

IN THE DISTRICT COURT HELD AT OSINO ON THURSDAY THE 6<sup>TH</sup> DAY OF  
JUNE, 2023 BEFORE HIS WORSHIP AYAGIBA SALIFU BUGRI, DISTRICT  
MAGISTRATE

Suit No: A2/04/23

ENSU NYAME YE ASSOCIATION

PER ITS LAWFUL ATTORNEY ..... PLAINTIFF

DANIEL TENADU

OSINO

VRS:

MARTHA AMOAKOWAA ..... DEFENDANT

OSINO

J U D G M E N T

**Reliefs sought:**

1. Cash sum of GHC610.00 being money defendant owes Ensu Nyame Ye Association
2. Any other orders that the court may deem fit to make
3. Interest and cost

**Brief Facts**

The plaintiff's case is that defendant has been a member of Ensu Nyame Ye Association since 2012. One of the rules of the association is that a member shall refund all donations made to that member during a bereavement of that member, if that member decides not to be a member of that association. As it turned out, defendant benefited during the demise of her parents and when her daughter put to bed. Subsequently

defendant has failed to pay monthly dues of GHC10 for the past fifteen (15) months, and has also failed to attend meetings nor contribute to donations made by the association. Despite several verbal and written demands, defendant has failed to pay up.

Opening her defense, defendant admitted the consequences and failure to pay monthly dues. She also admitted that it is a rule of the association that if a member decides to relinquish his/her membership, that member shall refund all donations benefited during his/her membership of the association. In 2013 when her daughter gave birth, the association donated items because she paid her dues consistently. In 2017 and 2018, she lost her father and mother and the association donated to her respectively. In 2020 however, she took ill and unable to meet her financial obligations to the association. Contrary to her expectation that the association will be charitable to her, she was required to meet her obligations. In that year, some members volunteered to pay her monthly dues. In 2021, even though she had not recovered fully from her ailment, she managed to attend meetings and asked her son to use her remittance to pay her monthly dues on her behalf. She continued to attend all programs and meetings of the association in 2022 even though she had not paid her dues due to financial constraints. Somewhere in July 2022 there was an altercation between her and another female member of the association, that was eventually resolved at the chief's palace after the association had failed in that attempt. Subsequently the association decided to fine both and she did not accept nor reject. Defendant says the executives of the association visited her somewhere in 2022 to obtain the fine that was imposed and also told her, her feuding partner had voluntarily ceased to be a member of the association. Defendant says she pleaded for the fine to be mitigated since she intended to maintain her membership and also attended subsequent meetings. In that meeting, other members pleaded on her behalf for mitigation, whilst others suggested the fine be waived.

Subsequently she failed to attend meetings for a month and was served a letter by the executives expelling her from the association. Defendant says she was bitter because she had been a member in good standing for ten years, thus owing dues for one year should not merit an expulsion. Defendant counterclaimed that, the association return all her contribution of donations and dues for the past ten years that she has been a member of the association and in good standing, minus her indebtedness.

### **Issues for Determination**

Whether or not defendant has breached any rules of contract, and therefore liable to plaintiff's claims

From the evidences adduced, it is clear that defendant was one of the founding members of the association. As the evidence has it, defendant was also one of the members who instituted the rules and regulations governing the association, and enforced same rules against members who breached them as in the instant case, and recovered money due the association through similar court actions.

Having been a member of the said association, and having been in good standing for the past ten (10) years, it was defendant's expectation that some consideration is made in her case. Especially so when it is in evidence that defendant took ill and has not been engaged in trading activities to earn some income. Of course, rules governing an association are binding on all members in the absence of any exceptions expressly stated. In as much as it is not the duty of the instant court to dictate to or alter decisions of the association, a court can only decide on whether the decision is lawful and fair under the circumstances as in the instant case.

Where a group of people forming an association, have decided on the rules and regulations to regulate the conduct of members, payment of dues and punitive

measures against members who breach such provisions, the court will not alter it unless it is unlawful and repugnant to the rule of law, the national constitution, natural justice and good conscience.

Meanwhile Article 21(1)(e) states;

1) *All persons shall have the right to -*

*(e) freedom of association, which shall include freedom to form or join trade unions or other associations, national or international, for the protection of their interest*

In the instant case, plaintiff has stated without a rebuttal from defendant that the association is registered with the registrar general's department, and therefore a legal entity that can sue and be sued.

Thus under the circumstances, defendant had not breached any national law by being a member of the instant association. There is no evidence that defendant was coerced or joined the group by any undue influence. Having established that defendant is one of the founding members, she is also one of the proponents of the rules and regulations by which the affairs of the association are governed, and she is bound by those rules.

According to defendant, she joined the association because she is a single parent and only child of her parent. It is evident that defendant joined the association as a form of social security, for her own benefit during bereavement and hard times. It is established per the evidences adduced that defendant has benefited as expected during the demise of her parents and when her daughter gave birth.

For two consecutive years that she took ill, defendant paid her dues through her son in one instance and by the benevolence of other group members. Defendant is however

concerned that notwithstanding her ailment and economic circumstances at the time, the association did not exempt her from paying dues and meeting other commitments, even though it would have been fair to do so at the time.

I can infer from defendant's testimony that, it is from her trading activities that she paid her previous dues. Therefore, if she was ill and could no longer earn enough to pay her dues, she could have been exempt for the period that she was ill. It is trite that it is virtually impossible for one to extract something out of nothing.

For donations that defendant has been asked to refund, I am of the view that once that has been incorporated into the rules of the association and accepted by all, this court will not alter that rule. Otherwise, a donation as I understand it; is an act or instance of presenting something as a gift, grant, or contribution.

Per Wikipedia; A donation is a gift for charity, humanitarian aid, or to benefit a cause. A donation may take various forms, including money, alms, services, or goods such as clothing, toys food, etc.

Per Black's Law Dictionary, it is referred to as a gift.

Thus in my opinion a donation once made cannot be retrieved or recovered, because it is a gift. In as much as I do not think the rule is fair, the members of the association have agreed to that provision and this court shall not alter it. However, I wish to state that it is not defendant's fault that she benefited three times. Apart from defendant's daughter putting to bed, her bereavement may not have been her wish no matter the value of the donation made to her. Ordinarily, No person in his or her right senses prays for her parents or relative to die in order that he/she may benefit from donations. Moreover, I can infer from the evidences adduced that members of the association are resident within the same community and are familiar with each other. Therefore, I doubt that plaintiff and other members living within the community and neighboring defendant

would have failed to make donations to her, no matter how little or even if she was not a member of the group. It is notorious that funerals in most Ghanaian communities are social and community events. In as much as rules and regulations are made to govern any set of people, they must not be such that their enforcement and implementation will raise questions of morality and good conscience of those tasked to do so. Thus under normal circumstances once a gift or donation is made it cannot be recovered or retrieved unless it was obtained through fraud.

Notwithstanding the above, a contract is a legally binding agreement. It refers to an agreement, which the courts will enforce. Contracts are therefore those agreements that satisfy the requisite legal requirements well enough to be capable of enforcement by the courts of law.

Contracts can ordinarily be made orally or written or by implication from conduct. Section 11 of the Contracts Act (Act 25) states that a contract does not need to be in writing in all cases before it can be enforced by the courts.

***Section 11—Contracts Need Not Be in Writing Except in Certain Cases.***

*Subject to the provisions of any enactment, and to the provisions of this Act, no contract whether made before or after the commencement of this Act, shall be void or unenforceable by reason only that it is not in writing or that there is no memorandum or note thereof in writing.*

The terms of a contract refers to the exact undertakings that the parties have agreed to carry out under the agreement. In other words, the terms refer to the conditions, stipulations or covenants that the parties have each agreed to be bound by under the contract. A court will not enforce a contract if it is not clear as to what each of the parties

is required to do under the contract. Terms are an essential part of a contract without which a court will be handicapped as to what to enforce.

An agreement which is definite on the whole will be enforced despite the fact that some meaningless or unnecessary words have been added to it. The court will simply ignore those meaningless words or phrases and enforce the contract as if those meaningless words and phrases were not part of the contract. The terms of a contract may be implied or express.

For the sake of the instant case, I limit myself to express terms, which maybe conditions or warranties.

'Conditions' are essential or important terms which are vital to the contract to the extent that non-observance of them will affect the main purpose of the agreement. Breach of a condition gives the aggrieved party the right to rescind or terminate the contract. Alternatively, the aggrieved party may go on with the contract but recover damages for the breach of that term.

On the other hand, per 'warranties' the breach will aggrieve the other party but will not affect the main purpose of the contract.

A breach of contract is an act of breaking the terms set out in a contract or agreement.

In the instant case it is evident that defendant has breached a term of the contract between she and the association. The contract between the association and its members is that, they will honor obligations spelt out in the terms and in return enjoy certain benefits, which I have mentioned in the earlier paragraphs.

Although defendant has given reasons for the breach, it is important to note that the breach is one that affects the purpose of setting up the association. It is apparent from

plaintiff's evidence that, the association depends on dues and donations from individual members to meet its obligations when a member is bereaved or celebrating an event. Thus, non-payment of dues by members will definitely affect such obligations. Even though I understand that defendant has paid her dues over the years, and was in good standing until the year 2020, the sanctity of the contract is affected by her inaction. The issue of morality and good conscience is at the instance of the association through its executives. Even though defendant stated in her evidence that her situation was, discussed in one of their meetings, there is no evidence of the outcome. If some members expressed that her arrears in dues and a fine imposed for misconduct waived, suspended etc, there should be evidence of what was agreed. To this end, I believe that there was no agreement to that effect.

As stated earlier since the payment of dues forms an essential part of the contract between defendant and the association, it has the choice to either allow defendant to continue to be a member of the association, and honor her dues arrears with time or as and when she has the money and can afford. Tentatively the association can terminate defendant's membership or take an action to recover the dues arrears or damages arising from her inaction.

Having opted for the latter, it is the duty of the court to enforce the terms of the agreement between defendant and the association. It is not the duty of the court to alter the terms of the agreement under any circumstances. To the extent that defendant has been a member of the association for ten years, the issue of whether or not the rules and regulations vis a vis enforcement are fair cannot be raised at this juncture.

I have perused defendant's dismissal letter, which she tended in evidence and observed that the stated reason for her dismissal from the association is for absenteeism from meetings for three consecutive months.



Reference was made in the letter, to the fact that defendant would have been considered for her absenteeism if it was due to medical reasons, but that is not so in her case. The evidence adduced in this court reveals that defendant's ailment was in 2021, and visited by some executives of the association. However, the dismissal letter was in respect of absenteeism for three months continuously. From defendant's testimony, the last time she attended the association's meeting was in October 2022. It was in that meeting that issues pertaining to her discussed, including payment of a fine imposed by the executives of the association. Thus, three months have elapsed from that date to the filing of the instant suit.

If it is, embodied as part of the rules and regulations of the association to dismiss its members who fail to attend meetings for three consecutive months, and the members are aware of that rule, this court shall not alter but enforce it. Indeed, defendant has alluded to this fact.

On the other hand, since there is no evidence that it is per the rules of the association that a member who fails to honor his/her obligations, shall pay with interest, I decline to award same.

After evaluating and analyzing the evidences before me, I have made the following findings of fact in the instant case:

- 1. That defendant is a member of the association (Plaintiff)*
- 2. That defendant owes the association*

Defendant's counterclaim that plaintiffs should refund all contributions she has made over the past ten years is not tenable in my opinion. It is not in evidence that there is an

existing provision per the rules and regulations of the association that there shall be a refund to a member under any circumstance. Consequently, defendants counterclaim fails.

Consequently, I find defendant liable to pay the sum of GHC610.00

Costs of GHC200.00 awarded to plaintiff

Judgement in favor of plaintiff

**HIS WORSHIP AYAGIBA SALIFU BUGRI,  
MAGISTRATE**