

**IN THE SUPERIOR COURT OF JUDICATURE
IN THE HIGH COURT OF JUSTICE
[COMMERCIAL DIVISION]
HELD IN CAPE COAST ON 28TH NOVEMBER, 2022
BEFORE HIS LORDSHIP JUSTICE EMMANUEL A. LODOH, J.**

BA/02/2020

1. BEATRICE ALI AMOAH

PLAINTIFF (S)

SONGMA TINZON MICRO CREDIT SERVICES
ESTATE NO. L33, BOLGA, UPPER EAST REGION

2. SAMUEL ATIMOH

OPERATING AS MADAMFO COLDSTORE
TAKORADI

VRS

1. DR. ISAAC ENYAN

DEFENDANT(S)

SENYAW ENTERPRISE
NO. 37 ADISADEL ESTATE, CAPE COAST

2. STEPHEN KWAME ATTAH OWUSU

ADEPA TOTAL VENTURES, KADADWEN
MFANTSIPIM JUNCTION, CAPE COAST

JUDGMENT

Introduction

This is a simple matter arising out of contract for a loan facility and supply of goods. I am extremely saddened that this matter had to go through full trial which spanned a little close to the north of two years. I am of the considered view that the lawyers in this matter, giving the commercial and personal relationships between the parties, and the simplicity of the issues involved, failed in their duty to actively encourage the parties to take advantage of the pre-trial mediation conference to resolve this dispute. Indeed I find from their conduct that they rather unfortunately emboldened the parties to go through the drudgery of a laborious, time and expense consuming litigation. Let me ride on the back of this case to encourage lawyers to as a fundamental rule prioritise to use of alternative dispute mechanisms in resolving disputes. Be that as it may, as fate would have it, the court has been called upon to determine the respective rights of the parties, which is an exercise I would not struggle to deal with given the straightforwardness of the issues arising out of this case.

The plaintiffs on 8th November, 2019, took out the instant writ against the two defendants claiming jointly and severally the following alternative reliefs as endorsed on the Writ of Summons and statement of claim. These reliefs are:

1. An order directed at the Defendants to jointly pay to the 1st Plaintiff the total amount of Two hundred and twenty nine thousand, one hundred and forty one Ghana Cedis and Ninety six pesewas (GH¢229, 141.96) they owe as loan to the 1st Plaintiff together with the agreed interest on the said amount from 1st November, 2019 to the date of final payment.

2. An order directed at the defendants to jointly pay to the 2nd Plaintiff the total amount of Sixty-five thousand, seven hundred and twenty eight Ghana Cedis (GH¢65, 728.00) they owe to the 2nd Plaintiff for the supply of fish products together with interest calculated at the commercial bank rate from 1st January, 2019 to date of final payment.
3. Damages for breach of agreement and obligations.
4. Costs
5. Any other relief(s) arising from the pleading and hearing

OR IN THE ALTERNATIVE TO THE ABOVE

1. An order directed at the 1st Defendant to pay to the 1st Plaintiff the total amount of Two hundred and twenty nine thousand, one hundred and forty one Ghana Cedis and Ninety six pesewas (GH¢229, 141.96) he owes as loan under his said take over agreement with 2nd Defendant to the 1st Plaintiff together with the agreed interest on the said amount from 1st November, 2019 to the date of final payment.
2. An order directed at the 1st Defendant to pay to the 2nd Plaintiff the total amount fo Sixty-five thousand, seven hundred and twenty eight Ghana Cedis (GH¢65, 728.00) they owe to the 2nd Plaintiff for the supply of fish products under his said take over agreement with the 2nd Plaintiff together with interest calculated at the commercial bank rate from 1st January, 2019 to date of final payment.
3. Damages for breach of agreement and obligations.
4. Costs
5. Any other relief(s) arising from the pleading and hearing

Case of the Plaintiffs

My understanding of the antecedents of claim of the Plaintiffs as averred to in their pleadings filed on 8th November, 2020 is that each of the plaintiffs have unrelated and separate contracts with Defendants. Thus whereas 1st Plaintiff makes a claim of GH¢229, 141.96 in respect of a loan facility agreement against the Defendants either jointly or severally, 2nd Plaintiff on the other hand makes a claim for GH¢65, 728.00 in respect of unpaid supply of frozen fish products against the defendants either jointly or severally.

Further details of the case of the 1st Plaintiff are that the 1st and 2nd Defendants operated a cold store until March, 2018 when 2nd Defendant claimed he handed over the Cold Store to the 1st Defendant. That prior to the alleged handing over, the 1st and 2nd Defendant between 27th October, 2016 and 27th March, 2017 had taken various loans from her totalling GH¢150, 000.00 at an interest rate of 3.5% per month for a year. That the total interest on the said principal amount was GH¢58, 559.20. She contended further that even though the defendants had made attempts at liquidating the loan amount, their total indebtedness as at October, 2019 is GH¢229, 141.96.

The 2nd Plaintiff's case against the defendants is that per a sale and purchase agreement, he supplied the defendants with frozen fish products with a total value of GH¢65, 728.00 in October, 2017. He pleaded further that the defendants ought to have paid the said amount by the end of December, 2017, but they have since failed to settle their indebtedness to him. He also pleaded in paragraph 17 as follows:

17. The plaintiff state that in recent times, especially in 2018, the 2nd Defendant claims that he had by an agreement in March, 2018 handed over all his operations, benefits and liabilities to the 1st defendant who have assumed same, but yet the 1st Defendant still refuses to settle the said indebtedness the Defendants owe to the plaintiff.

Case of the 1st Defendant

The case of the 1st Defendant is pleaded in his Amended Statement of Defence filed on 15th June, 2021. 1st Defendant in his pleadings admitted in paragraph 5, paragraph 5 of the Statement of Claim that he and the 2nd Defendant “previously operated and acted together to operate” a Cold store until March 2018 when the Cold Store was handed over to him by the 2nd Defendant. He however pleaded in paragraph 3 of his defence that he subsequently returned the Cold store to the 2nd Defendant. In respect of the loan facility agreement and the supply of frozen fish, the 1st Defendant pleaded that he had no knowledge of these two transactions. He pleaded that these two transactions were entered into solely by the 2nd Defendant. He accordingly denied liability for the non-payment of the loan and a further denial of the liability in respect of the supply of the frozen fish.

Case of the 2nd Defendant

The 2nd Defendant case is pleaded in his Amended Statement of Defence filed on 1st December, 2020. He similarly admitted that he previously operated the Cold Store with the 1st Defendant. The 2nd Defendant admitted the liability in respect of the loan facility agreement with 1st Plaintiff but averred in paragraph 3 of his pleadings as follows:

3. Paragraph 6, 7, 8, 9, 10 and 11 are admitted to the extent that at the time that 1st Defendant took over the operation of Adepa Total Ventures on 20th day of March, 2018, the estimated amount quoted on the agreement per the information received from the managing director for the balance stood at GH¢208,000.00.

The 2nd Defendant also admitted the transaction in respect of the supply of fish which was contained in paragraph 14 and 15 of the Statement of Claim in paragraph 5 of his Statement of Defence as follows:

5. Paragraph 14 and 15 are admitted.

The 2nd Defendant however denied liability on the grounds that 1st Defendant had in an earlier agreement dated 20th March, 2018 between them taken over the assets and liabilities/debts of the Cold Store and therefore the 1st Defendant is the person liable for the payment of the claims of the Plaintiffs.

Issue for Trial

The pre-trial judge in an order dated 17th December, 2020 set down the followings substantive issues for determination. The said issues as stated on the process are:

1. Whether or not the 1st and 2nd Defendant operated Adepa Total Ventures together.
2. Whether or not the Defendants took loans from the 1st Plaintiff.
3. Whether or not the Defendant has defaulted in repayment of outstanding balance of the loan owed to the 1st Plaintiff.
4. Whether or not the 2nd Plaintiff supplied the Defendants assorted frozen fish products to the Defendants.
5. Whether or not the Defendants have defaulted in payment for the assorted frozen fish products supplied to them by the 2nd Plaintiff.
6. Whether or not the Plaintiffs are entitled to their reliefs.
7. Whether or not the 1st Defendant has any contractual agreement with the Plaintiff.

8. Whether or not following the termination of the contractual agreement between 1st and 2nd Defendants, the 1st Defendant is still liable to the Plaintiff on the liabilities of the 2nd Defendant.
9. Whether or not after taking over control of the Cold store, the subject of the agreement between 1st and 2nd Defendants, the 2nd Defendant is liable to resume his indebtedness to the Plaintiff.

The Trial

The 1st Plaintiff testified through her attorney during the trial. Her attorneys name is Naa Bodbire Albert. The 2nd Plaintiff also testified. Both Defendants testified during the trial. The 1st Defendant called to his aid a sole witness in the person of William Nuamah Quartson (DW1).

Issues for trial

As indicated supra, multiple issues were set down for trial by the Pre-trial Judge. I am however of the considered view that all these issues can be merged into three key issues which will in my considered view will circumscribe the real issues in controversy. Accordingly I am of the considered view that the real issues in controversy are (1) whether or not the 1st and 2nd Plaintiffs entered into a loan facility and agreement and the supply of Frozen Fish with the Defendants; (2) Whether or not there has been a default of payment in respect of the loan facility and the supply of Frozen Fish and (3) Whether or not the defendants are obligated to pay for the loan and frozen fish supplies either jointly or severally.

Issue 1

Whether or not the 1st and 2nd Plaintiffs entered into a loan facility and agreement and the supply of Frozen Fish with the Defendants respectively.

The first issue I will determine is whether the Plaintiffs individually entered into separate subject matter agreements with the Defendants. In this regard it is trite law that the general rule is that the plaintiff in these circumstances bore the legal burden to put before this court evidence to establish its claim against the defendants. In the case of In the case of **Bank of West Africa Ltd. V. Ackun [1963] 1GLR 176** it was reported in holding 2 that:

“The onus of proof in civil cases depends upon the pleadings. The party who in his pleadings raises an issue essential to the success of his case assumes the burden of proof”.

Again in the case of **Ababio v Akwasi III [1994-95] GBR 774@777** it was held that:

“The general principle of law is that it is the duty of a plaintiff to prove his case, ie he must prove what he alleges. In other words, it is the party who raises in his pleadings an issue essential to the success of his case who assumes the burden of proving it. The burden only shifts to the defence to lead sufficient evidence to tip the scales in his favour when on a particular issue the plaintiff leads some evidence to prove his claim. If the defendant succeeds in doing this he wins; if not he loses on that particular issue”

The Plaintiff tendered a document I consider fundamental in establishing their case. The document (Exhibit “F”) is titled **“AGREEMENT FOR SALE OF BUSINESS (ADEPA TOTAL VENTURES) LOCATED AT KADADWEN NEAR MFANTSIPIIM JUNCTION”**.

The Defendants did not dispute the existence of Exhibit “F”. Indeed they each testified that they executed this document as parties to Exhibit “F”. 1st Defendant testified as follows in his evidence in chief:

2. I am the 1st Defendant in this matter. Somewhere in 2018 or thereabout the 2nd Defendant informed me that he was relocating to Ashanti region so he wanted someone to take over his Adepa Total ventures and run. This was a cold store business he was operating at Kadadwen near Mfantshipim Junction.
3. I showed interest and subsequently entered into agreement to assume the cold store business with a new business Isanyan Enterprise.
4. The agreement with the 2nd Defendant required me to assume his liabilities to 3rd parties including the plaintiffs. The understanding was that the creditors would continue to supply products to the cold store so that I will use the proceeds of the sale to pay the 2nd Defendants indebtedness to them.

During cross-examination of 1st Defendant by counsel for the Plaintiffs below is what transpired:

Q. Take a look at Exhibit "F" again. At the time you executed that agreement what was the indebtedness of the operation of your cold store to the 1st plaintiff?

A. Two hundred & eight thousand Ghana cedis

Q. Take a look at Exhibit "F" again. The indebtedness is also subject to interest. Not so?

A. That is so

Q. In Exhibit "F" again at the time you executed this agreement what was the indebtedness of your operation in the cold store to the 2nd plaintiff's business as contained in paragraph "D" under "Suppliers".

A. Sixty-five thousand seven hundred & twenty-eight Ghana cedis.

The evidence of 2nd Defendant in respect of Exhibit “F” is expressed in paragraph 10, 11 and 12 of his witness statement in which he also admitted due execution of Exhibit “F”. He stated as follows:

10. 1st Defendant brought prospective buyers to buy the venture and after assessment and several other considerations the said prospective buyers were committed to buying the said ventures.
11. However to my surprise, 1st Defendant involved our then pastor to plead with me not to dispose of the ventures to another person or person since he was interested in acquiring same looking at the prospects as against the challenges.
12. Agreeing to dispose off same to 1st Defendant after all assessments; valuation of assets as against liabilities, 1st Defendant took [sic] caused his lawyer to prepare a document; Agreement for Sale of Business (ADEPA TOTAL VENTURES) annexed is the said document as exhibit “1”.

Now Exhibit “1” is the same as Plaintiff’s Exhibit “F” which was tendered by the Defendant. So what is this Exhibit “1” or “F”? A synthesis of the evidence of 1st and 2nd Defendant in respect of this document will lead to the unequivocal conclusion that same was entered into by 1st and 2nd Defendant in respect of the transfer of Adepa Total Ventures.

An examination of Exhibit “F” will show that it details the liabilities of the cold store, which was the subject matter of the sale, under the heading “Liabilities of the Business” as at 20th May, 2018 when the contract was entered into. The details of the relevant liabilities is captured as:

- | | |
|------------------------|-------------------------------------|
| (a) Beatrice Ali Amoah | GH¢208,000.00 (subject to interest) |
| (b) Madamfo Coldstore | GH¢65, 728.00 |

My simple finding from the above disclosures on Exhibit “F” or “1” is that the Defendants knew per their records that as at March, 2018, Adepa Cold Store was indebted to the 1st and 2nd plaintiffs in the amount of GH¢208,000.00 and GH¢65, 728.00 respectively. With this finding, I am of the considered view that the Plaintiff requires no further proof of same the existence of their debt against the defendants.

Issue 2

Whether or not there has been a default of payment in respect of the loan facility and the supply of Frozen Fish

This issue is a no brainer. The evidence of the Plaintiffs that the said sums remained unpaid remained unchallenged during cross-examination. **Evelyn Frimpomaa Owusu v James Owusu (H1/144/2010) delivered on 17th March, 2011**, the Court of Appeal applied the principle and stated as follows:

“Cross-examination among other things, affords the party doing the cross-examination the opportunity to put up his case across. He does this by putting to his opponents or his opponent’s witness so much of his case as relates to that witness, or by putting the witness that aspect of his own case in which that witness has any share or interest. Where, for example, the testimony of the plaintiff on an issue is not exactly what the position of the defendant on that issue is, counsel for the defendant is obliged by his cross-examination to indicate how much of the testimony he accepts, and how much of it he disputes or rejects and he will also put forward what the defendant’s position on the issue is going to be. If in a situation like this, counsel for the defendant keeps quiet about the plaintiff’s testimony or fails to ask questions about it, he will be taken to accept the plaintiff’s statement in its entirety”.

Applying the said case to the evidence, I find that the amount of GH¢208,000.00 and GH¢65, 728.00 respectively remained unpaid and due to the 1st and 2nd Plaintiffs respectfully at the time of the filing of this suit. Accordingly I find that the said amount ought to be paid to the Plaintiffs. I do not accept the evidence of 1st Plaintiff that as at 26th October, 2017 the outstanding debt of the Adepa Total Ventures was GH¢208, 559.20 without proper documentation. Exhibit C1 and C2 is therefore ignored.

Issue 2

The next issue is the vexed question regarding which of the defendants is liable for the payment of the said liabilities. Is it the 1st Defendant only, is it the 2nd Defendant only, or are they jointly liable.

Again this question is much easier to determine. In this regard I will rely exclusively on Exhibit "F" (or "1") to determine liability. My understanding of Exhibit "F" is that the intention of the parties was that upon due execution Exhibit "F" the 1st Defendant will assume the assets and liabilities of Adepa Total Ventures. I am of the considered view that no other construction of the words used in Exhibit "F" is deducible or implied on the face of the record. Indeed no other construction was put before this court to give birth to an interpretation issue.

Indeed contrary to the paragraph 4 of the witness statement of the 1st Defendant, I do not see any reservation of debts or conditions precedent indicating an intention between 1st and 2nd Defendants that "the creditors would continue to supply products to the cold store so that I will use the proceeds of the sale to pay the 2nd Defendant's indebtedness...". Indeed if this was an implied condition, I find no evidence on record to support this finding. My reasons are stated infra.

Firstly, I herewith reproduce *in extenso* the entirety of the said agreement (Exhibit "F") for a better appreciation of the contextual basis of my findings. The agreement reads as follows:

**AGREEMENT FOR SALE OF BUSINESS (ADEPA TOTAL VENTURES)
LOCATED AT KADADWEN NEAR MFANTSIPIM SCHOOL JUNCTION**

THIS AGREEMENT for sale of business (cold store) is made the 20th day of March, 2018 BETWEEN STEPHEN KWAME ATTAH OWUSU of P. O. Box 549, Cape Coast operating under a registered business name ADEPA TOTAL VENTURES (hereinafter called "the Vendor") of the one part AND Dr. Isaac Enyan of House No 37, Adisadel Estate Avenue, Cape Coast operating under a registered business name ISENYAN ENTERPRISE (hereinafter called "the Purchaser") of the other part.

1. The vendor is the beneficial owner of a cold store Business located at Kadadwen near Mfantsipim School Junction and operating under a registered business name "ADEPA TOTAL VENTURES" (hereinafter called "the Business")
2. Both parties agree and recognize that the business is in distress and needs injection of capital to become a going concern.
3. The Vendor hereby agrees to sell and the Purchaser agrees to buy the Business subject to the terms and conditions hereunder provided.

Value of Assets

4. The assets (fixed and current) of the business of the Vendor (hereinafter called the Assets”) used in the conduct of the Business is valued at GH¢300,000.00

Liabilities of the Business

5. The business is currently indebted to individuals and suppliers with proper records of indebtedness as follows:

INDIVIDUALS	AMOUNT GH¢	REMARK
a. BEATRICE ALI AMOAH	208,000.00	subject to interest
b. MR. PETER KOFI OBENG	56,000.00	subject to interest
c. MR. MICHAEL OBENG AMPOFO	45,600.00	subject to interest
d. MADAM FELICIA HAMMOND	50,000.00	subject to interest
e. MADAM PERPERTUAL COKER	10,000.00	subject to interest
f. DR. ISAAC ENYAN	8,000.00	No interest
g. SAMUEL KOJO CROFFIE	7,000.00	No interest
h. CLEMENT ABAIDOO	5,000.00	No interest
i. UPLINK FIELD SERVICES	4,000.00	No interest
j. JOSHUA APPOH	40,000.00	No interest
TOTAL	433,600.00	

SUPPLIERS	AMOUNT GHS
a. LABIANCA COMPANY LIMITED	70,700.00
b. COMIDA LIMITED	21,250.00
c. STAR TRADE LIMITED	33,487.00
d. MADAMFO COLDSTORE	65,728.00

e. DOLPHIN FROZEN FOODS	500.00
TOTAL	191,735.00

GRAND TOTAL INDEBTEDNESS = 433,600 + 191,735 = GHS 625,335.00

6. Both the Vendor and the Purchaser have agreed that the **purchaser will take over all the assets of the business and assume all the liabilities of the business which stands at Six Hundred and Twenty-Five Thousand, Three Hundred and Thirty-Five Ghana Cedis (GHS 625,335.00)** as a consideration of the assets of the vendors. (emphasis mine)
7. The Vendor shall seek the permission of the landlord of the House Number H38/4, KADADWEN, situate and lying near the Mfantsipim School Junction where the business resides, to sublet or assign or transfer his unexpired interest in the tenancy agreement made on the 1st day of December, 2016 to the purchaser herein.
8. That upon the sublet or assign or transfer of the vendor's unexpired interest in the tenancy agreement to the purchaser, the purchaser shall atone tenancy to the landlord and assume payment of the rent (when due), utilities, taxes, rates etc. payable in the pursuit of the business venture.
9. **The Purchaser shall after the signing of this agreement, indemnify the vendor from all liabilities of the business and negotiate with the creditors for full payment of all the indebtedness of the business.** (Emphasis is mine).

10. The parties further undertake that subsequent to signing this purchase agreement, the vendor shall write to inform the creditors of the assumption of the liabilities of the business by the Purchase. The Purchaser shall thereafter negotiate with all the creditors of the vendor for the full payment of the liabilities.

11. The purchaser further agrees that within two weeks after signing this purchase agreement, he shall cause to be changed the business name of the vendor "ADEPA TOTAL VENTURES" tagged on the business premises to his own business name "ISENYAN ENTERPRISE"

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and names the day and year first above written.

SIGNED SEALED AND DELIVERED by) Sgd.
 STEPHEN KWAME ATTAH OWUSU)

The vendor herein in the presence of)
 WILLIAM GODFRED MANTEY) Sgd.
 P. O. BOX 164, CAPE COAST)

SIGNED SEALED AND DELIVERED by) Sgd.
 DR. ISAAC ENYAN)

The purchaser herein in the presence of)
 WILLIAM NUAMAH QUARTSON) Sgd.
 BOX AD 1037, CAPE COAST)

As indicated earlier there exists no dispute that Exhibit "F" was signed by both the 1st and 2nd Defendants. So what is the legal effect of signing a contract? In the case of **Inusah v D.H.L Worldwide Express [1992] 1 GLR 267** the court held as follows on the question:

"The general rule was that when a document containing contractual terms was signed, then in the absence of fraud or misrepresentation, a party of full age and understanding was bound to the contract to which he appended his signature. In such a case it would be immaterial whether he read the document or not".

In the instant case I find no evidence on the record to negate the application of the general rule. Indeed the undisputed evidence was that Exhibit "F" was prepared by counsel for 1st Defendant. I therefore find that the parties are bound by the express terms as stated in Exhibit "F". I find from the terms of the contract an agreement that the 2nd defendant sold Adepa Cold Stores to the 1st Defendant. I further find that the sale was subject to agreed terms and conditions which were clearly stipulated in the contract. I finally find that the terms in Exhibit "F" clearly and unequivocally addressed the question of existing liabilities and how it was agreed to be settled.

A reading of the terms contained in Exhibit "F" will show that the liabilities of Adepa Total Ventures were transferred to the 1st Defendant in consideration for taking over all the assets of the Adepa Total Ventures. Paragraph 6 and 9 of Exhibit "F" provided as follows:

- 6. Both the Vendor and the Purchaser have agreed that the purchaser will take over all the assets of the business and assume all the liabilities of the business which stands at Six Hundred and Twenty-Five Thousand,**

Three Hundred and Thirty-Five Ghana Cedis (GHS 625,335.00) as a consideration of the assets of the vendors.

9. **The Purchaser shall after the signing of this agreement, indemnify the vendor from all liabilities of the business and negotiate with the creditors for full payment of all the indebtedness of the business.**

On the terms contained in the contract therefore I find that the 1st Defendant as of 20th March, 2018 assumed the liabilities contained in the agreement and also indemnified the 2nd defendant. The said liabilities per the contract included that of the 1st and 2nd Plaintiffs? I further find that the 2nd Defendant having divested himself of all liabilities pursuant to the contract, the 1st Defendant cannot vest him with liability for his (1st Defendant) failure to perform his obligation under the contract. Even though the Plaintiff is a third party to this contract, It is my considered view that their debts by operation of Exhibit "F" or "1" has been transferred to 1st Defendant.

I am fortified by my finding above because, contrary to the representations of 1st Defendant in his witness statement. I do not find any evidence to support his say so in paragraph 6, 8 and 9 of his witness statement as follows:

6. However, when I took over the cold store business, I realised that the representations the 2nd defendant made to me were not true. In fact, the freezers at the cold store had run down beyond repairs. The plant was faulty and inefficient. I therefore spent huge resources to put them in order.
8. I brought the condition of the cold store and the conduct of the creditors to the attention of the 2nd defendant. In the face of these circumstances and misrepresentations by the 2nd Defendant, I wrote to terminate the agreement I

entered into with the 2nd Defendant. All the creditors including the Plaintiff were copied (find attached and marked Exhibit 1).

9. Indeed, following the termination of the agreement, the 2nd Defendant met me personally and I handed over the cold store to him. He has long taken over the business and running it himself or through and [sic] agent. He has also re-assumed his indebtedness to his creditor including the Plaintiff.

Firstly, I do not accept the evidence of 1st Defendant that he was misled by the 2nd defendant. I say so on two grounds. The first is that he failed to lead evidence I support of the nature and particulars of the misrepresentation made by the 2nd defendant. What evidence did he put before his say so that the Cold store had “run down beyond repairs”. Indeed if the cold store had had “run down beyond repairs”, how did he miraculously manage to “put them order” that which was beyond repairs. No evidence was provided.

Secondly, he did not deny that it was his lawyer Solomon Gyasi, Esq. who drafted the agreement and led him to facilitate the transaction with 2nd defendant. It is therefore my considered view that 1st Defendant executed the agreement with his eyes fully opened and therefore the presumption that the agreement was sound and unimpaired will operate against him. He cannot therefore subsequently claim without more that he had been misled. In conclusion on this issue I find that the 1st Defendant is liable to pay the amounts claimed by the Plaintiffs because by operation of Exhibit “F” or “1” the 2nd Defendant is fully acquitted of any liability.

Finally, I find a failure of the 1st Defendant to establish positively his claim that the he later handed over Adepa Cold Ventures back to the 2nd Defendant, wherein he (2nd Defendant) assumed the unpaid liabilities.

Interest (Loan Amount)

Per Exhibit "F", the total indebtedness of the Defendants was stated as GH¢208,000.00 as at 20th March, 2018,. The 1st Plaintiff evidence was at as at October, 2019 the total indebtedness of the Plaintiffs was GH¢229, 141.96. The question which begs to be answered is whether the interest rate applied and which resulted in the GH¢229, 141.96 was agreed upon by the parties.

According to 1st Plaintiff's Attorney an interest rate of 3.5% per month was applied to the outstanding loan amount from March, 2018 to October, 2019 to arrive at the figure of GH¢229, 141.96. She stated further that the said GH¢229, 141.96 later shot up to GH¢357, 461.72 as at 30th April, 2021 as a result of the accumulated interest.

I have perused Exhibit "C", which is the Loan Application form and do not see any terms detailing the said interest payment, which sets the interest rate at 42% per annum. I therefore find that the 1st Plaintiff has failed to proof the said interest rate. I will accordingly apply the interest rate as provided for under Rule 1 of COURT (AWARD OF INTEREST AND POST JUDGEMENT INTEREST) RULES 2005 (C.I. 52) provides as follows:

If the court in a civil cause or matter decides to make an order for the payment of _____ interest on a sum of money due to a party in the action, that interest shall be calculated

(a) at the bank rate prevailing at the time the order is made, an

d

(b) at simple interest

but where an enactment, instrument or agreement between the parties specifies a

rate of interest which is to be calculated in a particular manner the court shall award that rate of interest calculated in that manner.

Interest on Frozen Fish Supplies

The principle is that interest is usually charged where monies unreasonably held by another. In the case of **GHANA COMMERCIAL BANK v. BINO-O-KAI [1982-83] GLR 74**, the court held that **“The basis of an award of interest was that the defendant had kept the plaintiff out of the use of his money, and the defendant had had it, so he should compensate the plaintiff”**. I also refer to the case of **Agyei v Amegbe [1989-90] 1 GLR 351**. In this case Justice S.A. Bobbey, J. (as he then was) held as follows:

“Interest has been defined in the Chambers’ Twentieth Century Dictionary (New ed.) at 656 as “premium paid for the use of money.” That definition presupposes that whenever interest is to be charged and paid in respect of money, the charge is based on the supposition that the person to pay the interest has had the use of the payee’s money.”

My finding is that as at August, 2018 the amount of GH¢65, 728.00 remained unpaid. Accordingly following the dictum in the Amegbe case (supra), I hold that the 2nd Plaintiff is entitled to the principal sum and interest. Unfortunately for reasons best known to the 2nd Plaintiff, he is claiming interest from 1st January, 2019. I will accordingly not interfere with same.

Damages

The Plaintiffs also prayed for damages for breach of contract. My general view about payment of damages for breach of contract in respect of payment of a loan facility is that, where a lender has imposed interest on monies unpaid, that interest is akin to payment of damages. However, where that interest amount remains unpaid at the agreed time, then a party is entitled to the payment of damages to compensate for the

loss of use of the payment of the principal and interest at the agreed time. However the damages that will be paid will be nominal unless evidence is led to establish a quantifiable loss suffered as a result of the failure of the borrower to pay his debt.

In circumstances where penal interest is agreed, it is my respectful view that a lender will not be entitled to damages for non-payment since same will already have been agreed upon by the application of penal interest rates.

In this case in respect of the loan facility, I find no penal interest rates applicable. I also find no evidence of quantifiable damages. In the case of the supply of frozen fish, I also find no evidence to establish quantifiable loss. Be that as it may, the failure of the plaintiffs notwithstanding what is not in dispute is that the 1st Defendant failed to liquidate the debts.

In the case of **Delmas Agency Ghana Ltd vrs Food Distributors International Ltd [2007/2008] SCGLR 748**, the court stated at page 760 of the report as follows:

“General damages is such as the law will presume to be the probable or natural consequences of the defendant’s act. It arises by inference of law and therefore need not be proved by evidence. The law implies general damages in every infringement of an absolute right. The catch is that only general damages are awarded.

Where a plaintiff has suffered a properly quantifiable loss, he must plead specifically his loss and prove it strictly. If he does not he is not entitled to anything unless general damages are also appropriate.’

Conclusion

In conclusion I find that the plaintiffs have led evidence to ground a finding on the balance of probabilities that they are entitled to the payment of certain unpaid amounts.

I further find that they plaintiffs are entitled to recover the said amount from the 1st Defendant. Their claims against the 2nd defendant is accordingly dismissed. I accordingly enter judgment in favour of the plaintiffs against the 1st Defendant with some modifications as follows:

1. The 1st Plaintiff is hereby ordered to recover from the 1st Defendant the sum of Two hundred and eight thousand Ghana Cedis (GH¢208,000.00).
2. The 1st Plaintiff is further ordered to recover interest on the said amount of GH¢208,000.00 from May, 2018 at the prevailing bank rate and at simple interest until date of final payment.
3. The 2nd Plaintiff is ordered to recover from the 1st Defendant an amount of Sixty-five thousand, seven hundred and twenty eight Ghana Cedis (GH¢65, 728.00).
4. The 2nd Plaintiff is further ordered to recover from the 1st Defendant interest on the said amount from 1st January, 2019 at the prevailing bank rate until date of final payment.
5. General Damages of Twenty thousand Ghana Cedis (GH¢20,000.00) is hereby awarded in favour of the Plaintiffs against 1st Defendant.
6. Cost of Twenty thousand Ghana Cedis (GH¢20,000.00) against the 1st Defendant in favour of the Plaintiffs.

(SGD)

Emmanuel Atsu Lodoh, J
(Justice of the High Court)

Lawyers

1. John Assan Benson, Esq. for the Plaintiff.
2. Solomon Gyasi, Esq. for the 1st Defendant.
3. Rev. S.G. Gabora, Esq. for the 2nd Defendant.