

IN THE DISTRICT COURT, KADJEBI IN THE OTI REGION OF THE REPUBLIC OF GHANA ON FRIDAY THE 2<sup>ND</sup> DAY OF JUNE, 2023, BEFORE HIS WORSHIP ERIC K. FIAMORDZI ESQ., (MGISTRATE)

SUIT NO.A2/75/2023

NANA AMOAH NYARKO  
SUING FOR AND ON BEHALF OF  
ASATO TRADITIONAL STOOL  
V

PLAINTIFF

GODSWAY ATSUTSE  
OF ASATO

DEFENDANT

### **JUDGMENT**

This judgment stems from a writ of summons issued by the Plaintiff against the Defendant under the District Court Rules, 2009, C I 59, Order 2 rule 3 (6) for the following reliefs.

1. Recovery of cash, the sum of five thousand, three hundred Ghana Cedis (GH¢5,300.00) being the Plaintiff's share of proceeds of cocoa beans the defendant has taken care of on behalf of the Plaintiff.
2. Interest on the said amount of five thousand three hundred Ghana Cedis (¢5,300.00) from the month of October 2022 to date of final payment.
3. Cost.

#### **SUMMARY OF SUBJECT MATTER OF CLAIM.**

Plaintiff is a former District Chief Executive of the Kadjebi District Assembly and Odikro (chief) of Dzamlomey.

The Defendant is a farmer resident at Asato Dzamlomey. Plaintiff says he has taken the action against the defendant for and on behalf of Asato Traditional stool.

The Plaintiff continues that the stool of Asato has a farmland at Asato Dzamlomey and had an agreement with the Defendant's late father to cultivate the said land on 'abunu' tenancy agreement. (ie.) planting cocoa trees and at the end of each cocoa season after the maturity of the cocoa trees after five (5) years, the proceeds would be shared into two equal parts and the Defendant's father takes one part whilst the Plaintiff also takes the other part. The Plaintiff states that the Defendant's father has passed on, and after his demise, the stool per the custodians invited the defendant to discuss the agreement they had with the father and he (defendant) accepted continuing with it but, he has failed to pay the proceeds for 2019 -2020, 2020 - 2021, 2021 - 2022 and 2022 - 2023 cocoa seasons despite persistent demands from the Plaintiff. Wherefore the Plaintiff claims from the Defendant per the endorsement on the writ of summons.

Gleaning from the face of the records, the defendant was initially not seen and served. The Plaintiff filed a motion ex-parte with its accompanying affidavit praying for an order of substituted service by the court. In his affidavit accompanying the motion ex-parte, the Plaintiff stated that the defendant has been within the Asato community but has been evasive. The Plaintiff moved the motion on the 28<sup>th</sup> day of February, 2023. The court granted the application and made an order for the defendant to be served by substituted service.

The order was subsequently drawn and served, and the matter was adjourned to the 29<sup>th</sup> day of March, 2023 to create an opportunity for the defendant to appear and be heard

After a few adjournments, the Plaintiff filed another process seeing that the defendant was in for a prank. This time round, the Plaintiff filed a motion ex-parte with an accompanying affidavit praying the court to enter judgment on the merits of the suit. The motion was moved on the 25<sup>th</sup> day of April, 2023 in open court,

after which the court granted the application. The Plaintiff was thereafter heard on Oath with his evidence in chief.

He relied on all the processes he has filed to establish his case.

According to the Plaintiff, the Defendant's late father, entered into an abunu tenancy agreement with the stool of Asato on a fifteen acres farmland at Dzamlomey But, after the demise of the Defendant's father, when a meeting was held, and after which the defendant had agreed to continue with the agreement reached between his father and the stool of Asato, he (Defendant has reneged on his part of the agreement. He. (Defendant) has since the year 2020 – 2021 cocoa season crop season refused or failed to honor the agreement.

The Plaintiff continued further that all appeals and persuasions made by the stool to help with an amicable solution of the issues have failed because the Defendant has been adamant. The Plaintiff concluded that it is only the court that can help to resolve the issues amicably, hence this action to seek redress, more so, when the agreement has been a verbal agreement.

The issues for the determination of the court are whether or not:

1. An order of this court is to be directed at the defendant to pay the amount of five thousand three hundred Ghana Cedis (GH¢5,300.00) to the Plaintiff, as the share of the Asato Traditional stool.
2. Interest must be paid on the amount of five thousand three hundred Ghana Cedis (GH¢5,300.00) from the month of October, 2022 to the date of final payment.
3. Cost should be awarded in favor of the Plaintiff against the defendant.
4. In the instant suit, the defendant has been granted ample time to try and make it to the court but he has failed to utilize the opportunity to appear and defend himself.

In the classic case of Ashaley Botwe Lands, Adjete Agbosu & ors. V Kotey and ors [2003 – 2004] SGLR 420, 425,-426, Brobbey J.S. C ( as he then was ) summed up the principle in the Evidence Act 1975, NRCD 323 in the following simple and straight forward way:

“.....A litigant who is a Defendant in a civil suit does not need to prove anything; the Plaintiff who took the Defendant to court has to prove what he claims or 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 that determination depends on the evaluation of facts and evidence, the Defendant must realize that the determination cannot be made on nothing..... If the Defendant leads no such evidence or facts, that will induce the determination to be made in his/her favor, the court will be left with no choice but to evaluate the entire case on the basis of the evidence before the court which may be the only evidence of the Plaintiff.”

Clearly, there is no other evidence available to this court other than that of the Plaintiff. As such, I am compelled to make the determination based on the available evidence before me (as a court).

From the evidence before this court, the facts and the law, I hereby enter judgment in favor of the Plaintiff herein against the Defendant.

He (defendant) is hereby ordered to promptly pay the amount due ( ie. GH¢5,300.00) to the Plaintiff.

No order as to interest on the amount involved as the parties did not intend to calculate interest on the amount due as at the time of entering into the agreement. I award a cost of one thousand five hundred Ghana Cedis (GH¢1,500.00) in favor of the Plaintiff against the defendant.

H/W ERIC K. FIAMORDZI ESQ.,

(MAGISTRATE)