

**IN THE DISTRICT MAGISTRATE COURT ADENTAN, SITTING BEFORE HER
WORSHIP LINDA AMISSAH ON MONDAY THE 23RD DAY OF JANUARY, 2023**

SUIT NO: A11/15/2022

FRANCISCA ABENA OFORIWAA

PLAINTIFF

VRS

1. PRINCE ATSU AMENOR

DEFENDANT

2. BROTHER AGBEY AMEVOR

JUDGMENT

The plaintiff initiated this action against the defendants for the following reliefs:

An order compelling the defendants jointly and severally to return the Huaaju Motorbike with registration number M – 20 – JR 8673 or an order compelling the defendants jointly and severally to pay the current market price for the Huaaju Motorbike which 1st defendant claim is missing.

CASE OF THE PLAINTIFF

It is the case of the plaintiff that she purchased a Huaaju Motorbike and registered same with the intention to resell. The 2nd defendant introduced the 1st defendant to the plaintiff who agreed to purchase the motorbike.

Plaintiff and defendants agreed that the motorbike (Hajoue motorbike with registration number, M-20-JR8673) would be sold on hire purchase on a work-and-pay basis. The first defendant came for the motorbike, tried it, and satisfied himself that the motorbike was fit for purpose.

On the 23rd of May 2021, the 1st defendant came for the motorbike and on the 24th of May, 2021, started working with it. At the time the 1st defendant started working with the motorbike, she had not entered a formal agreement with him.

On the 27th of May, 2021, the 1st defendant called the plaintiff to inform her the motorbike was missing. The plaintiff asked the 1st defendant if he has lodged a complaint with the police. The defendant responded in the negative.

Upon further investigation, 1st defendant admitted that he left the key in the ignition of the motorbike when he parked it. Three days after the motorbike was purportedly missing, the plaintiff saw the 1st defendant working with another motorbike. The plaintiff seized the motorbike because she realized the defendant showed no seriousness in looking for her missing motorbike. The matter was reported to the police for the plaintiff's motorbike to be recovered. The police directed her to court. She prays for the reliefs endorsed on her writ of summons.

CASE OF THE DEFENDANTS

It is the case of the 1st defendant that a friend of his introduced the plaintiff to him as someone who wanted to sell her motorbike. He went to the plaintiff with the 2nd defendant who confirmed she was ready to sell the motorbike on a work-and-pay basis. The plaintiff informed him and the 2nd defendant that he will call them later for an agreement to be drafted.

The following day the plaintiff called him to come for the motorbike. When he went, the plaintiff told him the motorbike will be sold to him at GH¢7,000. He will make a weekly sale of GH¢250. According to the 1st defendant, the very day he started working with the motorbike it was stolen. He informed the plaintiff and the 2nd defendant who is his uncle. He informed the plaintiff his boss at Jumia was ready to purchase him a motorbike to work with to defray the cost of the missing vehicle. When he began working with the new motorbike, the plaintiff seized it. The plaintiff later lodged a complaint against him at the police station. At the police station, he promised to sell his land to defray the cost of the motorbike. The plaintiff agreed to accept the land to offset the cost of the motor vehicle. He was later served with a writ of summons to appear before this court.

The second defendant repeated the averments made by the 1st defendant.

In the case of **NARTEY V MECHANICAL LLOYDS ASSEMBLY PLANT LTD,¹ ADADE JSC** held: “ *A person who comes to court, no matter what the claim is must be able to make a case for the court to consider otherwise he fails...*”

In the present case, the plaintiff came to court, she thus bears the burden of producing evidence in proof of her case.

I will begin my analysis with the 2nd defendant. The plaintiff told the court he guaranteed for the 1st defendant. During cross-examination, however, it became clear that on the day the 1st defendant went for the motorbike, he went alone. The 2nd defendant was not present and did not also complete any guarantor’s form on behalf of the 1st defendant. The role the 1st defendant played was to accompany the 1st defendant to the plaintiff’s house. The plaintiff also admitted that the 2nd defendant was not part of the negotiations between the 1st defendant and her on the motorbike.

On the part of the 1st defendant, he admitted that the motorbike was missing. He told the court he was making attempts to sell his land and use the proceeds to defray the cost of the land.

There is no contention that the motorbike got missing a day after the plaintiff released it to the 1st defendant. It is thus reasonable for the 1st defendant to refund the cost of the motorbike to the plaintiff.

I enter judgment for the plaintiff against the 1st defendant. The defendant is to pay the current market price of the Huaaju Motorbike to the plaintiff.

The 2nd defendant is non-suited.

Costs of GH¢500 awarded to the plaintiff.

(SGD)

¹ (1987) 2 GLR @ P. 344,

H/W LINDA AMISSAH

MAGISTRATE