

**IN THE DISTRICT COURT HELD AT WEIJA, ACCRA ON THURSDAY THE 27TH OF
DAY OF JULY, 2023 BEFORE HER WORSHIP RUBY NTIRI OPOKU (MRS),
DISTRICT MAGISTRATE.**

SUIT NO. G/WJ/DG/A2/16/2022

ELIZABETH NKRUMAH

PLAINTIFF

VRS

EUNICE DELORES ASAMOAH

DEFENDANT

PARTIES ARE PRESENT AND SELF REPRESENTED

JUDGMENT

The plaintiff filed a Writ of Summons in the registry of this court on 30th November 2021 for the following reliefs;

1. Recovery of an outstanding balance of GHC5, 050.00 being medical products supplied to the defendant in November 2017 which defendant had failed to pay.
2. An order for interests to be calculated at the current bank rate from January 2018 to date of final settlement
3. Costs.

The defendant filed a defence on 14th December 2021.

At the close of pleadings, the issue set down for determination by the court is whether or not the plaintiff is entitled to recover the sum of GHC5, 050.00 from the defendant.

PLAINTIFF'S CASE

Plaintiff testified by herself and called Peter Kofi Gyan Donkor as her witness.

Plaintiff's case is that sometime in 2017, defendant expressed the desire to buy medications from her on credit. It is her further case that she supplied goods worth

GHC7, 100.00 to the defendant and it was agreed between the parties that defendant shall pay for the cost of the drugs on completion of sales.

Plaintiff added that defendant paid the sum of GHC5, 000.00 to her leaving the sum of GHC2, 100.00 outstanding.

According to the plaintiff, defendant again requested for a second batch of medication which she supplied at a cost of GHC2, 160.00 bringing the total amount owed by defendant to GHC4, 260.00

Plaintiff testified that defendant paid the sum of GHC1,000.00 to her leaving a balance of GHC3,260.00 following which defendant failed to make payments to her as agreed.

After several demands, defendant directed plaintiff to go for money from one Georgi who paid the sum of GHC3, 260.00 to her thus defraying the indebtedness of defendant totally.

Plaintiff stated that subsequently, at the request of defendant, she supplied medical products worth GHC5, 450.00 to defendant on credit. Defendant failed to pay for the goods as agreed and as a result plaintiff stated that she went for a loan from Progressive to pay for the costs of the products.

Plaintiff added that frantic search for defendant revealed that she had moved from her known location and her whereabouts was unknown. According to plaintiff, she saw the defendant at a chemist shop one day and requested for her money. Defendant told her to write off the money as a bad debt which she resisted. She reported her to the Toll Booth Police Station where defendant paid the sum of GHC400.00 to her leaving the sum of GHC5, 050.00 outstanding.

Plaintiff prayed the court to compel the defendant to pay the sum of GHC5,050.00 outstanding to her.

Plaintiff called her husband as PW. It is his case that he was at home one Saturday morning when she saw plaintiff giving out some quantities of medication to defendant. It is his further case that defendant paid for some of the medications and came back for a second consignment worth the sum of GHC5,000.00

He added that years after, defendant failed to pay for the second consignment of the goods and as a result, he was compelled to take a loan of GHC4,000.00 from his bankers and topped up the said sum in order to pay his suppliers for the goods.

According to him, after he had paid for the cost of the products, he saw the defendant at Gallilea and tried to cause her arrest but upon heeding to her plea and those of the onlookers, he took her telephone number with the agreement that defendant makes payment to plaintiff within a period of one week. PW stated that he called defendant several times and sent her messages to no avail after the agreed week. She responded to her call later and told him that she will not pay any money to him and that he was free to take her wherever he pleases.

He added that one day he was driving along the Gallilea rough road when he saw defendant in front of a big drug store. He quickly went for the plaintiff and when plaintiff demanded for the sum outstanding, she indicated that her debts should be written off as bad debts.

DEFENDANT'S CASE

The defendant testified by herself and called no witness.

It is the defendant's case that she took goods worth GHC5, 645.00 from the plaintiff at a discount of 15%.

It is her further case that she paid the sum of GHC1, 000.00 to the plaintiff. She added that she discovered that some of the goods supplied to her by the plaintiff had expired and so

she returned same to her on the agreement that the cost of the expired goods were to be deducted from the balance owed. According to her, PW called to inform her that due to the fact that she had delayed in making payments for the goods supplied to her, the discount had been taken off and that she was to pay for the full costs of the goods. She informed the court that subsequently, the customer she supplied the goods to died and as a result she paid the sum of GHC1, 000.00 to the plaintiff leaving a balance of GHC2, 492.00 outstanding.

BURDEN OF PROOF

It is trite that the burden of proof will generally lie on the party asserting the affirmative of an issue, the absence of the defendant notwithstanding.

Section 11 of the Evidence Act, 1975 NRCD 323 provides;

(i)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."

Section 14 of NRCD 323 also provides that in a trial, the burden of proof may shift but unless and until it is shifted, a party has the burden of persuasion as to each fact, the existence or non-existence of which is essential to the claim or defence he is asserting.

This principle of law is reiterated in the case of **RE: ASHALLEY BOTWE LANDS; ADJETEY AGBOSU & OTHERS V KOTEY & OTHERS [2003-2004] SCGLR 420** where Woode JSC (as she then was) at page 444 stated;

It is trite learning that by the statutory provisions of the Evidence Decree 1975,(NRCD 323) the burden of producing evidence in any given case is not fixed, but shifts from a party to party at various stages of the trial depending on the issues asserted and or denied.

COURT'S ANALYSIS OF THE EVIDENCE AND OPINION

From plaintiff's pleadings and evidence before this court, she stated that defendant took goods worth GHC5,450.00 and only paid GHC400.00 when plaintiff reported her to the Toll Booth Police Station leaving an outstanding balance of GHC5, 050.00 which plaintiff is claiming.

Defendant on the other hand admitted that she took goods worth GHC5,645.00 from the plaintiff.

In the case of In Re Asere Stool; Nikoi Olai Amontia IV (substituted by Tafo Amon II) v Akotia Oworsika III (Substituted by Laryea Ayiku III) [2005-2006] SCGLR 637, the Supreme Court held as follows;

"Where your adversary has admitted a fact advantageous to your cause, what better evidence do you need to establish that fact than relying on his own admission?"

Having admitted that she took goods worth GHC5,645.00, she explained that plaintiff gave her a discount of 15%. She stated that she paid the sums of GHC1,000.00 on two occasions to plaintiff via mobile money platform and returned some expired products to the plaintiff. She added that she is indebted to the plaintiff to the tune of GHC2,492.00 and not GHC5,050.00

Plaintiff forcefully denied the assertions of the defendant as gleaned from the following exchanges during cross examination of the defendant by the plaintiff;

Q: when did you send me the sums you claim to have sent to me because when I gave the drugs to you, I never set my eyes on you again

A: I sent GHC1000.00 to you via momo and later sent you GHC1,000.00 again via momo

Q: I did not find any such payments on my phone. The current drugs I supplied to you, you never paid and the amount has been outstanding from 2017 to date.

A: I paid the money to the plaintiff

The plaintiff having denied the claims of the defendant, she had the burden to lead evidence to prove her claim in the nature of the receipts indicating the percentage of discount offered to her by the plaintiff, statement of accounts of her mobile money wallet, photographs showing the expired products and their costs as well as the receipts acknowledging plaintiff's receipt of the said drugs.

The means of effecting proof was explained in **MAJOLAGBE V LARBI [1959] GLR 190**, where Ollenu J. (as he then was) held that:

"Proof, in law is the establishment of fact by proper legal means; in other words, the establishment of an averment by admissible evidence. Where a party makes an averment and his averment is denied, he is unlikely to be held by the court to have sufficiently proved that averment by his merely going into the witness box, and repeating his averment on oath, if he does not adduce that corroborative evidence which (if his averment be true) is certain to exist."

It is my respectful opinion that the defendant having merely repeated her averments on oath in the witness box without leading evidence to show that she indeed paid monies to the plaintiff leaving a balance of GHC2, 492.00 unpaid, her evidence cannot be accepted by the court as the truth.

Accordingly, I find that the plaintiff has been able to prove her case on the preponderance of probabilities against the defendant. The plaintiff is entitled to recover from the defendant the sum of GHC5, 050.00 being the outstanding balance of medications supplied to Defendant.

The court accordingly enters judgment in favour of the plaintiff against the defendant as follows;

1. The defendant is ordered to pay the sum of GHC5, 050.00 to the plaintiff.
2. The defendant is ordered to pay interests on the sum of GHC5, 050.00 at the prevailing commercial bank rate from 2017 to the date of full and final settlement.
3. Costs of GHC1, 500.00 is awarded in favour of the plaintiff against the defendant.

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H/W RUBY NTIRI OPOKU (MRS.)
(DISTRICT MAGISTRATE)