

**IN THE DISTRICT COURT HELD AT NYINAHIN ON FRIDAY THE
3RD DAY OF NOVEMBER, 2023 BEFORE HER WORSHIP VICTORIA
VERA AKONU ESQ. DISTRICT MAGISTRATE**

SUIT NO: A2/39/23

COMFORT YEBOAH @MAAME YEHOWA PLAINTIFF
Of H/No. 4, Block 4,
Atasemanso - Kumasi

AND

BABA SEIDU DEFENDANT
Of Nyinahin
Ashanti

PARTIES: Present

J U D G M E N T

By her writ of summons issued from this Court's Registry on the 17th of February, 2023, the Plaintiff's claim against the Defendant is for the recovery of an amount of Thirty Thousand, Five Hundred and Seventy-Five Ghana Cedis (GHS30,575.00) being balance of money the Defendant collected from her for the supply of timber wood of which the Defendant failed to deliver as agreed between them, recovery of Four Thousand Eight Hundred Ghana Cedis (GHS4,800.00) as expenses she has incurred as a result of hiring taxi from travelling from Kumasi to Nyinahin on several occasions with the aim of coming to collect her money from the Defendant and interest on the principal at the prevailing bank rate.

On 28th March, 2023, the Defendant pleaded liable to the relief one and not liable to reliefs two and three.

Accordingly, judgment on admission was entered in favour of the Plaintiff and against the Defendant for relief one. The Defendant then paid Seven Thousand Ghana Cedis (GHS7,000.00) in open Court which was handed over to the Plaintiff.

The matter was subsequently referred to the Registrar of the Court to assist the parties reach an amicable settlement on reliefs two and three, after the Defendant has requested for time to produce the wood and/or refund the Plaintiff's money to her.

On 13th July, 2023, the Registrar informed the Court that settlement in respect of reliefs two and three has broken down and so the matter was adjourned to 21st August, 2023 for trial. When the case was called on 21st August, 2023, the Defendant was absent and so the matter was again adjourned to 31st August, 2023 for trial with an order for hearing notice to be served on the Defendant. On 31st August, 2023, both parties were absent and so it was again adjourned to 11th and 12 September, 2023.

Even though the Defendant was served with a hearing notice for 11th and 12th September, 2023, he was absent when the matter was called. The Plaintiff testified and closed her case on 11th September, 2023. The Defendant however came to Court on the 12th September, 2023 and opened his defence.

This judgment is in respect of reliefs two and three.

CASE OF THE PLAINTIFF

It is the evidence of the Plaintiff that she lives at Atasomanso and sells wood at Santasi in Kumasi. It is her case that she gave the Defendant Forty-Five Thousand Eight Hundred and Thirty-Eight Ghana Cedis (GHS45,838.00) to be supplied with 5000 pieces of 2 by 2 Otea wood in Kumasi. Her claim against the Defendant was Thirty Thousand, Five Hundred and Seventy-five Ghana Cedis (GHS30,575.00) and that the Defendant has failed to supply her this amount of wood.

She avers that she is entitled to interest on the said amount as she borrowed the money and it is attracting interest. That the Defendant has kept her money since April, 2022.

She avers that the Defendant lives at Nyinahin and when he was not supplying her with the wood, she came to Nyinahin for more than 10 different occasions to demand for her money and each time she came to Nyinahin it costed her Four Hundred Ghana Cedis (GHS400.00) and this has accumulated to Four Thousand, Eight Hundred Ghana Cedis (GHS4,800.00).

She avers again that when the Defendant was not paying the money, she caused his arrest by the Nyinahin Police all to no avail. Hence this action.

THE CASE OF THE DEFENDANT

The evidence of the Defendant is that he lives at Chirayaaso Nkwanta in Nyinahin and that the Plaintiff is his customer who he was supplying wood. He avers that the Plaintiff is not entitled to interest because she did not pay the money to him in bulk but bit by bit within a period of 4 years to get the

total of what the Plaintiff is claiming and that in the wood business when money is given for the supply of wood, it does not attract interest.

He avers again that he was not the only reason that the Plaintiff was coming to Nyinahin and that there are other people/workers the Plaintiff come to see and it is when she comes to see these people that she will call him to enquire about her money. He states that there were many times he saw the Plaintiff in Nyinahin but the Plaintiff did not call him.

He states that the Plaintiff caused his arrest and from that time that he was arrested by the Police, it was the Police that was demanding for the money and not the Plaintiff herself. For that reason, the Plaintiff is not entitled to the transportation she is demanding.

Burden of Proof/Burden of persuasion

By law the Plaintiff has a burden to prove her case to the standard required in civil actions; that is on a balance of probabilities as stated in the Evidence Act, 1975 (NRCD 323). as relates to the issues raised are set out below:

Section 10 –

“(1) For the purposes of this Act, the burden of persuasion means the obligation of a party to establish a requisite degree of belief concerning a fact in the mind of the tribunal of fact or the Court”

“(2) The burden of persuasion may require a party to raise a reasonable doubt concerning the existence or non-existence of a fact or that he

establishes the existence or non-existence of a fact by a preponderance of the probabilities”.

As I have stated earlier, judgment on admission has already been entered in favour of the Plaintiff and so it is the claim for interest and transportation that has necessitated this judgment.

The issue for determination is Whether or not the Plaintiff is entitled to be paid interest and transportation?

Interest is defined by google as **“money paid regularly at a particular rate for the use of money lent, or for delaying the repayment of a debt”**.

In his book titled **PRACTICE & PROCEDURE IN THE TRIAL COURTS & TRIBUNALS, 2ND EDITION, @ PAGE 402,** His Lordship Justice S. A. Brobbey define interest as **“interest is the price paid by a borrower for the use of a lender’s money. Thus, in Riches Vrs. Westminster Bank Ltd [1947] AC 390 at 398, HL, Viscount Simons, in distinguishing between interest and capital, described interest as “the accumulated fruit of a tree which the tree produces regularly until payment”**.

Interest could be based on the agreement between the Parties at an agreed rate and there are situations where the Courts are mandated by the Law to award interest as well as transactions involving interest free or friendly assistance to one another and when the money is not paid at the time it became due, the affected party may apply to the Court to award interest.

The evidence of the Plaintiff is that the Defendant has kept her money since April, 2022 and that if she had traded with it, she would have made profit on same.

The only reason given by the Defendant for his refusal to pay the interest is that the money was not paid to him in bulk and also their agreement was not time bound.

This assertion by the Defendant is not acceptable to the Court, granted without admitting that their agreement was not time bound, the moment he failed/refused to supply the wood and the Plaintiff demand for the return of her money, he should have refunded the money to her. The value of the money 4 years ago will not be the same as the Court has taken judicial notice of high inflation rate for the past two years and so keeping someone's money unlawfully for 4 years will only be beneficial to the person who is keeping the money and not the one who has given out the money and since the judgment had already been entered for the Plaintiff, it is appropriate that the Court award interest in order to cater for the loss of income or profit she would have made on her money.

I therefore find and hold that the Plaintiff is entitled to interest on her money from the moment she demanded for the return of her money from the Defendant.

On the issue of transportation, the Plaintiff has not led sufficient evidence for me to grant her the amount. However, since the Defendant has admitted that the Plaintiff came to him twice I will grant her transportation for the two

occasions which is Eight Hundred Ghana Cedis (GHS800.00) as the Defendant has not disputed that the Plaintiff spends Four Hundred Ghana Cedis (GHS400.00) each time that she had to come to Nyinahin to demand for her money.

It is the considered opinion of the Court that the Plaintiff has not led any credible evidence to prove her assertion. She could have at least called the taxi driver who was bringing her to Nyinahin to testify to support her claim.

I therefore find and hold that the Plaintiff is entitled to only Eight Hundred Ghana Cedis (GHS800.00) for the two days admitted by the Defendant.

Having examined the evidence adduced by the parties, vis-à-vis the legal principles on the balance of probabilities, I hold that the Plaintiff was able to demonstrate that she is entitled to the reliefs he is seeking for which reason, I enter judgment for the Plaintiff against the Defendant as follow:

Interest on Thirty Thousand, Five Hundred and Seventy-Five Ghana Cedis (GHS30,575.00) from April, 2022 to March 2023 and on Twenty-Three Thousand, Five Hundred and Seventy-Five Ghana Cedis (GHS23,575) from May 2023 at the Ghana Commercial Bank rate till date of final payment

Even though the Defendant pleaded not liable to Relief 3, cost is at the discretion of the Court. In awarding cost, the Court has to take into consideration expenses including traveling expenses reasonably incurred by that party, amount of Court fees paid by that party and the length of the proceedings. It is evident that the Plaintiff comes from Kumasi each time

this case has to be called and the fact that this case has also suffered lots of adjournments due to the continuous absence of the Defendant.

I award cost of Two Thousand Ghana Cedis (GHS2,000.00) against Defendant and in favour of the Plaintiff.

SGD.
VICTORIA VERA AKONU
DISTRICT MAGISTRATE