

IN THE DISTRICT COURT HELD AT TAKORADI (MARKET CIRCLE)
ON WEDNESDAY THE 12TH DAY OF JULY 2023 BEFORE HER WORSHIP
CATHERINE OBIRI ADDO ESQ.

SUIT NO. A2/ 198/22

**ERNEST APPIAH
H/NO. A10
WEST FIJAI**

PLAINTIFF

VRS

**MR. FRIMPONG.
OF TADISCO DOWN
WEST LINE**

DEFENDANT

JUDGMENT

The Plaintiffs in this case initiated the action against the defendant at the registry of this Honourable Court on the 24TH day of August 2022 and claim against the defendant the following:

- i. Recovery of cash the sum of GH¢10,000.00 being the balance of GH¢17,000.00 Musso sanguong sport car with registration No. WR 479-18 plaintiff bought from the defendant which car was detected faulty
- ii. Interest at the prevailing bank rate from March, 2022 till date of final judgement.
- iii. Cost.

EVIDENCE OF THE PLAINTIFF

The plaintiff avers he needed a car to buy and discussed same with a brother of his who indicated to him, he has seen a car and the cost of the car is GH¢17,000.00 as such he came from Kumasi for the purchase of the said vehicle. He inspected the said car and was interested. Plaintiff avers, himself and two workers of his went to the defendant shop for the purchase of the vehicle. When they got to the defendant shop, and they needed to try the car, it was the defendant who drove the car for a distance

and the defendant informed them that there wasn't any diesel in the car as such defendant made them aware that he cannot drive the car for a long distance since there is no diesel in the car.

That same day after paying the purchase price of the car, they took the car same day the defendant tried the car and moved same to a fuel station to buy fuel since the defendant indicated to them that there was no diesel in the car. After filling the car with diesel at the fuel station, he realised that when you turn on the ignition of the car, the car is able to start but the car couldn't move they therefore called the defendant to inform him. After informing the defendant about the issue, the defendant indicated to them that because there was no fuel in the car and they have filled same with diesel that, may be the reason why the car couldn't move. The defendant went to the filling station, and again indicated to them that there is no ATF in the car that is why the car couldn't move the defendant therefore suggested the plaintiff buys ATF so he bought same and the defendant himself collected the said ATF and put same in the car and the defendant tried to move the car but it wasn't working. As such the defendant again suggested it might be an electrical fault as such the defendant managed to take the car from the filling station to shop at Kokompe for an auto electrician to fix same. The auto electrician worked on same but the car couldn't function.

The defendant decided that he should change the engine oil and he did same but still the car couldn't function as such they sent the car back to the defendant's work place. One of the mechanics at the defendant's shop suggested that the problem might be the gear box as such he should change the gear box which he refused to do same.

According to plaintiff after returning the faulty car to the defendant, the defendant called him one Sunday that he has received documents pertaining to the car as such he should come for same. He therefore indicated to the defendant that he is no longer interested in buying the car so he needs his money. The next day on a Monday, he went to the defendant shop and the defendant refunded GH¢7,000.00 out of the GH¢17,000.00 purchase price paid to him and he informed him he has given the GH¢10,000.00 to the owner of the car and informed the plaintiff to come for the

remaining balance of GH¢10,000.00 later since the owner of the vehicle has travelled to Accra. According to plaintiff since then the defendant does not give him any good response whenever he calls to inquire about his remaining balance. When he came back to Takoradi from Kumasi, and went to the defendant shop to demand for his money, the defendant indicated to him that if he will say it was, he the plaintiff who spoilt the car. As such he brought the matter to the court. He therefore prays the court to grant his reliefs as endorsed on the writ of summons.

Plaintiff called pw1 to corroborate his case. Pw1 avers, the plaintiff is his boss and they deal in books. At a point they needed a vehicle to take their books for supply. He was there one day when the plaintiff called him indicating that his brother has seen some of the car for purchase as such, he is returning to Takoradi from Kumasi when he arrives, he will go with PW1 to inspect the car. He avers the plaintiff came and they proceeded to the defendant shop to inspect the car. According to pw1, it was pick up car. The defendant drove the car for them to know the condition of the car however, on the way the defendant informed them that the fuel in the car is not enough so defendant returned the car back to his shop. The next day the plaintiff informed him they should take GH¢17,000.00 from the bank to pay for the car. As such they next day after withdrawing the money from the bank, himself, the plaintiff and two others went to the defendant shop to make the payment of GH¢17,000.00 to the defendant. The defendant handed the car keys to them as such because the defendant has earlier on indicated to them that there was not enough fuel in the car, to the fuel station to fill the tank. At the fuel station, after filling the car with fuel, they realised that when they spark the car the ignition is turned on but the car couldn't move. The plaintiff called the defendant to inform him about the situation and the defendant came to the fuel station however the defendant upon trying to move the car realised the car could move for just a short distance and stops. The defendant kept on trying severally but it couldn't work. The defendant therefore managed to move the car and took the car to an auto electrician at Kokompe. The auto electrician worked on the car, and they, moved the car from the electrician shop to the new market the car failed to move again

they therefore parked the car at a fuel station and called the said auto electrician and he came to pick the car back to his shop at Kokompe. The auto electrician and the mechanics around made them change the oil in the car which they did same but the car still couldn't function. same day they sent the car back to the defendant shop indicating since they paid the car and that very day the car is giving them problems; they are not interested in purchasing the car again it was a Friday. As such on Monday, the four of them who went to pay the purchase price of the money to the defendant went to the defendant shop to demand for the GH¢17,000.00 they paid for the vehicle. The defendant gave them GH¢7,000.00 out of the GH¢17,000.00 and promised them that the owner of the vehicle is in Accra as such he will receive the remaining GH¢10,000.00 from him and same will be given to them. However up till date, the defendant has failed to pay the remaining GH¢10,000.00 to them.

PW2 avers, he received a call from the plaintiff that he has seen a vehicle at the defendant shop and is interested in same as such the plaintiff asked him to escort him to the defendant shop to inspect the car. The next day which was a Friday, the plaintiff went with him to go and see the car at the defendant shop which he did. Upon reaching there, the defendant asked that they sit in the car for him to drive same by way of trying the car for them. As such himself, plaintiff, PW1 and one other and he does not know the name sat in the car while the defendant drove same. PW2 avers after a while he realised that the car was moving it shakes at the same time so he inquired from the defendant why the car is behaving that way and he was informed by the defendant that one of the tyres of the car has reduced in size and that is the cause of it. He avers the defendant turned at the latter rain junction and came back to the shop. The plaintiff paid GH¢17,000.00 as purchase price for the car. PW2 avers, he took hold of the car and informed the plaintiff that they should try the car since he PW2 is a driver. He moved the car from the defendant shop to Chinses total fuel station to fuel the car. After fuelling the car, he realised that when he sparks the car or turn on the ignition, it works but the car couldn't move. They called the defendant to

inform him and he came to the fuel station himself to try the car but the car couldn't move. The defendant told the plaintiff to buy ATF which the plaintiff did by buying two of those and the defendant himself put same in the car but the car still couldn't move. The defendant therefore went for tools from his car and came to work on the car but still the car couldn't move. Pw2 avers he realised at the fuel station, that when the plaintiff tries to move the car, the car jerks. The defendant therefore made the plaintiff to board the jerking car, together with pw1 and he moved the car to Kokompe while he pw2 followed them with the defendant personal car he drove to the fuel station. At Kokompe, the auto electrician made them change the engine oil and told the mechanics to work on the car as such the mechanics made them buy engine oil which they did. The plaintiff bore the cost of the expenses.

Pw2 avers from Kokompe, he drove the car but upon reaching new Market the car started jerking again so they parked the car at the shell fuel station and the auto electrician came to pick the car back to Kokompe but the fault repeated itself. So, they gradually and slowly moved the jerking car back to the defendant shop that same day. They therefore decided not to buy the car again because of the faults. On Monday, they went to the defendant shop for their money however the defendant only gave them GH¢7,000.00 out of the GH¢10,000.00 and promised to pay the remaining GH¢10,000.00 to them on Friday since the remaining balance is with the alleged owner of the car. Time passed but the defendant still failed to give the money back to the plaintiff as such the matter was brought to Court.

EVIDENCE OF DEFENDANT AT TRIAL

The defendant avers he was there when the plaintiff brother called to inform him that he needs some vehicle for the plaintiff. As such the plaintiff in the company of two others came to his shop and he showed them the car for them to inspect and they did same and they were interested in same. The following day, the plaintiff and two others came for them to try the car. They drove the car from Anaji to the Ntankoful area. They therefore promised to bring the money the next day. The next day, the plaintiff and the others brought him GH¢17,000.00 for the purchase of the car and he received

same on behalf of the owner of the car upon a call to him. The plaintiff and the others took the car away and they later called informing him about the defects in the car. He therefore proceeded to where the car is inspecting same and informed the plaintiff the auto electrician who works on the car is at Kokompe as such they send the car to him for him to work on same. When he went, the plaintiff has sent the car to a mechanic instead of the auto electrician when he inquired from the plaintiff why he sent the car to the mechanic plaintiff indicated to him that he knows the said mechanic. He further avers, plaintiff informed him, they have changed the oil in the car at a cost of GH¢300.00. He therefore gave GH¢3,00.00 the plaintiff had earlier on given him back to the plaintiff and he left to his shop.

About 4pm the plaintiff brought the car to his suppose and stated the car is defective. He informed the owner of the car about same and told the plaintiff to come and meet the car owner but plaintiff was not ready to meet the car owner.

Plaintiff called to inform him that he needs his money so when he sold the car, the alleged car owner gave him GH¢7,000.00 as such he gave same to the plaintiff he was there when the was served with court summons to attend court.

The defendant called DW1 to corroborate his case. DW1 who happens to be the alleged owner of the car avers, he knows the defendant herein but he does not know the plaintiff he only got to know the plaintiff during the Alternative dispute resolution. According to him the vehicle is as pick up with registration number WR 479-18. He purchased the said vehicle in 2018. He avers the defendant is his mechanic and the he DW1 was in financial difficulty as such he put up the car for sale, he informed the defendant when he sells same, the defendant should keep GH¢7,000.00 whiles he keeps GH¢10,000.00. He was there when defendant called to inform him that the plaintiff is interested in purchasing the said car. According to him, when the plaintiffs came, he tested the car and the car was in good condition and paid GH¢17,000.00 for the purchase price of the car. He therefore gave the car papers to the defendant however in two days' time, the defendant called to inform him that the plaintiff says he is no longer interested in the car so he gave his share of the purchase price money

thus GH¢7,000.00 to the plaintiff. According to DW1, he came the following day to take the car and to sell same in order to give plaintiff GH¢10,000.00 to him but he was informed by the defendant that the plaintiff has caused defect to the gear box of the car as such the car can't move. He decided to see the plaintiff as to how to fix the gear box but plaintiff indicated he does not know him as he bought the car from the defendant. He further indicated, he was there when he was invited to the CID headquarters at Sekondi and he wanted to see how to settle the gearbox issue but same proved futile. He therefore wants the plaintiff to fix the gear box in order to sell same to that he can give the plaintiff money back to him.

ISSUES FOR DETERMINATION

Whether or not the plaintiff is entitled to recover her outstanding balance of GH¢10,000.00 from the defendant.

EVALUATION OF EVIDENCE AND APPLICATION OF THE LAW.

The plaintiff bears the burden of proof in this case to establish his claims. The standard of proof required from the plaintiff is proof by the preponderance of probabilities. It is a basic principle of law of evidence that in a civil case, a party who bears the burden of proof is to produce the required evidence of facts in issue that has the quality or credibility short of which his claim may fail. See the case of **ACKAH V PERGAH TRANSPORT LTD (2010) SCGLR 728 at P. 736. PER ADINYIRA JSC.**

The burden demands that a party produces sufficient evidence such as will lead a reasonable man on all the evidence to conclude that the existence of the fact in issue is more probable than its non-existence. **See sections 11(4) and 12(1) of the evidence Act.** It is only after the plaintiff has discharged his burden that the defendant is required to adduce evidence in rebuttal of the plaintiff's evidence.

Under the sales of goods Act, the buyer bears the burden to prove the existence of latent defects in goods bought at the time the contract was concluded. This will lead me to my first issue I will proceed to resolve the issue.

Whether or not the plaintiff is entitled to recover her outstanding balance of GH¢10,000.00 from the defendant.

From the facts and evidence of this case, plaintiff indicated he purchase a vehicle with registration number WR. 479-18 from the defendant. He paid GH¢17,000.00 as purchase price for the said vehicle. According to the plaintiff the said vehicle is defective. Same day he purchased the vehicle and at the time of trial by the defendant, the defendant after covering a short distance indicated to him that there was low diesel in the vehicle as such, they cannot cover a long distance. Plaintiff indicated after taking delivery of the car from the defendant the same day he purchases same in the company of three others, went to the fuel station to fuel same since the defendant indicated there was not enough diesel in the car. After filling the vehicle at the fuel station, they realised the car could start but couldn't move. Defendant was called by the plaintiff who proceeded to the fuel station where the car was parked and suggested plaintiff buys ATF into the said vehicle. Same was done but the car couldn't move.

Defendant later drove the car himself to an auto electrician at Kokompe in the company of plaintiff and three others including pw1 and PW2 herein where the said auto electrician worked on the said vehicle but still the vehicle could not start. It was suggested to him that the engine oil needs to be changed which he did same but still the car couldn't function. As such he gradually drove the car back to the defendant shop and demanded for his money. The defendant has so far paid GH¢7,000.00 to the plaintiff leaving the outstanding balance of GH¢10,000.00.

This evidence of the plaintiff was corroborated by PW1 and PW2 and the defendant himself. This suggests that the defendant was aware that the car was defective ab initio. Except to say that according to the defendant when he took the car to the auto

electrician at Kokompe, the plaintiff herein made some mechanics worked on the said vehicle as such it was the defendant who spoiled the said car.

This assertion of the defendant was vehemently denied by the plaintiff. The court finds that whether or not the plaintiff allowed a mechanic to work on the said vehicle is irrelevant. The crux of the matter is that the car was defective from the very start when the defendant offered to try the car but he however did not make this known to the plaintiff.

In deed the court finds that the purchase of the said vehicle was not completed. Although the plaintiff took car after paying for same, that very day at the fuel station attempting to fill the tank of the car with fuel, the car broke down.

In addition, the failure of the plaintiff for not paying the outstanding balance of GH¢10,000.00 is that according to him the said GH¢10,000.00 is with the alleged owner of the car.

In fact, according to plaintiff he dealt with the defendant and not anybody. Neither did the defendant reveal to him that he was selling on behalf of someone nor acting as an agent for someone. As such the said transaction took place between the plaintiff and the defendant. This evidence of the plaintiff was corroborated by DW1 the defendant witness himself where he indicated

“I decided to see the plaintiff as to how to fix the gear box but plaintiff indicated he does not know me as he bought the car from the defendant”

In addition, the DW1 have this to say during his evidence to the court “I am into construction works. I know the defendant but I don’t know the plaintiff ii got to know the plaintiff in court through the Alternative dispute Resolution processes”

From the above it is quite clear that the plaintiff did not contract with DW1. Plaintiff at all material times contracted with the defendant and not any alleged owner of car. Defendant sought to put across that, the plaintiff inspected the car before purchasing same. The court finds that, although the plaintiff inspected the said vehicle, the said

defect could not have been revealed by the said examination and the defendant herein being a mechanic and knowing very well about the defect in the car, did not reveal same to the plaintiffs upon purchase.

The general rule under the sale of goods Act 1962, is that a seller of goods in Ghana whether new or second hand, is liable for all defects in them.

The court further finds that, the defendant though not a person who sells cars but a mechanic who repair cars, have been aware of the said defect or aware that the car is defective but yet still sold same to the plaintiff.

DW1 in his evidence to the court informed the court that the defendant informed him, that the plaintiff has spoiled the gear box of the car.

In fact, during the evidence of the plaintiff, he made it known to the court that upon persistent demand for his money from the defendant, the defendant indicated to him that, he will put the blame on the plaintiff for having spoilt the car. This very piece of plaintiff was never challenged by the defendant.

In the case of **SAMUEL ADRAH V ECG (2018) 119 GMJ 143 @ 184 C.A** per Dzamefe J.A held

“When party lead evidence which is not challenged by his opponent in cross examination, nor does the opponent tender evidence to the contrary, those facts depose to are deemed to have been admitted by the opponent and must be accepted by the court”.

Base on the above position of the law, the court accepts the assertion of plaintiff supra, this explains why DW1 indicated in his evidence to the court that, the defendant informed him that the plaintiff has spoiled the gear box of the car in an attempt to frame the plaintiff for the defect in the car which has always been there from the very start and which defendant is aware of same.

In addition to the above plaintiff in his evidence to the court stated “and they told me to change the gear box of the car but I told them I will not do it” again this piece of

evidence was never challenged by the defendant nor did the defendant led any evidence to the contrary.

Base on the above position of the law the court finds that the plaintiff never damaged the gear box of the car as alleged by the defendant and his witness.

Plaintiff and his witnesses as well as defendant and his witness are ad idem about the fact that the defendant has refused GH¢7,000.00 to the plaintiff. The mere refund of GH¢7,000.00 to the plaintiff, the defendant accepts that the car he sold to the plaintiff was faulty and he had the intention of refunding same to him. It does not lie in the mouth of the defendant to state that it is DW1 who needs to refund the alleged GH¢10,000.00 to the plaintiff when at all material times, the plaintiff contracted with the defendant and no one else.

In view of the foregoing and evaluations made supra, the court finds that, the plaintiff has been able to establish his case on the balance of the probabilities in respect of the reliefs before the court. In the circumstance, it is the determination of the court that the plaintiff is entitled to recover the outstanding balance of GH¢10,000.00 from the defendant. Interest of the said amount form March 2022 till date of final payment cost of GH¢10,000.00 awarded in favour of the plaintiff.

Before I conclude, I wish to end this judgement with the decision of Best C.J in the case of JONES V BRIGHT (1820) 130 ER 1167 @1171 where the learned judge stated

“It is the duty of the court in administering the law to lay down rules calculated to prevent fraud, to protect persons necessarily ignorant of the qualities of a commodity they purchase, and to make it the interest of manufacturers and those who sell, to furnish the best article that can be supplied.....”

In the recent decision of KEN KWAME ASAMOAH V SIC..... I hereby summarised my orders as follows

- a. Plaintiff is entitled to recover the outstanding amount of GH¢10,000.00 from the defendant.
- b. Plaintiff is to recover from defendant interest on the said GH¢10,000.00 from March 2022 till date of final payment.
- c. Cost of GH¢1,000.00 awarded in favour of the plaintiff.

SGD

H/W CATHERINE OBIRI ADDO ESQ:

(M A G I S T R A T E)

REPRESENTATION

PARTIES APPEARED PRO SE.

****MILLY.**