

CORAM: HIS WORSHIP MR. MAWUKOENYA NUTEKPOR (DISTRICT MAGISTRATE), SITTING AT THE DISTRICT COURT, BOLGATANGA IN THE UPPER EAST REGION OF GHANA, ON WEDNESDAY, THE 8TH DAY OF NOVEMBER, 2023.

SUIT NO.: UE/BG/DC/A2/166/2021

**SIMON ANAMOO
OF BOLGATANGA**

PLAINTIFF

VRS.

**EMMANUEL AMOBILLA
OF BOLGATANGA**

DEFENDANT

TIME:10:03AM

PLAINTIFF PRESENT

DEFFENDANT PRESENT

NO LEGAL REPRESENTATION FOR THE PLAINTIFF

RICHARD ADAZABRA, ESQ. FOR THE DEFENDANT ABSENT

JUDGMENT

Introduction

1. By a Writ of Summons and Particulars of Claim filed on 14th June 2021, the Plaintiff claims against the Defendant as follows:
 - a. Recovery of cash the sum of Fourteen Thousand GHana Cedis (GH¢14,000.00) being outstanding balance together with 40% interest rate per month against the defendant.
 - b. Cost.

2. Defendant filed his defence on 8th October, 2021 and counterclaim against the Plaintiff for an order that plaintiff pays an outstanding amount of GH¢2,300 to Defendant, which amount represents the remaining value of Defendant's motorbike he deposited with plaintiff to offset a fully repaid loan amount of GH¢900.00.
3. On 11th August, 2021, the defendant admitted owing plaintiff the sum of GHC2,000.00 and the court differently constituted ordered the defendant to pay the said GHC2,000.00 to the plaintiff and the remaining balance of GHC12,000.00 in issue was set down for determination by this court.

Plaintiff's case

4. Plaintiff says he is a money lender and he lent an amount of GH¢4,000.00 without interest and GH¢5,000.00 at 40% interest rate to the Defendant on the 9th August, 2019 and 13th August, 2020 respectively. Plaintiff avers that Defendant paid off the GH¢4,000.00 on 22nd October, 2020. Plaintiff says that the GH¢5,000 at 40% interest rate per month for five months, amounted to Fifteen Thousand Ghana Cedis (GH¢15,000.00) of which Defendant only made part payment of the GH¢1000.00 22/10/2020, leaving outstanding GH¢14,000.00. Plaintiff stated that the total indebtedness of the Defendant as at 13th January, 2021 due and owing him stood at GH¢14,000.00. The plaintiff avers that all demands made on the defendant to settle his indebtedness have proven futile. Plaintiff says the Defendant has evinced an intention not to pay the money to him unless compelled by this court.

Defendant's case

5. Defendant vehemently denied plaintiff claim and says that he does not know whether or not plaintiff is a licensed money lender. It is the defendant's case that he first borrowed an amount of GH¢600.00 (six hundred Ghana cedis) from plaintiff repayable to him over a three-month period at a fixed lump sum interest amount on that loan of GH¢300 (three hundred Ghana cedis,

making it a total of GH¢900 (nine hundred Ghana cedis). Defendant says he was made to deposit his motorcycle documents with plaintiff as a sort of guarantee for repayment, but later when he was having difficulties repaying the money for the period, plaintiff took the motorcycle itself from him, saying he needed it to offset his loan he gave him, but actually, the value of the motor (GH¢3,200) far exceeded the GH¢900 he owed him.

6. Defendant says that he later needed another amount of GH¢5000 with interest thereon of GH¢2000 to solve another problem and plaintiff further lent him that money, but he returned that GH¢5000 to plaintiff before the end of that same month he borrowed the money. Defendant says no receipts or acknowledgements of money lent him or received back from him was ever given to him by plaintiff. That there were witnesses to repayment of the GH¢5000 back to plaintiff, and that he will repay him his interest of GH¢2000 back to him since he is currently facing difficulties and communicated to plaintiff.
7. Defendant says that apart from the above narration, Defendant does not owe plaintiff any money, and everything in the Writ is cooked up for dubious reasons. It is the Defendant's case that plaintiff rather owes him an amount of GH¢2,300 being remaining value of the motorcycle he used as guarantee for the first loan plus interest of GH¢900 which Defendant has fully repaid. Defendant therefore prays that plaintiff's claims against him should be dismissed as unfounded.

Evaluation of Evidence, Legal Analysis and discussion of issue(s)

8. The issue for determination in this case is whether or not the Defendant is liable to pay Plaintiff the sum of GHC12,000.00. It is a trite law that it is the duty of a Plaintiff to prove his case for he who alleges must prove. 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 of NRCD 323 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.”

9. 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.**

10. 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.”

11. 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)”.

12. In Air Namibia (Pty) Ltd. V. Micon Travel & Tour & 2 Ors, [2015] 91 G.M.J, It was held at page 177 that:

“It is trite law that it is the duty of a Plaintiff to prove his case for he who alleges must prove. In other words, it is the party who raises an issue essential to the success of his case who assumes the burden of proving such issue. This burden of proof is statutorily defined in sections 10 (1) and (2) 11(1) and (4) and 12(1) and (2) of the Evidence Act, 1975 (NRCD 323) and explained in the case of Adwubeng v. Domfeh [1996-97] S.C.G.L.R. 660. It must be noted that specific pleading of an issue of fact by a plaintiff in the civil case requires a specific denial of that issue of fact by the defendant in his statement of defence in order to cast a duty on the plaintiff to adduce credible and sufficient evidence of that issue of fact in order to

succeed in his claim. That is the rationale behind the enactment of section 10, 11 and 12 of the Evidence Act, 1975 (NRCD 323). Thus section 11(4) and 12(2) of NRCD 323 has provided in clear and uncertain terms that the standard of proof in the civil case is proof by a preponderance of the probabilities Adwubeng v Domfe (supra). But a bare assertion of the plaintiff in his evidence of the issue of fact he had asserted in his pleadings will not be sufficient to discharge his burden of proof of that assertion if he wants to succeed in his claim. He must go further to produce other evidence of facts and circumstances from which the court can be satisfied that what he has asserted is true. Such other evidence of such facts may include documentary evidence of the issue(s) asserted.”

13. Also, it is a settled principle of law that a bare assertion or merely repeating a party’s pleadings in the witness box without more does not constitute proof. **In KLAH V. PHOENIX INSURANCE CO. LTD [2012] 2 SCGLR 1139,** this principle was reiterated:

“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 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.”

See also **Majolagbe v Larbi & others (1959) GLR 190-195** and **Klutse v. Nelson [1965] GLR 537.**

14. In instant case, the Plaintiff testified himself and called one witness. The Defendant testified without a witness. From the evidence on record, the court found the following facts that:

- a. Plaintiff borrowed GHC9,000.00 to the Defendant on two occasions, GHC4000 without interest and GHC5000 at the rate of 40% per month respectively.

- b. The Defendant paid GHC5,000.00 leaving outstanding balance of GHC4,000.00
- c. When the matter came before this court differently constituted on 11th August, 2021, the Defendant admitted owing Plaintiff GHC2,000.00 and he was ordered to pay the said GHC2,000.00 with interest of GHC500.00 and Cost of GHC700.00 amounting to GHC3,200.00 which the defendant has paid.
- d. Hence the outstanding balance of the of the loan amount of GHC9,000.00 is GHC2,000.00

15. Plaintiff claims he is money lender but failed to provide sufficient evidence to convince the court that he is a money lender. Be that as it may, the court found that plaintiff lent GHC5000 to the defendant at the rate of 40% per month. To this court, the interest rate of 40% per month is too excessive. The court will therefore exercise its discretion and change the interest rate to 40% per annum. As the money has been with Defendant since August 2020, he will therefore be liable to pay interest on the outstanding principal of GHC2,000.00 from August 2020 to November 2023 (thus about 40 months) amounting to GHC2,667.00. The interest together with the remaining principal is GHC4,667.00. The court will also award Cost of GHC500.00 against the defendant.

16. The next issue to consider is whether or not the Defendant is entitled to his counterclaim. It is a well-established principle of law that a defendant who files a counterclaim has the same burden of proof as a plaintiff. In the case of **Nortey (No.2) V. African Institute Of Journalism And Communication & Others (No.2) [2013-2014] 1 SCGLR 703,** the principle was stated thus,

“Without any doubt, a defendant who files a counterclaim assumes the same burden as a plaintiff in the substantive action if he/she has to succeed. This is because a counterclaim is a distinct and separate action on its own which must also be proved according to the same standard of proof prescribed by sections 11 and 14 of NRCD 323, the Evidence Act (1975)”.

17. In the instant case, the Defendant counterclaimed against the Plaintiffs for the sum of GHC2,300. He therefore has a burden of proof to discharge. But having examined the evidence on record as well the above analysis under issues one *supra*, this court is of the considered opinion that the defendant has failed to establish the existence of facts contained in his counterclaim by the preponderance of the probabilities. The Defendant counterclaim is accordingly dismissed

Conclusion

18. So, having examined the whole evidence adduced by the Plaintiff on record in accordance with above-mentioned authorities, the court holds that the Plaintiff has failed to prove his case to the satisfaction of this court that he is entitled to claim GHC12,000.00 from Defendant. However, it is hereby ordered that the Plaintiff shall recover the sum of **Five Thousand One Hundred and Sixty-seven GHana Cedis (GHC5,167.00)** from the Defendant. The breakdown of the GHC5,167.00 is as follows: (a) remaining Principal of GHC2,000.00 (b) Interest on the GHC2,000.00 for Forty Months at the rate of 40% per annum....GHC2,667.00 and Cost of Five Hundred Cedis (GHC500.00.). Defendant counterclaim is dismissed.

(SGD.)
H/W MAWUKOENYA NUTEKPOR
(DISTRICT MAGISTRATE)