

IN THE DISTRICT COURT AT TESHIE-NUNGUA
SITTING BEFORE HER HONOUR PRISCILLA SOPHIA YEBOAH
ON FRIDAY THE 9TH DAY OF JUNE 2023

SUIT NO. GTNDC/A2/64/22

REV EBENEZER ANSAH
6/13 ESSEI STREET
SEKONDI

PLAINTIFF

VRS:

1. GORDON ASSIRIFI

OF COLD STORE-NUNGUA, ACCRA

DEFENDANTS

2. PHYLLIS AKANYIBA

OF ASHAIMAN, ACCRA

JUDGMENT

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| PARTIES PRESENT EXCEPT PLAINTIFF WHO IS REPRESENTED BY FELIX HAMMOND | PRESENT |
| COUNSEL FOR DEFENDANTS DENNIS DANGBEY ESQ. | PRESENT |
| COUNSEL FOR PLAINTIFF | ABSENT |

Out of the registry of this Court, the plaintiff on the 28th day of April 2022 caused a writ of summons to be issued against the defendants herein claiming and amount of twenty thousand cedis plus other reliefs from the defendants.

Defendants filed a statement of defence on the 27th of September and 23rd May 2023 respectively. Defendants pled not liable to plaintiff's claim and submitted that they

are not the proper parties to the instant action as they were neither privies nor partakers of the contract between the Plaintiff and one Annak who happened to be the friend and brother respectively to the defendants.

BREIF FACTS OF THE CASE

The plaintiff is a Reverend Minister at a church in Essikado in the Western Region while the defendants are an auto-mechanic and trader respectively at Nungua and Afenya both in the Greater Accra Region of Ghana. On the 15th day of November plaintiff through a mobile money merchant transferred an amount of ten thousand cedis each to each of the defendants phone numbers respectively. The said amount was initial deposite out of thirty –five thousand Ghana cedis which represents an agreed purchase price of a volkswagen Passat salon car which price according to plaintiff subsequently changed and therefore he has called for recision of the contract between plaintiff and the vendor of the car in question as a result of the breach of the contract. Hence, Plaintiff's request for refund of the ten thousand ghana cedis each deposited onto defendants respective account.

DEFENDANTS

Defendants oppose the claim for refund and pled not liable even though they both agreed to have received the said amount of monies on their phone.

First defendant contends that he was contacted by his good friend by name Sylvester Annak whom plaintiff contracted for the purchase of the car in question. Ist defendant avers that he was instructed by his friend Anak that some one was going to put an amount of ghc10,000 unto his momo and after receipt of the amount he should use same to purchase building materials and pay a carpenter for Anaks building he is supervising. It is the case of 1st defendant that when the mon ey was payed onto his wallet he used it for the purpose as instructed.

Further the 1st defendant contends that he did not use the money for his personal benefit neither did he entered into contract with the plaintiff. Also the plaintiff did not call him to confirm whether he has received the said money and thefere he is neither liable nor the proper person to be sued.

2nd defendant on the other hand avers that she does not know the plaintiff neither did she enter into contract with the plaintiff. On her part she claims she was contacted by her brother the said Annack who is resident in Dubia that someone was going to transfer ghc10,000 unto her momo wallet which money is for business transaction with the sender.

2nd defendant contends that once the money was sent to her phone she received instructions from her brother Annak to send the money back to him. She insit that she was a mere conduit through which the money got to Annak and nothing more.

Like 1st defendant, 2nd defendant also claims that she has no contract with the plaintiff for the purchases of a vehicle neither did she ask plaintiff to transfer any money to her wallet and thereforef the plaintiff is not entitled to her reliefs.

Non of the parties called witness to testify.

ISSUES

The issues that spring up for resolution are as follows:

- 1. Whether the parties are bound by any contract or agreement**
- 2. Whether the defendants are privy to any contractual agreement between the plaintiff and Annak**
- 3. Whether the defendants can be held as agents for Annak**

4. Whether the plaintiff is entitled to refund of ghc10,000 each from the defendants.
5. Whether any order can be made against Annak who is not a party to the suit.

RULES AND ANALYSIS

A contract is an agreement between parties who have capacity for a price measured in terms of money, effort, forbearance or exchange of promise which agreement is intended to bind the parties and is enforceable by a court of law. It comes into existence in a legal sense, when the parties have established all of the elements that makes the contract enforceable.

- The creation of a binding contract that the Courts will enforce requires the contracting parties to meet a number of requirements prescribed by law of contract and these requirements must never the less be met before the agreement creates rights and duties that may be enforceable at law. The element required for a valid contract includes.

1. An intention to create a legal relation
2. Offer and acceptance
3. Consideration
4. Capacity to contract and
5. Legality

Offer and Acceptance of the clear terms of the contract: By offer there must be a specific proposal which terms must be unequivocally be accepted by the offeree. The facts in issue demonstrate that the plaintiff agreed with one Annak to buy for him a car at the purchased price of ghc360,00. As part of the contract terms, Plaintiff was instructed to make initial deposite of GHC10,000 each onto the MOMOwallet of the defendants and the instructions was given by the said Annak who offered to

Purchase or sell the car in issue to plaintiff. Plaintiff accepted the offer and paid the consideration through the defendant's phone. The Plaintiff has legal capacity to enter into a contract because he is an

adult with no evidence of unsound mind. The parties do not have any social or family ties and the transaction was purely for business purpose thereby creating an intention to create legal relation and so far no vitiating factors have been established to set the contract aside.

Having asserted that the facts suggest a contractual relation exists, the next compelling issue worth considering is whether the plaintiff and defendant have a binding contractual relation.

Whether the defendant has a binding contract with Plaintiff:

Flowing from the aforementioned valid contractual elements, this court holds that between the parties before me there was no offer made by either party, there was no acceptance by any party to the specific terms of the contract, no agreed consideration was made and therefore there can be no intention to create legal relation or enforce the contract between the parties.

Quoting defence counsel in his address "the record reveals, unequivocally, that the parties do not know themselves from Adam. The Defendants were not part of whatever agreement reached between the Plaintiff and Annak. The amount to be paid, the vehicle to be supplied, the mode and means of sending the money were all agreed on solely between the Plaintiff and Sylvester Annak. In all these, the Defendants did not know anything about the deal between the Plaintiff and Annak. Also, the money sent by plaintiff through the Defendants was intended for the use and benefit of Annak. And this was done upon the exclusive agreement between the Plaintiff and Annak. I think defendant presented a sound argument the first issue. The law is clear that the proper defendant in an action on a contract was the person who made the promise the breach of which had created the cause of action.

In the case of **MORKOR v. KUMA (No.1) [1999-2000] 1 GLR 721**, the court held as follows:

Since the proper defendant in an action on a contract was the person who made the promise the breach of which had created the cause of action, and in the instant case the sale transaction was between the respondent and the 1st Defendant, a limited liability company, a corporate being with capacity separate, independent and distinct from those constituting it or employed by it, yet the appellant had been sued jointly with the first defendant for the only reason that she was the chief executive, main shareholder and a director of the company, she would be a proper party to the suit only if specific personal liability were established against her or the veil of incorporation could be lifted to make her acts synonymous with those of the 1st Defendant, or vice versa. The **Morkor case** supra applies, mutatis mutadis, with the facts of this case. Thus, from the Plaintiff's own case, the sale of the vehicle transaction was solely between himself and Annak. And it was as a result of Annak's alleged breach of promise regarding the car that he is bringing the action to recover his money.

Having analysed the issue before me I firmly conclude that no valid contract existed between the parties to bind the defendants to the terms of the contract. This is more so when plaintiff is on record to have admitted that he did not even contact or call the defendants after sending the money to their momo. No word come from

the plaintiff because he knew it was Annak he was dealing with. Issue one therefore shall collapse.

WHETHER THE DEFENDANTS ARE PRIVY TO ANY CONTRACTUAL AGREEMENT BETWEEN THE PLAINTIFF AND ANNAK:

At common law two categories of persons may sue to enforce a contract namely a 1) party to a contract (2) a person on whom a contract expressly reserves a benefit.

Ghana's law goes beyond the classical common law position which limits the enforcement of contract to parties only. Section 5 of Ghana's contract Act, 1960 modifies the strict common law position on privity of contracts the section reads "**Any provision in a contract made after the commencement of this Act which purports to confer a benefit on a person who is not a party to the contract wheter as a designated person or as a member of a class of persons, may subject to the provision of this part, be enforced or relied upon by that person as though he were a party to the contract.** The effect of the Contract Act,1960 is not to abolish the doctrine of privity but to extend the benefit of contract to 3rd parties if so contemplated. In Koah v. Royal Exchange Assurance[1968], the plaintiff was injured in a motor vehecle accident. The defendant was insurer of the owner of the vehicle. The vehicle had insurance cover for the owner when he was driving.however, at the material tim e, someone else was driving the vehicle. The plainyiff had successfully sued the owner and driver of the offending vehicle in a separete action but because those defendants lacked the means to pay, he brought the action against the insurer to enforce payment. The present action was dismissed. Archer J said" **in the first place, kojo Arku who was a party to the contract cannot recover from the defendants because he was not driving at the material time, in the second place, Brima Salga the driver at the material time cannot recover from the defendants because he was not a party to it and moreover the contract of insurance did not purport to confer any benefit on him.** Aplicable to this case, nowhere does the plaintiff mentions that the defendants were ever involve in the

transaction for the purchase of the vehicle. The defendants are unknown to the plaintiff . the only time the defendants are mentioned is when money was sent to defendants momo on the instructions of Annak whom plaintiff contracted with. The defendantds are neither parties to the contract as concluded earlier on, Also the contract between the Plaintiff and the said Anak confer no express benefit niether are the defendants in contemplation of

receiving any bebenefits. In terms of privity no such relationship exist between the parties herein therefore defence counsel is right that the defendants are not privy to the contractual relation and therefore no cause of action on grounds of privity arises against the defendants.

WHETHER THE DEFENDANTS CAN BE HELD AS AGENTS FOR ANNAK

The law of agency is concerned with the relationship that exist when one person either expressly or impliedly or by necessity uses the the services of another to carry out a specific task on his or her behalf. If the Agent has negotiated a contract on behalf of the principal within the scope of the agent's authority only the principal and the third party will be bound. The position of the law, under under the exceptions to the law of agency is that an agent is liable under the contract if he in fact intended to undertake personal responsibilities. **BASMA v. WEEKS**[1950]A.C441: **Kai Yung v. Hong Kong & Shanghai Banking Corp.**[1981] A.C 787, 795'' He may be liable even though such a contract also provides that it is signed on behalf of a third person, for such a provision may merely be intended to mean that that person is is to be a party to the contract and not that the agent is to be absolved from liability under it'' **treitel, 8th edition,p.635: The Sun Happiness** [1984] 1Lloyd's Rep.381.

I like the cases cited by plaintiffs counsel which deals with some principles of agency ie **Republic v, High Court, Accra;Ex-parte Attorney- general (Delta Foods Ltd interested Party) [1999-2000] 1GLR 255, (2) Mrs Velma Newton-Palmer v. Daniel Evans Forjour[2007] suit No E1/216/2004** "The agent has a duty to account for all monies received from his principal or on behalf of the principal. It has been held that that exclusive duty exist even if the transaction in respect of which the money was received was void or illegal as long as the contract

of agency was itself not illegal". Plaintiff through his Counsel is urging this Court to superimpose an agency relationship on the defendants while no such relationship exist. The defentants did not represent the said Annak to bind the contract between plaintiff and Annak. The issue of disclosed or undisclosed principal does not arise in the instant case. The cases cited by plaintiffs are to be factually distinguished and immaterial to this case. The claim of agency relationship as well collapses.

Whether the plaintiff is entitled to refund of ghc10,000 each from the defendants.

Having concludedc that the defendants have no contractual relation or privy to the contract. The defendants acted on the instructions of Annak and therefore havinf arrived at the conclusion that they are not the right persons to have been sued I hold that they are not entitled to refund the money. Plaintiff must sue Annak for money back.

- 1. Whether any consequential order can be made against Annak who was not made a party.**
1. I accept defence counsel's submissions in his address that an attempt to make any consequential orders against Annak who was not made a party to the instant suit may violate the principles of fundamental justice. The said Annak was not

afforded the opportunity to be heard see the case of **REPUBLIC V HIGH COURT, ACCRA; EX PARTE OSAFO [2011] 2 SCGLR 966**. In this case, the court held that:

“The consequence of a denial of the fundamental right of hearing was so well-settled that in all cases of proven default, the judgment so entered by the court would be so fundamentally flawed as to be quashed by certiorari”.

Since Annak was not sued by the Plaintiff, the allegation of whether or not Annak has breached his promise, based on which the Plaintiff may be entitled to a refund cannot be established or pronounced upon by the court in the absence of evidence or hearing from Mr. Annak.

I agree with defence Counsel that it will be unjust and against the rules of natural justice for any consequential orders to be made against a person who is not made a party to a suit.

CONCLUSION

I Accordingly dismiss the reliefs endorsed on the Plaintiffs Writ of Summons and Statement of Claim in its entirety. I hold that there is no cause of action against the defendants and therefore the instant action is accordingly dismissed.

Having wrongfully sued the defendants I shall award cost of GH¢4,000.00 against Plaintiff.

SGD

H/H PRISCILLA SOPHIA YEBOAH

CIRCUIT COURT JUDGE

