

**THE DISTRICT MAGISTRATE COURT HELD AT BEGORO ON
WEDNESDAY THE 12TH DAY OF JULY, 2023 BEFORE HER WORSHIP
FLORENCE A. BAAH DISTRICT MAGISTRATE**

SUIT NO: A11/10/22

ADU SAMMY.....PLAINTIFF

VRS

BABA IBRAHIM GIBRILLA.....DEFENDANT

Parties: Present

JUDGMENT

On the 29/11/21, the Plaintiff, Sammy Adu, filed this suit against the Defendant, Baba Ibrahim Gibrilla claiming the following relief;

Plaintiff seeks an order of the Honourable Court compelling the defendant to supply Plaintiff with one (1) remaining calf defendant collected money from the plaintiff to supply but has failed despite repeated demands.

The parties appeared before the Court on 09/12/22 and when the claim was read and explained to the Defendant, he pleaded Not Liable to the Plaintiff's claim. The evidential burden was therefore on the Plaintiff to prove his case on a balance of probability required by law in the civil standard of proof.

In the pleadings filed by the parties, the Plaintiff stated in his statement of claim among other things that the defendant is a herdsman and lives at Koradaso and that the defendant is a supplier of almost all his cattle for which plaintiff rears them and sells afterwards. He says that defendant had earlier on supplied him with 4 calves successfully without any hindrance. He states further that about 4 years ago the plaintiff paid for the supply of 3 *gudali* calves at a price of GH¢ 1,000.00 each which the defendant supplied two but has failed to supply the remaining one calf despite numerous efforts made for the defendant to do so. The plaintiff avers that due to the failure of defendant to supply the remaining calf, he approached the defendant's wife to talk to her husband to supply the calf. He claims defendant's wife then advised plaintiff to take the matter to her father and seek better solution which same was logged but yielded no result. He states further that the defendant has been throwing dust in his eye by making numerous promises to supply the remaining calf but has failed to do so neither has defendant refunded the money equivalent. He continued to state that due to defendant's failure to honor his promises, plaintiff approached one Rufai who is

defendant's church member and also a police officer to advise defendant to supply the remaining calf to avoid any misunderstanding and breakage of the friendship that existed between them. He avers further that upon a visit by plaintiff and the officer to the defendant, he promised to supply the calf in two (2) weeks but also failed to do so. Plaintiff states that when they went to the defendants place, they never asked defendant to pay any money and no money was collected from the defendant. Plaintiff prays that due to the years involved that the calf had not been supplied, the defendant should supply a bull of 4 years old. Because he says defendant is of hard hearted and has willfully refused to supply the remaining calf unless ordered by this Honourable court to do so.

In the statement of defense filed by the Defendant he denied all material averment and allegation of fact contained in the statement of claim as if the same were set down in extensor and denied seriatim.

Defendant admitted paragraph 1-4 of the plaintiff's statement of claim and denied paragraph 5-14 of same as untrue. In reply defendant states categorically that, somewhere in 2020 plaintiff gave him GH¢ 1,000.00 to purchase one (1) calf for him. He claims he went to Oworobong near Miaso to negotiate with one herdsman- Bube who is defendant's business partner for the calf. He claims after the negotiations, the herdsman agreed to sell the calf to him, and so he paid the GH¢ 1,000.00 but he failed to give the calf to him despite several demands.

He claims in 2021 the Plaintiff led a Policeman, Rufai to cause for his arrest in his house in the presence of his wife Hajare. He states further that he consequently, pleaded with the Policeman and the plaintiff and asked for one week to go and bring the calf but later, plaintiff insisted that he will no longer collect a calf, so defendant must refund his GH¢ 1,000.00 to him, which same defendant agreed. He says subsequently, the Policeman told him that when plaintiff lodged the complaint he incurred expenses of GH¢ 300.00, so if defendant is pleading for one week to refund the GH¢ 1,000.00, then he must also pay the GH¢ 300.00 which was incurred by the plaintiff at the Police Station, which said amount defendant paid. Defendant added that later the Policeman and the Plaintiff gave their contact numbers to the defendant and he also gave his to them and they urged him to call them when the GH¢ 1,000.00 was ready, so that same could be collected. Defendant avers he informed his father in law who is Hajara's father of what has transpired and one week later, defendant had a call from the Policeman demanding the refund of the GH¢ 1,000.00, so defendant asked him to come for same which he did in the presence of his wife. He avers further that after he paid the GH¢ 1,000.00 to the Policeman he called one Issah Ibrahim who is one of the executive members of the N.D.C Party and informed him of same. He claims later, Issah Ibrahim

informed him that, he has inquired from the Policeman and he has confirmed exactly what defendant has stated above.

Defendant states categorically that, plaintiff gave him GH¢ 1,000.00 to buy one calf for him but later when defendant reported to the Police and the Police approached him, he refunded the GH¢ 1,000.00 to the plaintiff, through the Policeman and also paid the expenses of GH¢ 300.00 which he alleged he spend at the Police station. So defendant does not owe the plaintiff any calf or owe the plaintiff any amount. Defendant therefore prays the August Court to dismiss the Plaintiff's case as frivolous, vexatious and misconceived and award heavy costs in favor of him.

EVIDENCE ADDUCED AND APPLICATION OF LAW

Duah v Yorkwa [1993-94] 1 GLR 217, Brobbey JA, (as he then was) held that it is the plaintiff who has the duty or obligation to lead evidence in order to forestall a ruling being made against him.

Section 12 of the Evidence Act, 1975, NRCD 323 provides that proof must be by a preponderance of probabilities. That section defines "preponderance of probabilities" as denoting "a certain degree 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."

This position was confirmed by the Supreme Court in the case of **Adwubeng v Domfeh [1997-98] 1 GLR 282** that the standard of proof in all civil actions, without exception, was proof by a preponderance of probabilities.

Upon a careful study of the pleadings filed the following issues were identified for determination:

Whether or not the Plaintiff paid a thousand Ghana to the Defendant for a calf under a contract

Whether or not the Plaintiff took along Rufai, the Police officer to the Defendant's house to demand for his calf/money

Whether or not the Defendant has paid the money to the said Police officer Rufai.

Plaintiff in proving his claim testified for himself but did not call any witness and did not also tender any exhibit. In his witness statement filed to the Court he repeated the averments in his statement of claim and added that he and defendant did not enter into any agreement to pay the money to Rufai, the Police officer, since he only engaged him to talk to the defendant to supply the calf. Plaintiff claims that he and the defendant did not transact any business with Rufai and so if any money has been paid to him as defendant is claiming then he has not instructed the defendant to do so. Neither did he instruct the said officer to collect any money on his behalf and that when they went to the defendants place, they never asked defendant to pay any money and no money was collected from the defendant. According to him, the defendant is blatantly lying in his

assertion that he had made any payment to him hence he prayed that due to the years involved that the calf was not supplied, the Honourable should compel the defendant to supply a bull of 4 years old.

The Defendant in his defense testified and called two witnesses but did not tender any exhibit.

In the defense by the Defendant as found in his witness statement filed to the Court, he told the Court he is a farmer/herdsman and lives at Koradaso and also knows the Plaintiff as one of his customers who lives at Dansor and works as a farmer/ mason. According to him somewhere in 2020, the plaintiff gave him an amount of GH¢ 1,000.00 to purchase one (1) calf for him. That upon receipt of the money, he went to Oworobong near Begoro to negotiate the price for a calf with one herdsman called Bube who was his business partner. He claims after negotiations, Bube agreed to sell the calf to him as a result he paid for the calf at GH¢ 1,000.00 to him which he promised to deliver it to him in a week's time but refused despite several demands. He claims further that because of that, somewhere in 2021 while he was at home with his wife Hajara, the plaintiff lead by a police officer to arrest him. He claims further that the police officer whose name is Rufai said the plaintiff had lodged a complaint against him at the Begoro Police station that plaintiff had contracted him to buy a calf for him and he gave him GH¢ 1,000.00 for it but he failed to buy same hence his arrest. He says he consequently pleaded with the police officer and the plaintiff to give him one week to produce the calf which plaintiff insisted that he no longer want the calf but the money and so he must refund his money to him which he agreed. He avers the police officer told him that the plaintiff incurred GH¢ 300.00 to lodge the complaint and so he pleaded for a week's grace period to pay him and also paid the expenses incurred to him. Defendant averred further that before they left his house they gave him their contact numbers to call when the money was ready for collection which he also gave them his. He contend that a week a later, he had a call from the police officer asking whether the money was ready which he asked him to come with the plaintiff to collect same. He contend further that subsequently, the police officer came to his house in the presence of his wife to collect the GH¢1,000.00 after which he called one Mr. Issah Ibrahim an Executive member of the N.D.C party to inform him of same. He averred further that the said Issah Ibrahim later called to inform him that he has called the police officer to confirm the payment of the amount to him. Defendant emphatically stated that the plaintiff indeed gave him GH¢ 1,000.00 to purchase a calf for him but later when he reported the case to the police and per the agreement reached between them, the money was paid through the police officer Rufai and he also paid the expenses of GH¢ 300.00 which he alleged he incurred at the police station to make the case. In conclusion he

added that apart from paragraph 1 – 4 of plaintiff's claim that are true, all averments made thereafter are concocted, frivolous, vexations, misconceive and have no basis and prayed the Court to dismiss the claim with punitive cost against him.

PW2 was Hajaratu Gibella @ Sister Lamin. She told the Court she lives at Koradaso, near Begoro and sells "waakye". She stated in her witness statement that she knows both parties in this issue. Defendant is her husband while the plaintiff is her husband's business partner. According to her about two and half years ago, defendant informed her that plaintiff has given him GH¢ 1,000.00 to buy a calf for him to rear but the herdsman had delayed in delivering the calf, though he has paid him for same.

DW1 claims the plaintiff later told her that he had given GH¢ 1,000.00 to her husband to buy a calf for him to rear but her husband (defendant) had refused to deliver the calf and had also failed to refund the GH¢ 1,000.00 given to him. DW1 claims she told the plaintiff that, the delay was from the herdsman, he therefore pleaded with him to give her husband time to contact the herdsman for the calf. However, somewhere last year, she was in the matrimonial home with her husband (defendant) when policeman called Rufai approached them and told them that the Plaintiff has lodged a complaint against him at Begoro Police Station that, the plaintiff had given defendant GH¢ 1,000.00 to buy a calf for him but defendant has not delivered the calf and has also refused to refund the said amount to him and so he was under arrest.

She claims further that the Defendant pleaded with the plaintiff and the Policeman to give him time to contact the herdsman for the calf but plaintiff insisted that, he will no longer collect the calf, so defendant should refund the GH¢ 1,000.00 to him. As a result, the Policeman told the defendant that when plaintiff came to lodge the complaint, he incurred expenses of GH¢ 300.00 which ought to be paid by defendant which he obliged to pay. And later defendant informed her that, he has paid the GH¢ 1,000.00 to the plaintiff through the Policeman. She avers that some months later, plaintiff informed her that defendant has not settle the said amount, as a result she told plaintiff that, Defendant has paid the money to the Policeman-Rufai he engaged to collect the money for him.

She added that the Policeman and the Plaintiff gave their contact numbers to the defendant and he also gave his to them and they urged defendant to call them whenever the GH¢ 1,000.00 was ready, so that same would be collected.

Further, she averred that defendant went and informed his father in- law that is her father of what has happened. And a week later, defendant had a call from the Policeman demanding a refund of the GH¢ 1,000.00, so defendant asked him to come for same which he did in the presence of his wife in their house. According to DW1, after

defendant has paid the GH¢ 1,000.00 to the Policeman, he called one Issah Ibrahim who is one of the Executive Members of the N.D.C Party and informed him of same and the said Issah later called to inform Defendant that the Police officer, Rufai had confirm taking GH¢1,000.00 from the Defendant including the ex GH¢ 300.00 expenses he alleged he spent at the Police station. She concluded her evidence that defendant does not owe the plaintiff any calf neither does he owe the plaintiff any amount. Because she has told Plaintiff that the Police officer he brought to arrest Defendant in their house had collected the GH¢1,000.00 for the calf including, the extra GH¢ 300.00 some months later when he asked her about the money. And did not hear anything again until the Defendant told her the Plaintiff had sued him in Court on the same matter.

DW2 was Abubakari Rufai. He told the Court he resides at Apaa junction in Begoro and works as a police officer and knows the Plaintiff as his friend and also looks to the Defendant as a father. According to him about two (2) years ago the plaintiff herein called to enquire if he knew the Defendant and further informed him of a transaction that he had with the defendant but same has failed as the defendant has refused to produce the calf, he the plaintiff gave him GH¢ 1,000.00 to purchase for him. He claims Plaintiff initially thought of organizing some guys to go beat the defendant up and so upon hearing same, he told him since the defendant is more like a father, to him, he would prefer speaking to him to resolve the issue between them. And it was because of this that he escorted the plaintiff to the defendant's house where they tried to resolve the matter. And that during the discussions the Plaintiff made it known to the defendant that he wants his calf which the defendant said the amount paid to him to buy the calf had already been given to one Fulani to produce same but he failed as promised.

DW2 contend that the Defendant asserted that since the calf has not been brought by the Fulani then he will refund Plaintiffs money but Plaintiff insisted on taking GH¢ 3,000.00 instead, with the reason being that the GH¢1,000.00 would have appreciated if same was put into business. He contends further that consensus was not reached and so they left. But before they left, the Plaintiff in agreement with the Defendant gave him GH¢ 200.00 as a token for the assistance or mediation in trying to resolve the matter. He averred it was later that the Plaintiff called to ask if he had any information from the defendant with regards to the matter. This made him to call the defendant as to how far. He adds that the Defendant subsequently sent some GH¢ 1,000.00 on different occasions through his mobile money wallet which he informed the Plaintiff but plaintiff insisted on the defendant producing the calf or pay it market value hence would not take the money. And that Plaintiff is very much aware that the said amount was with him but he has failed to collect same after insisting on retrieving the calf from the defendant or

the defendant pays its current market value of GH¢ 3,000.00. He claims this was how he got involved in the matter before this honorable court.

I will now proceed to address the issues identified for determination

Whether or not the Plaintiff paid a thousand Ghana to the Defendant for a calf under a contract

In the pleadings filed by the parties and evidence adduced as found in the witness statements filed, the defendant admitted he received a thousand Ghana Cedis from the Plaintiff to buy a calf for him on humanitarian grounds since there was no binding contract between the Parties.

Contract is defined by **G.H Trietel in his book ‘The Law of Contract** as an agreement giving rise to obligations which are enforced or recognized by law.

According to **K. Sarpong Anane & Lawrence Lartey in a book entitled Law of Contract 1**, for a contract to be enforceable under the law it must have these essential elements;

Such as offer & acceptance, capacity, consideration, intention to create legal relationship and consent.

The evidence on the record does not suggest there was something like meeting of minds when the Plaintiff made the offer for the Defendant to buy him the calf, that they were entering into a contract even though they had the capacity to enter into a legal contract by virtue of the fact that they were both adult. The Plaintiff also did not show by his evidence supra that there was any form of consideration in the form of money, effort of forbearance paid to the Defendant for the promise to buy the calf for the Defendant. Neither did it occur to any of the parties that they intend their agreement to be legally enforceable. That is to say the transaction that took place between the parties was gratuitous and not a legal contract.

Specific performance is one of the remedies in contract. It can be an order of Court after a person has been found guilty to perform a specific work or a function which the person has defaulted.

The Plaintiff in this instant case is seeking for the specific performance for the Defendant to either provide the calf or its equivalent value today. However, since it has been held supra that even though Defendant admit categorically that Plaintiff gave him an amount of GH¢1000.00 to buy a calf for him as previously done but the evidence in the instant case does not suggest their agreement was under an enforceable contract for

specific performance to lie as held in **Djan v Owoo (1976) 2 GLR 401-407**. What happened per the evidence can best be described as a voluntary act to buy the calf for Plaintiff. However, Defendant is still liable to a refund of the purchase money Plaintiff gave to him and not specific performance as the Plaintiff is seeking as the legal maxim goes 'volunti non fit injura' meaning a voluntary act is not without liability, as the case may be, if there was breach under an existing enforceable contract being oral or written. Even though as shown by the Defendant's evidence, the person whom he was buying the calf from took the money to supply it but unfortunately run away with it and never came back.

Whether or not the Plaintiff took along Rufai, the Police officer to the Defendant's house to demand for his calf/money

Plaintiff in his evidence supra, admitted the fact that he took the Policeman Rufai to the Defendant's house to advise him to pay his money with interest since he claims his money had been with Defendant more than he expected without him supplying the calf for which he gave him the money. Even though the Defendant described their visit as an arrest, the Plaintiff claims he took Rufai who is also DW2 to the Defendant's house only for him convince him to give him the calf money he paid to him- GH¢1,000.00 to him. According to Defendant when the Plaintiff brought DW1 to arrest him he pleaded for time to refund the one thousand Ghana Cedis meant to buy the calf to him even though the person he gave money to supply the calf run away with it, plus GH¢ 300.00 the Plaintiff claim he spent in making the case at the Police Station. So later when DW2 called him concerning the money, he asked him to come for the Thousand Ghana Cedis plus the Three hundred extra for taking the matter to the Police Station. This assertion of taking the Police officer-Rufai to the Defendant's house was confirmed by DW1, DW2 and was also admitted by Plaintiff in cross examination but he claims he went there to demand for his calf and not money.

However, in the evidence of DW1, he claims when they went to the Defendant's house Plaintiff was insisting on taking GH¢ 3,000.00 instead of the GH¢ 1,000.00 he gave to Defendant because he failed to supply the calf to him as intended but they could not resolve that dispute before they left the Defendant's house. He claims further that, later when the Plaintiff inquired from him whether he has heard from the Defendant, he called the Defendant and Defendant asked him to come for the money which he did. But later when he informed the Plaintiff about it he refused to take the money insisting on taking GH¢ 3,000.00 instead of GH¢ 1,000.00 and he kept it from 2021 until the Court ordered him to pay it to Court after his evidence in Court.

Whether or not the Defendant has paid the money to the said Police officer Rufai.

The Defendant's assertion that he paid the Plaintiff's GH¢ 1,000.00 to DW2 in 2021 upon his demand of same after Plaintiff had taken him to his house to arrest him two years ago, was corroborated by both DW1 and DW2. Checks from the registry indicates the said thousand Ghana Cedis has been paid to Court by DW1. The Plaintiff's sending DW1 to the Defendant's house to demand for his calf/money and his subsequent act of asking DW1 whether he has heard from the Defendant. And DW1 taking further steps to go to the Defendant's house to collect the thousand Cedis plus the three hundred Ghana Cedis extra, created in law agency. DW1 afterwards acted as the agent of the Plaintiff with his consent.

As held supra, since there was no binding contract between the parties of which the Defendant breached, specific performance as a remedy cannot lie as Plaintiff is seeking in this present suit. As Plaintiff indicated in his evidence the Defendant early on supplied him with the calf he asked him to buy on his behalf. Even though the act was gratuitous, Defendant was still liable to a refund of Plaintiff's money though specific performance would have suffice if there was an existing binding contract between the parties for Defendant to do so for which he has breached. It would have been equitable for Defendant to supply the calf or its equivalent value under a contract Defendant has breached. But the evidence adduced does not suggest so. To that extent the Plaintiff has failed to prove his case on the balance of probability required by law. The Thousand Cedis the Plaintiff gave to the Defendant has been refunded to DW1 two years ago when he acted as the agent of the Plaintiff and he has been ordered by Court to pay the said money to Court for the Plaintiff's collection if he so wish. At the end of the trial, it was found as a fact that there was no binding contract between the parties and that the Plaintiff gave GH¢ 1,000.00 to Defendant to purchase a calf for him gratuitously in 2020 and the said GH¢ 1,000.00 plus GH¢ 300.00 for lodging the complaint to the Police was paid to the Police officer Rufai in 2021 upon his demand on behalf of Plaintiff. And that Rufai has also paid it to Court upon the Court's order as evidence of his assertion to it. It was also found as a fact that indeed the Plaintiff took the Police officer- DW2 to the Defendant's house to demand for his calf money.

Upon a considered view of the whole evidence before me as, I hold humbly that Plaintiff has failed to prove his case on the balance of probability required by law and accept the Defendant's defense as reasonably probable and reject the Plaintiff's claim. Plaintiffs' claim fails. I award costs of GH¢ 500.00 for the Defendant against the Plaintiff.

DECISION:

Plaintiff's claim fails. I award costs of GH¢ 500.00 for the Defendant against the Plaintiff.

**SGD.
FLORENCE A BAAH
(DISTRICT MAGISTRATE)**