

09/08/23

IN THE DISTRICT COURT HELD AT THE AKROPONG DISTRICT COURT ON
WEDNESDAY THE 24TH DAY OF AUGUST, 2023 BEFORE HIS WORSHIP
ROCKSON A. K. KPODO ESQ DISTRICT MAGISTRATE.

SUIT NO. A2/144/23

NHYIRABA OSEI GODFRED

V.

EBENEZER AGYEI

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JUDGMENT

Plaintiff claims against defendant:

- a) General damages for wrongful seizure of plaintiff's tricycle with the registration with registration No. AW 2494 – 22.
- b) Recovery of 21 days at GHC400 per day.
- c) Interest on relief 2 at the current bank rate from 28th February, 2023 to 21st March, 2023.

Plaintiffs case in support of his claim is that defendant herein sent him to buy a tricycle which cost GHC15000 him and that when he was going to buy the cycle defendant gave only an amount of GHC5000 as payment for the bike and he asked defendant to go with him so they can discuss the terms with the seller but defendant refused so he went all alone to give the money to the person and took the tricycle.

Plaintiff added that on his way home some 2 guys cross him on the way and wanted to collect the bike from him and he did not allow them so they called the police and so he was detained for 5 days and asked him to look someone to sign the bail bond for him after they realised that he bought the bike from a genuine source but defendant

refused to come and sign the bail for him but he was later given a self-recognisance bail.

Plaintiff added that when he got home, he met defendant and they both agreed that the tricycle should work for them to use the proceeds to pay the bank loan GHC100 per day and defendant agreed but later defendant called to tell him that he should him an amount of GHC5000 being the money he owed the bank.

According to plaintiff defendant later called to tell him to pay GHC15000 or he will seize his tricycle and he disagreed with him and later his bank guarantor called to tell me that he has seized my motor bike and that he will release it when I pay their money to them and later he asked me to bring my wife to witness the agreement to use my motor bike to pay the debt I owed defendant and so I reported the issue to the Assemblyman of our area and he also asked me to report the issue to the unit committee chairman which I did and they also referred the matter to the chiefs for settlement.

Plaintiff says that at the palace the chiefs asked defendant to release the bike to him to work with it in order to pay him but they did not agree because they fear that he may run away if they release the bike to him, hence they did not release the bike to him.

Plaintiff concluded that defendant brought the bike to him later with the courts summons but as the bike was faulty, he asked him to repair the bike for him and he did that and he also paid him his GHC5000 with cost all amounting to GHC7500 and added that he wants the court to compel defendant to pay his daily sales of GHC400 per day for the 21 days that he kept the bike and also pay interest on the said sales at the prevailing bank rate.

PW1 corroborated plaintiff's evidence that defendant kept his bike for 21 days.

In his defence defendant says that plaintiff told him that someone was selling a tricycle at the cost of GHC10000 and that the person wanted half of the money so we can pay the balance later so he gave plaintiff an amount of GHC5000 being half payment for

the bike and plaintiff went and came back after 3 days to tell him that he bought the bike but it turned out to be a stolen bike and so he asked him to refund his money but plaintiff refund the money to him but he later gave his bike to him to use so that he will go and bring mine later but to no avail.

Defendant added that as plaintiff could not bring his bike to him after several demands, he gave his bike to him to use to work in order to defray the GHC5000 he gave him but as he was not able to pay the loan at the bank his guarantor met him on the bike and sized it and kept it for 7 days after plaintiff promised to pay him the money and that he kept the bike for only 3 days.

DW1 added that plaintiff and his brother-in-law reported the issue to him and so he advised him to take the issue to the unit committee which he did and the committee too referred the matter to the chiefs and they all met at the palace to settle the issue and the chiefs ruled that plaintiff should refund the money to defendant but defendant said the bike has been seized by his guarantor but plaintiff got offended and told the chiefs that they have not decided the matter well so he was taking the case to the court.

Gleaning from the above therefore the court has identified the following issues for settlement:

1. Whether or not plaintiff is entitled to his reliefs?
2. Whether or not defendant is entitled to his counterclaim?

Plaintiff, after paying the money defendant gave to him buy the bike for him, thinks that defendant should also pay for the 21 days defendant kept his bike with interest.

But defendant on the other hand disagrees with plaintiff on the grounds that he was not the one who kept plaintiff's bike and that he has no control over the seizure of the bike because the bike was seized by his guarantor as he was not able to pay the loan, he took to buy the bike.

The court is of the view from the above scenario that it was plaintiff who first messed up the whole situation by deceiving defendant under the pretext of buying a tricycle for him but to no avail.

Thus, plaintiff has sinned against **the maxim of equity which says that 'one who comes to equity must come with clean hands.'**

In fact, there is no doubt that prior to the filing of this suit a court of competent jurisdiction has already found plaintiff guilty of fraud on defendant and convicted him accordingly.

Thus, plaintiffs have been able to produce sufficient evidence to prove their case in circumstance with section **11(1) of the Evidence decree, NRCD 323 of 1975 which says:**

'For the 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'.

The court is therefore of the view from the above that defendant has not kept plaintiff's bike, hence cannot be held liable for keeping plaintiff's bike for the stated period.

Thus, plaintiff has not been able to prove on the balance of probabilities that defendant has pay him GHC400 for keeping his bike for 21 days with interest.

Judgment is hereby entered for defendant.

Cost of GHC600 is hereby awarded for defendant against plaintiff.

SGNED

H/W ROCKSON A. K. KPODO

