

**IN THE DISTRICT COURT HELD AT OSINO ON MONDAY THE 9<sup>TH</sup> OCTOBER  
2023 BEFORE HIS WORSHIP AYAGIBA SALIFU BUGRI DISTRICT MAGISTRATE**  
**CASE NO. . A2/17/23**

**NAOMI TETTEH**

**PER THE DEBT COLLECTOR A.OP .....  
DEBT COLLECTING OF  
ANYINAM**

**PLAINTIFF**

**VS**

**KOFI ALEX  
OF AKYEM SEKYERE**

**.....**

**DEFENDANT**

**JUDGEMENT**

Reliefs Sought:

1. An order of the court to compel the defendant to pay cash the sum of GHC2,600 being the total cost of pumping machine defendant rented from the plaintiff from 23<sup>rd</sup> December to 13<sup>th</sup> February 2023 but failed to pay despite several demands from the plaintiff
2. Interest at the prevailing bank rate till final payment
3. Costs

**Brief Facts**

Plaintiff is the managing director of A.OP debt collecting ventures based in Anyinam in the Atiwa East District and defendant is into mining and a mason.

Plaintiffs case is that defendant rented his pumping machine at a daily rate of of GHC50 and paid for a certain number of days. After the expiration of the days paid for or rental period, defendant continued using the machine from 23<sup>rd</sup>/12/2022 to 13<sup>th</sup> February 2023 without any payment for the additional period. Despite several and repeated demands, defendant has refused to pay GHC2,600 being the accumulated sum of the unpaid period.

Defendants defense is that; the pumping machine was seized by a landlord of an adjoining land because he encroached into his land. The landlord demanded GHC4000 before he will release the machine. However, upon negotiations with the owner of the pumping machine, he purchased a new one as replacement.

Defendant disagrees with plaintiff that he is still liable to pay GHC2,600 being the number of days that plaintiff lost revenue from the seized machine notwithstanding its replacement.

## **Issues for Determination**

**Whether or not defendant is liable to specific performance of the contract**

**Whether or not defendant is liable to pay 52days revenue that plaintiff lost**

Per the evidences adduced, there is no doubt that defendant rented a pumping machine from plaintiff's agent (PW1). The fact that the pumping machine was seized by a landlord for the reason that defendant was mining illegally on his land and without his consent has also been established. It has also been established that the landlord demanded GHC4000 from defendant as a condition to release the pumping machine.

It is evident that plaintiff's agent was aware that defendant engaged in illegal mining activity and the reason for the rental of the pumping machine.

PW1 agreed per his evidence that it is a trade usage among those engaged in illegal mining activity which is notorious within the jurisdiction that, where one hires a pumping machine, and it develops a mechanical problem or seized by the Police during usage, the parties i.e. the hirer and hiree share the cost of repairing or retrieving it. However, in the instant case the pumping machine did not develop a mechanical problem or seized by Police, hence PW1's submission that he is not liable to share the cost of retrieving or replacing the machine.

Defendant's defense is that, since plaintiff's agent is aware that the machine is with a landlord, who he has demanded GHC4000 payment plaintiff must bare part of the cost, by way of applying the principle of the trade usage aforementioned.

Plaintiff however disagrees and wants his machine and payment for the number of days that the machine has been with the landlord as a result of the seizure, including outstanding arrears of the initial contract that they entered into.

According to defendant, having met with the owner of the machine it was agreed for him to replace it, which he subsequently did and PW1 has attested to that. However, the point of disagreement stems from the demand of an additional GHC2,600 being 52 days that the said machine was presumed to be in the custody and being used by the defendant. Plaintiff insists that whether or not defendant has purchased and replaced the seized machine with a new one, he is liable to pay for the 52days loss of revenue prior to the replacement.

Plaintiff and PW1's submissions are that they lost income for those days, especially so when the initial contract had elapsed. Had the machine been availed at the time, the presumption is that potential hirers would have engaged its service, or the contract renewed by defendant if he still wanted to use it.

Indeed, in a contract such as the instant one, the intention of the parties is clear from the time they entered into the contract. There is no doubt that plaintiff seeks the remedy of specific performance of the agreement he entered into with defendant.

It is apparent on the face of defendant's defense that retrieving the pumping machine from the landlord will cost more than acquiring a new one, hence the decision for the latter option.

I have no doubt in my mind that ordering specific performance of their agreement will put defendant in more hardship than allowing a new machine to be purchased to replace the seized one. It is not difficult to opine the intention of plaintiff, that is, to recover his machine and money in full.

In the opinion of this court, to the extent that defendant lost the services of the machine due to the seizure, he also lost revenue or earnings from the reason he hired the machine, which is to extract gold. Indeed, as the evidence suggests, defendant paid nothing from the usage of the machine from 23<sup>rd</sup> December 2022 to 13<sup>th</sup> February 2023. From the evidences adduced, and in the absence of evidence to the contrary, this court can infer that the period aforementioned is the duration of the seizure of plaintiff's machine. To pray this court to enforce the contract to the latter due to a breach of this nature is in the opinion of this court unconscionable, most unfortunate and tantamount to the character of a 'shylock' as I see it. The view of the court would have been different if the evidence suggested that defendant was using the said machine throughout the period and failed to pay for it.

Moreover, whether or not plaintiff knew that defendant is engaged in illegal mining does not absolve him from the fact that he aided and abetted the conduct of an illegality. Ordinarily, a court will not enforce an illegal contract, let alone claims from it as in the instant case.

After all, the risks associated with that activity are notorious, including seizure, damage and burning of illegal mining equipments by law enforcement agencies and task forces appointed or engaged by government and other bodies.

Therefore, not being directly engaged or involved in illegal mining but facilitating the chain of the illegal activity means bearing the risks associated with it.

Upon evaluating and analyzing the evidences adduced, it is the decision of this court that, in order that the parties will both not suffer unduly, notwithstanding engaging in and attempting to enforce an illegality, defendant's acquisition of a new pumping machine for the plaintiff, and which plaintiff has received as the evidence suggests,

plaintiff has been restored to his former position at the time he bought the pumping machine. Plaintiffs attempt to recover revenue lost over the period and also keep the new machine is not fair and an attempt to enrich himself unjustly. After all, it is not in evidence that the machine that defendant hired from plaintiff's agent PW1 was a new one. Considering wear and tear over the period that the said machine has been in use before defendant hired it, replacing it with a new one is conscionable to do and defendant shall not be required to pay additional money.

Accordingly, plaintiff's claims are dismissed.

There is no order as to costs.

-SGD-  
**HIS WORSHIP  
AYAGIBA SALIFU BUGRI,  
MAGISTRATE**