

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

SUIT NO. A2/74/2023

NANA AMOAH NYARKO

SUING FOR AND ON BEHALF

OF ASATO TRADITIONAL STOOL

PLAINTIFF

V

DANIEL AGBALENYO

OF ASATO

DEFENDANT

### **JUDGMENT**

The Plaintiff has taken legal action against the Defendant per the District court Rules ,2009 CI 59, Order 2 rule 3 (6), for the following reliefs :

1. Recovery of cash, the sum of four thousand, five hundred Ghana Cedis (GH¢4,500.00) being the Plaintiff's share of proceeds of cocoa beans the Defendant took care of on behalf of the Plaintiff
2. Interest on the said amount of four thousand Five hundred Ghana Cedis (GH¢4,500.00) from October, 2022 to the 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 the Odikro (chief) of Dzamlomey. The Defendant is a farmer resident at Asato Dzamlomey. Plaintiff says he is taking this action against the Defendant for and on behalf of Asato Traditional stool. According to the Plaintiff, the stool has a farmland at Asato

Dzamlomey and had an agreement with the Defendant's late father to cultivate the said land with cocoa trees on 'abunu' tenancy agreement.

It was therefore agreed between the parties that at the end of each cocoa planting/cropping season, the proceeds from the farm would be shared into two equal parts and the Defendant's father was to take one part and the Plaintiff would also take one part. The Plaintiff continued that the father of the Defendant passed on, and the custodians of the stool and the land called the Defendant to discuss the agreement between them and the deceased.

He added that the Defendant accepted to continue with the maintenance and agreement they had reached with his late father. But, he (defendant) has failed to pay the proceeds for the 2020 -2021, 20-21 -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.

On the face of the records, the Defendant was not seen and served initially after about three attempts.

The Plaintiff then filed an ex-parte motion with an accompanying affidavit praying the court for an order for substituted service.

According to the Plaintiff, the defendant has been around, but became evasive when he got wind of the fact that a legal action has been taken against him before the court.

The court granted the application of the Plaintiff and the order was drawn and served on the Defendant. The matter was set down for hearing on the 29<sup>th</sup> day of March, 2023. However, the defendant absented himself from the court.

On the 5<sup>th</sup> day of April, 2023, the Plaintiff filed a motion ex-parte with an accompanying affidavit for judgment to be entered on the merits of the suit. He (Plaintiff) moved the motion on the 18<sup>th</sup> day of April, 2023.

The application of the Plaintiff /applicant was granted after which he was heard on oath.

In his evidence in chief to the court, the Plaintiff relied on all the processes he has filed to make/establish his case.

The Plaintiff stated that the defendant's father who was known and called Taata had a verbal agreement with the Asato traditional stool. But, the Defendant after the demise of the father, had agreed to continue with same.

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

1. The plaintiff should be allowed by the court to recover the amount of four thousand, five hundred Ghana Cedis (GH¢4,500.00) from the defendant as the share of proceeds from the cocoa farm, the subject matter in issue.
2. The defendant should be ordered to pay interest on the amount of four thousand, five hundred Ghana Cedis (GH¢4,500.00) from October, 2022 to date of final payment.
3. Cost should be awarded against the defendant in favor of the Plaintiff.

In the case of : In Re

Ashaley Botwe Lands, Adjetey Agbosu & ors. V Kotey & ors. [2003]-2004] S C.

GLR, 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 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

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”.

In this suit before the court, the defendant has been given a number of opportunities to avail himself before the court and be heard but, he has taken an entrenched position not to appear.

The only evidence and facts before this court, is that of the Plaintiff.

From the evidence and facts, as well as the law, (including the District Court Rules, 2009, C I 59, Order 25, I hereby enter judgment in favor of the Plaintiff against the Defendant.

The Defendant is hereby ordered to pay the amount of GH¢4,500.00 to the Plaintiff.

I shall make no order as to the payment of interest on the amount due. This is because, as at the time of entering into the verbal agreement with the defendant or his late father the parties did not intend that at a time such as this, interest would be paid on the amount involved.

I award cost, the amount of one thousand five hundred Ghana Cedis (GH¢1,500.00) against the defendant in favor of the Plaintiff.

H/W ERIC K. FIAMORDZI ESQ.,  
(MAGISTRATE)