

IN THE DISTRICT COURT HELD AT KENYASI ON MONDAY THE 19TH JULY, 2023

BEFORE HIS WORSHIP CLEMENT KWASI ASOMAH AS MAGISTRATE

SUIT NO: BR/KS/A2/05/2023

ABEDNEGO DAKPO

VRS

NANA JOB SARPONG

JUDGMENT

Plaintiff on 13/04/23 was issued out of the Registry of this court a writ of civil summons claiming;

1. An amount of GH¢53,000 from the Defendant.
2. Cost

These reliefs the defendant admitted GH¢30,000 but denied the remaining GH¢23,000. So judgment was given on the amount the defendant admitted

This judgment is therefore in respect of the remaining GH¢23,000 the defendant denied liability.

THE PLAINTIFF'S CASE

Besides himself, the plaintiff called two witness.

The evidence of the plaintiff was that he advanced an amount of GH¢30,000 to the Defendant as a financial assistance. The plaintiff stated that they all agreed that the defendant would refund the entire amount within Four (4) months and would pay 20% each month as interest and a document to that effect was executed.

According to the plaintiff at the expiration of the Four (4) months, the Defendant has still not paid the remaining GH¢26,000.00 so same increased to GH¢53,000 per the interest they all agreed on which the Defendant agreed to pay in presence of witnesses when he could not meet the deadline.

Pw1, Gyamfi Buadu's evidence corroborated the evidence of the plaintiff in all material respects. According to pw1, the Defendant agreed to pay all the interest which would accrue from December, 2022 when he could not settle the entire GH¢54,000.

Pw2, Nana Appiah also corroborated the evidence of the plaintiff.

Suffice it to say that the plaintiff closed his case after the evidence of pw2.

THE DEFENDANT'S CASE

The Defendant's evidence was that he needed financial assistance so the plaintiff gave him GH¢30,000 and they agreed on 20% interest per month and a document to that effect was executed and all the parties accented.

According to the Defendant he paid GH¢28,000 but could not finish full payment because his contract with Newmont was terminated

He concluded that he owes the plaintiff GH¢26,000 but not GH¢53,000.

He denied agreeing to pay interest on the additional months. Beside the 4 months

The defendant closed his case after his evidence.

ISSUES

The following issues arose for determination by this court;

1. Whether or not the parties agreed on 20% as interest per month.
2. Whether or not the plaintiff is entitled to his claim.

NOW THE ISSUES

Issue One – Whether or not the parties agreed on 20% as interest per month.

The plaintiff was emphatic that before he advanced the GH¢30,000 to the Defendant, they all agreed that 20% interest would be paid on the principal each month for the Four (4) months duration of the loan. So the interest plus the principal stood at GH¢53,000.00.

The evidence of the plaintiff was corroborated in all material respect by pw1 who said he was present during the transaction and was privy to what transpired that day.

The defendant did not deny this piece of evidence by the plaintiff. In fact the defendant unequivocally admitted that they all agreed on the 20%.

I therefore have no difficulty in holding that the 20% per month was what the parties agreed on.

Issue Two – Whether or not the plaintiff is entitled to interest beyond December, 2022.

It was the case of the plaintiff that the duration of the financial assistance was Four (4) months.

And for each month the defendant was to pay 20% as interest but at the expiration of the Four (4) months. The defendant was able to pay GH¢28,000 instead of GH¢54,000. So the defendant agreed in presence of witnesses that he would continue to pay the agreed interest till the debt is liquidated, the reason the debt now stands at GH¢53,000.

The defendant vehemently denied this piece of evidence by the plaintiff and contended that they agreed on the 20% for the Four (4) months but not beyond that and so he did not agree to pay interest beyond December, 2022.

Now the law is that he who alleges assumes the onus of proof. See FAIBI VRS STATE

HOTELS (1968) GLR 471.

In the instant case since it is the plaintiff who alleged that the defendant agreed to pay interest beyond December, 2022, he assumed the onus to have adduced sufficient evidence to establish his claim.

Section 14 of the evidence Decree, NRCD 323, 1975 enacts; "Except as otherwise provided by law, unless and until it is shifted a party has the burden of persuasion as to each fact the existence or non-existence of which is essential to the claim or defence he is asserting.

The question is has the plaintiff been able to discharge this legal burden on him, the plaintiff called pw1; Kwaku Boadu as a witness. In his bid to discharged this legal burden on him

Exhibit A was also tendered in evidence to show that the agreed interest was 20%.

He was emphatic that the defendant agreed to pay the interest beyond December, 2022 which as I have indicated in this judgment, pw1 corroborated this piece of evidence by the plaintiff's whereas the evidence of the plaintiff is corroborated by pw1 on this issue that of the defendant stood in total isolation through evidence abounds that the person who even introduced the plaintiff to the defendant was present at their meeting. And he is a friend of to the defendant. Yet he did not call him as a witness.

The position of the law is that a court ought to prefer corroborated evidence as against uncorroborated evidence unless on the face of the judgment the corroborated evidence is either incredible or impossible. See the case of QUAGRAINE VRS ADAMS (1981) GLR 599.

I am of the view that the Defendant agreed to pay interest beyond December, 2022 and solve issue two in favour of the plaintiff.

Issue three – whether or not the plaintiff is entitled to his claim.

It is the claim of the plaintiff that the Defendant owes him GH¢53,000 but not GH¢30,000.00 he admitted in court because he has calculated the 20% interest they agreed on the remaining GH¢26,000.

Now it is worthy if not that the courts respect the sanctity of contracts so contracts freely entered into by parties with capacity are treated in law as sacred.

The law is concerned with the free will of the parties and not with the fairness of the terms of a valid contract. So if two astute businessmen enter into a contract that contract is valid and the court will not entertain complaints about contractual fairness.

In the instant case evidence abounds that the parties met and agreed on 20% as interest. The court has established that as a fact. In view of that the defendant cannot use parole. Evidence to contradict what they have agreed on and reduced into writing. I am satisfied on the preponderance of probabilities that the plaintiff has been able to prove his claim. I therefore have no option but to give him judgment on the remaining GH¢23,000.

Judgment is accordingly entered for plaintiff on the GH¢23,000 the defendant denied liability Cost of GH¢2000.00 is awarded against the defendant.

SGD.

H/W C. KWASI ASOMAH