

**IN THE DISTRICT MAGISTRATE COURT SITTING AT NYANKUMASI AHENKRO ON
MONDAY 8THMAY, 2023. BEFORE HIS WORSHIP PETER ANONGDARE – DISTRICT
MAGISTRATE.**

A2/61/2023

**DORIS ASIEDU BOTWEY
OF NYAME AHYIRASO COLD STORE PLAINTIFF
ASSIN KYINSO**

VRS

**SISTER AMOAKOA
OF ASSIN ANKAASE DEFENDANT**

JUDGMENT

The plaintiff claimed against the Defendant recovery of three lines of frozen fish the defendant purchased from her three years ago. In the alternative the plaintiff claimed the current market price, GH¢825.00 (eight hundred and twenty-five Ghana Cedis). The Defendant pleaded not liable to the claim.

When the defendant pleaded not liable the burden was on the plaintiff to prove that the defendant owed. The plaintiff's case is that she had been trading with the defendant. The plaintiff testified that the defendant bought two boxes of fish on 04/02/2021 but did not pay. That each box cost GH¢160.00. And on another occasion the defendant sent an Okada rider to collect another box at GH¢170.00. What this means is that the plaintiff wanted the court to believe that the defendant owed GH¢490.00. The plaintiff added that the defendant made some payment. But she did not complete the payments. So the parties reconciled their transactions and the defendant had an outstanding balance of GH¢320.00 and the defendant again bought two boxes of fish at GH¢170.00 per box.

During cross-examination the defendant challenged the above assertions of the plaintiff. The following cross-examination caught my attention.

Q: Do you remember when I came with Kaya to your place I paid GHC200.00.

A: Yes

Q: Do you remember I gave GHC200.00 to Brother Kwame to be given to you.

A: The two payments were in respect of earlier transactions.

Q: Do you remember when you told me I owed GHC700.00; I paid GHC400.00 and told you I would use oil to defray my debt.

A: You owed me GHC660.00 and you gave me GHC350.00.

Q: I owed you GHC300.00 and I gave you oil worth GHC350.00 so you rather owe me GHC50.00.

A: You owed me GHC660.00 and the oil you gave me was GHC350.00, so you owe me GHC310.00.

From the above cross examination it appears to me that the plaintiff's case contain some inconsistencies. At the end of the evidence of the plaintiff it appeared to me that the plaintiff wanted the court to come to the conclusion that the defendant owed GHC660.00. But the defendant owed GHC310.00 after the defendant gave her oil worth GHC350.00. Another inconsistency is the fact that Kweku Antwi (PW1) who is the husband of the plaintiff testified that the defendant owed GHC300.00. This contradicts the plaintiff's figures of GHC660.00 and GHC310.00. Apart from the inconsistency in the figures PW1 claimed he had the records. PW1 never showed nor tendered any records to the court. What is more significant is the fact that the defendant denied the assertions of both the plaintiff and PW1.

On the other hand the defendant's story has been consistent. The defendant's case has been that she did not owe the plaintiff. When the plaintiff and PW1 testified none of them even mentioned that defendant paid part of her debt with oil. It took cross examination for the defendant to concede that the plaintiff received part payment by way of oil.

What it means is that the plaintiff's story is inconsistent and full of bare assertions. The plaintiff asserted that the defendant owed. The defendant denied the claim that she owed. And the amount being claimed is not consistent.

More so, PW1 did not go beyond the assertion that he had records. What prevented PW1 from tendering or even showing the records to the court? The basic principle of law of evidence is that a party who bears the burden of proof is to produce the required evidence of the facts in issue that has the quality of credibility short of which the claim must fail. See *Ackah V. Pergah Transport Ltd. & Others* [2010] SCARB 728@ 736. The plaintiff produced inconsistent evidence full of bare assertions. The defendant on the other hand was consistent in her story while denying the assertions of the plaintiff. In the light, these I am more inclined to believe the defendant's story while rejecting the plaintiff's story. I do not find as a fact that the defendant owed the plaintiff. I came to that conclusion because I am not convinced on the balance of the probabilities that the defendant owes the plaintiff because there is no certainty of belief in my mind that, the fact that the defendant owed is more probable than not. I therefore dismiss the plaintiff's case and award cost of GHC100.00.

SGD

HIS WORSHIP PETER ANONGDARE