

**IN THE DISTRICT MAGISTRATE COURT SITTING AT NYANKUMASI AHENKRO ON
WEDNESDAY 1ST FEBRUARY, 2023. BEFORE HIS WORSHIP PETER ANONGDARE –
DISTRICT MAGISTRATE.**

A2/06/2023

ISAAC JACKSON AMOAH

.....

PLAINTIFF

VRS

1. KWAKU DUKU

.....

DEFENDANTS

2. OKO AGYEI

3. KWABENA AFRIM

JUDGEMENT

The plaintiff filed a writ seeking the following reliefs;

1. Recovery of cash jointly and severally from defendants the sum of Two Thousand Six Hundred Ghana Cedis (GH¢2,600.00) being cost plaintiff incurred on a land 1st defendant granted to plaintiff to cultivate cocoa on Abunu basis. With breakdown as follows;
 - a. Cost of lease of land GH¢900.00 plus GH¢50.00 drinks
 - b. Cost of labor GH¢1,000.00 plus cost of feeding GH¢400.00
 - c. Transportation cost GH¢200.00
 - d. Cost of maize seeds GH¢50.00

2. Two thousand five hundred Ghana Cedis (GH¢2,500.00) as Damages.

The case of the plaintiff is that, he agreed with the first defendant herein known as D1 that the plaintiff will farm on a piece of land belonging to D1. The plaintiff in his evidence in chief stated that he paid GHC900.00. D1 during cross examination admitted that he received GHC900.00 from the plaintiff in respect of their agreement for the plaintiff to farm on his land. D1 then accepted to refund the GHC900.00 to the plaintiff but insisted he was not liable to the rest of the money.

The second and third defendants herein known as D2 and D3 respectively contended that they were not liable to pay money to the plaintiff. They both argued that the land D1 permitted the plaintiff to farm on belonged to them. So D1 had no right to grant permission to the plaintiff to farm thereon. With this D1 conceded that the land belongs to D2 and D3. What this meant was that D1 by implication accepted he had no right to grant the land to the plaintiff. The inference therefore is that D2 and D3 cannot be held liable for the money as the plaintiff claimed.

The main issue for consideration and determination is;

Whether or not the plaintiff can recover the money he spent in preparing the land.

The plaintiff brings his case. The plaintiff carries the burden of persuasion. Section 12 of the Evidence Act 1975 (NRCD 323) requires the plaintiff to prove his case by the preponderance of the probabilities.

The plaintiff testified that he spent GHC1,000.00 to clear the land. D1 contested the amount the plaintiff claimed he spent in clearing the land. It must be noted that the plaintiff only mounted the witness box and repeated the reliefs. It was only in connection with the cost of labour that the only witness for the plaintiff stated that they worked for the plaintiff and received GHC500.00 as payment. The witness virtually repeated what the plaintiff said. From the forgoing did the plaintiff prove his case? In CONTINENTAL PLASTICS ENGINEERING CO.

LTD V. IMC INDUSTRIES-TENIK GMBH [2009] SC GLR 298 at 306-307 WOOD CJ stated that; "... a person who makes an averment or assertion which is denied by his opponent has the burden to establish that his averment or assertion is true. And he does not discharge this burden unless he leads admissible and credible evidence from which the fact or facts he asserts can properly and safely be inferred".

Applying the above to the instant case, I dare say that the plaintiff had a burden to discharge when the Defendant denied the cost the plaintiff incurred in clearing the land. To my mind where the plaintiff only mounted the witness box and repeated the assertion that he spent GHC1,000.00 in clearing the land and the defendant denied same in cross examination, the plaintiff needed to lead admissible and credible evidence from which the fact or facts he asserted could properly and safely be inferred. It appears to me that the plaintiff did not discharge the above burden. The plaintiff could have called people to testify in respect of the expenses made. For instance a witness could have testified on the food items he or she purchased and generally what went into the preparation of the food in terms of expenses. A description of the food items and quantities bought could have given the court a clue as to the amount of money spent. The plaintiff claimed damages. The writ did not disclose whether special or general damages. In any case, the plaintiff in his evidence did not raise the issue of damages.

In the light of the above analysis, I come to the following conclusions. The plaintiff established a case against D1 in respect of the amount the plaintiff paid for the lease to farm on the land. However, D1 did not have the right to lease the land to the plaintiff. Consequently, I enter judgment for the plaintiff against D1. The justification being that it was D1 who without authority leased the land (property of D2 and D3) to the plaintiff. I therefore order D1 to pay

1. GHC900.00 being a refund of same he took from the plaintiff.
2. GHC500.00 being cost of labour and feeding
3. GHC500.00 as general damages
4. Costs is assessed as GHC600.00.

SGD

HIS WORSHIP PETER ANONGDARE