

IN THE DISTRICT COURT, NGLEHSHIE AMAFRO HELD ON FRIDAY THE 7TH
DAY OF JULY, 2023 BEFORE HER WORSHIP EMELIA K. ABRUQUAH ESQ.,
(MRS.)

SUIT NO. A2/07//2023

TIME: 11:09AM

ERNEST NII AMAFIO

PLAINTIFF

VRS:

STEPHEN ODAI

DEFENDANT

PLAINTIFF PRESENT

DEFENDANT PRESENT

JUDGMENT

This action was instituted by the Plaintiff against the Defendant for a refund of the sum of nine thousand five hundred Ghana Cedis (GHC 9,500.00) being cost of F.I.S. NON TEBLE Engine which got missing in the custody of the defendant in the year 2022 which Engine the Defendant failed or refused to pay its cost and he would not pay unless compelled by this honourable court

b. In the alternative Defendant should replace the same Engine.

The Plaintiff filed his witness statement on the 11th of March, 2023 in which he stated that his car broke down somewhere in 2022, so he went to Accra with the Defendant who is his mechanic and PW1 to buy an engine but they realised that that engine bought was too small for the car so they returned it and were told to come in a month's time for another one as their type F.I.S NON TEBLE was finished and were expecting some to arrive. Plaintiff stated that they were called to come for the engine. So, he again went with the Defendant and PW1 and brought the engine to the Defendant's shop. He said he asked the Defendant to lock the Engine in a room but the Defendant told him that it would rather be stolen in the room so he would rather fix it into the car to which they did. That it was left with an automatic converter to be bought and fixed for the car to be able to move which he was looking for one to buy. He said the Defendant called him one day to say that the engine has been stolen in the car. PW1 virtually repeated the evidence of the Plaintiff except to add that the engine was bought at GHC9,500.00 and he was present when the engine was fixed into the car and that the Defendant was waiting for the automatic converter to connect it to the engine before the car can move but she was told by the Plaintiff that the Defendant said the engine has been stolen.

PW2 is an auto electrician. He said he was invited by the Plaintiff to lay wires in his car but he detected that the engine was too small for the car so he advised him to change it. He said the Plaintiff called him later to say that he has bought the prescribed engine that is F.S.I NON TEBLE engine. He added that the engine was already fixed in the car before he went to lay the wires. PW2 attached photographs and receipts of payment for the engine.

On his part, the Defendant who filed his witness statement on the 22nd of March, 2023 stated that the Plaintiff called him somewhere in 2022 to come and inspect his faulty Audi A2 Car for repairs. After inspecting the car, he was unable to start the car. According to the defendant Plaintiff agreed for the car to be moved to his mechanic shop at Amuzo-Kope for it to be repaired. That the towing cost was GHC500.00 which the Plaintiff asked

him to pay so as to be reimbursed later. Defendant indicated that the Plaintiff asked that the diesel engine be changed to petrol engine. That after a week, when the Plaintiff was not coming he called him to come and tow the vehicle to his premises for safety but the Plaintiff told him he has no Parking place so he should continue to keep it. Plaintiff never came for the car for over one and a half years. That a vehicle recklessly damaged Plaintiff's car in his shop and he was made to repair it at a cost of GHC350.00 and after he again asked the Plaintiff to come and tow the car away but he never came until after four months when he called to say he was ready to buy the engine. Now, Defendant and Plaintiff went to Abossey Okai and bought the petrol engine at GHC4,500.00. The engine was changed four times being unsuitable for the car. Defendant said the gear box and converter were faulty and Plaintiff was told to go and look for some to buy and he was able to get the gear box and not the converter. That the delay in bringing the converter for about four months resulted in the engine stolen at where it was lying on the ground. The first witness of the Defendant told the court that both Plaintiff and Defendant brought the car engine to the shop but as a result of the absence of the convertor, the engine was kept at the workshop. That the defendant asked the Plaintiff to bring the convertor to fix the engine into the car but he never brought it till the engine was stolen. The second witness of the Defendant also told the court that both Plaintiff and Defendant brought an engine and left it on the floor of the workshop which has no lock so he told the Defendant to ask the Plaintiff to provide the convertor for him to fix because where the engine was lying was not safe.

From the evidence adduced by both parties and their witnesses, it is not in dispute that an engine was bought for Plaintiff's car and deposited at the workshop of the Defendant.

The following are however worth determining

1. Whether or not the engine was fixed into the car or it was lying on the ground at the workshop
2. Whether or not the engine was bought at GHC9,500.00 or at GHC7000.00

The onus of proof in matters like the instant case is on the Plaintiff to lead credible and admissible evidence to establish his case and the standard of this proof is by a preponderance of probabilities. This vale of evidence regarding the onus of proof was appropriately sated by Kpegah JA as he then was, in *Zabrama V. Segbedzi* (1991) 2 GLR 221 at 246 as follows “... a person who makes an averment or assertion which is denied by his opponent has the burden to establish that his averment or assertion is true. And he does not discharge this burden unless he leads admissible and credible evidence from which the fact or facts he asserts can properly and safely be inferred...”

Also the standard of proof in civil matters has been codified in Section 11(4) and 12 of the Evidence Act 1975 (NRCD) 323, as proof by preponderance, of probabilities. This position of the law was aptly stated in *Adwubeng v Domfeh* (1996-1997) SCGLR 660, holding (3) at 662 that by sections 11(4) and 12 of the Evidence Decree 1975 (NRCD 323 1 the standard of proof in all civil cases is proof by preponderance of probabilities no exceptions were made. This same rule of evidence was further enunciated in head note (5) of the *Takoradi Flour Mills v. Samir Farris* (2005-2006) SCGCR 882 at 884 as follows:

“It is sufficient to state that this being a civil suit, the rules of evidence require that a Plaintiff produces sufficient evidence to make out his claim on a preponderance of probabilities, as defined in section 12(2) of the Evidence Decree 1975 (NRCD 323) Also see *Yaa Kwesi v. Arhin Davis & Another* (2007-2008) SCGLR 580 at page 580 and *Sarkodie v.FKA Co-Ltd* (2009) SCGLR 65 at page 69. In this regard, it is expected that Plaintiff herein, who mounted his action should lead credible and sufficient evidence to establish that his assertion is more probable than the denial of the Defendant. It is only after the Plaintiff has introduced sufficient evidence of the probability of his case that the burden placed on him may shift unto the Defendant to equally produce evidence to avoid a ruling against him.

On the first issue of whether the engine was fixed in the car or placed on the ground waiting for convertor. What evidence did the Plaintiff adduce to prove his

allegations that the Defendant told him they should fix the engine in the care to avoid it being stolen. The Plaintiff called two witnesses who both corroborated the evidence of the plaintiff that engine was fixed into the car by the defendant. The Plaintiff also tendered in evidence a photograph of his car being worked on by the Defendant showing an engine in the car. The Defendant has however denied that the engine in the car was the second engine that was stolen. He indicated that the engine seen in the car was the first engine that they removed because it was too small for the car. He insisted that the second engine was placed on the ground waiting for the Plaintiff to bring the convertor before fixing it. His evidence was also corroborated by DW2 evidence who stated that the engine was lying at the entrance of the shop and he told the Defendant that where the engine was lying was not good. The question I asked is, was the engine handed over to the Defendant? I will say Yes, based on the question asked by the Plaintiff during the cross-examination.

Q. After we brought the engine from Abossay-Okai, did I hand the engine over to you or I left it in the shop?

A. You handed it over to me because I was going to work on it.

From this exchange between the parties it is crystal clear that the Defendant accepted to keep the car engine with him whether it was agreed that the engine be placed in the car or in the shop does not matter. It is the duty of a (Bailee) to take reasonable care to keep and preserve the good handed over to him and it is his duty to exercise that degree of care which might reasonably be expected from a reasonable man in respect of his own goods. If he failed to exercise that degree of care he had to pay for them when they were lost. See holding 3 of the case of the proprietor MOK Beer Bar v. Gada (1979) GLR 34. In the instant case, Defendant by admitting that the engine was handed over to him was under a duty to keep and preserve it for the Plaintiff, failure of this duty makes him accountable for the lost of the engine. This notwithstanding, the engine was with the

Defendant because the Plaintiff was to provide a convertor to be added to the engine and fix in the car which Plaintiff delayed in bringing it to the Defendant.

This is what transpired during cross-examination of the Plaintiff.

Q. I want to ask when did you receive the convertor and when did the engine get lost?

A. I received the convertor in September 2022 and it was around the same period that you called to tell me the engine was missing.

Q. Do you remember you received the convertor on a Thursday but you came to the shop on Saturday without bringing the convertor

A. It is true that I received it on Thursday but it is not true that I came to the shop on Saturday.

Q. It was due to the delay of the convertor that led to the missing of the engine, so how could you receive it without bringing it

A. I received it on Thursday but I was busy at a place on Friday and Saturday and the Defendant called on Sunday to inform me the engine was stolen.

From the above discourse, it is undoubted that the Plaintiff was keeping the convertor for 3 consecutive days before the engine was stolen. Plaintiff is well aware that his car was at the Defendants shop waiting for him to provide the convertor for the car to be fixed for him so why would he receive the convertor and refuse or failed to send it to the Defendant to fix his car for him since that was what was keeping his car with the Defendant. The court is of the opinion that the Plaintiff was negligent in this regard. The principle of law is that where a person contributed to an act which affects him/her, the amount of damages he would receive will be reduced by the extent of his contributions to that act. This court is of the believe that, had the Plaintiff presented the convertor he received on Thursday to the Defendant, may be his car would have been fixed for him and may be the theft would have also been avoided. As already stated, the Defendant

acted as a bailee in this instant when he received the engine at wise so he was under a duty to keep and preserve the engine for the Plaintiff.

On the issue of whether or not the engine was bought at GHC9,500.00 or at GHC7000.00. The Plaintiff stated in his witness statement that the engine was bought at GHC9,500.00. This was corroborated by the second witness of the Plaintiff who also tendered in a receipt of GHC9,500.00 as being the price of a complete engine. The Defendant denied that the engine cost GHC9,500.00 and asked the Plaintiff the following questions during cross-examination

Q. Do you recall that you reported to the Police to arrest me because of missing engine,

A: Yes

Q: Do you recall that when this matter went to the before the Kasoa Divisional Commander you mentioned GHC 7000.00 as being the cost of the engine?

A: Yes, that was what I said, the GHC7000.00 was mentioned for the engine alone but you later told me the gear box was included.

From the above dialogue between the parties, the question that boggles my mind is, why would you go and buy an item at a particular price, given a receipt which indicated complete engine at a cost of GHC9,500.00". If you really had this receipt at the time the matter was reported to the Police why did you go and mentioned GHC7000.00 and not the supposed GHC9,500.00 and now come to court alleging that you did not know that the gear box was included.

Who went to buy the engine in the first place and what does it mean to say complete engine? Anyway, complete engine to my lay-mind knowledge means, the engine and the gear box.

This court will ignore that receipt tendered which was not even tendered in by the Plaintiff but a witness who admitted in this court that he did not go with Plaintiff to buy the engine. Where did he get that receipt from? leave that answer to all of us. From the

foregoing, I am not in any way persuaded that the Plaintiff was truthful with the cost of the engine.

From the totality of the evidence produced before this court, I am obliged at this stage to hold that the Plaintiff has succeeded in proving that he gave his engine to the Defendant which the Defendant could not produce upon demand and I also find as a fact, that the cost of the engine was GHC7000.00 and not GHC9,500.00 sated by the Plaintiff

In the circumstance, I enter judgement in favour of the Plaintiff to recover GHC7000.00 being the cost of the engine and in the alternative, the Defendant to buy for the Plaintiff the F.I.S Non Teble engine. As indicated earlier the Plaintiff in one way or the other contributed to the stolen of the engine when he received the convertor and neglected sending it to the Defendant for the work to be done, so no cost shall be awarded.

(SDG)

H/W EMELIA K. ABRUQUAH (MRS)

(MAGISTRATE)