

**IN THE DISTRICT COURT HELD ON WEDNESDAY THE 29TH DAY
OF NOVEMBER, 2023 BEFORE HER WORSHIP VICTORIA VERA
AKONU ESQ. THE DISTRICT MAGISTRATE**

SUIT NO: A2/13/23

KINGSLEY ANTWI KODUAH PLAINTIFF
H/No. AI-0007-5194
Nyinahin - Salam

VRS.

KOFI AMOAH DEFENDANT
Kyirayaaso

PARTIES: Present

J U D G M E N T

The Plaintiff issued this writ of summons on 22nd November, 2022 against the Defendant for the recovery of the sum of Thirty-Three Thousand Nine Hundred and Ninety-Three Ghana Cedis (GHS33,993.00) being money Defendant collected from him in November, 2020 with the promise of supplying him woods (beams) equivalent to the said amount which the Defendant has refused or failed to honour his promise upon several demand from him, an order compelling the Defendant to return his Monkey Jack (10 tones) which was given to the Defendant to support his wood work and costs of instituting this action.

On the 30th November, 2022 the Defendant pleaded liable to reliefs one and two and the matter was adjourned for the parties to attempt an out of Court

settlement after one Charles Dabank approached the Court to be given the opportunity to assist the parties settle their differences out of Court.

Settlement broke down and so on 27th February, 2023 judgment on admission was entered in favour of the Plaintiff to recover the sum of Twenty-One Thousand, Four Hundred and Ninety-Three Ghana Cedis being the amount admitted by the Defendant on 30th November, 2022. The Plaintiff also informed the Court on that day that the Defendant has also returned the Monkey Jack (10 Tones) to him making relief 2 moot.

Both Parties testified and did not call any witness.

CASE OF THE PLAINTIFF

The case of the Plaintiff is that he deals in woods. He avers that he gave money bit by bit to the Defendant for him to be supplied with wood. The total amount that was given to the Defendant is Thirty-Three Thousand Nine Hundred and Ninety-Three Ghana Cedis (GHS33,993.00). He tendered in evidence invoices which were admitted and marked as Exhibits “A and B” without objection after they have reconcile their accounts.

He continued that, after the reconciliation, they agreed that he will convey the wood from the bush and so when his car broken down due to accident, he collected a friend car to be used for that purpose and informed the Defendant that he was ready to convey the wood from the bush.

He avers that the Defendant then told him that he was going to inspect and clear the road as there may have been trees that might have blocked the road and get back to him.

He avers further that he never heard from the Defendant till he called him one day insulting him that he had reported him to one Coach. He then informed him that he has not told Coach anything. The Defendant then refused to pick his call or have anything to do with him.

He denied that the Defendant informed or showed him where he had kept the wood in the bush as agreed between them and that the wood he kept in the bush got spoilt.

Subsequently, he saw that the Defendant was selling wood to other people even when he had not supplied his and so he informed the Defendant to return his money to him which he refused to comply. Hence this action.

EVIDENCE OF THE DEFENDANT

The evidence of the Defendant is that he is a chainsaw operator who traded with the Plaintiff by supplying him with wood and that in the wood business, supplies are made to those who have or own cars.

He avers that the agreement between him and the Plaintiff was that he will cut the wood, leave it in the bush and then the Plaintiff will convey same with his car in the bush. According to him he cut the wood in the Chirayaaso forest and then informed the Plaintiff but the Plaintiff refused to convey same and allowed one Tagbor to convey 100 pieces of the said wood from the forest to the Plaintiff's shop.

He avers again that it was left with 250 pieces in the bush which the Plaintiff told him that he will not convey them and that was left in the bush to rot. He admitted collecting (GHS33,993.00) from the Plaintiff but his contention was with the 250 pieces that which was left in the bush. He states that each piece

of the wood cost GHS50.00 and the 250 pieces amounted to the GHS12,500.00 and for that matter he does not owe the Plaintiff.

Since the Defendant does not deny that he collected the amount being claimed from the Plaintiff, his only issue has to do with the 250 pieces which according to the Defendant, the Plaintiff failed to convey same from the bush. Hence the issue I will to determine is

Whether or not the Defendant informed and showed or directed the Plaintiff about the wood left in the bush

APPLICABLE LAW/BURDEN OF PROOF

By law the Plaintiff had a burden to prove his case to the standard required in civil actions; that is on a balance of probabilities.

Section 11 of the Evidence Act, 1975 (NRCD 323) states in part:

Section 11 – Burden of producing Evidence Defined

“(1) 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”

“(4) In other circumstances the burden of producing evidence requires a party to produce sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of the fact was more probable than its non-existence.

Section 12 “(1) Except as otherwise provided by law, the burden of persuasion requires proof by a preponderance of probabilities”

“(2) Preponderance of the probabilities means that degree of certainty of beliefs in the mind of the tribunal of fact or the Court by which it is convinced that the existence of a fact is more probable than its non-existence.

In the case of **TAKORADI FLOUR MILLS VRS. SAMIR FARIS [2005-2006]** **SCGLR @900** it was held as follows “.....in accessing the balance of probabilities, all the evidence, be it that of the Plaintiff or the Defendant must be considered and the party in whose favour the balance tilts is the person whose case is the more probable of the rival versions and is deserving of a favourable verdict”

The evidence of the Plaintiff confirms that the Defendant called to tell him that he has cut the wood but he did not show him the location

This is what transpired under cross examination by the Defendant on 18th May, 2023.

Q: You claim you do not know the location where I parked the wood how come you told the Court that I have conveyed the wood from bush?

A: I was told by my workers when you took the wood to the sawmill they were the ones who carried it out of the truck.

The Plaintiff has denied that the Defendant then answered that he told the driver of the Plaintiff that he has left the wood in the bush. The agreement was for the Defenant to inform the Plaintiff and not his driver. Having said so I therefore find and hold that the IDefenndant did not inform the plf the location where he had cut the wood in the bush

Having examined the evidence adduced by the Parties and on the legal principles on the balance of probabilities, I find that the evidence of the Plaintiff is more probable and for that I enter judgment for the Plaintiff to recover from the Defendant GHS12,500. I hold that the evidence of the Plaintiff is more probable than its none existence. I hereby enter judgment for the Plaintiff against the Defendant as follow:

The Plaintiff is to recover from the Defendant an amount of Twelve Thousand Five Hundred Ghana Cedis (GHS12,500.00) being the disputed amount.

Plaintiff is awarded costs of Two Thousand Ghana Cedis (GHS2,000.00).

SGD
VICTORIA VERA AKONU ESQ
DISTRICT MAGISTRATE