

**IN THE DISTRICT COURT 1,TAMALE HELD ON WEDNESDAY 15TH MAY, 2024
BEFORE HIS WORSHIP D. ANNAN ESQ. [AS ADDITIONAL RESPONSIBILITY]**

SUIT NO. A2/71/23

BETWEEN

KANLIGI EBENEZER

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PLAINTIFF

AND

- 1. IDDRISU FAROUK**
 - 2. MOHAMMED YUSSIF**
 - 3. ISSAHAKU MUMUNI**
 - 4. IDDRISU MOHAMMED**
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DEFENDANTS

JUDGMENT

INTRODUCTION

1. This judgment relates to contract, recovery of money.

2. The plaintiff is a businessman who trades under the name and style Kanligi Ventures and deals in assorted drinks. The 1st defendant is also a businessman and a regular customer of the plaintiff. By an order of joinder dated 10th August, 2023 the 2nd, 3rd and 4th defendants were made defendants to this case. The 2nd, 3rd and 4th defendants are described to have undertaken to pay the 1st defendant's debt, should 1st defendant fail to pay.

3. The plaintiff by an amended writ and summary of subject matter of claim filed on 31st August, 2023 seeks against the defendants, jointly and severally, as follows:
 - “a. An order for the recovery of the sum of GHS24,017.00 being the amount due and owing by the 1st defendant on account of the supply of assorted soft drinks by plaintiff to the 1st defendant for which the 2nd to 4th defendants guaranteed repayment but failed to pay despite repeated demands.
 - b. Interest on the said sum at the prevailing commercial banks’ rate from date of default to date of judgment.
 - c. Costs.”
4. Parties were ordered to file witness statements to which they did, save the 1st defendant. The 1st defendant was not served with any of the court processes. In fact, the 2nd, 3rd and 4th defendants informed the court that they cannot tell the whereabouts of the 1st defendant. Since, the plaintiff’s action is against the defendants jointly and severally, the court decided to proceed despite the non-service on the 1st defendant.
5. The respective case of the plaintiff, 2nd, 3rd and 4th defendants are detailed below.

PLAINTIFF’S CASE

6. According to plaintiff, 1st defendant approached him for the supply of assorted drinks on credit and that 1st defendant had paid leaving a balance of GHS24,017.00. He contended that the 1st defendant has failed to pay the said balance since July 2022. As such on 16th July, 2022 he reported the matter to the police. Plaintiff added at that at the police station an agreement was reached to which 1st defendant with the compliments of the 2nd, 3rd and 4th defendants undertook to pay the said balance by 30th November, 2022. *Plaintiff tendered a copy of the said undertaking/agreement and was*

marked as Exhibit A. Plaintiff averred that defendants, however, have since failed to pay, save the GHS10,000.00 that was paid in open court.

7. Plaintiff contended that since the 2nd, 3rd and 4th defendants guaranteed to pay the debt should the 1st defendant fail, the court should compel them to make due the outstanding balance to the plaintiff, plus interest and costs. Hence, this present action.

DEFENDANTS' CASE

8. As earlier mentioned, the 1st defendant did not attend court or file any process.
9. The 3rd defendant testified for himself. The 4th defendant testified for himself and on behalf of the 2nd defendant.
10. According to 3rd defendant, the 1st defendant is his nephew. He explained that he was informed by the 1st defendant's wife that 1st defendant had been arrested and locked up at the police station. He averred that he went to the police station successively on Saturday and Sunday, spent the whole day there, but 1st defendant was refused bail. He averred further that on the Monday, he went to the police station, there he got to know the 2nd and 4th defendants. He stated that the police informed them (2nd, 3rd and 4th defendants) that the only way they could assist the 1st defendant was to sign a document. Hence, he, 2nd and 4th defendants signed a document prepared by the police. To him, he signed the said document thinking that it was a bail document. He added that the police assured them (2nd, 3rd and 4th defendants) that immediately the document was signed the 1st defendant would be released. And yes, after signing the 1st defendant was released. He contended that he did not know that the document he signed was an undertaking, if he knew he would not have signed it.

11. 4th defendant recounted a similar story as that of the 3rd defendant. He, added that he knows the 1st defendant through 1st defendant's wife. He stated that on 18th July, 2022 the 1st defendant's wife informed him that the 1st defendant had been locked up at the police station for about two (2) days. He stated further that the 1st defendant's wife was heavily pregnant and to him the situation of 1st defendant and the wife was very bad. So upon pleading with the police to release the 1st defendant, but the police refused, they (2nd, 3rd and 4th defendants) were give a document to sign with the assurance that 1st defendant would be released immediately after signing. He added that he knew he was signing a bail bond but not an undertaking to pay a debt owed by 1st defendant.

ISSUES FOR TRAIL

12. The only issue borne out of the facts is, *whether or not Exhibit A signed by the plaintiff and the 2nd, 3rd and 4th defendants is valid and binding?*

BURDEN OF PROOF

13. It is essential to note that 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) & (2) of NRCD 323.

14. Also, a person who makes an averment or assertion which is denied by his opponent has a burden to establish that his averment or assertion is true and he does not

discharge this burden unless he leads admissible and credible evidence from which the fact(s) he asserts can properly and safely be inferred, see **Zabrama v Segbedzi [1991] 2 GLR 221**. See also **Majolagbe v. Larbi [1959] GLR 190** per Ollennu J (as he then was) where he 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”.

15. 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**, **Nyame v Tarzan Transport and Anor. [1973] 1 GLR 8, CA**, and **Okudzeto Ablakwa (No. 2) v. Attorney-General & Obetsebi-Lampitey (No. 2) [2012] 2 SCGLR 845**.

ANALYSIS OF THE ISSUE

16. The only issue borne out of the facts is, *whether or not Exhibit A signed by the plaintiff and the 2nd, 3rd and 4th defendants is valid and binding?* Contracts are legally binding agreements between two or more parties that outline the rights and obligations of each party. It can be oral or written. Often, written contracts are preferred over oral contracts since it stipulates clearly the terms agreed therein. Hence, it is not the duty of the court to make a new contract for parties on terms they have not mutually agreed upon, see **Mireku & Tetteh (Dec'd): In Re Mireku v Tetteh [2011] 1 SCGLR 520**.

17. The law is also that documentary evidence takes precedence over oral evidence.

Hence in the case of **Fosua & Adu-Poku v Dufie (Deceased) & Adu Poku-Mensah [2009] SCGLR 310**, Dotse JSC (as he then was) stated at page 345 as follows:

“In the case of **Yorkwa v Duah [1992-1993] GBR 278 CA**, it was held that whenever there was in existence a written agreement and conflicting oral evidence over a transaction, *the practice in the court was to lean favourably towards the documentary evidence*, especially if it was authentic and the oral evidence conflicting, see also **Nsiah v Atuahene [1992-1993] GBR 897 CA**”

18. Hence, save any of the vitiating factors, e.g. mistake, fraud, duress, undue influence, incapacity, legality, etc, a written contract shall be valid and binding. The Supreme Court in the case of **Hemans v Cofie [1997-98] 1 GLR 144** explaining duress or a compulsion to sign a document which can vitiate a contract/agreement stated that:

“To be capable of giving rise to duress, the threat had to be illegitimate either because what was threatened was a legal wrong or because the threat itself was wrongful, though what was to be done was lawful or because it was contrary to public policy. *But for duress to vitiate consent, there had to be proof both of coercion of the will and the existence of the duress at the time of making the contract. ...A contract which results from duress does not have to be "manifest disadvantage" of the person who is persuaded to enter into it. Indeed, a contract which is substantively fair can be struck down simply because it was made under duress. It is rather in a plea of presumed undue influence that the unfairness of the transaction is a prerequisite for a successful action.*”

19. Based on the above authorities, the onus is on the 2nd, 3rd and 4th defendants to lead sufficient evidence, on the balance of probabilities, that they were misled or compelled into signing Exhibit A, failing which the document shall be binding on them.

20. From the evidence, the 2nd, 3rd and 4th defendants argued that they were misled by the police to sign Exhibit A. According to them, they thought they were signing a bail bond but not to guarantee or undertake to pay the 1st defendant's debt. They added that considering the condition of the 1st defendant's wife, that she was heavily pregnant and the husband was locked up, they were compelled or had empathy to signed the document.

21. It is important to state in full the said Exhibit A:

“Letter of Agreement

I, Mohammed Yussif with the under-listed persons have agreed that from today, 18th July, 2022 to 30th November, 2022 we will PAY ALL bill (GHS24,017) owed Kanligi Ventures, in lieu of Iddrisu Faruk who owes the sum for supply of drinks.

Mr. Mohammed Yussif (0240686807)

...(signed)...

Issahaku Mumuni (0243537328)

...(signed)...

Iddrisu Mohammed (0501607880)

...(signed)...

Kanligi Ebenezer (0507675544)

...(signed)...”

22. The plaintiff disputed that the 2nd, 3rd and 4th defendants were not misled or compelled into signing Exhibit A. To him, he was not the one who came up with the said agreement. Rather, the 2nd, 3rd and 4th defendants intervened when the matter was sent to the police.

23. From the evidence, below ensued when plaintiff was under cross-examination:

“Q: You agree with me that what transpired between you and 1st defendant was a normal commercial contract?

A: Yes.

Q: Now, when he failed to pay the balance as promised you reported the matter to the police?

A: Yes.

Q: You agree with me that this is not a matter you should have reported to the police?

A: No.

Q: I am suggesting to you that this is a matter that where you should have sued him for your money like you have done now?

A: No. When it happened per my understanding it was a fraudulent case.

Q: I am suggesting to you that you only reported him to the police because you wanted to use intimidation and duress from the police to get him to pay?

A: No.

Q: It was at the police station that the purported undertaking or agreement was signed?

A: Yes.

Q: And the time the agreement was signed 1st defendant was locked up, not so?

A: Yes.

Q: And it was 1st defendant's heavily pregnant wife who called 2nd, 3rd and 4th defendants to come to 1st defendant's aid at the police station?

A: I have no knowledge about that.

Q: 1st defendant's heavily pregnant wife called the other defendants to come to the police station to help secure her release, I am suggesting that to you?

A: I do not know.

Q: When they came to the police station, the police threatened to lock up 1st defendant until the purported agreement was signed by them?

A: I did not engineer anything of that.

Q: But then after the signing of this agreement, 1st defendant was released by the police?

A: Yes. That was when the family and the employers came to us.

Q: I am suggesting to you that if 1st defendant had not been locked up in police custody and the police had not threatened not to release him until the agreement was signed, 2nd, 3rd and 4th defendants would not have appended their signatures to this agreement?

A: No. He was not threatened at all.

Q: After the purported agreement, 1st defendant still defaulted.

A: All of them.

Q: Since the inception of this case, part of the money has been paid to you, not so?

A: Yes.

Q: That GHS10,000.00 was paid by the 1st defendant alone?

A: I do not know who paid the money.

Q: 1st defendant sent his brother to this court and in open court 1st defendant paid the GHS10,000.00 to you as coming from the 1st defendant.

A: I only took the money from the defendants. I do not know who. The money was brought here.

Q: 1st defendant by paying the GHS10,000.00 still accepts that he is liable for the debt and intends to pay the balance to you?

A: I did not see it.

Q: Finally, I am suggesting to you that 2nd, 3rd and 4th defendants cannot be liable to you in any way for a debt owed by the 1st defendant?

A: They all have a history of working together. And when it happened they came to me. I did not go to them, that they will help clear the debt.

Q: That is all for him.

24. Also when 3rd defendant was under cross-examination, below transpired:

“Q: And so with the experience gathered in signing documents, you understand the meaning of signing, not so?

A: Relating to my work, I understand.

Q: You do not deny that you were one of the persons who secured bail for the 1st defendant?

A: My understanding was that when we sign what we signed that was the bail.

Q: On Exhibit A, you do not see anything about police on that document?

A: Yes.

Q: Are you aware that for bail bond, it is the police that process it?

A: To the best of my knowledge, this document was signed at the police station with the police.

Q: Look at Exhibit A and tell the name of the police officer who signed it, if any?

A: On this document, there is no police person's name on it. But it was the police personnel who gave it to us to sign with the condition that when we sign 1st defendant will be released.

Q: As a literate, it is presumed that you read the document before you signed?

A: Yes. But the situation was that the 1st defendant, his wife was heavily pregnant and 1st defendant was with the police for some number of days. So when we were called, myself and 2nd defendant, I was called by the 1st defendant's wife, so when we got to the police station, the 1st defendant's wife was weeping and wailing and asking us to try and help the husband, because 1st defendant has been there for some time. So for the wife's situation, she was due, our mind and fears were to get the husband out. So as human as we are, the wife will not suffer.

Q: So the fact is that you felt so sympathetic for the heavy pregnancy that you did not cause and that was why you signed?

A: Obviously, I am not responsible. It is the husband.

Q: Can you tell this court where the 1st defendant is now having been so sympathetic for the wife?

A: We can't find him."

25. 4th defendant during cross-examination also responded as follows:

"Q: So you understand that when you put your signature on a document, it shows that you signed it?

A: Yes.

Q: Exhibit A the signature there attributed to you is your true signature, is that not the case?

A: Yes.

Q: And you are highly literate, you read the content of Exhibit A?

A: Yes. But this letter was signed under pressure. 1st defendant is my late brother's son, so when his wife called and told me about her situation, that her delivery date was closer and the husband was locked up for 3days, we could not secure a bail, so when this agreement was prepared, I was told to sign to secure his release. If not because he was locked up, I would not have signed it.

Q: As a teacher, are you aware that nobody can force you to secure bail for another person?

A: Yes. But "nobody" you are saying is relative.

Q: You were the one who provided your phone number to be typed under your name, nobody did, you did?

A: Yes.

Q: So, if I understand you well the pressure you are talking about is the pathetic situation of the heavily pregnant wife, not so?

A: Yes. As an uncle I will be compelled by it."

Q: That is all."

26. From the above, it is clear that there is no doubt that the 1st defendant owes the plaintiff GHS24,017.00. Also, it was not in doubt that the 1st defendant was arrested regarding the non-payment of the said amount. It appears to this court, that the 2nd, 3rd and 4th defendants read and signed Exhibit A, knowing very well that they were signing a letter of agreement. They provided their names and contact numbers. Exhibit A does not reflect anything of a sort of a bail bond being executed by the police. Rather, the 2nd, 3rd and 4th defendants had sympathy for the pregnancy of 1st defendant's wife, the weeping and wailing and therefore voluntarily consented to help by signing to pay the debt as per the terms therein. They were not coerced, they

rather had sympathy. In the absence of the said sympathy, Exhibit A would not have been a valid agreement. Voluntary consent, however, vitiates duress. Hence, I hold that Exhibit A was a voluntarily entered into and same is a valid and binding agreement.

27. Before I conclude, I would touch briefly on the principle of jointly and severally liability. As earlier mentioned, the plaintiff's case is against the defendants jointly and severally. The principle of jointly and severally liability is that, liability may be apportioned either among two or more parties or to only one of the parties at the adversary's discretion. Thus, either liable party is individually responsible for the entire obligation, but a paying party may have a right of contribution and indemnity from non-paying parties, see Black's Law Dictionary, 9th Edition.

28. From the evidence, there is no doubt that 1st defendant is the one who owes the plaintiff, but he cannot not be traced. He has also failed to pay the debt in full. Hence, I come to the conclusion that Exhibit A shall be construed against the defendants, jointly and severally.

29. Lastly, it is not in doubt that GHS10,000.00 has been paid by the defendants. Hence, the amount to be recovered shall be GHS24,017.00 less the GHS10,000.00. Thus, GHS14,017.00.

CONCLUSION

30. In brief, I hereby enter judgment in favour of the plaintiff against the defendants, jointly and severally, as follows:

- a. Recovery of the sum of GHS14,017.00 being the amount due and owing by the 1st defendant on account of the supply of assorted soft drinks by plaintiff to the

- 1st defendant for which the 2nd, 3rd, 4th defendants guaranteed repayment but failed to pay despite repeated demands.
- b. Interest on the said sum at the prevailing commercial bank rate from 1st December, 2022 till date of final payment.
- c. Costs assessed at GHS5,000.00 in favour of the plaintiff.

H/W D. ANNAN ESQ.

[MAGISTRATE]

SYLVESTER ISANG ESQ., FOR THE PLAINTIFF

RASHID M. MUMUNI ESQ., FOR THE 2ND, 3RD, AND 4TH DEFENDANTS

References:

1. ss. 11(4), 12(1) & (2) and 14 of the 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. *Zabrama v Segbedzi* [1991] 2 GLR 221
5. *Majolagbe v. Larbi* [1959] GLR 190
6. *Ababio v Akwasi III* [1995-1996] GBR 774
7. *Nyame v Tarzan Transport and Anor.* [1973] 1 GLR 8, CA,
8. *Okudzeto Ablakwa (No. 2) v. Attorney-General & Obetsebi-Lamptey (No. 2)* [2012] 2 SCGLR 845
9. *Mireku & Tetteh (Dec'd): In Re Mireku v Tetteh* [2011] 1 SCGLR 520.
10. *Fosua & Adu-Poku v Dufie (Deceased) & Adu Poku-Mensah* [2009] SCGLR 310
11. *Yorkwa v Duah* [1992-1993] GBR 278 CA

12. *Nsiah v Atuahene* [1992-1993] GBR 897 CA

13. *Hemans v Cofie* [1997-98] 1 GLR 144

14. *Black's Law Dictionary, 9th Edition*