

**CASE NO. . A2/09/2023**

.....

VS

..... DEFENDANTS

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benefit a deep freezer, air conditioner, stove burner and travelling bag after contributing for six (6) months. Plaintiff paid GHC300 initially for four months and subsequently GHc400 every three weeks. From July to December 2023 plaintiff says she paid GHC495 every three weeks. In 2023, she paid GHC550 every three weeks. Plaintiff added that she was fined GHC200 and GHC5 for lateness respectively which she paid. The following month plaintiff says she was suspended for six months for frowning. Subsequently she was fined GHC550 every three months for six months for not paying attention and for playing with her mobile phone, but she refused to pay. Plaintiff says she decided to opt out of the association and requested that her contributions be refunded to her. Plaintiff also requested for the items promised to no avail. Plaintiff says she believed she would benefit from the items aforementioned because they were indicated on flyers that the association used to advertise itself. Plaintiff says she has contributed, GHC12, 380 to the association towards the items for a year and half instead of six months but has benefited nothing even though she has qualified for them.

Opening her defense D1 indicated that plaintiff joined the association on 17<sup>th</sup>/10/21, and started contributing to the program on 11/11/21 until May 2023 when she decided to opt out. According to D1, it was almost plaintiffs turn to benefit from the association per the aforementioned items when she decided to opt out. Any breach of the rules of the association attracts a sanction and one may lose her turn for the reason of the breach. Lateness to a program attracts a suspension and a fine of GHC200. On one occasion, that plaintiff and other members were late to a program they were fined and all paid except plaintiff. Even though plaintiff later paid GHC190 via mobile money payment and the remainder of GHC10 through a third party, she insisted that plaintiff made that payment personally. In another instance, plaintiff left in the middle of a meeting with the volume of her mobile phone very loud that it distracted the other members. Plaintiff was agitated when asked to lower the volume of her phone.

The period of these incidents coincided with performing plaintiffs ceremony for the handing over of the items promised. When plaintiff was told to pray that the association gets three more members, she retorted that there was no way she was going to get three potential members and left with a bitter heart, amidst insinuations until some of the members pleaded for peace to prevail. According to D1, by her conduct plaintiff had breached the rules of the association and had to be sanctioned by suspension unless she apologized. Even though plaintiff reported the matter to the Anyinam Police and subsequently to Anyinam circuit court they were advised to settle amicably. Plaintiff agreed to apologize for her conduct, but instead summoned her to the instant court. Defendant concluded that, one of the rules of their association is that if one leaves the association with anger and bitterness she loses her program.

D1 testified that others breached the rules and had their programs performed for them after they apologized. Therefore, if plaintiff apologizes for her breaches, the association will reciprocate by performing her ceremony and present the items. Otherwise, the association has no money to pay plaintiff.

### **Issues for Determination**

1. Whether or not by virtue of agreement between plaintiff and the association, the parties have entered into a legal relationship and a contract for that matter.
2. Whether or not plaintiff has the right to opt out of the association and thereby entitled to a refund of her contributions for the past one and half years

It is trite law that a contract is a legally binding agreement. It refers to an agreement which the courts will enforce. For an agreement to be enforceable by a court, it must meet certain legal requirements well enough to be capable of being enforced by the courts of law. Contracts can be described as simple and specialty contracts.

For the sake of the instant case the court shall limit itself to simple contracts which is relevant to the subject matter before it. Indeed simple contracts are the most common and important variety of contracts. They may be made in writing, orally or by implication from conduct. Section 11 of Act 25 (contracts act) affirms this.

The essential elements necessary for a court to enforce a simple contract are:

A definite offer, an unqualified acceptance of that offer, consideration, intention to create legal relations, capacity, clear terms of the contract, and legality. If any of these elements is missing in any agreement, the courts will refuse to enforce such an agreement. If such an agreement is enforced at all, it will be seen as an agreement simpliciter (per se) but not a contract. In the instant case there is no evidence that the association is registered under any law of Ghana to operate as such. By registration, the objective of the company, including its directors are known. On the other hand, it is not in evidence whether or not its activities have been sanctioned by the District Assembly under whose jurisdiction it operates. Thus, its operations are not formal. At best, by its mode of operation and conduct may be described as a ponzi scheme in my opinion. Ponzi schemes are investment frauds that pays existing investors with funds collected from new investors. They often promise to invest a customer's money and generate high returns with little or no risk, but end up not investing and rather abscond with the money. The object is to make outrageous and enticing rewards to the unsuspecting public, attract and register potential members, benefit the initial few and abscond after it has succeeded in accumulating so much money by way of deposits and registrations as in the instant case. Since they have no legal backing and the directors are not known they usually vanish into thin air with the funds of their customers.

In the instant case, it is evident that D1 and D2 who are founders and managers of the association made an offer to their members including plaintiff. The offer was for

plaintiff to register as a member of the association, pay dues and after the expiration of six months, she would benefit certain products and appliances already known to the parties. It is not in evidence that the terms of the agreement were spelt out by any document and handed to the members upon attaining membership, except orally. From the evidences adduced, sanctions during programs and meetings were at the will and not documented in any document or constitution.

It is evident from plaintiffs claim that, the sum claimed i.e. GHC12, 380 include fees paid as sanction for some of her breaches of the association's rules. In as much as I agree that the amounts are outrageous, I am not sure that it added up to a members contributions and one could claim it as in the case of plaintiff.

It is also apparent that there is no system of accountability, and anyone who challenged the status quo was punished with suspension and forfeiture of her turn even if she was left with a day presentation. This ad hoc approach caused members to lose their turns when it was time to benefit after the expiration of the six months membership. Thus instead of six months one could remain a member of the association after the expiration of six months due to sanctions of a combination of fines and extension of time. In the case of plaintiff, she had contributed for one year and six months but had still not received her items due to such sanctions.

In the case of DW1, she protested that someone had benefited in her place. For an association that sanctions its members for disrespect and unruly behaviour or even lateness, one will assume that the object is also to instill discipline including moral uprightness and integrity in its members. To punish a member for protesting against unfairness raises issues about the integrity of the handlers of the association and D1 for that matter.

In terms of a contract, an offer is an indication or a statement of the terms on which an individual is willing to be bound by way of an agreement. If the agreement is accepted as it stands, then an agreement comes into existence between the parties concerned.

In the instant case it is evident that the offer was express and the parties relied on it. Additionally, flyers had been used to advertise the association and the items that a potential member stood to gain if she became a member. Pioneers like plaintiffs friend PW1 had benefited from it. In my opinion that was an inducement enough for plaintiff to enter into the above contract with D1's association.

In the case of *Carlill v Carbolic Smoke Ball Company LTD*: The defendant company put up an advertisement in a newspaper that if anyone bought a certain drug produced by them and used it as prescribed but still caught influenza, then they pay 100 pounds to that person and that they had deposited 1000 pounds with a particular bank out of which such payments could be made. This statement was made in order to assure people about the efficacy of their drug (implying that it was impossible that that their drug will fail to cure people who depend on it to treat their influenza). Based on this advertisement, the plaintiff (lady) bought the drug and used it as prescribed but still caught influenza. She therefore sued the defendants for the reward of 100 pounds promised by them.

The court held that:

1. What was advertised constituted a contractual offer
2. That such a general offer could be accepted by anyone by conduct
3. That such acceptance could be valid even without previously notifying the offeror about the acceptance

In my opinion, the advertisement by the D1's association constituted an offer by itself as held in the aforementioned case with similar facts.

On the other hand, a mere puff or boast is a statement that no reasonable person would take seriously because it is an obvious exaggeration. It often made by way of advertisement such as a claim on the packet of a detergent that Omo washes brighter and removes all stains. If anyone buys any goods based on such a puff or boast and the goods do not work out as claimed, he/she cannot sue the makers of these statements for breach of contract.

It is trite law that an offer must be communicated to an offeree before he can accept it. Therefore, if an offeree is not aware of an offer, but all the same he does something tantamount to an acceptance of that offer, then in law he cannot be said to have accepted that offer by his conduct since an offer cannot be accepted by a person until the offer is known by that person.

In the instant case, the evidence adduced by the parties suggest that D1 communicated the offer to potential members. It is based on the offer of electrical appliances, traveling bags among others that D1 mentioned when asked to educate the court on the activities of her association that plaintiff accepted the offer and became a member thereon.

Offers maybe terminated by withdrawal, lapse of time, death, rejection, by failure of contingency, by acceptance.

In the instant case, the offer was to terminate upon the expiration of six months of being a member of the association and in good standing by way of payment of dues and regular attendance of meetings. In my opinion, granted that a person paid a fine upon a breach of rules, it is not fair to extend her time because she has been punished for the breach. Moreover, if membership terminates upon the expiration of six months, where

is it documented for contingency per the rules of the association for those whose time is extended because of a breach.

Asked by the court to educate it on its activities, D1 said the association (Royal Ladies Association) was formed to give items to its members. The items are rice, kettle, microwave, cooking oil, assorted provisions, key soap, and cash. After the presentation, that beneficiary ceases to be a member of the association. Before the member exits the association however, she is obliged to donate two plastic chairs and a crate of 'better malt'. The beneficiary is also obliged to rent musical instruments for entertainment on the day of her ceremony to attract potential members. The beneficiary may sell alcoholic beverages during the program, and in the absence of an MC, D1 may be plead upon to sell the products or drinks. It is the duty of a beneficiary to entertain members that attend her program. As much as possible misunderstanding among members is supposed to be settled within the association and not in public. If a member without permission, fails to attend a program or meeting of the association it may attract a suspension. Apart from bereavements, issues pertaining to a member require the associations support. Additionally, financial contribution is made to an ailing member.

In my opinion once the period stipulated for plaintiff to benefit had elapsed and there was no sight of her ceremony, she had every right to rescind the contract and opt out of the association.

The various grounds for rescission include where a contact is made with utmost good faith, which requires a party to make full disclosure of information which is within his purview only. Failure of which the other party can rescind the contract. In the instant case there was a seeming good faith by both parties hence they entered into the agreement or contract.

The other is the express right to rescind a contract. The parties to a contract may expressly preclude one from rescission if certain conditions are not satisfied. In the instant case, the conditions set by D1 were not adhered to, hence upon the expiration of six months, plaintiff has endured for another year. Granted plaintiff breached rules, for the fact that she was in good standing financially considering the evidence before me, D1 and the association for that matter should have exercised reasonableness in the extension of her time after six months elapsed it is trite that rescission shall not be granted if a party deliberately creates a situation to facilitate rescission. In the instant case, it is not evident that plaintiff deliberately created a situation to facilitate rescission, otherwise she will not endure for one and half years just to benefit the offer.

Mistake, is another ground on which a party may rescind a contract. A mistake occurs where the subject matter being relied upon is viewed differently by the parties. This means that both parties are mistaken as the subject matter does not exist and the contract is void. In the circumstance, intervention of equity is unnecessary. It is a common mistake and they cannot make a contract relating to a non existing subject matter.

There is one kind of mistake that makes the contract void ab initio.

That is common mistake; in common mistake both parties make the same mistake. Each knows the intention of the other and accepts it but each is mistaken about some fundamental fact. The parties for instance are unaware that the subject matter of their contract has already perished. The courts have said that, if it is such that their minds never met the contract must be set aside.

In unilateral mistake only one of the parties is mistaken. The other knows or must be taken to know his mistake

**Misrepresentation;** Misrepresentation is a statement of fact. Therefore, a representation of law is not a misrepresentation.

Misrepresentation is a statement of fact, which turns out to be false or untrue.

Therefore, a misrepresentation is a statement of fact made by one party to the other party intended to be relied upon and actually being acted upon but it eventually turns out that the statement relied on and acted on is false, wrong or true.

**Fraudulent Misrepresentation;** It is a false statement of fact made knowingly or without belief in its truth or made carelessly or without caring whether it be true or false and with the intent that it be relied upon and it was actually relied upon.

**Constructive Fraud;** This is a kind of fraud that does not rise to prosecutable fraud. It is rather any conduct which does not measure up to the standard that equity demands. Rescission will be granted on constructive fraud on the grounds of undue influence, abuse of confidence unconscionable bargain and frauds of power.

**Undue influence;** This is a type of influence that bends the will without persuading the judgement

This means persuasion is allowable and permissible, except where it is over persuasion. Usually a party who alleges undue influence has the burden of persuasion. If he fails, the courts will award punitive costs as his inability to do so casts a slur on the integrity of the other party.

The exception is where there is a fiduciary relationship, which creates dominant and servient situation, the law presumes undue influence.

In the instant case even though I do not see the semblance of over persuasion, there is however a seeming dominant and servient or master and servant situation in the

relationship of D1 and the members of the association. It is a seeming 'do before complain'. For fear of losing their terms and harsh sanctions imposed, they abide.

***Abuse of confidence;*** This is where a fiduciary relationship or position of close relationship is established and a party uses such a position to obtain a direct or indirect benefit. When such occurs the courts would say that a party has abused his confidence.

***Unconditional Bargain;*** A contract is deemed unconditional when the parties at the negotiation are not at arm's length. This means that the bargain is lopsided, hard and it grossly does injustice to one party. The idea of unconscionability of a contract is most apparent where the negotiation is between an ignorant, illiterate, weak and powerless party and a well informed, and astute business person. Therefore, the well informed business individual takes undue advantage of the ignorant and uninformed party. Most authorities consider the low income earners, illiterates as ignorant and poor. Also, a contract contrary to public policy may be set aside for unconscionability though not to protect any particular party.

***MISDESCRIPTION;*** It means that the other party to a contract does not get what he bargained for. This amounts to failure of consideration and the contract can be set aside for its failure. It is either significant or substantial when what is described in the contract differs materially from what was actually bargained for and to be delivered. The rule is that a party should give or receive that which he did not mean to have or give. When it is substantial the party affected may accept it but claim abatement in price or a proportionate compensation for the discrepancy. The party failing to deliver cannot compel the affected party to rescind or force the contract on the affected by way of specific performance.

In the instant case, it is evident from PW1's testimony that various means were used to extort money from plaintiff. It is also evident from PW1's evidence that she became

worried for plaintiff at D1's conduct for obviously being responsible for introducing plaintiff to the association. As I said earlier, this is the mode such schemes operate. In my opinion, once it was convinced that plaintiff was gainfully employed and within her means to pay on demand, all forms of methods were applied to extort money from her. It is not surprising that plaintiff was always on the receiving side of sanctions at the whims of D1. It is always evident from the cross examination of PW1 that even though PW1 attended meetings of the association on behalf of plaintiff, D1 was still not content and exacted sanctions of payment of fines that were unjust in my opinion. To buttress my point, it is evident from that cross-examination that D1 was unaware that PW1 had attended meetings and even made payments on behalf of plaintiff. In the opinion of this court every sanction imposed on plaintiff was a scheme and ingenious way to extort money from her. To this extent, I doubt if the association had any records of meetings attended by members or minutes of meetings for that matter.

Per the testimony of DW1 apart from the GHC20 that members paid as registration fees to join the association, the other was GHC150 and later an upward adjustment of GHC250. From her testimony, one was only required to apologize to D1 for any breach of the associations rules. The other sanction is that the offender loses her turn to the next in good standing, since it is obvious that 'the first come first serve' policy was not guaranteed due to our fallibility as humans. Thus it baffles my mind that plaintiff had to pay so much by way of fines if not extortion. DW1 is an apprentice hairdresser, even though sanctions were imposed on her following a breach, it was nothing close to any on the ones imposed on plaintiff. From the evidences adduced and the economic status of DW1, there was no way she could have paid any of the sums plaintiff paid as sanctions. If payment and buying items into the association cost GHC150 initially and later adjusted to GHC250, then plaintiff crossed these thresholds any of the aforementioned mandatory payments. Granted that plaintiff had a misunderstanding

during one of the associations meetings with D1, and failed to apologize, the sanctions meted to her must be fair, reasonable and conscionable. For a member who has paid her dues consistently for six months, failed to receive items promised to her after the expiration of six months promissory and maturity period, and continued to make such payments close to two years, there was no way frustration was not going to set in. Plaintiff's misunderstanding with D1 could possibly be borne out of that frustration. This court cannot rule that out.

According to DW2, most of the rules in the association had not been enforced, until she was a victim. Her case was that even though she had met the six months requirement, the ceremony was performed for another and not on 'first come, first served' basis. That was the cause of her reaction (a natural and realistic reaction in my opinion) that caused her to lose her turn. In the case of DW1 she was suspended even though she was not aware of it until she was advised to apologize. When she did so, the ceremony for presentation of items was performed accordingly. In the case of plaintiff, it was not so. Every sanction had money extorted, whether or not in lieu of or in addition to an apology is not very clear.

In as much as it is the fundamental human right of every person to form or join an association freely, it must be lawfully established, and the activities must be for lawful reasons. It is evident that D1 and D2 are operating a scheme that targets and take advantage of the illiterate, poor, uninformed and unsuspecting public. As indicated earlier these schemes tend to lure people with high interests or items such as in the instant association to boost their customer base. The initial members benefit as part of the scheme to make a statement to the public about their credibility. Once they achieve their desired target and obtained enough money from them, they fold up and vanish into thin air with members hard earned money.

To this extent I have no doubt that defendants are engaged in constructive fraud and by that abused the confidence reposed in them by their members. Defendants have taken advantage of the unsuspecting members who are mainly unemployed to lure them into such a scheme. Otherwise, a reasonable person can tell that GHC150 and GHc250 paid monthly or every three weeks, for six months, cannot get one the aforementioned items, if not by fraudulent means. Indeed rules and regulations are necessary to regulate the conduct of members of an association. These rules are mostly contained in the associations own constitution or any document. It is imperative that members are aware of and issued copies of their constitution to guide their conduct and expectations of their association. That notwithstanding, the contents of the association cannot be against the national constitution and obviously against public policy.

In the instant case, some of the rules of the association are obviously against public policy in our current democratic dispensation in my opinion. No court will enforce a rule that is unconscionable, infringes on the fundamental human rights of a person and against the national constitution.

How is it, that, one cannot speak up if she disagrees with anything happening in the association, even at meetings of the association. After all, it was formed in the interest and for the benefit of all the members. Meetings are held to deliberate over issues until a decision is made. There are obviously bound to be disagreements as long as each member has a right to express their respective opinions.

How is it, that one will be described as exchanging words with the head of the association during a meeting to deliberate on issues pertaining to the association, when it is one of the rules of the association that all issues be settled within. Thus, if there's an altercation between any member and D1 during a meeting, how is that punishable. D1 has stated that she is a media personality and ought to know better than to operate an

association with dictatorial tendencies where all must listen and not disagree with her. Moreover, how is it that a frown will attract a fine, when one's facial expression can easily change based on a disagreement or unhappiness about something being said in the meeting, and possibly something very remote from what is being said in the meeting. These are feelings with commensurate facial expressions that one can hardly control and more importantly, not be sanctioned as in the case of plaintiff. Even a court cannot make an order to injunct another's facial expression, including a frown.

Upon evaluating and analyzing the evidences adduced, I have made the following findings of fact:

1. That plaintiff is a member of Royal Ladies Association
2. That she has been a member for one and half or close to two years
3. That she has paid her dues consistently
4. Has met the criteria of six months to receive items promised

On the basis of the above, and upon the preponderance of probabilities of the evidences adduced, I am convinced that plaintiff's testimony is more credible than defendant's defense. I am also convinced per the evidences adduced that plaintiff has not been treated fairly by the association and D1 and D2 for that matter.

Since D1 indicated during her defense and cross examination that the association is ready to perform a ceremony for the delivery of items promised and due to plaintiff before she instituted the instant suit, I order that that ceremony is held and items delivered to her accordingly as soon as practicable. I order specific performance of that which the parties agreed when they entered into the agreement. There is no doubt that plaintiff has met the criteria for the ceremony and delivery of an air conditioner, stove burner, deep freezer, and travelling bag as indicated in her evidence in chief. There should not be any further delay, whether or not plaintiff has apologized.

The above decision is because, considering the evidences adduced, plaintiff has paid so much money comprising both fines and dues since she joined the association. As it stands per the evidences before me, some of plaintiff's payments are not documented, besides the print out of mobile money payments (Exhibit A), which do not add up to the sum claimed per the reliefs sought.

Whereas I agree that some of the reasons for the fines are outrageous, identifying the amount paid as fines alone and dues respectively will be a laborious task since they are from various, including non-documented sources. Consequently, it is a better option to enforce the agreement.

Finally, to ensure that D1 and D2 are operating a lawful association, I order that all registration certificates or any license for the creation and operation of the D1 and D2's association, known as ROYAL LADIES ASSOCIATION are submitted to the instant court for perusal by Monday 21<sup>st</sup> August 2023. The full compliments and Curriculum Vitae of the directors must be included as such.

Costs of GHC500 awarded for the plaintiff.

**(SGD)**

**HIS WORSHIP AYAGIBA SALIFU BUGRI,  
MAGISTRATE**