

IN THE DISTRICT COURT, NGLLESHIE AMAFRO HELD ON FRIDAY THE 15TH
DAY OF JUNE, 2023 BEFORE HER WORSHIP EMELIA K. ABRUQUAH ESQ.,
(MRS.)

SUIT NO. A2/19//2023

TIME: 07:49AM

1. TETTEH DJAMINE
2. POPOLAMPO REGINA

PLAINTIFF

VRS:

1. KOFEI DJAMINE
2. KOTEY DJAMINE

DEFENDANT

1ST PLAINTIFF PRESENT

1ST AND 2ND DEFENDANT ABSENT

JUDGMENT

The Plaintiffs claim against the Defendants is for an order of the Court compelling the Defendants to immediately refund cash sum of GHC35,000.00 being 2nd Plaintiff's accident insurance benefits which the Defendants collected on behalf of the 2nd Plaintiff but failed or refused to hand it over to her.

Before I proceed to write this judgment, I consider it appropriate to state that the 2nd Plaintiff whose witness statement was expunged at her request due to ill health has since passed. The first Plaintiff vowed to see to the end of this matter in court despite the fact that the second Plaintiff (his wife) and the Defendants mother has passed on. It is worth stating that though this court has no Court connected ADR facilities, we tried to help the family come to terms of settlement but was not successful.

In his witness statement before the Court, the 1st Plaintiff stated that the Defendants are his children. He said some time ago, the 2nd Plaintiff was seriously injured in a car accident and the Insurance company of the vehicle compensated her with GHC35,000.00. According to 1st Plaintiff, he appointed the Defendants to go for the cheque which they did and went on to cash the cheque but refused to hand over the money to the 2nd Plaintiff to enable her seek further treatment of her injury.

On his part, the 1st Defendant stated that he and the 2nd Defendant were the people chasing after their mother's Insurance benefits. He said the cheque was issued in his mother's name. That the value was GHC35,000.00 and that they only showed her the cheque but did not give it to her. That the 2nd Defendant gave his church account at Nyakrom Rural Bank and the money was placed in there. He stated that he suggested to their mother that they should buy two taxis with the money but the 2nd Defendant said they should rather buy ovan which was agreed and they spent GHC25,000.00 for the vehicle and its maintenance. He said the car was given to a driver who was making daily sales of GHC100.00 for about three months to the 2nd Defendant before the 2nd Defendant took over the vehicle and he was made his driver's mate. According to 1st Defendant, he was sacked by the 2nd Defendant after four months of working together. That he heard later that the 2nd Defendant was involved in an accident with the vehicle but never knew when he sold the vehicle because they were not in talking terms. He said it is never true that the 2nd Defendant incurred some expenses in the process of

obtaining the cheque and that the money was never paid into their mother's account. He added that the 2nd Defendant never went for loan to repair the vehicle he sold out the accident car and went for the remaining GHC10,000.00 at the bank and added the money of the sold vehicle and the sales they made to build a house for himself.

When it was 2nd Defendant's term to lead evidence, he stated in his witness statement that he was the one who was following up with the Insurance company and a cheque of GHC35,000.00 was issued in the name of 2nd Plaintiff, his mother and he paid it into her account with Nyakrom Rural Bank. According to 2nd Defendant, he incurred some expenses in the process of obtaining the benefits including a medical report at a cost of GHC1,000.00, Police report at GHC1,000.00, travelling expenses at GHC2,000.00, Bank charges at GHC1,000.00 and total expenses came up to GHC5,000.00. 2nd Defendant added that it was the 2nd Plaintiff who transferred GHC30,000.00 into 2nd Defendant's account and he used GHC28,000.00 to buy the vehicle. That the vehicle was involved in an accident and he went in for a loan of GHC3,000.00 to repair it. He indicated that the Bank was given him pressure for their money so he sold the vehicle at GHC4,000.00 and used it to defray the loan.

After carefully examining the evidence on record, I am of the considered opinion that the only issue for determination is whether or not the Plaintiffs are entitled to their claims.

Before dealing with the issue for determination, I will 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 case, assumes the Onus of proof. See *Bank of West Africa Ltd. V Ackan* (1963) 1 GLR 176. The civil Onus is a preponderance of probabilities, See Section 12 of the Evidence Act 1975 (Act 323). Therefore in the instant case the burden lies on the Plaintiff to adduce sufficient evidence to convince the Court that his claim is more probable than not.

It is worthy to note that there is no dispute that the 2nd Plaintiff was paid GHC35,000.00 as compensation. I now proceed to determine the issue whether or not the Plaintiffs are entitled to their reliefs

The 1st Plaintiff in the instant suit is/was the husband of the 2nd Plaintiff who benefited from an insurance package after a motor traffic accident. He said he appointed the Defendants to go for the money of GHC35,000.00 but they failed to account for it. The 1st Defendant alleged that the 2nd Defendant paid the money into his church Bank account before withdrawing GHC25,000.00 to buy a vehicle. I must say this allegations were not denied by the 2nd Defendant when he was cross examining the 1st Defendant. The question I will like to ask is assuming that the 2nd Plaintiff has no bank account, what prevented the 2nd Defendant from opening a bank account for his mother.

It is the opinion of the Court that the 2nd Defendant did not open the bank account for the 2nd Plaintiff because he had intended to deprive her of her money else he could have easily open an account for his mother. In his witness statement the 2nd Defendant stated that he bought the vehicle at GHC28,000.00 but when he was being cross examined by the 1st Defendant, this is what he said.

Q: How much did we buy the car you sold out?

A: We bought it at GHC25,000.00.

It is clear that the 2nd Defendant has never been truthful to this Court. It is trite law that where the evidence of a party on a material issue is at variant with the evidence of his own witness or any part of his evidence in Court, the Court should not glot over it and rule in favour of that party. The 2nd Defendant also admitted that he went for a loan of GHC3,000.00 in the name of the family and without the consent of the family to be used to repair the vehicle which was involved in an accident after repairing the vehicle he

sold it out for GHC4,000.00 and used that money to pay off the loan. Why would you buy a car for GHC28,000.00 and within 5 years sells it out for only GHC4,000.00 .

He admitted selling the vehicle without informing the family. It can therefore be said that it was the 2nd Defendant who solely managed the 2nd Plaintiff's money. He convinced her to use the money to buy a commercial vehicle for his advantage. 2nd Defendant claimed he gave GHC4,000.00 of the money to the 2nd Plaintiff. Since the 2nd Plaintiff is no longer here to admit or deny, the Court will assume that the said amount was given to the 2nd Plaintiff. The 2nd Defendant claimed that along the line, he incurred some expenses but he never saw the need to attach the receipt of payment of the medical and police report and others. The Court is therefore of the opinion that no such expenses were incurred otherwise the 2nd Defendant would have produce receipts of payment in Court to support his claims.

I find as a fact that the GHC35,000.00 received was utilized by only the 2nd Defendant. The 1st Defendant only went with the 2nd Defendant to pick the cheque and was, later used as a driver's mate and sacked thereafter by the 2nd Defendant.

I therefore enter judgment in favour of the Plaintiffs as against the 2nd Defendant for the recovering of the vehicle or pay an amount of GHC28,000.00 being the amount he said he used to buy the vehicle.

I award costs of GHC1,000.00 in favour of the Plaintiff as against the 2nd Defendant.

(SGD)

H/W EMELIA K. ABRUQUAH (MRS)

(MAGISTRATE)