

IN THE OTI MAGISTERIAL DISTRICT COURT HELD AT NKWANTA ON MONDAY,  
THE 23<sup>RD</sup> DAY OF JUNE, 2023 BEFORE HIS WORSHIP JOSEPH EVANS ANANG OKROPA

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SUIT No. VR/NK/DC/A2/22/2023

SUCCESS CREDIT UNION LTD.

PER THE MANAGER : PLAINTIFF

VRS

NIMO STEPHEN : DEFENDANT

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JUDGMENT

Plaintiff Company is a limited liability company represented by the manager in this suit. Plaintiff instituted the instant action seeking the following reliefs against the defendant:

1. A recovery of an amount of GH¢3,500.00 being outstanding of the principal and its accrued interest of a loan facility Defendant took from Plaintiff since 2022 but has refused/failed to pay despite repeated demand notices served on the Defendant.
2. Costs

Defendant pleaded not liable to the reliefs sought by plaintiff.

CASE FOR PLAINTIFF

Plaintiff's case is that defendant after contracting the loan facility of an amount of GH¢2,000.00 being the principal at an interest rate of 25%, agreed to pay an amount of GH¢500.00 per month as interest until the principal is paid.

Per Plaintiff, defendant accepted the terms and conditions, signed and was granted the loan, on 12<sup>th</sup> June, 2022. Defendant defaulted in payment for 2 months and made his first interest payments of GH¢500.00 in August, September, October and skipped November and paid December, 2022, amounting to GH¢2,000.00.

After several attempts to get defendant to pay, he (Defendant) pleaded with plaintiff and promised to pay the outstanding balance on instalment basis: i.e GH₵500.00 per month until loan is settled and plaintiff agreed.

According to plaintiff, on March 2<sup>nd</sup>, 2023 Defendant paid an interest of GH₵1,000.00, to plaintiff making a total interest payment for Defendant = GH₵3,000.00.

At the ending of March, 2023, defendant failed to abide by his promise and hence this action.

### **CASE FOR DEFENDANT**

In his opening statement, defendant alleged fraud and illegality and said it was a short - term loan he took from Mr. Benjamin Dare and not a loan from SUCCESS CREDIT UNION LTD as stated by plaintiff.

However, all monies paid and per the dates stated by defendant is not different from what the plaintiff stated in his witness statement. Per this, I wish to state that defendant corroborated the evidence of plaintiff in relation to the amount of money paid by defendant. However, defendant again in open court alleged the use of duress in signing the loan form and also stated that he was not allowed to study the loan form before executing the contract.

Defendant also said the loan was given to him in 2 instalments, with some 3 days intervals. Again, he was not given the money in an office space, but in the street. **ISSUES**

Issues to be determined in this case include:

1. Whether or not there was some fraud and illegality in the contract.
2. Whether or not the outstanding amount due for payment by defendant is GH₵2,200.00 and not GH₵3,500.00 as stated by plaintiff.

### **APPLICATION OF LAW AND EVALUATION OF EVIDENCE**

It is trite learning that he who asserts must prove. Proof in civil cases, per the evidence Act (NRCD 323) is proof on the preponderance of the probabilities.

There are factors that vitiate every contract, when such factors exist in any contractual agreement, the contract becomes void ab initio.

Some of these vitiating factors are misrepresentation, undue influence, duress, mistakes and inducement.

In a situation of undue influence in a contract, you would be influenced unduly such that, you would do something which under normal circumstances you would not have done.

Duress as alleged by the defendant is one key vitiating factor in contract. Fraud it is said, vitiates everything.

Duress in law has the same or similar effect as undue influence. Duress means to put fear in you: ie fear of body harm; fear of death; or fear of losing your life. In some situation, you can be put under duress to sign a contract at gun point.

In such a situation, you prove a defence of Non est factum – it is not your deed. Duress at common law or what is sometimes called Legal Duress means the exercise of actual violence or threats of violence to the person; ie threats calculated to produce fear or loss of life or of bodily harm.

The general rule under the doctrine of non-est factum (it is not my deed) is that, a man is estopped by his deed.

A party of full age and understandable is normally bound by his signature whether he reads it or understands it or not.

If, however, a party has been misled into executing a deed or signing a document essentially different from that which he intended to execute or sign, he can plead NON- EST FACTUM in an action against him. – Quao V. Squire [1978] 1 GLR 270.

In the instant suit, defendant stated both in open court and in his written statement that he was given the loan application form to sign in the street, not in an office and he was not given the opportunity to read through to be able to appreciate the terms and conditions, and that amounts to duress. Defendant is of full age and of sound mind. He could not prove to court any of the elements that amount to duress mounted him to execute the contract.

The fact that he signed the loan application form without reading through to be able to appreciate the terms and conditions is an after-thought. He was not unduly influenced under any circumstance to be able to plead that he entered into the contract under duress.

The question is why has the defendant not been able to raise any issues as to the execution of the contractual agreement between him and the plaintiff all this while, until he was served with demand notice to pay back the loan he had defaulted in paying?

On the issue of illegal contract that he contracted a short-term loan from the plaintiff in person and not one representing Success Credit Union Ltd is neither here nor there.

Exhibit "B" which is the loan application form duly completed and signed by the defendant bears the caption:

"SUCCESS COOPERATIVE CREDIT UNION SHABO SHABO FORM"

The loan form has various items including the amount of loan applied for in figures and in words; date of loan, interest of loan payable on monthly and expected date of refund (both P & 1). There is even a clause; "BONDING", promising to abide by the loan agreement and all the rules and conditions by the loan.

Wherefore comes the illegality and fraud in this contract?

### **FINDING OF FACTS**

I find as fact that

1. The loan agreement contracted between Plaintiff and Defendant was duly and legally contracted per the terms and conditions of the Plaintiff's Company.
2. There was no iota of fraud, duress and illegality in the contractual agreement.
3. Defendant has defaulted in payment of the principal of the loan and accrued interest amounting to GH¢3,500.00.

### **CONCLUSION AND FINAL ORDERS.**

On the strength of the evidence available to court and on the strength of the plaintiff's case,

I hereby find the plaintiff's case more probable.

Judgment is hereby entered in favour of plaintiff per his reliefs sought.

Defendant herein is hereby ordered to pay the amount of money accrued amounting to

GH¢3,500.00 being loan and its interest accrued to the plaintiff herein.

Costs of GH¢500.00 is awarded for the plaintiff against the defendant.

H/W JOSEPH EVANS ANANG OKROPA ESQ

**23 – 06 - 2023**