

**IN THE DISTRICT COURT HELD AT DUAYAW NKWANTA**  
**ON MONDAY 14<sup>TH</sup> DAY OF AUGUST, 2023 BEFORE HIS WORSHIP STANLEY ADJEI**  
**ESQ.**

SUIT NO. A2/49/2023.

LAMISI TONGO.....PLAINTIFF HEREIN

VRS

KYEI BAFFOUR ..... DEFENDANT HEREIN

**JUDGMENT**

By a writ of summons filed on 13/7/2023, Plaintiff sued Defendant for the following reliefs.

- a) Cash sum of Seven Thousand Ghana Cedis (GHC7,000.00) being the cost of cassava Defendant harvested from the plaintiff's farm without her notice.
- b) Cost.

**BACKGROUND TO THE SUIT.**

Plaintiff herein is a farmer at Duayaw Nkwanta. The defendant is a Teacher at susuanho. Plaintiff contends that she has a farm at a place called Gugumsereme where she has been cultivating foodstuffs for more than 30 years now and that she cultivated cassava on land about 2 years ago.

Plaintiff continued that she travelled to her hometown and upon her return, she noticed that the cassava in her farm have been harvested and upon inquiry she got to know that it

was the Defendant who have harvested her cassava and Defendant confirmed same with the reason that he has purchased the land and that he is ready to compensate the plaintiff with Ghc500.00.

#### PLEA

The Defendant pleaded not liable to the reliefs sought by the plaintiff setting up the matter for trial.

#### **ISSUES FOR DETERMINATION**

The issue before the court is whether or not plaintiff was able to establish her claim 7000ghc for harvesting her Cassava without her notice.

#### **MODE OF TRIAL.**

The court did not order the parties to file pleadings. The mode of trial was by oral evidence. The plaintiff testified herself and called no other witness. Defendant also testified himself and called no other witness.

#### **STANDARD OF PROOF, BURDEN OF PROOF AND PERUATION.**

A writ of summon as a form of civil litigation, the standard of proof is one on balance of probabilities or preponderance of probabilities. The proof as prescribed in civil trials is

provided in section 10, 11 and 12 of the Evidence Act, 1975 (NRCD 323). These sections on burden of proof, burden of persuasion and burden of producing evidence, provide thus:

(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

(a) to raise a reasonable doubt concerning the existence or non-existence of a fact, or

(b) to establish the existence or non-existence of a fact by a preponderance of the probabilities or by proof beyond a reasonable doubt.

11 (1) For the purposes of this Act, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling on the issue against that party.

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

(2) **“Preponderance of the probabilities”** means that degree of certainty of belief 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.

As was held by the Supreme Court per Adinyira, JSC in *Ackah v Pergah Transport Ltd* [2010] SCGLR 728 at p. 736: “It is a basic principle of the law on evidence that a party who bears the burden of proof is to produce the required evidence of the facts in issue that has the quality of credibility short of his claim may fail...”

## **THE TRIAL ITSELF -EVIDENCE BY THE PLAINTIFF**

Evidence of the Plaintiff.

The plaintiff in her evidence-in-chief testified that she cultivated cassava on a land given to her by an old lady who is deceased and her daughter by name Auntie Manu -Plaintiff testified that she travelled to her hometown and upon her return, the Defendant had harvested the cassava. In her efforts to resolve the matter with the Defendant, the Defendant told her that he got 7 bags from the farm and after taking out cost, the money left is Ghc500.00 and she refused to accept the Ghc500.00 because she was not present and she could not tell what Defendant realized from the sale of the cassava.

The plaintiff continued further that she is demanding Ghc7000.00 from the defendant because upon her inquiry, a full tricycle of cassava costs Ghc1500.00 and per her estimation, the cassava harvested amount to 3 full tricycle loads.

## **EVIDENCE LED BY THE DEFENDANT.**

Evidence of the Defendant. Defendant testified that he acquired a plot of land numbered 95 and after acquiring it, there were crops on the land and he made efforts to find the person who has crops on the land.

In March 2022, he went to the farm and met the plaintiff. Defendant further stated that he told plaintiff that he has bought the plot so if she could quantify the crops on the land so he(defendant) could compensate her to be able to develop the land but plaintiff refused. Defendant continued that he gave plaintiff time to remove her crops from the land and added that it should not take too long.

Defendant testified that he involved someone to talk to the plaintiff to take compensation but plaintiff again refused. Defendant continued that two months after meeting plaintiff on the land, Plaintiff had still not removed her crops on the land.

Defendant further testimony was that he caused to be deposited two trips of sand on the land and bought 80 bags of cement and molded 2500 blocks on the land all in efforts to send notice to the plaintiff that he needed the land to develop. Defendant continued that amidst of all these efforts, plaintiff did not make any effort to take the crops from the land. Defendant testified that he had to invest his money meant for the project elsewhere.

Defendant continued his testimony this way "I have been the one taking care of the land by weeding until 29/6/2023 when I had opportunity to go for a top-up loan" to start the project so he decided to harvest the cassava including some that he planted himself with the reason that he has given the plaintiff enough time to have harvested the cassava for him to develop his land. And after harvesting the cassava including some he also planted on the land, he realized Ghc500.00 after deducting cost.

Defendant testified that plaintiff came to his school on the issue and in an engagement to resolve the issue, Defendant told plaintiff that he realized Ghc500.00 from the cassava and that plaintiff should tell him how much she thinks she deserves but plaintiff rejected the money and reported the matter to police station and the matter could not be resolved at the police station and plaintiff subsequently sued him.

## **EVIDENCE OF PATRICK OWUSU (DW1)**

The evidence of DW1 centered on the harvesting of the cassava and the sum that was realized from it. Dw1 testified that Defendant ask him to accompany him to his plot to check on the harvesting of the cassava on his plot.

Dw1 testified that when they got there they had finished harvesting the cassava and some had rotten and, in their estimation, they were expecting one full load of tricycle(aboboyaa) but it was not up to that. And in the end the harvest was seven (7) bags and a bag was sold for GHc100.00 and so the 7 bags came to 700ghc and the cost of harvesting and transporting came to 200ghc and thus the net amount from the cassava harvested was GHC500.00.

#### **EVALUATION OF THE EVIDENCE.**

In evaluating the evidence, the court takes the view that plaintiff did not mount a strong case. The evidence of the defendant to the effect that he proceeded to harvest the cassava for a while he was the one taking care of the land by weeding and that he was ready to develop the land and had given the plaintiff enough time to harvest her crops which she failed to do.

To put it in simple terms, having bought/acquired the land on 15/10/2021 and having waited till middle of 2023, it is enough time for plaintiff to have harvested her crops for Defendant to take possession of the plot to develop the land. Plaintiff failed to prove her case.

The action is hereby dismissed. Cost of GHC200 is awarded against the Plaintiff.

SGN

H/W.STANLEY ADJEI ESQ

14/8/2023