CORAM: IN THE NALERIGU DISTRICT COURT HELD ON, 9TH NOVEMBER 2023 BEFORE HIS WORSHIP SIMON KOFI BEDIAKO ESQ. SITTING AS MAGISTRATE

SUIT NUMBER: NR/ NG/DC/19/2023

1. **CECILIA KENNEDY KONLAN (P1)** **PLAINTIFFS**
2. **DAJRIM FOUNDATION (P2)**

V

1. **ISSAHAQ SULEMAN (D1)** **DEFENDANTS**
2. **NANGAI INITIATIVE FOR SUSTANABLE AGRICULTURAL DEVELOPMENT (NISAD) (D2)**

JUDGEMENT

Introduction:

The Plaintiffs claim the reliefs endorsed in their writ of summons as amended issued on the 25th of January 2023 against the defendants as follows:

1. Defamation of character.
2. Breach of contract.
3. Renegotiation of contract terms that is poorly executed.
4. Cost of transporting the farmers from their communities to Kulgoduri chief palace and the Nayiri.
5. Any order this Honorable Court may deem fit to make.
6. General Damages

CASE OF THE PLAINTIFFS

It is the case of the Plaintiffs that P1 is the executive director of P2 which is a local NGO duly registered under the laws of the Republic of Ghana as a company. According to the plaintiffs, on 20th June 2022, P2 and D2 entered a contract for D2 to provide P2 with funds for ploughing services, weedicides, and other services such as training of the farmers of P2 on best agricultural practices, validation, and monitoring of the fields of P2's farmers and coordinating and review of plans for purposes of P2's farmers cultivating soya beans. In exchange for the funds and services of D2, P2 was required under the contract to pay in kind 110kg bag of soya beans per acre farmed by the farmers of P2 to D2. The plaintiffs aver that after the signing of the contract,

P2 failed to release the funds for the project to P2 on time which led to low production and low yield by the farmers. Consequently, the farmers could not provide the soya bean grains to pay D2 as agreed.

The plaintiffs aver that D2 did not comply with the terms of the contract they entered. According to the plaintiffs, in December 2022 the defendants wrote to P2 in respect of the delay in the payment of what was due D2 under the contract. According to the plaintiffs, after attempts to resolve the matter by negotiation between P2 and D2 proved futile, D1 reported the matter to the Kulguduri chief for resolution. P1 was invited to the palace of the Kulguduri chief, and she duly honoured the invitation of the Kulguduri chief. According to plaintiffs the chief eventually asked them to go and resolve the matter themselves but when they attempted to do so, it proved futile once again. The plaintiffs aver that D1 subsequently reported the matter to the Nayiri who summoned the plaintiffs to his palace for resolution. According to the plaintiffs, at Nayiri's palace, D1 and his friends called P1 a fraud and stated that she had spent some of the money that was given to P2 by D2. Plaintiffs stated that P1 after these accusations filed this suit against the defendants for defamation of her character. The plaintiffs further aver that after the suit had been filed in this court and the defendants had been served with the writ of summons, D1 reported the plaintiffs to the police as frauds

and cheats. According to the plaintiffs, the police after one week of investigation stated that they found no fraud in the matter.

CASE OF DEFENDANTS:

D1 testified that he is an agronomist resident in Nalerigu, and he is a director of D2. D1 represented himself and D2 to make a joint defence. The case of the defendants in summary is that in May 2021, P1, representing P2 approached D1 for funds to cultivate soya beans and maize with the intention of paying back the funds in kind. According to the defendants, after an initial proposal from the plaintiffs had been turned down, the plaintiffs presented another proposal to the defendants requesting funds to cultivate only soya beans. They requested funds to cultivate 400 acres of soya beans. The defendants further aver that funds for the cultivation of 245 acres of soya beans were provided to the plaintiffs between 9th June 2022 and 21st June 2022. It is the case of the defendants that a total amount of GHS 53,900 was provided to the plaintiffs for the cultivation of 245 acres of soya beans. An amount of GHS 220 was provided per acre to the plaintiffs. According to the defendants, funds for 100 acres were initially provided to the plaintiffs in exchange for a 110kg bag of soya beans per acre cultivated after harvesting. Defendants aver that based on the demand of the plaintiffs, funds for another 100 acres were provided to the plaintiffs but this time it was agreed that it would be in exchange for a 120kg bag of soya beans per acre cultivated after harvesting. Defendants further aver that the plaintiffs subsequently demanded funds for another 100 acres, but D2 was only able to provide the plaintiff with funds for 45 acres. It is the case of the defendants that there are three contracts to cover the funds provided to the plaintiffs which are Exhibits A, 3, and 4. According to the defendants after providing the funds and training as required of D2 under the contract, the defendants waited for the plaintiffs to invite them to conduct yield analysis when it was time for harvesting in accordance with the terms of their contract, but the plaintiffs failed to do so contrary to the terms of their contract and started harvesting the soya beans without informing the defendants. The defendants further aver that the contracts they had with the plaintiffs were all supposed to end on 31st October 2022, but when the contracts expired, they did not hear from the plaintiffs. A letter was written to P2 by D2's deputy director by the name Dr. Thomas Vanmourik urging plaintiffs to pay the soya beans as their investors are mounting pressure on them. P2 was also cautioned in this letter that per

the terms of the contract, a delay in delivering the soya beans to D2 will attract 30% interest on the soya beans they are required to provide to D2. According to defendants P1 subsequently invited D1 to a warehouse and showed him 10 bags of soya beans which were not even full bags. The defendants aver that based on the terms of the contract; they sought to resolve the matter through Alternative Dispute Resolution, but this failed. The defendants based on this, counterclaimed against the plaintiffs as follows:

1. "Recovery of 284 maxi bags of 100kg soya beans grains or its equivalent market value of GHS 178,920.00 at the time of contract repayment period from 31st October 2022 of which 100kg maxi bag was GHS 630.00.
2. Additional penalty per the contract of 30% on default payment of the contract sum of 284 maxi bags of soya beans being 85.2 maxi bags of soya beans or its equivalent of GHS 53,676.00.
3. Cost of litigation that is from Wa to Nalerigu and back each time the case is mentioned.
4. General damages against the plaintiff since my reputation is now dented and most investors are now not willing to invest in my initiative any longer and that of my organization because of this suit.
5. Any other order or orders the court may deem fit to make in the interest of justice in this matter."

ISSUES IDENTIFIED:

The following issues have been identified for determination by this Court:

1. Whether or not P2 and D2 entered into three separate written contracts?
2. Whether or not D2 breached the contracts between P2 and D2 which discharges P2 from performing its obligations under the contracts?
3. Whether or not D2 is entitled to recover from P2 284 maxi bags of 100kg soya bean grains or its monetary equivalent of GHS 178,920.00 (GHS 630 per bag) as of 31st October 2022 which was the repayment date?

4. Whether or not D2 is entitled to recover 30% of 284 maxi bags of soya beans or its monetary equivalent of GHS 53,676.00 from P2 for defaulting to provide the 284 maxi bags of soya beans to D2 on 31st October 2022 as agreed by the parties?
5. Whether or not D1 defamed P1?

BURDEN OF PROOF:

Before a court decides a case one way or the other, each party to the suit must adduce evidence on the issues to be determined by the court to the standard prescribed by law. In the case of **Akrofi v Otenge and Anor [1989-90] 2 GLR 244** the venerable Adade JSC. held that:

"what is proof? It is no more than credible evidence of a fact in issue. This may be given by one witness; or by several witnesses; what matters is the quality of the evidence."

The above legal position is supported by various provisions of NRCD 323, **Section 14 of the Evidence Act, 1975 (NRCD 323)** provides that:

> *14. 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".*

This being a civil suit, the burden of producing evidence by both sides in the suit as well as the burden of persuasion is one to be determined on the preponderance of probabilities as defined by **Section 12 of the Evidence Act 1975 (NRCD 323) which stipulates as follows:**

> *Proof by a Preponderance of Probabilities*
>
> *(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.*

The defendant carries the burden of proving the facts alleged in his defence to the same degree as the burden Plaintiff carries in proving her claim against Defendant.

It is also trite law that for every case there is a burden of proof to be discharged and the party who bears the burden will be determined by the nature and circumstances of the case. **Sections 10 and 11(1) and (4) of the Evidence Act, 1975 (N.RC.D. 323)** provide that:

> *"10. Burden of Persuasion Defined*
>
> *(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. 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.*

In **Ababio v Akwasi 111 [1994-95] GBR at 774**, the Supreme Court reiterated the point of a party proving an issue asserted in his pleadings. Aikins JSC. delivering the lead opinion of the court held thus:

> *"the general principle of law is that it is the duty of the plaintiff to prove his case that is, he must prove what he alleges. In other words, it is the party who raises in his pleadings an issue essential to the success of his case who assumes the burden of proving it. The burden only shifts to the defence to lead sufficient evidence to tip the scales in his favour when on a particular issue the plaintiff leads some evidence to prove his claim. If the defendant succeeds in doing this, he wins, if not he loses on this particular issue.*

SUMMARY OF EVIDENCE

At the trial, P1 testified on behalf of P2 and herself. The plaintiffs called four (4) witnesses before closing their case.

The plaintiffs tendered the following exhibits which were admitted into evidence by the court:

Exhibit A - Soyabeans Production Contract between NISAD and DAJRIM FOUNDATION signed by the parties on 20th June 2022.

D1 testified by himself for the defendants. The defendants called no witnesses before closing their case. The defendants tendered in evidence the following exhibits which were duly admitted in evidence by the court:

Exhibit 1 – Bank Statement of D1 covering the period from 9th June 2022 to 22 June 2022.

Exhibit 2 – WhatsApp message between P1 and D1.

Exhibit 3 – Unsigned contract between NISAD and DAJRIM FOUNDATION dated 9th June 2022.

Exhibit 4 – Unsigned contract between NISAD and DAJRIM FOUNDATION dated 9th June 2022.

Exhibits 5A and 5B – Photographs of D1 training and having a meeting with farmers of P2.

ANALYSIS:

Issue One: Whether or not P2 and D2 entered three separate written contracts?

In Ghana, contract law is primarily governed by the common law principles and the Contracts Act, 1960 (Act 25). A contract is a legally binding agreement between two or more parties that creates rights and obligations enforceable by law.

The American Restatement (Second) of Contracts (1891) defines a contract as *"a promise or a set of promises for the breach of which the law gives a remedy or the performance of which the law in some way recognizes a duty."*

Black's Law Dictionary, 9th Edition also defines a contract as *"An agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law."*

Based on the writ of summons of the plaintiffs and the evidence they adduced at trial, it is the case of the plaintiffs that P2 only entered one contract with D2. From the evidence adduced by both the plaintiffs and the defendants at trial, it is a fact that P2 and D2 entered a written contract signed by both parties on 20th June 2022. This contract was tendered in evidence by P1, and it was duly admitted in evidence and marked as Exhibit A. The defendants admitted that D2 entered that contract with P2. This contract was in respect of the cultivation of 100 acres of soya beans.

The defendants however aver that P2 and D2 entered two additional contracts dated 9th June 2022. The defendants tendered evidence of their alleged contracts as Exhibits 3 and 4 respectively. The contents of Exhibits A, 3, and 4 are similar with minor differences. The differences are as follows: In Exhibit A the crust of the contract is that D2 provides ploughing services and weedicides amongst others to P2's groups of farmers to cultivate 100 acres of soyabeans in exchange for a 110kg bag of soyabean grains per acre farmed from P2 after harvesting. In Exhibit 3, D2 was required to provide ploughing services, and weedicides amongst others to P2's groups of farmers to cultivate 100 acres of soya beans in exchange for a 120kg bag of soya bean grains per acre farmed from P2 after harvesting. Finally, in Exhibit 4, D2 was required to provide ploughing services, and weedicides amongst others to P2's groups of farmers to cultivate 45 acres of soya beans in exchange for a 120kg bag of soya bean grains per acre farmed from P2 after harvesting.

Exhibits 3 and 4 unlike Exhibit A is not signed by the parties therein. It is trite law that a contract document that is not signed by both parties is generally not enforceable in law. The signing of a contract is the formal process by which the contract is made valid and put into binding effect. See **L'Estrange v. F. Graucob [1934] 2 K.B. 394.**

Despite the general position of the law, in some limited circumstances, the terms contained in an unsigned contract may be enforceable where there is evidence to prove the existence of the elements of a valid contract. In the English case of **Brogden v Metropolitan Railway Co. (1877) 2 App. Cas. 666.** Brogden had supplied the Metropolitan with coal for many years without any formal contract. Eventually, Brodgen suggested that the parties draw up a formal contract. Metropolitan drew up a draft contract leaving certain parts blank for Brogden to fill in. Brogden filled in the blanks and added an arbitration clause. He then signed the bottom of the contract and sent it back to Metropolitan. Metropolitan did not

respond. The parties proceeded in accordance with the terms of the draft contract and occasionally referred to the contract when dealing with minor disputes. However, when a significant dispute arose Brogden denied that any contract had been formed between the parties. Metropolitan sued Brodgen for breach of contract. The House of Lords held in favour of Metropolitan that the conduct of the parties established that there was a contract between them and Brodgen was in breach of the same.

It must be noted that the burden of establishing that the parties acted on the draft contract lies on the party who relies on that fact to prove its case. In this case, exhibits 3 and 4 are not signed but the defendants insist that the terms therein are binding on P2. The burden of proof is therefore on the defendants to prove that fact.

P1 admitted during the trial that P2 received contract documents from D2 to provide additional funds for 145 acres of land to P2. These contract documents referred to above are Exhibits 3 and 4. This establishes that the plaintiffs were aware of the terms of Exhibits 3 and 4.

The defendants tendered in evidence Exhibit 2 which is a WhatsApp message from P1 to D1 in which P1 requests for funds in respect of the second 100 acres. This indicates that besides Exhibit A, the plaintiffs requested for additional funds to cultivate soya beans on another 100 acres of land. The plaintiffs did not object to Exhibit 2 and failed to adduce evidence to throw its authenticity or credibility into doubt.

Although it is not expressly stated in Exhibit A, it is implied that the parties by their conduct agreed for D2 to provide funds to P2 for purposes of ploughing, acquiring weedicides to spray the lands and administrative charges. D1 testified that D2's contract with P2 in respect of all three alleged contracts was to provide an amount of GHS 220 per acre to P2 for the soya beans farming by P2's farmers. This amount was admitted by P1 when she was cross-examined by D1. Below is the relevant question and answer:

Q. How many acres did I support you and your organization with for the 2022 farming season?

A. 100 acres.

Q. What was the amount received per acre?

A. GHC220 per acre was received from NISAD.

It is the defendants' assertion that funds to cultivate soyabeans on a total of 245 acres of land were provided to P2 by D2 from 9th June 2022 to 21st June 2022.

Therefore, GHS 220 per acre multiplied by 245 acres equals GHS 53,900. D1 stated in his evidence-in-chief that, GHS 53,900 was the total amount of funds which was given to P2. According to D1 out of this amount, GHS 2,000 was sent to the mobile money account of P2. GHS 49,200 was sent to P2's bank account and GHS 2,700 was given to P1 in cash. P1 did not deny receiving the cash amount of GHS 2,700 as stated by D1. The defendants tendered in evidence Exhibit 1 which is D1's bank statement showing various fund transfers made from that account to P2 from 9th June 2022 to 21st June 2022. From Exhibit 1 a total of GHS 44,200 was transferred from D1's bank account to P2's bank account and not GHS 49,200 as asserted by D1. From the content of Exhibit 1, it can also be seen that an amount of GHS 2,000 was transferred to the mobile money account of P2 as averred by D1. It is therefore safe to conclude that from the evidence on record, a total amount of GHS 48,900 was paid to the P2 for purposes of the soya beans farming. Now, GHS 48,900 divided by GHS 220 per acre equals approximately 222 acres of land. This means P2 received funds from D2 for at least 222 acres of land to cover cost of ploughing, weedicides, and administrative charges. Considering that P2 received funds capable of cultivating soya beans on 222 acres of land, I am inclined to believe that P2 and D2 entered into more than one contract as asserted by the defendants. I come to this conclusion on the basis that, if P2 and D2 only entered Exhibit A for purposes of cultivating soya beans on 100 acres of land then why would the defendants provide funds to P2 which is capable of farming soya beans on 222 acres of land. Even though Exhibits 3 and 4 are not signed by the parties, there is an implied contract between the parties on the terms contained within those contracts based on the conduct of the parties.

P2's conduct of accepting from D2 additional funds to cultivate a further 122 acres of land after receiving Exhibits 3 and 4 means that the parties by their conduct had agreed to the terms contained in Exhibit 3 and 4 even though they were not signed. P2 and D2 are therefore bound by the terms of Exhibits 3 and 4.

I hereby find that P2 and D2 entered three separate written contracts for soya beans farming. The contracts ran concurrently, all terminating on 31st October 2022. The first contract is a written contract contained in Exhibit A which was modified by the conducts of the parties. This contract was duly signed by P2 and D2. The second and third contracts are also written contracts which P2 and D2 by their performance of its terms made them binding and enforceable even though they were not signed by them.

Issue Two: Whether or not D2 breached the contracts between P2 and D2 which discharges P2 from performing its obligations under the contracts?

A contract may be discharged by an agreement between the parties to the contract, by performance of the obligations under the contract by each party to the contract, by breach of the contract by a party to the contract, or by the frustration of the performance of the contract. Discharge of a contract refers to the termination or release of the parties from their obligations under the contract.

I will focus on the discharge of the contracts between P2 and D2 by performance of the terms of the contract and the discharge of the contracts by breach.

It is trite law that breach of contract is a civil wrong and a cause of action arises when it occurs, thus an aggrieved party to a contract that has been breached may commence legal proceedings to enforce the contract against the other party. Breach of a contract occurs when a binding contract is not honoured by one or more of the parties to the contract by non-performance or interference with the other party's performance of his or her obligations under the contract. To establish a cause of action for breach of contract or for the enforcement of a contract, it must be established that there is an existing valid contract between the parties, there must be a performance by the party seeking to enforce the contract, and there must be an unjustified nonperformance or failure to perform on the part of the other party. A party to a contract who is not in breach of the contract will only be discharged from performing his or her obligations under the contract for breach of contract by the other party where the breach is fundamental to the contract or the party in default repudiated the contract before it was due or before the contract has been fully performed.

It is the case of the plaintiffs that D2 breached the terms of Exhibit A which led to low or no yield of the soyabeans which were cultivated by the farmers hence the court should discharge P2 from its obligation under Exhibit A and order the parties to renegotiate the contract. Since it was concluded in the first issue supra that P2 and D2 entered three separate contracts which ran concurrently then by extension it is also the case of the plaintiffs that D2 breached the contracts in Exhibits 3 and 4.

The burden of proof lies on the plaintiffs to prove that D2 failed to perform all or some of its obligations under the contract on the balance of probabilities. From the terms of Exhibits A, 3 and 4 specifically clause 2.0 which is headed Responsibilities and Duties of 'NANGAI INITIATIVE FOR SUSTAINABLE AGRICULTURE DEVELOPMENTS, D2 was required to fulfil the following obligations under the contract: *1. "Timely ploughing of their lands*

2. *Provision of weedicides.*
3. *Payment of administrative cost to Dajrim Foundation.*
4. *Provide technical support and verification of production and participate in field day.*
5. *NANGAI INITIATIVE FOR SUSTAINABLE AGRICULTURE DEVELOPMENTS shall monitor and verify the field of all members of the group to ensure they have planted and are following good agricultural practices in soyabean in the production protocols.*
6. *Organize monthly coordination meetings to review progress and to plan the way forward.*
7. *Harvesting of produce on the programmed field shall be done only after both parties have taken adequate steps to ensure yield measurements prior to harvest."*

It has been determined above under issue one that the parties by their conduct agreed for the first three responsibilities of D2 to be provided in the form of funds which was duly paid to P2 in respect of 222 acres of land. It is also the case of the plaintiffs that the funds were not released to P2 on time by D2. Both the plaintiffs and the defendants admit that the best period for planting soya beans is between 15th June and 15th July. This was also confirmed by all the witnesses of the plaintiffs. In the summary of subject matter of claim of the plaintiffs attached to their writ of summons, the plaintiffs stated that after the signing of the contract between P2 and D2, the D2 did not release the funds early and that, the funds were only released for the project in the last week of July 2022. In P1's evidence-in-chief she stated that it was in early July that D1 started transferring the funds. There is a clear conflict between what was stated by the plaintiffs in their summary of subject matter and what was stated by P1 in her evidence-in-chief. PW1 stated in his evidence in chief that they expected the funds from the defendants at a certain time, but it was not provided at that time. He failed to specify the time D2 was required to provide the funds.

The contents of Exhibit 1 as I have already considered under issue one clearly establishes to the court that D2 sent the funds to P2 through its mobile money account, bank account, and P1. The funds were according to Exhibit 1 transferred to P2 in 13 installments from 9th June 2022 to 21st June 2022. Therefore, the funds were received by P2 in June as asserted by the defendants, and not in July as asserted by the plaintiffs. It is also the case of the plaintiffs that the funds were provided to P2 in installments by D2 instead of being given to them in a lump sum. Indeed, having perused the contents of Exhibits A, 3, and 4, there is nothing in these contracts to indicate that D2 was under any obligation to provide the funds in a lump sum to P2. The plaintiffs failed to adduce any evidence to prove otherwise to the court. It is essential to consider whether, considering the nature of the contracts between P2 and D2, it was too late to plant soya beans for that farming season at the time D2 sent all the funds to P2. It is a fact that the best time for planting soya beans is between 15th June and 15th July, so if D2 paid the last installment of the funds to P2 on 21st July 2022, then there was still enough time for the lands to be ploughed and the soya beans planted. In fact, from 9th June 2022 to 14th June 2022, D2 had provided GHS 17,000 to P2. This could have been used on approximately 77 acres of land.

PW2 stated during cross-examination that he received the soya beans from the plaintiffs for farming in August 2022. PW3 stated that P1 brought the soya beans to her to sow in July 2023. PW1 during cross-examination could not recollect when he received the inputs from the plaintiffs to commence farming. It is unclear what caused the delay in the inputs being released to the farmers by the plaintiff after the funds had been provided to P2 by D2, but one thing that is certain is that that delay was not occasioned by the defendants. The plaintiffs on the balance of probabilities failed to prove so. It is also certain that the low or no yield of the soya beans as asserted by the plaintiff was not caused by a delay in the release of the funds by D2. All the witnesses of the plaintiffs and P1 admitted that it was the lack of rain that caused the low or no yield of the soya beans they planted. In fact, some of the witnesses of the plaintiffs testified that up until the rains stopped, the soya bean plants were growing well.

The fourth responsibility of D2 in the contracts was to provide technical support and verification of production and participate in field day. It is unclear what exactly D2 was

required to do under this obligation of the contract. I therefore resorted to the evidence adduced by both parties to ascertain the intention of the parties in respect to the fourth obligation of D2. Having considered all the evidence on record, I conclude that it was the intention of the parties for D2 to conduct training for the farmers of P2. This conclusion was reached because the plaintiffs, in the summary of the subject matter of their claim, stated that one of the obligations of D2 under their contract was

to train farmers in best agricultural practices even though there is no such clause in Exhibits A, 3, and 4. P1 in her evidence-in-chief also stated that *"As part of the contract, the defendant was to come and train the women farmers on gapping, show videos in their communities on soya beans farming, visit all farms and mark them."* The defendants did not deny this assertion by the Plaintiffs. The defendants rather adduced evidence to prove that the training was conducted. The defendants tendered as evidence Exhibit 5A which is a photograph of a training session facilitated by D1 for the farmers of P2. The plaintiffs could not taint the credibility of Exhibit 5A. Contrary to the testimony of P1 that D2 did not train the farmers PW1, PW2, and PW3 all admitted during cross-examination that they attended a training on soya beans farming facilitated by D1.

I therefore find that D2 performed its fourth obligation under all the contracts as he was able to prove the same to the court on the balance of probabilities. From the evidence on record, D2 did not perform its obligation under the fifth responsibility stated above. D2 could only fulfill that obligation if it had the list of all the farmers and their locations. It was the obligation of P2 under the contracts to register all the participating farmers and the acres of land they were going to farm. From the evidence on record, it is a fact that registration forms were given to P2 by D2 to register the farmers, and the same returned to D2. P2, however, never returned the registration forms to D2. P1 admitted on record that she did not return the registration forms to D2. The registration forms were only shown to P1 after the expiration of the contracts and at the time the dispute between the parties had commenced. The conduct of P1 who is the agent of P2 prevented D2 from fulfilling its obligations under the fifth responsibility because the list of the farmers and their location was never provided to D2 to enable it to monitor and verify the fields of the farmers.

Regarding the sixth responsibility of D2, the plaintiffs, apart from mere averments which were also repeated on oath, failed to prove that D2 did not perform that obligation. The

defendants tendered in evidence Exhibit 5B to prove a meeting was organized for P2 and its farmers. The sixth obligation of D2 under the contracts is not an obligation that goes to the root of the contract. It was not a fundamental term of the contracts. Even if the plaintiffs proved that D2 did not perform that obligation fully, it would not entitle P2 to repudiate the contract. It will only entitle P2 to sue for damages for that breach.

I therefore conclude that D2 did not breach any fundamental term of the contracts with P2 which entitles P2 to repudiate the contracts. P2 is therefore obliged to perform its obligations under the contracts between P2 and D2.

Issue Three: Whether or not D2 is entitled to recover from P2 284 maxi bags of 100kg soya bean grains or its monetary equivalent of GHS 178,920.00 (GHS 630 per bag) as of 31st October 2022 which was the repayment date.

The defendants counterclaimed against the plaintiffs to recover from the plaintiffs 284 maxi bags of soya bean grains or its monetary equivalent of 178,920.00 with each bag valued at GHS 630 which was the market value of a 100kg maxi bag of soya beans as of 31st October 2022, the date on which the contracts between the parties expired. The defendants base their claim on three contracts that D2 entered with P2. These contracts have been discussed extensively under issue one above. Under issue one it was concluded that P2 and D2 entered into three concurrent contracts for D2 to provide P2 with funds and other services for purposes of P2's group of farmers cultivating 245 acres of soya beans. D2 was only successful in proving to the court on the balance of probabilities that funds for approximately 222 acres were provided to P2.

The general principle in law is that a party to a contract is required to perform precisely and completely all his or her obligations under the contract to entitle him or her to bring an action against the other party to enforce that party's performance. This general principle was espoused in the English case of **Re Moore & Co. v. Landauer & Co. [1921] 2K.B. 519**. This general position brought about some hardship to contractual parties who had for example provided a substantial or partial performance of their obligations under the contract which performance had been accepted by the other party to the contract. As a result, the doctrine of partial performance emerged.

Regarding the doctrine of substantial performance, Christine Dowuona Hammond in her book **The Law of Contract in Ghana (2016) at page 276**

states that *"The principle of substantial performance states that if the performance tendered falls short of the required performance only in some relatively trivial respect, the party not at fault is not completely discharged from performance. He must pay the price agreed upon for the work done or the services rendered but may counterclaim for the loss he has suffered by reason of the incomplete or defective performance. This means there will be a deduction for the partial non-performance or trivial defect in performance. What constitutes substantial performance of a contract depends on the nature of the contract and all the circumstances. The courts look at the nature of the defects in performance and the proportion between the cost of rectifying the defects and the total contract price. Generally, where the cost of rectifying the defects in performance is a relatively small proportion of the total contract price, the courts are likely to consider the contract as substantially performed."* **See Hoenig v Isaacs [1952] 1 T.L.R. 1360.**

Considering the evidence on record, D2 provided substantial performance of its obligations under the contract which entitles it to sue to recover what is due it under the contracts with P2. Under the contract contained in Exhibit A, D2 provided funds to P2 for the cultivation of soya beans on 100 acres of land in exchange for 1 bag of 110kg soya bean grains per acre after harvesting.

D2 is therefore entitled to recover from P2 100 bags of 110kg bag of soya bean grains. The total weight of 100 bags of 110 kg bag of soya bean grains is 11,000kg. In respect of the contract in Exhibit 3, D2 provided funds to P2 for the cultivation of soya beans on 100 acres of land in exchange for 1 bag of 120kg soya bean grains per acre after harvesting. D2 is entitled to recover from P2, 100 bags of 120kg bag of soya bean grains. This gives a total weight of 12,000kg. Finally, under the contract in Exhibit 4, D2 provided funds to P2 for the cultivation of soya beans on 45 acres of land in exchange for 1 bag of 120kg soya bean grains per acre after harvesting. The defendants were only able to prove that funds for 22 acres were provided to P2. Considering this, D2 is entitled to recover from P2, 22 bags of 120kg bag of soya bean grains. Its total weight is 2,640kg. The total weight of soya beans recoverable from P2 by D2 under the three contracts is 25,640kg. The claim of the defendants in their counterclaim is in respect of 100kg maxi bags of soya beans and not 110kg or 120kg as referred to in the contracts. 25,640kg of soya bean grains divided by 100kg bags of soya beans equals

256.4 bags of soya bean grains. D2 is therefore entitled to recover from P2 256.4 100kg maxi bags of soya bean grains or its monetary equivalent of GHS 161,532 (GHS 630.00 per bag). The plaintiffs did not dispute the value of a 100kg bag of soya bean grains as of 31st October 2022 and therefore the court admits the same to be the value as of that date.

Issue Four: Whether or not D2 is entitled to recover 30% of 284 maxi bags of soya beans or its monetary equivalent of GHS 53,676.00 from P2 for defaulting to provide the 284 maxi bags of soya beans to D2 on the 31st October 2022 as agreed by the parties.

In clause 3.0 paragraph 5 of Exhibits A, 3 and 4, P2 and D2 agreed that 30% interest would be charged on the number of soya beans payable to D2 under the contracts if P2 defaults in providing the agreed soya bean grains to D2 by 31st October 2022. The plaintiffs were very much aware of this clause, to the extent that the farmers were informed of the clause and encouraged to work hard to ensure that they do not default in providing the soya bean grains required from them to avoid the 30% interest. This was confirmed by PW3 when she was cross-examined by D1.

D2 is therefore entitled to recover 30% interest on 256.4 bags of 100kg bag of soya bean grains or its monetary equivalent of the amount of GHS 161,532. This equates to 76.92 bags of 100kg bag of soya bean grains or its monetary equivalent of GHS 48,459.6.

Issue Five: Whether or not D1 defamed P1?

It is the case of P1 that D1 defamed her by calling her a thief and a fraudster without any provocation. D1 vehemently denied that he used the words stated above against P1.

In a defamation action, the plaintiff must prove the following elements as was stated by Justice Afia Serwah Asare-Botwe (Mrs.) in **Abdul Malik Kwaku Baako vs. Kennedy Ohene Agyapong [2020] DLHC8909**:

1. That the words were defamatory.
2. That the words referred to the claimant; and
3. That the words were published (to at least one person other than the claimant) by the Defendant.

Mark Lunney and Ken Oliphant in paragraph two, page 704 of their book **Tort Law, Text and Materials (Fourth Edition)** state that *"A defamatory statement is one which impugns another person's reputation or adversely affects his or her standing in the community. Defamation takes two forms: libel, referring to publications that are in permanent form or that are broadcast on stage or screen or over the airwaves; and slander, referring to publications in transient form (e.g. casual conversations)."*

The onus of proof is therefore on P1 to prove on the balance of probabilities that the words 'you are a thief, and a fraudster' are defamatory, the words were made by D1 with reference to her, and the words were published to at least one person.

P1 in her evidence-in-chief stated that D1 and his friends referred to her as a fraud and that she had spent money that was meant for P2. She also stated that P1 reported the plaintiffs to the police as frauds and cheats.

There is no doubt that the words, you are a thief and a fraudster as well as the words frauds and cheats are defamatory. This is because these words impugn the reputation of D1 and lower her standing in the community she resides and carries on her business. This is particularly so as P1 is the Executive Director of P2 which is a non-profit organization.

P1 apart from merely stating that D1 used those words against her, failed to adduce any tangible evidence to prove that D1 indeed used those words against her. Considering that D1 had denied making the defamatory statement, P1 was obliged to prove her averment. In **Majolagbe v Larbi and Others [1959] G.L.R 190 at page 192** per Ollennu J. (as he then was) stated as follows:

"Proof in law is the establishment of facts by proper legal means. 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, circumstances, and its averment is denied, he does not prove it by merely going into the witness box and repeating the averment on oath, or having it repeated on oath by its 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."

P1 failed to prove the averment she made by producing evidence of facts and circumstances. She merely repeated her averment on oath.

I therefore conclude that P1 has failed to prove on the balance of probabilities that D1 defamed her.

DISPOSITION:

Kilroy J. Oldster in his book Dead Toad Scrolls which was published in 2015 made an interesting statement which I will share here for the parties to ponder on. He stated that *"Courtrooms are battlegrounds where society's bullies and the oppressed clash, where the victims of abusers seek recompense, and where parties cheated by scalawags seek retribution. Because of the high stakes involved, the parties are not always honest, and justice depends upon an array of factors including the prevailing case precedent, the skills of the legal advocates, and the merits of each party's claims and counterclaims."*

After extensive evaluation of all the evidence on record, it is my considered judgement that the plaintiffs' action fails, and I accordingly deny all the reliefs endorsed in their writ of summons.

The counterclaim of the defendants succeeds, and I accordingly enter judgement in favour of the defendants against the plaintiffs as follows:

1. In respect of the first relief of the counterclaim, P2 is ordered to provide to D2, 256.4 100kg maxi bags of soya bean grains or its monetary equivalent of GHS 161,532 (GHS 630.00 per bag).
2. In respect of the second relief of the counterclaim, P2 is ordered to provide 76.92 bags of 100kg bag of soya bean grains or its monetary equivalent of GHS 48,459.6 to D2. This represents 30% interest on 256.4 bags of 100kg bag of soya bean grains or its monetary equivalent of the amount of GHS 161,532.
3. Cost of GHS 2,000 is hereby awarded against plaintiffs jointly and severally in favour of the defendants.
4. The fourth relief of the counterclaim is hereby denied. The contracts P2 and D2 entered provided for P2 to pay interest of 30% on the soya beans payable to D2 if P2 defaults in providing the agreed soya beans by 31st October 2022. The purpose of this clause is to compensate D2 for any damages it will suffer due to the default by P2. This has been

duly granted to D2 in the second relief and it will not be equitable to further award damages for the delayed payment.

SGD

H/W SIMON KOFI BEDIAKO ESQ

MAGISTRATE

09/11/2023
