IN THE TDC DISTRICT COURT HELD AT TEMA ON FRIDAY THE 7TH DAY OF JULY 2023 BEFORE HER HONOUR AKOSUA ANOKYEWAA ADJEPONG (MRS.), CIRCUIT COURT JUDGE, SITTING AS AN ADDITIONAL MAGISTRATE

SUIT NO. A11/13/19

DORIS FABEA ..... PLAINTIFF
SUING PER HER LAWFUL ATTORNEY
KWABENA EFFAH
H/NO. E13 GAS STATION
SAKUMONO – TEMA

VRS

GLORY ASSEMBLIES OF GOD CREDIT UNION .....
DEFENDANT
SAKUMONO - TEMA

PARTIES: PLAINTIFF'S ATTORNEY PRESENT
DEFENDANT REPRESENTED BY RITA TITI ABABIO

COUNSEL: RAYMOND AFAWUBO, ESQ. FOR PLAINTIFF ABSENT

DAVID SOWAH KPOBI, ESQ. FOR DEFENDANT PRESENT

JUDGMENT

In her Amended Writ of Summons issued on 24th July 2019, the Plaintiff claims the following reliefs against the Defendant:

a. An order restraining the Defendant from interfering in the Plaintiff's use of the vehicle no. GT 6958-14.
b. An order directed to the Defendant to transfer the vehicle into the Plaintiff's name.
c. An order to Defendant to pay GH¢50.00 per day for loss of use of the vehicle when it was seized by the Defendant from February to July, 2017 and cost.

In its Statement of Defence filed on 8th August 2019, the Defendant stated that the Plaintiff is not entitled to her claims and counterclaimed against the Plaintiff as follows:

i. Recovery of the sum of GH¢13,870.00 being total debt due and owing to the Defendant as at February 2016.
ii. Interest on the said amount from March 2016 until date of full and final payment.
iii. An order for judicial sale of the vehicle with registration number GT 6958-14 with chassis number KMJWVH7HPIU310260.
iv. Costs including legal fees.

The Plaintiff subsequently filed her Reply and Defence to Counterclaim.

THE CASE OF THE PLAINTIFF

It is the case of the Plaintiff that she is a trader and that she contributed a total of GH¢5,020.00 from 15th January 2013 to 18th May 2015 to purchase a vehicle for her trading activities. That upon meeting one third of the cost of the vehicle, the Defendant supported her with GH¢10,000.00 to buy a Hyundai H100 for her bakery business. That the vehicle was bought for her but registered in the name of the Credit Union. That an amount of GH¢7,350.00 was thereafter calculated as interest for the financial support in purchasing the vehicle. According to the Plaintiff, as part of the verbal agreement the Defendant was to be responsible for the repairs of the vehicle by the Defendant's own mechanics but the Defendant breached the said agreement and failed or refused to repair the vehicle compelling the Plaintiff to buy spare parts and repaired the vehicle at the various times amounting to a total of GH¢10,010.00 which exceeds the interest of GH¢7,350.00 calculated on the money lent to her by Defendant. The Plaintiff further stated that the Defendant's refusal to renew the insurance and road worthy certificates of the vehicle made the police on countless number of times impound the vehicle for days and despite repeated notices to the Defendant, it has failed to renew the said documents leading to the loss of use. She continued that the Defendant also seized and detained the vehicle for six months and she was not able to use the vehicle for the intended purpose of the bakery business. According to the Plaintiff, the transaction between her and the Defendant is a loan of GH¢10,000.00 and interest of GH¢7,350.00 totaling GH¢17,350.00 which she paid GH¢5,200.00. That her initial contribution was GH¢5,020.00 and she spent additional GH¢10,000.00 amounting to GH¢15,020.00. She prayed for her reliefs as endorsed on the amended Writ of Summons.

The Plaintiff's lawful attorney in his evidence tendered the Power of Attorney as exhibit 'S'. He testified that the Plaintiff used to be a member of the Defendant Credit Union. He repeated the assertions in the Amended Statement of Claim and tendered exhibits 'A' to 'P' to support the claim that the Plaintiff purchased spare parts and repaired the vehicle at various times amounting to GH¢10,010.00. The Plaintiff's attorney continued that as a result of the failure on the part of the Defendant to perform its part of the agreement, the Plaintiff was not able to pay the outstanding balance of GH¢2,340.00, and that the Defendant is not entitled to its counterclaim. That the only document the Defendant issued to the Plaintiff was the passbook in which the monies paid to the Defendant were recorded. He tendered the said passbook as exhibit 'Q series'. That the Defendant took GH¢500.00 from the Plaintiff and did not record same and also requested the Plaintiff to pay GH¢2,000.00 for the registration of the said vehicle without any record or agreement to that effect.

The Plaintiff's attorney called one witness as PW1. PW1 gave his name as Adjei Emmanuel. That the Plaintiff was sending him to pay her financial contributions until she was given a loan of GH¢10,000.00 to top her contribution of GH¢5,020.00 to buy a van for her bakery business. That apart from her contributions the Defendant took another GH¢2,000.00 from the Plaintiff which was used to register the car and the insurance in the name of the Defendant who agreed to maintain the vehicle with its own mechanics. According to PW1 he does drive the said vehicle and on one occasion a young man approached him to seize it from him and he resisted because he did not know him. That he took him to his house and parked the van outside; and the Defendant and its men broke the glass of the van and attacked him which was reported to police. He

concluded his evidence that the Plaintiff does not owe Defendant the money being claimed.

The Plaintiff's attorney thereafter closed the Plaintiff's case.

THE CASE OF THE DEFENDANT

In the evidence of the representative of the Defendant, who gave his name as Emmanuel Mensah-Brown; the officer in charge of running the daily activities of the Defendant, the Plaintiff was a member of the Defendant Credit Union sometime in 2013 and made contributions to the Credit Union amounting to GH¢5,020.00. That the Plaintiff applied for a loan facility of GH¢15,000.00 in January 2014 at an interest rate of 36% per annum and was to be repaid in 12 months. Exhibit '1' being a copy of the Loan Form was tendered in evidence. That the purpose of the facility requested by the Plaintiff was to enable her purchase a vehicle for her bakery business. That the facility was secured by the Plaintiff's contributions to the Credit Union which at the time amounted to GH¢5,020.00 as well as the vehicle to be purchased which vehicle was to be registered in the Defendant's name. That as further security for the loan, the Defendant registered the vehicle in its name and handed over same to the Plaintiff for use and to serve the purpose for which it was bought. A copy of the vehicle registration documents was tendered in evidence as exhibit '2'. He continued that the Plaintiff was aware of the interest rate and all other conditions on the facility and accepted same prior to disbursement. That there was no agreement or arrangement between the Defendant and Plaintiff that, the vehicle purchased for the personal and business use of the Plaintiff was to be maintained and repaired by the Defendant. According to the Defendant's representative, it

would not make economic sense for the Defendant to take responsibility and maintain a self-acquired property purchased and used by the Plaintiff's own profit-making business. That there was no agreement that the Defendant was under an obligation to bear the cost of insurance premiums and roadworthy of the vehicle purchased for the Plaintiff except that the Defendant was to make onward payment for such expenses upon receipt of funds from the Plaintiff when they became due. That the Plaintiff was unable to complete and retire the facility during the agreed period of 12 months therefore the Plaintiff's contribution (savings) was debited by the Defendant in reduction of the Plaintiff's outstanding debt. That the Plaintiff's total payment made at the end of the facility period (February 2015) was GH¢8,700.00 leaving a balance of GH¢11,700.00. He continued that the Plaintiff's facility was rescheduled and extended for a further one year ending February 2016 with an interest of GH¢4,212.00 calculated on the outstanding facility balance of GH¢11,700.00. That the Plaintiff defaulted in repayment of the facility within the one year extension period; and had paid an amount of GH¢1,142.00 out of the GH¢15,912.00 payable as at February 2016. A copy of Plaintiff's statement of account was tendered in evidence as exhibit '3'. That several demands were made on the Plaintiff to repay the loan which she reneged on. That the default clause in the agreement was therefore activated and the Defendant attempted repossession of the vehicle but was unsuccessful because the Plaintiff resisted same so the matter was reported to the Sakumono police. That the police took custody of the vehicle for investigation and within three days released the vehicle to the Plaintiff on the understanding that the Plaintiff makes all further outstanding payments through them upon which the Plaintiff made further payments at different times amounting to GH¢900.00 through the police to reduce her indebtedness. A copy of an undertaking made by the Plaintiff to the police to repay the outstanding

debt was tendered in evidence as exhibit '4'. That the Defendant issued various receipts of transactions between itself and the Plaintiff in respect of the loan repayment by the Plaintiff. Copies of some of the said receipts were tendered in evidence as exhibit '5 series'. According to the Defendant's representative, the Defendant cannot be held liable for any cost incurred by the Plaintiff resulting from the loss of use of the vehicle as a result of seizure by the police or for non-renewal of roadworthy as this was occasioned by Plaintiff's default in repayment of the facility. That the Plaintiff has not completed repayment of the facility and still remains indebted to the Defendant to the tune of GH¢13,870.00. He concluded that the Plaintiff is not entitled to her claims and prayed this Court to deliver judgment in the Defendant's favour per its counterclaim.

The Defendant called one witness as DW1, who gave her name as Mrs. Vida Sackitey Aminah. She testified that she was the officer in charge of running the daily activities of the Defendant when the loan was granted to the Plaintiff. DW1 repeated the testimony of the Defendant's representative and further clarified that she can confirm as an officer at the time that, there was no such agreement or arrangement between the Defendant and the Plaintiff that the vehicle purchased for the personal and business use of the Plaintiff was to be maintained and repaired by the Defendant save that she suggested at the time that the Credit Union had a mechanic who could be of assistance to her any time the vehicle developed a fault. That there was no agreement that the Defendant was to bear the cost of insurance premiums and roadworthy of the said vehicle for the Plaintiff except that the Defendant was to accompany the Plaintiff to renew the insurance and road worthy certificate but the Plaintiff refused to bring the vehicle anytime it was due because of the loan repayment default. That when the

Plaintiff defaulted in her repayment obligation she called her several times to pay but to no avail, so she called her to inform her that the vehicle would be repossessed to offset the rest of her indebtedness to the Defendant. She concluded that the Plaintiff is not entitled to her claims and prayed the Court for the Defendant's counterclaim to be granted.

Thereafter, the Defendant's case was closed.

The legal issues to be determined are:

1. *Whether or not the Plaintiff defaulted the loan repayment agreement.*
2. *Whether or not there was an agreement between the parties for the Defendant to repair the said vehicle and also pay for the insurance premiums and road worthy of the said vehicle.*
3. *Whether or not the Defendant seized the subject matter vehicle from the Plaintiff from February to July, 2017.*
4. *Whether or not the Plaintiff is still in default of GH¢13,870.00.*
5. *Whether or not the Plaintiff is entitled to the reliefs endorsed on the Amended Writ of Summons.*
6. *Whether or not the Defendant is entitled to the reliefs contained in the Counterclaim.*

In civil cases, the general rule is that the party who in his pleadings raises an issue essential to the success of his case assumes the onus of proof. See **Sections 10, 11(1) and (4) and 12(1) and (2) of the Evidence Act, 1975 (NRCD 323).**

Section 12(1) of the Evidence Act, 1975 (NRCD 323), provides that:

"except as otherwise provided by law, the burden of persuasion requires proof by a preponderance of probabilities."

In the case of ***Adwubeng v. Domfe [1996-97] SCGLR 660,*** the Supreme Court held thus:

> **"***Sections 11(4) and 12 of the Evidence Decree, 1975 (NRCD 323)… have clearly provided that the standard of proof in all civil actions was proof by preponderance of probabilities – no exceptions were made.*

Section 11(4) of the Evidence Act explains the burden of proof in civil cases as follows:

> "*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*".

In the case of ***Memuna Amoudi v. Kofi Antwi*, Part 3, [2006] MLRG, 183 at 195,** the Supreme Court per Wood, JSC (as she then was) stated:

> "*A cardinal principle of law on proof … is that a person who makes an averment or assertion … has the burden to establish that his averment or assertion is true. He does not discharge his burden unless he leads admissible and credible evidence from which the fact or facts he asserts can be properly and safely inferred*."

In the case of ***Fosua & Adu-Poku v. Adu-Poku Mensah-Ansah [2009] SCGLR 310***, the Supreme Court held that where the Plaintiff is able to produce sufficient evidence to prove his case then the onus shifts to the Defendant to lead evidence that would tilt the balance of probabilities in his favour. This principle is found in Section 14 of the Evidence Act, supra, which provides as follows:

"Except as otherwise provided by law, unless 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 that party is asserting."

Also, in the case of ***In Re: Ashalley Botwe lands; Adjetey Agbosu and Others v. Kotey and Others*** **(2003-04) SCGLR 420**, Brobbey JSC interpreted section 11(1) of the Evidence Decree 1975 (N.R.C.D 323) at pages 464 to 465 and held that:

"*A litigant who is a Defendant in a civil case does not need to prove anything; the Plaintiff who took the Defendant to Court has to prove what he claims he is entitled to from the Defendant. At the same time, if the Court has to make a determination of a fact or of an issue, and the determination depends on evaluation of facts and evidence, the Defendant must realize that the determination cannot be made on nothing. If the Defendant desires the determination to be made in his favour, then he has the duty to help his own cause or case by adducing before the Court such facts or evidence that will induce the determination to be made in his favour….*".

I shall now examine and evaluate the evidence adduced by the parties in support of their respective cases within the context of their corresponding burdens and the prescribed standard of proof as provided under *the Evidence Act, 1975 (NRCD 323)* to resolve the above issues.

1. *Whether or not the Plaintiff defaulted the loan repayment agreement.*

The Plaintiff's attorney in his evidence told the Court that the Plaintiff was not able to pay the outstanding balance of GH¢2,340.00 because of the failure on the

part of the Defendant to perform its part of the agreement which led to the instant situation and Defendant is not entitled to any counterclaim. From this piece of evidence by the Plaintiff's attorney, the Plaintiff admits that she defaulted in the repayment of the loan but the amount in default is in issue as the Plaintiff's attorney stated a different amount from what the Defendant has counterclaimed. The Plaintiff's attorney further blamed the Defendant for the Plaintiff's default to repay the entire loan amount.

In ***Asante v. Bogyabi [1960] GLR 232 @ 240*** per Siriboe JSC:

> *"Where admissions relevant to matters in issue between parties to a case are made by one side, supporting the other … then it seems to me right to say that that side in whose favour the admissions are made, is entitled to succeed and not the other, unless there is good reason apparent on the record for holding the contrary view …".*

Applying the above authority and considering the evidence before this Court particularly in light of the admission by the Plaintiff's attorney as reproduced above, I find that notwithstanding the issues the Plaintiff raised as being her reason for defaulting the loan repayment agreement, there is evidence before this Court that the Plaintiff basically defaulted the loan repayment agreement.

2. *Whether or not there was an agreement between the parties for the Defendant to repair the said vehicle and also pay for the insurance premiums and road worthy of the said vehicle.*

The Plaintiff asserted in her pleadings that, as part of the verbal agreement the Defendant was to be responsible for the repairs of the vehicle by the Defendant's

own mechanics but the Defendant breached the said agreement and failed or refused to repair the vehicle compelling her to buy spare parts and repaired the vehicle at the various times amounting to a total of GH¢10,010.00 which exceeds the interest of GH¢7,350.00 calculated on the money lent to her by Defendant. The Plaintiff further stated that the Defendant's refusal to renew the insurance and road worthy certificates of the vehicle made the police on countless number of times impound the vehicle for days and despite repeated notices to the Defendant, it has failed to renew the said documents leading to the loss of use.

In its defence the Defendant denied the said claims by the Plaintiff and stated that there was no agreement or arrangement between the Defendant and Plaintiff that the vehicle purchased for the personal and business use of the Plaintiff was to be maintained and repaired by the Defendant. That there was no agreement that the Defendant was under an obligation to bear the cost of insurance premiums and roadworthy of the vehicle purchased for the Plaintiff except that the Defendant was to make onward payment for such expenses upon receipt of funds from the Plaintiff when they became due.

The Defendant having vehemently denied the claims of the Plaintiff on the above issue, there was legal burden on the Plaintiff to adduce sufficient evidence to substantiate her claims.

Gbadegbe JSC in the case of ***Sagoe v. SSNIT (2011) 30 GMJ 133; (2012) 52 GMJ 47*** held that:

> *"The party who asserts the affirmative of an issue has the incidence of the legal burden …"*

The Plaintiff who asserted in the affirmative that there was a verbal agreement between the parties for the Defendant to be responsible for the repairs of the vehicle by the Defendant's own mechanics, had the incidence of the legal burden to substantiate the said assertion after same was vehemently denied. The Defendant's representative stated in his evidence that they never had any such agreement with the Plaintiff. The Plaintiff therefore ought to have adduced some credible evidence in support of the said claim. There is no evidence on record to support the claim that the parties made a verbal agreement to that effect.

The burden of proof was on the Plaintiff but she could not lead any persuasive evidence to that effect. The Plaintiff's attorney only repeated the assertions in the Statement of Claim as to the above issue.

In the case of ***Adjetey Adjei & Ors. v. Nmai Boi & Ors. [2013-2014] 2 SCGLR 1474,*** Adinyira JSC held:

> *"… It is trite law that pleadings would not constitute evidence. To hold otherwise would negate t*

Also, PW1 did not adduce any evidence that he was present when the said verbal agreement was made between the parties. The Plaintiff's attorney under cross examination told the Court on 14th April 2021 that Vida told them that if there is a problem with the car, the Credit Union will repair it and even sent them to their mechanic. That he asked for an agreement on that but she did not give them. He further stated under same cross examination that, Vida said they will repair the car if there is any problem until they finish paying for the car.

The Defendant called the said Vida as DW1 who confirmed the Defendant's position that there was no such agreement between the parties that the vehicle in question was to be maintained and repaired by the Defendant, neither was there an agreement that the Defendant was to bear the cost of insurance premiums and

roadworthy of the vehicle. DW1 added that she suggested at the time that the Defendant had a mechanic who could be of assistance to her any time the vehicle developed fault. Under cross examination of DW1 on 19th July 2021, she denied telling the Plaintiff that the Defendant will insure and maintain the vehicle until the loan is repaid.

It is important to note ***section 11(1) of the Evidence Act N.R.C.D 323*** which defines burden of producing evidence. It states thus:

> *"…the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling against him on the issue."*

There is no sufficient evidence on record to suggest that there was such verbal agreement as claimed by the Plaintiff, as the Plaintiff's attorney could not lead satisfactory evidence to establish the said assertion and the said Vida the Plaintiff mentioned in that claim as having told her that, appeared before the Court as DW1 and denied same.

In the case of ***Boakye v. Asamoah*** **[1974] 1 GLR 38 at 45**, the Court held that:

> *"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."*

The Plaintiff bore the legal burden and was thus required to prove that indeed there was an agreement between the parties for the Defendant to repair the said vehicle and also pay for the insurance premiums and road worthy of the said vehicle as she asserted in her pleading. This, the Plaintiff's attorney could not discharge because he did not lead cogent evidence in support of that.

Consequently, the said assertion is dismissed for want of evidence and I hereby find from the evidence on record that there was no agreement between the parties for the Defendant to repair the said vehicle and also pay for the insurance premiums and road worthy of the said vehicle.

3. *Whether or not the Defendant seized the subject matter vehicle from the Plaintiff from February to July, 2017.*

The Plaintiff averred that the Defendant seized and detained the vehicle in question for six months and she was not able to use the vehicle for the intended purpose of the bakery business. The Defendant denied the said assertion and further stated that it attempted to repossess the vehicle but was unsuccessful because the Plaintiff resisted the repossession which resistance was reported to the Sakumono police. That the police took custody of the vehicle for investigation and within three days released same to the Plaintiff on the understanding that the Plaintiff makes all outstanding payments through them.

The Defendant having denied the allegation by the Plaintiff that it seized and detained the subject matter vehicle for six months and so she was not able to use the vehicle for the intended purpose of the bakery business, there was a legal burden of proof on the Plaintiff to lead persuasive evidence to establish that allegation. Thus, the Plaintiff's attorney had the onus to lead satisfactory evidence in support of that claim relying on the authorities listed *supra*.

In his evidence, the Plaintiff's attorney repeated the said averment without adducing sufficient evidence to establish same. PW1 in his evidence told the Court that he does drive the said van and one occasion a young man approached

him to seize it from him and he resisted because he did not know him. That he took him to his house and parked the van. That the Defendant and its men broke the glass of the van and attacked him so the matter was reported to the police. Under cross examination on the above issue, PW1 recounted the said narration in his evidence in chief to the extent that, he was at home when the Defendant sent a man to break into the said car and when he confronted the man, he assaulted him which led them to the police station.

Appau JSC held in the case of ***Emmanuel Osei Amoako v. Standford Edward Osei (substituted by Bridget Osei Lartey); Civil App. No. J4/3/2016 dated 1st June 2016, S.C. (Unreported)*** as follows:

> *"Respondent, did not go beyond his rhetorical statements … Judgments must be based on established facts not mere rhetoric or narrations without any supporting evidence that can sustain the claim".*

From the evidence on record, there is no iota of evidence before this Court that supports the assertion that the Defendant seized the subject matter vehicle from the Plaintiff from February to July, 2017. The Plaintiff's attorney woefully failed to discharge the burden of proof on the Plaintiff having made that claim, to substantiate same. Consequently, I hereby dismiss the claim that the Defendant seized the subject matter vehicle from the Plaintiff from February to July, 2017 for lack of evidence; and the Plaintiff's relief premised on the said claim is similarly dismissed.

4. *Whether or not the Plaintiff is still in default of GH¢13,870.00.*

It is the Plaintiff's case that she contributed an amount of GH¢5,020.00 to the Defendant Credit Union to purchase a vehicle for her trading activities; and upon meeting one-third of the cost of the vehicle, the Defendant supported her with GH¢10,000.00 to buy a Hyundai H100 for her bakery business. That an amount of GH¢7,350.00 was thereafter calculated as interest for the financial support in purchasing the vehicle. That the transaction between her and the Defendant is a loan of GH¢10,000.00 and interest of GH¢7,350.00 totaling GH¢17,350.00 which she paid 5,200.00. That her initial contribution was 5,020.00 and she spent additional GH¢10,000.00 amounting to GH¢15,020.00. It is also the Plaintiff's case that, as a result of the failure on the part of the Defendant to perform its part of the agreement, the Plaintiff was not able to pay the outstanding balance of GH¢2,340.00.

The evidence of the Defendant's representative is to the effect that the Plaintiff after obtaining a loan of GH¢15,000.00 defaulted the loan repayment agreement. That the Plaintiff was aware of the interest rate and all other conditions on the facility and accepted same prior to disbursement. That the Plaintiff's contribution (savings) was used by the Defendant to reduce her outstanding debt after her inability to repay the loan within the agreed period of 12 months. That the Plaintiff defaulted in repayment of the facility within the one year extension period. According to the Defendant's representative, several demands were made on the Plaintiff to repay the loan but she still defaulted.

From exhibit '1', it is clear that the Plaintiff had savings of GH¢5,020.00 and an amount of GH¢15,000.00 was given to her as a loan. Exhibit '1' which is a loan application form indicates that the duration for the loan repayment was cancelled from 12 months and replaced with 24 months. The Plaintiff also agreed on exhibit '1' to pay an interest of 36% per month on the loan amount however

the Defendant's representative told the Court in his evidence that the interest on the loan was 36% per annum and was to be paid in 12 months, but they extended the duration to 24 months when the Plaintiff defaulted the repayment agreement.

In exhibit 4, the Plaintiff agreed on 24th August 2018 to pay GH¢200.00 monthly to clear her arrears of GH¢13,870.00 with the Defendant. Therefore the Plaintiff having agreed that she would pay the said GH¢13,870.00 being her arrears ought to have done so. However, it is the case of the Plaintiff that the Defendant breached the verbal agreement between the parties that the Defendant was to repair the said vehicle and also pay for the insurance premiums and road worthy of the said vehicle, which the findings of this Court *supra* from the evidence on record indicates otherwise. Therefore the Plaintiff did not have any reasonable justification for defaulting the loan repayment agreement.

From the evidence on record, particularly from the exhibits tendered by both parties being exhibit 'Q4' and exhibit '1', same indicate that the Plaintiff took a loan of GH¢15,000.00 from the Defendant but prior to that, she had done savings with the Defendant Credit Union to the tune of GH¢5,020.00. From exhibit 'Q series' the Plaintiff started the repayment of the loan and in the course of it, the Defendant withdrew the savings of the Plaintiff to repay part of the Plaintiff's outstanding debt to the Defendant. The Defendant's representative in his evidence stated that the GH¢5,020.00 contributed by the Plaintiff was used to secure the Plaintiff's loan facility; that is, the Defendant used the Plaintiff's contribution of GH¢5,020.00 as cash collateral in addition to the subject matter vehicle that was purchased with the said loan facility.

Being a cash collateral, the standard practice is that a person cannot use the same asset being cash or otherwise, as collateral and earn interest on it simultaneously.

A person can use an asset to either earn interest or secure a loan, one cannot do both simultaneously. In the instant case, the evidence on record suggests that, the Plaintiff before applying for the loan facility knew that she had to contribute and get some savings with the Defendant before she would be qualified to be given a loan by the Defendant. Therefore the Plaintiff used her savings of GH¢5,020.00 as cash collateral. From the evidence of the Plaintiff's attorney under cross examination, it is because of the loan they wanted from the Defendant to buy a car for their bakery business that is why they made that savings with the Defendant. On exhibit '1' which the Plaintiff thumb printed, it is stated that *"The Applicant's savings and the vehicle are enough guarantee for the loan, the loan is therefore approved"*. This confirms the Defendant's position that the savings of GH¢5,020.00 by the Plaintiff was used to secure the loan making it cash collateral together with the subject matter vehicle. It is trite learning in the finance industry that when you use an asset as collateral to get a loan, it becomes locked in your wallet until you repay your loan in full. When you have repaid your loan in full the collateral amount is unlocked, and you can deposit it to a different account to earn interest.

In the instant case, the Plaintiff from the findings of this Court and the evidence on record, defaulted the loan repayment without reasonable justification, therefore the Defendant had to use her cash collateral to pay part of the outstanding loan amount.

Moreover the claim by the Plaintiff that she spent GH¢10,010.00 to buy spare parts and repair the vehicle at the various times could not be established from the evidence on record. In an attempt to substantiate the claim of GH¢10,010.00 spent on the said vehicle by way of repairs and purchase of spare parts, the Plaintiff's attorney tendered exhibits 'A' to 'P' to support the said claim.

However, the total amount of money on the receipts tendered as exhibits 'A' to 'P' is GH¢6,100.00 and not GH¢10,010.00. In any case, the Plaintiff could not also establish that there was a verbal agreement between the parties which the Defendant failed to perform its part of the agreement.

Flowing from the above I find that, the Plaintiff is in default of GH¢13,870.00 as at 24th August 2018, as she agreed in exhibit '4'.

5. *Whether or not the Plaintiff is entitled to the reliefs endorsed on the Amended Writ of Summons.*

The Court of Appeal applying the principle held in the case of ***Fordjour v. Kaakyire [2015] 85 GMJ 61,*** His Lordship Ayebi J.A. espoused:

> *"It has to be noted that the Court determines the merits of every case based on legally proven evidence a*

The Plaintiff is seeking for an order restraining the Defendant from interfering with the Plaintiff's use of the vehicle No. 6958-14. However, the evidence before this Court do not support the grant of the reliefs endorsed on the Amended Writ of Summons. This is because from the findings of this Court, the Plaintiff is indebted to the Defendant and the Defendant having registered the said vehicle in its name as security of the said facility as found above, the Defendant has an interest in same and is allowed to secure its interest upon default of the loan repayment by the Plaintiff. Flowing from that, the Court is unable to order the Defendant to transfer the said vehicle into the Plaintiff's name, as the Plaintiff has outstanding debt to pay to the Defendant before such transfer can be made.

Furthermore, the findings above from the evidence on record indicate that the Plaintiff could not establish her claim that the Defendant seized the said vehicle from February to July, 2017. The said claim having being dismissed by the Court as unsubstantiated, the Plaintiff is not entitled to her relief which is based on same.

The burden of proof fell on the Plaintiff to adduce cogent evidence to support her claims and reliefs but she could not discharge that burden. The Plaintiff did not meet the standard of proof as required in the Evidence Act.

In the case of ***Faibi v. State Hotels Corporations (1968) GLR 471,*** it was held**:**

> **"***The onus in law lays upon the party who would lose if no evidence was led in the case; and where some evidence had been led it lay on the party who would lose if no further evidence was led."*

The Plaintiff's attorney in his evidence did not lead sufficient evidence to establish the claims of the Plaintiff. He mostly gave a mere rhetoric without any proof to substantiate the assertions which the Plaintiff's reliefs are based on.

Relying on the above authorities and in the absence of concrete evidence to substantiate the claims of the Plaintiff, I do hereby find that the Plaintiff is not entitled to the reliefs as endorsed on the Amended Writ of Summons.

6. *Whether or not the Defendant is entitled to the reliefs contained in the Counterclaim.*

The Supreme Court per Akamba JSC held in the case of ***Nortey v. African Institute of Journalism & Communication (2014) 77 GMJ 1*** thus:

> *"Without any doubt a defendant who files a counterclaim assumes the same burden as the plaintiff in the substantive action if he/she is to succeed. This is because a counter-claim is a distinct and separate claim on its own which must also be proved according to the same standard of proof prescribed by Sections 11 and 14 of NRCD 323 the Evidence Act (1975)"* See also ***Messrs Van Kirksey & Associates v. Adjeso & Others [2013-2015] 1 GLR 24***

From the evidence before this Court and from the above findings, the Defendant has been able to prove by a balance of probability that the Plaintiff defaulted the loan agreement and is still in default of GH¢13,870.00 being the outstanding amount on the facility. However from the Defendant's own exhibit '4', the Plaintiff agreed to pay the amount of GH¢13,870.00 being her arrears as at 24th August 2018 when she thumb printed the said repayment agreement. Therefore I find that, the Defendant is entitled to recover the said amount from the Plaintiff with interest on the said amount from August 2018, and not from March 2016 as counterclaimed by the Defendant.

When a Court is called upon to resolve conflicting versions of facts, the duty of the Court is distilled in a crucial question articulated by Wood CJ in the case of ***Sarkodie v. FKA Co Ltd*** **[2009] SCGLR 65 @ page 69** in these words:

> *"The main issue for the Court to determine is simply that, on a preponderance of the probabilities, whose story is more probable than not*?"

That question put differently is – whose evidence had more weight and credibility?

From the totality of the evidence before this Court and from the findings above, I conclude that the Plaintiff's attorney has failed in his duty of providing and adducing sufficient evidence to establish the claims of the Plaintiff on the balance of probabilities. Consequently, I hereby dismiss the claims of the Plaintiff as unsubstantiated; and all her reliefs as endorsed on the Amended Writ of Summons are accordingly dismissed. The Defendant on the other hand has been able to sufficiently prove its counterclaim on a balance of probabilities.

From the foregoing reasons, I hereby enter judgment for the Defendant as against the Plaintiff as follows:

1. The reliefs (i) and (ii) contained in the Counterclaim of the Defendant are hereby granted against the Plaintiff, save that the interest on the said amount shall run from August 2018 to the date of final payment at the prevailing commercial bank rate.
2. The relief (iii) contained therein is granted, in the event of failure by the Plaintiff to comply with reliefs (i) and (ii) above.
3. I award costs of GH¢4,000.00 in favour of the Defendant against the Plaintiff.

H/H AKOSUA A. ADJEPONG

(MRS)

(CIRCUIT COURT JUDGE)