

IN THE DISTRICT COURT, NGLHSHIE AMAFRO HELD ON FRIDAY THE 17TH
DAY OF MARCH, 2023 BEFORE HER WORSHIP EMELIA K. ABRUQUAH ESQ.,

(MRS.)

SUIT NO. A2/01//2023

TIME: 11:09AM

BAIDOO FRANK

PLAINTIFF

VRS:

THOMAS MENSAH

DEFENDANT

PLAINTIFF PRESENT

DEFENDANT ABSENT AND BEING REPRESENTED BY MUSA AMIDU

JUDGMENT

This action was instituted by the Plaintiff against the Defendant claiming an amount of Ten Thousand Ghana Cedis (GHC10,000.00) which Plaintiff gave to the Defendant to get him employed into the Ghana Armed Force which he failed to do.

The plaintiff in his evidence before the Court which was reduced to writing stated that one Gifty introduce the Defendant to him concerning some recruitment. The Defendant told him that if he could raise GHC10,000.00 he could easily recruit him into Ghana

Armed Forces. According to the Plaintiff, he met the Defendant at West Hill Mall on 2nd November, 2021 and gave him GHC6,000.00 and made the final payment of GHC4000.00 two weeks later at London Bar AKA 'Choice'.

He said since then the Defendant has failed to secure him the job and all efforts to take his money back has not been successful. The Plaintiff denied knowing a third party in the transaction and that all payments were made to the Defendant directly. In an answer to a question posed by the Defendant, Plaintiff insisted that the money paid to the Defendant was GHC10,000.00 and not GHC8,000.00 as he alleges.

Let it be in record that the Defendant filed only a three paragraph statement as his evidence in this Court, where he only stated that he paid GHC1,500.00 to the Plaintiff through mobile money transfer in July, 2022. When the Plaintiff cross-examined him and asked him to provide the transaction I.D, the Defendant then said it was hand delivered and no longer by mobile transfer.

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 only discharges the legal burden by producing sufficient and credible evidence on a preponderance of probabilities as required in *Section 11 and 12 of the Evidence Act, 1975 (NRCD 323)*. Hence the Court in the instant case must satisfy itself that on the totality of Plaintiff's evidence before it, Plaintiff has succeeded in discharging this burden required by law to have his reliefs granted. This principle of law aptly stated by the Supreme Court in *Adwubeyo V Domfeh (1996-97) SCGLR 660 that by Section 11 (4) and 12 of the Evidence Act, 1975 (NRCD 323)* proof in all civil actions was one by the preponderance of probabilities, no exceptions were made.

There is no dispute that the Defendant received money from the Plaintiff, what is however in dispute is whether the Defendant received GHC10,000.00 as alleged by the

Plaintiff or GHC7,000.00 or GHC8,000.00 indicated by the Defendant. It is also in dispute as to whether the Defendant was acting in his own capacity or as an agent of principal.

The Plaintiff in both his writ and witness statement before this Court mentioned that he gave GHC10,000.00 in total to the Defendant. He refuted the Defendant assertion during cross examination that the money was GHC8,000.00 he received. It is worth nothing that the Defendant gave conflicting evidence on this issue in Court. It is on record that he stated that the Plaintiff gave him GHC7,000.00 but when he was being cross examined, he again said it was GHC8,000.00 he received from the Plaintiff far then, in Defendant witness statement, he stated that he gave the Plaintiff GHC1,500.00 through MTN mobile money transaction in July, 2022. However when this question was asked:

Q: You wrote in your witness statement that you sent GHC1,500.00 to me, on which mobile number did you send it to me and can you provide the transaction I.D

A: It was not sent through mobile but by hand delivery.

Clearly, these are contradictory testimonies.

The rule of Evidence is that where the evidence of a party is in conflict with his own evidence or that of his witness, bordering on a material fact, whilst that of the opponent remains uncorroborated, the Court will not gloss over such conflicting evidence except where there is good reasons to do so. See the case of *Afadi V Hadzekpo (1981) GLR 218 @ 224*

In this case, having regard to the evidence on record, I have no justifiable ground to make a finding in favour of the conflicting evidence of the Defendant that the money was GHC7,000.00 or GHC8,000.00 and that he paid the Plaintiff GHC1,500.00.

It is therefore not true that the Plaintiff paid only GHC8,000.00. In the absence of credible evidence to the contrary and considering the inconsistencies in the Defendant's case, I have come to the conclusion that the Plaintiff paid GHC10,000.00 to the Defendant and not GHC8,000.00 as he wants the Court to believe.

The Defendant asserted that he was acting as an agent to one Dorcas which the Plaintiff is aware and also knows the said Dorcas. The Plaintiff has denied knowing anyone by that name introduce to him by the Defendant since it is the Defendant who is asserting that he was acting for his principal, it is trite that, the burden now shifts on him to produce sufficient evidence on this allegation to prove his case.

The best thing to have been done by the Defendant was to invite his principal in Court to come and corroborate the fact that only GHC8,000.00 was paid by the Plaintiff through her agent the Defendant. The Defendant's failure to discharge this burden means there is no any third party to the contract between him and the Plaintiff. He was the very person the Plaintiff had all along been dealing with. From the above analysis, the Court comes to the conclusion that the Plaintiff has succeeded in discharging the legal burden placed on him provided in sections 11(4) and 12 of Act 323. On the other hand, the Defendant has failed to discharge the evidential burden shifted on him. The findings of the Court are that the amount paid by the Plaintiff to the Defendant was GHC10,000.00 and not GHC8,000.00 as the Defendant wants the Court to believe.

I hereby enter judgment in favour of the Plaintiff against the Defendant for the recovery of GHC10,000.00. The Plaintiff is also seeking interest on this amount at what the GHC10,000.00 could do as at 2021 may only be able to do a third of that now in the current dispensation. I therefore award interest on the GHC10,000.00 to be assessed from November, 2021 at the current Ghana Commercial Bank rate till date of final payment.

Cost of GHC500.00 is awarded to the Plaintiff against the Defendant.

(SDG)

H/W EMELIA K. ABRUQUAH (MRS)

(MAGISTRATE)