

**IN THE DISTRICT COURT HELD AT WEIJA, ACCRA ON WEDNESDAY THE 5TH
DAY OF APRIL, 2023 BEFORE HER WORSHIP RUBY NTIRI OPOKU (MRS),
DISTRICT MAGISTRATE**

SUIT NO. A2/182/2019

ISSAHAKU ABDUL-FATAWU

PLAINTIFF

VRS

AGYEMANG BADU

DEFENDANT

PARTIES ARE PRESENT AND SELF REPRESENTED

JUDGMENT

The plaintiff filed a writ of summons and particulars of claim at the registry of this court on 10th September, 2019 for the following reliefs;

1. An order directed at defendant to do transfer of ownership of vehicle number GS 2796-10 or in the alternative pay an amount of GHC10,500.00 as costs and expenses incurred on the vehicle.
2. An order for interests if defendant intends to pay for the costs and expenses from date of judgment to date of final payment.
3. Damages of GHC2,000.00 for breach of contract
4. An order for costs and any further orders as the court may deem fit.

On 18th October 2019, defendant filed notice of appointment of a lawyer and filed his defence on 20th November 2020 and counterclaimed for the following;

- a. Recovery of an amount of GHC12, 000.00 being balance of purchase price of the vehicle sold to plaintiff in the year 2017;
- b. Interest on the sum of GHC12,000.00 from 2017 to date
- c. Costs and further order(s) as the court may deem fit

The plaintiff filed a reply on 18th January 2021.

PLAINTIFF'S CASE

It is the case of the plaintiff that in January 2018, defendant offered and granted his faulty vehicle to plaintiff to repair and buy same. It is the further case of plaintiff that defendant collected the sums of GHC5, 000.00 and GHC1,000.00 making a total of GHC6,000.00 in consideration for the vehicle. He added that he used the sum of GHC4, 500.00 in repairing the vehicle bringing the total costs incurred to GHC10, 500.00

According to the plaintiff, after repairing the vehicle, defendant has refused to hand over the documents to the vehicle to him and is threatening to take the vehicle from him.

Plaintiff prays the court to grant his reliefs.

DEFENDANT'S CASE

It is the case of the defendant that parties are friends and somewhere in 2017, the plaintiff approached defendant to purchase his Nissan Primera with registration number GX 2796-10 which is the subject matter of this dispute for use in supplying plaintiff's electrical wires.

It is the further case of the defendant that upon a verbal agreement entered into by the parties, plaintiff was to pay the sum of GHC20, 000.00 to him for the vehicle.

Defendant added that plaintiff made a part payment of GHC6, 000.00 to him and took possession of the vehicle.

According to defendant, within two months, plaintiff called to inform him that the engine of the vehicle was giving him problems and that he had changed the engine at a cost of GHC2, 000.00.

It is the case of the defendant that he told the plaintiff to surcharge him for the cost of the engine increasing the total part payment made to him by the Plaintiff to GHC8, 000.00 leaving a balance of GHC12, 000.00 unpaid.

He added that plaintiff called him some time ago requesting for the documents to the vehicle as he needed to use same to procure a loan. Defendant stated that he demanded for the total sum outstanding and since then, he did not hear from the plaintiff until he lodged a complaint at the toll booth Police Station against him.

Defendant says that the vehicle has been in possession of the plaintiff for about three years and that he is not indebted to the plaintiff.

He prayed the court to grant his counterclaim.

At the close of pleadings, the court set down the following issues for determination;

1. Whether or not plaintiff was entitled to recover the documents to the vehicle from the defendant or in the alternative the recovery of the sum of GHC10,500.00
2. Whether or not defendant was entitled to recover the sum of GHC12,000.00 from plaintiff with interests and costs.

Parties were ordered to file witness statements. Plaintiff filed his witness statement on 8th April 2021 whilst the defendant filed his witness statement and that of his witnesses on 12th April 2021.

EVIDENCE OF THE PLAINTIFF

Plaintiff repeated his pleadings before the court and supported his claims with invoices of a Nissan Altima “sarkola” Engine without coil with the cost of GHC1,900.00 and a Nissan Board at a cost of GHC900.00, 1 set of Spark plugs which cost GHC200.00 and the

payment of air flow meter which cost GHC150. These exhibits were admitted and marked as exhibits A, A1, A2 and A3 respectively.

Plaintiff tendered a sheet of paper dated 18th August, 2017 in which plaintiff had itemised the total amount paid to defendant as follows;

1. Payment of GHC5,000.00 paid to Agyemang Badu
2. Payment of GHC1,000.00 paid to Francis Bonah
3. Payment of 1,000.00 made to Francis Bonah's mechanic to repair and assemble the old engine
4. Expenditure for mechanic workmanship, electrician's workmanship, towing of car, transportation of engines from Abossey Okai(4 engines), engine oil and other services total – GHC2,580
5. Gross total GHC13,000.00

EVIDENCE OF DEFENDANT

Defendant also repeated his pleadings before the court and tendered a picture of the vehicle the subject matter of this dispute and same was admitted and marked as Exhibit 1.

BURDEN OF PROOF

BURDEN OF PROOF

It is trite that in civil cases, proof is by a preponderance of probabilities.

In the case of *Ackah v Pergah Transport Ltd* [2010] SCGLR 728 at page 736, Sophia Adinyira JSC (as she then was) delivered herself as follows;

“It is a basic principle of 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.”

This position of the law was re-echoed by Benin JSC in the case of *Aryee v Shell Ghana Ltd & Fraga Oil Ltd* [2017-2020] 1 SCGLR 721 at page 733 as follows;

“It must be pointed out that in every civil trial all what the law requires is proof by a preponderance of probabilities. See section 12 of the Evidence Act, 1975 (NRCD 323). The amount of evidence required to sustain the standard of proof would depend on the nature of the issue to be resolved.”

SHIFTING OF THE BURDEN OF PROOF

The burden of proof may shift from the party who bore the primary duty to the other.

Section 14 of the Evidence Act, 1975 (NRCD 323) provides as follows;

Except as otherwise provided, 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.

In the case of *Re Ashalley Botwe Lands; Adjetey Agbosu v Kotey* [2003-2004] SCGLR 420, it was held as follows;

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

ANALYSIS OF THE EVIDENCE AND OPINION OF THE COURT

ISSUE ONE: Whether or not plaintiff is entitled to recover the documents to the vehicle from the defendant or in the alternative the recovery of the sum of GHC10, 500.00

In plaintiff's particulars of claim filed on 10/09/ 2019, he averred that he had paid the sum of GHC5, 000.00 to the defendant and had paid a total of GHC1,000.00 to defendant's friend increasing the total sum paid to defendant to GHC6,000.00

He claimed he had spent a total of GHC4, 500.00 in repairing the vehicle bringing the total sum paid to GHC10, 500.00. The invoices plaintiff submitted to prove his claim totalled GHC3,150.00 which contradicts the sum of GHC4,500.00 he claimed to have spent on repairs.

At paragraph 5 of his reply filed on 18th January 2021, he claimed that he had paid a total of GHC5, 000.00 to the defendant.

At paragraph 23 of plaintiff's witness statement, he stated that when the car was finally fixed, he had incurred a total costs of GHC16, 000.00

I find that plaintiff's story is full of contradictions. In his pleadings, he stated that the total amount spent on the vehicle was GHC10, 500. He quickly departed from his pleadings and stated in Exhibit B attached to his witness statement that the total sum incurred was GHC13, 000.00 which sum was not in tandem with the sum of GHC16, 000.00 stated in paragraph 23 of his witness statement.

It is worthy of note that the total amount stated on Exhibit B if it is anything to go by should total GHC9,580.00 and not GHC13,000.00 meanwhile the total amount he claims to have expended as borne out by Exhibit A series is GHC3,150.00

Upon a careful study of Exhibit A series, it is difficult to ascertain whether or not Exhibit A series are receipts or invoices and plaintiff has not been able to give reasons for the contradiction in the various sums presented to the court.

In *Odupong v The Republic* [1992-1993] 3 GBR 1028 – 1048 CA, Brobbey J.A (as he then was) delivered himself as follows;

“The law is now settled that a person whose evidence on oath is contradictory of a previous statement made by him whether sworn or unsworn is not worthy of credit and his evidence cannot be regarded as being of any probative value in the light of his previous contradictory statement unless he is able to give a reasonable explanation for the contradiction.”

Applying the law cited supra to the facts of the present case, I find that the plaintiff’s evidence cannot be regarded as being of any probative value in the light of his contradictory statements.

The defendant admitted that the plaintiff paid the sum of GHC6,000.00 to him. He also admitted that the plaintiff bought the engine at the sum of GHC2,000.00 which he had agreed that the said sum was to be surcharged to him increasing the sum paid to him in total by the plaintiff to GHC8,000.00

The Supreme Court in the case of *Opoku & others (No.2) v Axes Co. Ltd (No.2)* [2012] 2 SCGLR 1214, observed as follows;

“Once there has been such an unequivocal admission before a court in respect of a claim or part thereof as was done in the case before us and not withdrawn, there cannot in principle be any objections to a decision based on them.”

He however denies plaintiff’s claim of an additional sum of GHC2, 500.00 being monies incurred on repair works.

In *Majolagbe v Larbi* [1959] GLR 190-195, Ollenu J held 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 legal principle was reiterated in the case of *Zabrama v. Segbedzi* [1991] 2 GLR 221 at 224, when the Court of Appeal held as follows;

A person who makes an averment or assertion which is denied by his opponent has the burden to establish that his averment is true and he does not discharge this burden unless he leads admissible and credible evidence from which the facts or facts he asserts can be properly and safely inferred.”

Plaintiff therefore had the burden to prove his claim of GHC2, 500.00 yet he did not call Bonah’s mechanic whom he claimed had charged GHC1, 000.00 for fixing his engine as a witness. Exhibits A series were also in excess of the extra claim of GHC1,500.00 and yet plaintiff did not offer any explanation for the inconsistencies in his claim.

The court called the mechanic who fixed the engine as the court’s witness. He told the court that he sent one of his boys to go with the plaintiff to purchase the engine. According to him, when the engine was fixed the first time, it was not good but because they had a warranty, the engine was changed a second time at no extra cost to the plaintiff however when the engine was fixed, he failed to pay any workmanship to him. He stated that the defendant eventually paid GHC400.00 to him as workmanship after he had made several demands on plaintiff to pay his workmanship of GHC500.00 to no avail.

The following information was elicited during cross examination of CW by the plaintiff;

Q: Agyeman Badu has told this court that he paid you workmanship but when I came to your shop, you said he had not paid any money to you

A: I said no because it was you I worked for and not the defendant and it took you over five years to come to my shop to ask if defendant had paid my workmanship to me

Q: I put it to you that we went on three occasions to purchase the engine and not two occasions

A: It was on two occasions

The following information was elicited when defendant cross examined CW

Q: Mr. Moses, the plaintiff has told this court that he bought so many things apart from the engine. Please tell this court if he bought any other thing for the car

A: I only fixed the engine for the car. He did not buy any other thing.

From the totality of the evidence before this court, I find that the plaintiff has not been able to prove his case with regards to the extra sum of GHC2, 500.00 he claimed to have incurred on the preponderance of probabilities.

ISSUE TWO: Whether or not defendant was entitled to recover the sum of GHC12, 000.00 from plaintiff with costs

With regard to the counterclaim of the defendant, it is trite that the defendant bears the same burden as a plaintiff in proving her counterclaim which is on the preponderance of probabilities as stated by the authorities cited supra.

In *Tetteh Ayaa Iddrisu v. Winfred Otuafo & Anor* [2010] SCGLR 818, the Supreme Court held as follows;

“A party who counterclaims bears the burden of proving his counterclaim on the preponderance of probabilities and will not win on that issue only because the original claim failed.”

Ansah JSC in Joseph Akonu-Baffoe and 2 others v Lawrence Buaku and Another, Civil Appeal No. J4/6/2012 emphasized the position of the law on counterclaim as follows;

“In essence, a defendant’s counterclaim is to be treated in the same way as the plaintiff’s case. The roles are reversed and the defendant as plaintiff in the counterclaim assumes the burden to prove his case.”

Defendant has informed the court that he sold his vehicle to plaintiff for the sum of GHC20,000.00 out of which plaintiff paid the sum of GHC8,000.00 leaving the balance of GHC12,000.00 unpaid. Meanwhile plaintiff has taken custody of the vehicle and has used same for five years without paying the balance outstanding. He added that plaintiff has sued him in court requesting for documents to a vehicle which purchase price has not been fully paid by him.

At paragraph 24 of plaintiff’s witness statement filed on 8th April 2021, plaintiff stated that when he approached defendant for the documents to the vehicle, **“Badu blurted out saying I have not finished paying for the car so he can’t give me the documents meanwhile he had not told me the price of the car because that was not what I wanted to buy”** (emphasis is mine)

Yet at paragraph 25 of the witness statement, he stated **“Badu said since the money is GHC16, 000.00, I should pay an additional GHC4, 000.00 but I told him to give me time. I told him the money will be ready in four months’ time but he said he needs the money in two weeks and in bulk”** (emphasis is mine)

At paragraph 23, he had stated that he had incurred a total amount of GHC16,000.00, which amount he has failed to prove and at paragraph 25, he had stated that he had agreed to pay an additional sum of GHC4,000.00 within four months which proposal defendant had disagreed with. Plaintiff's assertions point to the fact that the purchase price for defendant's vehicle was GHC20,000.00 as admitted by the defendant.

Plaintiff has admitted from the evidence that the vehicle has been in his custody since 2017.

Defendant has however admitted that plaintiff has paid the sum of GHC8, 000.00 leaving a balance of GHC12, 000.00 outstanding.

From the totality of the evidence before this court, I find that the defendant has proved his case on the balance of probabilities against the defendant.

Accordingly, plaintiff is ordered to pay the sum of GHC12, 000.00 to the defendant forthwith. Plaintiff is ordered to pay interest on the sum of GHC12,000.00 at the prevailing commercial bank rate from the year 2017 to the date of full and final settlement.

Defendant is ordered to release the documents to the vehicle to the plaintiff on the date of full and final settlement of the judgment sum.

Costs of GHC2, 000.00 is awarded in favour of the defendant against the plaintiff.

DECISION

On the totality of the evidence before the court, I find and hold that the plaintiff has not been able to prove his claim against the defendant on the preponderance of probabilities.

The defendant's claim succeeds. Accordingly, plaintiff is ordered to pay to the defendant the sum of GHC12, 000.00 with interests at the prevailing commercial bank rate from 2017 to the date of full and final settlement.

Costs of GHC2, 000.00 is awarded in favour of the defendant against the plaintiff.

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H/W RUBY NTIRI OPOKU (MRS.)

DISTRICT MAGISTRATE