

IN THE DISTRICT COURT HELD AT AGONA AHANTA ON  
THURSDAY 18<sup>TH</sup> DAY OF JANUARY, 2024. BEFORE HER WORSHIP  
AWURAMA DAMOAH DARKWAH – MAGISTRATE.

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SUIT NO: A2/21/23

GHANA RUBBER ESTATE LTD (GREL)  
OF AGONA NKWANTA

PLAINTIFF

VRS

AYUBA NUHU  
OF TWIFO MOKWA

DEFENDANT

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### JUDGMENT

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The Plaintiff by its amended writ of summons and particulars of claim filed in the Registry of this court on 13<sup>th</sup> January 2023, sought the following reliefs:

- I. Recovery of the sum of GH¢6,482.80 being cost of services and planting materials supplied to Defendant by Plaintiff as a result of an agreement between Plaintiff and Defendant, which Defendant has refused to pay despite repeated demands
- II. Interest on the said amount from January 2016 till the date of the final payment
- III. Recovery of legal cost

The gravamen of the Plaintiff case set out in the particulars of the claim is that the core of its business is to produce and process high-quality raw rubber for

international markets. As a result, it enters into agreements with local rubber out-growers to support them in nurturing rubber seedlings and growing and maintaining rubber plants. Defendant is an out grower rubber farmer and has a farm at Twifo Mokwa.

Thus, Plaintiff agreed to supply Defendant with planting materials and provide other services to enable Defendant to grow and maintain its rubber plants at an agreed cost. Plaintiff alleges that it performed its obligations under the agreement; however, Defendant has failed to pay the agreed cost despite repeated demand.

The defendant was duly served with the writ of summons and particulars of a claim by substituted service after personal service proved futile. Notwithstanding service of court processes and hearing notices on the Defendant, he opted not to participate in the trial. Hence the Court conducted the entire trial in the absence of Defendant.

Plaintiff adduced evidence through one Isaac Pie, who testified on oath and tendered into evidence the Defendant's operational account sheet and statement as Exhibit A. It was the evidence of Plaintiff as gleaned from Exhibit A,

that from 01/01/2014 to 31/12/16, it supplied field stumps, fertilizer, termiticides, replacement stumps and provided planting labour, and fertilizer application services at a total cost of GH¢14,818.04. This debt includes a 5% contingency of GH¢477.68 which was applied to defray the debt. After 31/12/2016, Defendant ceased payment despite repeated demands.

At the end of the hearing, the issues that were set for determination were:

1. Whether or not Defendant is indebted to Plaintiff to the tune GH¢ 6,415.06
2. Whether or not Plaintiff is entitled to interest and cost.

## ANALYSIS OF THE ISSUES:

It is a settled principle of law that where a party is served personally or through his counsel and is sufficiently aware of the hearing date, he risked being proceeded against if he chose not to attend Court. And in that case, the trial and the decision taken by the Court would be valid and the evidence adduced stands unchallenged. See the case of *Ghana Cocoa Board v. Messrs Awura Julie Construction* (2009) JELR 65392 (HC) High Court.

Also, Order 25 of the District Court Rules 2009 (C.I 59) sets down the procedure to be followed at trial when the action is called, but the Defendant fails to appear. *Order 25 Rule 2 of C.1 59* reads as follows:

*“(2) Where an action is called for trial and a party fails to attend, the trial magistrate may*

- (a) Where the Plaintiff attends and the Defendant fails to attend, dismiss the counterclaim, if any and allow the Plaintiff to prove the claim*
- (b) Where the Defendant attends and the Plaintiff fails to attend, dismiss the action and allow the Defendant to prove the counterclaim if any or*
- (c) Make any orders that is just ”*

Furthermore, in the case of *FRANK APPAH V. GHANA RAILWAY CORPORATION* (2009) JELR 63788 (HC), the Court held that “As it *stands now, the evidence of the plaintiff stands unchallenged. It must be noted that failure of the defendant to come to court to prove his case does not mean the case cannot go on. The principle on this is that where a party has the opportunity to lead evidence in support of his case or in defence of allegation against him, but deliberately declined to avail himself of that opportunity, the court will be entitled to proceed with the trial to conclusion and make deductions, draw conclusion or make findings on the basis of the evidence adduced at the trial*”.

The processes on record are replete with evidence that Defendant was served with processes and hearing notice, yet opted not to participate in the trial. The defendant was invited to attend court to put up a defence, but he failed to do so. In accordance with the case of *Ghana Cocoa Board, Frank Appah (supra)* and the rules of court, the Court allowed the Plaintiff to prove its claim when the action was called for trial. Due to the absence of Defendant in the trial, the only evidence on record is that of Plaintiff and the same stands unchallenged. The Court is of the informed opinion that it can proceed to hear the suit in the absence of Defendant

I shall proceed to determine issue (1) and (2) together

1. *Whether or not Defendant is indebted to Plaintiff to the tune of GH¢14,818.04*
2. *Whether or not Plaintiff is entitled to interest and cost*

It is a time-honoured principle of the law of evidence that the onus of proof in civil cases depends upon the pleadings. The party who, in his or her pleadings, raises an issue essential to the success of his or her case assumes the burden of proof. See the case of *BANK FOR WEST AFRICA LTD v. ACKUN* (1963) 1 GLR @ 176-182.

The burden of proof on a Plaintiff is determined by statute. Accordingly, the relevant provisions of the Evidence Act 1975 (Act 323) is as follows. Section 10(1), 10(2), 11(1) and 11(4) of Act 323 reads that:

*10(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.*

*10(2) The burden of persuasion may require a party to raise a reasonable doubt concerning the existence or non-existence of a fact, or to establish the*

*existence or non-existence of a fact by a preponderance of the probabilities or by proof beyond a reasonable doubt.*

*11(1) For the purposes of this Act, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling on the issue against that party.*

*11(4) In other circumstances the burden of producing evidence requires a party to produce sufficient evidence which on the totality of the evidence, leads a reasonable mind to conclude that the existence of the fact was more probable than its non-existence.*

The aforementioned provisions implies that the Court will grant Plaintiff the relief sought only if it is able to prove its case on the balance of probabilities. Such that the Court will believe that the Defendant is indebted to it to the tune of GH¢14,818.04. From the evidence before this Court, exhibit A shows the transactions between Plaintiff and Defendant from 01/01/2014 to 31/12/16. Unfortunately, the witness did not tender into evidence the Agreement Plaintiff executed with Defendant to supply the latter with the planting materials and provide services to the latter. It is the opinion of this court that the reliefs which Plaintiff seeks the court to enforce is premised on this agreement and "Exhibit A" is only consequential to the agreement.

Nonetheless can "Exhibit A" be considered as relevant evidence which makes Plaintiff case and the relief it seeks more probable? It is a settled principle of law that matters that are capable of proof must be proved by producing sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of the fact is more probable than it non-existence.

*Section 51(2) of the Evidence Act 1975 reads that "All relevant evidence is admissible except as otherwise provided by any enactment". Evidence is considered to be relevant when it has "the tendency to make the existence or non-existence of any fact that is material to the determination of a material fact or issue more probable or less probable than it would be without the*

*evidence". See the case of MAHOB HOLDING COMPANY LIMITED V. SILVERSTAR AUTO LIMITED AND DAIMLER CHRYSLER A (2018) JELR 66328 (HC) HIGH COURT.*

Exhibit A is a relevant document which captures the materials and services Plaintiff availed to Defendant for the latter's benefit. It describes the materials and services provided, states the unit price for each item, amount received from Defendant, contingencies and outstanding balance. Exhibit A chronologically explains how the debt of GH¢14,818.04 claimed by Plaintiff in its writ of summons and particulars of claim arose. It is a finding of fact that Exhibit A establishes that Plaintiff supplied Defendant with planting materials and provided some services to Defendant. As a result of the services Plaintiff provided to Defendant from 01/01/2014 to 31/12/16, the latter is indebted to Plaintiff to the tune of GH¢14,818.04. The court finds the Defendant is indebted to Plaintiff to the tune of GH¢14,818.04 and Plaintiff is entitled to recover the said amount.

On the issue of interest, in the case of *ELLIAS PREKO V. K & H LIMITED (2019) JELR 68596 (CA) COURT OF APPEAL*, the court held that *"The rationale for the award of interest by the Courts in Ghana especially in business transactions is that by the failure of the Defendant to pay the Plaintiff the sum ascertained to be due, the Defendant had deprived the Plaintiff the opportunity to work with the money to earn profit or income"*

The eminent jurist and Learned author S.A. Brobbey in his Book, Practice & Procedure In The Trial Courts & Tribunals in Ghana at page 419, paragraph 954, stated that; *"In determining when payment of interest is to commence, the most relevant date is when the principal became due and payable. In the absence of any agreement to the contrary, the date of delivery of judgment is relevant in determining the statutory rate as stipulated in C.I.52, Rule 2 and*

*the period for paying interest. Because the rate differs from time to time, this provision is of extreme importance in deciding which day's rate is to be used in calculating the interest"*

**Rule 2 of the COURT (AWARD OF INTEREST AND POST JUDGMENT INTEREST) RULES, 2005 (C.I 52)** read thus: "2(1) Subject to sub rule (2) each judgment debt shall bear interest at the statutory interest rate from the date of delivery of the judgement up to the date of final payment.

2(2). Where the transaction which results in the judgment debt

(a) contained in an instrument,

(b) evidenced in writing, or

(c) admitted by the parties

and the parties specify in the instrument, writing or admission the rate of interest which is chargeable on the debt and which is to run to the date of final payment, then that rate of interest shall be payable until the final payment".

From the evidence on record, the debt of GH¢14,818.04 became due and payable on 31/12/16. Defendant willfully refused to settle her debt of 14,818.04 for the materials and services which he benefitted from. Had Defendant settled his debts timeously, Plaintiff could have ploughed the money into its business to generate more revenue. In the absence of any agreement between Plaintiff and Defendant specifying the applicable interest rate, the court orders that interest shall be calculated at the statutory interest rate prevailing at the time the judgment was given to date of final payment.

Furthermore, in accordance with Order 74 of the High Court (Civil Procedure) Rules 2004 (C.I 47), which guides the court in awarding costs, the

court awards the cost of GH¢1,000.00 in favour of the Plaintiff. The court took into consideration the expenses Plaintiff incurred in instituting the action and other expenses it incurred in prosecuting the matter

**(SGD.)**

**H/W AWURAMA DAMOAH DARKWAH**

**(MAGISTRATE)**

**COUNSEL: PHILIP OCTHERE DARKO FOR PLAINTIFF**

**NO LEGAL REPRESENTATION FOR DEFENDANT**