

CORAM: HIS WORSHIP MR. MAWUKOENYA NUTEKPOR (DISTRICT MAGISTRATE), SITTING AT THE DISTRICT COURT, BOLGATANGA IN THE UPPER EAST REGION OF GHANA, ON WEDNESDAY, THE 4TH DAY OF OCTOBER, 2023.

SUIT NO.:UE/BG/DC/A2/2/23

**FELIX NEETEGE FAATAH
OF BODI DISTRICT EDUCATION OFFICE
WESTERN NORTH REGION**

PLAINTIFF

VRS.

**GBEOGO TEACHERS COOPERATIVE CREDIT
UNION LTD, TONGO**

DEFENDANT

TIME: 09:11AM

PLAINTIFF PRESENT

**DEFENDANT REPRESENTED BY MR. ATEO SYVESTER GARIBA
PRESENT**

JALADEEN ABDULAI, ESQ. FOR PLAINTIFF PRESENT

ISSAHAKU TAHIRU LAWAL, ESQ. FOR THE DEFFENDANT PRESENT

JUDGMENT

Introduction

1. By a Writ of Summons and Particulars of Claim filed on 1st August, 2022, the Plaintiff claims against the Defendant as follows: -
 - a. Recovery of an amount of Nine Thousand Three Hundred and Ninety Three Ghana Cedis [GH¢9,393.00] being monies wrongfully deducted from plaintiff's salary account and paid to the defendant.

- b. Interest on the said amount of Nine Thousand Three Hundred and Ninety Three Ghana Cedis [GH¢9,393.00] from July 2021 till date of final payment.
 - c. General damages for breach of contract.
 - d. Cost.
2. On the 18th day of August, 2022, the Defendant filed its defence to the plaintiff's claim. The plaintiff also filed a reply to Defendant's defence on 11th October, 2022.

Plaintiff's case

3. The Plaintiff says he is a Teacher by profession and currently the District Director of Education in the Bodi District of the Western North Region of Ghana. He avers that sometime in 2018 he was the Head master of the Gbeogo School for the Deaf in Tongo District. Plaintiff avers that whiles he was stationed at Tongo as aforesaid he joined the Defendant Credit union as a member. Plaintiff avers that sometime on 9th January, 2018 he applied for and was granted a loan facility of Fifteen Ghana Cedis only [GH¢15,000.00] by the Defendant Co-operative Credit Union. Plaintiff avers that at the material time of the grant of the said facility, he was not notified of an attraction of an interest rate or any interest at all on the facility, nor was he told of any tenure (time for repayment) of the loan. Plaintiff avers that he did not sign any document with the defendant indicating that the facility was at a particular interest or any interest at all. Plaintiff avers that he subsequently commenced repayment of the loan and completed repayment on 13th June 2021, before he proceeded to assume duty at his current office at Bodi in the Western-North Region. Plaintiff avers that he noticed a shortfall in his monthly salary sometime in July 2021 when he went to his Bank (ADB Bank) for his salary. Plaintiff avers that his investigation revealed that the said deduction was upon the instruction of the defendant, authorized by its

Board chairman Mr. Ateo Sylvester Gariba. Plaintiff avers that it is not legal for monies to be deducted from his personal salary accounts without his knowledge and consent and indeed without access to his personal password to the said account with his bankers.

4. Plaintiff avers that without his knowledge and consent, officials of the Defendant **fraudulently** obtained his personal password to have access to his account and instructed the Controller and Accountant General to commence deductions of monies from his said account into the accounts of the defendant without his knowledge and consent.

PARTICULARS OF FRAUD

- a. Obtaining plaintiff's password to his salary account which was used to authorize deduction from his account without his knowledge and consent.
 - b. Instituting the deductions of monies from plaintiff's said account [for whatever reason] without first communicating to him and obtaining his consent so to do.
 - c. Appointing guarantors to the said loan without their knowledge and consent, and in fact without the knowledge and consent of plaintiff, thereby exposing them to great risk of financial encumbrance and embarrassment.
 - d. Generation of mandate form without the knowledge and consent of plaintiff, forging his signature and also gave authorization to Controller and Accountant General Department to do the deduction from plaintiff's salary.
5. Plaintiff avers that he subsequently petitioned the Regional manager of the upper East Region Chapter of the Ghana Co-operative Credit Union

Association, appealing for redress and for assistance to get Defendant to refund all amounts then deduction from Plaintiff said account. Plaintiff avers that at a meeting held in the office of the Talensi District Director of Education, Officials of the Defendant, including its Board Chairman flatly refused to accede to his demand. Plaintiff avers that subsequently an investigation conducted under the auspices of the Upper East Region Chapter of the Ghana Co-operative Credit Union Association, was carried out and it was strongly recommended to Defendant to refund the deducted amount back to the plaintiff but this again was to no avail. Plaintiff avers that he has since written to the Defendant's Board Chairman and followed up with reminders, including his Solicitor's Demand Notice for a refund of the deducted amounts to him but the Board Chairman failed and /or refused to even acknowledge receipt of the said letters let alone accede to plaintiff's request. Plaintiff's avers that the deductions that were carried out from his said account did not follow a regular pattern to disclose a particular rate of deductions but was haphazardly done with irregular deductions from month to month.

6. Plaintiff avers that, the total amount illegally deducted from his account amounted to Eleven Thousand Four Hundred and Ninety Three Ghana Cedis [GH¢11,493.00] and was received by the defendant. Plaintiff says that he had an outstanding IOU amounting to Two Thousand One Hundred Ghana Cedis [GH¢2,100.00] with the defendant and that during the meeting at the District Director's Office he directed the defendant to deduct the said IOU from the total amount illegally deducted from his salary and the balance paid to him. Plaintiff states that if the IOU of GH¢2, 100.00 is deducted from the said amount deducted from his account by the defendant it will be left with an amount of Nine Thousand Three Hundred and Ninety Three Ghana Cedis [GH¢9,393.00] to be returned to the plaintiff. Plaintiff avers that Defendant will not refund the said amount of Nine Thousand Three Hundred and Ninety Three Ghana Cedis [GH¢9,393.00] to plaintiff unless ordered by court.

Defendant's case

7. Defendant vehemently denied Plaintiff claims and states that plaintiff joined the Gbeogo Credit Union Limited in January 2012 and prior to the instant loan has taken several loans from the Union and as the practice is, a ledger is opened for every registered member and all his transactions are recorded in the ledger. In January 2018 the plaintiff applied for a loan facility of GH ₵15,000.00 which was granted for him. By the terms of the loan facility granted to the plaintiff, he was supposed to repay the loan facility within 6 months at a monthly installment of GH₵2,762.50. Defendants states that the plaintiff had previously taken loans from the credit union and repaid with interest so he knew that this particular loan facility was to be paid with interest. Defendant says as a matter of fact it is stated clearly in the Bye-law and Articles of the Association that loans granted to members will attract interest. Also there is a chart in the office of the Credit Union which shows interest rates to be paid by members based on the number of months within which the loan facility will be repaid.

8. It is the defendant's case that the plaintiff stated in his application form that the loan was to be repaid in 6 months so it attracted an interest rate of 10.5% as provided for in the interest rate of the Credit Union. Defendant stated that a loan facility which was supposed to be paid within 6 months, the plaintiff eventually used over 3 years to pay and does not want to pay interest. Defendant avers that the plaintiff at the time of completing the loan form, provided the credit union with his is password, voters identification card, passport size picture and staff number to enable the credit union generate a mandate number to deduct the loan facility through the Controller and Accountant General Department if he fails to pay off the loan as well the interest accrued on it. It is the defendant case that it never fraudulently obtained the password of the plaintiff but he was the one who provided the union with these data which was used to make deduction through Controller and not his personal account at the Bank.

9. Defendant says as the plaintiff delayed in repaying the loan facility, interest on the loan continue to accrued and as at the year 2021 interest has accrued up to over GH¢9,393.00. Defendant says the interest accrued on the plaintiff's loan facility amounted to GH¢9,393.00 and the plaintiff had an IOU of GH¢2,100.00 which made his total indebtedness to the credit union amounted to GH¢11,493.00. The defendant says it made all efforts to get the plaintiff to pay the interest accrued on the loan and the IOU but he failed and or refused to settle his indebtedness to the credit union. The Defendant says as a result it had no alternative than to forward the said amount of GH¢11,493.00 and plaintiff's bio-data which he provided to the credit union to Mr. Francis Awen Agadia, defendant's systems Administrator to process to Controller for the deduction to be effected. Defendant says an input was therefore made to deduct an amount of Gh¢478.00 per month for a period of 24 months from the Accounts of the plaintiff at the Controller and Accountant General's Department. However, due to some technical problems, Controller made the deductions haphazardly within 7 months but eventually the total amount deducted from his account amounted to the same figure of GH¢11,493.00.

10. Defendant says after Controller started effecting the deductions, the plaintiff wrote a letter to the Regional Manager of co-operative union, Upper East chapter complaining of illegal deductions from his salary. A meeting was held at the office of the credit union and another at the office of the District Director of Education Tongo both of which was attended by the Regional Manager of co-operatives in an attempt to amicably resolve the matter both meetings prove futile. It is the Defendant's case that the plaintiff's action is misconceived, unlawful and unconscionable and that the plaintiff is not entitled to his claim and or at all.

Issues

11. The issues for determination in this case are as follows:

- a. Whether or not the loan of GHC15,000.00 given to Plaintiff was to be paid within a certain period with interest.
- b. Whether or not the deduction of the sum of **GHC11,493.00** from Plaintiff's salary by the Controller and Accountant General Department on the authority of Defendant and for the benefit of the Defendant without Plaintiff's consent or approval is illegal or fraudulent.

Burden of Proof

12. The obligation or duties of parties to lead evidence; and to persuade the court, as to the credibility of his or her allegations are covered both by statute and plethora of authorities. Under sections 10, 11, 12 and 14 of the Evidence Act 1975 (NRCD 323) the burden of who has the responsibility to lead evidence is clearly set out. These are burdens of leading evidence and the burden of persuading a tribunal by leading credible evidence. Sections 11(1) (4) and 14 provides as follows:

11(1) For 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.

(4) In other circumstances the burden of producing evidence requires a party to produce sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of the fact was more probable than its non-existence.

14 Except as otherwise provided by law, 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."

13. Thus there are two parts to the duty to discharge the burden of proof. Thus, the twin burdens of proof and standard of proof contained in the provisions are: (a) There is the burden of leading evidence to back an assertion; and (b) the burden of persuasion i.e. leading evidence of sufficient standard to persuade a tribunal to rule in one's favour. **See the case of Isaac Alormenu vs. Ghana Cocoa Board, Civil Appeal No. J4/86/2022, delivered on 8th February 2023.**

14. In the case of **In re Ashalley Botwe Lands; Adjetey Agbosu & Ors v Kotey & Ors [2003-2004] SCGLR 420, at pp. 464-465**, Brobbey JSC explained the law on burden of proof thus:

“The effect of sections 11(1) and 14 and similar sections in the Evidence Decree, 1975 may be described as follows: A litigant who is a defendant in a civil case does not need to prove anything: the plaintiff who took the defendant to court has to prove what he claims he 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 desires the determination to be made in his favour, then he has the duty to help his own cause or case by adducing before the court such facts or evidence that will induce the determination to be made in his favour. The logical sequel to this is that if he leads no such facts or evidence, the court will be left with no choice but to evaluate the entire case on the basis of evidence before the court, which may turn out to be only the evidence of the plaintiff.”

15. In **Ackah v Pergah Transport Ltd., 2010] SCGLR 728**, Sophia Adinyira JSC stated on the burden of proof at p.736 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. The method of producing evidence is varied and it includes the testimonies of the party and material witness, admissible hearsay, documentary

and things (often described as real evidence), without which the party might not succeed to establish the requisite degree of credibility concerning a fact in the minds the court or tribunal of fact such as a jury. It is trite law that matters that are capable of proof must be proved by producing sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of the fact is more reasonable than its non-existence. This is a requirement of the law on evidence under Section 10(1) and (2) and 11(1) and (4) of the Evidence Act, 1975 (NRCD 323)”.

16. Also, it is a settled principle of law that in any civil action the burden of persuasion as to the commission by a party of a crime which is directly in issue requires proof beyond a reasonable doubt. Thus, it was held by the Supreme Court in **Susu Bamfo vrs. Sintim (2013) 1 SCGLR 136** in holding 3 that:

“the law regarding forgery or any allegation of a criminal act in civil trial was governed by section 13(1) of NRCD 323; that section provided that the burden of persuasion required was proof beyond reasonable doubt.”

See also the case of **Fenuku v John Teye (2001-2002) SCGLR 985**

Evaluation of evidence, discussion of issues and legal analysis

17. Plaintiff testified himself and called one witness-PW1 (Shiela Amoasah). The Plaintiff’s evidence is similar to the facts of the plaintiff’s case as stated above. The evidence of plaintiff’s witness in effect supported the plaintiff’s case. The plaintiff tendered in evidence the following documents:

- a. Loan Application Form as **Exhibit A and F**
- b. A letter dated 12th August 2021 notifying the Upper East Regional Manager of CUA as **Exhibit B**.

- c. Copy of Application for refund of monies deducted dated 02/02/2022 as **Exhibit C**.
- d. An Investigation Report as **Exhibit D**.
- e. A Demand Letter from Plaintiff's Solicitor dated 16th May 2022 as **Exhibit E**.
- f. A copy of the Membership Pass Book showing how the loan was paid as **Exhibit G**.

18. Also, the Defendant testified through its Board Chairman in the person of Mr. Ateo Sylvester Gariba. The evidence of the defendant's representative is similar to the defendant's brief facts as stated above. It must be noted that one Francis Awen Agadia (DW1) started giving evidence but could not complete it due to ill health, and on the request of the Defendant the evidence of DW1 was expunged from the record. The Defendant tendered in evidence the following documents:

- a. Bye-laws of the Defendant Union as **Exhibit 1**
- b. An Extract of the Plaintiff's transactions with the Defendant recorded in a Ledger as **Exhibit 2**.
- c. The Loan Application form as **Exhibit 3**.
- d. A chart showing the various interest rates payable as **Exhibit 4**.
- e. A letter dated 10th December 2020 as **Exhibit 5**.
- f. A letter date 10th May 2021 as **Exhibit 6**.
- g. A copy of Publication of Loan Defaulters in July 2020 as **Exhibit 7**.

19. From the Evidence on record, the court found the following facts that:

- a. Plaintiff borrowed GHC15,000.00 from the Defendant January 2018.
- b. Plaintiff finished paying the said loan of GHC15,000.00 excluding interest on 13th June 2021, **See Exhibit G**. Thus Plaintiff used about 42 months to pay the loan of 15,000.00.
- c. The defendant authorized the Controller and Accountant General to deduct GHC11,493.00 (which the defendant claims to be accrued interest and outstanding IOU) from plaintiff's salary within a period of seven (7) months and paid to the defendant without plaintiff's consent or approval.
- d. Plaintiff made several demands for the refund of the said money less IOU of GHC2,100.00 but all his efforts proved futile, hence the commencement of this suit.

20. It must be noted counsel for the parties were given opportunity to file their written submissions. The lawyer for plaintiff did not file submissions but the lawyer for the defendant filed his submissions on 08/09/2023. The counsel for defendant in his submission filed on 08/09/2023 submitted that the repayment period for the loan was for six months and amount payable a month was GHC2,762.50. He also submitted that the plaintiff provided his bio data to the Union to enable them use it to make deduction from Controller if he fails to pay the loan and that defendant never fraudulently generated plaintiff's mandate form to authorize Controller to make deduction from plaintiff's salary. Counsel for defendant further argues that the plaintiff has failed to provide any documentary evidence to show that GHC11,493.00 was deducted from plaintiff's salary by Controller and Accountant General Department and paid to the Defendant, so plaintiff's case should be dismissed.

21. From the evidence on record, the analysis of the Loan Application Form which was tendered in evidence as **Exhibits A and F** by plaintiff and **Exhibit 3** by Defendant discloses few irregularities or anomalies. For instance, the Loan was to be approved by a Loan Committee made up of three members but only one of them purportedly signed the loan form. The court also noted that no interest rate was stated on the Loan Form. Besides, the loan agreement was not properly executed nor the loan guaranteed by anyone or secured contrary to regulations 18 (3) of the **Co-Operative Credit Union Regulations, 2015** (L.I. 2225). The said Regulation 18(3) of Co-Operative Credit Union Regulations, 2015 (L.I. 2225) provides that:

*“Subject to the by-laws of a Co-operative Credit Union, a Co-operative Credit Union **SHALL NOT** grant a loan unless (a) the loan is executed under a formal contract in writing; and (b) the loan is secured or guaranteed.”*

22. Be that as it may, there is no dispute that the Plaintiff borrowed GHC15,000.00 from the defendant and completed paying the said loan excluding interest on 13th June, 2021. The issue is whether or not the loan of GHC15,000.00 given to Plaintiff was to be paid within a certain period with interest. The plaintiff argues that there was no specific period for paying the loan nor any interest rate agreed upon while the defendant claims the repayment period was six (6) months but the plaintiff used 42 months to pay the loans excluding the interest. To this court, if the loan was for six months it should have been paid by July 2018. However, the defendant did not take any steps to recover the money from the plaintiff till December 2020 or the first letter from the defendant demanding for payment of the loan was on 10th December 2020. This was more than two years from July 2018 in which the Plaintiff should have completed payment of the loan, assuming without holding that the loan was given for 6 months. Also, in the letter dated 10th May, 2021 (**Defendant’s Exhibit 6**) the defendant claims the interest was GHC10,762.50 but in its evidence in chief the defendant claims the interest was GHC9,393. There is a clear inconsistency as to how much plaintiff was to pay as interest.

23. Moreover, if you look at **Exhibit G** which is the Plaintiff's passbook showing the repayment of the loan, there is nothing showing that plaintiff was liable to pay interest when the plaintiff paid the remaining balance of the loan on 13th June, 2021. However, for the previous loans there was an indication anytime an amount is paid showing both principal and interest. The defendant claims the plaintiff entered into an agreement for the plaintiff to pay the loan first and later paid the interest. The plaintiff has denied this allegation and the defendant has the onus to convince this court to that effect. Unfortunately, the defendant has failed to prove that allegation to the satisfaction of this court. This court therefore holds that the loan was given to plaintiff without interest and repayment period.

24. Furthermore, Counsel for defendant submitted that the plaintiff has failed to provide any documentary evidence to show that GHC11,493.00 was deducted from plaintiff's salary by Controller and Accountant General Department and paid to the Defendant, so plaintiff's case should be dismissed. This court however disagrees with this submission. This is because the defendant admitted in its evidence in chief that deduction of GHC11,493 was made from the plaintiff's salary account within 7 months by Controller and paid to the Defendant, hence there is no need for plaintiff to prove same.

25. This brings us to the issue of whether or not the deduction of **GHC11,493.00** made by Controller from Plaintiff's salary, on the authority of the defendant and paid to Defendant without Plaintiff's consent or approval is illegal or fraudulent? It is noteworthy that if somebody owes you and you want to recover your money you must follow the procedure laid down by law. To generate somebody's mandate form and authorize the Controller to deduct from someone's salary without the person's consent or approval is not acceptable. In the instant case, the defendant claims the plaintiff submitted his bio data to the Union to enable them use it to make deduction from Controller if he fails to pay the loan and that defendant never

fraudulently generated plaintiff mandate form to authorize Controller to make deduction from plaintiff's salary. The plaintiff however denied this allegation and it is the duty of the defendant to provide sufficient evidence that the plaintiff provided his bio data to the defendant for the Controller to be authorized to make the deduction. To this this court, the fact that someone submitted his bio data to you for the purpose of collecting loan does not give you the authority to use it to generate a mandate form without his knowledge, consent or approval and authorized Controller and Accountant General to make any deduction.

26. It is worth mentioning that Controller and Accountant General Department cannot make a deduction from someone's salary and paid to another person if an input is not made by a system administrator. The defendant claims they made an input for the money to be deducted in 24 months installment at GHC 478.88 per month; however the Controller used 7 months to deduct the total amount. This court is of the view that the defendant cannot blame the Controller and Accountant General Department for the manner in which the deductions were made. Whatever deduction that was made from Plaintiff's salary by the Controller and Accountant General was orchestrated by the defendant or defendant's System Administrator and any argument by the defendant to the contrary is unacceptable to this court.

This court therefore holds that the use of plaintiff's bio data by the Defendant to generate a mandate form without his knowledge, consent or approval and authorizing Controller and Accountant General to deduct the sum of GHC11,493.00 from Plaintiff's salary within seven (7) months for the benefit of the Defendant is fraudulent or illegal.

27. For the foregoing reasons, this court is of the considered opinion that the Plaintiff has succeeded in establishing the existence of facts contained in his claim to the satisfaction of this court. The Defendant is therefore liable to refund the amount of Nine Thousand Three Hundred and Ninety Three Ghana Cedis (GHC9,393) that was wrongfully deducted from the plaintiff's salary on the authority of the Defendant and paid to the Defendant. However,

the reliefs for interest and damages for breach of contract are hereby refused. The reason being that plaintiff's borrowed money from the defendant without paying interest and it will be unfair for the defendant to pay interest on the monies wrongfully deducted. Indeed, one of the maxims of equity is that he who comes to equity must come with clean hands.

Conclusion

28. Having examined the whole evidence adduced by the Plaintiff and the Defendant on record and from the foregoing authorities as well as the analysis, the court holds as follows that:

- a. Plaintiff's action succeeds in part and the Defendant is hereby ordered to pay the sum of Nine Thousand Three Hundred and Ninety Three Ghana Cedis (GH¢9,393.00) being monies illegally deducted from plaintiff's salary by Controller and Accountant General Department and paid to the Defendant.
- b. Reliefs for Interest on the said amount of Nine Thousand Three Hundred and Ninety Three Ghana Cedis (GH¢9,393.00) as well as damages for breach of contract are however refused.
- c. Cost of Two Thousand Ghana Cedis (**GH¢2,000.00**) is awarded against the Defendant in favour of the Plaintiff.

(SGD.)

**H/W MAWUKOENYA NUTEKPOR
(DISTRICT MAGISTRATE)**