

IN THE DISTRICT COURT SITTING AT ASAMANKESE ON THE 5TH DAY OF JUNE, 2023, BEFORE HIS WORSHIP GEORGE DAVIS KWASI OFORI (MR) – DISTRICT MAGISTRATE

SUIT No: A2/81/23

GEORGE TAWIAH

.....

PLAINTIFF

VRS.

B.A a.k.a KOFI ADU

.....

DEFENDANT

J U D G E M E N T

CLAIM:

The plaintiff's claims is for the recovery of cash the sum of Gh¢1,750.00 with break down as follows:

- a) Gh¢1,250.00 being plaintiff's fair share of 104 palm trees he gave to the defendant to distill alcohol on 1st June, 2022.
- b) Gh¢500.00 being capital the plaintiff gave to the defendant to help in the distillation of the alcohol.
- c) Costs.

SUMMARY OF PLAINTIFF'S CASE:

It is his case that on the 1st day of June, 2022, upon agreement, he gave 104 palm trees to the defendant to distill alcohol so that they will share the proceeds. That he gave the defendant Gh¢500.00 as capital to help in the distillation.

That his fair share of the business was Gh¢1,250.00 which the defendant has refused to give to him. Hence this action, praying for the reliefs endorsed on the writ of summons. The plaintiff called one witness to support his case.

SUMMARY OF DEFENDANT'S EVIDENCE

It is his case that the plaintiff gave him 100 palm trees to distill alcohol so that they share the profit.

That he employed labourers to uproot the palm trees, who charged Gh¢15.00 per tree, making a total of Gh¢1,500.00. That the plaintiff gave him Gh¢500.00 to be given to the labourers as advance so that when he distill the alcohol, they will pay them the balance.

That he also gave Gh¢300.00 to the labourers as their “chop money” or feeding fees, which is a trade usage. That they agreed that they will give one gallon (popularly called “Kuffour gallon”) of alcohol they will distill first to the labourers as their “chop money”.

That he also bought sugar worth Gh¢400.00 for the project and the plaintiff paid Gh¢40.00 for its conveyance to the project site. That he also provide a fowl and “Kasapreko” Gin with Gh¢90.00 to pacify the river gods since where they were distilling was close to a river.

That since it was raining in June, it was difficult to tap enough or the required level of palm wine from the palm trees to distill into alcohol because the weather was too cold or and not conducive.

That one day in June, when he got to the project site, he realized that somebody had removed all the equipment and materials from the site and when inquired from the plaintiff about this, the plaintiff admitted that he did, and that they should change site since, the place they were distilling was too close to the river which is too cold for that purpose. That the plaintiff promised to buy barrels to be taken to the new site so that he could continue the work, but waited for 3 weeks to no avail.

Meanwhile, there was palm wine already tapped sitting in barrels for the three (3) weeks going bad. That the plaintiff's wife came to apologies to him for dismantling the site of the distillation. That after the apology, he mobilized materials and returned to the old site to distill alcohol since they needed money to pay the labourers balance of Gh¢1,000.00.

That out of the alcohol distilled, they measured Gh¢1,000.00 worth of alcohol and gave it to the labourers, which was in the presence of the plaintiff.

That all attempts by him to get the plaintiff to sit down with him to determine whether they made a profit or not proved futile. The defendant called 2 witnesses to support his case.

ISSUE FOR DETERMINATION:

From all the evidence before me, the issues that came up for determination are:

- a) Whether the palm trees the plaintiff gave to the defendant were 100 or 104;
- b) Whether or not the defendant paid the labourers "chop money twice"
- c) Whether or not the labourers were paid their balance of Gh¢1,000.00 from the alcohol distilled.

- d) Whether or not the plaintiff made it impossible for the defendant to distill enough alcohol for sale to get profits.
- e) Whether or not the plaintiff is entitled to his claims.

To succeed, the onus lies on the plaintiff to lead sufficient evidence to prove that on a balance of probabilities, his evidence is reasonable and carries more weight than the defendant. In other words, the onus lies on the plaintiff to lead enough evidence to prove that the existence of a fact is more probable than its non-existence which onus may shift, see Section 10, 11 and 12 of The Evidence Act 1975 (NCRCD 323) see also the Case of Fosua and Adu Poku vrs Adu Poku Mensah [2009]SC GLR 310.

With respect to the first issue, the plaintiff said the palm trees he gave the defendant to tap palm wine for distillation were 104. the defendant disputed this, saying they were 100. According to the defendant, whose evidence was supported/corroborated by the evidence of his 1st witness is one of the labourers who uprooted the palm trees, they charged Gh¢15.00 per tree. $Gh¢15.00 \times 100 = Gh¢1,500.00$ which the plaintiff himself agreed that was the labour cost. For this reason, I accept the defendant's evidence that the trees were 100 and not 104.

With respect to the 2nd issue, the defendant stated at paragraph 4 of his witness statement that they agreed to give one yellow container popularly called “Kuffour gallon” full of the first distilled alcohol to the labourers as chop money. Then again he stated at paragraph 8 of his witness statement that he paid Gh¢300.00 to the labourers from his own pocket as feeding fees.

In my opinion, feeding fees and chop money are same thing and therefore the defendant could not have paid them feeding fees or chop money twice. I therefore take it that the Gh¢300.00 which he said he paid from his pocket is the only feeding fees he paid to the labourers, and therefore he has to account for the proceeds of the one “Kuffou gallon” of the first distilled alcohol.

Adding his Gh¢300.00 to the Gh¢400.00 he spent to buy the sugar and the Gh¢90.00 he said he spent on a fuel and kasapreko puts the defendant investment at Gh¢790.00.

Again, adding the plaintiff’s investment/advance of Gh¢500.00 paid to the labourers to his Gh¢40.00 paid to those who conveyed the sugar to the site makes the plaintiff’s total investment. Gh¢540.00, giving the defendant a credit balance of Gh¢250.00 out of his total investment. Although, the plaintiff disputed the cost of the fuel, he did not provide any figure. On the fact that fowls can cost as much as Gh¢150.00 how, I agree with the cost of the fowls I.e Gh¢50.00 quoted by the defendant.

With respect to the 3rd issue, it is uncontroverted that the parties proved the labourers e.e DW1 and another a balance of Gh¢1,000.00 as part of their labour cost. Therefore once DW1 has admitted that they were paid that with distilled meant that the parties do not owe them any more labour costs. What remains a controversy is whether the plaintiff was present when the defendant measured the Gh¢1,000.00 worth of alcohol to pay the labourers.

According to the defendant, the plaintiff and his wife together with him, his wife and DW1 were present when the measurement was done but the plaintiff denied that he was present, which implies that he doubted the defendant's assertion that indeed it

was only Gh¢1,000.00 worth of alcohol that was measured for the labourers ie DW1 and another.

When the onus shifted on the defendant, he failed to tell the Court that after paying GH¢1,000.00 worth of alcohol to the labourers, none or some alcohol remained. This, in my opinion is an attempt by the defendant to cover distilled alcohol, which amounts to unjust enrichment. Emity abhors unjust enrichment.

With respect to the 4th issued, the defendant argued that without his consent and knowledge the plaintiff unilaterally removed the distillation equipment and materials from the distillation site close to a stream to another place and for three weeks, he could not distill any alcohol. That this made the palm wine stored in barrel for distillation go bad.

The plaintiff admitted that he removed them to another place because the site was too close to the river which was cold and therefore not conducive for distillation.

In my opinion, after giving out the contract to the defendant, the plaintiff had no business interfering in the work of distillation what he should have been interested in was taking stock of the quantity of alcohol distilled for each day and waiting for his profits.

It was at the old site that, from the evidence, alcohol was distilled to pay the labourers, and also one “Kuffor gallon” gotten. Therefore if the plaintiff had not interfered with the distillation process and had allowed the defendant to do his job, the palm wine in the barrels would not have gone bad. In my opinion, by interfering

in the process, the plaintiff is deemed to have breached their agreement, which could be described as a main cause of reduction or loss of profits.

With respect to the fifth issue, I have stated that the plaintiff's interference with the distillation process is a major cause of the dispute between the parties and therefore, I am unable to enter judgment for him.

Be that as it may, I have also stated that the defendant has concealed the rest of alcohol left after paying the labourers Gh¢1,000.00 worth of alcohol.

I therefore order the defendant to pay the plaintiff's Gh¢540.00 investment capital to him for this reason. No further orders as to costs.

(SGD)
H/W GEORGE DAVIS KWASI OFORI (MR)
(MAGISTRATE)
5/6/23