

IN THE DISTRICT COURT SITTING AT TWIFO PRASO, CENTRAL REGION ON  
FRIDAY THE 20<sup>TH</sup> OF JANUARY, 2023 BEFORE HIS WORSHIP MAXWELL OFORI  
KPODO, ESQ.

SUIT NO. A2/159/2021

REGINA OSEI

.....

PLAINTIFF

VRS

MASTER AWORTWE

.....

DEFENDANT

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**J U D G M E N T**

By a writ issued on 16<sup>th</sup> March, 2021 seeking the following reliefs thereof.

Plaintiff claims against the Defendant as follows:

- (a) Plaintiff claims from the Defendant is for recovery of cash the sum of Three Thousand, One Hundred and Fifty Ghana Cedis (GH¢3,150.00) being amount Defendant collected from Plaintiff under the pretext of supplying Plaintiff with Stihl Mower Machine but failed to supply the exact as agreed upon brand and rather supplied Honda 4 Mower Machine which developed fault soon after Defendant supplied it to Plaintiff.
- (b) Refund of One Hundred and Forty Ghana Cedis (GH¢140.00) which amount Defendant collected from Plaintiff to purchase spare parts to repair the machine but has failed to repair it or refund the said money since February, 2020.

**PLAINTIFF'S CASE**

Plaintiff is a seamstress and lives at Twifo Mampong. That somewhere in April 2019, she had a conversation with one E.K in regards to Stihl machine (mower) for use. The said E.K. introduced the Plaintiff to one Mr. Awortwe (Defendant) for which they went to see him along with her husband and father. The Plaintiff averred that the Defendant could not get her the Stihl mower machine at that moment but agreed to import some from China. The purchase price of the mower agreed on was GH¢3,300 which Plaintiff secured a loan from the bank and initially made part payment of GH¢2,700.00 for the purchase price leaving a balance of GH¢600 to be paid.

Defendant promised to bring the mower through importation as soon as possible but it took 4 months before the mower machine was brought which was different from what was agreed upon. Defendant brought Honda 4 Mower Machine instead of Stihl Mower Machine. According to the Plaintiff the Defendant explained that the machine he (Defendant) whatsapp to the company wasn't the exact machine brought and pleaded with Plaintiff to use the Honda 4 Mower Machine since both machines possessed the same qualities. Plaintiff worked with the Stihl mower machine for 3 months and it started developing some mechanical fault.

Defendant requested for the balance to enable him use some to buy the spare part which was not available in Ghana.

Upon several demands by the Defendant for the balance, the matter was reported to TOPP Police where Defendant was invited. At the Police Station, Plaintiff paid the balance GH¢400.00 for the Defendant to take the GH¢200.00 and use the remaining GH¢200.00 to buy the spare parts. Defendant later brought the spare parts but the mower machine got faulty again. Plaintiff later went to Kumasi with her husband and asked of the price of Honda 4 Mower Machine which price was stated as GH¢800.00, that was when Plaintiff realized that Defendant had deceived her. Subsequently the mower machine developed another fault and Defendant requested for another GH¢140.00 to buy the spare parts. The Defendant gave flimsy excuses after taking the money but later

brought the Honda Machine to Plaintiff to try if it worked but it didn't. As a result, the Plaintiff requested for a refund of her money but the Defendant had since refused to refund Plaintiff's money to her.

### **DEFENDANT'S CASE**

Defendant states that he is a Laboratory Technician at TOPP Clinic and resides at Twifo Ntafrewaso. According to him, somewhere in 2019, the Plaintiff came to Defendant's office that she needed grass trimmer machine to buy with a brand name Stihl, a type used by the company. Defendant informed Plaintiff that the brand value was GH¢7,000.00 as the company gives out to people but Defendant told Plaintiff that he could only provide her a type which is Honda and far cheaper than the Stihl of which Plaintiff agreed for which Defendant showed her pictures of the Honda machine and Plaintiff said she was going to think about it and get back to him. Plaintiff returned to Defendant few days later and asked of the price of the Honda Mower and Defendant mentioned the price as GH¢3,500.00 and finally they agreed on GH¢3,300.00 after bargaining. Defendant made it known to Plaintiff that the machine was going to be imported and must pay for the cost of the machine before it comes. Plaintiff made part payment of GH¢2,700.00 and promised to pay the balance of GH¢600.00 once the machine arrived. The machine arrived and Plaintiff came for it without paying the balance but promised to do so in a month's time which he initially objected but later Plaintiff brought one Nana Ama to stand in as witness for her to ensure that she pays the balance as promised.

Plaintiff promised to pay the balance after one month but came back in 3 months to inform the Defendant that the machine was faulty and should help her buy the spare parts which he refused to do so. Plaintiff reported the matter to the TOPP Police Station where Defendant narrated his story and the Chief Inspector Adjei pleaded with Defendant to help Plaintiff for which she paid GH¢200.00 and Defendant got the spare parts for her. Several demands by the Defendant for the balance of GH¢400.00 proved futile since Plaintiff said she had used the money to pay off the loan she contracted to buy the mower machine so Defendant didn't ask Plaintiff again. Thereafter, Plaintiff called

the Defendant again that the machine was faulty again for which Defendant took an amount of GH¢140.00 from Plaintiff to buy the spare parts but due to the Corona pandemic, Defendant could not get the spare part. The Defendant averred that, the Plaintiff called and rained insults on him so he reported the matter to the repairer who took the measurement. Plaintiff owes Defendant a balance of GH¢10.00.

I have identified the following issue:

**Whether or not the defendant breached his contractual obligation to the plaintiff  
Under the Ghana *Sale of Goods Act 1979***

**Legal Principles & Application:**

Section 11 of the Evidence Act, NRCD 323 of 1975 provides:

- (i) For the purposes of this Decree the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling against him on the issue.

Further, Section 14 of NRCD 323 stipulates that in a trial, the burden of proof may shift but unless and until 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 he is asserting. The principle of law has received judicial blessing as the Supreme Court pronounced on it in the case of **RE: ASHALLEY BOTWE LANDS, ADJETEY AGBOSU & OTHERS v. KOTEY & OTHERS [2003-2004] SCGLR 420**. The Court held per Wood JSC (as she then was) at page 444 that:

*“It is trite learning that by the statutory provisions of the Evidence Decree, 1975 (NRCD 323) the burden of producing evidence in any given case is not fixed, but shifts from a party to party at various stages of the trial, depending on the issues asserted and or denied.”*

Further, Brobbey JSC (as he then was) in the same case reiterated at page 465 that a defendant generally does not carry a burden of proof, because the Plaintiff who took the

Defendant to Court has to prove what he claims is entitled to from the Defendant. However, if the court has to make a factual determination of an issue, and that determination depends on evaluation of facts and evidence, the Defendant must realize that the determination cannot be made on nothing. Consequently, in line with the tenets of Section 14 of NRCD 323, a Defendant who wishes to succeed in a case is required to adduce facts and provide evidence on issues they desire to be held in their favour.

## **ANALYSIS**

**The relevant portion of section 13 of the Sale of Goods Act, 1979 which has a direct bearing on the present case, provides as follows:**

### **Section 13—Quality and Fitness of Goods.**

- (1) Subject to the provisions of this Act and any other enactment there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale except as follows—
  - (a) There is an implied condition that the goods are free from defects which are not declared or known to the buyer before or at the time when the contract is made:

Provided that there is no such implied condition—

- (i) where the buyer has examined the goods, in respect of defects which should have been revealed by the examination;
- (ii) in the case of a sale by sample, in respect of defects which could have been discovered by a reasonable examination of the sample;

- (iii) where the goods are not sold by the seller in the ordinary course of his business, in respect of defects of which the seller was not, and could not reasonably have been aware.
  - (b) Where the goods are of a description which are supplied by the seller in the course of his business and the buyer expressly or by implication makes known the purpose for which the goods are required, there is an implied condition that the goods are reasonably fit for that purpose.
- (2) The condition implied by paragraph (a) of subsection (1) is not affected by any provision to the contrary in the agreement where the goods are of a description which are supplied by the seller in the ordinary course of his business and the condition implied by paragraph (b) of subsection (1) is not affected by any provision to the contrary in the agreement unless the seller proves that before the contract was made the provision was brought to the notice of the buyer and its effect made clear to him.

The import of the foregoing provision is summarized as follows: the general rule under the Ghana *Sale of Goods Act 1962*, is that a seller of goods in Ghana, whether new or second-hand, is liable for all defects in them. This duty is an implied condition of the contract of sale.

The seller is, however, not liable for those defects which he declares or makes known to the buyer before or at the time of the contract. Again, where the buyer has examined the goods, the seller is not liable for the defects, which should have been revealed by the examination. It would appear then that where the defects complained of were not declared or made known to the buyer before the contract and could not have been revealed by the buyer's examination, if any, the seller is liable.

Under section 13 of the Sale of Goods Act of Ghana, the seller has the duty to deliver goods of the right quality and fitness.

It can be seen from the foregoing summary that the law imposes a heavier responsibility on sellers of goods.

In the case of *Continental Plastics Engineering Co Ltd v IMC Industries-Technik GMBH* [2009] SCGLR 298 supra, Georgina Wood, CJ, said:

*The legal position can therefore be summed up as follows: a seller of either first or second hand goods is by an implied condition, liable for all defects in them. Based on what we believe is pure common sense the seller is however not liable for defects which he fully discloses or declares to the buyer at the time of the contract of sale. When the buyer has examined the goods the seller cannot be held liable for defects which ought to have been discovered on examination, as for example, patent defects. It does follow that if there were defects particularly latent defects which are not discoverable on examination, and which are not disclosed to the buyer before the conclusion of the contract, the seller cannot escape liability for the breach of an essential condition of the contract"*

The questions to be asked then in a sale of goods are these;

First, were the defects complained of by the Plaintiff declared or known to her before or at the time of the contract?

Second, if they were not declared or known to her, did she examine the goods and should the examination have revealed those defects?

Thirdly, was the Defendant, a dealer in the imports of such electronic equipment or machinery aware or should he reasonably have been aware of the defects complained of?

Taking the questions *seriatim*, I will answer the first question in the affirmative and say that the defects complained of was not declared or known to the Plaintiff. In fact, as borne

by the evidence, the plaintiff only knew of the defect after she used the mower machine and it developed faults on several occasions within a short time.

Any information, which came to the Plaintiff about the defects in the mower machine, came after the damage had occurred and not before or during the contract. It was on this date that any evidence as to the latent defect would become apparent to the Plaintiff by which time the contract had already been executed.

On the second question of whether she examined the mower machine and should the examination have revealed the defects, the evidence shows that the plaintiff did not examine the mower machine and even if she examined the mower, the latent defect would not have been apparent to her. A cue is taken from the very definition of 'latent defect'. *Black's Law Dictionary (6<sup>th</sup> ed.)* defines latent defect as:

“Hidden or concealed defect, one which *could not be discovered by reasonable or customary observation or inspection*; one not apparent on the face of the goods, product or document...Defect which the owner has no knowledge of.”

On the third question of whether the defendant, a dealer in the imports of electronic equipment or machinery such as mower, was aware or should he reasonably have been aware of the defects complained of?

It is trite knowledge that a dealer in specialized upmarket electronic equipment or machinery should be aware of the defects complained of.

As already indicated by the evidence on record, the latent defect rendered the mower machine in a non-propulsion state that was to say that it was incapable of self-propulsion.

This breach goes to the whole root of the sale of the brand new mower machine and that it affects the very substance of the contract. I find as a fact that the breach occasioned was a condition as the mower had been rendered non-propulsive due to defects.



The evidence on record further reveal that the mower retained the defects even after several repairs had been done by the defendant and it is therefore rightly urge that it was inferior and fundamentally different from what the plaintiff had bargained for when purchasing the mower machine and the Defendant could not be said to have fulfilled his obligations under the Sale of Goods Act.

**Section 55**— The Sale of Goods Act, 1962, states the following:

**Damages for Breach of Condition or Warranty.**

Where the seller is guilty of a breach of his fundamental obligation or of a condition or warranty of the contract, the buyer may maintain an action against the seller for damages for the breach complained of or may set up a claim to such damages in diminution or extinction of the price.

**Section 56— Assessment of Damages Under Sec. 55.**

The measure of damages in an action under section 55 of this Act is the loss which could reasonably have been foreseen by the seller at the time when the contract was made as likely to result from his breach of contract.

In this case, the logical assessment of damages is what the defendant foresaw would be the natural result of the breach, which is to ask for a replacement of the new mower machine the plaintiff bought, with a brand new one.

If the mower is new, it is reasonable to expect that it be free from defects. The plaintiff has been able to discharge the burden of proof that the mower machine had latent defects.

I hereby enter judgment in favour of the Plaintiff against the Defendant. The Defendant is ordered to buy a new mower machine for the Plaintiff or in the alternative refund an amount of GH¢3,298.

Cost of GH¢1,000.00 is awarded in favor of the Plaintiff against the Defendant.

**(SGD)**

**H/W MAXWELL O. KPODO ESQ.**

**(MAGISTRATE)**