

**IN THE DISTRICT COURT 2, TAMAHE HELD ON TUESDAY 27TH FEBRUARY, 2024
BEFORE HIS WORSHIP D. ANNAN ESQ.**

SUIT NO. A2/77/23

BETWEEN

ANAFO ERIC

-

PLAINTIFF

AND

MR. YAKUBU

-

DEFENDANT

JUDGMENT

INTRODUCTION

1. This judgment relates to a commercial contract.
2. The plaintiff is driver and owner of Kia Rhino vehicle with registration number AW 7353-13. The defendant is a mechanic. The dispute herein regards the said vehicle, AW 7353-13.
3. By an amended writ of summons filed on 26th June, 2023 by the plaintiff, plaintiff seeks against the defendant for the following:
 - a. Recovery of Kia Rhino vehicle with registration number AW 7353-13 from the defendant which plaintiff gave to the defendant for repairs and the defendant has since refused to hand over to plaintiff despite repeated demands.

- b. Recovery of an amount of GHS27,800.00 being the outstanding balance defendant was supposed to pay the plaintiff for using the vehicle to carry goods to various places.
 - c. Interest on the amount of GHS27,800.00 at the prevailing bank rate from January 2023 till date of final payment.
 - d. Damages for breach of contract.
 - e. Costs including legal fees.
 - f. Any other relief(s) as this Honourable Court may deem fit.
4. The plaintiff later caused to be filed a motion on notice for interim preservation of the said vehicle, which was granted.
5. The defendant disputed the plaintiff's claim. In his amended defence and counterclaim filed on 25th October, 2023 defendant counterclaimed against the plaintiff as follows:
- a. Recovery of an amount of GHS40,190.00 being the outstanding amount defendant spent to fix the plaintiff's vehicle.
 - b. Interest on the above sum at the prevailing commercial bank rate from 10th June, 2023 till date of final payment.
 - c. Costs.
6. The plaintiff filed a reply and answer to the counterclaim on 26th October, 2023 similarly disputing the defendant's counterclaim. Parties were ordered to file their witness statements to which they did. The respective case of either party is detailed below.

PLAINTIFF'S CASE

7. The plaintiff's story is that sometime in December 2020 he gave his Kia Rhino vehicle with registration number AW 7353-13 to the defendant for repairs. Later in January 2023, the defendant informed him that he had finished with the repairs and that plaintiff was to pay for the workmanship and pick his vehicle. According to the plaintiff, he paid for the repairs but was unwell such that he was unable to pick the vehicle. Plaintiff averred that some days later in January 2023, that defendant informed him that he (defendant) had found a driver who could use the said vehicle, make sales to plaintiff till plaintiff recovers and/or come for his vehicle. Plaintiff agreed to the deal. At paragraph 9 of his witness statement, he stated that, 'I say that from my experience as a driver I agreed with the defendant that whenever the car carries goods from Zabzugu to Accra the driver will make sales of GHS7,500.00; each time the car carries goods from Tamale to Kumasi the driver will make sales of GHS4,000.00; each time the driver carries goods from farms in Zabzugu to Zabzugu town and carrying passengers to markets, the driver will make sales of GHS1,000.00.' Plaintiff contended that the defendant agreed to the above and the vehicle was given to the driver and plaintiff was updated on the trips. He stated that per the updates from the defendant the car carried goods from, 'Zabzugu to Accra on 3 occasions at GHS7,500.00 per trip; Tamale to Kumasi on 2 occasions at GHS4,000.00 per trip, went to village markets 2trips at GHS1,000.00 per trip and carried goods from farms to Zabzugu town 2times at GHS1,000.00 per trip.' Hence the total amount to pay to him was GHS34,000, but he has received GHS6,700.00 leaving GHS27,800.00 to be paid. Plaintiff tendered in evidence the mobile money statements of the GHS6,700.00 as Exhibits A and B.
8. Plaintiff added that the defendant has refused to pay the said sales to him and when he demanded for the return of the vehicle the defendant indicated that he had taken

a loan to buy tyres for the vehicle and that until the said loan is paid, defendant will remove the tyres before releasing same. Yet, the vehicle was still making trips. Plaintiff contended that he never authorized the defendant to contract a loan for any tyre. More so, at the time he (plaintiff) gave the vehicle for repairs, the tyres under the vehicle were in good condition and did not need any replacement. He reported the matter to the police, but the police indicated that it was a civil matter. Hence, his action in court.

9. In addition to the above, plaintiff stated that since the defendant continued to use the vehicle from 13th June to 3rd August, 2023 (thus before the vehicle was parked by a court order), the defendant be ordered to pay an amount of GHS1,000.00 for each day. The amount thereof is GH51,000.00, thus 51days at GHS1,000.00 per day.

Plaintiff's witness

10. Plaintiffs called Abdallah Tuaha (PW1), a welder as a witness. According to PW1, he changed the vehicle's axle to double axles. He tendered a picture of the vehicle showing the double axles as Exhibit C. He added that before changing the single axle, the vehicle had four tyres which were home used and in good condition and the two front tyres were brand new. But after changing to double axles, the vehicle had four rims and two tyres, which were not in good condition. He maintained that he had driven the vehicle to a washing bay to allow a sprayer to do a 1st coating, when the defendant came for the vehicle at the plaintiff's instruction. He explained that the defendant pick the car and was to work on the brakes.

DEFENDANT'S CASE

11. According to defendant, he was authorized by the plaintiff to pick the vehicle from Alhaji Maida's yard, where the vehicle had been packed and unattended to for six years. He averred that with the consent of the plaintiff he purchased vehicle parts,

including tyres and two car batteries, in order to move the car to his shop for the repairs. Upon taking the vehicle, defendant stated that he requested plaintiff to send money for the full repairs, but plaintiff only sent GHS400.00. Defendant added that plaintiff prevailed on him to prefinance the repairs and to be reimbursed later. Defendant stated that he spent in all GHS46,700.00, including his workmanship. He tendered in evidence a pen drive containing videos of the repairs and pictures of the spare parts, as Exhibit 1. Exhibits 2-2K are some of the invoices covering the repairs. The court rejected other invoices on grounds that it did not bear the number plates of the vehicle. Those invoices were marked as Exhibits R-R7.

12. Defendant stated that after completing the work, the plaintiff could not afford the expenses so he entered into an agreement with the plaintiff for the vehicle to be used and income from that be used to offset the GHS46,700.00. According to the defendant, the agreement was that trips from Zabzugu to Accra will be GHS6,000.00, Tamale to Kumasi will be GHS4,000.00 and Tamale to Chamba will be GHS1,300.00. Based on this, the vehicle made 3 trips from Zabzugu to Accra @ GHS18,000.00; 2 trips from Tamale to Kumasi @ GHS8,000.00 and 3 trips from Tamale to Chamba @ GHS3,900.00. Total GHS29,900.00. Defendant explained that out of this GHS29,900.00, GHS10,900.00 was spent on maintaining the vehicle during the period. A copy of the said expenses was attached but same was rejected as self-serving and marked as Exhibit R8. Defendant further explained that GHS4,500.00 was spent on the driver and his mate. Also, GHS8,800.00 was paid to the plaintiff and the remaining GHS6,510.00 was used to offset the plaintiff's debt.

13. Defendant averred that he was at the shop when one Jalil and another person were authorized by the plaintiff to come for the vehicle, but he refused to hand it over on ground that he had an agreement with the plaintiff and that plaintiff was yet to pay GHS40,190.00 under the said agreement. Yet, plaintiff reported the matter to the police

that he (defendant) had stolen the vehicle. Copy of the said report was tendered and marked as Exhibit 3. Defendant stated that the police referred the parties to resort to a civil action, to which he now counterclaims for this GHS40,190.00 and the other reliefs, aforementioned.

Defendant's Witnesses

14. Defendant called two witnesses, Mutala Abdul-Gafaru (DW1) and Kassim Yussif (DW2). According to DW1, he is a mechanic and defendant is his master. He added that he accompanied defendant to pick the said vehicle from Alhaji Maida's yard. He explained that when they got to the yard, the vehicle had been left unattended to for a long time and so they had to rent two car batteries and replaced all the tyres because they had worn out. He averred that they were able to drive the vehicle to their shop where defendant worked extensively in repairing the vehicle.
15. According to DW2, defendant engaged him as the driver with one Adam as a mate. He confirmed the defendant's trips. He also confirmed that he and his mate were paid GHS4,500.00 as remuneration for the period: thus, GHS600.00 and GHS200.00 respectively for the 3 trips from Zabzugu to Accra, GHS450.00 and GHS150.00 respectively for the 2 trips from Tamale to Kumasi and GHS200.00 and GHS100.00 respectively for the 3 trips from Tamale to Chamba. He also stated that defendant carried out regular maintenance on the vehicle.

ISSUE FOR TRIAL

16. The issues borne out of the facts are:
 - a. *Whether or not the plaintiff is entitled to GHS27,800.00 being the outstanding sale trips of the vehicle or that defendant is entitled to GHS40,190.00 being the outstanding repairs plus workmanship owed by the plaintiff, and/or a set-off, if any?*

b. Whether or not plaintiff is entitled to GHS51,000.00 being the total daily sales from 13th June to 3rd August, 2023?

BURDEN OF PROOF

17. 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.

18. 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 case of **Ababio v Akwasi III [1995-1996] GBR 774**.

19. Lastly, where there is a counterclaim, the counter claimant must also prove his case. The Supreme Court speaking through His Lordship Ansah JSC in the case **Osei v Korang [2013] 58 GMJ 1**, stated that, “... each party bears [the] onus of proof as to which side has a claim ... against his/her adversary, for a counter claimant is as good as a plaintiff in respect of ... which should he assays to make his/her own.” See also **Aryeh & Akapo v Ayaa Iddrisu [2010] SCGLR 891 @ 901**.

ANALYSIS OF THE ISSUE

Issues a

20. Issue a, thus *whether or not the plaintiff is entitled to GHS27,800.00 being the outstanding sale trips of the vehicle or that defendant is entitled to GHS40,190.00 being the outstanding repairs plus workmanship owed by the plaintiff, and/or a set-off, if any?*
21. 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**. In effect, where parties have an oral contract and there is no dispute as to a term, same would be construed as binding on the parties. The issue, however, arises when one party contends that a term was part of the oral contract and the other disputes it.
22. In civil cases like this one, a party who makes allegations has the burden to lead evidence to prove those allegations unless they are admitted by the other party. If he fails to do that, a ruling on those allegations will be made against him, see **Okudzeto Ablakwa (No. 2) v. Attorney-General & Obetsebi-Lampsey (No. 2) [2012] 2 SCGLR 845**. 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 the often cited case of **Majolagbe v. Larbi [1959] GLR 190** per Ollennu J (as he then was) where the court 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”.

23. In a claim for a specific sum, the law requires that the claimant must particularly prove same, else may lose on those which were not proven, see the case of **Chahin & Sons v. Epope Printing Press [1963] 1 GLR 163 @ 168**.

24. Hence, the onus is on the plaintiff to prove that the defendant owed him the amount of GHS27,800.00 being the outstanding sale trips of the vehicle. Similarly, the defendant to also prove that he is entitled to GHS40,190.00 being the outstanding repairs plus workmanship. Where there is a set-off, the court will make a determination.

25. From the evidence, the plaintiff during cross-examination was in complete denial of every question posed to him. In fact, he even denied that there was an agreement with the defendant for the vehicle to be used for commercial transport. Yet, in his evidence-in-chief (per his witness statement), he averred that the vehicle was used for commercial transport after the repairs. Again, plaintiff in one breathe indicated that he had paid for all the repairs, but in another breathe, he is yet to pay. He would also admit that the tyres of the vehicle were in good shape, yet had to buy or rent tyres. PW1 admitted under cross-examination that the tyres were not in good condition. Below is what ensued when plaintiff was under cross-examination:

“Q: You agree with me that the vehicle was parked at one Alhaji Maida’s house for over 6years?

A: The vehicle was not parked there for 6years.

...

Q: *You are telling this court that Mr. Abdallah (PW1) never added another axle to your vehicle?*

A: *Not at all.*

Q: *I am putting it to you that it was Mr. Abdallah who added the axle?*

A: *Yes, it was Mr. Abdallah who added the axle.*

Q: And you agree with me that when Mr. Abdallah added the axle to the vehicle, he stated that the vehicle had four rims after adding the axle?

A: Yes.

Q: Mr. Abdallah also stated that the vehicle had 2 tyres which were not in good state?

A: Yes.

Q: *I am putting it to you that because the tyres were not in a good condition, the defendant had to buy tyres in order to move the car from Alhaji's house?*

A: *Defendant did not buy any tyres for my vehicle.*

...

Q: *How much did you pay for all the repairs done on your vehicle to the defendant?*

A: *I am yet to pay.*

Q: *You agree with me that you and the defendant agreed that he would pre-finance the repairs of the vehicle?*

A: *No. I paid for the repairs.*

Q: *How much did you pay?*

A: *I did not pay.*

...

Q: *Because you could not pay for the works done, you both agreed that the vehicle be used for commercial purposes to defray the amount owed?*

A: *No.*

Q: *I am putting to you that both agreed to use the vehicle for commercial purposes in order to defray the debt?*

A: *There is no debt.*

...

Q: *Do you know the estimated incomes from those trips?*

A: *I know.*

Q: You agree with me that the cost of fueling the vehicle and paying the driver together with his mate was taken from the amount you agreed on?

A: The amount was to be obtained from the trip.

Q: *So you will therefore be paid from the balance after those deductions were made?*

A: *There was no payment.*

Q: *Is it your testimony that the defendant never paid any monies to you?*

A: *He only paid upon my request.*

...

Q: *I am putting it to you that you owe the defendant an amount of GHS40,190.00?*

A: *I don't owe the defendant."*

26. When PW1 was also under cross-examination, below is what transpired:

"Q: In paragraph 5 of your witness statement, you stated that the axle you added to the vehicle had 4 rims and two tyres.

A: Yes.

Q: That means that the vehicle would have needed 2 more tyres in order for the other rims?

A: That is so. The two tyres we added to the vehicle were not good tyres.

...

Q: You have admitted before this court that the tyres were not in good condition, not so?

A: That is so.

Q: I am putting it to you that the defendant had to buy tyres in order to move the vehicle from the yard?

A: That did not happen."

27. The defendant was also not far from the inconsistencies. He stated that he bought 18tyres in one breathe, but in another breathe he bought 28tyres. He also denied having any agreement with the plaintiff regarding how much each trip costed, yet in his witness statement he stated that there was an agreement. Below is what ensued when defendant was under cross-examination:

"Q: You agree with me that you moved the car from Maida's yard in October 2022?

A: Yes.

...

Q: I am suggesting to you that date on Exhibit 2B is 17/4/23?

A: Yes.

Q: And it also relates to the 8pieces of the tyres you bought to fix it?

A: Yes.

Q: I am putting you cannot fix tyres in October 2022 and later buy same tyres in April 2023?

A: When I fixed the tyres, 3tyres got busted on the 1st trip and as for tyres, you can fix it today and within a short period the tyre become a bad tyre.

Q: I am putting it to you that the 3 tyres busted on the 1st trip, your receipt would have shown buying 3tyres but not 8?

A: When the 3tyres got spoilt after fixing the first 8 and in replacing the spoilt 3 tyres, I do not have to indicate the 3 in my receipt.

Q: You agree with me that the car uses 10tyres?

A: Yes.

Q: And you agree with me that when you picked the car from Maida's yard, it had 6tyres in good condition, the front tyres and the back axle?

A: All the tyres were not good.

Q: You agree with me that the plaintiff rented tyres from Bolga and you met the driver in Savulegu and you picked them?

A: Yes.

Q: And in fact, they were 4 tyres?

A: Yes.

Q: I am putting it to you that these 4tyres were meant to supplement the 6tyres that were already on the car?

A: Those tyres were home used tyres and were not good tyres as well. It appeared to be very difficult to use those tyres from here to Kintampo.

...

Q: *In all, how many tyres did you buy in fixing the vehicle?*

A: *18 tyres.*

...

Q: *I am putting it to you that paragraph 10 of your witness statement, no. 17, 18 and 21 alone is 18tyres?*

A: *That is so.*

Q: *So if you add the home used tyres at no. 3 and the brand new tyres at no. 17, 18 and 21 of your paragraph 10, it will amount to 28tyres?*

A: Yes.

...

Q: You agree with me that you suggested to make sales of GHS10,000.00 per trip from Zabzugu to Accra?

A: I did not agree to that with the plaintiff.

Q: I am putting it to you that you suggested to give GHS10,000.00 per trip to plaintiff for trips from Zabzugu to Accra?

A: That is not true.

Q: And in fact, because he was an experienced driver he agreed to make it GHS7,500.00 per trip from Zabzugu to Accra?

A: I did not agree with the plaintiff regards to what you are saying.

Q: You also suggested to him that when you make a trip from Zabzugu to Kumasi you will pay GHS6,000.00 per trip?

A: That is not true.

Q: In fact, plaintiff again said you should rather make GHS4,500.00 per trip for Zabzugu to Kumasi?

A: That is not true.

Q: You again suggested to the plaintiff that when you make trips from Zabzugu to Chamba or from Zabzugu to a village or from Zabzugu to a farm, you will make daily sales of GHS1,000.00?

A: No.

Q: And in fact plaintiff agreed for the daily sales of GHS1,000.00 for those destinations?

A: No.

Q: *How much did you agree on from Zabzugu to Chamba, Zabzugu to a village and Zabzugu to farms?*

A: *There was no agreement between us as to how much will be paid for trips.*

Q: *Per paragraph 16(i) of your witness statement, you said from Tamale to Chamba is GHS1,300.00?*

A: *That is so."*

28. The witness who in my opinion aided the court in understanding the issue at stake was DW1. However, despite admitting that he failed to report on some of the trips, he stated that he made 8 trips. Below is what ensued when her was under cross-examination:

"Q: In fact, you carried charcoal from Buipe and its environs to Tamale?

A: No.

Q: *But throughout your dealings with the car, you have carried charcoal to other towns?*

A: *I used it on one occasion to convey charcoal of 100bags from Nyohani, defendant's residence to a buyer at Tapayili.*

Q: *You agree with me that on that occasion you did not make sales?*

A: *Yes.*

...

Q: From that day they asked you for the delivery of the car till the day the vehicle was parked in the premises of the court, how many trips did you make?

A: 8 trips.

Q: And on those 8 trips, how much sales did you make?

A: 1st, 2nd and 3rd trips: Tamale to Chamba – GHS1,500.00. 4th to 6th trips: Tamale to Accra – GHS6,000.00. 7th and 8th trips: Tamale to Kumasi – GHS4,000.00. All per trip.

Q: And all those sales were made to the defendant.

A: Yes."

29. On the totality of the evidence, it is not in doubt, despite the denials by both parties, that the vehicle was used for commercial transport after it had been fixed. Also, the vehicle was to be used for commercial transport to offset the cost of fixing/repairing

the vehicle. Now, we do some mathematics, i.e. how much was earned, less the expenses.

30. The plaintiff contended that vehicle made 9 trips: Zabzugu to Accra on 3 occasions at GHS7,500.00 per trip; Tamale to Kumasi on 2 occasions at GHS4,000.00 per trip, went to village markets 2 trips at GHS1,000.00 per trip and carried goods from farms to Zabzugu town 2 times at GHS1,000.00 per trip.' To him, the total amount was GHS34,000, but he has received GHS6,700.00 leaving GHS27,800.00.

31. Defendant on his part submitted that the vehicle made 8 trips. 3 trips from Zabzugu to Accra @ GHS18,000.00; 2 trips from Tamale to Kumasi @ GHS8,000.00 and 3 trips from Tamale to Chamba @ GHS3,900.00. Total, GHS29,900.00. DW1 contradicted the evidence of defendant stating that the 8 trips were as follow: 3 trips from Tamale to Chamba @ GHS1,500.00 per trip, 3 trips from Tamale to Accra @ GHS6,000.00 per trip, and 2 trips from Tamale to Kumasi @GHS4,000.00. Total will be GHS30,500.00.

32. I will prefer the evidence of DW1 since he was the one using the vehicle. Now, despite not accounting for the trip regarding the 100bags of charcoal from defendant residence at Nyohani to Tapayili, that would be a local trip and I will estimate that as GHS1,000.00 considering that a trip from Tamale to Chamba is GHS1,500.00. Hence, the total trips stand at 9 at a cost of GHS31,500.00.

33. Now, defendant submitted that plaintiff owes him GHS46,700.00 out of which GHS10,900.00 was spent on maintaining the vehicle during the period. GHS4,500.00 was spent on the driver and his mate. GHS8,800.00 was paid to the plaintiff and the remaining GHS6,510.00 was used to offset the plaintiff's debt. At paragraph 10 of

defendant's witness statement, he stated that, "The breakdown for the expense incurred for the sum of GHS46,700.00 is set out in the table below:

Serial No.	Item	Amount GHS
1.	Workmanship	5,000.00
2.	Insurance & Road Worthy	800.00
3.	Home use tyres	1,500.00
4.	27 U-clip	360.00
5.	Center bolt	80.00
6.	Gear oil	160.00
7.	Clutch repair	250.00
8.	Workmanship for setting of springs	500.00
9.	Hydraulic pipe	250.00
10.	Cutting of springs	500.00
11.	Greasing of vehicle	200.00
12.	Front center bolt	500.00
13.	Electrician workmanship	250.00
14.	Driller's workmanship	250.00
15.	Fitter's workmanship	5,000.00
16.	Helper springs	1,000.00
17.	265tyres (8tyres)	10,400.00
18.	285 tyres (2tyres)	5,200.00
19.	Pump shields	300.00
20.	Separate valves	400.00

21.	Vehicle tyres (8tyres)	13,800.00
	Total	46,700

34. The defendant did not lead sufficient evidence in proof of all of the above. Some of the said expenses were rejected as not regarding the subject vehicle and also self-serving. During the trial, the following expenses were tendered as exhibits:

Exhibit	Item	Date	Amount GHS
Exhibit 2	Workmanship of blacksmith & welding	26/5/23	650.00
Exhibit 2A	2 tyres of 285tyre	15/5/23	5,200.00
Exhibit 2B	8 tyres of 265tyre	17/4/23	10,400.00
Exhibit 2C	Engine bearing	17/4/23	1,200.00
Exhibit 2D	Clip U	10/4/23	360.00
Exhibit 2E	Pinion & Hop cilings	10/5/23	100.00
Exhibit 2F	Separate valves 4 brake pipes	10/4/23	500.00
Exhibit 2G	...	5/4/23	250.00
Exhibit 2H	Oil filter & anor.	28/4/23	570.00
Exhibit 2J	Clutch repairs	5/4/23	250.00
Exhibit 2K	Hydraulics pipes	5/4/23	250.00
		Total	19,730

35. The following exhibits were rejected:

Exhibit	Item	Date	Amount GHS
Exhibit R	Pumps	16/5/23	300.00

Exhibit R1	Oil Filter & Anor.	6/5/23	570.00
Exhibit R2	2 p batteries	13/4/23	1,500.00
Exhibit R3	Oil pump & Anor.	20/3/23	1,350.00
Exhibit R4	6pieces of wheel board	1/4/23	300.00
Exhibit R5	Center bolts – 4 pieces	25/5/23	100.00
Exhibit R6	Cridis	11/1/23	10,000.00
Exhibit R7	Oil filter & Anor.	4/4/23	570.00
Exhibit R8	List of repairs	-	10,090.00
		Total	24,780

36. From the evidence, I hold that defendant was only able to prove the expenses of GHS19,730.00, despite the date covering the said expenses. I also note that the defendant workmanship stood at GHS5,000.00 but no receipt was issued thereof. Although the plaintiff disputed the workmanship, I hold that that payment reasonably flows from fixing/repairing a vehicle and that I will admit the GHS5,000.00 as reasonable fee for the workmanship. Regarding the other expenses like insurance and road worthy, home used tyres, vehicle tyres, workmanship for electrician, driller and fitter, greasing, etc in paragraph 10 of the defendant's witness statement which the plaintiff denied, the onus was on the defendant to prove but he was unable to lead sufficient evidence in proof of same, see **Zabrama v Segbedzi [supra]** and **Chahin & Sons v. Epope Printing Press [supra]**.

37. Now, the Defendant further stated that GHS4,500.00 was spent on the driver and his mate. I find that the plaintiff was in the known that a driver and mate had been engaged and reasonably had to be paid. I therefore admit such expense. In sum, the

total income stands at GHS31,500.00 while the total expenses stand at GHS29,230.00 (i.e. GHS19,730.00+GHS5,000.00+GHS4,500.00).

38. Regarding the set off, defendant admitted receiving GHS400.00 for the initial repairs. Defendant further averred that GHS8,800.00 was paid to the plaintiff and GHS6,510.00 was used to offset the plaintiff's debt. Plaintiff, on his part, averred that he only received GHS6,700.00, see Exhibits A and B, i.e. the mobile money statements. Defendant failed to lead sufficient evidence of paying the said GHS8,800.00. Hence, I will prefer that of the plaintiff over his, see **Zabrama v Segbedzi [supra]**. In effect, I hold that plaintiff has received GHS6,700.00 out of the GHS31,500.00. The balance being GHS24,800.00 and the GHS400.00 admitted by the defendant be set off against the expenses of GHS29,230.00. This will imply that the plaintiff has to pay GHS4,030.00 to the defendant, and I so hold.

Issue b

39. Issue b is *whether or not plaintiff is entitled to GHS51,000.00 being the total daily sales from 13th June to 3rd August, 2023?* First and foremost, this was not part of plaintiff's reliefs. Secondly, the agreement between the parties regarded number of trips, not daily sales. In fact, the plaintiff failed to lead sufficient evidence to prove that the vehicle made daily trips to which he is entitled to GHS1,000.00 per day. Hence, his claim for daily sales of GHS51,000.00, fails.

CONCLUSION

40. In light of the above, I hereby enter judgment in favour of the defendant to recover the GHS4,030.00 as being the amount owed by the plaintiff. Interest on the said amount is assessed at the prevailing bank rate from the date of this judgment till the date of final payment.

41. The vehicle parked be returned to the plaintiff, by the Registrar.

42. No order as to costs.

H/W D. ANNAN ESQ.

[MAGISTRATE]

LAMBON B. SAMPSON ESQ. HOLDING THE BRIEF OF SYLVESTER ISANG ESQ., FOR
THE PLAINTIFF

ANGELA ABUGRI HOLDING THE BRIEF PAUL K. CHINATRA ESQ., FOR THE
DEFENDANT

Reference

1. ss. 11(4), 12(1) & (2) and 14 of the Evidence Act (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. *Ababio v Akwasi III* [1995-1996] GBR 774.
5. *Osei v Korang* [2013] 58 GMJ 1
6. *Aryeh & Akapo v Ayaa Iddrisu* [2010] SCGLR 891 @ 901
7. *Mireku & Tetteh (Dec'd): In Re Mireku v Tetteh* [2011] 1 SCGLR 520.
8. *Okudzeto Ablakwa (No. 2) v. Attorney-General & Obetsebi-Lamptey (No. 2)* [2012] 2 SCGLR 845 at page 867
9. *Zabrama v Segbedzi* [1991] 2 GLR 221
10. *Majolagbe v. Larbi* [1959] GLR 190

11. *Chahin & Sons v. Epope Printing Press* [1963] 1 GLR 163 @ 168.