

**IN THE DISTRICT COURT /KASOA CENTRAL REGION**

**SUIT No: A2/194/2022**

**ABRAHAM FRIMPONG**

**) PLAINTIFF**

**AND**

**BENJAMIN NARTEY**

**) DEFENDANT**

.....  
.....

**JUDGMENT**

**GIVEN BY H/W STEPHEN OFORI AKRASI ESQ (DISTRICT MAGISTRATE)**

**DATED 25/7/2023.**

**IN THE DISTRICT COURT HELD AT KASOA ON TUESDAY, THE 25<sup>TH</sup> DAY  
OF JULY, 2023 BEFORE: HIS WORSHIP STEPHEN OFORI AKRASI ESQ.**

**DISTRICT MAGISTRATE**

SUIT No: A2/19/2022

**ABRAHAM FRIMPONG**

**) PLAINTIFF**

**AND**

**BENJAMIN NARTEY**

**) DEFENDANT**

.....  
**JUDGMENT**  
.....  
.....

By his writ of summons Plaintiff herein issued out of this court a writ of summons with affidavit in support dated 9/6/2022 seeking:

- a. Recovery of outstanding balance of GHc9,270. 00 out of a total amount of GHc42,270.00 being the cost of six tipper trucks defendant rented on credit from Plaintiff.
- b. Interest on the GHc9,270.00 from 20/8/2021, till date of final payment.

### **PLAINTIFF'S CASE**

Plaintiff deals in tipper trucks. Plaintiff is a caretaker of the trucks for the owner. That on 20/8/2021 Defendant rented six of the trucks from him to Takoradi for some construction works at a total cost of GHc42,270.00. That at the end of the construction Defendant made a part payment of GHc33,000.00 remaining GHc 270,000.00 unpaid. That all efforts made to collect the money from Defendant has proved futile.

Defendant on the other hand failed to appear in court in spite of service of writ of summons and notices on him.

The legal issues for determination are:

- i. Whether or not Defendant is liable.
- ii. Whether or not Defendant is entitled to the reliefs sought

### **EVALUATION OF EVIDENCE AND APPLICATION OF LAW**

The evidential rule in civil cases is that the burden of proof rests upon the party who substantially asserts the affirmative of his case. In the case of **Lamprey alias Nkpa vrs. Fanyie and Others (1989-90) 1 GLR 286** the Supreme Court held that on general principles, it was the duty of the Plaintiff to prove his case. However, when on a particular issue he had led some evidence, then the burden will shift to the Defendant to lead sufficient evidence to tilt the scale in his favour. This is clearly covered in section 10,11,12 and 14 of the Evidence Act, 1975, NRCD 323.

In **Majolagbe v Larbi (1959) GLR190 @ 192**, Ollennu J (As he then was) had this to say on what constitutes proof in Law:

*“Proof in law is the establishment of facts by proper legal means where a party makes an assertion capable of proof in some way, e.g., by producing documents, description of things, reference to other facts, instances or circumstances, and his averment is denied, he does not prove it by merely going into the witness box and repeating that averment on oath, or having it repeated on oath, by his witness. He proves it by producing other evidence of facts and circumstances, from which the court can be satisfied that what he avers is true’.*

Adinyira JSC expatiating on the cardinal principle of Audi alteram partem in **In re: Kumi (dc’d); Kumi v Nartey (2007-2008) SCGLR 623 @ 632-633** held inter alia as follows:

*“..... it is trite law that a person cannot be found guilty or liable on order or judgment unless he had been given fair notice of the trial or proceedings to enable him to prepare and defend himself. This is the essence of justice. Failure by a court or tribunal to do so would be a breach*

*of the rules of civil procedure and natural justice. A judgment or order procured under such circumstances is in our view, a nullity.*

However, in the instant case, the Defendant failed to attend court notwithstanding the service of hearing notices on her on two occasions. Thus, Defendants failed to take advantage of the law to make her side of the story to be heard.

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In the case of *The Rep v High Court (Human Rights Division), Accra, Ex Parte Akita (Mancell Egala & A. G, Interested party) .(2010) SC GLR 372. At page 146.*

*Agbewole v Agbodogbey (2012) 44 GMJ124 C.A AT PAGE 146 Per Kusi Appiah*

J. A it was held that a person who had an opportunity to be heard but deliberately spurred it to satisfy his decision to boycott the proceedings is deemed to have waived the right to be heard. Accordingly, such a person cannot rely on the principle of *Audi*

*alteram patern.* See also the case of **Rep v Fast Track High Court, Accra Ex parte State Housing Corporation Ltd. (2009) 21 MLRG 163,S.C, Per Wood C J.**

In the circumstance the court has no alternative than to proceed with the matter to determine the rights of the parties in the absence of the Defendant. Judgment is accordingly entered in favour of Plaintiff. Defendant is to refund the plaintiff's outstanding debt, the sum of GHc5,000.00 to be paid by the end of April, 2033 with interest thereon to be calculated in accordance with the prevailing BOG cedi exchange rate till the date of final payment. Cost is assessed at GHc2,000.00.

(SGD) STEPHEN OFORI AKRASI ESQ.

(DISTRICT MAGISTRATE)



