

SUIT NO. A2/1/23

IDDRISU SEIDU

—

AND

MOHAMMED IBRAHIM

1

DEFENDANT

JUDGMENT

1. This judgment relates to recovery money.
2. The plaintiff described himself as a baker while the defendant is a farmer. On 7th November, 2022 the plaintiff instituted this action against the defendant for the following reliefs:
 - a. The recovery of GHS3,500.00 being loan requested by the defendant from plaintiff in 2019 to harvest his farm produce and promised to pay back by June 2019, but defendant had failed to pay.

- b. Payment of interest from November, 2019 to date of final payment.
 - c. Costs.
- 3. The defendant pleaded not liable to plaintiff's claim. Parties indicated intention to settle and were referred to ADR but they returned that the settlement had broken down. The case was then set down for trial.
- 4. Below are the respective cases of the parties.

PLAINTIFF'S CASE

- 5. Plaintiff's evidence was straight to the point, "defendant took GHS3,500.00 in June 2019. But he had failed to pay. Defendant was to pay in 6months time that ended in December, 2019. That is all." He called no witnesses or tendered any exhibit in support of his case.

DEFENDANT'S CASE

- 6. Defendant, on his part, filed a witness statement. In his evidence, he stated that he borrowed GHS3,000.00 from plaintiff and promised to pay back after the harvesting season but the produce were not enough to sell and pay back. He indicated that he was to pay interest of GHS300.00 per month. Upon payment of the interest for the first two months, he informed the plaintiff that he would pay for the principal, but the interest he cannot, which the plaintiff agreed. He averred that the plaintiff then took his motorbike indicating that when he (defendant) pays the money, the motorbike will be returned. Defendant stated further that plaintiff was using the motorbike for his business. In 2021, he had plaintiff's money and therefore asked for the return of his motorbike, but the motorbike had been damaged. So both parties took it to the mechanic shop which costed GHS800.00 for the repairs. Defendant stated that after

the repairs, he deducted the GHS800.00 and gave the plaintiff the remaining GHS2,200.00. He tendered in evidence, Exhibits 1 and 1A - copies of the invoices for the repairs dated 31st May, 2021. To defendant, all had been concluded only to return from the farm in October 2022 to sight a writ of summons from the plaintiff. He, therefore, prayed the court to put this matter to rest.

ISSUES FOR DETERMINATION

7. The issues borne out of the facts are:

- a. Whether or not defendant took GHS3,500.00 as loan at a monthly interest of GHS300.00 from the plaintiff?*
- b. Whether or not defendant had paid off the loan?*

BURDEN OF PROOF

8. In civil cases, the general rule is that the party who in his pleadings or his writ raises issues essential to the success of his case assumes the onus of proof on the balance of probabilities. See the cases of **Faibi v State Hotels Corporation [1968] GLR 471** and **In re Ashalley Botwe Lands; Adjetey Agbosu & Ors. v. Kotey & Ors. [2003-2004] SCGLR 420**. The Evidence Act, 1975 (NRCD 323) uses the expression “burden of persuasion” and in section 14 that expression has been defined as relating to, “...each fact the existence or non-existence of which is essential to the claim or defence he is asserting.” See also ss. 11(4) and 12(1) & (2) of NRCD 323.
9. It is when the claimant has established an assertion on the preponderance of probabilities that the burden shifts onto the other party, failing which an unfavourable ruling will be made against him, see s. 14 of NRCD 323 and the case of **Ababio v Akwasi III [1995-1996] GBR 774**.

ANALYSIS OF THE ISSUES

10. I will consider the two issues together. Issue a, *whether or not defendant took GHS3,500.00 as loan at a monthly interest of GHS300.00 from the plaintiff* and issue b, *whether or not defendant had paid off the loan?* Here, the law is that he who asserts must prove, particularly when his assertion is denied by the other party, see **Okudzeto Ablakwa (No. 2) v. Attorney-General & Obetsebi-Lampitey (No. 2) [2012] 2 SCGLR 845 at page 867**. In **Klah v. Phoenix Insurance Company Limited [2012] 2 SCGLR 1139** the Supreme Court rehashed the decision in **Majolagbe v Larbi [1959] GLR 190** that once the averment is denied, the party making that averment does not prove it by merely going into the witness box and repeating that averment on oath or having it repeated by his witness, rather he proves it by producing other evidence of facts and circumstances from which the court can be satisfied that what he avers is true.
11. From the instant case, the burden, therefore, was on the plaintiff to prove that he gave the defendant GHS3,500.00 as loan at a monthly interest of GHS300.00. Failing which an unfavourable ruling will be made against him.
12. From the evidence, plaintiff averred that he gave the defendant GHS3,500.00 to be paid within 6 months, ending December, 2019. He did not indicate any interest to be paid. Defendant, on his part, averred that he took GHS3,000.00 and was to pay GHS300.00 per month as interest. He added that when he made two interest payments, he informed the plaintiff that he could not keep up with the interest but will pay the principal, which according to him, plaintiff agreed. Plaintiff later came for his motorbike as collateral. The motorbike was to be returned to defendant on payment of the principal. Defendant contended that when he indicated that he was ready to pay for the principal, it was realised that plaintiff as a result of using the motorbike had damaged it. So both parties went to the mechanic where the cost for the repairs was assessed at GHS800.00 and the motorbike was fixed. He, defendant,

then deducted the cost of the repairs and gave the remaining GHS2,200.00 to plaintiff and took his motorbike.

13. Below is an extract of the cross-examination of the plaintiff:

“Q: When did you receive the GHS2,200.00?

A: 2nd June, 2021.

...

Q: So why did you two send the motorbike for repairs?

A: I was using it.

Q: So the GHS2,200.00 was paid to you after repairing the motorbike, not so?

A: Yes.

Q: Were you told how much was the repairs?

A: Yes. The amount involved was GHS800.00.

...

Q: How much did you charge as interest?

A: GHS300.00 each month

Q: Did you receive any payment of the interest?

A: Yes, for 2months, the sum of GHS600.00.”

14. On the part of the defendant, below is what ensued:

“Q. The GHS3,000.00 you said you took, did you give me a collateral for it?

A: It was without a collateral.

...

Q: I am putting it to you that you gave me your motorbike because of the relationship I have with you and not as a collateral?

A: I gave the motorbike because of the money.

Q: I am putting it to you that the loan was GHS3,500.00?

A: That is not true.”

15. On the totality of the evidence, I find that plaintiff was not able to lead sufficient evidence to the effect that he gave defendant GHS3,500.00 as loan. Defendant, therefore, loses on this assertion, see **Klah v. Phoenix Insurance Company Limited (supra)**. I, however, find that the amount given as loan was GHS3,000.00 with monthly interest of GHS300.00. This was an admission by the defendant. Defendant paid GHS600.00 as interest for two months. He then informed plaintiff that he could not keep up with the interest, but will pay the principal. Then the plaintiff took defendant’s motorbike. Plaintiff used the motorbike. Later in May 2021, when defendant went to pay the principal, he noticed the motorbike was damaged. Both parties agreed and sent the motorbike for repairs. The cost of the repairs was GHS800.00. On 2nd June, 2021 the defendant paid the difference of GHS2,200.00 and took the motorbike. In his evidence-in-chief, plaintiff never mentioned the GHS2,200.00, save under cross-examination where he confirmed receiving it. Also,

under cross-examination he admitted having received the GHS600.00 interest and being informed about the GHS800.00 repairs. At this point, I am of the firm opinion that the defendant has paid off the loan and rightfully retrieved his motorbike, without more. In effect, plaintiff loses on his claim.

16. Suit is, therefore, dismissed as having no merit.

H/W D. ANNAN ESQ.

[MAGISTRATE]

PARTIES APPEARED IN PERSON

References:

1. 11(4), 12(1) & (2) and 14 of NRCD 323
2. *Faibi v State Hotels Corporation* [1968] GLR 471
3. *In re Ashalley Botwe Lands; Adjetey Agbosu & Ors. v. Kotey & Ors.* [2003-2004] SCGLR 420
4. *Ababio v Akwasi III* [1995-1996] GBR 774
5. *Okudzeto Ablakwa (No. 2) v Attorney-General & Obetsebi-Lamptey*(No. 2) [2012] 2 SCGLR 845
6. *Klah v. Phoenix Insurance Company Limited* [2012] 2 SCGLR 1139
7. *Majolagbe v Larbi* [1959] GLR 190