

**IN THE DISTRICT COURT TDC TEMA HELD ON WEDNESDAY THE
2ND DAY OF AUGUST 2023 BEFORE HER WORSHIP BENEDICTA
ANTWI (MRS) DISTRICT COURT MAGISTRATE**

SUIT NO: A2/37/23

**PHILIP TEI BLESSMAN
SUING UNDER THE NAME
AND STYLE CANAANLAND CAR TERMINAL PLAINTIFF**

VRS

ALHAJI SAANI DEFENDANT

JUDGMENT

BRIEF FACT

On the 27th February 2023, plaintiff initiated this suit against the defendant praying for the following reliefs;

- a) Payment of an amount of GH¢ 12,000 which is due and owing for the period November 2021- February 2023
- b) A further order that the defendant pays the monthly fee of 800 to the plaintiff for the continuous parking of his tankers in the yard of the plaintiff beyond the period stated in (a) above when same becomes due and owing till defendant stops parking his tankers in plaintiff's yard.
- c) Interest on the amounts in (a) and (b) above from 21st November 2021 to the date of final payment and cost

The plaintiff prayed per his paragraph 11 that the suit be placed on undefended list. However, the plaintiff did not attach any affidavit and exhibits to the writ as required under order 8 rule 1 of C.I 59, the suit therefore placed on the general list to be tried summarily.

The writ was served by substitution on the 11th May 2023 together with hearing notice for the 26 for April 2023.

When the suit came up for hearing, the defendant who had been duly served was absent from court without any just excuse, the court thus ordered for witness statements to be filed for trial and adjourned to the 6th July 2023 for hearing. The court further ordered for the witness statement together with hearing notice to be served on the defendant by substitution.

Plaintiff's case

On the 6th July 2023, plaintiff testified by relying on his witness statement filed on 22th June 2023 and same was admitted as the evidence in chief of plaintiff together with the following exhibit;

Exhibit 'A' – Receipt dated 22-7-22

Exhibit 'A1' – Receipt dated 30 – 01 – 21

Exhibit 'B' – Expulsion from Canaanland Terminal

Exhibit 'B1' – Demand Notice dated

Plaintiff's case is that, he is the owner of Canaanland Car Terminal located at Kpone barrier operating a parking terminal for large

trucks at a fee. Defendant entered into a verbal agreement with plaintiff on or about 2019 to park four (4) of his tanker vehicles at Canaanland Car Terminal. Per the verbal agreement, the defendant was to pay a monthly fee of GH¢ 800.00 for the services rendered by plaintiff. As at November 2021, the defendant has failed to pay the agreed monthly sum. Defendant is now indebted to the tune of GH¢ 12,000 and the defendant continues to park his tankers at plaintiff's yard.

BURDEN OF PROOF

In every civil suit, the person who asserts usually has the burden of proving same on a preponderance of probabilities. Preponderance of probabilities, according to section 12(2) of the Evidence Act, 1975 (NRCD 323) means:

*"... that degree of certainty of belief in the mind of the tribunal of fact or the Court **by which it is convinced that the existence of a fact is more probable than its non-existence.**"*

Where the plaintiff has been able to lead sufficient evidence in support of his case, then it behoves upon the defendant to lead sufficient evidence in rebuttal, otherwise the defendant risks being ruled against on that issue or issues. Under Section 11(4) of NRCD 323, a party discharges the burden of producing evidence when the party produces *"... sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of the fact was more probable than its non-existence"*.

In ***Okudzeto Ablakwa (No. 2) v. Attorney-General & Obetsebi-Lamprey (No. 2) [2012] 2 SCGLR 845***, the Supreme Court, in dealing with the burden of proof, held at page 867 of the report as follows:

"... he who asserts, assumes the onus of proof. The effect of that principle is the same as what has been codified in the Evidence Act, 1975 (NRCD 323), s 17(a). What this rule literally means is that if a person goes to Court to make an allegation, the onus is on him to lead evidence to prove that allegation, unless the allegation is admitted. If he fails to do that, the ruling on that allegation will go against him. Stated more explicitly, a party cannot win a case in Court if the case is based on an allegation which he fails to prove or establish."

This has been further reiterated in ***Faibi vrs State Hotels Corporation (1968) GLR 471*** which held that:

" the onus in law lay upon the party who would lose if no evidence was led in the case; and where some evidence had been led it lay on the party who would lose if no further evidence was led"

And ***In re Presidential Election Petition (No. 4) Akufo-Addo & Ors. v. Mahama & Ors. [2013] SCGLR (Special Edition) 73***, where the Supreme Court held at page 322 of the report as follows:

"Our understanding of the rules in the Evidence Decree, 1975 on the burden of proof is that 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."

ISSUES

After close of case, the issue to be determined by the court as distilled from the pleadings and evidence led is;

1. whether or not there is an agreement which allows the defendant to park his trucks at plaintiff's terminal.
2. Whether or not the defendant is indebted to the plaintiff as a result of the agreement.

ANALYSIS

In **Republic v Court of Appeal Accra Ex parte East Dadekotopon Development Trust**, Civil motion No. JS/39/2015, (30th July 2015)

"there could not be a breach of the rules of the audi alteram partem rule when it is clear from the facts that sufficient opportunity was given to a party and was abused by him"

The defendant was duly served with hearing notices for every court sitting. He however chose to absent himself from the trial and never filed any process in court to defend the suit.

The court will now analyze the unchallenged evidence of the plaintiff on record as the defendant failed to participate in the trial.

The plaintiff's claim for the reliefs endorsed on his writ is based on the existence of an oral contract entered into by the parties.

This being a civil action, the burden of proof lies on the plaintiff to prove on a preponderance of probability that there is indeed an existing contract between the parties and the defendant is indebted to him in the sum as claimed on the writ.

The latin maxim "*semper necessitas probandi incumbit ei qui agit*" which means (the necessity of proof always lies with the person who lays the charges") applies. This maxim has been given statutory blessing in section 11(1) and 17 of the Evidence Act (1975) ACT 323.

Exhibit 'A' series tendered by plaintiff are copies of receipt from the defendant dated 22/7/22 making payment of GH¢ 1000 to the plaintiff as part-payment for use of Caananland Terminal. Exhibit 'A1' is a further receipt dated 30/1/21 showing payment of the sum of GH¢4,800 from one Saani Nazif to plaintiff. It is not explained to the court if the person making the payment in exhibit 'a1' is the same as the defendant.

Exhibit 'A' , being receipt of part payments of money by the defendant to plaintiff, shows the existence of a business arrangement between the parties .

Exhibit 'B' is also a letter from plaintiff to defendant dated 02/09/2022 and titled "EXPULSION FROM THE CANAANLAND TERMINAL PREMISES" the plaintiff per this exhibit informed the defendant that vehicles with registration numbers; DAF GN 2976- 15, DAF GT 6961- 17, MAN GN 1393 – 17, RENAULT GN 8497 – 18 will be removed from the terminal as the indebtedness of defendant has far exceeded the debt tolerance of plaintiff.

Exhibit 'B1' is a notice the plaintiff sent to the defendant stating that the defendant has reduced the number of truck to two and that the outstanding debt be paid before the defendant will be allowed access to the terminal. In the opinion of the court, this exhibit further demonstrates the existence of a business agreement between the parties.

The court has considered all the exhibits tendered and finds that there was an oral agreement between the parties that the defendant could park his trucks at plaintiff's terminal for a fee.

The plaintiff however failed to demonstrate to the court the intended duration of the business agreement, however, exhibit 'B' series shows the intention of the plaintiff to bring the arrangement to an end due to the failure of defendant to pay his debt.

Since the evidence of plaintiff stands unchallenged, the court accepts the evidence on oath of plaintiff that the agreed monthly parking fees for the trucks was GH¢ 800,

Consequently the court finds from the totality of evidence on record the was in existence a business agreement between the parties which resulted in the debt claimed by the plaintiff on his writ of summons. The defendant is indebted to the plaintiff to the tune of GH¢ 12,000 being parking fees from November 2022 to February 2023 .

CONCLUSION and FINAL ORDERS

The court finds that the plaintiff has been able to prove his claim on a preponderance of probabilities and I accordingly hold that plaintiffs claim succeeds with the following orders;

- a) Defendant is ordered to pay the sum of GH¢ 12,000 to plaintiff being the outstanding sum owed to plaintiff for Parking services rendered to defendant from November 2021 – February 2023
- b) A further order that Defendant pays the parking fee of GH¢ 800 from February 2023 till the date defendant moves his vehicles from the terminal of plaintiff or until either party takes steps to terminate the agreement. Whichever comes first.
- c) Interest on the sum in (a) at the prevailing commercial bank rate from 21st November 2021 to the date of final payment
- d) Cost of GH¢ 3000 in favour of plaintiff as against Defendant.

**[SGD]
BENEDICTA ANTWI (MRS)
DISTRICT MAGISTRATE**

COUNSEL:

SUSSANA TETTEY FOR PLAINTIFF

PARTIES: ABSENT