

**IN THE DISTRICT COURT, NGLLEHSHIE AMAFRO HELD ON FRIDAY THE 19<sup>TH</sup>**  
**DAY OF MAY, 2023 BEFORE HER WORSHIP EMELIA K. ABRUQUAH ESQ.,**  
**(MRS.)**

**SUIT NO. A2/01//2023**

**TIME: 11:09AM**

**CHRISTIANA SEFAAH ANIM**

**PLAINTIFF**

**VRS:**

**THOMAS MENSAH**

**DEFENDANT**

**PLAINTIFF PRESENT**

**DEFENDANT ABSENT**

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***JUDGMENT***

The Plaintiff claims against the Defendant are as follows

- a. An order for the recovery of an amount of GHC7,500.00 being an outstanding balance of GHC10,000.00 Defendant took from Plaintiff since July, 2021 to get Plaintiff recruited into Ghana Immigration Service which transaction did not materialized.

- b. Interest on the said amount from July, 2021 at the prevailing Bank rate till date of final payment.
- c. Cost of litigation.

The case of the Plaintiff is that she was told of a job opportunity at the Immigration and she will be required to pay a total sum of GHC10,000.00. According to the Plaintiff she paid various sums of monies by herself and through her relatives by mobile money transaction which sum up to GHC10,000.00.

My perusal of the transaction between the Plaintiff and the Defendant's mobile number of 0243-655306 which he answered in affirmative as his mobile number came up to GHC3.500.00.

The 1<sup>st</sup> witness of the Plaintiff also told the court that he is aware of the matter before the court. He stated the dates and the amount of money he transferred to the Defendant confirmed number amounting to GHC4,000.00 which has been verified by the MOMO transaction statement filed by the Pw1.

Pw2 Gabriel Owusu who is also a relative of the Plaintiff also enumerated the amount of mobile money transfers he sent to the Defendant MTN mobile number totaling GHC1,500.00 with dates attached.

I must indicate that the evidence of the Plaintiff and her witnesses is backed by printed statements from MTN Ghana indicating the date the number and the amount of money sent to that number, which number as stated earlier was confirmed by the Defendant as his.

The Defendant gave only three-paragraph evidence where he stated that he gave the Plaintiff an amount of GHC1,500.00 through MTN mobile money in August 2022. No further evidence is given to back this statement like by way of attachment from MTN as the Plaintiff and her witnesses did.

It is trite law that this being a civil matter, the party whose claim or assertion has been denied by his opponent has the burden of adducing sufficient and credible evidence to prove his claim. he discharges this legal burden by producing sufficient and credible evidence on a preponderance of probabilities as required in sections 11 and 12 of the Evidence Act 1975 (Act 323). Hence the Court in the instant case must satisfy itself that, on the totality of Plaintiff's evidence before it, Plaintiff'S have succeeded in discharging this burden required by law to have the reliefs granted. This principle of law was stated by the Supreme Court in the case of **Duah v. Yorkwa (1993-94) 1 GLR 217 at page 224** in the following terms, "In our jurisprudence, if two parties go to court to seek redress to a dispute, it is the Plaintiff who initiates the litigation and literally drags the Defendant to court. If both parties decide to lead no evidence, the order which will be given will necessarily go against the Plaintiff. Therefore it is the Plaintiff who will lose first, who has the duty or obligation to lead evidence in order to forestall a ruling made against him. This is clearly amplified in **section 11 (1) of NRCD 323** which provides that: "**11 (1) for the purposes of this Decree, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling against him on the issue**".

The Plaintiff and her two witnesses supported their oral evidence with document to prove the amount of money sent to the Defendant's number. It is worth nothing that the Defendant elected not to cross examine the PW1 with the reason that all the mobile money transaction between the two of them was right. In the case of PW2, the Defendant himself took the adjournment date when Pw2 who is a banker to come and give his evidence but failed without any reason to be in Court on that adjourned date. The matter therefore went on and Pw2 was discharged after he tendered in his witness statement.

The issues before the Court is whether or not the Defendant took GHC9,000.00 from the Plaintiff to get her enlisted in the Immigration Service. As indicated the Plaintiff

submitted documents obtained from MTN Ghana bearing the Defendant's phone number where a total amount of GHC9,000.00 has been received by the number.

The Defendant had stated even when being cross examined by the Plaintiff that he only received GHC7,000.00 from the Plaintiff and never received GHC10,000.00 cash from her. Whilst cross examining the Plaintiff. The Defendant asked.

Q: Apart from the mobile transaction that came to me I did not received any cash from you except the document you came and left at my shop.

A: It is not true, I gave you the document and GHC1,000.00 and you counted it in front of me.

Perusing the documents presented to the Court, the Momo transactions received by the number confirmed by the Defendant amounted to GHC9,000.00 which monies were sent by the Plaintiff and her witnesses . So if the Defendant is admitting that mobile money transactions were received by him, then the amount received from the Plaintiff and her witnesses is GHC9,000.00 and not GHC7,000.00 as he wants the court to believe. With regard to the GHC1,000.00 that the Plaintiff said he added to the documents and sent to the Defendant, the Defendant vehemently denied receiving that amount and that the Plaintiff only brought the document without any money. The question then is which of the two evidence is more probable. It is trite in civil matters that where evidence of the parties boils down to the oath of one party and his witnesses against the oath of the other party and his witnesses, the decision of the Court may safely be based on the trial courts impression of the credibility of the parties and their witnesses. See the case of **Theophilus Kushigbor V Y.B Salifu.**

Having examined the evidence of the Plaintiff visa vie that of the Defendant the court finds the Plaintiff's evidence more credible than that of the Defendant.

From the above analysis, the court comes to the conclusion that, the Plaintiff has succeeded in discharging the legal burden placed on her under sections 11(1) and 12 of Act 323. On the other hand, the Defendant has failed to discharge the evidential burden shifted on him after the Plaintiff discharged the legal burden. I therefore find as a fact that the Plaintiff paid in total GHC10,000.00, GHC9,000.00 of this is by mobile money transaction from the Plaintiff and her witnesses whilst to the Defendant GHC1,000.00 was paid to the Defendant cash by the Plaintiff.

From the above, it is reasonable for the Court to order the Defendant to refund the GHC7,500.00 to the Plaintiff being the remaining balance of GHC10,000.00 the Plaintiff paid to the Defendant since July, 2021.

I hereby enter judgment in favour of the Plaintiff as against the Defendant for the recovery of GHC7,500.00. Interest to be assessed at the current Bank rate from July, 2021 till date of final payment.

Cost of GHC700.00 is awarded to the Plaintiff as against the Defendant.

**(SGD)**

**H/W EMELIA K. ABRUQUAH (MRS)**

**(MAGISTRATE)**