

IN THE DISTRICT COURT, KWASO-ASHANTI REGION HELD  
ON FRIDAY THE 20TH DAY OF OCTOBER 2023 BEFORE HIS  
WORSHIP SOLOMON. K. ALOMATU

SUIT NO: A2/10/2023

ISAAC ADUTWUM ..... PLAINTIFF

V

KWAME DANQUAH ..... DEFENDANT

PARTIES .....PRESENT

**JUDGEMENT**

From the writ of summons and the statement of claims, it is the case of the plaintiff that, he purchased an Opel Astra Caravan with Reg. number AS 5916U. He gave the said car to Defendant, who is driver on the 23/06/ 22 to work with and render weekly account of Gh¢300.00 to him personally. He failed to render account from November 2022 to December 2022, which totaled Gh¢1,800.00. Plaintiff tendered in evidence a Passbook and argued that it shows the transactional recording of the only payment Defendant made as **Exhibit 'B'**.

The defendant eventually abandoned the car. He spent money to replace the battery, changed the engine oil and bought fuel, totaling Gh¢950.00

Finally, he instituted this action against the Defendant for the following reliefs:

- 1. Recovery of cash the sum of Gh¢1,800.00 being accrued sales from November 2022 to December 2022.**
- 2. Gh¢150.00 being the cost of maintenance of the car.**
- 3. Replacement of Battery or alternative Gh¢800.00 being its value.**

#### 4. Costs

The defendant denied the claims of the Plaintiff.

It is the position of the Defendant that, when the Plaintiff purchased the car, he did not want his wife to know about it. He therefore instructed him to render the weekly account of Gh¢300.00 to one Robert at the Kwaso Taxi terminal. This he complied with. After about 5 months the car developed battery faults and he informed the plaintiff and together they went to charge it at the cost of Gh¢60.00. The plaintiff paid for.

Three months later his mother became sick. He informed the plaintiff to find another driver because of his mother's condition. Plaintiff then asked him to park the car, which he did. Later on the plaintiff took the present action against him.

Under cross examination the defendant maintained that plaintiff asked him to render account to one Robert which he did, and does not own the plaintiff. He also denied any knowledge of **Exhibit 'B'**.

From the case of the plaintiff and that of the defendant, the following emerged as facts.

1. They plaintiff bought a Taxi cab for the Defendant as the driver
2. They agreed on a weekly sale of Gh¢300.00

The issues in controversy are:

- 1. Whether or not Defendant is to render account directly to the Plaintiff**
- 2. Whether or not plaintiff maintained the car at the cost of Gh¢150.00**
- 3. Whether or not Defendant caused damaged to the battery of the car.**

In this case, there is no counterclaim to the plaintiff's action, therefore the plaintiff carries the burden to prove his case against the Defendant. The plaintiff assumes the burden of producing evidence and that of persuasion. The standard of proof to discharge this burden is on the preponderance of probabilities. **Section 12 (1) of the Evidence Act (NRCD 323). Ackah v Pergah Transport [2010] SCGLR72@736.**

I now proceed to examine the issues as they appeared above.

On the very first issue above, the Plaintiff canvassed the point that Defendant was supposed to render the weekly account to him in the sum of Gh¢300.00. This he failed to do. The defendant either in statement of defence, evidence in chief and through or under cross examination denied this assertion and argued that Plaintiff appointed one Robert to be the Receiver of same because did not want his wife to be in the known. This denial placed the legal burden on the Plaintiff to lead cogent evidence in support of his case.

Plaintiff in his evidence in chief said, he agreed with the Defendant to render account of Gh¢300.00 to him. This, the defendant failed to do. Under cross examination when the Defendant put to him that, he directed the Defendant to render the account to one Robert, he denied it. However, in a further question when the Defendant asked him if he did not go to one Robert to collect the sales, he answered in the positive and at the same time contradicted himself. See below:

**“Q. Did you not go to Robert to collect the daily sales from him?”**

**A . ... I go to Robert on Sundays to collect the money”**

**In a follow up question;**

**Q. “Were you the one who instructed me to make the weekly sales to one Robert?”**

**A. It is not true.**

Clearly the plaintiff’s evidence in chief contradicts that under cross examination and under cross examination contradicts evidence under cross examination. In short in one breath, he claimed not have appointed one Robert to receive the sales from the Defendant, in another breath he says he did. A party who contradicts himself in this manner as in the present case, a court of law cannot lean in favour of his evidence.

Furthermore, to rescue his case, Plaintiff called Robert Addai to support his case. At para5 of the witness statement of PW1, he states **“the Plaintiff asked me to be collecting a weekly sale from the Defendant and forward same”**.

It must be noted that, the reason why a party in a case call as witness is not for the fun of it but to support his or her case. Therefore, where the evidence of party witness supports that of his opponent when his own testimony stood uncorroborated, no judicial weight can be given to such evidence. In the present case, the bone of contention between the two parties is who the Defendant was supposed to render account. The plaintiff argued that Defendant was supposed to render account to him personally but failed. Whilst the Defendant contended that Plaintiff directed him to render the account to PW1 which he did dutifully. From the above evidence of PW1, his testimony in no doubt contradicts that of Plaintiff and supports the position of the Defendant. Therefore, the above principle applies to the present case. It is therefore my respectful view that, on this issue the plaintiff failed to establish it, hence same dismissed.

On the next issue, plaintiff averred that he spent Gh¢150.00 to change oil and buy fuel. This the defendant resisted. It is settled that, where a matter is capable of being proof either by producing some material evidence, the party whose assertion is denied must produce

same. The plaintiff knew that he was going to make claim against the Defendant one day. Therefore, he could have obtained receipts for both fuel and oil change he claimed to have made. He produced nothing to back his claim. Therefore, his assertion cannot stand the judicial acid test. Accordingly same dismissed.

On the last issue of replacement of car battery or in the alternative a claim of it value of Gh¢800.00, just like the immediate issue above, he could have tendered the receipt of the battery he claimed to have bought or the damaged battery when the he knew he would make a claim one day and more importantly when the defendant denied, the battery was damaged at his hands. Respectfully the plaintiff made bear assertion without any attempt to back it. This is equally dismissed.

All in all, it is my respectful opinion the whole action of the plaintiff is founded on nothing therefore same dismissed.

I take the position that, he just wasted the time and resources of the Defendant. I therefore award costs of **Gh¢1,0000** against the plaintiff for Defendant.

The costs should be paid into court within 7working days.

**SGD**

**H/W SOLOMON K. ALOMATU.**

**DISTRICT MAGISTRATE 20-10-2023**