

IN THE DISTRICT COURT, NGLLESHIE AMAFRO HELD ON FRIDAY THE 17TH
DAY OF MAY, 2023 BEFORE HER WORSHIP EMELIA K. ABRUQUAH (MRS.)

SUIT NO. A2/01//2023

TIME: 11:09AM

JANET ADUBEA

PLAINTIFF

VRS:

BELINDA AKOS

DEFENDANT

PLAINTIFF PRESENT

DEFENDDANT PRESENT

JUDGMENT

The Plaintiff per her writ of summons against the Defendant is claiming an amount of GHC8,000.00 being money she gave to the Defendant to safe keep for her to travel and come which money the Defendant is alleging has been stolen.

According to the Plaintiff she has once given her money to the Defendant for safe keeping and there was no problem. In December, 2022, Plaintiff was attending a funeral at Suhum and was having GHC8,000.00 which she did not want to take along so she took it to the Defendant again whom she described as a friend from the same town. She

inform the Defendant that she was once more bringing money for her to keep for her till she returns. That when she took the money to the Defendant in a handbag The Defendant asked her to take care of her trade whilst she sends the money home for safe keeping and come. Plaintiff indicated that whilst travelling she had a change of mind and called PW1 to go for the money from the Defendant but PW1 told her she went to the Defendant's house on three occasion but has never met her. Upon her return from the funeral, the Defendant told her that the money is missing after some friends visited her and that she went to a spiritualist who told her the money was not lost, that the person will return it and that the spiritualist told her it was George who took the money but the said George was not picking her calls. Plaintiff said the Defendant brought her GHC1,000.00 as part-payment of the GHC8,000.00 but she returned it when she realized the Defendant was not making any effort to pay the rest of the money.

Plaintiff's sole witness told the Court that the Defendant usually keeps Plaintiff's money for her. She said the Plaintiff called and told her that she was going for a funeral at Suhum and that she gave GHC8,000.00 to the Defendant to keep so she should go for it and she went to the Defendant place three times and never met her to take the money.

For her part, the Defendant asseverate that the plaintiff has been bringing items to her to keep without her knowing the content and comes later for them. According to her the Plaintiff again in October, 2022 brought her a small hand bag to keep for her and that she was travelling to her hometown and will come for it on her return. Defendant further states that she was not told of the content so she took it home. The next day she had an argument with a lady so she went out to explain herself to some elders and forgot to lock her door. When she came back to the room she found out that her money was missing and the Plaintiff's bag was also opened. That she went to the police station to lodge a complaint that someone has stolen her money in her room. she indicated that she went and told the Plaintiff that someone broke into her room and stole her money

and that the bag was also opened, it was there that the Plaintiff informed her that her money was inside the bag and did not know how much it was inside the bag. She alleges that the Plaintiff asked her to go and see spiritualist and she went to see a Mallam and a Pastor and was told that the person who took the money will bring it back. That the Plaintiff came to her one day to say she was not having money on her and needed money but she told her that she was not having much money so she gave her GHC1,000.00 but she returned it after about a month and said she does not need the money again and was going round telling people that she gave her GHC5,000.00 or GHC7,000.00 to her to keep and she misplace the money. She added that Plaintiff reported her to the police and when asked whether she lives alone, she told the police that sometime friends and some children come to her and that she had invited one George and doesn't know whether he came or not.

After carefully examining the evidence led by both parties, I am of the considered opinion that the only issues for determination are;

1. Whether or not the Plaintiff gave the Defendant a bag for safe keeping and if yes;
2. Whether or not the content of it was made known to the Defendant.

Before I deal with the issues for determination, let me briefly touch on the burden of proof. In civil cases, the general rule is that the party who in his pleadings or writ raises issues essential to the success of his or her case assumes the onus of proof. See **Bank of West Africa Ltd v. Ackan (1963) 1GLR 176**. The civil onus is on a balance of probabilities, See Section 12 of the **Evidence Act 1975, (Act 323)**. also in **African Mining Service Vs. Larbi (2010-2012) 1 GLR 579 @ 580 C.A. Sir Dennis Adjei J.A re-echoed the same Principal as follows.**" the combine effect of section11 and 12 (c) of the Evidence Degree 1975 (GRCD 323) was that except otherwise provided by law, the burden persuasion required proof by the preponderance of probabilities which required the party to produce sufficient evidence such that a reasonable mind could conclude that

the existence of a fact was more probable than its non-existence. The Plaintiff in the instant case therefore bears the burden to adduce sufficiency evidence to convince this Court that her claim is more probable than not.

I now proceed to determine the issues. The first issue whether or not the Plaintiff gave her bag to the Defendant to safe keep for her. I must say that this issue is moot because it is not in dispute that the Plaintiff gave her hand bag to the Defendant to safe keep for her to travel for a funeral and come.

With regard to the second issue whether or not the content in the bag was made know to the Defendant.

From the facts and evidence, the Plaintiff and her sole witness were consistent in their evidence that the Plaintiff not once or twice always gives her money to the Defendant. Defendant therefore knew the content of the bag and in fact knows how much money was inside the bag.

The Court should not glose over some part of the evidence of both the Defendant and the Plaintiff. Whilst the Plaintiff told the Court that the Defendant brought her GHC1,000.00 to part pay the GHC8,000.00 after which she never heard from her again for along time as a result she returned the GHC1,000.00 back to her, for her part, the Defendant told the Court that the Plaintiff came to her one day to say she was not having enough money on her and she only had GHC1,000.00 on her and gave it to the Plaintiff and did not know if that was enough for her. She indicated that the Plaintiff returned the money later so she collected it back. There is no doubt from both evidence that the Plaintiff's evidence is more probable than not. I say so because why would the Defendant just remove GHC1,000.00 and give to the Plaintiff without requiring her to pay back, what business or trade does she engage in that she can just remove GHC1,000.00 and give it to Plaintiff and was even worried if it would be enough for the

Plaintiff. Defendant indicated that she only had GHC1,000.00 so she gave it to the Plaintiff. Why would you give your last to the Plaintiff if not for the payment of her money.

As indicated the Court sees the evidence of the Plaintiff and her witness more credible than that of the Defendant. It is therefore the believe of the Court that the GHC1,000.00 paid was to part pay the Plaintiff's GHC8,000.00 allegedly missing in the Defendant's room and not that she was only helping the Plaintiff who was in deed of money.

From the above analysis, the Court comes to the conclusion that, Plaintiff has succeeded in discharging the legal burden place on her under sections 11 (c) and 12 of Act 323. On the other hand, the Defendant has failed to discharge the evidential burden shifted on her. The findings of the Court is that the Plaintiff gave her GHC8,000.00 in a hand bag to the Defendant to safe keep for her.

From the above findings, it is reasonable for the Court to order the Defendant to refund or pay to the Plaintiff an amount of GHC8,000.00 being money she gave to the Defendant to safe keep for her to travel and come back for it. I hereby enter judgment in favour of the Plaintiff against the Defendant for the recovery of GHC8,000.00 she gave to the Defendant to safe keep for her.

Cost of GHC800.00 is awarded to the Plaintiff against the Defendant.

(SGD)

H/W EMELIA K. ABRUQUAH (MRS)

(MAGISTRATE)