IN THE DISTRICT COURT
AGONA SWEDRU - A.D. 2023
BEFORE HIS HONOUR ISAAC APEATU
Civil Suit No A2/129/2022
16th February, 2023

EMMANUEL CO-OPERATIVE CREDIT
UNION LTD
Suing per the Manager, Benjamin Essilfie …… Plaintiff

VERSUS

NYINAKU LOIS
EMMANUEL NANA BARNES NYINAKU …… Defendants

JUDGMENT

The Plaintiff issued out its Writ of Summons on the 24th day of May, 2022 against the Defendants for the following reliefs:

a. Recovery of cash the sum of Eight Thousand, Six Hundred Ghana Cedis (GH¢8,600.00) being the balance of principal loan together with its interest the 1st Defendant contracted from the Plaintiff on 7th October 2020 which said amount the 2nd defendant guaranteed its repayment by the 7th April 2021 but which the defendants have failed and or refused to pay despite repeated demands.
b. Interest on the said sum of Eight Thousand, Six Hundred Ghana Cedis (GH¢8,600.00) at the current bank rate from 6th May 2022 till date of final payment.
c. General damages for breach of contract
d. Cost including legal costs for prosecuting the suit.
e. Any other relief(s) that the court may deem fit.

On service of the Writ of summons, the 1st Defendant appeared in court and admitted liability to the sum of GH¢3,500.00. Judgment was thus entered on the admitted sum against the 1st defendant with the residue of GH¢5,100.00 left for evidence to be taken on it for a determination to be made. When the court realized that the case was not one which necessitated the filing of written statements and that the 1st Defendant who appeared to defend the suit would not appreciate the legalities involved in filing processes in the matter, it did not order for the filing of written statements but ordered that the case proceed with the taking of the evidence of the parties without any reliance on written statements. I think that this course of action by the court is amply supported by the provisions of the District Court Rules, 2009 (C.I. 59) in Order 18 r 2(1) (b) which states that the court shall not require a party who is incapable of preparing or understanding a written statement to file a written statement. Also, as the Supreme Court held in the case of **Armar Nmai & 2 Others v Adjetey Adjei & 2 Others, (Civil Appeal No. J4/8/2013, unreported)**, pleadings are not evidence and to hold otherwise negates the requirements of proof as provided in the Evidence Act and the well-known cases of Majolagbe vs. Larbi [1959] GLR 190; and Zabrama v. Segbedzi [1991] 2GLR 221.

Having established the basis of the court's decision to disregard the written statements filed, I proceed to determine which of the parties bore the burden to prove their case? It is a settled principle of law buttressed by the Evidence Act, 1975 (NRCD 323) that the onus of producing evidence of a particular fact in civil cases is on the party against whom a finding of fact would be made in the absence of further proof: see Section 17(a) and (b) of NRCD 323.The authorities are also in harmony that matters that are capable of proof must be proved by producing sufficient evidence so that, on all the evidence, a reasonable mind could conclude that the existence of a fact is more reasonable than its non-existence. This is the requirement of the law on evidence under sections 10 (1) and (2) and 11(1) and (4) of the Evidence Act, 1975 (NRCD 323).

The burden of producing evidence has been defined in Section 11 (1) of the NRCD 323 as follows;

> "11 (1) For the purpose of this Act, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling on the issue against that party".

Thus, the burden of proof is not static but could shift from party to party at various stages of the trial depending on the obligation that is put on that party on an issue. This provision on the shifting of the burden of proof is contained in Section 14 of NRCD 323 thus:

> "14 Except as otherwise provided by law, unless it is shifted, a party has the burden of persuasion as to each fact the existence or non-existence of which is essential to the claim or defence that party is asserting".

From the above, it can be concluded that the burden of proof was on the Plaintiff initially to establish the averments it made on a preponderance of probabilities.

The obligations of proof laid before the parties, I wish to run through highlights of the evidence led by both parties in proof of their respective claims. As I stated earlier, in terms of the demands of procedure, the Plaintiff bore the burden to lead evidence to prove the grounds upon which its claims were grounded to have judgment entered on the reliefs claimed on the Writ of Summons. Plaintiff led evidence in proof of the averments it made through its Manager, one Benjamin Essilfie. His evidence was to the effect that the 1st Defendant who was a Susu customer applied for a loan of GH¢4,500 which was granted to her. This loan attracted interest of 3% interest to run for a period of 6 months. So the 1st Defendant was to have paid interest of GH¢810. That in October 2020, she applied for another loan of GH¢5,000 which was also granted. The second loan attracted interest of 3% for a period of 6 months. So the interest at the end of the six-month period was to be GH¢900. She was to have paid an amount of GH¢983.33 each month as per the schedule of payment. That the 1st Defendant agreed to pay the

two loans together. However, she defaulted and failed to pay the two loans. She thus stopped payment in October 2021. In October 2022, she paid GH¢250 out of the loans. That the 1st Defendant has failed to pay despite being written to severally. That as at the time of filing the writ, 1st Defendant owed GH¢2,365.18 on the first loan while the balance on the second loan was GH¢6,233.96 together with interest. So the when the two loans are consolidated, the 1st Defendant was indebted to the sum of GH¢8,600.

He stated that the 1st Defendant has from August 2022 paid an amount of GH¢560 which reduces the debt to GH¢8,040. He tendered in evidence the Loan Application Form for the first loan which was admitted without objection and same marked as Exhibit A. he further tendered the Loan Statement of Account which was marked as Exhibit B. He then tendered the Loan Application Form for the second loan which was marked as Exhibit C and the Loan Statement of Account marked as Exhibit D. He tendered the Loan Repayment schedule which was marked as Exhibit E. He further tendered other documents which were duly marked as Exhibits F, G, H, J and K.

During the cross-examination that followed, 1st Defendant contended that her passbook into which all records of payment of the loan were kept was with the Plaintiff and demanded that it be given back to her. The witness however denied that the passbook was with them claiming that it was not for them to keep the passbooks of their customers.

After the Plaintiff had called the two witnesses, it closed its case. 1st Defendant was called to open her defence. She gave evidence in her defence. The 1st Defendant who is the primary party in this suit gave evidence which was basically that she took a loan from the Plaintiff and was repaying it. She then took a second loan as a top up. That all payments she made were entered into her passbook. She got pregnant and defaulted in repayment. When she came back, the mobile banker told her that the Plaintiff needed

her passbook at the office to check some things in it. Since then, the passbook has not been given to her. She claimed that she needs the passbook to know how much she owes the Plaintiff.

The issues which call for determination in this matter are:

1. Whether or not the 1st Defendant contracted a loan facility from the Plaintiff.
2. Whether or not the 1st Defendant defaulted on repayment.
3. Whether or not the Plaintiff was able to prove the claim for the amount defaulted.
4. Whether or not the 2nd Defendant is bound by the consequences of the 1st Defendant's default.

I shall set out to determine the issues that have arisen in this trial. In doing so, the first three issues will be resolved together since they are entwined and the determination of one will automatically dispose of the others. The first issue to deal with therefore is whether or not the 1st Defendant contracted a loan facility from the Plaintiff. 1st Defendant conceded in evidence that she contracted an initial loan of GH¢4,500 from the Plaintiff in August 2020. She did not contest the terms of the loan which according to PW1 was to attract interest of 3% interest to run for a period of 6 months. 1st Defendant also admitted that in October 2020, she applied for another loan of GH¢5,000 which was also granted to her which was also to attract interest of 3% for a period of 6 months. So the first issue is no longer in doubt.

That resolved, the next issue then is whether the 1st Defendant defaulted on repayment of the loan. According to Mr Essilfie, 1st Defendant contracted the second loan on 7th day of October 2020 and was to expire within 6 months. The 1st Defendant was to have paid an amount of GH¢983.33 each month. However, he said she paid only GH¢172.85 in November 2021 and that was the last payment she made. So, by the expiry date, the 1st

defendant had not paid the loan leaving a balance of GH¢8,600 to be paid. She paid a total of GH¢560 when the suit was filed leaving a balance outstanding of GH¢8,040.

1st Defendant did not deny that she was to have paid an amount of GH¢983.33 each month as per the schedule of payment. She also did not deny that she proposed to pay the two loans together and that she defaulted and failed to pay the two loans. She admitted that she defaulted in repayment of the loans when she got pregnant. This is a confirmation of PW1's assertion that the 1st Defendant stopped payment in October 2021. She however appears to say that she made more payments than have been stated by PW1 and that all her payments were recorded into her passbook which the Plaintiff has failed to give to her.

I have read the statement of account of the 1st Defendant. I have also read the 1st Defendant's savings account statement which was tendered in evidence. I could not agree more with the Plaintiff that the 1st Defendant owes the amount claimed in the writ. She applied for the loans and were duly granted to her. Per the schedule of payment, she ought to have made a monthly payment of GH¢983.33 for a period of six months. She however failed to pay as scheduled. According to her, she got pregnant and had to leave to Cape Coast. As a result, she could not pay the loan. She defaulted in repayment of the loan. Her default rate was so high. As at the 7th day of April 2021 when the loan was to expire, the 1st Defendant had not paid the loan. From the 1st Defendant's own statement, she defaulted because she got pregnant and left for Cape Coast. A person is deemed to have defaulted on a loan or a similar undertaking when that person fails to pay the debt or to perform the task he undertook to "within a given period". The import of the above is that there must be clear details of the given period within which that action ought to be taken failing which we can safely say that there has been a default. In this case, I find that the second loan into which the first loan appears to have been consolidated, was for a period of six months expiring in 7th day of

April, 2021. A clear period is given and any amount which had to be paid had to be completed within the limited 6 months period failing which the borrower is deemed to have defaulted. Since the 1st Defendant had not fully liquidated the loan by the given date, she had defaulted. I hold therefore that the 1st defendant defaulted in repayment of the loan.

I find that the offer letter contained a declaration by the 1st Defendant that she will pay 3% interest per month on the reducing balance and also that if she defaults in repayment of the loan, she is liable to pay the collection expenses and fines of 10% per annum on the unpaid balance. This declaration was duly signed by the 1st Defendant. I find that after the expiry period, the 1st Defendant had paid only part of the loan and her cash collateral or Susu savings was disbursed into offsetting part of the debt. However, because she failed to pay the consolidated loans for a long time, interest was calculated on the principal sum which has brought the debt outstanding on the loan to GH¢8,040.

The 1st defendant did not really put up any real defence to the claims save to say that she made payments and that all those payments were recorded into her passbook. However, the Plaintiff has custody of the passbook. She appears to say that she made more payments than that disclosed by the Plaintiff to her. As I stated above, both PW1 and PW2 denied that the 1st Defendant's passbook was with them. They maintained that they do not keep the passbooks of their customers and that all passbooks of customers are kept by the individual customers. Despite maintaining that the passbook was in the custody of the Plaintiff and their denial of it, the 1st Defendant failed to lead any evidence to prove that the Plaintiff has custody of her passbook. I think that this line of defence is a convenient means of escaping from liability. I do not find that the Plaintiff has custody of the passbook. Even if they did and have not released it, I do not think that what is contained in the passbook will be anything different from what is in the

statements of account and the other documents exhibited in this case. I find on record that the 1st Defendant had voluntarily signed to abide by the terms of the loan. She signed Exhibits A and C which are the Application Form containing all the obligations as a borrower. The form bears the signature of the 1st Defendant. The law is that generally, where a document containing contractual terms is signed by a party of full age and understanding, in the absence of fraud or misrepresentation, the party signing it is bound by its terms and it is wholly immaterial whether he read it or not. See the cases of **L'Estrange v F. Graucob [1934] 2 K.B. 394** and **Inusah v DHL Worldwide Express [1992] 1 GLR 267.**

In this case there is no evidence on record that any fraud was perpetrated by any official from Plaintiff financial institution on the 1st Defendant, neither is there any allegation of misrepresentation on their part. The 1st defendant is a woman of full age and she must have known of the contents before she signed. If she did not know, at least her guarantor could have notified her of any term which would have wrecked injustice on her. I hold therefore that the 1st Defendant is indebted to the Plaintiff in the sum of GH¢8,600 as appearing on the face of the writ. However, she paid GH¢560 in court reducing the balance outstanding to GH¢8,040.

I find on the totality of the evidence that the 1st Defendant is liable to the Plaintiff in the sum of GH¢8,600 out of which they have paid GH¢560 leaving a balance of GH¢8,040. But the GH¢560 was paid after the writ had been served and the case had been called in court. So I enter Judgment against the 1st Defendant in the sum of GH¢8,600 being the sum on the writ of summons in favour of the Plaintiff. Interest shall be calculated on the sum of GH¢8,600 from 6th May, 2022 to 1st August 2022. Having paid GH¢560 in August 2022, the reduced sum is GH¢8,040. Interest shall hence be calculated on the sum of GH¢8,040 from 1st September, 2022 to date of final payment. In the circumstances of the case, I award cost of GH¢1,000 against the 1st Defendant in favour of the Plaintiff.

HIS HONOUR ISAAC APEATU

DISTRICT MAGISTRATE