

**IN THE DISTRICT COURT 2, TAMALE**  
**HELD ON FRIDAY 10<sup>TH</sup> MARCH, 2023**  
**BEFORE HIS WORSHIP D. ANNAN ESQ.**

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**SUIT NO. A2/74/22**

**BETWEEN**

**SULEMANA ISSAHAK**

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**PLAINTIFF**

**AND**

**AZIZ ABDULAI**

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**DEFENDANT**

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**JUDGMENT**

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**INTRODUCTION**

1. This judgment relates to a loan contract.
2. On 3<sup>rd</sup> August, 2022 the plaintiff instituted this action against the defendant for the following reliefs:
  - a. An order to recover his car (Mercedes Benz-ML-350) given to the defendant as collateral for a loan of GHS11,000.00.
  - b. A declaration that the defendant is entitled to GHS15,500.00 being the loan amount plus interest accrued on same.

c. Costs.”

3. The defendant filed a defence and counterclaimed as follows:

- a. The payment of GHS15,500.00 being the amount owed the defendant by the plaintiff.
- b. Interest on the GHS15,500.00 at the prevailing bank interest rate from April, 2022 till date of final payment.
- c. Damages for breach of contract.
- d. Costs including legal fees.

4. On 2<sup>nd</sup> November, 2022 this court granted an interlocutory injunction directing that the car used as collateral be parked at the court premises until final determination of this case.

5. The respective cases of the parties herein are detailed below.

#### PLAINTIFF’S CASE

6. According to the plaintiff on 9<sup>th</sup> April, 2021 parties herein executed an agreement, Exhibit A, where he borrowed from the defendant an amount of GHS11,000.00 with an interest of GHS4,500.00. The loan was to be paid within two months, thus ending 31<sup>st</sup> May, 2021 as stated in Exhibit A. He used his car, a Mercedes Benz ML-350, as collateral. Plaintiff averred that in the said Exhibit A, parties agreed that in default, the defendant was at liberty to use the collateral to secure a loan. He stated that he faced financial difficulties in paying the loan and interest. However, in July 2022 he approached the defendant to pay the amount owed and take back his car. Upon approaching the defendant, plaintiff stated that the defendant would not give out the

car unless he (plaintiff) pays an additional GHS50,000.00. Hence, he instituted this action.

#### DEFENDANT'S CASE

7. Defendant testified that this present loan is the fourth between the parties herein. According to him, plaintiff was to pay the loan and interest withing two (2) weeks. However, it took over 12 months and when plaintiff reached out sometime in July 2022, he stated that the interest had to be revised because of the long period, but plaintiff refused. Defendant added that he had expended GHS5,000.00 in maintaining the car. To him, plaintiff has breached their agreement and so prays for his counterclaim.

#### ISSUES FOR DETERMINATION

8. The only issue borne out of the facts is *whether or not the defendant is entitled to interest and damages for breach of contract?*

#### BURDEN OF PROOF

9. 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.

10. 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 ISSUE

11. The only issue is *whether or not the defendant is entitled to interest and damages for breach of contract?* From the evidence, defendant admitted to the GHS15,500.00, save his claim for interest and damages.
12. Regarding interest, in the case **Royal Dutch Airlines (KLM) v. Farmex [1989-90] 2 GLR 623** the Supreme Court said at page 636 that:
- “When a defendant keeps a plaintiff out of the use of his money, the plaintiffs are entitled to call upon the defendant to account to them for the use of this money, which is another way of saying that the plaintiffs are entitled to interest on the said money beyond the date of judgment to date of payment...”
13. In **Merchant Bank v Ghana Primewood Ltd [1989-1990] 2 GLR 551** the Supreme Court held:
- “...Order 42 Rule 15 did not forbid the levying of interest above four percent. It only required that the higher interest rate should have been agreed by the parties. ....interest would accrue at the contractual rate so long as the moneys remained unpaid...”
14. Similarly in **Butt v Chapel Hill Properties [2003-2004] 1 SCGLR 626** the Supreme Court had this to say -
- “Once the court holds that there was an implied loan transaction between the plaintiff and defendants, the court is obliged to exercise its statutory authority to

award interest on the loan implied in order to preserve the value of the capital...The justice of this case requires that interest should be awarded to plaintiff, even if not expressly claimed... Under Order 63 rule 6 of LN 140A, the High Court has authority to make any order it considers necessary for doing justice, whether such order has been expressly asked for by the person entitled to the benefit of the order or not. ...”

15. The power of the Courts in Ghana to award such interest has been re-enacted in rule 1 of CI 52 of the Court (Award of Interest and Post Judgment Interest) Rules, 2005. The language of CI 52 is very clear in its direction for courts to award only simple interest unless specific circumstances exist. To reiterate this point, CI 52 provides first for the application of prevailing bank rates at simple interest as the only manner in which a court can award interest on a judgment debt. It reads in Rule 1:

“Rule 1 - Order for payment of interest

1. If the court in a civil cause or matter decides to make an order for the payment of interest on a sum of money due to a party in the action, that interest shall be calculated

- a. at the bank rate prevailing at the time the order is made and
- b. at simple interest.”

16. From the evidence, since there was no agreement between the parties on nature of interest, period of application of the particular type of interest or quantum of interest, I shall apply interest at the prevailing bank rate in simple interest mode. Thus, I hold that the interest rate chargeable on the debt GHS15,500.00 shall be calculated at the prevailing bank rate effective from the date of this judgment till date of final payment.

17. On damages, the Supreme Court in **Delmas Agency Ghana Ltd v Food Distributors International Ltd. [2007-2008] SCGLR 748** held that:

“General damages is such as the law will presume to be the natural or probable consequence of the defendant’s act. It arises by inference of the law and therefore need not be proved by evidence. The law implies general damage in every infringement of an absolute right. The catch is that only nominal damages are awarded. Where the plaintiff has suffered a properly quantifiable loss, he must plead specifically his loss and prove it strictly. If he does not, he is not entitled to anything unless general damages are also appropriate.”

18. In this instant case, what then the defendant is entitled to by way of general damages is for the court to award a reasonable sum, which I assess at GHS3,000.00.

19. Lastly, since the Mercedes-Benz was used as collateral, the plaintiff is entitled to recover it after the judgment debt is paid. The defendant, however, shall not be entitled to a refund of the maintenance since it was not part of his counterclaim or part of the agreement, Exhibit A. Moreso, he was expected to hold the collateral and not use it, let alone had to fix it.

## CONCLUSION

20. In effect, I hereby enter judgment in favour of the defendant as follows:

- a. The plaintiff to pay GHS15,500.00 being the amount owed.
- b. Interest on the GHS15,500.00 at the prevailing bank rate from the date of this judgment till date of final payment.
- c. Damages for breach of contract assessed at GHS3,000.00.
- d. Costs is assessed at GHS2,000.00.

- e. Plaintiff is, however, entitled to pick his vehicle after payment of the judgment debt.

**H/W D. ANNAN**

**[MAGISTRATE]**

SLYVESTER ISANG ESQ. FOR THE PLAINTIFF

SHEIKH-ARIF ABDULLAH ESQ. FOR THE DEFENDANT

References:

1. ss. 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. *Royal Dutch Airlines (KLM) v. Farmex* [1989-90] 2 GLR 623
6. *Merchant Bank v Ghana Primewood Ltd* [1989-1990] 2 GLR 551
7. *Butt v Chapel Hill Properties* [2003-2004] 1 SCGLR 626
8. *Delmas Agency Ghana Ltd v Food Distributors International Ltd.* [2007-2008] SCGLR 748
9. *Rule 1 of CI 52 of the Court (Award of Interest and Post Judgment Interest) Rules, 2005*