

IN THE DISTRICT COURT, NGLHSHIE AMAFRO HELD ON FRIDAY THE 12TH
DAY OF MAY, 2023 BEFORE HER WORSHIP EMELIA K. ABRUQUAH ESQ.,
(MRS.)

SUIT NO. A2/03//2023

TIME: 11:09AM

RAKIA TANKO

PLAINTIFF

VRS:

ISRAEL FULIA @ BRO. SARK

DEFENDANT

PLAINTIFF PRESENT

DEFENDANT ABSENT

JUDGMENT

This is an action for the recovery of GHC7,000.00 being balance of sale OF Plaintiff set of musical machines to the Defendant.

The case of the Plaintiff is that her musical machines which she has been renting out at GHC500.00 per a day were faulty. He therefore invited the Defendant through PW2 to come and repair them. She said the cost of repairing them was too high and she decided to sell them and the Defendant expressed interest in buying them so they negotiated

and agreed at GHC9,000.00. The Defendant initially paid GHC1,000.00 and later gave another GHC1,000.00 to one Sandra Ampofo on Plaintiff's behalf bringing the total amount to GHC2,000.00. Since then she never saw the Defendant until she caused his arrest.

PW1, Sandra Ampofo stated that she was a witness to the transaction between the Plaintiff and the Defendant and that they agreed at GHC9,000.00 as the purchase price for the machines. She added that the Defendant paid GHC1,000.00 through her to be given to the Plaintiff which she did and that the Defendant later asked her to tell the Plaintiff to reduce the purchase price but she did not inform the Plaintiff.

PW2 was the person who introduced the Defendant to Plaintiff to repair her sound system. He said as a result of the high cost of repairing it, the Plaintiff decided to sell them and the Defendant agreed with the Plaintiff to purchase them at GHC9,000.00. He said the first GHC1,000.00 was paid through him and the Defendant later added another GHC1,000.00 bringing the total payment to 2,000.00 leaving a balance of GHC7,000.00.

In defence, the Defendant told the Court that the Plaintiff sold her faulty musical instruments to him at an agreed price of ghc8,000.00 in May, 2022.

He said he has made a total payment of GHC2,600.00 made up of GHC2,000.00 payment to Plaintiff daughter and Solo, GHC100.00 to Solo and GHC500.00 which Plaintiff contracted him to play music in her house during the Salah celebration. He said he now owes Plaintiff GHC5,400.00 and not GHC7,000.00.

Dw1, Abdul Wahab merely repeated the evidence of the Defendant except to indicate that he is a disk Joker apprentice of the Defendant and that the Defendant now owes the Plaintiff GHC5,400.00 after paying a total amount of GHC2,600.00.

The parties in support of their cases called two and one witness respectively.

The undisputed facts on the face of the record is that the Plaintiff sold musical instruments to the Defendant on credit.

The bone of contention however is whether the musical instruments were sold to the Defendant at GHC9,000.00 or GHC8,000.00.

In civil actions like the instant one, the burden is on the Plaintiff to adduce credible and admissible evidence to establish her case and the standard of proof is that on a preponderance of probabilities. In **Adwubeng V Domfeh (1996-97) SCGLR 660**, the **Supreme Court held that by section 11 (4) and 12 of the evidence Act, 1975, (NRCD 323)** provided that standard of proof in all civil cases without exception is one by the preponderance of probabilities.

This position of the law was further echoed in **the case of Takoradi Flour Mills Ltd. V. Samir Fairs (2005-2006) SCGLR 882 @ 884**, Thus *“It is sufficient to state that this being a civil suit, the rules of evidence require that Plaintiff produce 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)*. In assessing the balance of probabilities, all the evidence, be it that of the Plaintiff or the Defendant must be considered and the party in whose favour the balance tilts is the person whose case is the more probable of the rival versions and is deserving of a favourable verdict.

In determining the sole issue whether or not the musical interments were sold to the Defendant at GHC8,000.00 or GHC9,000.00. The Plaintiff and her two witnesses all insisted that it was agreed at GHC9,000.00 after negotiation and the Defendant has so far paid GHC2,000.00. The Defendant on the other hand also insisted that they had agreed at GHC8,000.00 and he has paid GHC2,600.00 and now owes only GHC5,400.00.

It is trite that where the evidence of the parties boils down to the oath of one party and his/her witnesses against the oath of the other party and his witness, then the Court

may decide the case based on other considerations. **See the case of Praka V. Kerewa (1964) GLR 423 SC.** In the instant case, the Plaintiff asked the Defendant to returned the instrument after he failed to pay within the period agreed upon but the Defendant said he sold them to a pastor who is gone missing. The question then is, did the pastor locked up the church or the church itself is still in operation.

The church is a separate legal entity which can sue and be sued. So if it is true that the Defendant sold the instruments to the church and its pastor, he could have sought for an order join in the church since the instruments are with the church. From the foregoing, I am inclined to lean favourably towards the evidence of the Plaintiff as being more credible than that of the evidence of the Defendant. I therefore make findings that the musical instruments were sold to the Defendant at GHC9,000.00 and not GHC8,000.00 as he wants the court to believe.

It is worth nothing that the Defendant stated that he has paid GHC2,600.00 so far thought the Plaintiff stated that Defendant paid GHC2,000.00 except to say that she should not pay for the spinning at her house because the instruments used by the Defendant belongs to her.

From the discussion above, the court to holds that the Defendant has so far paid GHC2,600.00 of the GHC9,000.00 owed and the balance left to be paid is GHC6,400.00.

I hereby enter judgment in favour of the Plaintiff against the Defendant for the recovery of GHC6,400.00. I order interest to be accessed on the GHC6,400.00 at the current GCB rate from May, 2022 till final date of payment considering the fact that the payment of the money came about as a result of business transaction between the parties.

I award cost of GHC200.00 in favour of the Plaintiff as against the Defendant.

(SGD)

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