IN THE DISTRICT COURT 2, TAMALE HELD ON TUESDAY 30TH APRIL, 2024 BEFORE HIS WORSHIP D. ANNAN ESQ.

SUIT NO. A2/85/23

BETWEEN

FATLAS MOTORS - PLAINTIFF
[SUING PER ITS MANAGER HAMZA ALHASSAN]

AND

SALAGA DISTRICT HEALTH DIRECTORATE - DEFENDANT

JUDGMENT

INTRODUCTION

1. This is the second attempt of the plaintiff in seeking justice to his claim. In the earlier case with no. **A2/34/23** intituled **Fatlas Motors v Mr. Zakaria,** this court dismissed the plaintiff's action on grounds that the defendant was not a proper party to the suit.

2. In the instant case, the plaintiff is a mechanic shop suing per it's manager Mr. Hamza Alhassan. The defendant is an institution under the Ghana Health Service and located at Salaga.
3. On 1st August, 2023 the plaintiff took out this action against the defendant for the following reliefs:

    "a. Recovery of GHS16,060.00 being the cost of spare parts and workmanship on vehicle no. GV 1683-14 belonging to the Defendant and remains unpaid despite repeated demands since November 2022.

    b. Interest on the said amount of GHS16,060.00 from November, 2022 till date of final payment.

c. Damages for breach of contract.

d. Costs including legal fees."

4. The defendant on 7th November, 2023 filed a Defence and Counterclaim to plaintiff's claim. It pleaded negligence on the part of the plaintiff and in its counterclaim, it seeks against the plaintiff the following:

"a. Breach of contract between the plaintiff and defendant.

b. Damages for breach of contract.

c. Damages for negligence, anxiety, psychological trauma as well as non-economic losses plaintiff caused the defendant.

d. Refund of an amount of GHS45,000.00 being monies paid for the engine which is not fit for purpose and taking off their defective engine from defendant's vehicle.

e. Costs."

5. The plaintiff on 30th November, 2023 filed a Reply and Defence to Counterclaim basically disputing the defendant's claim. The case of either party is detailed below.

PLAINTIFF'S CASE

6. According to Mr. Hamza Alhassan, sometime in October 2022, the defendant's representative, Mr. Abdul-Kasim Zakaria (DW1), contacted him to service a car which had broken down enroute from Salaga to Tamale. He explained that preliminary checks on the vehicle revealed that the engine was weak and could not function properly if even worked on. Hence, he suggested to DW1 for a replacement of the engine with a home used one. He added that the price of the home used engine at the time was GHS18,000.00. Plaintiff explained further that defendant indicated it did not have money to buy. Plaintiff later recommended an engine dealer, Mr.

Agyenim Boateng (PW1), in Kumasi to DW1 to which defendant subsequently bought the home used engine, this time at the cost of GHS45,000.00. *Photograph of the said engine was tendered as Exhibit A.* Plaintiff then replaced the old engine and DW1 drove the vehicle to Salaga on 28th October, 2022. Plaintiff stated that on 29th October, 2022 DW1 called that the engine was good and the sound smooth and that on return, he (DW1) would bring plaintiff some yams as gift. Meanwhile, the plaintiff's workmanship stood at GHS1,500.00 which according to plaintiff DW1 indicated to pay when he gets to Salaga.

7. Plaintiff averred that he did not hear from defendant or its representative until 21st November, 2022 when DW1 came to his shop with the car indicating that the car had developed a fault (overheating) at Kpalbe, on his way from Salaga and Tamale. Plaintiff stated that when he checked the dashboard of the car, he realized that the temperature was at maximum and checking the water tank, there was no water therein. He questioned why DW1 had not stopped when he noticed the fault, but DW1 answered that it was necessary for him to arrive in Tamale. Further checks on the vehicle revealed that the reserved tank was leaking and the radiator was faulty. Also, the head gasket was damaged as well as the cylinder head cracked. Plaintiff explained that because DW1 had drove the vehicle while it overheated, that destroyed those parts. Plaintiff averred that DW1 then called PW1 to supply the parts needed and that he (DW1) would pay when he gets back to Salaga. Plaintiff stated that the parts included a complete cylinder head, radiator, reserved tank, tank, head gasket, oil and diesel filters, gear oil and engine oil which DW1 negotiated with PW1.

8. Plaintiff averred that an invoice of GHS16,060.00 was later raised being the cost of the parts and workmanship, but defendant or its representative has failed to pay the said amount, despite repeated demands. *Copy of the said invoice tendered as Exhibit B.*

Plaintiff's Witness

9. Plaintiff called Mr. Agyenim Boateng (PW1) as a witness. He repeated the above story and his evidence is best described when he stated under cross-examination as follows:

> "I do not hear anything about the engine until 3months time when the director of the defendant called me when he was on his way from Salaga to Tamale and the engine was overheating. He informed me that he had sent the vehicle to the plaintiff's workshop. I asked that they check the engine for me to know what the problem was. Upon checking the engine, the director informed me that the head was broken so I should give them a new one to purchase. I told him I cannot give him the head when I had not received payment, but unless I call the plaintiff for him to confirm, if plaintiff agrees that I give it to him, then I would because I do not know the director personally. So after speaking to the plaintiff, I sent the head by transport to the plaintiff and after fixing it and the director had come for the vehicle, the director was not paying the money. When I call, he does not pick and later he blocked me. So, I decided not call again. So, I called the plaintiff and demanded for my money since I do not know the director personally. I only know him through the plaintiff."

DEFENDANT'S CASE

10. Mr. Abdul-Kasim Zakaria (DW1) contended that the subject matter of this suit, is a government vehicle, a Toyota Hilux Pickup with registration number GV 1683-14. He stated the vehicle broke down in July 2021. He explained that he tasked his transport officer who contacted plaintiff and the vehicle was sent to the plaintiff's shop. He confirmed that the plaintiff recommended for a replacement of the engine with a home used one. He averred that plaintiff gave assurance that the home used

engine was better, hence he requested plaintiff to check on the cost. Later the plaintiff informed him that it costed GHS18,000.00. DW1 averred that the office did not have enough money at that time so the purchase was aborted. However, the plaintiff called to inform him about the rising cost of the engine. DW1 averred that he then raised GHS45,000.00 and was able to buy the home used engine from PW1, upon plaintiff's recommendations. DW1 added that plaintiff assured him that PW1 would get them a good engine.

11. DW1 averred that plaintiff coordinated everything from the beginning such that he (DW1) did not even know how the engine got to Tamale. He stated that plaintiff did not call him to check the new engine, but went ahead and fixed it. He argued that plaintiff did not show him the original engine either. He stated further that on 28th October, 2022 the vehicle was released to him at 6:20pm with assurance that it was fit for purpose and sound. However, on his return to Salaga the vehicle was not 'pulling' as expected but he managed to send the vehicle to Salaga, a journey that should have been done in 2 hours was done in 4 hours. On 29th October, 2022 he complained to plaintiff, but plaintiff intimated that the engine was yet to 'open' so there was no need to worry. He added that plaintiff indicated that the engine had a warranty for 2 weeks. This he questioned why only 2 weeks, since it took over two weeks to fix it and the plaintiff requested for the vehicle for further checks. DW1 averred that on 21st November, 2022 on his way from Salaga to Tamale, at Kpalbe the vehicle developed overheating. He then called the plaintiff and was informed that when he arrives it would be checked. He added that the car developed the overheating at 1:00pm and he arrived in Tamale after 5:00pm and he gave the vehicle to plaintiff after 6:00pm. DW1 stated on 22nd November, 2022 plaintiff informed him that the engine head was damaged and needed a replacement. DW1 averred that he was not in the position to commit further funds and so informed the plaintiff to call

PW1, but received a feedback that PW1 would not replace the engine. DW1 then called PW1 to express his displeasure about the engine. DW1 added that he informed the plaintiff not to work on the vehicle if PW1 would not replace the engine. However, on 26th November, 2022 DW1 while in Tamale he received a call from plaintiff indicating that vehicle had been fixed, without replacing the engine. He then sent his driver to pick the vehicle and when the vehicle was being driven to Salaga on 27th November, 2022 it developed another overheating at Nyamaliga. According to DW1, he managed his frustrations and his driver spoke with the plaintiff to pick the vehicle at Nyamaliga. DW1 stated that 3 days later the apprentice of the plaintiff drove the vehicle to Salaga. Upon arrival, he noticed that the radiator tank, reserve tank had been replaced without his knowledge.

12. DW1 averred that a week later the engine developed another fault. When the apprentice of the plaintiff was called to Salaga to check the vehicle, the said apprentice indicated that the pistons and connecting rods had a problem and so reported it to the plaintiff. DW1 confirmed that the apprentice replaced the said parts, but the engine was still not in a good condition and could not be used for long journeys. DW1 stated that later the plaintiff informed his driver that he (plaintiff) took those spare parts (i.e. engine head, radiator tank and reserve tank) on credit. DW1 argued that he never authorized the plaintiff to buy any spare parts. However, he admitted that the defendant would pay for the radiator and reserve tanks but will not pay for the engine head since the office was demanding for change of the engine from PW1. He argued further that the actions of the plaintiff and PW1 were aimed at siphoning money from the directorate. At paragraph 61 of his witness statement, defendant pleaded negligence on the part of the plaintiff stating that plaintiff, "(a) failed to acquire a fit for purpose engine despite assurances, (b) failed to carry out proper maintenance and purported replacement of the vehicle engine, and (c) caused

extreme damage to other parts of the vehicle." DW1 maintains that the vehicle is still parked and could not be used for any trip. Hence, defendant's counterclaim.

13. Defendant tendered in evidence the following exhibits:

    Exhibit 1 – Copy of the payment for the home-used engine.

    Exhibit 2 – Copy of the vehicle document.

    Exhibits 3 and 3A – Pictures of the vehicle parked.

Defendant's Witness

14. Defendant called a witness, Issahaku Tahiru (DW2). According to him, he was directed to pay the GHS45,000.00 for the home-used engine, see Exhibit 1. He confirmed that the vehicle is faulty and currently parked.

15. Defendant sought to call an expert witness but later abandoned same.

ISSUES FOR DETERMINATION

16. The issues borne out of the facts are:

    a. *Whether or not the plaintiff failed to acquire a fit for purpose home used engine or that negligently caused damage to the home used engine?*
    b. *Whether or not the plaintiff or defendant is entitled to his/its respective claim?*

BURDEN OF PROOF

17. 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.

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 as follows:

> "… 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."

ANALYSIS OF THE ISSUES

Issues a and b.

20. Issues a and b are w*hether or not the plaintiff failed to acquire a fit for purpose home used engine or that negligently caused damage to the home used engine* and w*hether or not the plaintiff or defendant is entitled to his/its respective claim?* 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.

21. Negligence is said to occur when the defendant (a) owes a duty of care to the plaintiff, (b) breaks that duty by failing to come up to the standard of care required by law and (c) thereby causing legally recognised damage to the plaintiff or plaintiff's thing, see that case of **Ghana Highway Authority v Mensah [1999-2000] 2 GLR 344**. The onus, therefore, is on the plaintiff, like any other civil case, to prove his case on the balance of probabilities or to adduce evidence from which inference can be drawn that the negligence of the defendant led to the damage, see the cases of **Nyame v Tarzan Transport and Anor. [1973] 1 GLR 8, CA,** and **Okudzeto Ablakwa (No. 2) v. Attorney-General & Obetsebi-Lamptey (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 **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".

22. In establishing that there is a defect in goods, the court in **G. A. Sarpong v Silver Star Auto Limited [2014] 72 GMJ 1 at page 28**, per Ansah JSC (as he then was) held that:

"the general rule under the Ghana *Sale of Goods Act 1962*, distinguished from the English *Sale of Goods Act 1979*, is that a seller of goods in Ghana, whether new or second-hand, is liable for all defects in them. This duty is an implied condition of the contract of sale. *The seller is, however, not liable for those defects which he declares or makes known to the buyer before or at the time of the contract. Again, where the buyer has examined the goods, the seller is not liable for defects, which should have been revealed by the examination*. It would appear then that where the defects complained of were not declared or made known to the buyer before the contract and could not have been revealed by the buyer's examination, if any, the seller is liable. But even so, where the seller is not a dealer in the kind of goods sold and it is established that he did not know or could not reasonably have been aware of the defects complained of, he escapes liability. Under section 13 of the Sale of Goods Act of Ghana, the seller has the duty to deliver goods of the right quality and fitness.

It can be seen from the foregoing summary that the rules to be applied under Ghana law where a buyer complains of latent defects are completely different from those existing under English law and under which most of the cases relied on by both parties have been decided. It is also worth observing that under the Ghana provisions dealing with defects in goods, no determination as to the merchantability of the goods is required. Indeed, nowhere in the Ghana *Sale of Goods Act* is the term "*merchantable quality*" used. Ghana law imposes a heavier responsibility on sellers of goods than is the case under English law. Moreover, the duty imposed by the Ghana law is the same for sellers of both new goods and second-hand goods. In short, the Ghana law approaches the topic of Sale of Goods with a *Caveat Venditor* gloves on rather than the *Caveat Emptor* approach of the English common law.

In the case of ***Continental Plastics Engineering Co Ltd v IMC Industries-Technik*** **GMBH [2009] SCGLR 298** supra, Georgina Wood, CJ, said:

The legal position can therefore be summed up as follows: a seller of either first or second hand goods is by an implied condition, liable for all defects in them. Based on what we believe is pure common sense the seller is however not liable for defects which he fully disclose or declares to the buyer at the time of the contract of sale. When the buyer has examined the goods the seller cannot be held liable for defects which ought to have been discovered on examination, as for example, patent defects. It does follows that if there were defects particularly latent defects which are not discoverable on examination, and which are not disclosed to the buyer before the conclusion of the contract, the seller cannot escape liability for the breach of an essential condition of the contract."

23. In order to appreciate the rights and obligations of the seller and the buyer under the Sale of Goods Act, 1962 (Act 137), sections 13, 49 and 50 are quoted in extenso:

"Section 13 - Quality and Fitness of Goods

(1) Subject to the provisions of this Act and any other enactment there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale except as follows—

(a) There is an implied condition that the goods are free from defects which are not declared or known to the buyer before or at the time when the contract is made:

Provided that there is no such implied condition-

(i) where the buyer has examined the goods, in respect of defects which should have been revealed by the examination;

(ii) in the case of a sale by sample, in respect of defects which could have been discovered by a reasonable examination of the sample;

(iii) where the goods are not sold by the seller in the ordinary course of his business, in respect of defects of which the seller was not, and could not reasonably have been aware.

(b) Where the goods are of a description which are supplied by the seller in the course of his business and the buyer expressly or by implication makes known the purpose for which the goods are required there is an implied condition that the goods are reasonably fit for that purpose.

(2) The condition implied by paragraph (a) of subsection (1) is not affected by any provision to the contrary in the agreement where the goods are of a description which are supplied by the seller in the ordinary course of his business and the condition implied by paragraph (b) of subsection (1) is not affected by any provision to the contrary in the agreement unless the seller proves that before the contract was made the provision was brought to the notice of the buyer and its effect made clear to him.

(3) An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.

(4) An express warranty or condition does not negative a warranty or condition implied by this Act unless inconsistent therewith.

(5) The provisions of this section apply to all goods delivered in purported pursuance of the contract and extend to all boxes, tins, bottles or other containers in which the goods are contained.

Section 49 When Buyer has Right to Reject

(1) *Subject to the provisions of this Act the buyer is entitled to reject the goods and to refuse to pay, or as the case may be, to recover, the price where*

(a) the seller is guilty of a breach of a fundamental obligation; or

(b) the seller is guilty of a breach, not being of a trivial nature, of a condition of the contract, whether the breach is in respect of all of the goods or, subject to subsection (2), of part only; or

(c) the buyer has entered into the contract as a result of fraudulent or innocent misrepresentation on the part of the seller.

(2) Where there is a contract for the sale of goods which are to be delivered by instalments, then—

(a) if each installment is to be separately paid for, subsection (1) shall apply to each instalment separately:

Provided that where there are persistent and grave breaches by the seller in respect of two or more instalments the buyer may treat the whole contract as repudiated.

Provided further that nothing in this paragraph shall affect the buyer's rights under paragraph (c) of subsection (1);

(b) in any other case, such a breach as is referred to in subsection (1) in respect of one or more instalments shall be treated for the purpose of that subsection as though it were a breach in respect of the whole contract.

Section 50 - Effect of Rejection

(1) *Where goods are delivered to the buyer and he rejects them, having the right so to do, he is not bound to return them to the seller, but it is sufficient if he intimates to the seller that he rejects them.*

(2) *After the buyer has intimated to the seller that he rejects the goods the seller is entitled to have the goods placed at his disposal:*

Provided that where the buyer has paid the price or any part thereof he may retain the possession of the goods until the seller repays or tenders the amounts he has received from the buyer."

24. Per the above, the onus is on the defendant to prove that it relied on the plaintiff in purchasing a fit for purpose home used engine for the vehicle, but that plaintiff failed in his duty or that PW1 supplied a defective good, else an unfavourable ruling shall be entered against it, see **Ababio v Akwasi III [supra].** Thus, PW1 is not liable for those defects which he declared or made known to the defendant before or at the time of the contract, or that, where the defendant had examined the goods, PW1 is not liable for defects, which should have been revealed by the examination.

25. From the evidence, it is clear that with the initial (first) works by the plaintiff on the vehicle, it was at the instance of the defendant. I find that it was the defendant, through its representative, Mr. Zakaria (DW1), who negotiated with the spare parts dealer (PW1) and paid for same, see Exhibit 1. Plaintiff admitted that the home used

engine was brought and he worked on same, which DW1 personally came for. It was required of DW1 to inspect it, before taking delivery. Yet, DW1 argued that he did not see or check the said engine and that the plaintiff worked on the old engine. This, I find as an afterthought. DW1 further argued that when he was driving from Salaga to Tamale on 29th October, 2022, the vehicle was not 'pulling'. He used 4 hours to complete the journey that needed only 2 hours. Here, DW1 did not reject the engine, but used same for almost a month. He only expressed his displeasure at the 2 weeks warranty given by PW1.

26. On 21st November, 2022 when DW1 was on his way from Salaga to Tamale, at Kpalbe the vehicle developed overheating. Here, he drove the vehicle with the problem from that distance to Tamale, i.e. from 1:00pm when he noticed the overheating to 6:00pm when he handed over the vehicle to the plaintiff. That was clearly damaging the engine. This is seen from the evidence when the plaintiff checked the overheating and noticed that the reserved tank and radiator were damaged. Further checks revealed that the head gasket and cylinder head were also damaged. These, I find as a result of the long driving while the engine was faulty.

27. Plaintiff averred at paragraph 22 of his evidence-in-chief that before he could even place a call to PW1 at the request of DW1, "DW1 called Agyenim Boateng (PW1) and told him what he needed ...." This DW1 admitted under cross-examination. Here again, DW1 did not reject the engine.

28. After the second works, the defendant took the vehicle and DW1 noticed a defect, an overheating, when he got to Nyamaliga on his way to Salaga. Yet again he did not reject it, but allowed the apprentice of the plaintiff to work on the pistons and the connecting rods. At paragraph 54 of his evidence-in-chief, DW1 stated as follows: "I

told the driver to inform the plaintiff that with the radiator tank and reserve tank, the office will pay, but the engine head, we are still demanding the possibility of plaintiff changing a different one from his friend Agyenim." In my opinion, this did not amount to a rejection, rather DW1 allowed further works on the engine.

29. A rendition of the above findings are reproduced below. Thus, when the DW1 was under cross-examination below ensued:

"Q: You agree with me that in July 2021 a vehicle with registration no. GV 1683-14 broke down at Donyin Village?

A: Yes.

Q: You agree with me that you called the plaintiff to transport it to his workshop?

A: Yes.

Q: You agree with me that after his preliminary checks he informed you that you have to change the engine?

A: Yes.

…

Q: And from then you took the contact of a dealer in spare parts to also find out the prices of engines?

A: Yes.

…

Q: I am suggesting to you that you called the plaintiff and informed him that you have raised money from various organisations and was ready to pay for the cost of the engine at GHS45,000.00?

A: Yes.

Q: You agree with me that the plaintiff took delivery of the engine and fixed same into the vehicle?

A: I have no idea.

Q: But you agree with me you directed your accountant to deposit the amount of GHS45,000.00 into the account of the dealer in Kumasi?

A: Yes. It was deposited before the engine was to be transported to the mechanic.

Q: You agree with me that on 28th October, 2022 you personally took delivery of the vehicle at the plaintiff's shop?

A: No.

Q: You agree with me that whoever took the vehicle from the plaintiff's shop was instructed by you to take delivery?

A: Yes.

Q: You agree with me that you drove the vehicle from Tamale to Salaga on the same day?

A: Yes.

…

Q: You agree with me that from 28th October, 2022 when you took delivery, it was on 21st November, 2022 that the car broke down at Kpalbe on your way to Tamale?

A: No.

Q: I suggest to you that it was on the 21st November, 2022 that you called the plaintiff to inform him that the car has broken down?

A: Yes.

…

Q: You agree with me that the car broke down in Kpalbe at 1:00pm on 21st November, 2022.

A: Yes.

Q: And in fact the fault that was encountered was overheating?

A: Yes.

Q: You have driven for a considerable length of time?

A: Yes.

Q: And you agree with me that if a car is overheating the normal thing to do is to stop on the spot?

A: Yes.

Q: But in fact you drove the car from Kpalbe at 1:00pm to arrive in Tamale at 5:00pm?

A: Yes. Based on the mechanic's advice that we should stop intermittently. It wasn't that we drove continuously.

…

Q: After he opened the engine, it was reported to you that the head gasket as well as the cylinder head were broken?

A: Yes.

Q: And in fact you personally called the spare parts dealer while the plaintiff was under your car for the spare parts for the overheating of the engine?

A: Yes.

Q: In fact, the first time plaintiff worked on your engine, you did not pay the workmanship?

A: Yes. The bill was not given to us. He did not give us the cost of the workmanship.

…

Q: Take a look at Exhibit B, invoice, this was served on you?

A: No. The first time I saw this was it came with a writ of summons in January 2023.

Q: You agree with me that a demand notice was served on you demanding the outstanding balance of the GHS16,060.00?

A: Yes.

Q: And despite the demand, you refused to honour the obligation within the stipulated time?

A: Yes.

…

Q: I am further putting it to you that you personally negotiated for the engine and bought the spare parts from the spare parts dealer to deliver same to the plaintiff?

A: Yes."

30. With all the above, the defendant wants this court to believe that plaintiff was negligent in that: the plaintiff did not replace the old engine or got a fit for purpose home used engine, that the plaintiff failed to carry out a proper maintenance on the vehicle, and that plaintiff caused extreme damage to the other parts of the vehicle.

31. Let me at this point mention here the legal implication of retaining goods with defects, particularly for a long time. The court in **Pyne Associates v African Motors [2017] DLSC 2630,** the Supreme Court unanimously affirming the decision of the Court of Appeal and speaking through the venerable Dotse JSC (as he then was), held that:

"We have also considered in detail the statements of case filed by learned Counsel for the parties herein. In our determination of the appeal herein, we are of the considered opinion that learned Counsel for the Plaintiffs has not appreciated the legal principles involved in the determination of the rights of the Plaintiffs as regards their rights of rejection of goods and recovery of the purchase price as well as lack of appreciation of the basic ingredients of section 13 of the Sale of Goods

Act which deals with Quality and Fitness of Goods. Sections 49 (1) (a) (b) and (c) refers.

The Plaintiffs, it must be understood knew why they purchased this type of four wheel vehicle. According to them, it was to enable them travel on rugged terrain and long distances. *Thus, they had the responsibility and opportunity if they were really conscious of that, to have inspected and examined the vehicle before accepting same.* This is because, the nature of the four wheel drive mechanism was crucial to their choice of that type of vehicle to purchase. See the unreported Supreme Court decision in the case of **Andreas Bschor GMBH & Co. KG v Birim Wood Complex Limited CA. No J4/9/2015 dated 22nd March 2016 per Pwamang JSC** and **Georgia Hotel Limited v Silver Star [2012] 2 SCGLR at 1283 per Adinyira JSC.**

In our considered view, the defects from which the vehicle suffered were not latent defects, and could have been easily detected if the Plaintiffs had taken advantage of their rights to inspection and examination as is granted under the law. From our examination of the appeal record, it is clear that even though the vehicle appeared to have been riddled with some defects, these cannot legitimately be deemed as latent, or hidden which an inspection or examination would not have exposed or revealed. The Plaintiff's own representative stated that "*the four wheel drive was working but the other problems were still there so I wrote to them". When we consider the chronology of events and their sequence, it seems clear that the Plaintiffs waived their rights under the Sale of Goods Act by their conduct in continuing to use the vehicle after becoming aware of the defects.* Perhaps they must have been satisfied that the defects have been repaired satisfactorily, hence their continued use and even request to have it transferred into their name."

32. Based on the above, I find in our instant case that the defendant did not act reasonably under the law, when it ought to have rejected the home used engine when it detected the defects. Yet, it kept negotiating and changing parts of the said engine. Also, it is unclear to this court when the engine ceased working completely or that when the vehicle was parked. Assuming all those works were concluded in December 2022, the engine has been with the defendant till date, without an outright rejection.

33. On the totality of the evidence, I hold that the defendant was unable to lead sufficient prove on the balance of probability that the plaintiff negligently did not replace the old engine or failed to get a fit for purpose home used engine, or that the plaintiff failed to carry out a proper maintenance on the vehicle, or that caused extreme damage to the other parts of the vehicle. Defendant rather failed to take advantage of the law to its benefit. Hence, defendant's counterclaim fails.

34. Having come to the above conclusion, I shall make some few remarks regarding the plaintiff's claim. The plaintiff is required by law to also prove his case, more particularly that he claims a specific amount, see the case of **Ababio v Akwasi III [supra]**. It is not in doubt that the defendant did not pay for the workmanship on the initial works. Plaintiff submitted that the initial works costed GHS1,500.00. The second works, per Exhibit B, is therefore assessed at GH1,000.00 Also, the defendant admitted negotiating with the PW1 for the supply of the spare parts in fixing the engine. Plaintiff mentioned that the reserved tank was leaking and the radiator was faulty. Also, the head gasket was damaged as well as the cylinder head cracked. PW1 confirmed that he is owed for the spare parts supplied. However, from Exhibit B, the items I find unrelated to an engine is the Car Battery and Break Fluid which were quoted at GHS800.00 and GHS30.00, respectively. From the evidence, all that

regarded the works on the vehicle had to do with the engine, but not the other parts. PW1 stated at paragraph 11 of his evidence-in-chief that, "…I then sent complete cylinder head, radiator, reserved tank and head gasket at a cost of GHS10,500.00." Hence, the plaintiff is entitled to the content of Exhibit B, save the cost for the Car Battery and Break Fluid.

35. In effect, I find that plaintiff has been able to prove his case on the balance of probabilities, save the unrelated cost of Car Battery and Break Fluid which has to be deducted. Thus, GHS16,060.00 less GHS830.00, which is GHS15,230.00.

CONCLUSION

36. I hereby enter judgment in favour for plaintiff as follows:
    a. Recovery of GHS15,230.00 being the cost of spare parts and workmanship on vehicle number GV 1683-14 belonging to the defendant and remains unpaid despite repeated demands since November 2022.
    b. Interest on the said amount at the prevailing bank rate from November, 2022 till date of final payment.
    c. I decline to award damages for breach of contract based on the reasons in arriving at reliefs a and b above.
    d. Costs including legal fees assessed at GHS5,000.00

H/W D. ANNAN ESQ.

[MAGISTRATE]

SYLVESTER ISANG ESQ. WITH SAMPSON B. LAMBONG ESQ. FOR THE PLAINTIFF

VIRGINIA GLORIA AKPENE FUGAR ESQ., ASSISTANT STATE ATTORNEY, FOR THE DEFENDANT

References:

1. *ss. 11(4), 12(1) & (2) and 14 of the Evidence Act, 1975 (NRCD 323)*
2. *ss. 13, 49 and 50 of the Sale of Goods Act, 1962 (Act 137)*
3. *Faibi v State Hotels Corporation [1968] GLR 471*
4. *In re Ashalley Botwe Lands; Adjetey Agbosu & Ors. v. Kotey & Ors. [2003-2004] SCGLR 420*
5. *Ababio v Akwasi III [1995-1996] GBR 774.*
6. *Ababio v Akwasi III [1995-1996] GBR 774.*
7. *Osei v Korang [2013] 58 GMJ 1*
8. *Mireku & Tetteh (Dec'd): In Re Mireku v Tetteh [2011] 1 SCGLR 520*
9. *Ghana Highway Authority v Mensah [1999-2000] 2 GLR 344*
10. *Nyame v Tarzan Transport and Anor. [1973] 1 GLR 8, CA,*
11. *Okudzeto Ablakwa (No. 2) v. Attorney-General & Obetsebi-Lamptey (No. 2) [2012] 2 SCGLR 845*
12. *Zabrama v Segbedzi [1991] 2 GLR 221.*
13. *Majolagbe v. Larbi [1959] GLR 190*
14. *G. A. Sarpong v Silver Star Auto Limited [2014] 72 GMJ 1 at page 28*
15. *Continental Plastics Engineering Co Ltd v IMC Industries-Technik GMBH [2009] SCGLR 298*
16. *Pyne Associates v African Motors [2017] DLSC 2630*
17. *Andreas Bschor GMBH & Co. KG v Birim Wood Complex Limited CA. No J4/9/2015 dated 22nd March 2016 per Pwamang JSC*

18. Georgia Hotel Limited v Silver Star [2012] 2 SCGLR at 1283 per Adinyira JSC