

**IN THE DISTRICT COURT HELD AT OBUASI ON  
MONDAY THE 15<sup>TH</sup> DAY OF JANUARY 2024, BEFORE  
HIS WORSHIP KOFI OWUSU SEKYERE ESQ.**

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**SUIT NO. AR/OB/DMC/A11/10/2023**

**MADAM HANNAH ARTHUR  
OF BONGOBIRO-OBUASI  
VRS**

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**PLAINTIFF**

**AZIZ FATAWU ABDUL  
OBUASI-EMUYE**

**\*\***

**DEFENDANT**

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**J U D G M E N T**

On the 21<sup>st</sup> day of November 2022, the plaintiff filed this writ of summons at the registry of this Honourable Court seeking the reliefs which was captured as follows;

- a. 'An order compelling the defendant to give back to plaintiff her KIA DAEWOO Saloon Car with Registration Number AS-4099-15*
- b. An order compelling the defendant to accept his Four Thousand Ghana Cedis (GH¢4,000.00) being financial assistance defendant granted plaintiff*
- c. An order compelling the defendant to return to the plaintiff her Plot Allocation Document, her husband's Driver's Licensed''*

**CASE OF THE PLAINTIFF**

The plaintiff filed her witness statement before this Court dated 8<sup>th</sup> February 2023 and relied on same as her evidence in chief upon oath.

The plaintiff in her evidence in chief stated that she went for a loan of Four Thousand Ghana Cedis (GH¢4,000.00) from the defendant. She secured the loan with her KIA DAEWOO SALOON Car with Registration Number AS-4099-12 as collateral to repay same within two months' time.

She averred that she collected the loan about two and half years ago at the time of filing her suit on 8<sup>th</sup> February 2023.

According to her, she could not pay for the loan at the schedule time. She travelled to Accra and in her absence she had a call from her husband that the defendant had come to take the car from her house without her authorization.

She averred that, the following items were in the car; her husband's driving license, sound system, spare tyre, jack and other personal effects which the defendant took along with the car.

On her return from Accra, she and her husband went to inquire from the defendant why he came for the car; the defendant told her that he had sold the vehicle. She then requested the defendant to give her all the items kept in the car. The defendant only return her husband's Driver's License but failed to return all other items kept in the car. All effects made to get the defendant return her vehicle and other personal belongings in the car had proven futile, hence this civil suit.

The plaintiff only witness was her husband Henry Frimpong (PW1) whose evidence corroborated that of the plaintiff

### ***CASE OF THE DEFENDANT***

The defendant filed his witness statement before this Court dated 16<sup>th</sup> February 2023 and relied on same as his evidence in chief

He stated that in March 2020 the plaintiff's husband (PW1) approached him for financial assistance of Six Thousand Ghana Cedis (GH¢6,000.00) to enable him clear his goods at the Port.

According to him, the plaintiff's husband (PW1) told him he had a vehicle and was using it as collateral security for the loan. As he personally could not assist PW1, he took the plaintiff and PW1 to his friend Henry Kofi Kyei (DW3) who gave the plaintiff and PW1 Four Thousand Ghana Cedis (GH¢4,000.00) with the agreement that they pay the money within two weeks' time. The plaintiff and her husband after receiving the money voluntarily handed their DAEWOO SALOON Vehicle with Registration Number AS-4099-15 to his friend the creditor with the agreement that in case they fail to pay the money,

he should sell same to defray the debt. When the debt was due for payment, they failed to honour their promise despite persistent demand.

He averred that, he and DW1 approached PW1 the plaintiff's husband herein for the money, he told them that they had used the said vehicle as collateral and as such could go ahead to sell the vehicle to defray the debt. As a result of that his friend (DW2) sold the vehicle to defray the debt.

The defendant emphasized that he was not the one who gave the financial assistance to the plaintiff and her husband and was not the one who sold the vehicle. The plaintiff is therefore not entitled for her claim.

The defendant called three witnesses to close his case.

Their witness statements thus Homiah Joseph (DW1) and Harry Kyei Kofi (DW2) filed on the 16<sup>th</sup> March 2023 and Appiah Bosompem (DW3) on 30<sup>th</sup> November 2023 before this Honourable Court and relied on same as their evidence in chief.

DW1 in his evidence in chief stated that somewhere 2020, the defendant informed him that the plaintiff's husband (PW1) took financial assistance from DW2 and provided his DAEWOO Lenos as collateral security. As he (PW1) could not pay the loan, he authorized DW2 to sell same to defray his debt.

He then contacted DW2 who affirmed what defendant told him and advised him to go and verify from PW1. He then went to the plaintiff's husband (PW1) who confirmed that he had authorized DW2 to sell his said vehicle to defray the debt he owed him and based on that DW2 sold the vehicle to him. He insisted that it was DW2 who sold the vehicle to him and not the defendant.

Herry Kofi Kyei (DW2) evidence corroborated that of the defendant and DW1. He stated among other things that the plaintiff and her husband (PW1) came for financial assistance at GH¢4,000.00 from him with the promise to pay back within two weeks' time.

According to him, they used their stationary Daweoo Lenos Vehicle as collateral security. When they failed to pay the loan at the matured time they could not pay same. The plaintiff's husband then directed him to sell the said vehicle to defray the debt. He then sold same to DW1.

DW3 briefly stated that he was a letter writer doing his business at Obuasi Post Office. Whilst on duty the plaintiff and the defendant came to him to

prepare a document concerning a sale of plaintiff's vehicle to the defendant's friend. He therefore prepared same, read and explained the content in Twi Language to the two before they endorsed same with their thumbprint and signature respectively.

According to him, the defendant signed as a witness to the buyer.

The case of the plaintiff was simply that she went for financial assistance of GH¢4,000.00 from the defendant. She used her KIA DAEWOO SALOON Car as collateral security. She defaulted paying the loan and as a result the defendant sold the vehicle to someone to recover his money. The defendant rather disputed the plaintiff's assertion.

According to him, he was not the one who granted the said loan/financial assistance to the plaintiff. It was rather DW2 who gave the loan to the plaintiff and it was he (DW2) who after the default of payment of the said loan sold the vehicle to DW1.

He contended that the plaintiff and her husband approached him for financial assistance to clear their goods at the Port. As he was not capable to assist them he introduced them to DW2 who was able to assist them.

From the evidence adduced before me, there is no dispute between the parties that the plaintiff went for the financial assistance of GH¢4,000.00 and that she used her/their vehicle as collateral security.

There is also no dispute that the plaintiff could not repay the loan at the due date and based on that the said vehicle was sold to defray the loan.

The issues that emerged from the evidence adduced before me are;

- 1) Whether or not it was the defendant who granted the loan to the plaintiff*
- 2) Whether or not it was DW2 who granted the loan to the plaintiff*
- 3) Whether or not it was the defendant who sold the vehicle to DW1*

It is the case of the plaintiff that she contracted financial assistance of GH¢4,000.00 from the defendant and used her vehicle as collateral security for the said loan.

As she could not pay same the defendant sold the vehicle.

The defendant on the other hand disputed the plaintiff's assertion that he gave the financial assistance to the plaintiff.

According to him, the plaintiff and her husband (PW1) came to him for financial assistance to clear their goods at the Port. He did not have money and as such introduced DW2 to them.

Plaintiff and PW1 then approached DW2 who offered them the loan where they used their vehicle as collateral security. As they could not pay plaintiff's husband (PW2) authorized DW2 to sell the vehicle to recover his money. It was as a result of that DW2 sold the vehicle to DW1. He disputed the plaintiff's assertion that he was the one who gave the loan to the plaintiff. Neither was he the one who sold the vehicle.

The defendant's assertion was corroborated by all the three witnesses he called.

DW2 testified to confirm that he was the one who gave the loan to the plaintiff and her husband who in turn used their vehicle as collateral security. Upon failure to pay same, plaintiff's husband (PW1) authorized him to sell the vehicle to defray the loan. He then sold it to DW1.

DW1 also in his evidence confirmed that he purchased the vehicle from DW2 and not the defendant.

Now the question is which version of the story is more probable? Is it the plaintiff who is telling the truth or the defendant?

In Civil cases, such as the one before me 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; See ***Faibi V. State Hotels Corporation [1968] GLR 471 and Bank of West African Ltd. V. Ackun [1963] 1 GLR 176, SC.***

The onus therefore is on the plaintiff who sued the defendant before this Court to lead convincing evidence to prove to Court that her case is more probable than the defendant.

*‘‘For he who asserts assumes the onus of proving the assertion’’.*

Exhibit "AFA1" which is a receipt covering the sale of the vehicle confirmed that the vehicle was sold by DW2 to DW1 with the defendant signed as witness to the transaction for DW2.

I therefore find and hold that it was DW2 who sold the vehicle to DW1 and not the defendant. DW2 could not have sold same if he was not the one who granted the loan to the plaintiff.

I therefore have no doubt that it was DW2 who granted the loan facility to the plaintiff and her husband and not the defendant.

I accordingly nonsuit the defendant as he is not the one who granted the said loan to the plaintiff and also not the one who sold the said vehicle. In any way the said vehicle was used as collateral security for the repayment of the loan. And once the plaintiff defaulted paying the loan and PW1 (husband) did authorize DW2 to sale same. DW2 also went ahead and sold same. The plaintiff could not lead any evidence to prove to the Court that the vehicle belonged to her and for that matter the consent given to DW2 to sell the car was void.

Considering the evidence before me, in its entity it is my view that the plaintiff could not prove her case and same is accordingly dismissed.

Cost of GH¢1,500.00 in favour of the defendant.

**KOFI OWUSU SEKYERE ESQ.  
(MAGISTRATE)**

*\*ed\**