

**IN THE DISTRICT COURT 2, TAMALE
HELD ON THURSDAY 6TH APRIL, 2023
BEFORE HIS WORSHIP D. ANNAN ESQ.**

SUIT NO. A2/40/23

BETWEEN

TAMALE COMMUNITY CO-OP. CREDIT UNION LTD. - PLAINTIFF

AND

**MOHAMMED SADIA -
DEFENDANT**

JUDGMENT

INTRODUCTION

1. This judgment relates to recovery of loan.

2. The plaintiff is a credit union and it instituted this action through its Manager, Mr. Emmanuel Amoka Akaare. The defendant is described as an beneficiary of a loan facility from the plaintiff. On 23th January, 2023 the plaintiff took out a writ of summons against the defendant for the following reliefs:

- a. Recovery of the sum of GHS9,624.89 being the defendant's total indebtedness to plaintiff as at 10th December, 2022 to which defendant has failed, refused or neglected to pay in spite of several demands.
 - d. Costs.
3. On 31st January, 2023 the defendant pleaded not liable to plaintiff's claim saying that the money she took was not a loan but a facility granted her by an NGO. The parties were encouraged to settle, but they returned that they were unable to settle. Parties filed their respective witness statements.
4. The respective cases of the parties herein are detailed below.

PLAINTIFF'S CASE

5. Plaintiff's witness, Mr. Akaare testified to the effect that the defendant took a loan of GHS7,000.00 since 10th December, 2020 and was to complete payment on 10th December, 2022. However, the defendant has failed to make payment, bringing the total debt to GH9,624.89 as at 10th December, 2022. The interest amount being GHS2,624.89 over the period. Plaintiff contended that loan was granted to the defendant under a German Sparkassen Foundation for International Cooperation (DSIK) programme in collaboration with African Development Organisation for Migration (AFDOM). The said programme is aimed at minimizing all forms of migration particularly within the newly created regions of Ghana. The programme, therefore, trains, coaches and supports participants from moving out of their regions. The participants who are found to eligible to have their own businesses are then granted loans and to pay back the loan under a flexible system. Hence, the plaintiff was to help with the Northern Region sector in giving out the said loans. According to plaintiff, it as a result of this programme that the defendant qualified for a loan

facility. Plaintiff maintained that the defendant being well aware that it was a loan now has assumed not pay the debt unless compelled by this court. Plaintiff tendered in evidence the below exhibits (in ascending order as to the date it was executed):

Exhibit C – Loan Appraisal Form for GHS7,000.00 by the defendant dated 31/08/20.

Exhibit D – Loan Application by defendant dated 8/10/20

Exhibit B – Credit Risk Management Assessment: Short Application by defendant dated 8/10/20

Exhibit E – Loan Agreement and Acceptance Form for the defendant dated 8/10/20

Exhibit F – Loan Repayment Schedule for the Defendant.

Exhibit H – Notice to Credit Unions participating in the migration project, dated 6/7/21

Exhibit A – An email to plaintiff regarding the beneficiaries of the migration project dated 28/09/21.

Exhibit G – Demand notice from the Plaintiff dated 21/2/22

DEFENDANT'S CASE

6. Defendant, on her part, testified that the money she took was a facility granted under the DSIK programme and was not intended as a loan. She explained that she participated in the two weeks training in Accra and Tamale. After the training, she was told to open an account with the plaintiff. To her, the rationale was for the participants to be given money to boost their businesses. So in 2021, she was contacted by plaintiff that she was to benefit an amount of GHS7,000.00. Defendant explained that she was made to sign the document in order to receive the money. She contended that she could not read or write and that the plaintiff's witness of Exhibit E did not explain the documents to her before she signed. She contended further that she was

only given GHS6,400.00 and not GHS7,000.00. She averred that in 2022 the plaintiff's witness and his staff visited her several times demanding for the money. She stated that she was surprised at the demands of the plaintiff, because to her the money was a grant but not a loan. She added that on 20th December, 2022 the plaintiff's witness and three others assaulted her over this issue and the matter is presently before this court. She maintained that she did not apply for any loan from the plaintiff.

COURT WITNESS

7. With defendant contending that the facility was not a loan and also that the loan documents were not explained to her before signing, the court subpoenaed the director of AFDOM, Mr. Mukala Aminu, known to both parties to assist the court with whether the monies given to the participants were grants or loans under the programme. I shall deal with the details of the evidence of the said court witness later in this judgment.

ISSUES FOR DETERMINATION

8. The only issue borne out of the facts is *whether or not the defendant took a loan from the plaintiff?*

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 for determination is *whether or not the defendant took a loan from the plaintiff?* It is trite law that parties are bound by their agreement, as long as the agreement is not contrary to law. In the case, **Oppong v Anarfi [2011] 2 SCGLR 556**, the Supreme Court held that a person of full age and understanding is bound by his signature. The court stated:

"It is therefore settled that a party of full age and understanding would normally be bound by his signature whether he reads, understands it or not particularly in the absence of the requisite evidence that the other party misled him."

12. In the case, **Amankwanor v Asare [1966] GLR 598**, the court held that, "when an illiterate executes a document, there is no presumption that he has appreciated the meaning and effect of it. The onus of proving that he has appreciated the meaning and effect of the document is upon the party seeking to bind the illiterate to the terms of the document. Since the plaintiff's first witness was admittedly illiterate, to bind him with exhibit A, a document obviously prepared in the English language, *the onus lay upon the defendant to establish that it had in fact been properly explained and interpreted to him so as to make him understand its real import.*" The court in **Zabrama v Segbedzi [1991] 2 GLR 221** also held that, "If after assessing all the available evidence it was

satisfied, upon the preponderance of the evidence, that the document was read and explained to the illiterate person, then the burden of proof would have been discharged by the person relying on the document. That was because, just as it was bad to hold an illiterate to a bargain he would otherwise not have entered into if he fully appreciated it, so also was it equally bad to permit a person to avoid a bargain properly and voluntarily entered into by him under the guise of illiteracy.” In **Doudo v Adomako & Anor. [2012] 1 SCGLR 198**, the Supreme Court similarly held that, “the law will not allow a party to use his illiteracy as a cloak to perpetuate fraud, if he fully appreciated the contents of a document before executing it.”

13. From the evidence, plaintiff maintained the defendant is well aware that the money was a loan and not a grant. Plaintiff witness explained that the loan documents were explained to the defendant in Dagbani language before she appended her signature. Defendant contended that indeed she signed it but the documents were not explained before she signed. To her, the money she took was a grant but not a loan. Below is an extract of defendant being cross-examined:

“Q: An amount of GHS7,000.00 was granted to you, you signed Exhibit E, a loan agreement and acceptance form for a period of 24months?

A: That is not true, because you cannot take money from a bank without signing, so I signed. But the money is not up to GHS7,000.00. It was around GHS6,000.00 plus. Plaintiff company told me there were some deductions.

....

Q: Your signature for the applications on the loan forms are all consistent and that is your signature?

A: As for the signing I did sign. But I know that I have to sign before taking money from the bank. I was not told the reason for signing.

...

Q: You were called to my office sometime in 2021 when the AFDOM Director, Alhaji Aminu, the Project Co-ordinator, Susan, and the Training Coach, Felix, all told you that the money given to you was a loan?

A: That is not true.

Q: At the meeting you told us that you had used the money to buy grains and because of your pregnancy, you could not go to the market to sell the grains?

A: I was called and in that meeting Mr. Aminu, Mr. Felix was there. Madam Susan was not there. Rather one Hannah. They wanted to ascertain whether the money given to me, I was doing well with it or used it well. That was why I gave them that response.

...

Q: On 10/08/20 through the appraisal conducted, our partners together agreed that an amount of GHS7,000.00 be given to you as a loan.

A: That is not true.

Q: I personally showed you that appraisal, Exhibit C, after the assessment, I am putting it to you?

A: That is not true. It was only a cheque."

14. The above issue was clarified by the court witness, Mr. Mukala Aminu, when he was asked the below question:

“Q: So the money that was given to the applicant, is it a loan or a grant not to be repaid?”

A: It is a loan to be paid back by the applicant at an interest rate determined by the credit union.”

15. Clearly from the above, there is no doubt that the defendant took the facility as a loan. I also find from the evidence that not only did the defendant take the loan, but was made to open an account to put money into same for the repayment of the loan. When asked about the account details and booklet, defendant retorted that she cannot remember and also that the booklet cannot be traced.

16. On the totality of the evidence, I find that the plaintiff has led sufficient evidence in proof that the defendant understood the nature of the transaction before appending her signature. The law will, therefore, not allow the defendant to rely on her illiteracy as a cloak to avoid liability, see **Doudo v Adomako & Anor. (supra)**. In brief, I find that the defendant took the GHS7,000.00 as a loan and I so hold.

17. Regarding the interest to be paid, the court 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..."

18. From the evidence, the interest stated on the Exhibit E reads 3% per month. In effect, the said interest (at 36% per annum) shall be applicable from 10th December, 2020 till date of final payment. The plaintiff shall maintain the Reducing Principal Balance Method with regard to the repayment.

CONCLUSION

19. In effect, I hereby enter judgment in favour of the plaintiff for the following:

- a. Recovery the amount of GHS7,000.00 given to the defendant as a loan facility from 10th December, 2020.
- b. The defendant to pay interest on the said amount at the rate of 36% on Reducing Principal Balance Method from 10th December, 2020 till date of final payment.
- c. Costs assessed at GHS1,500.00.

H/W D. ANNAN ESQ.

[MAGISTRATE]

References:

1. *ss. 11(4), 12(1) & (2) and 14 of the Evidence Act, 1975 (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. *Oppong v Anarfi* [2011] 2 SCGLR 556
6. *Amankwanor v Asare* [1966] GLR 598
7. *Zabrama v Segbedzi* [1991] 2 GLR 221
8. *Doudo v Adomako & Anor.* [2012] 1 SCGLR 198
9. *Butt v Chapel Hill Properties* [2003-2004] 1 SCGLR 626