

CORAM: IN THE DISTRICT COURT HELD AT KODIE IN THE ASHANTI REGION
ON MONDAY THE 2ND DAY OF OCTOBER, 2023 BEFORE HER WORSHIP MRS.
CHRISTIANA ODARKOR BRUCE-ASHIRIFIE (ESQ.), THE DISTRICT
MAGISTRATE.

SUIT NO. AR/KD/DC/A2/116/2023

OBIBA BOATENG JOHN
Of H/No C3
Bremang

]- PLAINTIFF

VRS

ACHEAMPONG MICHAEL
Of Bremang

]- DEFENDANT

JUDGMENT

The Plaintiff instituted this suit against the Defendant by a writ of summons filed on the 12th of May, 2023 praying for the following reliefs:

- 1. The recovery from the Defendant the sum of GH¢6,769.00 being outstanding payment of debt owed to the Plaintiff*
- 2. Interest on the said amount*
- 3. Cost incidental to the suit.*

The Defendant was personally served with the Plaintiff's writ of summons on the 12th of May, 2023 of which he engaged the services of a lawyer one Vera Boateng and she filed a Notice of Appointment of Solicitor on the 6th of June, 2023. Thereafter neither the Defendant or his lawyer appeared in court to defend the action.

The court therefore, on the 7th of August, 2023 ordered the Plaintiff to file his witness statements and serve same on the Defendant for the trial of this matter. The court further made an order for the Plaintiff to serve the Defendant with a hearing notice to notify him of the trial pursuant to **Order 25 rule 2(a)** of the **District Court (Civil Procedure) Rules, 2009 (C.I. 59)** which states as follows:

“Where an action is called for trial and a party fails to attend, the trial magistrate may

(a) Where the plaintiff attends and the defendant fails to attend, dismiss the counterclaim, if any, and allow the plaintiff to prove the claim.”

On the strength of **Order 25, Rule 2(a)** quoted above, the Plaintiff was made to prove his claim.

THE PLAINTIFF’S CASE

According to the Plaintiff herein he got to know the Defendant herein through his son one Vincent Acheampong whom he employed to work as a mobile money vendor in February, 2023. It is the case of the Plaintiff per his witness statement filed on the 15th of June, 2023 that because of the nature of the work which involves money, he requested his employee Vincent Acheampong to provide a guarantor and he came with his father the Defendant herein.

The Plaintiff averred that he entered into an agreement with the said Vincent Acheampong and the Defendant herein signed as his guarantor. The said agreements were tendered into evidence as **Exhibit “A”, “B” and “C”** which are the Employment Agreement, Code of Conduct and Photocopies of Ghana cards of the Defendant and his son respectively.

The Plaintiff in his witness statement stated that he gave an amount of GH¢13,326 to Vincent Acheampong to start the business. According to him Vincent Acheampong worked for two (2) months and judiciously rendered accounts each day for that period. It is the case of the Plaintiff that thereafter the said Vincent stopped rendering accounts as he used to.

The Plaintiff stated that this got him alarmed and so he quickly contacted the Defendant herein about the whereabouts of his son as he was having difficulty tracing him.

The Plaintiff averred that the Defendant came to plead and promise to refund the money his son has taken away an amount of GH¢6,769.00. It is the case of the Plaintiff that he had persistently demanded his money from the Defendant but he had failed to honour his promise to refund same and hence this instant action.

The Plaintiff called one Joyce Boateng to testify in support of his case. According to PW 1's witness statement filed on the 15th of June, 2023 she got to know the Defendant herein when his son came to work with his brother the Plaintiff. She averred that she is aware that the Defendant's son took the Plaintiff's money of which the Defendant herein promised to pay back but he had failed to do so.

ISSUE

At the end of the trial, the issue that fell for determination was whether or not the Plaintiff is entitled to his claim.

EVALUATION OF THE LAW AND EVIDENCE

It is important to mention that our courts are often admonished to take evidence before proceeding to enter judgment. This caution was reiterated by **Appau J.A.**

(as he then was) in the case of Ayiku IV v A.G. & Anor [2009] 5 GMJ 148 where he stated as follows:

“the trial court could not have entered default judgment in favour of the appellant in respect of the declaratory reliefs sought by the appellant in the action based on an ex parte application without calling evidence to establish the claim or reliefs...”

Thus, notwithstanding the absence of the defendant the burden of proof on the Plaintiff remains unchanged. This position is supported by the dictum of the much celebrated Ollenu J. in Barima Gyamfi and Another v. Ama Badu [1963] 2 GLR 596 where he said as follows:

“... there is no onus upon the defendant to disprove a claim made by the plaintiff, so that, however conflicting or unsatisfactory his defense may be, the same cannot avail the plaintiff...”

This dictum implies that it always falls entirely upon the Plaintiff to make a satisfactory case and the fact that the defendant makes an unsatisfactory defense - such as in this case where a defence is totally nonexistent - does not in any way ease the responsibility placed on the Plaintiff.

As the Plaintiff is making the assertions per his claim, he has the burden to prove the existence of the assertions made on the balance of the probabilities.

ANALYSIS OF THE PLAINTIFF'S EVIDENCE

The evidence provided by the Plaintiff in support of the claim is that he set up a mobile money operating business of which he employed one Vincent Acheampong to man same. According to him because of the nature of the work he

entered into an agreement with the said Vincent of which his father, the Defendant herein signed as a guarantor that in case of any losses he will bear same.

The Plaintiff to support his case tendered in evidence copies of the said agreement signed as **Exhibit "A", "B" and "C"** respectively. The said exhibits demonstrate that the Plaintiff can recover from the Defendant any losses incurred by his son in the course of his work. The Plaintiff's claim before this court, however, is for the recovery of the amount of GH¢6,769.00 from the Defendant herein being money he claimed the Defendant's son bolted away with at work.

Thus the question is what evidence was led by the Plaintiff to support his allegation?

The Plaintiff did not lead any evidence as to how the Defendant's son come to owe him the amount stated supra.

The law is very clear on the kind of evidence required when a party makes an allegation of fact in his pleadings. A party who alleges a fact must prove it either by direct evidence or evidence from which the court can rightly infer that the facts alleged exists. One cannot mount the witness box and repeat the same allegations of fact without calling evidence to support same.

Thus it behooves on the Plaintiff to lead sufficient evidence to convince the court of the amount that he is claiming from the Defendant more so when the Defendant did not appear in court to take part in the trial.

In the absence of any direct or indirect evidence by the Plaintiff to show that the Defendant's son bolted with his GH¢6,769.00, I find that his claim against the Defendant must fail.

Cost would have been awarded in favour of the Defendant but none will be made since at no point during the trial did he attend Court to take part in the trial even though he was duly notified of same. The Plaintiff's case against the Defendant is hereby dismissed.

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CHRISTIANA BRUCE-ASHIRIFIE, ESQ.,
(DISTRICT MAGISTRATE).