

IN THE DISTRICT COURT HELD AT ADANSI ASOKWA ON MONDAY THE 2ND
DAY OF OCTOBER, 2023 BEFORE HER WORSHIP LINDA FREMAH ADOM
OKYERE, ESQ.

SUIT NO. A11/02/2023

ABENA SERWAA

V

ELDER FRANCIS

JUDGMENT

The instant Writ of Summons was filed on 16th May, 2023 against the Defendant whereupon the Plaintiff claimed the following reliefs:

“a. An order of the court to compel the Defendant to purchase Plaintiff’s cocoa spraying machine called ‘SOLO’ or pay its equivalent current market price, being Plaintiff’s spraying machine, the Defendant collected from the Plaintiff to repair same and after the repairs use it to spray his cocoa farm but Defendant never returned the said cocoa spraying machine and has also refused to replace same upon several demands since 2021

b. An order for cost”

The Plaintiff’s case is that she had a cocoa spraying machine which was in the custody of one Agya Adu who she would engage from time to time to spray her cocoa for her. She stated that the machine was slightly faulty. According to the Plaintiff, the Defendant asked to borrow this spraying machine upon which she informed the Defendant of the faulty state of the spraying machine. She claimed that the Defendant agreed to have the machine repaired and bear the cost of the repairs. He would then use the machine to spray his farm. The Plaintiff stated that the machine was sent to the repairer but the Defendant failed and/or refused to take delivery of same until the machine got stolen from the repairer’s shop.

The Defendant's response to the claim is that he indeed took the spraying machine with the understanding of having same repaired for use by him. He stated that he could not afford the cost of the repair at the time the repairer finished working on the machine. However, three days later, when he went to pay and take delivery of the machine, the Defendant claimed that he was informed by the repairer that it had been stolen together with other valuables from the shop.

The facts of this case are straightforward and the singular issue that arises from here is whether or not the Plaintiff is entitled to her claim.

In accordance with **Section 12 of the Evidence Act, 1975 (Act 323)**, the Plaintiff bears the burden of proving her claim on the balance or preponderance of probabilities to establish that degree of certainty or belief in the mind of the court by which it is convinced that the existence of the fact of giving the machine to the Defendant on the terms she asserts were agreed between the parties, is more probable than its non-existence.

It is not in dispute that the Plaintiff's spraying machine was given to the Defendant. It is also not in dispute that the machine was faulty and that the Defendant was to have same repaired so he could use same for spraying his farm.

The Plaintiff's point of complaint is that the Defendant has failed to return the spraying machine since he took custody of same in 2021.

It is trite learning that, generally, a person who is making a negative averment does not have to prove the negative averment. The burden therefore rests on the Defendant to demonstrate that he did return the machine as agreed.

The Defendant stated in clear terms in paragraphs 7, 8 and 9 of his witness statement that he was unable to go for the machine at the time he got information that the repairs had been completed but he was not in the position to make payment immediately. According to his evidence, the machine had gone missing by the time he was ready to pay for the repairs. The Defendant clearly admits that he has not returned the machine and his excuse is that same has been stolen. Having admitted liability, the Defendant

is seen to be making arrangement to place himself in the position as to be able to replace the Plaintiff's spraying machine. He states in paragraph 12 of his witness statement that he agreed with the repairer to contribute money towards the purchase of a new solo spraying machine for the Plaintiff thereby seeking indemnity from the repairer.

It would appear that the only reason for Defendant denying liability in this action and thereby necessitating this trial is the fact that according to him (per paragraph 13 of his witness statement), he is faced with debts that came with the funeral arrangement of his late wife, which he cites as his reason for being unable to replace the Plaintiff's machine. As unfortunate as it is, this excuse is obviously no defence in law so as to absolve the Defendant of his liability.

For the foregoing reasons, judgment is entered in favour of the Plaintiff as follows:

- a. The Defendant is hereby ordered to replace the Plaintiff's cocoa spraying machine called Solo or pay its equivalent current market value to the Plaintiff. The purchase or payment as the case may be shall be done by the Defendant within fourteen (14) days from the date of this judgment.**
- b. Costs of GHC. 500.00 against the Defendant.**

SGD

MRS. LINDA FREMAH ADOM OKYERE, ESQ.

DISTRICT MAGISTRATE

02/10/2023

