

**IN THE DISTRICT COURT 2, TAMALE HELD ON TUESDAY 21<sup>ST</sup> NOVEMBER, 2023  
BEFORE HIS WORSHIP D. ANNAN ESQ.**

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**SUIT NO. A2/18/23**

**BETWEEN**

**ALHASSAN YUSSIF**

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**PLAINTIFF**

**AND**

**1. BABA SANKOFA CO. LTD.**

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**DEFENDANTS**

**2. KHALED WEHBE**

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**JUDGMENT**

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**INTRODUCTION**

1. The plaintiff herein deals in the supply, distribution and sale of varied products as well as running a bread bakery. The 1<sup>st</sup> defendant imports and sell Baba Sankofa brand of mosquito products and other businesses. The 2<sup>nd</sup> defendant is the general manager of the 1<sup>st</sup> defendant.
2. On 28<sup>th</sup> April, 2023 the plaintiff through his counsel instituted this present action against the defendants. The reliefs sought by the plaintiff are:
  - “a. Recovery from the defendants an amount of Fifty-Six Thousand Nine Hundred and Twenty-Six Ghana Cedis Sixty Ghana Pesewas (GH56,926.60) being the outstanding payment for the promotion and commission for the supply of Baba Sankofa Mosquito products.

- b. Interest on the said amount at the prevailing commercial bank interest rate up to the date of final payment.
  - c. Damages for breach of contract.
  - e. Costs.”
3. The defendants disputed the plaintiff’s claim and counterclaimed as follows:
  - “a. Recovery of an amount of GHS30,755.00 as balance outstanding of the GHS37,255.00 as amount of goods plaintiff seized from Alhaji Osman and sold and failed to pay to the defendants.
  - b. Interest on the GHS27,000.00 at current commercial bank rate since September 2022 till date of judgment.
  - c. Recovery of an amount of GHS26,000.00 as special damages from the plaintiff.
  - d. General damages
  - e. Costs.”
4. The plaintiff in his reply also disputed the defendants’ counterclaim.
5. Parties were directed to file witness statements in support of their respective claim. I shall recount the case of either party in the ensuing paragraphs.

#### PLAINTIFF’S CASE

6. According to the plaintiff sometime in April 2022 the 2<sup>nd</sup> defendant acting on behalf of the 1<sup>st</sup> defendant engaged him as a key distributor and later became a (principal) agent. As part of his role, he was required to find credible bulk customers as well as carry out promotional campaigns in the five northern regions. Plaintiff explained that he was entitled to commission calculated on the difference between the ex-factory

price and the agreed wholesale price. Thus, he was to be paid the said commission once the bulk customers had sold and paid the 1<sup>st</sup> defendant.

7. Plaintiff averred that he was able to bring on board Mr. Hakeem of Wa, Alhaji Osman and Mr. Red, both of Tamale and Madam Lardi of Navrongo. He detailed that all these customers took various products from the 1<sup>st</sup> defendant, see paragraphs 11-20 of his reply to defendants' counterclaim and paragraphs 15-27 of his witness statement. Yet, the defendants have failed pay his commission.
8. Plaintiff added that he also undertook promotional campaigns for the defendants, such as open broadcast vans, market storms at vantage areas and market days, vehicle (van) branding and product sampling. A jingle was also created in Dagbani language and popular local actors, like Lukeman Hakeem Adam (PW1), were engaged. All these were aimed at promoting the new products of the 1<sup>st</sup> defendant, yet the defendants have failed to reimburse him.
9. Plaintiff tendered in evidence Exhibit A being the whatsapp conversation between himself and the 2<sup>nd</sup> defendant. Exhibit B, is a pendrive containing an audio communication between the plaintiff and 2<sup>nd</sup> defendant, as well as the jingle.

Plaintiff witness

10. Lukeman Hakeem Adam, aka Chairman Banku (PW1) testified in support of the plaintiff claim. He explained that he was contacted by the plaintiff to produce the Dagbani jingle for 1<sup>st</sup> defendant's mosquito coils and sprays. He added that the plaintiff paid for the jingle. He indicated that the plaintiff also requested for open door promotion to which he (PW1) and his colleagues carried out same in Nyankpala, Kumbungu, Savelugu, Yendi, Gushegu and within the Tamale township.

## DEFENDANTS' CASE

11. 2<sup>nd</sup> defendant in his preliminary objection stated that the 1<sup>st</sup> defendant is a separate legal entity that can sue and be sued. He admitted that he dealt with the plaintiff for and on behalf of the 1<sup>st</sup> defendant. Hence, unless there is established fraud or any such claim, he was not a proper party to be added to the suit.
  
12. Testifying on behalf of the 1<sup>st</sup> defendant, 2<sup>nd</sup> defendant stated that at no point in time was the plaintiff engaged as an agent of the 1<sup>st</sup> defendant. He explained that he was in Wa when the plaintiff contacted him requesting to be an agent for 1<sup>st</sup> defendant for the five northern regions. 2<sup>nd</sup> defendant added that plaintiff gave out a cheque of GHS385,000.00 to be used as a guarantee, but he declined plaintiff's request because the plaintiff's warehouse was not in good shape and also that plaintiff's assurance of numerous customers and reliance on experience of having worked with Unilever Ghana could not be ascertained. Also, plaintiff wanted goods on credit, to which 1<sup>st</sup> defendant declined.
  
13. 2<sup>nd</sup> defendant averred that it was plaintiff, however, who introduced Alhaji Osman and Mr. Red to 1<sup>st</sup> defendant. But 1<sup>st</sup> defendant supplied the goods directly to the said bulk customers. He explained that the 1<sup>st</sup> defendant agreed to reward the plaintiff for that gesture by asking plaintiff to use the name of either Alhaji Osman or Mr. Red to request for goods, sell and retain profit for himself. Based on this, 2<sup>nd</sup> defendant stated that plaintiff took 200 cartons of goods supplied through Alhaji Osman. He added that plaintiff fixed his own prices and sold them for his own benefit, and that no commission was so agreed. Also, the GHS320.00 paid to plaintiff was only an appreciation for referring one Hakeem at Wa to be supplied with goods.

14. He averred further that Alhaji Osman and Mr. Red had difficulties paying for the goods supplied to them. Hence, plaintiff requested to take the rest of the goods supplied to Mr. Red, to which 2<sup>nd</sup> defendant agreed. 2<sup>nd</sup> defendant stated, however, that plaintiff went for the some of the goods supplied to Alhaji Osman under the pretence that he had directed the plaintiff to go for same. Plaintiff sold same, but failed to pay to the 1<sup>st</sup> defendant and as a result he reported the matter to the Tamale CID. According to the 2<sup>nd</sup> defendant, the plaintiff agreed to pay for the goods taken from Alhaji Osman, with stood at GHS37,255.00 (thus goods at factory price of GHS34,000.00 and interest of GHS3,255.00). 2<sup>nd</sup> defendant stated that plaintiff has so far paid GHS6,500.00 out of the GHS37,255.00, leaving a balance of GHS30,755.00.
15. 2<sup>nd</sup> defendant alleged that it was the plaintiff who took the goods from Alhaji Osman, without the authorization of 1<sup>st</sup> defendant and that the plaintiff is to pay the amount claimed. Also, plaintiff is to pay the amount of GHS26,000.00 being numerous travels, accommodation and expenses associated with pursuing the matter at the police station.
16. 2<sup>nd</sup> defendant tendered in evidence, Exhibits 1 and 1a being invoices, Exhibit 2 the cheque issued by the plaintiff, Exhibit 3 a whatsapp conversation between the CID and 2<sup>nd</sup> defendant confirming payments made by the plaintiff.

## ISSUE FOR TRIAL

17. The issues borne out of the facts are:

- a. *Whether or not the 2<sup>nd</sup> defendant is a proper party to this suit?*
- b. *Whether or not the plaintiff was engaged as an agent of the 1<sup>st</sup> defendant?*
- c. *Whether or not the plaintiff is entitled to his commission and refund of the promotional campaign?*
- d. *Whether or not the defendants are entitled to their counterclaim?*

## BURDEN OF PROOF

18. In civil cases, the general rule is that the party who in his pleadings or his writ raises issues essential to the success of his case assumes the onus of proof on the balance of probabilities. See the cases of **Faibi v State Hotels Corporation [1968] GLR 471** and **In re Ashalley Botwe Lands; Adjetey Agbosu & Ors. v. Kotey & Ors. [2003-2004] SCGLR 420**. The Evidence Act, 1975 (NRCD 323) uses the expression “burden of persuasion” and in section 14 that expression has been defined as relating to, “each fact the existence or non-existence of which is essential to the claim or defence he is asserting.” See also ss. 11(4) and 12(1) and (2) of NRCD 323.

19. It is when the claimant has established an assertion on the preponderance of probabilities that the burden shifts onto the other party, failing which an unfavourable ruling will be made against him, see s. 14 of NRCD 323 and the cases of **Ababio v Akwasi III [1995-1996] GBR 774**, **Sarkodie v FKA Company Ltd. [2009] SCGLR 65** and **Klah v. Phoenix Insurance Company Limited [2012] 2 SCGLR 1139**.

20. Lastly, where there is claim and a counterclaim filed in the same action, the Supreme Court speaking through His Lordship Brobbey JSC (as he then was) in the case **Aryeh & Akakpo v Ayaa Iddrisu [2010] SCGLR 891** held that, “A party who counterclaims

bears the burden of proving his counterclaim ...and will not win on that issue only because the original claim failed. The party wins on the counterclaim on the strength of his own case and not on the weakness of his opponent's case..." See also the case **Osei v Korang [2013] 58 GMJ 1**.

## ANALYSIS OF THE ISSUE

### Issue a

21. Issue a is *whether or not the defendant is a proper party to the suit?* The law is clear that a company is a separate legal entity. It can sue and be sued, see **Salomon v Salomon (1897) AC 22**. Thus, a company although clothed with the capacity to act, it acts through its officers/members. The law recognises these officers/members as directing the mind and will of the company. Justice Torkornoo JA (as she then was) in **Suit No. H1/170/14: Robert Ashie Kotie Ventures Ltd v Sadat Car Accessories Enterprise & Anor. dated 11/6/15, CA (unreported)** puts it simply as, "The state of mind of these managers is the state of mind of the company". However, there are instances, such as fraud, improper misconduct, evasion of legal obligation, willful misdeeds, etc where an officer of a company can be held personally liable. This is known as the 'lifting the veil' doctrine, see the case **Morkor v Kuma (No. 1) [1999-2000] 1 GLR 721**.

22. In the instant case, the 2<sup>nd</sup> defendant contends that the 1<sup>st</sup> defendant is a separate legal entity that can sue and be sued. He admitted that he dealt with the plaintiff for and on behalf of the 1<sup>st</sup> defendant. Hence, unless there is established fraud or any such claim, he was not a proper party to be added to the suit. Having considered the evidence, I find that the plaintiff did not plead any fraud or improper conduct or evasion of legal obligation or willful misdeeds to which the 2<sup>nd</sup> defendant is to be joined to this suit. 2<sup>nd</sup> defendant stated that he acted for and on behalf of the 1<sup>st</sup> defendant and that the 1<sup>st</sup> defendant, if any, is the proper party to be sued, not him.

Accordingly, I find that the 2<sup>nd</sup> defendant was improperly joined to this suit. I shall going forward regard the defendants as defendant.

Issues b and c

23. I shall consider issues b and c together. Issue b is *whether or not the plaintiff was engaged as an agent of the 1<sup>st</sup> defendant?* Issue c is *whether or not the plaintiff is entitled to his commission and the promotional campaign?* Now regarding agency, the law on agency is trite that an agent is the representative of his principal or acts in the authority of his principal. There must exist a contract, either express or implied that the acts of the agent binds the principal. Where a person has not been so appointed by a principal, his acts cannot bind his principal and same cannot constitute a principal-agent relationship, see the case of **PS Investment Ltd. v Central Regional Development Corporation [2012] 1 SCGLR 611**. Hence, if there is no principal-agent relationship, there is no commission or remuneration/expenses to be paid by the principal. An independent agent or contractor is, however, entitled to his remuneration, once engaged by the other. According to the **Black's Law Dictionary, 9<sup>th</sup> Edition**, an independent agent is one who exercises personal judgment and is subject to the principal only for the results of the work performed, Also, an independent contractor is one who is entrusted to undertake a specific project but who is left to do the assigned work and to choose the method for accomplishing it. It does not matter whether the work is done for pay or gratuitously.

24. It is important to note that in civil cases, he who asserts must prove. In the case **Okudzeto Ablakwa (No. 2) v. Attorney-General & Obetsebi-Lampety (No. 2) [2012] 2 SCGLR 845**, the Supreme Court in dealing with the onus of proof of an allegation held at page 867 as follows: "...What this rule literally means is that if a person goes to Court to make an allegation, *the onus is on him to lead evidence to prove that allegation,*



unless the allegation is admitted. If he fails to do that, the ruling on that allegation will go against him. Stated more explicitly, a party cannot win a case in Court if the case is based on an allegation which he fails to prove or establish." See also the often cited case of **Majolagbe v. Larbi [1959] GLR 190** per Ollennu J (as he then was) where the court held that, "where a party makes an averment capable of proof in some positive way, e.g. by producing documents, description of things, reference to other facts, instances, or circumstances, and his averment is denied, he does not prove it by merely going into the witness box and repeating that averment on oath, or having it repeated on oath by his witness. He proves it by producing other evidence of facts and circumstances, from which the Court can be satisfied that what he avers is true".

25. Hence, the onus is on the plaintiff to prove that he is entitled to GHS56,926.60 being the commission and promotion campaign, else an unfavourable ruling will be made against him, see also **Ababio v Akwasi III (supra)**.
26. According to the plaintiff, he was engaged as a key distributor and later became a principal agent of the defendant for the five northern regions. He explained that the defendant inspected his warehouse and delivery van and was convinced that he had capacity to be an agent of defendant company. He added that the defendant company then took GHS385,000.00 as proof of his capacity.
27. Plaintiff added the defendant company tasked him to scout for customers. As a result, he was able to bring on board Mr. Hakeem of Wa, Alhaji Osman and Mr. Red, both of Tamale and Madam Lardi of Navrongo. He stated that these customers took goods from the defendant company and as result he was entitled to a commission. He explained that he was entitled to the difference between the ex-factory and wholesale price. He added that when the customers paid for the products, the defendant

company will in turn pay the said commission. At paragraph 12 of his Reply to Defendants Defence and Counterclaim, plaintiff stated that,

“12. That for every carton of the products, the following margins of commission were to be paid to me:

Product	Commission/Margin on Each Carton
a. Black Coil and Incense -	GHS5.00
b. Mosquito Spray (300ml) -	GHS19.00
c. Mosquito Spray (500ml) -	GHS5.00”

28. Plaintiff added at paragraphs 15-26 of his witness statement as follows:

“15. I say that Alhaji Osman made an order from 1<sup>st</sup> defendant in the following quantities:

a. Baba Sankofa Black Mosquito Coils -	700 cartons
b. Baba Sankofa Herbal or Incense -	50 cartons
c. Baba Sankofa Mosquito Spray (300ml) -	80 cartons
d. Baba Sankofa Mosquito Spray (500ml) -	20 cartons.

16. The total value of products of 1<sup>st</sup> defendant ordered by Alhaji Osman is worth GHS158,570.00.

17. I say that Alhaji Osman issued two (2) post-dated cheques to cover the value of the products ordered.

18. I say also that through my initiative, Mr. Red also made an order in the following manner:

a. Baba Sankofa Black Mosquito Coils -	700 cartons
b. Baba Sankofa Herbal or Incense Mosquito Coils -	20 cartons

19. The total value of the products ordered from 1<sup>st</sup> defendant through my initiative is worth GHS128,100.00.
20. I say that Mr. Red also issued two (2) post-dated cheques to cover the total value of the products ordered.
21. I say that Madam Lardi of Navrongo through my initiative also made an order of 100 cartons of the black coils which were too low to be treated as a bulk customer. However, I took orders from other retailers from Upper East Region. I therefore requested for 600 cartons of the product.
22. The 1<sup>st</sup> defendant through the 2<sup>nd</sup> defendant was able to only supply 200 cartons out of the 600 cartons. ...
23. *In agreement with the 2<sup>nd</sup> defendant and Alhaji Osman, 114 cartons of Baba Sankofa Black Mosquito coils, 35 cartons of Baba Sankofa Herbal Incense, 1 carton of the 500ml spray and 34 cartons of the 300ml spray, all valued at GHS36,610.00 were taken from the stock of the product of Alhaji Osman to facilitate a quick sale and movement of the products.*
24. I say that Alhaji Osman paid GHS36,000.00 to the 1<sup>st</sup> defendant through a cheque he issued to me and that cheques was honoured.
25. I say that Mr. Red after taking delivery of the goods called me later to inform me that he is no more interested in doing business with the 1<sup>st</sup> and 2<sup>nd</sup> defendants because of the stories he had heard about them. This he

communicated to the defendant through me and I also conveyed same to the defendants.

26. *I say that some of Mr. Osman's cheques were returned as not honoured despite the fact that he told 2<sup>nd</sup> defendant not to present the cheques to the bank and that he will pay cash because he had had some challenges with someone who was to credit his account. This the 2<sup>nd</sup> defendant still refused and presented them and they were not cleared."*

29. Regarding the promotional campaign, plaintiff at paragraphs 27-30 of his witness statement that:

*"27. I say that because the products of the company were new in the market, the bulk customers demanded an aggressive promotional strategies to be put in place by the company to boost the sales of the products.*

28. I say that the 2<sup>nd</sup> defendant tasked me to take permits from the Assemblies and to design aggressive business strategies for the promotion of the product of the company in the northern regions.

29. The strategies agreed on included market storms at vantage areas and market days, deployment of open broadcast vans and to brand the said van and product sampling where products will be given freely to customers to go and test the efficacy of the products.

30. I say that a jingle was created in Dagbani Language and popular local actors were recruited and sent to various market centers to promote the products upon agreement with the defendants. ..."

30. The above is all that the plaintiff stated in support of his claim for the GHS56,926.60 representing the commission and the promotional campaign.

31. The defendant, on its part, stated that it never appointed the plaintiff as a key distributor or agent of the company. It explained that it refused plaintiff's request to be an agent on grounds that plaintiff's warehouse was not fit for purpose. Also, the plaintiff's claim that he had worked with Unilever Ghana and that had numerous customers to take defendant's products could not be ascertained. Defendant explained that it took the cheque of GHS385,000.00 due the persistence of plaintiff, but never engaged the plaintiff as an agent. It added that it held the cheque to verify the plaintiff's persistence. Defendant contended that the said cheque has not been cashed, despite its present demands from the plaintiff.

32. From the evidence, this is what ensued when plaintiff was under cross-examination:

*"Q: Do you have any formal document to show that defendants have appointed you as their agent?"*

*A: No.*

*...*

*Q: When you issued the GHS385,00.00 cheque you wanted to convince the defendant that you could serve as their agent, that cheque was never cashed?"*

*A: Yes, because the goods were not supplied."*

33. Based on the above admissions, I have no doubt in my mind in coming to the conclusion that the plaintiff was never engaged as agent of the defendant company. I will, however, proceed to determine whether plaintiff acted as an independent agent or contractor, to which he is entitled to some form of commission or remuneration or refund for the promotional campaign.
34. The defendant admitted that it was the plaintiff who introduced Mr. Hakeem, Alhaji Osman and Mr. Red to the company. Nonetheless, it never agreed to pay any commission to the plaintiff. It stated the company directly supplied to Mr. Hakeem in Wa and to show appreciation to plaintiff, it paid GHS320.00 to the plaintiff and that was not an agreed commission. Defendant company further stated that it agreed to reward the plaintiff for his gesture (i.e. the introduction of the customers) by asking plaintiff to use the name of either Alhaji Osman or Mr. Red to request for goods, sell and retain the profit for himself. As a result, 200 cartons from the goods supplied through Alhaji Osman were given to plaintiff. Plaintiff sold same and took the profit for himself.
35. Defendant company added that these two customers, Alhaji Osman and Mr. Red, failed to pay for the goods supplied. It stated that their guaranteed cheques were also dishonoured. As a result, it allowed the plaintiff to take the rest of the goods supplied to Mr. Red, sold same, kept the profit and sent the factory price to the defendant company, which plaintiff did. It added, however, that the plaintiff went ahead to take some goods from Alhaji Osman without its authorization. Defendant later discovered that the plaintiff had sold the goods taken from Alhaji Osman, but failed to pay the factory price of GHS34,000.00 to the company. As a result, it reported Alhaji Osman to the police where plaintiff admitted having taken the goods and also agreed to pay the factory price plus an interest of GHS3,255.00. Defendant stated further that the

plaintiff has so far paid GHS6,500.00 out of the GHS37,255.00. It added that Alhaji Osman, is yet to pay for the other goods.

36. Regarding the promotional campaign, defendant company argued that it never instructed or approved of the plaintiff to carry out such campaigns. Moreso, it was never given the cost of same to even consider. It stated that it doesn't even know the local artiste who created the jingle. In effect, the defendant contended that at all material times, the plaintiff was never promised any commission or directed to carry out any promotional campaign. It only gave the plaintiff the opportunity to take goods (as an appreciation) through the recommended customers and to sell same, keep the profits and pay the factory price to the company, without more. Plaintiff, however, was on the frolic of his own in promoting and selling his products.

37. Below is what ensued when plaintiff was under cross-examination:

*“Q: You have not also exhibited any formal agreement in which the agreed commission is indicated?”*

*A: No. It is not there.*

*Q: Even going by your own proposition in paragraph 15 of your witness statement, what is the commission you were supposed to have earned for 15(a) Baba Sankofa Mosquito Coil, the 700 cartons?”*

*A: I do not have the figure off head.*

*Q: What is the exact commission on 15(b)?*

A: *I don't have the figure.*

Q: *I state therefore that you do not have the exact commission for 15(c) and 15(d) as well?*

A: *Yes. It is not on the document.*

Q: And you received the copy of the affidavit of the grounds of defence filed by the defendants?

A: Yes.

Q: *You see that in paragraph 26 of that affidavit, the defendants indicated that you took some of the goods from Alhaji Osman and the value was GHS34,000.00, you see that?*

A: Yes.

...

Q: *So you agree with me that the total value of goods you took from Alhaji Osman has not been fully paid to the defendants?*

A: Yes.

Q: In your reliefs, relief 1 you are seeking to recover GHS56,926.60 being the outstanding payment for the promotion and sale of Baba Sankofa Mosquito products?



A: Yes.

Q: *As per the relief, it is not the case that there was a commission on each product sold, but the payment you deserve was for a promotion of the product?*

A: *The amount is for the commission I was entitled to for selling the products to the two customers and also the promotion I engaged for the company.*

Q: *You have not adduced cost of the exact quantity of products you sold and the corresponding commission?*

A: *That is so, because in my witness statement I stated the various commission that I was entitled to and 2<sup>nd</sup> defendant has confirmed that I have supplied to these customers.*

Q: Which part of your witness statement mentions where the amount of commission you are entitled to was stated?

A: Paragraphs 10-12

Q: Read it.

A: 10. The ex-factory price of the Baba Sankofa Mosquito Black Coil and Incense was fixed at the price of GHS180.00 per carton and sold to the bulk customer at a wholesale price of GHS185.00 who shall also retail it at GHS210.00 to small retailers. 11. The ex-factory price of Baba Sankofa

Mosquito Spray (300ml) was pegged at GHS175.00 to be sold on wholesale at GHS204.00 and on retail at GHS210.00. 12. I say that the Mosquito Spray (500ml) ex-factory price was agreed to be given to me at GHS170.00 and to be supplied to the bulk distributor wholesalers at a wholesale price of GHS175.00 who will in turn sell to the retailers at GHS190.00 per carton.

*Q: Per paragraph 10, you have not mentioned any specific commission to be paid to you?*

*A: Not specifically. There are two figures quoted, GHS180.00 and GHS185.00*

*Q: You only stated those figures but you have not stated that you sold these goods and handed over the monies to the defendants?*

*A: That is so, because that was not my agreement with the defendants. Commissions are earned when the sale is done. In this case, we dealt with cheques.*

*Q: Which cheques have you shown to the court that it was cashed out by the defendants and that you were entitled to a commission?*

*A: No cheques was been cashed out.*

*Q: The defendants never supplied any goods to you directly?*

*A: That is so."*

38. On the promotional campaign, below is what ensued when PW1 was under cross-examination:

“Q: You just indicated that you do not know the defendants?

A: Yes.

Q: It was the plaintiff who told you that he was an agent of a company that you do not know?

A: Yes. It was the plaintiff who informed me but I don't know anything about the company.

Q: You did not also see any contract between the plaintiff and the company?

A: That is so.

...

Q: And it was the plaintiff who made payment to you, allegedly?

A: That is so.”

39. As earlier pointed out, the plaintiff is in this court praying for the sum of GHS56,926.60 being the commission and promotional campaign he is entitled to. Based on the above, I find that the plaintiff failed to lead sufficient evidence in proof that he was entitled to his claim. The onus was on him to lead evidence as to how many goods were sold to the bulk customers, which he facilitated, and after sale, the monies paid to the defendant company. Plaintiff admitted that it was only after the bulk customers had paid for the goods that he was entitled to a commission. Yet from

the evidence, it is unclear whether the goods were sold and the bulk customers paid same to the defendant to which the plaintiff is entitled to a commission. Plaintiff basically stated the ex-factory, wholesale and retail prices without justifying how much was sold or paid to the defendant company. Moreso, it is clear from the evidence that he (plaintiff) was allowed to take goods from Mr. Red sold same, kept the profit and paid the factory price to the defendant company. He also took some goods from Alhaji Osman but he is yet to pay the factory price (plus interest) to the defendant company. Defendant added that Alhaji Osman is also yet to make payments for the other goods. If so, what commission is the plaintiff asking for?

40. The law is that if a person goes to court to make an allegation, the onus is on him to lead evidence to prove that allegation, unless the allegation is admitted. If he fails to do that, the ruling on that allegation will go against him, see **Okudzeto Ablakwa (No. 2) v. Attorney-General & Obetsebi-Lamphey (No. 2) (supra)**. And he does not prove it by merely going into the witness box and repeating that averment on oath, or having it repeated on oath by his witness. He proves it by producing other evidence of facts and circumstances, from which the court can be satisfied that what he avers is true, see **Majolagbe v. Larbi (supra)**. From the evidence, it is unclear as to which part of the GHS56,926.60 is the commission or the promotional campaign. Defendant also denied approving any promotional campaign or knowledge of PW1. PW1 admitted that it was plaintiff who engaged him to carry out the promotional campaigns. The question I have been wondering also is, what is the exact amount being claimed as promotional campaign? No invoice or receipts were shown as constituting the promotional campaign. Not even how much was paid to PW1. Defendant stated that it only gave the plaintiff the opportunity to take goods as an appreciation or reward for recommending the bulk customers. Also, in appreciation, it allowed plaintiff to take goods, sell, keep the profits and pay the factory price to the company, without

more. Plaintiff, in my opinion, was acting on his own and more particularly to convince the defendant company that he could work for them. His efforts were rewarded in another way, but was never promised any commission. Again, plaintiff acted on his own regarding the promotional campaigns.

41. In effect, having considered the evidence, I come to the conclusion that plaintiff is not entitled to his commission and promotional campaign since there was no sufficient evidence in proof of same.

Issue d

42. Issue d is, *whether or not the defendants are entitled to their counterclaim?* From the evidence, plaintiff was allowed to take goods, sell, keep the profit and pay the factory price to the defendant company. Plaintiff has taken some goods from Alhaji Osman, sold same but yet to pay the outstanding factory price and interest to the defendant company. From the evidence, plaintiff admitted that he is yet to pay the GHS30,755.00 being the factory price plus interest on the goods taken from Alhaji Osman.

43. I note from the evidence that the plaintiff paid GHS2,500.00 on 19/9/22, GHS2,000.00 on 3/10/22 and GHS2,000.00 on 17/10/22 out of the total GHS37,255.00. It is clear to this court that the outstanding amount as at 17/10/22 is GHS30,755.00. In effect, the defendant company is to recover the amount of GHS30,755.00 from the plaintiff. Interest to be paid on the said amount is assessed at the prevailing bank rate from 17/10/22 till date of this judgment. I note that the GHS27,000.00 stated at relief b of defendant's counterclaim was in error.

44. Regarding the claim for GHS26,000.00 covering numerous travels, accommodation and expenses associated with pursuing the matter at the police station, I find from the

evidence that defendant failed to lead sufficient evidence in proof of the special damages. Once specifically pleaded, it must be proved in order for this court to grant same, see the case of **Delmas Agency Ghana Ltd v Food Distributors International Ltd. [2007-2008] SCGLR 748**. In that case, the Supreme Court held that:

*“General damages is such as the law will presume to be the natural or probable consequence of the defendant’s act. It arises by inference of the law and therefore need not be proved by evidence. The law implies general damage in every infringement of an absolute right. The catch is that only nominal damages are awarded. Where the plaintiff has suffered a properly quantifiable loss, he must plead specifically his loss and prove it strictly. If he does not, he is not entitled to anything unless general damages are also appropriate.”*

45. Defendant company did not tender any flight receipts, hotel bills or number of times 2<sup>nd</sup> defendant was in Tamale in proof of this claim. Hence, I am unable to grant this relief.

46. Lastly, regarding defendant’s claim for general damages and costs, I will award general damages assessed at GHS5,000.00 and costs assessed at GHS3,000.00.

## CONCLUSION

47. I hereby enter judgment in favour of the defendant company as follows:

- a. I hold that 2<sup>nd</sup> defendant was improperly joined to this suit.
- b. Defendant company to recover the amount of GH30,755.00 being the outstanding amount of goods plaintiff took from Alhaji Osman, sold same but failed to pay to the defendant company.
- c. Interest on the said amount at the prevailing bank rate from 17<sup>th</sup> October, 2022 till date of judgment.

- d. The claim for GHS26,000.000 as special damages, fails.
- e. General damages assessed at GHs5,000.00.
- f. Costs is also assessed at GHS3,000.00.

**H/W D. ANNAN ESQ.**

**[MAGISTRATE]**

SALISU B. ISSIFU ESQ., FOR THE PLAINTIFF

SLYVESTER ISANG ESQ., WITH SAMPSON B. LAMBON ESQ., FOR THE  
DEFENDANTS

References:

1. *ss. 11(4) and 12(1) and (2) of Evidence Act, 1975 (NRCD 323).*
2. *Faibi v State Hotels Corporation [1968] GLR 471*
3. *In re Ashalley Botwe Lands; Adjetey Agbosu & Ors. v. Kotey & Ors. [2003-2004] SCGLR 420*
4. *Ababio v Akwasi III [1995-1996] GBR 774*
5. *Sarkodie v FKA Company Ltd. [2009] SCGLR 65*
6. *Klah v. Phoenix Insurance Company Limited [2012] 2 SCGLR 1139*
7. *Aryeh & Akakpo v Ayaa Iddrisu [2010] SCGLR 891*
8. *Osei v Korang [2013] 58 GMJ 1*
9. *Salomon v Salomon (1897) AC 22*
10. *Suit No. H1/170/14: Robert Ashie Kotie Ventures Ltd v Sadat Car Accessories Enterprise & Anor. dated 11/6/15, CA (unreported)*
11. *Morkor v Kuma (No. 1) [1999-2000] 1 GLR 721*

12. *PS Investment Ltd. v Central Regional Development Corporation* [2012] 1 SCGLR 611
13. *Okudzeto Ablakwa (No. 2) v. Attorney-General & Obetsebi-Lamptey (No. 2)* [2012] 2 SCGLR 845
14. *Majolagbe v. Larbi* [1959] GLR 190
15. *Delmas Agency Ghana Ltd v Food Distributors International Ltd.* [2007-2008] SCGLR 748