

**IN THE DISTRICT COURT 2, TAMALE HELD ON FRIDAY 15TH MARCH, 2024
BEFORE HIS WORSHIP D. ANNAN ESQ.**

SUIT NO. A2/80/24

BETWEEN

ABUBAKARI ABDUL-MALIK & ANOR.

-

PLAINTIFFS

AND

ALHASSAN ABDUL-RAHAMAN

-

DEFENDANT

JUDGMENT

INTRODUCTION

1. This judgment relates to commercial contract.
2. The parties herein are businessmen and are resident in Tamale.
3. By a Writ of Summons filed on 26th June, 2023, the plaintiff seeks against the defendant for the following:
 - “a. Recovery of an amount of GHS124,900.00 being the outstanding balance of money the defendant took from plaintiffs to supply them with shea nuts and soya beans together with an Apsonic Aloba motorbike.
 - b. Interest on the amount of GHS124,900.00 at the prevailing commercial rate from March, 2023 till date of final payment.
 - c. Damages for breach of contract.
 - d. Costs including legal fees.”

4. The defendant was duly served with the Writ of Summons via substituted service. Subsequently, the defendant was served with a copy of the plaintiff's witness statement and hearing notice to attend court. Despite due service on defendant, he failed to attend court or filed any response to plaintiffs' claim.
5. I shall deal with defendant's failure to attend court or file any process later in this judgment.

PLAINTIFF'S CASE

6. The plaintiffs testified through the 1st plaintiff. According to 1st plaintiff, sometime in 2022, plaintiffs gave the defendant an amount of GHS270,000.00 for the supply of 500bags each of soya beans and shea nuts. He added that the prices of soya beans and shea nuts at the time of giving the said money were GHS355.00 and GHS185.00, respectively. 1st plaintiff admitted that defendant submitted 280bags of soya beans and 280bags of shea nuts, leaving a balance of 220bags of the soya beans and 220bags of shea nuts, at a total cost of GHS118,800.00. 1st plaintiff added that defendant was also given a brand new Apsonic Aloba motorbike valued at GHS6,100.00 which the defendant has failed to return or paid for same. Hence, the total claim of plaintiffs is GHS124,900.00.
7. The plaintiffs, therefore, pray for the recovery of the said amount plus interest and damages as well as costs. Plaintiffs did not tender any exhibit.

BURDEN OF PROOF AND ANALYSIS OF PLAINTIFF'S CLAIM

8. As earlier pointed out, the defendant was duly served with the court processes, but he failed to attend court or filed any process. The law regarding the defendant's inaction is that where a party fails to appear in court after due service on him, he is

said to have deliberately failed to take advantage of the opportunity given him to be heard. The *audi alteram partem* rule cannot be said to have been breached. The court is entitled to proceed with the trial to conclusion and make deductions, draw conclusions or make findings on the basis of the evidence adduced at the trial, see the cases of **In re West Coast Dyeing Industry Limited: Adams v Tandoh** [1984-86] 2 GLR 561, CA and **Ankumah v. City Investment Co. Ltd.** [2007-2008] 1 SCGLR 1068. See also the case of **Republic v. High Court (Fast Track Division); Ex-parte State Housing Co. Ltd. (No. 2) Koranten-Amoako Interested Party**, [2009] SCGLR 185 where Wood JSC (as she then was) stated authoritatively at page 190 as follows:

“A party who disables himself or herself from being heard in any proceedings cannot later turn round and accuse an adjudicator of having breached the rules of natural justice.”

9. Based on the above, all that is required of the plaintiffs is to prove their case on the balance of probabilities, see ss. 11(4), 12(1) & (2) and 14 of NRCD 323. See also the cases of **Faibi v State Hotels Corporation** [1968] GLR 471 and **In re Ashalley Botwe Lands; Adjete Agbosu & Ors. v. Kotey & Ors.** [2003-2004] SCGLR 420.
10. Now, having heard the plaintiffs under oath and without any challenge from the defendant, I shall proceed as appropriate, see **In re West Coast Dyeing Industry Limited: Adams v Tandoh (supra)**.
11. From the evidence, it is clear that the defendant has failed to supply the outstanding 220bags of soya beans and 220bags of shea nuts at the unit price of GHS355.00 and GHS185.00, respectively. The total cost is GHS118,800.00. Moreso, the defendant has failed to return the brand new Apsonic Aloba motorbike or paid its value of GHS6,100.00. A summation of the plaintiffs' claim is, therefore, GHS124,900.00.

12. Consequently, I find that the plaintiffs have led sufficient evidence in prove of their claim such that they are entitled to the reliefs endorsed on their writ, save the date of interest. It is unclear to this court when the outstanding amount accrued. The plaintiffs contended that they gave the money to the defendant in 2022, yet the interest rate stated in their reliefs should run from March 2023 till date of final payment. When exactly did the outstanding amount of GHS118,000.00 for the soya beans and shea nuts accrue? How about the motorbike? I, therefore, hold that since the date is unclear, the effective date of interest shall be the date of this judgment till date of final payment.

CONCLUSION

13. In sum, I hereby enter judgment in favour of the plaintiffs as follows:

- a. Recovery of the amount of GHS124,900.00 being the outstanding balance of money the defendant took from plaintiffs to supply them with shea nuts and soya beans together with the value of an Apsonic Aloba motorbike.
- b. Interest on the said amount at the prevailing bank rate from the date of this judgment till date of final payment.
- c. Damages for breach of contract assessed at GHS5,000.00.
- d. Costs assessed at GHS10,000.00.

H/W D. ANNAN ESQ.

[MAGISTRATE]

SLYVESTER ISANG ESQ. FOR THE PLAINTIFF

DEFENDANT ABSENT

References:

1. ss. 11(4), 12(1) and (2), 13 and 14 of Evidence Act, 1975 (NRCD 323).
2. *In re West Coast Dyeing Industry Limited: Adams v Tandoh* [1984-86] 2 GLR 561, CA
3. *Ankumah v. City Investment Co. Ltd.* [2007-2008] 1 SCGLR 1068
4. *Republic v. High Court (Fast Track Division); Ex-parte State Housing Co. Ltd. (No. 2) Koranten-Amoako Interested Party*, [2009] SCGLR 185
5. *Faibi v State Hotels Corporation* [1968] GLR 471
6. *In re Ashalley Botwe Lands; Adjetey Agbosu & Ors. v. Kotey & Ors.* [2003-2004] SCGLR 420