IN THE DISTRICT COURT HELD AT SOMANYA ON TUESDAY THE 23RD DAY OF JANUARY, 2024 BEFORE HIS WORSHIP MICHAEL DEREK OCLOO.

SUIT NO: A2/03/2022

SAKI ISRAEL KWAME } PLAINTIFF

VRS

PHILIP TERKU } DEFENDANT

J U D G M E N T

The Plaintiff commenced the action against the Defendant for the following reliefs:

1. Recovery of GH¢1,200.00 being the purchase price of a cutting machine that the Plaintiff bought from the Defendant but the Defendant later came to take the machine without the consent and knowledge of the Plaintiff.
2. Damages of GH¢5,000.00 for breach of agreement.
3. Costs of litigation.

The Defendant made a counter claim against the Plaintiff as follows:

a. A declaration that the Plaintiff has breached the terms of agreement and has used the said machine for four (4) years without rendering any account and by virtue of the said breach the Plaintiff is not entitled to any relief as stated in his Writ of Summons.
b. General damages for branding the Defendant a thief who stole the machine from his workshop contrary to the terms of agreement witnesses by Elder John.

c. An order for interest to be calculated on the GH¢500.00 at the current bank rate until final payment in respect of the machine sold to the Plaintiff on credit in the year 2014 by the Defendant which the Plaintiff failed to effect full payment to the Defendant as initially negotiated.

The Plaintiff's case is that he bought a sawmill machine from the Defendant on 24/12/2015 at GH¢1,300.00 and paid GH¢800.00 instantly and was issued with a receipt and he took the machine away on agreement that he would pay the remaining amount later. He added that he later paid GH¢400.00 by installments to the Defendant to bring the total payment to GH¢1,200.00 and was left with GH¢100.00 to pay to complete the transaction.

According to the Plaintiff he travelled in the later part of the year 2016 and left the said machine in his house and upon his return he could not find the machine so he called and enquired from the Defendant as to whether or not he had come for the machine and the Defendant replied in the affirmative with the reason that there was an outstanding GH¢100.00 to be paid. He further stated that he and his wife went to the defendant with the intention to pay the GH¢100.00 to the Defendant but he refused to collect same in order to release the machine. He later attempted to retrieve the said machine from the Defendant but to no avail as the defendant told him that the machine belongs to his brother a soldier whom he had to contact before deciding to release the machine. The Plaintiff continued that he reported the matter to the police and they were all invited to the police station where the District police commander told the Defendant to refund the Plaintiff's GH¢1,200.00 to him but the defendant said he could only refund GH¢200.00 to the Plaintiff. He concluded that the police commander then advised him (Plaintiff) to take the matter to court.

In the evidence of PW1 Gifty Akwada who is the Plaintiff's wife she stated the Plaintiff told her that he had bought a machine from the defendant and was left with GH¢500.00 to pay to complete payment. She added that the Defendant later came to demand payment from her at a time when the Plaintiff had travelled. She added that upon enquiry the defendant said the remaining amount was GH¢300.00 which he needed to enable him attends his wife's graduation ceremony at Kumasi. She added that she contacted her mother in-law and they raised GH¢120.00 which she gave to the defendant and sent GH¢80.00 through mobile money transaction to the Defendant the following day. She further stated that the defendant came later to demand the remaining GH¢100.00 from her but she could not give same to him and three days later she could not find the machine. She called the defendant on phone to enquire about the whereabouts of same and the defendant confirmed that he came for same because someone wanted to buy same at GH¢1,800.00. She further stated that upon her husband's return from the travel, the two (2) of them went to the Defendant to pay the GH¢100.00 but he refused to collect same and release the machine to them with the excuse that he would contact his brother a soldier before deciding to release the machine. She concluded that after 2 years of failed attempts to collect the machine from the Defendant the Plaintiff reported the case to the police who arrested the Defendant on 5/11/2018.

In opening his defence the Defendant said he and the Plaintiff agreed on a sale price of GH¢1,300.00 and the Plaintiff made an instant payment of GH¢800.00 and took the machine away on the agreement that the Plaintiff would pay the remaining amount within one month from October 2014 which the transaction took place. He added that he wrote this condition on the receipt/Invoice that he issued to the Plaintiff which also contained the fact that should the Plaintiff fail to make the full payment within one month of purchase the Defendant would collect the machine from the Plaintiff. He further stated that the Plaintiff failed to pay the money within the stipulated one month

and told the Defendant to issue him with a new receipt/Invoice since the first one had been misplaced so he gave him a new one. He added that he reported the matter to Elder John and also to the Plaintiff's wife and she later sent GH¢150.00 to him thorough mobile money. He further stated that the Plaintiff later paid GH¢50.00 to him to make total payments to be GHC1,000.00 leaving a balance of GH¢300.00which the Plaintiff has refused to pay since the year 2016. The Defendant concluded that he told the Plaintiff that he would come and take the machine away and Plaintiff replied that he could come for it since he (Plaintiff) had used same and made his profit and he acted on that statement to go for the machine.

The Defendant filed the witness statements of Kofi Larweh and Elder Oshiakor Narh but decided not to call them.

The legal issues for determination by the court are as follows:

1. Whether or not there was a contract between the parties.
2. Whether or not there was a breach of contract.
3. Whether or not liability to pay interest in event of a breach is automatic.
4. Whether or not payment of interest on a sum of money due to a party in an action shall be calculated at the bank rate prevailing at the time the order is made at simple interest.
5. Whether or not a party that sustains a loss due to a breach of contract must be placed in the same situation with respect to damages.
6. Whether or not the Defendant proved his counterclaim.

The burden of producing evidence as well as the burden of persuasion is on both the Plaintiff and the Defendant and the statutory standard is one on the "preponderance of the probabilities" by virtue of Section 12 (1) of the Evidence Act which requires

evidence to "that degree of certainty and 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".

In the case **OF LAMPTEY ALIAS NKPA V. FANYIE & OTHERS (1989-90) 1 GLR 286,** the Supreme Court held that:

> *"On general principles, It was the duty of a Plaintiff to prove his case. However, when on a particular issue he had led some evidence, then the burden will shift to the Defendant to lead sufficient evidence to tip the scale in his favour."*

ALSO IN THE CASE OF ACKAH V. PERGAH TRANSPORT LTD & ORS (2010) SC GLR 728 IT WAS HELD THAT:

> ***"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 which his claim pay fail. The method of producing evidence is varied and it includes the testimonies of the party and material witnesses, admissible hearsay, documentary and things (often described as real evidence), without which the party might not succeed to establish the requisite degree of credibility concerning a fact in the mind of the court…"***

In the case of **Kobaku Associate v Owusu (2006) 2 NKRG 228 C.A 247**, a contract was defined as "an agreement constituted by an offer and an acceptance with the mutual intention that it should be binding and enforceable at law…"

By the operation of offer and acceptance the Plaintiff and the Defendant entered into an agreement in which the Plaintiff bought the Defendant's wood-cutting machine. The

terms of the agreement was that they agreed on the purchase of GHC1, 300.00 in which the Plaintiff made a part-payment of GHC800.00 with the understanding that he (Plaintiff) would pay the remaining amount later. The said machine was then taken away by the Plaintiff.

The contract was reduced partly into writing to the extent that the invoice or receipt which was issued to the Plaintiff captures the following on its face:

Cutting machine	**-**	**GH¢1,300.00**
Advance payment	**-**	**GH¢ 800.00**
Balance to paid with one month	**-**	**GH¢ 500.00**

Failure to comply

I will come for my machine

The above was dated 20/10/14 with both the customer's (Plaintiff's) signature and the manager's (Defendant's) signature endorsed on same. The serial number on same is 8000566.

The second invoice or receipt with reference number 000776 dated 24/12/15 contains the inscription; Balance of GH¢500.00 to be paid by January 31, 2016.

The Plaintiff claims he made a total payment of GH¢1,200.00 to the Defendant and supported same with Exhibit A which was filed on 15/2/2020 and which contained the five (5) respective dates of installment payments. The Defendant claims that the Plaintiff made a total payment of GH¢1000.00. This means that the Plaintiff holds the view that he is left with GH¢100.00 to pay and the Defendant claims that the remaining amount is GH¢300.00. Assuming without admitting that the Plaintiff's claim is justified, the fact still remains that the Plaintiff did not finish the payment within the stipulated time

agreed in accordance with the contract. The Plaintiff was left with GH¢100.00 to complete payment. This failure to complete payment within the stipulated time constitutes a breach of contract on the part of the Plaintiff.

In the case of **KAMA HEALTH SERVICES LIMITED V. UNILEVER GHANA LIMITED CIVIL APPEAL NO. J4/24/2013, 19TH JULY, 2013**;

It was held that:

> **"Liability to pay interest in event of reach is automatic. Parties need not provide in their contract that interest shall be paid in the event of a breech. Interest payment follows failure of a contract under which payment has been made, as a form of damages for breach of contract."**

In the instant case the failure of the Plaintiff to pay the GH¢100.00 to the Defendant constitutes a breach of contract which shall attract interest despite the fact that the issue of interest payment in the event of a breach was not provided in the contract they entered into.

Also in the case of **KAMA HEALTH SERVICES LIMITED V. UNILEVER GHANA LIMITED (SUPRA)** it was held in terms of the determination of interest that:

> **"The relevant provision is contained in Rule 1 of C.I. 52 namely Court (Award of interest and Post Judgment interest) Rules which provides as follows:**

If the court in a civil cause or matter decides to make an order for the payment of interest on a sum of money due to a part in the action, that interest shall be calculated.

(a) At the bank rate prevailing at the time the order is made and
(b) At simple interest.

In the instant case the Plaintiff breached the contract in November 2014 as per the first invoice or receipt however the second invoice or receipt issued to the Plaintiff is indicative of the fact that he breached the contract in January 2016. The Plaintiff shall

therefore pay the interest on GH¢100.00 from 2016 to 2023 which covers a period of 8 years at the prevailing bank rate at simple interest. When the interest of 32% on which is the prevailing bank rate is calculated on GH¢100.00 for 8 years the result would be GH¢256.00 as such the principal and the interest would result in a total sum of GH¢356.00 which shall be paid by the Plaintiff.

Furthermore the issue of measurement of damages was addressed in the case of **JUXON SMITH VS. K. L. M ROYAL DUTCH AIRLINE [2005-2006] SCGLR 438** where it was held that:

> **"Where a party sustains a loss by reason of a breach of a contract, he is so far as money can do it to be placed in the same situation with respect to damages, as if the contract had been performed."**

During Cross Examination of the Plaintiff by the Defendant the following transpired:

Q. How many months has the machines been in your custody?

A. 8 months.

Q. I am putting it to you that the operation of the machine generates GH¢90.00 per day when I rent or hire it out to people.

A. I am not aware and I do not know that.

Q. I am putting it to you that for the 8 months that the machine was in your custody you are to pay me a total of 8 months X GH¢90.00 per day.

A. That is not so, I have made a part payment for the machine to you so the machine ceases to be yours.

Q. If so do you have documents indicating your ownership of the machine?

A. No because you did not give me any document indicating change of ownership.

In its attempt to place the Defendant in the same situation with receipt to damages as if the contract had been performed, the court may be tempted to calculate the damages with the formula GH¢90.00 times 365 (days) times 8 (years) which result would be unconscionable. Also calculation based on the formula GH¢90.00 times 8 months x 30 days will not be fair especially when the Defendant has not led evidence to prove that the said machine generated GH¢90.00 per day on rent or hire. The court will therefore calculate the damaged on GH¢90.00 times one month (30 days) to arrive at GH¢2,700.00.

It must also be noted that the Defendant's conduct of collecting the machine without the Plaintiff's knowledge is not the best especially when part-payment has been made despite the fact that the Plaintiff dared him to come for same because he (Plaintiff) had made profit from its usage.

In the cases of **OSEI V. KORANG [2013] 58 GMJ 1 SC 22 AND ABED NORTEY V. AFRICAN INSTITUTE OF JOURNALISM [2014] 77 GMJ 1 SC;**

It was held that:

> **"A Defendant who files a counterclaim assumes the same burden as Plaintiff in the substantive action if he or she is to succeed because a counterclaim is a distinct and separate action on its own which must also be proved according to the same standard of proof required by sections 11 and 14 of NRCD 323 of the Evidence Act (1975)".**

In the instant case the Defendant was unable to lead sufficient evidence to establish the fact that the Plaintiff branded him as a thief. The Defendant was expected to produce sufficient evidence in terms of the statement he made at the police on his arrest and further evidence to prove defamation of character and how the Plaintiff's conduct affected him in the negative sense.

In addition the Defendant was unable to lead evidence to support his assertion that the Plaintiff defaulted in the payment of GH¢500.00 to complete payment. He was able to prove GH¢300.00 as the remaining amount to be paid by the Plaintiff. The counterclaim is therefore dismissed to the extent that the Defendant failed to prove the outstanding balance of GH¢500.00 that he denied as well as the ingredients of defamation of character.

It is my finding after considering all the evidence adduced that:

1. There was a contract between the Plaintiff and the Defendant.
2. The Plaintiff breached the contract.
3. The Defendant took the said machine away without the knowledge of the Plaintiff which is unfortunate.

Also the Plaintiff was unable to lead enough evidence to discharge the burden of proof but the Defendant led sufficient evidence to tilt the scale in his favour.

In the circumstance and on the preponderance of probabilities I enter judgment in favour of the Defendant and make the following orders:

1. That the Plaintiff shall pay an interest of GH¢356.00 to the Defendant.
2. That the Plaintiff shall pay a total damage of GH¢2,700.00 to the Defendant.
3. That the Defendant shall pay GH¢1,200.00 as refund to the Plaintiff.

(SGD)

H/W MICHAEL DEREK OCLOO

(MAGISTRATE)

23/01/2024