

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE (GENERAL JURISDICTION COURT 5) HELD IN ACCRA ON FRIDAY THE 11TH DAY OF NOVEMBER, 2022 BEFORE HIS LORDSHIP JUSTICE WILLIAM BOAMPONG, HIGH COURT JUDGE

SUIT N^o: GJ/0141/2022

LIISA KOSKELA

SALLATUNTURINTIE 1 B 15 00970

HELSINKI, FINLAND

(SUING PER HER LAWFUL ATTORNEY IN FACT AND

HIS ADDRESS IS AKOTOSIE #2 MEDIE, NSAWAM

ROAD, ACCRA

VS

KWABENA APPENTENG

APSTAR TOURS LTD.

#40 FOREST ROAD, NORTH DZORWULU

ACCRAD

PLAINTIFF

DEFENDANT

JUDGMENT

The Plaintiff claims against Defendant per his Writ of Summons as follows:-

1. An Order directed at the Defendant to pay to the Plaintiff the sum of:-
 - a) Fifty Four Thousand, One Hundred and Sixty-Three Euros Fourteen Cents (€54,163.14) being funds transferred into Defendant's U.K. accounts to be paid to Plaintiff in Ghana.

- b) One Thousand, Nine Hundred and Fifty Seven Euros, Sixty-Two Cents (€1,957.62) as air fare for Three (3) times travelled to Ghana in an attempt to recover her money from the Defendant being Special Damages.
2. Interest on the total claim at the fore-going Commercial Bank interest rate till final payment.
3. General Damages for the lost time and business opportunities by virtue of Defendant's direct actions.
4. Cost incidental to this action as well as legal fees.

At the end of the pleadings, the following issues were set down for trial.

- a) *Whether or not the Parties agreed that the Sixty Thousand Euros (€60,000.00) transferred to Defendant's U.K. Accounts was to be paid in Euros to Plaintiff in Ghana?*
- b) *Whether or not the Defendant is in breach of their agreement?*
- c) *Whether or not the Plaintiff is entitled to the reliefs indorsed on her Writ of Summons and its accompanied Statement of claim filed at the Registry of this Honourable Court?*
- d) *Any further/other issues as may be raised during the trial of this case by the Court.*

After the application for Directions was taken on the 22nd February, 2022 the Court ordered the Parties to file their respective Witness Statements simultaneously on or before 15th March, 2022. The case was then adjourned to 5th May 2022 for C.M.C.

On 5th May 2022, the Plaintiff had filed her Witness Statement but the Defendant refused to file his. The Court therefore invoked Order 32 Rule 7A

(3) (b) and struck out the Defendant's defence. The Plaintiff was ordered to serve the Defendant with a Hearing Notice for the matter to proceed.

On the 23rd day of May 2022, the Defendant filed a Motion on Notice to restore his Statement of Defence which was struck out on 5th May 2022 and for leave to file his Witness Statement.

However on the return date, neither the Defendant nor his Counsel was in Court to move the Motion. The Court therefore struck out the Defendant's Motion to restore his Statement of Defence and leave to file his Witness Statement. The Plaintiff was once again ordered to serve the Defendant with Hearing Notice. When the Plaintiff duly served the Defendant with the said Hearing Notice, the Court proceeded to hear the case when the Defendant refused to attend the trial.

The Plaintiff gave her Witness Statement through her Lawful Attorney Kulego Kwasi Sethson.

The Plaintiff's case is that in a chat with the Defendant, the Defendant gave his United Kingdom Bank accounts numbers to the Plaintiff to transfer the Sixty Thousand Euros (€60,000.00) into it and assured the Plaintiff that same will be received in Euros in Ghana and all Bank charges will be at the expense of the Defendant. Exhibit 'B' is the said conversation between the Plaintiff and Defendant.

The Defendant therefore paid in total Five Thousand Eight Hundred and Thirty-Six Euros, Eighty-Six Cents (€5,836.86) to the Plaintiff remaining balance of Fifty Four Thousand, One Hundred and Sixty-Three Euros

Fourteen Cents (€54,163.14). At no point in the conversation between the parties was it ever said or mentioned that the payment of the fund transferred will be transferred back to Finland nor any issue of money laundering envisage. That idea to transfer the funds to the U.K. was entirely that of the Defendant.

The Plaintiff contends that since transferring the funds to the Defendant she had flew three times from Finland to Ghana in an attempt to recover her money but to no avail. See Exhibit 'E' series showing Airplane Tickets covering invoice Plaintiffs travels.

When all attempts made by the Plaintiff to recover her money from the Defendant failed, the Plaintiff caused his lawyer to serve a Demand Notice on the Defendant.

Plaintiff states that unless compelled by this Court the Defendant will not pay the sums as endorsed on her Writ of Summons to her.

In this case the Defendant was served with a Hearing Notice but the Defendant refused to appear for the trial. The legal effect of Defendant's conduct is that the Defendant do not wish to contest the Suit.

See the Supreme Court case of:-

Ankumah v City Investment Co. Ltd. [2007/08] 2A SCGLR 1067

Holding 4 "A Court is entitled to give ... Judgment, as in the instant case of the Party fails to appear after Notice of the proceedings has been given to him, for then, it would be justifiable to assume that he does not wish to be heard".

By a recent decision of the Supreme Court, the conduct of the Defendant in not attending Court to give evidence ought to be respected, but the Defendant ought to be made to face the corresponding sanctions that come with it.

See the case of:-

Alabi v B5 Plus Company Ltd. [2018/19] 1GLR 197

Held:-

“where a party voluntarily and deliberately failed and or refused to attend upon a Court of competent jurisdiction to prosecute a claim against him, he could not complain that he was not given a fair hearing or that there was a breach of natural justice. The Defendants must be respected for making such a choice, but they must not be allowed to get away with it....”

On the facts of the case also, since the Defendant did not appear in Court to challenge or controvert the Plaintiff’s evidence adduce at the trial, the legal effect is that the evidence of the Plaintiff stands unchallenged since no issues was joined on the evidence.

See the case of:-

Kusi v Kusi 2010 SCGLR 60

Per Georgina Wood C.J. (as she then was)

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“the rule of evidence is that where no issue are joined as between parties on a specific question, issue or fact, no duty was cast on the party asserting it to lead evidence in proof of that fact or issue”

See also the case of:-

Foli v Ayirebi 1966 GLR 627 SC

Held:-*“When a party had made an averment and that averment was not denied, no issue was joined and no evidence need to be led on that averment. Similarly, when a Party had given evidence of a material fact and was not cross-examined upon, they need not call further evidence of that fact.”*

The evidence led by the present Plaintiff on the records stand unchallenged.

I have no issue with that evidence in respect of the law too.

I accordingly give judgment in favour of Plaintiff against Defendant on Plaintiff's reliefs.

In respect of the Plaintiff's relief (3), I award GH¢25,000.00 General Damages in favour of the Plaintiff against the Defendant.

Cost:

I further award cost of GH¢70,000.00 in favour of Plaintiff against the Defendant.

(SGD)

**WILLIAM BOAMPONG
(JUSTICE OF THE HIGH COURT)**

COUNSEL:

KOJO TACHIE-MENSON ESQ, FOR THE PLAINTIFF

DR. EMMANUEL MAURICE ANKRAH ESQ, FOR THE DEFENDANT