

**IN THE DISTRICT COURT HELD AT HALF ASSINI ON TUESDAY THE 6<sup>TH</sup> DAY OF JUNE, 2023. BEFORE HIS WORSHIP WILLIAM OFORI-ABOAGYE.**  
**-MAGISTRATE-**

**SUIT NO. A2/18/20**

**AGARTHA COBBOLD  
OF HALF ASSINI**

} -- - PLAINTIFF

**VRS**

**1. ADJOA  
2. MIEZAH-  
BOTH OF TIKOBO NO. 1**

} - - - DEFENDANTS

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**By Court**

**JUDGEMENT**

**INTRODUCTION:**

This is a judgment in the case where the Plaintiff sued the Defendants jointly and severally for cash the sum of GH¢15,800. The said amount is the cost of rice and cooking oil 1<sup>st</sup> Defendant bought from the Plaintiff but failed to pay upon persistent demand by the Plaintiff. The 2<sup>nd</sup> Defendant was joined to the action since she claimed that he 2<sup>nd</sup> Defendant stood surety or guaranteed for the 1<sup>st</sup> Defendant when the Plaintiff arrested the 1<sup>st</sup> Defendant and wanted to hand her over to the Police in order to get her to pay what she owed to the Plaintiff. The Plaintiff released the 1<sup>st</sup> Defendant upon persistent pleading and assurance of the 2<sup>nd</sup> Defendant that he would see to it that the 1<sup>st</sup> Defendant pays what she owed.

### PLAINTIFF'S CASE:

The Plaintiff herein sued the Defendants jointly and severally for cash the sum of GH¢15,800.00. According to the Plaintiff this is the balance remaining from a total of GH¢23,800 worth of goods supplied to the 1<sup>st</sup> Defendant who promised to pay same but failed. After that the Plaintiff did not hear from the 1<sup>st</sup> Defendant till when luck run out for the 1<sup>st</sup> Defendant and the Plaintiff met her at Tikobo No.1 market. The Plaintiff therefore decided to hand her over to the Police but the 1<sup>st</sup> Defendant called in the 2<sup>nd</sup> Defendant who pleaded with the Plaintiff to let go the 1<sup>st</sup> Defendant and that he would make sure 1<sup>st</sup> Defendant pays the amount in full. According to Plaintiff, 2<sup>nd</sup> Defendant further stated that 1<sup>st</sup> Defendant was put into his (D2) care by the husband. Later, GH¢8,000.00 of the amount was paid to the Plaintiff by 1<sup>st</sup> Defendant through another person, which information was relayed to 2<sup>nd</sup> Defendant by the Plaintiff. That was all the Plaintiff heard of 1<sup>st</sup> Defendant until another time when she (Plaintiff) was able to trace 1<sup>st</sup> Defendant to her house and this time she held her and said until her money was paid in full she was not going to leave her. The Plaintiff stated further that 1<sup>st</sup> Defendant called 2<sup>nd</sup> Defendant in again and like the previous times he prevailed over her to release 1<sup>st</sup> Defendant and promised they were going to pay her in two weeks, which they failed again. When after due diligence the Plaintiff learnt that 1<sup>st</sup> Defendant had left the jurisdiction and that 2<sup>nd</sup> Defendant was also planning to leave the jurisdiction to la Cote D'Ivoire. She applied and was granted an order for Absconding Warrant for the arrest of 2<sup>nd</sup> Defendant on 13-11-19 for which 2<sup>nd</sup> Defendant was granted bail in the sum of GH¢20,000.00 with one surety. With these assurances she (Plaintiff) joined the 2<sup>nd</sup> Defendant in this action.

### 2<sup>ND</sup> DEFENDANT'S CASE:

According to the 2<sup>nd</sup> Defendant, about two (2) years ago, he met both the Plaintiff and 1<sup>st</sup> Defendant in a heated argument at the Tikobo No.1 over an unpaid money owed by the 1<sup>st</sup> Defendant to the Plaintiff. He said the 1<sup>st</sup> Defendant invited him to come to her aid and

pleaded with the Plaintiff for sometimes to enable 1<sup>st</sup> Defendant pay off what she owed. The 2<sup>nd</sup> Defendant stated that he did plead on behalf of the 1<sup>st</sup> Defendant and she was left to go by the Plaintiff. Later the 1<sup>st</sup> Defendant paid GH¢8,000.00 of the said amount to the Plaintiff who did not tell him till he called her to confirm same when the 1<sup>st</sup> Defendant inform him of it. He denied the fact that he stood as a guarantor for the 1<sup>st</sup> Defendant and therefore he is not liable for the balance. He also denied ever meeting Plaintiff.

#### PLAINTIFF'S EVIDENCE:

The Plaintiff gave evidence by herself and called one witness. The evidence is indicative of the fact that the total amount owed her initially by the 1<sup>st</sup> Defendant was GH¢23,800.00. That GH¢8,000.00 of that amount was paid to her by the 1<sup>st</sup> Defendant leaving a balance of GH¢15,000.00.

According to the Plaintiff, herself, PW, D1 and D2 all met at Tikobo No.1 Market. It is also a fact that Plaintiff made all efforts to get back her money. She even went to the extent of securing Absconding Warrant Order against the 2<sup>nd</sup> Defendant, when she realized that D1 had left the jurisdiction and was nowhere to be found and that D2 was also trying to leave the jurisdiction. PW gave evidence to the fact that D2 pleaded on D1's behalf and it was his assurance to enquire payment of the debt by D2 that influenced Plaintiff to release D1 at the material time.

#### 2<sup>ND</sup> DEFENDANT'S EVIDENCE:

In giving evidence, the 2<sup>nd</sup> Defendant stated that on the fateful day of the incident which had landed him in court, he did not stand as guarantor for D1. He only pleaded with the Plaintiff to release the 1<sup>st</sup> Defendant and to give her time to pay off what she owed. According to the 2<sup>nd</sup> Defendant on no occasion did he stand as guarantor for the 1<sup>st</sup> Defendant. That he only pleaded on the 1<sup>st</sup> Defendant's behalf for the Plaintiff to offer her ample time to pay the Plaintiff what she owed her. He informed the court that the 1<sup>st</sup> Defendant had even paid an amount of GH¢8,000.00 as part payment to the Plaintiff but

the Plaintiff did not inform him. He said he was called by the 1<sup>st</sup> Defendant to come to her aid only to be saddled with this court action. He did not call any witness.

### ISSUES

The following issues fall for the determination by the Court:

- a) Whether or not the 2<sup>nd</sup> Defendant stood as guarantor, and
- b) Whether or not the 2<sup>nd</sup> Defendant is liable to pay for the debt.

### ANALYSIS OF THE EVIDENCE AND APPLICABLE LAW.

A party to a litigation in a civil matter has to proof his or her case. Under section 10(1) of the Evidence Act 1975 NRCD 323 states that “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 court or the court”. This means a person must proof his/her case by adducing the requisite evidence to convince the court that his/her case is more probable. The burden falls on the Plaintiff initially but shifts to the Defendants after the Plaintiff has been able to establish his/her case. The law is that fraud vitiates everything and that anything tainted with fraud is void.

The 2<sup>nd</sup> Defendant at a point in the proceedings, filed a motion on Notice for Joinder of one Mr. Nkansah of Aiyinase as the 3<sup>rd</sup> Defendant on 9-12-19. However, this motion was resisted by the said Mr. Nkansah by an Affidavit in Opposition filed on 19-01-20 in which he indicated at paragraphs 6-10 therein that he had no relationship with the 1<sup>st</sup> Defendant except that he was engaged by 1<sup>st</sup> Defendant to pray over a room she had rented before she moved in. The said room turned out to be in the 2<sup>nd</sup> Defendants mother’s house. These averments made by Mr. Nkansah made the 2<sup>nd</sup> Defendant to abandon the motion as he did not move it again. The 2<sup>nd</sup> Defendant never mentioned this in his evidence nor made any reference to it anywhere during the trial. This brings up the fact that all the time the Plaintiff was looking for the 1<sup>st</sup> Defendant, she was living in the 2<sup>nd</sup> Defendant’s mother’s

house and he pretended he did not know her whereabouts. This behaviour of the 2<sup>nd</sup> Defendant amounted to fraud which the court could not gloss over. It is thus evident that the 2<sup>nd</sup> Defendant has concealed this fact from the Plaintiff and the Court as well. It is trite that even where fraud is not pleaded, the court cannot close its eyes where there is one upon careful examination of the records as held in the case of **Okonti Borley and Okonti Bortey V Hausbauer Ltd [2021] DLSC 10078**.

Again, the 2<sup>nd</sup> Defendant kept denying the fact that he stood as guarantor for the 1<sup>st</sup> Defendant. He did not however, made any effort to get the 1<sup>st</sup> Defendant involved in defending the matter. From his behaviour, it is safe to say that he had connived with the 1<sup>st</sup> Defendant to deny the plaintiff of the fruits of her labour.

The law is that where a party by his word or conduct makes another person to believe a thing and that other relies on same to her detriment, that party cannot go back on his word. This the import of **section 26 of the Evidence Act 1975 NRCD 323**. It is also trite that parties to a contract can amend the terms of their contract by adding or taking from the terms to the original contract which may be beneficial or detrimental to one party or even third parties.

In another vein, the parties may enter into another contract which can stand side by side with the original contract. This is termed as a collateral contract. The principle of collateral contract may apply even where the party receiving or giving the assurance or collateral promise is not a party to the main contract entered into. In the case of **Shanklin Pier Ltd v Detel Products Ltd [1951] 2 KB 854**, *the Plaintiffs were the owners of a pier at Shanklin, in the Isle of Wright. They wished to paint the pier and consulted the defendants who were paint manufacturers. They were told by the Defendants that their paint was suitable for the purpose and relying on this statement, the plaintiffs caused to be inserted in their agreement with the contractors a provision requiring them to buy from the Defendants. The paint turned out to be unsuitable. The court held that the defendants were liable to damages and that the Plaintiffs were able to sue on the collateral contract since they gave the consideration by agreeing with the contractors to buy the paint from the Defendants.*

Thus, in the instant case the 2<sup>nd</sup> Defendant by his pleadings and assurances to the Plaintiff at the material time which led to the release of the 1<sup>st</sup> Defendant at Tikobo No.1 market. When she was accosted by the Plaintiff, brought into existence a collateral contract between the Plaintiff and the 2<sup>nd</sup> Defendant for the benefit of the 1<sup>st</sup> Defendant, which obligation must be fulfilled. Thus the 2<sup>nd</sup> Defendant saddled himself with an obligation for the payment of the debt when he intervened for the release of 1<sup>st</sup> Defendant.

“A Guarantee is usually an undertaking by a third party to secure the due re-payment or performance of an obligation of a borrower. It is personal where such security is given by a natural person (an individual)”. *Security Without Security – Lessons for Banks and Similar Institutions (1) Article by Frederick Gurah Sampson, June 30, 2020*. Thus, a guarantor is an individual who agrees to pay a borrower’s debt in the event that the borrower or the person who owes another, defaults in his obligation. Even though this term is used strictly under lending, it may be applied in a situation where one party owes another a debt and a third party stand as a guarantor to make sure the debtor pays up the debt. This may be done by the third party providing an undertaking or some form of security either in writing or by his conduct. From the above, particularly the evidence of the Plaintiff it was the 2<sup>nd</sup> Defendant’s pleadings and assurances he made to the Plaintiff when she accosted the 1<sup>st</sup> Defendant at Tikobo No.1 market, that caused her to release 1<sup>st</sup> Defendant and therefore the 2<sup>nd</sup> Defendant assumed the duty of a guarantor by his conduct and therefore liable to the Plaintiff for the debt. In sum the Plaintiff has been able to proof her case that indeed the 2<sup>nd</sup> Defendant was a guarantor for the 1<sup>st</sup> Defendant and that it was his pleadings and assurances that made her to release the 1<sup>st</sup> Defendant.

### DECISION

From the above discourse it must be noted that parties to a contract can and are allowed at their freewill to amend the terms of their contract to include other terms which may bring in other parties to take on certain obligations under the contract.

This may be done by way of collateral contract which may amend the terms of an original contract. The 2<sup>nd</sup> Defendant by pleading for the release of the 1<sup>st</sup> Defendant on the assurance that he would ensure that she paid what she owed the Plaintiff, a condition for the release of the 1<sup>st</sup> Defendant, amounted to the 2<sup>nd</sup> Defendant bringing upon himself the duty of a guarantor, since the Plaintiff relied on that assurance to her detriment.

In the circumstance judgment is given in favour of the Plaintiff against both the 1<sup>st</sup> and 2<sup>nd</sup> Defendants. However, since the 1<sup>st</sup> Defendant had been absent all these while and she was released by the Plaintiff upon the assurances of the 2<sup>nd</sup> Defendant to the Plaintiff that he (2<sup>nd</sup> Defendant) would ensure she paid what she owed coupled with the fact that 2<sup>nd</sup> Defendant concealed the whereabouts of the 1<sup>st</sup> Defendant from the Plaintiff at the material time when she was being sought for, a situation which made the Plaintiff to apply for and was granted an Absconding Warrant Order against the 2<sup>nd</sup> Defendant, he is liable for the Debt as a guarantor for the 1<sup>st</sup> Defendant.

#### ORDERS

The following orders are hereby made:

- a. The 2<sup>nd</sup> Defendant is required to pay to the Plaintiff an amount GH¢15,800.00 being the balance of the goods supplied to the 1<sup>st</sup> Defendant.
- b. Interest of 15% penalty on the said sum in (a) beginning from the date when the instant action was commenced.
- c. Cost of GH¢1,500.00 against the 2<sup>nd</sup> Defendant (guarantor) of the 1<sup>st</sup> Defendant.
- d. All payments are to be carried out within three (3) months from the date of this judgment.

**(SGD)**

**H/W. WILLIAM OFORI-ABOAGYE**

**(MAGISTRATE)**

**06/06/2023**