



The Defendants pleaded not liable to all the claims endorsed on the writ of summons of the Plaintiff after all the claims had been read and explained to them in the Mampruli, a language of their choice.

### **CASE OF THE PLAINTIFF**

Plaintiff is a company registered in Ghana operating in agri-business in the Upper East and North-East Regions of the Republic of Ghana. Plaintiff commenced the suit via its Chief Executive Officer, Bukari Abdul-Rauf (hereafter “CEO”). Plaintiff avers that the Defendants entered into an agreement with the Plaintiff for the Plaintiff to provide Defendants with certified seeds of soya beans. According to Plaintiff, the Defendants were supplied with fifty (50) bags of certified seeds of soya beans on 25<sup>th</sup> June 2021 valued at Four Hundred and Ten Ghana Cedis (GHS 410.00) per bag.

Therefore, the total cost of the 50 bags of certified seeds of soya beans is

Twenty Thousand and Five Hundred Ghana Cedis (GHS 20,500.00). The Plaintiff stated that the Defendants were to pay back to the Plaintiff the total cost of the certified seeds of soya beans immediately after harvest precisely January 2022.

According to the Plaintiff, the Defendants have only paid One Thousand Five Hundred Ghana Cedis (GHS 1,500) out of the Twenty Thousand and Five Hundred Ghana Cedis (GHS 20,500) leaving a balance of Nineteen Thousand Ghana Cedis (GHS 19,000) and interest of Two Thousand and Five Hundred Ghana Cedis (GHS 2,500) to be paid by the Defendants.

### **CASE OF D1:**

D1 avers that he is a businessman resident in Wulugu and the D2 is a farmer resident in Wulugu. According to D1, he was introduced to the Plaintiff by his friend called Ziblim Braimah. D1 stated that after his friend had introduced him to the Plaintiff, the CEO came to him and bought 10 bags of maize from him. D1 stated that he subsequently assisted the CEO in a few transactions regarding the purchase, storage, and transportation of soya beans and maize. He avers that after these transactions, Plaintiff’s CEO invited him to attend a general meeting of the company if he is interested in working with the company. According to D1 on

the day scheduled for the meeting, he attended the meeting. D1 stated that when he got to the meeting, he saw D2 there. D1 avers that at the meeting the attendees were informed that the company wants people to supervise its farmers. According to D1, as part of he and D2's arrangement with Plaintiff via the CEO, they were to get a group of farmers to supervise. D1 added that the Plaintiff after the meeting promised to give the attendees appointment letters, motorbikes, and allowances for the work. D1 stated further that the Plaintiff gave them a form to use to recruit the farmers. D1 tendered in evidence a copy of the form given to them by the Plaintiff which was admitted in evidence as Exhibit 1. Exhibit 1 is titled "Memorandum of Understanding between Key Institute and Management Services (KEYMAS) and ..... Outgrower Group". Exhibit 1 is an unexecuted standard form of the Plaintiff. According to D1 Exhibit 1 contained terms and conditions for the farmers. He stated that for a farmer to be able to pick a form i.e., Exhibit 1, that farmer had to pay Twenty Ghana Cedis (GHS 20.00). D1 stated that when they got back to their village, he and D2 looked for farmers to recruit. After they recruited their respective farmers, they sent the monies they collected from the farmers for the forms to the Plaintiff at the request of the CEO. According to Plaintiff, he and D2 appointed chairmen for their respective groups of farmers to represent them in meetings with the farmers. He continued that after appointing the chairmen, they called the CEO, and they talked about soya beans seeds for the farmers. According to the D1, the farmers were agitated that Defendants had taken their monies but had failed to supply them with certified seeds of soya beans. D1 stated that he went to Plaintiff's office in Bolga three (3) times but he did not meet the CEO. He however met him the fourth (4) time he went there. According to D1, when he met the CEO at the office, he took him to an office and showed him the certified seeds of soya beans and asked that they find means to convey the seeds to the farmers which he did. D1 avers that a vehicle was hired to convey the certified soya beans to Wulugu. According to him, 50 bags of certified seeds of soya beans were picked from the Plaintiff. D1 added that when the seeds were taken to Wulugu, a meeting was called for his group of farmers and that of the D2. D1 avers that at the meeting he called the CEO who instructed them to share the seeds amongst the farmers. D1 stated further that as part of the terms and conditions contained in Exhibit 1, Plaintiff was to provide the farmers with tractors to plough their farmlands. He stated that he followed up with the CEO for the tractor services. According to D1 at the time a tractor was provided by Plaintiff, the ground was too dry for the tractor to plough so the tractor proceeded to another community. Plaintiff

subsequently sent another tractor to D1 after it rained and according to D1, the tractor was able to plough only 2 acres of the land of one of his farmers. He added that the tractor spent 2 days in his house. D1 stated that, he called D2 to ask him about his farmers and D2 informed him that his farmers had already ploughed their lands with different tractors. D1 avers that in the first week of January 2021, the Plaintiff's CEO sent some people to him to collect the certified seeds of soya beans. He added that Plaintiff subsequently summoned him and D2 to the palace of the Chief of Wulugu. He continued that at the palace, the chief told the Defendants to pay the Plaintiff the cost of the seeds of certified soya beans. According to D1, the Defendants subsequently contacted their respective farmers, and the farmers informed them that the Plaintiff was required to provide them with some services which it failed to provide and because of that they had a poor harvest. D1 stated that after the chief had told them to pay for the seeds, he and D2 went to the farmers, and they were able to get thirteen (13) bags of soya beans which were given to the Plaintiff.

## **CASE OF D2**

D2 testified that he is a farmer resident in Wulugu. The case of D2 is that he attended a meeting called by the Plaintiff in April 2021. He avers that at this meeting, the attendees who were 15 including himself were informed by the Plaintiff that they will be engaged to supervise farmers for the Plaintiff. According to D2, at this meeting, the CEO, told the attendees that they had to recruit and register the farmers they are going to supervise. D2 stated that his duty as a supervisor was to recruit farmers for the Plaintiff. He was then required after recruiting the farmers to select one of the farmers to be the chairman. The chairman was to aid D2 in his supervision of the farmers. He continued that the CEO promised that Plaintiff was going to pay each supervisor a monthly allowance of Six Hundred Ghana Cedis (GHS 600.00). One Hundred Ghana Cedis (GHS 100) out of the GHS 600.00 was for fuel to cater for their transportation. According to D2, they were supposed to start work as supervisors of the farmers in April 2021 and complete the same in December 2021. D2 stated that a memorandum of understanding (MOU) was given to them to use to engage the farmers. D2 tendered the MOU in evidence as Exhibit 2. Exhibit 2 is the same as Exhibit 1.

D2 avers that he registered nine (9) farmers and each of the farmers paid a registration fee of Twenty Ghana Cedis (GHS 20) which monies were sent to the Plaintiff through its Human Resource Officer, Adam Chifulu. He also stated that he appointed Wuni Salam as the chairman of his group of farmers. According to D2, the Plaintiff had the responsibility to provide some services to the farmers and these includes ploughing services, supply of seeds, fertilizer (4 bags of fertilizer per acre), chemicals and harvesting services. D2 stated that D1 called him and informed him that the certified seeds of soya beans have arrived in Bolgatanga. He added that at this time the farmers were accusing them of deceiving them because they took their monies, but no services had been rendered. He continued that he and D1 went to the Plaintiff's office where they met Plaintiff and PW1. They were shown the certified seeds and told to find the means to convey them to Wulugu which they duly did. According to D2, he and D1 took 50 bags of certified seeds of soya beans each weighing 50 kilos per bag. He added that he and D1 paid for the cost of transporting the certified seeds to Wulugu. D2 avers that, after they had conveyed the seeds to Wulugu, they waited for the tractors for the ploughing of the lands of the farmers. They followed up with the Plaintiff through its CEO from June 2021 to 15<sup>th</sup> July 2021. According to D2, they called the CEO to prompt him to bring the tractors and the CEO told them that, if any of the farmers were willing to plough the land by themselves, the Defendants should go ahead and give the seed to those farmers. D2 added that the CEO added that if any farmer ploughs the land himself, Plaintiff will refund the cost incurred by the farmer to that farmer.

The Plaintiff denied this averment by D2. According to D2, the certified seeds of soya beans were given to the farmers on 27<sup>th</sup> July 2021 and the farmers did the ploughing of their lands themselves. He added that his farmers farmed a combined total of 20 acres of land. D2 avers that the Plaintiff failed to provide the other services that they were supposed to provide to the farmer. He also stated that the Plaintiff failed to provide the motorbike and allowance it promised to give them. D2 stated that he could not carry out his role as a supervisor of the farmers because he had not been paid his allowance by the Plaintiff. According to D2 on 2<sup>nd</sup> February 2022, PW1 and other officers of the Plaintiff came to Defendants to collect the certified seeds of soya beans the Defendants collected from the Plaintiff. D2 stated that they requested to talk to the farmers and get back to the Plaintiff. According to D2 when they contacted the farmers, the farmers told them that they ran at a loss because the Plaintiff failed

to provide all the agreed services to them. He continued that the Plaintiff summoned the Defendants to the Palace of the Wulugu chief, where the chief ruled that the defendants should pay the cost of the seeds to the Plaintiff so that the Plaintiff also pays them the cost, they incurred in supervising the farmers. According to D2, he and D1 tried to get the seeds from the farmers, they were however only able to get 13 bags of soya beans which we sent to the chief.

### **ISSUES IDENTIFIED:**

The following issue has been identified for determination by this Court:

Whether or not Plaintiff is entitled to recover the cost of the certified seeds of soya beans plus interest from the Defendants.

### **BURDEN OF PROOF:**

Before a court decides a case one way or the other, each party to the suit must adduce evidence on the issues to be determined by the court to the standard prescribed by law. In the case of **Akrofi v Otenge and Anor [1989-90] 2 GLR 244** the venerable Adade JSC. held that:

*“what is proof? It is no more than credible evidence of a fact in issue. This may be given by one witness; or by several witnesses; what matters is the quality of the evidence.”*

The above legal position is supported by various provisions of NRCD 323, **Section 14 of the Evidence Act, 1975 (NRCD 323)** provides that:

14. *Except as otherwise provided by law, 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”.*

This being a civil suit, the burden of producing evidence by both sides in the suit as well as the burden of persuasion is one to be determined on the preponderance of probabilities as defined by **Section 12 of the Evidence Act 1975 (NRCD 323) which stipulates as follows:**

*Proof by a Preponderance of Probabilities*

- (1) *Except as otherwise provided by law, the burden of persuasion requires proof by a preponderance of the probabilities.*
- (2) *“Preponderance of the probabilities” means that degree of certainty of belief in the mind of the tribunal of fact or the Court by which it is convinced that the existence of a fact is more probable than its non-existence.*

The defendant carries the burden of proving the facts alleged in his defence to the same degree as the burden Plaintiff carries in proving her claim against Defendant.

It is also trite law that for every case there is a burden of proof to be discharged and the party who bears the burden will be determined by the nature and circumstances of the case.

**Sections 10 and 11(1) and (4) of the Evidence Act, 1975 (N.R.C.D. 323)** provide that:

*“10. Burden of Persuasion Defined*

- (1) *For the purposes of this Act, the burden of persuasion means the obligation of a party to establish a requisite degree of belief concerning a fact in the mind of the tribunal of fact or the Court.*
- (2) *The burden of persuasion may require a party*
  - (a) *to raise a reasonable doubt concerning the existence or non-existence of a fact, or*
  - (b) *to establish the existence or non-existence of a fact by a preponderance of the probabilities or by proof beyond a reasonable doubt.*

*11. Burden of Producing Evidence Defined.*

- (1) *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.*

*(4) In other circumstances the burden of producing evidence requires a party to produce sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of the fact was more probable than its non-existence.*

## **ANALYSIS:**

In order for me to resolve the issue of whether Plaintiff is entitled to recover the cost of the certified seeds of soya beans plus interest from the Defendants, it must first be determined whether a contract exists between Plaintiff and the Defendants. Secondly, if a contract exists between them, the nature and terms of that contract must also be ascertained.

**The American Restatement (Second) of Contracts (1891)** defines a

contract as *“a promise or a set of promises for the breach of which the law gives a remedy or the performance of which the law in some way recognizes a duty.”*

**Black’s Law Dictionary, 9th Edition** also defines a contract as *“An agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law.”*

A contract may be wholly in writing, wholly oral, or partly in writing and partly oral. The validity of oral contracts in Ghana is expressed in **section 11 of the Contracts Act of 1960 (Act 25)** as follows: *“subject to this Act, and to any other enactment, a contract whether made before or after the commencement of this Act, is not void or unenforceable by reason only that it is not in writing or that there is no memorandum or note of the contract in writing.”*

The burden of proof is on the Plaintiff to prove his case against the Defendants to entitle Plaintiff to the reliefs being claimed in the writ of summons by Plaintiff. The onus, therefore, lies with the Plaintiff to prove on the balance of probabilities, the contract in respect of which he seeks the reliefs endorsed on the writ of summons against the Defendants.

The Plaintiff during trial testified per its CEO and called one witness by the name Linda (PW1”) to make its case. The CEO testified that the Defendants showed interest in Plaintiff’s out-growers scheme for soya beans farming. Based on this interest the Defendants registered farmers from Wulugu and took fifty (50) bags of certified soya beans seeds to distribute to the farmers. The CEO further testified that the Defendants on 25<sup>th</sup> June 2021 conveyed the



seeds from the company's office with a van to Wulugu. He averred that from around December 2021 to January 2022, he started following up with the defendants for the cost of the certified seeds of soya beans and interest on the same.

The CEO stated further that the Defendants promised to follow up with the farmers they registered to collect the cost of the seeds and interest as agreed but it all proved futile. The CEO also testified that in his quest to resolve the matter amicably, he reported the Defendants to the Wulugu Chief who summoned the Defendants to his palace. According to the CEO, the chief ruled against the Defendants and ordered them to pay Plaintiff the cost of the certified seeds or provide the certified seeds of soya beans to Plaintiff. He continued that the Defendants after he had done several follow ups on the matter with the chief delivered a quantity of soya bean grains which weighed 300 kilos (3 bags of soya beans) to the chief's palace. According to him the soya beans were valued at One Thousand and Five Hundred Ghana Cedis (GHS 1,500). The CEO tendered in evidence Exhibit A which is a picture of the bags of soya beans the Defendants delivered to the Wulugu Chief's palace. Exhibit A was not objected to by the Defendants. They confirmed that the bags in the picture were the ones they delivered to the chief.

PW1 in her testimony confirmed that the Defendants took certified seeds of soya beans from the Plaintiff, and she was the officer who counted the certified seeds for the Defendants. Both Defendants in their respective evidence-in-chief admitted taking 50 bags of certified seeds of soya beans from the Plaintiff which they accordingly shared amongst their respective groups of farmers. The question that arises is, on what basis did the Defendants take the certified seeds of soya beans from Plaintiff to distribute to their farmers.

During cross-examination, D1 asked the CEO where the contract between them is, and the CEO answered as follows "They filled individual forms, and I did not bring that to the court. This answer by the CEO suggests that the agreement with the Defendants was a written agreement but no written agreement was ever produced in court by the Plaintiff or its witness. The court for purposes of obtaining clarity asked the CEO whether the Plaintiff entered a written contract with the Defendants, and he answered that "We did not enter a written contract, but we filled forms which contain the terms we agreed with them".

A standard form which contains the terms of an agreement is a written contract provided it contains all the ingredients of a valid contract and it is duly executed by the parties. In such

a case the terms contained on the standard form shall be binding on the parties involved. Apart from the fact that Defendants took 50 bags of certified seeds of soya beans from Plaintiff to distribute to their farmers, Plaintiff failed to disclose to the court the terms of the agreement it has with Defendants. It is also unclear whether the forms the CEO claims they filled were filled by the defendants or the farmers. Plaintiff failed to tender in evidence the form filled in by the Defendants to prove the terms of the contract between Plaintiff and Defendants. In the case of **Ababio v Akwasi 111 [1994-95] GBR at 774**, the Supreme Court reiterated the point of a party proving an issue asserted in his pleadings. Aikins JSC. delivering the lead opinion of the court held thus:

*“the general principle of law is that it is the duty of the plaintiff to prove his case that is, he must prove what he alleges. In other words, it is the party who raises in his pleadings an issue essential to the success of his case who assumes the burden of proving it. The burden only shifts to the defence to lead sufficient evidence to tip the scales in his favour when on a particular issue the plaintiff leads some evidence to prove his claim. If the defendant succeeds in doing this, he wins, if not he loses on this particular issue.*

From the evidence-in-chief of the Defendants, they were acting on the instructions of the Plaintiff when they took the 50 bags of certified seeds of soya beans and shared them amongst the farmers. According to the Defendants, Plaintiff engaged their services to recruit and supervise farmers for Plaintiff. According to the Defendants, Plaintiff gave them a form to use in the recruitment of the farmers they were to supervise. They both testified that they each recruited a group of farmers and each of the farmers they recruited paid GHS 20 as registration fee for the forms and the monies were subsequently sent to the Plaintiff. PW1 under cross-examination confirmed that the forms were not free and that each farmer had to pay an amount of GHS 20 before a form was issued to that farmer for the seeds. This statement by PW1 means that only farmers who paid the GHS 20 for the forms were eligible to receive the certified seeds of soya beans from Plaintiff. PW1 also testified that the Defendants were invited to the office of the Plaintiff to take part in a training for coordinators. This makes it more probable than not that the Defendants were engaged by Plaintiff as coordinators or supervisors to recruit and supervise farmers for Plaintiff and it was on that basis that the Defendants were given standard forms of Plaintiff to engage the farmers and

subsequently given certified seeds of soya beans to give to the farmers. Exhibits 1 and 2 are samples of the forms that Defendants assert Plaintiff gave to them to recruit the farmers. They contain terms and conditions in respect of services that Plaintiff was to provide to the farmers. Paragraph 1 and 2 of both Exhibits provides that the Plaintiff will supply the following to the outgrower; tractor services for land preparation, seeds, fertilizers, Agrochemicals and harvesting services and in exchange, the outgrower pays for the total cost of the services and inputs supplied by the Plaintiff with soya beans/paddy bags of rice. The number of bags of soya beans/paddy bags of rice was not stated in Exhibits 1 and 2. According to D2 if Plaintiff had fulfilled all its obligation in the agreement with the farmers, the farmers were to pay Plaintiff two (2) bags of soya beans per acre. Plaintiff did not deny these averments made by the Defendants in their evidence-in-chief.

The Defendants, therefore, acted only as agents for Plaintiff to enter contracts with the individual farmers recruited by the Defendants. The forms used to engage the farmers were the standard forms of the Plaintiff. After the Defendants had recruited their respective farmers, the registration fee of GHS 20 per farmer paid by each of the farmers for the forms was sent to Plaintiff.

Plaintiff did not deny giving its standard form which is an MOU to the Defendants to use the same to recruit the farmers. Plaintiff also did not deny that the Defendants sent the registration fees generated from the forms to Plaintiff. It is evident that the recruitment of the farmers, the collection of the GHS 20 from each farmer for the forms and paying same to Plaintiff and the collection of 50 bags of certified soya beans seeds from Plaintiff and the distribution of the same to the farmers were all done by Defendants at the behest of the Plaintiff. Therefore, it can be safely concluded that Plaintiff entered a contract with the farmers recruited by the Defendants for the purposes of providing the farmers with the services contained in Exhibits 1 and 2 in exchange for the benefits contained therein or agreed on dehors the MOU.

The **American Restatement of the law of Agency, 2nd Edition 1958** defines agency as “*the fiduciary relationship which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control and consent by the other so to act*”.

According to **Black's Law Dictionary, 9<sup>th</sup> Edition**, an agency is a *"fiduciary relationship created by express or implied contract or by law, in which one party (the agent) may act on behalf of another party (the principal) and bind that other party by words or actions."*

As I have already concluded above, if there is any contractual relationship between Plaintiff and Defendants, then it is one grounded in the law of agency. Considering that both Plaintiff and Defendant failed to produce any written agreement between themselves, it would be safe to imply that the agency agreement between Plaintiff and Defendants is an oral agreement. This oral agreement was entered at the meeting where Plaintiff engaged the Defendants to recruit farmers and supervise them for Plaintiff. According to the Defendants, at the meeting, Plaintiff promised to give them appointment letters, motorbikes, and a monthly allowance for the work. PW1 under cross-examination confirmed the fact that Plaintiff was required to provide motorbikes to the Defendants. She stated that Plaintiff could not provide the motorbikes because the company that Plaintiff had a contract with to supply the motorbike delayed in providing the same.

It can therefore be reasonably deduced that some of the terms of the agency contract between Plaintiff and the Defendants are that the Defendants will recruit farmers and supervise the farmers for Plaintiff and in return Plaintiff shall provide the Defendants with the motorbikes and monthly allowance. A contract between a principal and agent, like any other contract when it is breached, attracts damages against the party in breach in favour of the innocent party. Therefore, if the Defendants being agents of the Plaintiff fail to perform their obligations under the agreement and it leads to the Plaintiff suffering any damage, the Plaintiff is entitled as of right to sue the Defendants to recover damages. Where the breach is at the instance of the Plaintiff, Defendants will also be entitled to sue for damage.

For Plaintiff to recover damages from Defendants, Plaintiff must prove that Defendants breached the agency agreement. Plaintiff failed to adduce any proper evidence to demonstrate to the court that Defendant breached the agency contract. The only piece of evidence that was produced by the plaintiff, in this case, is related to the D1's failure to direct the tractors to the farms of all his farmers and the D2's failure to make himself available to direct the tractors to the farms of his farmers when tractors were dispatched to plough the land of his farmers. This cannot be a breach of the contract between the Plaintiff and the

Defendants which entitles it to the reliefs it seeks in its writ of summons. In fact, it is Plaintiff who rather failed to provide the needed resources and allowance to the Defendants to enable them to do the work for which Plaintiff engaged them. Furthermore, the evidence of the Plaintiff and its witness shows that the Plaintiff apart from the certified seeds of soya beans and the tractors services for the land preparation failed to provide the other services to the farmers the Defendants recruited. According to the

Defendants, the farmers stated the failure of the Plaintiff to perform all its obligations under their agreement as the reason why they could also not perform their obligation under the agreement.

Considering this, Plaintiff cannot seek to recover the cost of the certified seeds and interest on same from the Defendants because the farmers could not also fulfil their side of the agreement. There is no evidence that the Defendants directly or indirectly caused Plaintiff to lose the certified seeds of soya beans.

Based on the reasons I have set out above I find that Plaintiff is not entitled to recover the cost of the certified seeds of soya beans plus interest from the Defendants. The Defendants are not the proper parties to be sued to recover the cost of the certified soya beans plus interest on the same. This is because they are not parties to that agreement. The general position of the law is that only parties to a contract can sue or be sue in respect of the contract. The defendants only acted as agents to facilitate a contract between Plaintiff and the individual farmers. Therefore, the individual farmers who took the seeds are the proper parties to be sued under the contract between the Plaintiff and the farmers to recover the cost of the seeds plus interest.

#### **DISPOSITION:**

For all the reasons I have set out in this judgment Plaintiff's action fails, and I accordingly dismiss the action.

No orders as to cost against Plaintiff.

**SGD**

**H/W SIMON KOFI BEDIAKO ESQ**

**MAGISTRATE**

**12/05/2023**

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