

**IN THE DISTRICT MAGISTRATE COURT HELD AT N.A.M.A. NSAWAM ON
5TH DAY OF MAY, 2023 BEFORE HER WORSHIP SARAH NYARKOA NKANSAH
SUIT NO. A2/73/22**

**OFFEI NYAMPONG ----- PLAINTIFF
OF HOUSE NUMBER
UNNUMBERED HOUSE
OPAREKROM A SUBURB OF NSAWAM**

VRS

JOSEPH ANNOR @ DADA ----- DEFENDANT

PARTIES: ABSENT.

NO LEGAL REPRESENTATION

JUDGEMENT

The Plaintiff claims against the Defendant is for the following:

- a. Recovery of cash the sum of GH¢589.10 being accumulation of Electricity Bill owed by the Defendant has willfully refused to pay same in spite of persistent demands.

- b. Punitive cost thereon.

PLAINTIFF'S CASE

It is the Plaintiff's case that the Defendant used to be his tenant and the Defendant accumulated electricity bills in arrears of GH¢589.10. The Plaintiff continued that the action of the Defendant has led to electrical disconnection of the house and all efforts to recover the said debt have proven futile.

The Plaintiff closed her case without calling any witness.

Despite having notice of the pending suit, the Defendant who had been duly served chose to absent himself without any valid excuse to the Court. In view of same the Court therefore proceeded under Order 25 of the District Court Rules, 2009(C.I 59), to hear the matter in the absence of Defendant.

Order 25 r 1(2) (a) provides;

“Where an action is called for trial and a party fails to attend, the trial magistrate may where the Plaintiff attends and the Defendant fails to attend, dismiss the counterclaim if any and allow the Plaintiff to prove the claim”

In *Ankumah v City Investment Co Ltd [2007-2008] 2 SCGLR 1064*, Baffoe Bonnie JSC held at page 1076 as follows;

“A Court is entitled to give judgment in default as in the instant case, if the party fails to appear after notice of the proceedings has been given to him. For then, it would be justifiable to assume that he does not wish to be heard.”

In the circumstance the issue that falls for determination is;

Whether or not the Plaintiffs are entitled to recover the sum of GH¢589.1 from the Defendant.

In the case of *Nartey v. Mechanical Lloyd Assembly Press Ltd [1987-1988] 2GLR pg 314* Adade JSC stated that:

‘A person who comes to Court, no matter what the claim is, must be able to make a good case for the Court to consider, otherwise he must fail’.

Sections 11(4) and 12 of the Evidence Act, 1975 (NRCD 323) provides that the burden of proof on a party in a civil suit should be on a balance of probabilities.

In the case of *Adwubeng v. Domfeh [1996-97] SCGLR 660*, the Supreme Court held that in all civil actions, the standard of proof is proof by the preponderance of probabilities, and there is no exception to that rule.

In the present case the Plaintiff has led evidence to establish that, the Defendant owes an amount of GH¢589.1 electricity bills which has led to disconnection of electricity in Plaintiff's house and this has made life unbearable for Plaintiff and other tenants of the house. That the Defendant has willfully refused to settle this debt despite demands made on him.

As stated supra, the Plaintiff was discharged without being cross-examined by the Defendant since the Defendant chose to absent himself from Court.

The position of the law is that, the Court ought to accept the evidence led by a party, where his opponent fails to lead contrary evidence or challenge same under cross-examination by deeming the evidence as having been admitted by his opponent.

In *Takoradi Flour Mills vrs Samir Faris [2005-06] SCGLR 882*, the Supreme Court held that "where the evidence led by a party is not challenged by his opponent in cross examination and the opponent does not tender evidence to the contrary, the facts deposed to in that evidence are deemed to have been admitted by the opponent and must be accepted by the trial Court.

Considering that the Plaintiff was not cross-examined on his evidence to the Court, I accordingly conclude that the Court has accepted the whole of the evidence of the Plaintiff on record.

In *Boakye v. Asamoah* [1974] 1 GLR 38 @ 45, the Court held that the legal or persuasive burden is borne by the party who would lose the issue if he does not produce sufficient evidence to establish the facts to the requisite standard imposed under *section 10 of the Evidence Act, 1975 NRCD 323* that is, by a preponderance of probabilities.

I accordingly hold that; the Plaintiff has succeeded in proving his case on a preponderance of probabilities.

I hereby enter judgement in favour of the Plaintiff against the Defendant as follows:

- i. Recovery of the sum of GH¢589.10 from the Defendant.
- ii. Cost of GH¢500 awarded against the Defendant.

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H/W SARAH NYARKOA NKANSAH
MAGISTRATE
19/05/2023