

IN THE DISTRICT COURT HELD AT NEW ABIREM ON THE 19TH DAY OF JUNE 2023, BEFORE H/W BENJAMIN BENNET ATTABRA.

SUIT NO. A2/85/22

AMOYAW DANIEL

OF H/No. B. 125/C,

AKYEM AFOSU.

PLAINTIFF

VRS.

OSOFO OF

AKYEM AFOSU.

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DEFENDANT

Plaintiff Present

Defendant Present

By Court;

JUDGMENT

Plaintiff claim against the defendant for;

a. Recovery of GH¢1,500.00 being balance of cost of Pragia with Registration No. NR 1515-19 the plaintiff sold to the defendant in November 2021.

b. Current Interest Bank Rate of 20% per Annum from November 2021 till the final day of Judgment.

c. Cost.

Plaintiff is a retired cocoa research officer, resident at Akyem Afosu. The defendant is a businessman resident at Akyem Afosu. In November 2021, the plaintiff offered his used commercial Pragia (tricycle) with registration number NR 1515-19 for sale to the defendant in the sum of GH¢4,000.00. The defendant made part payment of GH¢2,500.00, leaving balance of GH¢1,500.00 which the defendant promised to pay within two weeks but failed. Despite persistent demands the defendant has still failed to pay the

GH¢1,500.00 to the plaintiff. Wherefore plaintiff claims against the defendant as per the writ endorsed.

The defense of the Defendant was that although he admits that the plaintiff offered his tricycle with the registration number NR 1515-19 for sale to him in the sum of GH¢4,000.00. Defendant argued he made an initial payment of GH¢2500.00 leaving a balance of Gh¢1500.00 but did not promise to pay the balance in two weeks.

It is the contention of the defendant that the plaintiff knew that the said tricycle was faulty so a verbal agreement was made to use the outstanding balance of GH¢1500.00 for repairs of the said tricycle.

Defendant submits the tricycle has been at the workshop since November, 2021 and the repairs is still ongoing. And an amount of GH¢3,620.00 has been incurred in repairing the tricycle from November, 2021 to date.

Defendant contends the plaintiff sold the item on deceit and thus, prays to the honorable court to strike the matter.

Defendant is called Reverend Samuel Oppong. He is a pastor and also a tricycle rider. He was at home when Plaintiff came to tell him he had a Pragia for sale at C\$5000.00 He enquired to know about the problem with the Pragia and Plaintiff told him the tyre and battery were spoilt. He opted to buy it at C\$4000.00 instead and made part payment of C\$2,500.00 on condition that when he fixed the battery and tyre and it worked Defendant will give Plaintiff the balance of C\$1500.00. He agreed and went to buy the tyre and battery. Plaintiff wished to introduce a fitter said until he sends his Pragia to the shop. It was towed to the shop. The fitter said the cost of the repairs will be more than C\$3000.00 so Defendant decided to go for his cash. When he went to the Plaintiff, Plaintiff started talking rubbish and Plaintiff's daughter asked Defendant to take time with her father as he was intoxicated and come the following day. The following day Defendant told plaintiff the cost of the repairs was unbearable. Plaintiff encouraged Defendant to get the bill worth C\$1,100.00 but when there's an extra bill then they look at it. Defendant went to the fitter to start the work but was unable to. Later Plaintiff requested to sell a new machine to Defendant and defendant said that he would deduct the cost of expenses from the price of the new machine but Plaintiff refused.

DEFENDANT'S WITNESS

His name is Yusif Razak. He lives at Mamanso and is a mechanic.

Plaintiff called him that someone wanted to buy his machine so he should come and start the machine for him. He was busy so his boys (apprentices) went to do that. When the boys brought back the machine, they told him there was work to be done on the machine. When they assessed the costs of the machine parts that needed to be fixed, it was almost ₵1000.00. They told the Defendant and he also asked them to inform the Plaintiff before fixing it. Later Defendant went to tell the fitter to start working as he had spoken with the Plaintiff. The fitter worked on it for some time but the defendant run out of cash so they left it at the shop. After some time the fitter informed the defendant to come for the machine as people were stealing the parts of the machine. He later went for it.

Issues for determination include whether or not there was an oral agreement for the remaining GH₵1500.00 to be used for maintenance?

Whether or not the defendant has kept the defective tricycle for unreasonable length of time?

In the course of the trial, plaintiff testified and called a witness Asabea Rita in support of his stance. The defendant also testified and called a witness (Yusif Rasak) in his defense. The court observed that the tricycle in question was used by the plaintiff for commercial purposes and per the registration had worked from the year 2019 to November 2021. The court further observed that the tricycle was parked for some time and so the plaintiff had to bring a mechanic to spark it to move. According to the sole witness for the defendant, he was engaged the very morning the plaintiff wanted him to go and spark the tricycle at the Plaintiff's house but was busy and so he detailed his apprentice to go and execute the task. Although the tricycle sparked, there were other faults that needed urgent attention before it could perform and so upon instruction of the defendant his boy sent it to his workshop for further assessment and prepared the list of parts that ought to be bought for the work. Following the assessment, the cost was huge but defendant provided resources for the initial work to commence. Subsequently, there were other faults he identified but the defendant could not provide resources readily for the work to be done. As the tricycle remained at the shop for unusually long period of time, he advised defendant to come for it since people are taking advantage of the situation to remove parts of the tricycle at the fitting shop. And so the defendant came for it.

According to the defendant he thought he could fix the problem and enjoy the tricycle only to realize that the job was challenging. Defendant realizing he could not repair the tricycle still kept it instead of returning it to the owner for a refund. The court observed further that defendant went to the plaintiff while the latter was drunk and spoke harshly to him but the defendant did not take it lightly. If the assertion that there was an oral agreement for the defendant to use the GH¢1500.00 for the maintenance or repair of the tricycle why did the defendant go to the plaintiff to complain about the state of the tricycle? If the defendant wanted to return the tricycle he should have returned when the plaintiff want to replace the tricycle with another machine plus additional cost but defendant turned down the offer.

J.M.Y. AMEGASHIE in his book THE VEHICLE OWNER AND DRIVER; THE LAW CONVENTIONS ON ROAD at page 63 gives a guidelines for buying a used motor Vehicle. There is a basic maxim in the law of contract and sale of goods which states that “caveat emptor” and this means “let the buyer beware”. In other words there is onus and responsibility on the purchaser who is parting with his or her money. For if you do not exercise sound judgment, you would end up losing your money as well as the motor vehicle. To buy a used vehicle the prospective buyer must, among other things follow the underlisted steps and undertake a history check on the vehicle by doing the following:

- . Check from the Police as to whether the car is reported stolen
- . Check from insurance companies whether the car has been written off.
- . Look for information as to whether the vehicle has had its identity changed.
- . Check whether there are any outstanding payment and might re-possess the vehicle.
- . Check at the Driver Vehicle Licensing Authority (DVLA) for the Vehicle Identification Number. The chassis number which is 17-digit is unique to each vehicle. It is usually stamped twice, one in the engine bay and another on the driver’s door or on top of the dashboard.
- . A check at the DVLA would reveal whether the vehicle had been exported or scrapped.
- . A check at DVLA would also reveal whether the vehicle namely how many times ownership has changed. It might also reveal whether the engine has been changed.

- . Ask the vendor to see all the papers on the vehicle Registration form A, change of ownership Form C, Vehicle Registration Certificate, Roadworthiness Certificate and Insurance Policy.
- . Request for a mechanical check to be carried out.
- . Look and shop around for the best buy.
- . Always try to negotiate a low price.
- . In case you are **not completely sure** and happy **walk away**.
- . Never buy a motor vehicle without registration document and road worthiness certificate. The two documents must bear the approved security features.
- . In case the owner of the used vehicle is not a dealer but a private person, always make sure you view the vehicle in his or her home during daytime. You would have ample time to observe any side defects /damage and ask questions if need be.

In the instant suit, the defendant approached the Plaintiff to negotiate for the purchase of second hand or used Pragia and they settled on C4000.00 and paid a sum C2500.00 as part-payment. Defendant did not go with his own mechanic for inspection or he did not tell the court how he conducted the inspection to satisfy himself that what he was buying was okay for him. It was rather Plaintiff who called his mechanic to come and spark the tricycle. The mechanic could not make it but instructed his boys to go and have the tricycle sparked. As defendant did not bother to procure his own mechanic to examine the tricycle before its acquisition how will he be convinced that he was buying a good machine. I therefore hold that the defendant was not due diligent when acquiring the tricycle. The defendant being satisfied with the state of the tricycle parted with the sum of GH¢2500.00 with the intention of paying the rest later. As the saying goes caveat emptor let the buyer beware.

Following the purchase of the tricycle, and the mechanic having detected other faults on it to be worked on. Defendant saw the need to come to let his concerns be known but met the plaintiff drunk. Plaintiff did not take things lightly and insulted the defendant to wit Bull shit. His daughter who was then present advised the defendant to come at another day but plaintiff suggested to sell a new machine at an extra cost but the but the defendant turned down the offer and walked away but **abandoned** the tricycle with the repairer till recently when the Fitter complained that parts of the tricycle was stolen at the fitting shop

and so he should go for it. In the first place it was imperative for the plaintiff to have walked away if he was not satisfied about the state of the tricycle but risked in parting with his money.

Again, the defendant in the view of the court kept the tricycle for unusually long period of time. The question that bothers the court is; what prevented the defendant from returning the tricycle when he detected that it does not worth the price he offered? Keeping the tricycle for long time is not the best.

In the case of *Rockson V. Armah* [1975] 2GLR 117 at 119, CA.

The appellant sold a second-hand Mercedes Benz car to the respondent for three thousand and two hundred old cedis (¢3,200.00). The respondent made cash payment of old ¢2,200.00 and remitted two postdated cheques of old ¢500.00 each for the balance of the purchase price. Upon delivery the car was found to have been involved in an accident and had suffered considerable damage.

The appellant accepted liability and agreed to repair the car. Consequently, the appellant approached Messrs. R. T. Briscoe to affect the repairs but found their estimates too high.

The car was eventually repaired by a 'wayside' fitter in a day and the respondent took delivery. However, after the respondent had used the car for almost two months he repudiated the contract on the ground that he had discovered some latent defects in the car. The learned trial judge held that the respondent was justified in repudiating the contract.

The principal issue for determination in the appeal is whether the respondent in the circumstance was right in rejecting the contract.

On appeal, the Court of Appeal held that if the car retains the defects which the accident gave rise to, it could be urged that it was inferior and fundamentally different from what had been bargained for the respondent could not be said to have opted to have it in that state. "The right to reject is lost by any unreasonable delay in doing so. Where a buyer elects to keep a defective car for an in ordinary long time, it is not open to him thereafter to avoid the transaction.

By section 51 of the sale of Goods Act, 1962 (Act 157), a buyer may not reject goods which he has accepted and by section 52 (b) a buyer is deemed to have accepted if "he does not, within a reasonable time after delivery of the goods inform the seller that he rejects them.

In the instant case the moment the defendant realized the tricycle was defective he should have repudiated the contract but retained it until the plaintiff instituted the action for the recovery of his GH¢1500.00. In view of that I hereby enter judgment in favour of the plaintiff and against the defendant. Costs of GH¢500.00 awarded against the defendant.

SIGNED;

BENJAMIN B. ATTABRA

DISTRICT MAGISTRATE

19 – 06 – 2023