

SITTING IN THE DISTRICT COURT AT WENCHI IN THE BONO REGION ON THURSDAY THE 2<sup>ND</sup> DAY OF MARCH,2023,BEFORE HIS WORSHIP ISSAH ABDUL-WAHAB (DISTRICT MAGISTRATE)

SUIT NO. A2/23/23

BETWEEN

AKUA ABIBA OF NSAWKAW - - - PLAINTIFF

VRS:

J.B OF NSAWKAW - - - DEFENDANT

J U D G E M E N T

The plaintiff sued the defendant herein seeking an order of the court for the recovery of

- (a) A total of 130 bags of cement or its current market price of GHC65.00 per bag (GHC8,450.00) paid to the defendant on the 6<sup>th</sup> day of March,2018.
- (b) A further 133 bags of cement or the market price of GHC65.00 (totaling GHC8,645.00) paid to the defendant on the 23<sup>rd</sup> day of March,2018.
- (c) General damages for a breach of the agreement.

The defendant pleaded not liable to the claims of the plaintiff after same were read to him (defendant) in Twi.

The following issues were then set down for trial after an examination of the plaintiff's particulars of claim.

- (a) Whether or not the plaintiff paid money to the defendant for the 130 bags of cement on the said date of 6<sup>th</sup> March,2018;

- (b) Whether or not the plaintiff again paid money to the defendant for the further 133 bags of cement on the said day of 23<sup>rd</sup> day of March,2018 as she (plaintiff) claimed.
- (c) Whether or not the defendant received the said sum of money for the 263 bags of cement.
- (d) Whether or not the defendant failed or refused to supply the plaintiff with the said 263 bags of cement.
- (e) Whether or not the plaintiff is entitle to any general damages for a breach of their agreement.

In her evidence in-chief, plaintiff told the court she is Akua Abiba and that she is a farmer and lives at Nsawkaw. That she knows the defendant. That some time ago she bought some weedicide from the defendant that she later went back to by some more weedicide but defendant told her (plaintiff) he (defendant) now sells cement and not weedicide. That defendant told her (plaintiff) she could deposit the money and then come for the cement anytime she (plaintiff) wanted.

Plaintiff said she first paid an amount of GHC3,900.00 to the defendant for 130 bags of cement at GHC30.00 per bag of cement at the time. This was on the 6<sup>th</sup> day of March, 2018 and that the defendant after taking the money issued her (plaintiff) with a receipt for the amount. Plaintiff tendered the receipt which was admitted as there was no objection from the defendant. The receipt was marked as Exhibit 'A'. Plaintiff said she again paid cash the sum of GHC3,990.00 to the defendant for another 133 bags of cement and defendant again gave her (plaintiff) receipt for that plaintiff tendered that other receipt which was admitted and marked 'A1'. Plaintiff said she later went to collect the 263 bags of cement but defendant told her the quality she (plaintiff) wanted was not up. He (defendant) then asked for some little time. Plaintiff said after that defendant kept giving excuses after repeated demands. She then decide to come to court.

When defendant asked plaintiff if she (plaintiff) knows the store does not belong to him (defendant) plaintiff said when defendant took the money he (defendant) never told her (plaintiff) the store is not for him (defendant). Plaintiff did not call any witness.

In his evidence in-chief the defendant told the court he is Joseph Boakye Danquah and that he manages the store of the Nsawkaw chief. That he (defendant) knows the plaintiff herein. That they sold cement in the store. That customers who needed cement could pay the money and later come for the cement.

That they took deposits from customers to the tune of GHC35,000.00. He then told the chief they owed some much that the chief then announced that those who paid money to them should come for their money. That the chief first paid money to the tune of GHC14,000.00 back to the customers. Then later the chief called him (defendant) and said he will not pay the money again. That the plaintiff then reported him (defendant) to the police and when he (defendant) went the Commander asked him (defendant) if he knows the plaintiff and he (defendant) said yes. That there he (defendant) told plaintiff demanded the current price of GHC65.00 per bag and he (defendant) told the police the chief said he will pay the old price. That later the police asked them to go to court. Defendant did not call any witness to.

After a careful evaluation of the evidence, it has been established by the plaintiff that she indeed paid the various sums of money to the defendant for the total of 263 bags of cement at GHC30.00 per bag at the time. This sums were paid in two separate tranches for first 130 bags totaling GHC3,900.00 and second for 133 bags totaling GHC3,990.00 respectively. This was not denied by the defendant. That is the defendant never denied that the plaintiff indeed paid the GHC3,900.00 and the GHC3,990.00 respectively to him for the 263 bags of cement. The plaintiff again tendered in evidence the two (2) separate receipts that defendant issued to her (plaintiff) as evidence of the payment. Defendant

again never denied that he issued the said receipt and also never denied that he received the money for the 263 bags of cement from the plaintiff.

Again it must be observed that inspite of the fact that defendant never denied that he told plaintiff that he sells cement and therefore took the plaintiff's money, he only tried to state that the store belonged to the chief of Nsawkaw. This claim the defendant failed to substantiate. Indeed if it is the case that the defendant was managing the store for the chief as he wants this court to believe he would have taken the plaintiff to the said chief for the money to be paid to him or as owner of the store. However the defendant from the evidence only sought to bring the chief in after he failed to deliver the cement. This in my view is nothing but an afterthought.

Finally, it must be stated that the defendant though claimed it was the chief who refunded the money to some of the other customers who paid money to him (defendant) for the cement. Defendant never called any witness (including) any of those customers to corroborated the said claim.

From the evidence therefore I found the following as facts;

- (1) That the plaintiff on the 6<sup>th</sup> day of March, 2018 and 23<sup>rd</sup> day of March, 2018 paid GHC3,900.00 and GHC3,990.00 respectively for a total of 263 bags of cement.
- (2) That the defendant received the said sums for the 263 bags of cement and receipted same.
- (3) That the defendant upon receipt of the money failed/refused to supply the 263 bags of cement to the plaintiff.
- (4) That the claim by the defendant that he managed the store for the chief of Nsawkaw has not been substantiated.

In a civil trial, the party who in his pleadings or writ of summons raise issues that are essential to the success of their claim assumes the onus of proof. This position of the

law on the burden as provided for by Section 11 (4) of the Evidence Act of 1975 (NRCD 323) has been exposed in the case of Faibi Vrs State Hotels Corp {1968} GLR, 176.

The nature of the burden imposed on the party laying the claim is the persuasive burden and section 11 (4) has defined that as relating to each fact, the existence or non-existence of which is essential to the claim or defence being ascertained.

The Evidence Act, 1975 provides further that the burden of persuasion requires proof by the preponderance of the probabilities and that also has been explained in Section 12 (2) to mean the degree of certainty of belief in the mind of the court by which the court is convinced that the existence of the fact is more probable than its non-existence".

In relating the law as stated above to the evidence adduced by the parties herein, it has been clearly established by the plaintiff herein that she (plaintiff) paid cash the sum of GH¢3,900.00 on the 6<sup>th</sup> day of March, 2018 and then another GH¢3,990.00 on the 23<sup>rd</sup> day of March, 2018 to the defendant herein for the supply of 263 bags of cement. The defendant never denied that he received the said cash. The plaintiff also substantiated her (plaintiff) claim by providing the two (2) separate payment receipts that the defendant issued after taking the money.

These are exhibits 'A' and A1' here in respectively. The evidence has also shown that the defendant after having taken the money failed or refused to supply the said 263 bags of cements. It is therefore fair that he supplies the cement (263 bags) or in the alternative pays the current market value of the said 263 bags of cement to enable the plaintiff buy same.

It is therefore the conclusion of this court that having regard to the evidence and the law as stated the plaintiff has proved her claims against the defendant and judgment is hereby entered for the plaintiff.

The reasons for the above conclusion include;

- (1) That the plaintiff paid the cash sum of GH¢3,900.00 and GH¢3,990.00 respectively for the supply of a total of 263 bags of cement.
- (2) That defendant received the money and dully receipted same but failed to supply the cement.
- (3) That the defendant though claimed he worked for a certain chief of Nsawkaw he never proved that he gave the money to the chief and the said chief also never confirmed same.
- (4) That the plaintiff proved the claims against the defendant on the preponderance of the probabilities and as required by law.

It is hereby ordered that the plaintiff recovers from the defendant herein the said 263 bags of cement or failing which the plaintiff shall recover the current market value of the 263 bags of cement which is GH¢85.00 per bag. This multiplied by the 263 bags.

Cost of GH¢1,000.00 for the plaintiff and against the defendant.

.....**SGD**.....

ISSAH ABDUL-WAHAB

(MAGISTRATE)