

IN THE DISTRICT COURT KWASO/ASH HELD ON FRIDAY 17TH DAY
OF NOVEMBER 2023 BEFORE HIS WORSHIP SOLOMON KWASI
ALOMATU

SUIT NO: A2/17/2023

NANA BAFFOUR TAWIAH PLAINTIFF

V

KOFI OWUSU DEFENDANT

PARTIES -----UNREPRESENTEDPRESENT

JUDGEMENT

Plaintiff sued the Defendant herein seeking the following:

- 1. Recovery of Gh¢690.00, being the cost of 23 pieces of Palm Trees at Gh¢30.00 each Defendant fell without his consent in January 2023.
- 2. Interest on the said amount from January 2023 till the determination of the matter.

The Defendant having been served denied the claims of the plaintiff.

From the writ of summons and the statement of claims, it is the case of that, he resides at Onwe near Ejisu. Plaintiff is both Cocoa and Palm trees farmer. He knows the defendant. Somewhere in December 2022 to early January 2023, his visited the farm and realized that someone had fell **23 Palm trees**. A week later his wife returned from the farm and informed him that, it is the Defendant who fell the Palm trees to distill alcohol. Plaintiff

visited the farm hoping to meet the defendant but could not. Plaintiff left a message with the son of the defendant that he should see him. He followed up for some months to get the defendant to pay for the trees but Defendant never showed up. Later in the month of April 2023 Defendant brought him Gh¢200.00 as payment for the Palm trees. This he refused. This is because defendant ignored the invitation. The cost of each Palm tree is Gh¢30.00. Defendant fell 23 Palm trees therefore the total amount is Gh¢690.00 and not Gh¢200.00.

During cross examination, the plaintiff denied he sold the Palm trees to the Defendant. He maintained the Defendant fell the palm trees without his consent therefore called him to pay for same.

For the Defendant, Plaintiff is the nephew of his late father.

In the year 2021 plaintiff approached him that he had some Palm Tress ready for tapping. Three months later defendant requested that, they should go and inspect the farm. Plaintiff replied he had other issues to attend therefore asked his wife to lead him to the farm. They went to the farm and counted **60 Palm trees** ready for tapping. At that time a palm tree was sold for **Gh¢5.00** but plaintiff sold his to him at **Gh¢7.00** per one. He paid **Gh¢460.00 for 60 Palm trees**. He thereafter **fell 45 Palm trees remaining 15 Palm trees on the farm**. He later informed plaintiff that he was searching for other palms trees around or near his farm to tap. When he was ready to go and tap the other person's palm trees, he informed the plaintiff he was going to fell the remaining 15 palm trees he paid for. While tapping the **15 Palm Trees** from the farm of the plaintiff', the Plaintiff requested that Defendant taps additional **8 Palm Trees**. In all, he **fell 23 Palm Trees**. Each Palm Tree cost Gh¢10.00 and not Gh¢30.00. He sent Gh¢200.00 to plaintiff for 20 Palm Trees leaving outstanding balance, but Plaintiff refused to accept it. In all, he only owes plaintiff for **8 Palm Trees**.

During cross examination the plaintiff denied he authorized or sold the palm trees to the Defendant. Despite the denial Defendant stood his ground.

From the case of the plaintiff and the Defendant, the following are facts.

- The Palm trees belong to the plaintiff
- Defendant fell 23 Palm Trees

The issues in contention are:

1. Whether or not the Defendant fell the Palm trees without the consent of the Plaintiff.
2. Whether or not Defendant is liable to pay for 23 palm trees at Gh¢30.00 each

It is the case of the Plaintiff that, Defendant fell 23 Palm trees on his farm without his knowledge. When he got to know, he demanded the Defendant to pay for same. That he priced it **Gh¢30.00 per one totaling Gh¢690.00**. Even though the Defendant denied he fell the palm trees without the knowledge, he claimed that, 15 of the Palm trees out of the 23 Palm Trees, were left over or reminder or part of 60 Palms Trees he earlier bought and paid for. Therefore, he is liable to the value of **8 palm trees**. He contended he only went to fell the reminder of 15 Palm trees when Plaintiff through his wife requested him to fell additional 8 palm trees. Plaintiff through cross examination denied the material evidence of the Defendant. In fact, he denied Defendant left 15 Palms Trees on the farm. He contended Defendant fell 23 Palm Trees and that he never sold them to the Defendant at Gh¢10.00 per one.

From the evidence of the Defendant, he admitted he is liable to pay for 8 palm trees. The question is it true that Defendant left 15 Palm trees on the farm of the plaintiff? The burden lies on the shoulder of the defendant to show that indeed left the 15 Palm trees of the farm of the plaintiff. It is settled law that, Statutory provisions of the **Evidence Act**

1975 (NRCD 323) the burden of producing evidence in any given case is not fixed but shifts from party to party in various stages in the trial, depending on the issues raised or denied. In the present case, the burden shifts to the Defendant.

Under section **8(2) of Sale of Goods Act, 1962 (Act 137)**, the fundamental obligation of the vendor under contract of sale of goods was to deliver them to the purchaser when they were paid for, and the purchase was obliged under section 21 of Act 137 to accept the delivery of the goods. Unless the contrary intention appeared in the contract, the place of delivery was the vendor's place of business or residence as provided for under section 19 of Act 137. These provisions were given the judicial backing in the case of **Birch v Asempa & Another [1991] D2HC1990**. In this case the plaintiff purchased 7000 Cement blocks, collecting some leaving about 2000 which got lost or damaged. The plaintiff sued the defendant for it. The court held to the effect that the point of deliver was Defendant place of business therefore if plaintiff left the blocks there, then does so at his own peril, as he owes him no duty except it proved that Defendant acted negligently or stole the blocks, he could not be held to account. I am fortified with this law to say that, even if it is true that Defendant left 15 palm trees, he did so at his own risks. In any case, plaintiff denied his assertion and he could not provide superior argument to establish his case. It is a case of oath against oath. It is my respectful view that Defendant fell 23 palm trees and is liable to pay for same.

The next issue at what price? Plaintiff avers Defendant fell the tree own his own, as result, there is not contract of sale between them. Therefore, he priced one Palm tree at Gh¢30.00. Even though Defendant denied this and said the plaintiff through the wife asked him to fell the trees. He failed to show that, there is concluded contract between him and the plaintiff before he fell the trees. He only said the one palm tree was sold at Gh¢10.00 at the material time.

On the whole, it is the view of this Court that plaintiff established his claims. I therefore enter judgment against the Defendant on the principal sum of **GH690**.

The claim for interest is declined because the price of Gh¢30.00 is the present market value for each Palm Tree.

I award costs of Gh¢200.00 against the Defendant for the plaintiff.

In summary, the plaintiff is to recover the following:

- 1. Principal sum of Gh¢690.00**
- 2. Costs Gh¢200.00**
- 3. Total Gh¢890.00**

The Defendant is to make full payment into Court within 7 working days.

The Defendant is reminded of his right to appeal.

SGD
H/W SOLOMON KWASI ALOMATU
DISTRICT MAGISTRATE
17-11-23