

IN THE DISTRICT COURT KADJEBI IN THE OTI REGION OF THE REPUBLIC OF GHANA HELD ON WEDNESDAY THE 17<sup>TH</sup> DAY OF MAY, 2023 BEFORE H/W ERIC K. FIAMORDZI ESQ., (MAGISTRATE)

SUIT A2/50/2022.

KINGSLEY ASIAMAH  
OF DJINDJINSO

PLAINTIFF

V

1. HARISU MOHAMMED  
2. ALHAJI MERIGA  
MEMPEASEM

DEFENDANTS

### JUDGMENT

This judgment is the outcome of a writ of summons issued by the Plaintiff against the Defendants under the District Court rules 2009, CI 59, Order 2 rule 3 (6) for the following reliefs:

1. Recovery of an amount of nineteen thousand Ghana cedis (GH¢19,000.00) being monies the defendants collected jointly and severally from the Plaintiff to purchase a three (3) seater opel Zafira car for him (Plaintiff) since the month of September, 2020 but the defendants have refused to purchase the said vehicle or even return the Plaintiff's money to him despite repeated demands.
2. Interest to be calculated on the said amount of nineteen thousand Ghana cedis (GH¢19,000.00) from the month of February 2022 to the date of final payment.
3. Cost of this application.

### SUMMARY OF SUBJECT MATTER OF CLAIM:

The Plaintiff is a teacher resident at Djindjinso whiles the Defendants are also dealers in different types of vehicles and are resident at Mempeasem. Plaintiff

states that in September, 2020, he (Plaintiff) was looking for a 3 seater Opel Zafira car /vehicle to purchase and the Defendants informed him that they will get one (1) for him at the cost of nineteen thousand Ghana Cedis (GH¢19,000.00). He continues that he gave the money to the defendants but they went and bought a diesel engine car. But he had earlier explained to the defendants that he wanted a petrol engine car, and not a diesel one. The defendants then agreed to get him (Plaintiff) the petrol engine Opel Zafira. The Defendant then sold the said Opel Zafira diesel engine vehicle and promised to get him the one of his choice by the close of October, 2020. But despite the fact that the Defendants have been bringing down vehicles to Mempeasem and Kadjebi to sell to some other people, they had deliberately refused to purchase or return the vehicle or the money to him despite several demands. All efforts to let the Defendants return the Plaintiff's nineteen thousand Ghana Cedis (GH¢19,000.00) to him cannot succeed. Hence this action to seek redress. Wherefore the Plaintiff claims from the Defendants jointly and severally as per the reliefs endorsed on the writ of summons.

On the face of the records, the first defendant was the only one seen and served. On the 29<sup>th</sup> day of April, 2022, the parties except the second defendant appeared before the court.

The plea of the first defendant was taken and he pleaded not liable to the reliefs of the Plaintiff.

The court made orders to the effect that the second defendant should be served, and the parties were to file their witnesses' statements and any relevant document(s) in their possession in relation to the subject matter in issue.

The parties except the second defendant (who was still not seen and served) complied with the orders of the court. The Registrar was consequently ordered to swap the various witnesses statements between the parties and the matter was set down for hearing.

On the 27<sup>th</sup> day of May, 2022, the Plaintiff led his evidence in chief on oath. He was cross examined by the first defendant who was present.

The matter was adjourned for the PW1 be heard on oath. The first defendant became evasive till on the 13<sup>th</sup> day of October, 2022 when the Pw1 was heard on oath and the first defendant was made to cross examine him. The second defendant was non suited at the instance of the parties. The cross examination of the PW1 continued to the 25<sup>th</sup> day of October, 2022.

The matter was adjourned to the 16<sup>th</sup> day of November, 2022 for continuation. Since then, the first defendant has not made it to the court.

On the 4<sup>th</sup> day of April, 2023, the Plaintiff filed a motion ex-parte with an accompanying affidavit praying the court to enter judgment on his behalf as the first defendant was just taking the opportunity to deliberately delay the matter and frustrate him.

The Plaintiff moved the motion on the 21<sup>st</sup> day of April, 2023 after which the application was upheld.

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

1. The defendants jointly and severally or the first defendant must be ordered to refund the amount of nineteen thousand Ghana Cedis (GH¢19,000.00) to the Plaintiff.
2. Interest must be calculated on the amount of nineteen thousand Ghana cedis (GH¢19,000.00) from the month of February, 2022 to the date of final payment.
3. Cost of the application must be paid to the Plaintiff by the Defendant (s)

In his evidence in chief to the court, the Plaintiff relied on the witness statement he filed and which copy was accordingly served on the first Defendant on the orders of the court on the 11<sup>th</sup> day of May, 2022. It was consequently adopted by the court.

According to the witness statement filed by the Plaintiff, when he got to know from a colleague of his that the first defendant sells vehicles, he (Plaintiff) and two of his colleagues went to see the first Defendant and two different types of vehicles – KIA Picanto and Opel Zafira. So, after some deliberations he was made to pay an initial amount of fifteen thousand Ghana Cedis (GH¢15,000.00). After taking delivery of the vehicle/car and the documents, he would then apply for a bank loan from his bankers to pay the difference.

The Plaintiff continued that after all the verbal agreement reached between him and the first defendant, the first defendant then placed a call and spoke to someone he (first defendant) referred to as an Alhaji Meiga (2<sup>nd</sup> defendant). After speaking to the person, he (first defendant) then took them to a guest house at Ahamansu Junction where they were made to meet the alleged Alhaji Meiga

He(Plaintiff) added that along the line, he told the first Defendant in the presence of a witness that he (Plaintiff) does not know the Alhaji Meiga (2<sup>nd</sup> defendant) and that the first defendant whom he knew earlier should be taking the monies meant for the payment of the vehicle in order that, in the case of any eventuality, he (first defendant) is going to be held liable and he (first defendant) agreed to that and collected the monies from him.

The Plaintiff continued further that, it was during their test drive that he detected and complained to the first Defendant that the vehicle was a diesel car and which was not pulling enough. The vehicle was then taken to some mechanics who advised him in the presence of the first defendant (who was driving) and a witness that the petrol engine type was better. So, it was based on that advice that he and the first defendant agreed to get the petrol engine opel Zafira for him (Plaintiff)

He intimated that the first defendant made him (Plaintiff) to pay an amount of five thousand Ghana Cedis (GH¢5,000.00) to Alhaji Meiga against his (Plaintiff) wish.

Under cross examination by the first defendant, the Plaintiff denied that the first defendant told him initially that the vehicle belonged to Alhaji Meiga

He however admitted that the first defendant took him later to meet the said Alhaji Meiga. He added that it was the first defendant whom he bargained with over the price of the vehicle apart from payment cash the amount of ten thousand Ghana Cedis (GH¢10,000.00) to him (first defendant)

The Plaintiff concluded that it was the first defendant who directed him to the said

Alhaji Meiga (second defendant) now non suited to pay the amount of five thousand Ghana Cedis (GH¢5,000.00) to him and to also take the mobile phone numbers of one Dramani from him (Alhaji Meiga).

The (PW1 corroborated the evidence of the Plaintiff.

Under cross examination by the first Defendant, the PW1 admitted that he accompanied the Plaintiff to the first defendant and the parties (Plaintiff and first defendant) bargained in his presence over the purchase of the Opel Zafira car. He added that he even saw the car himself and that it was the first defendant who handed over the keys of the vehicle to the Plaintiff.

In his witness statement filed, the defendant stated that, the Plaintiff gave some amount of money to the second Defendant to purchase an Opel Zafira vehicle from Lome I the Republic of Togo, at the cost of thirty five thousand Ghana Cedis (G¢35,000.00) in the month of September, 2021.

He (1<sup>st</sup> Defendant) stated that he brought the car/vehicle to Kadjebi but there was some noise which had caused the bearing not to be functioning well.

According to the first defendant, both the Plaintiff and the 2<sup>nd</sup> defendant agreed that the second defendant should repair and deliver same to the Plaintiff. He added that, the car was repaired by one Mashood but the Plaintiff failed to come for same with the reason that the entire engine system was not functioning.

The 1<sup>st</sup> Defendant intimated that the role he played was to bring the car from Lome to Kadjebi and that, it was later on that he got to know that the Plaintiff had gone to the 2<sup>nd</sup> defendant in Lome and had paid for a different car.

He (1<sup>st</sup> Defendant concluded that all the transaction between the Plaintiff and the 2<sup>nd</sup> defendant are not known to him (1<sup>st</sup> defendant).

The most surprising thing on the witness statement filed by the first defendant is that he did not even sign the alleged statement filed on the 9<sup>th</sup> day of May, 2022.

As a court therefore, I would not put any judicial weight on same.

In the classic case of: In Re Ashalley Botwe Lands, Adjetey Agbosu & ors. V Lamptey & ors. [2003 -2004] S.C. GLR 420, 425 – 426, Brobbey JSC (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 the instant suit, the defendant filed an unendorsed/unsigned witness statement. He appeared before the court, participated in the proceedings, cross examined the Plaintiff and his witness, but decided not to continue somewhere along the way.

The only available evidence to this court is the evidence of the Plaintiff and his witness.

From the available evidence, the facts and the law, I hereby enter judgment in favor of the Plaintiff against the first Defendant who facilitated the transaction between the Plaintiff, himself (first defendant) and the 2<sup>nd</sup> defendant, apart from receiving monies from the Plaintiff directly.

The 1<sup>st</sup> defendant is to pay the amount involved in full. This is because, even if the Plaintiff had refused to take the car there are avenues for the 1<sup>st</sup> Defendant to have initiated to seek redress.

I also order that, interest is to be calculated on the amount involved (i.e. GH¢19,000.00) from the month of February, 2022 as claimed by the Plaintiff to date.

A cost of one thousand, nine hundred and ninety Ghana Cedis (GH¢1,990.0) is awarded against the first defendant in favor of the Plaintiff.

H/W ERIC K. FIAMORDZI ESQ.

(MAGISTRATE)

