

IN THE CIRCUIT COURT DUNKWA-ON-OFFIN; SITTING ON 29<sup>TH</sup> MARCH 2023 CORAM:  
HIS HONOUR YAW POKU ACHAMPONG

SUIT NO.: C2/18/2019

*ALEX AGYAKWA*

.....

*PLAINTIFF*

VS

*MR. NKRUMAH*

.....

*DEFENDANT*

Parties present

### JUDGMENT

The parties herein entered into a contract. Subsequently, there were some disagreements between them. By an amended writ of summons filed on 05<sup>th</sup> November 2019, Plaintiff seeks the following reliefs:

- a. Recovery of an amount of Thirteen Thousand Two Hundred Ghana Cedis (GH¢13200.00) being an amount owed Plaintiff by Defendant since November 2018 which Defendant has deliberately refused to pay.
- b. Interest on the said amount.
- c. General Damages.
- d. Costs.

e. Any other orders this court may deem fit.

Defendant counterclaimed as follows:

- (1) An order for the recovery of monthly rents for the period the plaintiff has had possession and control of the machine until he returns the machine to the defendant.
- (2) Damages for breach of the contract of bailment.
- (3) An order for the return of the machine to the defendant forthwith.
- (4) Interest on any sums found due at the prevailing bank lending rate from the date of institution of the instant suit until judgment.

On 08<sup>th</sup> June 2021, Plaintiff filed “MOTION ON NOTICE ON FOR AN ORDER GRANTING THE DETENTION, CUSTODY AND PRESERVATION OF PAPALUPA MACHINE”. The court (differently constituted) granted the application as before my predecessor. The court ruled as follows:

“I have looked the motion as filed by the Applicant and the affidavit in opposition. I have also read through the processes as filed by both parties. It is my ruling that the Papalupa machine which was in the custody of the Plaintiff/Applicant when this case commenced which the Defendant/Respondent went for without the consent of Plaintiff/Applicant and without the order of the Court, which Papalupa machine is in the custody of the Defendant/Respondent, same be brought to this court premises[for] custody, detention and preservation until the final determination of this case in this Court. Defendant/Respondent is hereby ordered to produce the said Papalupa machine at the Court premises here on or before 8<sup>th</sup> October, 2021.

Plaintiff/Applicant who has custody of the saw to this Papalupa machine, is hereby ordered to produce the said saw to the Court premises for custody and preservation on or before the 8<sup>th</sup> of October 2021. Both parties are to report the production of these

machine and its parts to the Registrar of this Court on the day they so produce them in this Court.”

On 06<sup>th</sup> September 2022, Defendant filed “MOTION ON NOTICE FOR THE RELEASE OF IMPOUNDED PAPALUPA MACHINE TO DEFENDANT APPLICANT HEREIN”.

Upon hearing that motion i.e. the motion filed on 06<sup>th</sup> September 2022, I ordered as follows:

“In the circumstances, I order that the said saw milling machine be still kept in the custody of the Court but Defendant be made to have access to it to run his business of hiring it out. Whenever Defendant seeks to hire it out, a contractual agreement will have to be prepared to that effect and the Registrar of this Court and the most senior judicial service bailiff with this Court will be witnesses. The machine will then be returned to the Court after the contract has been executed. Defendant will be given half of the proceeds of hiring out the machine and half will be paid into court in an interest yielding bank account until the final determination of the case. See Order 18 of CI 47. Copies of the documentation on the above should be in the docket of this case. The successful party in this suit will be entitled to the monies paid into Court or part thereof as regards the above order as the situation will demand.

Having said the foregoing, I order for early trial in accordance with Order 25 rule 5(1) of CI 47 in respect of the rest of the hearing of this case.

Therefore, as from today, the case will be heard, as much as possible, on a day to day basis.”

Thus, relief 3 of the counterclaim is moot.

A contract is defined in *Black’s Law Dictionary* 11<sup>th</sup> edition, 2019. *inter alia*, as:

*“An agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law.”*

### PLAINTIFF'S CASE

Somewhere in October 2018, Plaintiff asked Defendant to show him somebody who could rent out a machine known as *papalupa* to him(Plaintiff). Defendant then told Plaintiff that Plaintiff could use his(Defendant's) papalupa machine at a hiring rate of One Thousand Two Hundred Ghana Cedis(GH¢1200.00) per month. Defendant further told Plaintiff that the machine was faulty and so he(Defendant) would need One Thousand Ghana Cedis(GH¢1000.00) to service it. Defendant then asked Plaintiff to get in touch with Defendant's mechanic called Issac and send Issac the money necessary for the servicing of the machine. Issac inspected the machine and informed the parties herein that there was the need to upgrade the machine at an additional cost of Three Thousand Five Hundren Ghana Cedis(GH¢3500.00). Plaintiff purchased the necessary items for the machine but discovered that all the additional parts that Defendant promised to purchase to service the machine had not been bought. Plaintiff then brought forth an additional amount of money for the repair of the machine to bring the total amount he had advanced towards the repair of the machine, then, to seven thousand four hundred Ghana Cedis(GH¢7400.00). At this point, the parties signed an agreement in respect of the money Plaintiff had advanced. Plaintiff tendered in evidence a document to that effect. It was admitted in evidence and marked by the Court as Exhibit A(on 28<sup>th</sup> June 2022). The following is the content of Exhibit A:

#### "AGREEMENT OF RENTING MACHINE(PAPALUPA MACHINE)

An agreement made the .....day of .....Two Thousand and .....(20.....)[Nothing was in those spaces] Between MR. NRUMAH(hereinafter) called "The owner and ALEX AGYARKWA (hereinafter called the RENTER) ALEX AGYARKWA have[sic] paid an amount of Seven Thousand, Four Hundred Ghana Cedis to MR. NKRUMAH (Owner) to repair machine before renting the machine and it is agreed that ALEX AGYARKWA will used[sic] the machine for a period of Seven Months to defray the cost.

WHEREBY IT IS AGREED AS FOLLOWS:-

1. The Renter has to inform the owner in case of not using the machine for over one month to enable the owner to terminate the counting of monthly fee.
2. The Renter has to inform the owner in case of light off for over one week within a month to enable the owner to deduct from monthly days[sic].
3. The owner has to refund the balance of rent to the Renter in case of taking the machine back.
4. In case of breakdown of machine it is the responsibility of the owner to repair the three(3) motors of the machine.

SIGNED

.....

MR. NKRUMAH

(OWNER)

SIGNED

.....

ALEX AGYARKWA

(RENTER)

WITNESSES

[NIL]

.....

[NIL]

.....

DATED AT DUNKWA-ON-OFFIN

THIS [NIL] DAY OF [NIL] 2018

BEFORE ME

COMMISSIONER FOR OATHS

[No endorsement by any commissioner for oaths or an registrar of any court of law]"

That just as the repair works were completed and the said machine was to be started, it was discovered that two(2) of the three(3) motors which ran the machine were not functioning. Plaintiff was reluctant to advance any more money for repair works on the machine and he informed Issac about that telling him that it was Defendant's responsibility to handle the issues arising from two(2) of the three(3) motors not functioning. Defendant said he was not in the position to handle that. Issac gave a caution that the amount of money that had been advanced towards the repair of the machine would be wasted if the machine was not repaired fully. With the consent of Defendant and assurance that he would repay the money, Plaintiff coughed out(to use his *ipsissima verba*) an additional money of four thousand five hundred Ghana Cedis(GH¢4500.00) to purchase two(2) motors of the machine bringing his expenses on the machine to eleven thousand nine hundred Ghana Cedis(GH¢11900.00). Afterwards, the machine got into operation and it could saw a log which was placed on it in a horizontal cutting position. When a bigger timber was placed on the machine for sawing, the bigger log could not be processed in a vertical and diagonal cutting position contrary to the machine's normal functioning abilities. Defendant subsequently sought the assistance of a local mechanic at Dunkwa-On-Offin for the repair works since Issac lived far away and his coming to Dunkwa-On-Offin to and fro would raise the cost of the repair works. Plaintiff again brought additional money of two thousand five hundred Ghana cedis(GH¢2500.00) on board for the repair works of the machine at the request of Defendant before the machine could properly function bringing Plaintiff's total expenditure on the machine to fourteen thousand four hundred Ghana cedis(GH¢14400.00). Plaintiff used the said machine for only one month after which he notified Defendant that he was no longer using the said machine and so Defendant should come over so that the parties could go into account to enable Defendant take custody of his machine and reimburse Plaintiff with the difference in the amount of money due Plaintiff. Defendant had ever since Plaintiff reached out to him to come over, refused to avail himself for the accounts to be done for Plaintiff to be paid his difference so that Defendant would take his machine away. Plaintiff submitted that he had spent a total of

GH¢14400.00 on Defendant's said saw milling machine being the cost he(Plaintiff) incurred on the machine to make it function. Plaintiff acknowledge using the machine for a period of one month and therefore at the rate of GH¢1200.00 per month as agreed to by the parties, Plaintiff should pay GH¢1200.00 to Defendant for the use of the machine. Therefore Defendant's indebtedness to Plaintiff is  $14400 - 1200 = 13200$ . Plaintiff therefore prayed the court for the reliefs endorsed on the writ of summons and statement of claim.

Plaintiff whilst testifying tendered in evidence two additional documents – Exhibit B and Exhibit C herein. According to Plaintiff, Exhibit B is about the GH¢4500.00 he referred to in his evidence-in-chief and Exhibit C is about the GH¢2500.00.

Exhibit B has the following content:

"18<sup>TH</sup> OCTOBER, 2018

EXPENSES FOR PAPALUPA

• 20 HORSE POWER MOTOR	GH¢ 2,000.00
• GYIA MOTOR	GH¢ 1000.00
• POWER DRIVE WIRE	GH¢ 300.00
• T/T FROM NKAUKAW TO DUNKWA	GH¢ 160.00
• U-IRON FOR MOTOR SEAT	GH¢ 320.00
• ROD 1 PACKET	GH¢ 20.00
• TAXI FROM DUNKWA TO KWAKUDUM	GH¢ IN/OUT
• 3 DAYS	GH¢ 300.00
• WEATHER WORKMANSHIP	GH¢ 400.00
• TOTAL =	GH¢ 4,500.00

YAW KYERE"

It is purportedly signed by one Yaw Kyere.

The following is the content of Exhibit C:

“EXPENSES FOR PAPALUPA

24<sup>TH</sup> NOVEMBER, 2018

	GH¢
◆ Chain block left	- 350.00
◆ Chain block right	- 350.00
◆ Driving Gear Line	- 150.00
◆ U-iron	- 350.00
◆ Rod (1 packet)	- 20.00
◆ Taxi from Dunkwa to Kwakudum (2days)	- 200.00
◆ T&T to Kumasi to Dunkwa in and out	- 80.00
◆ Main Switch	- 300.00
◆ Welder	- 200.00
◆ Workmanship	- 500.00
	<hr/>
TOTAL	2500.00

Sign.....

Razak Mohammed”

It is signed by a certain Razak Mohammed.

DEFENDANT’S CASE

On 25<sup>th</sup> July 2018, Plaintiff came to Defendant’s sawmill at Denkyira Asikuma with the mission of coming to cut his(Plaintiff’s) logs into lumber. Plaintiff then requested to hire Defendant’s bush mill and take it to his(Plaintiff’s) sawmill at Kwakudum near Ayaase. Defendant agreed to hire out the said bush mill to Plaintiff but he told Plaintiff at that time



that the bush mill had a big saw in it and that Plaintiff had to replace the big saw with a smaller one before Plaintiff could operate Defendant's bush mill. Defendant further told Plaintiff that he had a mechanic called Isaac[emphasis supplied] who could replace the big saw with a small one. Plaintiff asked Defendant to call his said mechanic for him and he did so. The mechanic estimated the cost of replacing the big saw with a small one at the cost six thousand eight hundred Ghana cedis(GH¢6800.00). Plaintiff, after taking the bush mill to his sawmill told Defendant that one of the motors in the bush mill was not functioning and so he had bought a new motor at the cost of two thousand Ghana cedis(GH¢2000.00). Plaintiff then told Defendant to show him receipts of payment in respect of the parts of the machine he had bought to fix the bush mill but Plaintiff did not provide him with any such receipts. The agreement between the parties started its journey in or around October, 2018. Three months after Plaintiff had sent the bush mill to his sawmill, Defendant went to Plaintiff's sawmill and saw that the bush mill was working in Plaintiff's sawmill but Plaintiff was not there. The machine was then in the control of a certain woman who had been engaged by Plaintiff. The agreement which was entered into via phone call provided that Plaintiff would hire the bush mill at GH¢1200.00 per month. It was also agreed that the cost of fixing minor faults in the machine would be born by Plaintiff while major faults would be fixed by Defendant. The parties also agreed that if there was any fault whatsoever within the first two weeks, that would not be counted as the machine having worked but beyond two weeks, it would be counted as the machine had worked.

Defendant subsequently left for Ivory Coast for about six(6)months and did not hear from Plaintiff but Plaintiff called him on phone the day before Defendant returned to Ghana. On Defendant's arrival in Ghana, Plaintiff came to him in the company of a court bailiff and Defendant was served with the instant court summons. It is the case of Defendant that Plaintiff is not entitled to the reliefs he is seeking before the court. Defendant prayed the court to enter judgment in his favour for what Defendant claimed was the twenty-one(21)months that his bush mill was with Plaintiff and all his counterclaim.

## ANALYSIS

Kpegah J.A. (as he then was) in *Zabrama v. Segbedzi* [1991] 2 GLR 221 @ 246 stated as regards proof in law that:

*“... a person who makes an averment or assertion, which is denied by his opponent, has a burden to establish that his averment or assertion is true, and he does not discharge this burden unless he leads admissible and credible evidence from which the fact or facts he asserts can safely be inferred. The nature of each averment or assertion determines the degree and nature of the burden.”*

Earlier in time Abban J (as he then was) stated the following in *Baah Ltd v. Saleh Brothers*[1971] 1GLR 119:

*“It can therefore be seen that, on the whole, the plaintiffs simply put forward allegations of indebtedness in their statement of claim and repeated the same before the referee. It is well established that where a party makes an averment in his pleadings and it is denied, that averment cannot be sufficiently proved by just mounting the witness-box and reciting that averment on oath without adducing some sort of corroborative evidence. When delivering his judgment in the case of *Majolagbe v. Larbi* [1959] G.L.R. 190, Ollennu J. (as he then was) at page 192 had this to say:*

*“Here I may repeat what I stated in the case of *Khoury and Anor. v. Richter* on this question of proof. That judgment was delivered on the 8th December, 1958, and the passage in question is as follows: - ‘Proof in law is the establishment of facts by proper legal means. Where a party makes an averment capable of proof in some positive way, e.g. by producing documents, description of things, reference to other facts, instances, or circumstances, and his averment is denied, he does not prove it by merely going into the witness-box and repeating that averment on oath, or having it repeated on*

*oath by his witness. He proves it by producing other evidence of facts and circumstances, from which the Court can be satisfied that what he avers is true'."*

*This opinion of the law was not only approved but also stressed by the Court of Appeal in its judgment in the case of Norgah v. Quartey, Court of Appeal, 15 May 1967, unreported; digested in (1967) C.C. 115.*

*In these circumstances, I am unable to say that the plaintiffs are entitled to the relief sought on the evidence before the referee. The evidence is not sufficient to satisfy the mind and the conscience of any reasonable referee and for that matter any reasonable judge so as to convince him to venture to act upon that conviction in favour of the plaintiffs. The referee was therefore justified in recommending that the plaintiffs' claim should be disallowed."*

The name of the game is evidence as the saying goes. It is for nothing that a scale is used to represent justice delivery especially in civil cases. One puts his weights(evidence) on one side and the other puts his weights(evidence) on the other side. Where the scale tilts to i.e. the side whose evidence is convincing wins the case. The evidence put on the scale should not be just any evidence but credible evidence.

Section 80 of NRCD 323 states:

- (1) Except as otherwise provided by this Decree, the court or jury may, in determining the credibility of a witness, consider any matter that is relevant to prove or disprove the truthfulness of his testimony at the trial.*
- (2) Matters which may be relevant to the determination of the credibility of the witness include, but are not limited to the following:*
- (a) the demeanour of the witness;*
  - (b) the substance of the testimony;*
  - (c) the existence or non-existence of any fact testified to by the witness;*
  - (d) the capacity and opportunity of the witness to perceive, recollect or relate any matter about which he testifies;*

- (e) *the existence or non-existence of bias, interest or other motive;*
- (f) *the character of the witness as to traits of honesty or truthfulness or their opposites;*
- (g) *a statement or conduct which is consistent or inconsistent with the testimony of the witness*  
*at the trial;*
- (h) *the statement of the witness admitting untruthfulness or asserting truthfulness.*

In *Ntiri v. Essien* [2001-2002] SCGLR 451, it was held by the court that the trial judge has the duty to ascertain credibility of a witness.

Section 12 of the *Evidence Act* states:

- (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.*

In cross-examination of Plaintiff by Defendant, the following, *inter alia*, transpired:

- Q. Apart from the GH¢4500.00 referred to in Exhibit B did I take any money from you.
- A. Yes. Before I took the machine from you, you and a mechanic called Jah Bless made me pay GH¢7800.00 which amount you and that mechanic claimed was meant for the maintenance of the said machine.
- Q. Did you pay the money by cheque or by cash or by mobile money.
- A. Cash. It was rather GH¢7400.00 and not GH¢7800.00.
- Q. I put it to you that you have never paid GH¢7400.00 to me.
- A. You brought the mechanic I requested and he made the estimates and I paid the GH¢7400.00 in the presence of that mechanic and you signed the agreement document i.e. Exhibit A to acknowledge receipt of the GH¢7400.00.

Q. I put it to you that the signature on Exhibit A which you are attributing to me is not my signature and I did not reach any such agreement with you.

A. We entered into that agreement and I paid the money to you in the presence of the said mechanic and you signed that agreement document.

Q. I put it to you that I did not request GH¢2500.00 from you as you have stated in paragraph 18 of your witness statement.

A. You did not tell me specifically to give you GH¢2500.00 but after we entered into the agreement as in Exhibit A, you told your mechanic that you did not have any money to carry out further repair works on the machine and so I should use my money i.e. GH¢2500.00 to do that so it is not the case that I gave you the GH¢2500.00 directly.

Q. Do you remember we sat down to deliberate about the renting and the repairs of the machine and I told you that until I saw receipts covering the parts you said you had bought and the expenses you said you had made, I would not accept any such indebtedness.

A. It is not so.

Q. I put it to you that it is not my mechanic that carried out repair works on the machine amounting to GH¢2500.00 as you want the Court to believe.

A. It is true. But it was upon the advice of your own mechanic that a certain mechanic called Razak did the work in order to beat down costs as your mechanic would have to come from Nkawkaw and there would be costs on hotel accommodation and others.

Q. Did you inform me about that.

A. No.

Q. Why didn't you inform me about that.

A. You told me that any repair works about the machine I should inform your mechanic about it and I informed your mechanic about that and he gave me instruction that I should fall on another mechanic called Razak and I followed that.

Q. I put it to you that you have never given me any receipt showing the expenses you say you have made on my machine.

A. It is true. But you and your mechanic always came to me to collect various sums of money for the repairs of the machine and the purchase of the parts to replace the damaged parts of the machine. You and your mechanic were responsible for the purchases and the repairs. You and your mechanic only gave me estimates. All that I did was to provide the money. So I wouldn't know how much money you spent on which repair or which part. I therefore do not have any receipts on that.

Q. I put it to you that I handed over the machine to you and so you were the one responsible for the repairs of the machine; you never gave any money to me in respect of the repair works of the machine.

A. It is not true.

Q. I put it to you that all that I owe you is GH¢4500.00.

A. It is NOT true. You owe me more than that.

In cross-examination of Defendant by Plaintiff, the following, *inter alia*, came up:

...

Q. Did I and you sign a document in respect of the business that has brought about this suit.

A. No.

Q. Look at Exhibit A. Did you sign the document Exhibit A.

A. The signature with Mr. Nkrumah written under it looks like my signature but I didn't sign it.

Q. In Exhibit A, you agreed to pay Seven Thousand Four Hundred Ghana Cedis (GH¢7400.00) as money that was used for the repair of the machine.

A. Yes.

Q. Look at Exhibit B. Do you remember that you accepted to pay the GH¢4500.00 as mentioned in Exhibit B.

A. No.

Q. I put it you that you accepted to pay the GH¢4500.00 in Exhibit B.

A. It is not true.

Q. I put it to you that the GH¢6800.00 you stated in paragraph 8 of your witness statement is not so; rather, it should be GH¢7400.00.

A. The cost of replacing the big saw with the small saw was GH¢6800.00 but additional repair works were done which raised the cost of replacement of the big saw with the small saw to GH¢10500.00.

Q. It is not true that I told you that I bought a new motor at the cost of GH¢2000.00 as you have stated in paragraph 10 of your witness statement.

A. It is true that you told me that you bought a motor at the cost of GH¢2000.00.

Q. I put it to you that I and your mechanic bought two motors which were fixed in the machine and I and your mechanic also bought some other gadgets for the machine and a total GH¢4500.00 was used to buy two motors and the said gadgets.

A. It is not true.

Q. Look at Exhibit B. Are there any of the items that were not bought. Tell the Court.

A) The 20 Horse power motor is a repetition because same was captured in the GH¢7400.00 in Exhibit A. All the remaining items in Exhibit B are repetitions; they are all captured in the GH¢7400.00 mentioned in Exhibit A.

Q. Are you telling the Court that the total of the amount of money mentioned in Exhibit A and the total amount of money mentioned in Exhibit B sum up to GH¢10500.00.

A. Yes.

Q. I put it to you that you are not telling the Court the truth.

A. That is not so. I am speaking the truth.

Q. I put it to you that the total will be GH¢11900.00 and not GH¢10500.00 as you want the Court to believe.

A. It is not true.

Q. Do you remember that the machine was repaired and when we were testing it that it was realized that two motors in the machine were not functioning.

A. During the repair of the machine my mechanic replaced the Gyia motor and when he was testing the machine he realized that the 20 Horse power motor was not functioning.

Q. I put it to you that there is nothing as regards the GH¢7400.00 in Exhibit A that is repeated in Exhibit B in respect of the GH¢4500.00.

A. It is not true.

Q. As regards what is stated in paragraph 11 of your witness statement, I put it to you that I didn't buy the motor and other parts of the machine; I gave you and your mechanic money and you and your mechanic went to buy those items and so I was not the one to give you receipts.

A. It is not true. You and my mechanic went to buy those items.

Q. What agreement are you referring to in paragraph 12 of your witness statement that you and I had and which took effect from October 2018.

A. The agreement was about me renting out my machine to you at GH¢1200.00 per month and agreeing with you to repair the machine and use the said machine to work to defray the cost of renting it and you took the machine from me in or around October 2018.

Q. I put it to you that the agreement as in Exhibit A was not conclusive. We agreed the machine would be tested after it had been repaired and that if it functioned properly then a date would be put on the agreement document Exhibit A.

A. It is not true.



Q. I put it to you that when you came to my saw mill and you saw the machine working as you stated in paragraph 13 of your witness statement, that was when the machine had worked after it had been repaired and that was in December 2018.

A. It is not true.

Q. Do you remember that your mechanic called you and told you that he had finished repairing the machine and so you should come to it sawmill to see it working.

A. No.

Q. I put it to you that I am entitled to my reliefs as before the Court.

A) You are not entitled to your reliefs.

Q) I put it to you that you are not entitled to payment for 21 months as you claim in paragraph 21 of your witness statement.

A) I am entitled.

...

The issues that come up for determination after the full trial are:

1. Whether or not Exhibit A is a contractual document between the parties.
2. Whether or not Defendant consented to any spending on the machine by Plaintiff as regards any amount exceeding GH¢6800.00.
3. Whether or not defendant owes Plaintiff GH¢13200.00
4. Whether or not Defendant is entitled to monthly rent at GH¢1200.00 for 21 months.
5. Whether or not Plaintiff worked with the machine for only one month.

Section 10(1) of NRCD 323 defines “Burden of Persuasion” and it states:

*For the purposes of this Decree, 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.*

Section 10(2) of the Evidence Act adds that:

*The burden of persuasion may require a party to raise a reasonable doubt concerning the existence or non-existence of a fact or that he establishes the existence or non-existence of a fact by a preponderance of the probabilities or by proof beyond a reasonable doubt.*

Section 11 of NRCD 323 defines “Burden of Producing Evidence”; subsections 1 and 4 state:

*(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.*

Sophia Adinyira JSC in *Ackah v. Pergah Transport Limited and Others* [2010] SCGLR 728; at 736 expatiated on sections 10 and 11 of the Evidence Act as follows:

*“It is a basic principle of the law on evidence that a party who bears the burden of proof is to produce the required evidence of the facts in issue that has the quality of credibility short of which his claim may fail. The method of producing evidence is varied and it includes the testimonies of the party and material witnesses, admissible hearsay, documentary and things (often described as real evidence), without which the party might not succeed to establish the requisite degree of credibility concerning a fact in the mind of the court or tribunal of fact such as a jury. It is trite law that matters that are capable of proof must be proved by producing sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of the fact is more reasonable[sic] than its non-existence. This is a requirement of the law on evidence under sections 10 and 11 of the Evidence Decree[sic].”*

A lot of the controversies in this matter centred around the mechanic of Defendant who Plaintiff calls *Issac* and defendant calls *Isaac*. Plaintiff filed a Witness Statement purportedly

for the said mechanic but Plaintiff failed to produce him to testify. His testimony(if it had materialized) might have eradicated some of the red herrings that reared their heads in the matter as well as other sources of confusion in this matter.

Section 7(1) of the *Evidence Act* states:

*Corroboration consists of evidence from which a reasonable inference can be drawn which confirms in some material particular the evidence to be corroborated and connects the relevant person with the crime, claim or defence.*

Another person whose evidence might have probably proved helpful to the court in settling the dust emanating from the confusion in this matter is the said Razak. He too, Plaintiff filed a Witness Statement purportedly for him(the said Razak) but he did not appear to testify.

Plaintiff's failure to inject his evidence with corroborative evidence, though he set on the right course by filing Witness Statements of some other potential witnesses, is detrimental to his burden of persuasion. See section 10 of the *Evidence Act* supra.

In *Barimah Gyamfi v. Ama Badu* [1963] 2GLR 596 @ 598, Ollennu JSC stated:

*"It must be observed from the outset that there is no onus upon the defendant to disprove a claim made by a plaintiff, so that, however, conflicting or unsatisfactory his evidence may be, the same cannot avail the plaintiff; evidence given by the defence only becomes important in a case either where it can upset the balance of probabilities which the plaintiff's evidence might have created in the plaintiff's favour, or where it tends to corroborate evidence of the plaintiff, or tends to show that evidence led on behalf of the plaintiff is true."*

As Defendant is also a counterclaimant, the principle in the decided case just above mentioned applies to him just as it applies to Plaintiff.

Lord Halsbury LC in *In re Jodrell; Jodrell v. Seale* (1890) 44Ch D 590 stated as follows:

*'I am called upon to express an opinion on what is the meaning of this written instrument... For myself, I am prepared to look at the instrument such as it is; to see the language that is used in it; to look at the whole of the document, and not part of it; and having looked at the whole of the document, to see (if I can) through the instrument what was the mind of the testator.'*

Aharon Barak in his book, *Purposive Interpretation in Law* (Princeton University Press 2007) page 329, explains the rationale behind the above principle as follows:

*"As I noted in one case: 'A contract is an integrative framework. Its different parts are entwined and intermingled. Its various branches influence each other. In interpreting a contract, a judge should, on the one hand, view it holistically, as a whole, but on the other hand, evaluate the connections between its various provision, as part of the attempt to formulate the parties' joint intent'"*

The learned author also referred to the case of *"Ata" Textile Co v. Estate of Zotolov*, CA 554/83,41 (1) PD 282, 305

In the case of *Yorkwa v. Duah* (1992 – 1993) GBLR 278 it was held that "wherever there was in existence a written document and oral evidence over a transaction, the practice in the court was to lean favourably towards the documentary evidence". In the same way where a party is unable to produce documentary evidence in support of his case and his adversary does, the Court would lean in favour of the party who produces documentary evidence in support of his case.

Also in *Fosua and Adu v. Dufie(Deceased) v. Adu-Poku* (2009) SCGLR 310, it was held that "it is settled law that documentary evidence should prevail over oral evidence. Thus where documents supported one party's case against the other, the court should lean towards documentary evidence."

In the instant case, Plaintiff in seeking to prove his case tendered in evidence three documents. They were admitted in evidence and marked Exhibit A, Exhibit B and Exhibit C. Exhibit A does not give date on which it was made. No witnesses signed the document. It is not for nothing that witnesses are necessary in regard to the preparation of an agreement document. Defendants says the signature looks like his but says that the signature is not his. By ocular observation of the signature attributed to Defendant on Exhibit A, it looks like his signature on some other processes Defendant has filed before this court in this case. A witness to the document might have given testimony as to whether that is the signature of Defendant or not and that might have assisted the court in making a determination as to whether that is the signature of

Defendant or not. The document Exhibit A is rejected as being weightless probatively and hollow. So do I find Exhibit B and Exhibit C.

It does appear to me that Plaintiff acted in good faith in bringing the machine to functionality. The GH¢13200.00 he is seeking recovery of is special damages he is seeking. But he failed to establish his claim by proper legal means. See Ollennu J's dictum in the *Majolagbe* case *supra*. I gather from the evidence especially from the cross-examination of Defendant by Plaintiff that it is reasonably probable that Plaintiff spent a total of GH¢11900.00 on the repair of the machine. Plaintiff claims that he used the machine for operation for one month. Defendant did not give evidence to challenge that. Defendant did not also establish that Plaintiff used the machine for operation for 21 months. I am inclined to accept Plaintiff's assertion that he used the machine for one month. Therefore, I hold that Plaintiff is entitled to recover the difference of GH¢11900.00 and GH¢1200.00 from Defendant. Defendant is therefore is ordered to pay GH¢10700.00 to Plaintiff with interest at the prevailing bank rate from today till date of final payment. See *Court (Award of Interest & Post Judgement Interest) Rules, 2005*(C.I. 52)

I also hold that for Plaintiff to bring this action, get Defendant's machine seized to prevent him from using same for income, only to fail to prove his case properly by calling the right witnesses and tendering the right documents, Defendant is entitled to general damages.

In the case of *Nicol v. Customs Excise & Preventive Services* [1992] 1GLR 135, CEPS who were the defendants seized and detained plaintiff's multi-purpose vehicle for over two(2) years. Having found the seizure to be oppressive, arbitrary and unconstitutional, Lutterodt J (as she then was) stated in her judgment that:

*"Exemplary damages were awarded when the tortfeasor's conduct was reprehensible and so outrageous that it deserved condemnation, as for example where he was actuated by malice, fraud, cruelty, insolence, brutal show of force or the like..."*

To my mind, Plaintiff having caused the seizure of the machine to prevent Defendant to enjoy the use of it and Plaintiff having failed to establish his claims by proper legal means, is reprehensible.

I hereby award general damages of GH¢10000.00 in favour of Defendant/Counterclaimant against Plaintiff/Defendant to counterclaim.

The GH¢10000.00 so awarded will attract interest at the prevailing bank rate from today till the day of final payment. See C.I. 52 supra

The machine in question is hereby released to Defendant.

I do not find any basis to award costs. Therefore, I make no order as to costs.

(SGD)

HH YAW POKU ACHAMPONG

CIRCUIT COURT JUDGE

29/03/2023

