

**IN THE DISTRICT MAGISTRATE COURT HELD AT N.A.M.A. NSAWAM ON  
TUESDAY, 25<sup>TH</sup> DAY OF JULY, 2023 BEFORE HER HONOUR SARAH NYARKOA  
NKANSAH CIRCUIT COURT JUDGE SITTING AS ADDITIONAL MAGISTRATE**

**SUIT NO. A2/59/22**

**EMMANUEL BRIGHT DARKO ----- PLAINTIFF  
A.K.A. WOFA DARKO OF  
DJANKROM-NEWTOWN**

**VRS:**

**OBAA YAA ----- DEFENDANT  
OF OPAREKROM, NSAWAM**

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**PARTIES: ABSENT.**

**NO LEGAL REPRESENTATION.**

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**JUDGMENT**

The Plaintiff herein commenced this action claiming the following against the Defendant:

1. GH¢2,400.00 being cost of 20,000 orange fruits Defendant bought from Plaintiff at GH¢12.00 per 100 orange fruits but Defendant has refused to pay same since July 2021 despite repeated demands.
2. Interest and cost.

The Defendant was duly served with the writ of summons, Court notes and Hearing Notices. It is however to be noted that even though Defendant had notice of the pending

suit, the Defendant did not file any process to contest the suit or appear in Court personally to be heard. The Court therefore proceeded under Order 25 of the District Court Rules, 2009(C.I 59), and proceeded to hear the matter without the Defendant.

*Order 25 r 1(2) (a)* provides;

*“Where an action is called for trial and a party fails to attend, the trial magistrate may where the Plaintiff attends and the Defendant fails to attend, dismiss the counterclaim if any and allow the Plaintiff to prove the claim”*

### **PLAINTIFF’S CASE**

Plaintiff claimed that somewhere in July 2021, the Defendant bought 20,000 orange fruits from his farm at a cost of GH¢12.00 per 100 orange fruits. Plaintiff mentioned also that the Defendant promised to pay the said amount after she had sold the oranges but even though the Defendant has since sold all the oranges, all attempts to get the Defendant to pay the amount have proven futile. Plaintiff therefore prayed the Court to compel the Defendant to pay the said amount with interest and cost.

### **PW1**

PW1 identified himself as a neighbor of the Plaintiff. He corroborated the evidence led by the Plaintiff.

The Plaintiff closed his case thereafter.

In the circumstance the issue that falls for determination is;

*Whether or not the Plaintiff is entitled to recover the sum of GH¢2,400.00 from the Defendant.*

In the case of Nartey v. Mechanical Lloyd Assembly Press Ltd [1987-1988] 2GLR pg 314 Adade JSC stated that:

*'A person who comes to Court, no matter what the claim is, must be able to make a good case for the Court to consider, otherwise he must fail'.*

*Sections 11(4) and 12 of the Evidence Act, 1975 (NRCD 323)* provides that the burden of proof on a party in a civil suit should be on a balance of probabilities.

In the case of Adwubeng v. Domfeh [1996-97] SCGLR 660, the Supreme Court held that in all civil actions, the standard of proof is proof by the preponderance of probabilities, and there is no exception to that rule.

The Plaintiff and PW1 have led evidence to establish that the Defendant owes the Plaintiff GH¢2,400.00 resulting from the purchase of Plaintiff's oranges by Defendant. As per the evidence the Defendant was to pay the said sum upon the sale of the oranges but she has refused to pay Plaintiff although she has sold the oranges.

As noted supra the Defendant did not contradict or challenge Plaintiff's evidence since she failed to attend the trial despite having notice of same.

The position of the law is that, the Court ought to accept the evidence led by a party, where his opponent fails to lead contrary evidence or challenge same under cross-examination by deeming the evidence as having been admitted by his opponent.

In *Takoradi Flour Mills vrs Samir Faris [2005-06] SCGLR 882*, the Supreme Court held that “where the evidence led by a party is not challenged by his opponent in cross examination and the opponent does not tender evidence to the contrary, the facts deposed to in that evidence are deemed to have been admitted by the opponent and must be accepted by the trial Court.

Considering that the Plaintiff was not cross-examined on his evidence to the Court, I accordingly conclude that the Court has accepted the whole of the evidence of the Plaintiff on record. The Court finds the Defendant liable to pay the sum of GH¢2,400.00 with interest to the Plaintiff.

In *Boakye v. Asamoah [1974] 1 GLR 38 @ 45*, the Court held that, the legal or persuasive burden is borne by the party who would lose the issue if he does not produce sufficient evidence to establish the facts to the requisite standard imposed under *section 10 of the Evidence Act, 1975 NRCD 323* that is, by a preponderance of probabilities.

I accordingly conclude that the Plaintiff has been able to prove his claim by preponderance of probabilities. I hereby enter judgement in favour of the Plaintiff for the following reliefs;

- i. Recovery of the sum of GH¢2,400.00 from the Defendant.
- ii. Interest on the sum of GH¢2,400.00 at the commercial bank rate from the date of issuance of the writ, 1st February, 2022, to date of final payment.
- iii. Cost of GH¢500.00 awarded against the Defendant.

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**H/W SARAH NYARKOA NKANSAH**  
**CIRCUIT COURT JUDGE SITTING AS**  
**AS ADDITIONAL MAGISTRATE**  
**25/07/2023**