

**IN THE SUPERIOR COURT OF JUDICATURE  
IN THE HIGH COURT OF JUSTICE  
[COMMERCIAL DIVISION]  
HELD IN CAPE COAST ON 1<sup>ST</sup> DECEMBER, 2022  
BEFORE HIS LORDSHIP JUSTICE EMMANUEL A. LODOH, J.**

MISC/01/2023

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**THE MATTER OF A NOTICE OF DISPUTE FILED BY THE CLAIMANT  
AGAINST THE PLAINTIFF/JUDGMENT CREDITOR PURSUANT TO ORDER 44  
RULE 12(1) OF CI 47**  
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**FLOKIDS COMPANY LIMITED**

**PLAINTIFF/JUDGMENT CREDITOR**

GE-233-9150

ORANGE AVENUE, ASHONGMAN

ACCRA

REPRESENTED BY IRENE FREDUAH AGYEMANG

VRS

**GABRIEL AMOATENG (ALHAJI)**

**DEFENDANT/JUDGMENT DEBTOR**

UNNUMBERED HOUSE SITUATE AT

ANOMABO-CENTRAL REGION

**ERIC OBENG ACHEAMPONG**

**CLAIMANT**

P.O. BOX 116 AF

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**JUDGMENT**

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**Background**

The Plaintiff/Judgment Creditor (hereafter to be called “Plaintiff”) secured a judgment on 23<sup>rd</sup> June, 2022 against the Defendant/Judgment Debtor (hereafter to be called “Defendant”) for the payment of a liquidated amount. Following the judgment the Plaintiff initiated execution processes and subsequently attached a Nissan Pathfinder vehicle with registration number AS 8670-11 purported to belong or was in the possession of the Defendant.

Following the attachment, the Claimant on 15<sup>th</sup> September, 2022 and in line with Order 44 rule 12 (1) notified the Registrar of his claim over the said vehicle levied in execution. Unsurprisingly, the Plaintiff disputed the claim and in accordance with Order 44 rule 12 (2) gave notice of her intention to dispute on 14<sup>th</sup> October, 2022. The Court on 17<sup>th</sup> November, 2022, after the close of the processes set the matter down for summary determination and took evidence from the parties in support of their respective claims.

**The Trial**

The sole question for trial to my mind is whether or not the disputed vehicle belongs to the claimant. The Claimant and the Plaintiff representative both testified in court. None of them called any witnesses to their aid.

On the totality of the evidence led by the parties, I find that it has not been disputed by the claimant that the disputed vehicle was recovered directly from the possession of the Defendant and no other person. Accordingly, I hold the considered view that since the

claimant is claiming “ownership, interest and right in and over” the disputed vehicle, then the onus would be him to put before this court credible evidence to establish the existence of this fact on the balance of probabilities. Indeed, it was for this reason that the claimant was ordered to testify first as the plaintiff.

My order to saddle the claimant with the burden of persuasion is consistent with section 17(1)(a) and (b) of the Evidence Act, 1975 (NRCD 323) as follows:

**17. Allocation of burden of producing evidence**

**Except as otherwise provided by law,**

**(a) the burden of producing evidence of a particular fact is on the party against whom a finding on that fact would be required in the absence of further proof;**

**(b) the burden of producing evidence of a particular fact is initially on the party with the burden of persuasion as to that fact.**

In explaining the application of this provision, the Supreme Court in the case of **Okudzeto Ablakwa (No 2) v & Another v Attorney General & Another (No. 2) [2012] 2 SCGLR 845** noted as follows:

*“What this rule literally means is that if a person goes to court to make an allegation, the onus is on him to lead evidence to prove that allegation, unless the allegation is admitted. If he fails to do that, the ruling on that allegation will go against him. Stated more explicitly, a party cannot win a case in court if the case is based on an allegation which he fails to prove or establish”*

The evidence of the claimant was brief and concise. I am of the considered view that this may likely have been so because he relied heavily on the papers tendered. He testified as follows:

**“My name is Eric Obeng Acheampong. I live at Accra, Madina. I am here because my vehicle number AS 8670-11 was taken in execution of a judgment debt. The car belongs to me, but was in the possession of the defendant. I have the vehicle documents. I want to tender it in evidence.”**

The Claimant then proceeded to tender a host of documents covering the vehicle. The said documents are a series of Form “C” and change of ownership letter indicating how the legal title of the vehicle had been transferred between various owners over the years. Unfortunately an examination of these documents will disclose that none of these documents bore the name of the Claimant. This failure to my mind means that he had no legal title over vehicle. Be that as it may, it is I am of the considered view, where proven, he may still have equitable rights in the said vehicle which the court is bound to protect.

During the trial the claimant was very silent in his evidence in chief about how he came to acquire the vehicle and secondly why the vehicle documents were not registered in his name but remained in the name of the previous owner. This fact was admitted by the claimant during cross-examination as follows:

Q. You agree with me that you don’t have your name on the Form “C” which shows that you are the owner of the car.

A. That is so.

Q. You also agree with me that you have not executed any document to show that the car has been transferred to you by the people on Form “C”

A. Yes

Be that as it may, notwithstanding the claimant's failure to lead evidence in chief on the matter, during cross-examination he testified in respect of his root of acquisition as follows:

Q. How did you become the owner of the Nissan Pathfinder?

A. I am a vehicle mechanic at Madina Obojo Light Industrial Area. I was working on one of the cars of Rockcare Herbal. It was through this I came into contact with one Ebenezer Boamah. So, the said Boamah brought the said pathfinder to repair and I detected that the gear box was faulty. So, I and Mr. Boamah went to Abbosey Okai to buy a replacement but after a year and a half, I did not hear from him. So, after one and a half years he came to inform me that he could not afford a new gear box so he was willing to dispose of the car. So, I showed interest in the purchase of the vehicle and I asked about the price. He initially said he would sell to me at GHS 25,000.00 but I told him I could afford twenty thousand cedis. I gave him some period of time and subsequently made a full payment to him and then I fixed the damaged gear box. He then gave me a receipt for the money paid. He also handed me the documents covering the car".

Firstly, the claimant did not tender the said receipt he claimed was given to him by the said Mr. Boamah. It appears strange to me why the claimant failed to tender at least the two most important instruments evidencing his purchase of a very expensive and statutorily regulated item. He not only failed to tender the receipt covering the purchase but he also failed to tender the letter of transfer from the original owner to him. He rather happily tendered other car documents which did not bear his name.

The evidence again of the Claimant is that he acquired the disputed vehicle directly from Mr. Ebenezer Boamah. His Exhibit "A", which is the Form "C" attest to the fact that Mr. Ebenezer Boamah was the one of the registered owners of the vehicle. Indeed a

synthesis of Exhibit “G”, which is a letter transferring the vehicle to Mr Ebenezer Boamah from Rockson Kofi Nsiah (Exhibit “G”) will show that the said Mr. Boamah acquired the vehicle from Rockson Kofi Nsiah on 18<sup>th</sup> May, 2015 and same was registered in Mr. Boamah’s name by DVLA in May, 2015.

The Claimant put his case to the Plaintiff during cross-examination as follows:

Q. Since 2016, my friend Paa Kwesi has been coming for my car to Anomabo. I put it to you.

A. I don’t know the Paa Kwesi he is talking about. It is the judgment debtor who I have seen at all times using the vehicle.

The question which flows from the Claimant’s case is that where indeed his claim that he has been in possession of the vehicle since 2016, it would mean the claimant has failed to register his vehicle after having acquired same for about six years. Applying the objective test to the conduct of the Claimant, I find that it is unusual for an ordinary person to acquire a vehicle at great cost and yet fail to register same without reasonable excuse. Unfortunately no such excuse was canvassed.

Indeed, I rather accept the evidence of the Plaintiff, when she says that she has observed the Defendant, driving the disputed vehicle since 2016. She supported this claim tendering Exhibit “1”, which is the original receipt in respect of “PVTs Vehicle Testing and Roadworthy” issued by the Driver and Vehicle Licencing Authority (DVLA) in respect of the disputed vehicle. The ownership of the vehicle as appears on the face of Exhibit “1” is that the vehicle belongs to the Defendant.

Below are responses by the Claimant in respect of the disclosures on the face of the Exhibit "1":

Q. Have a look at these documents. These are DVLA roadworthy certificate and insurance of the vehicle in issue.

A. That is so

Q. All the insurance and the roadworthy certificate has been paid in the name of the defendant/judgment debtor

A. That is so

In further explanation as to why Exhibit "1" bore the name of Defendant as the vehicle owner. The Claimant testified during cross-examination as follows:

Q. Because the vehicle belongs to the judgment debtor that is why he was the one paying the roadworthy and insurance.

A. That is not true. It was through my friend, Paa Kwesi that I got to know about the defendant and it was through Paa Kwesi that the car came to be in the possession of defendant. That is why the defendant while the vehicle was in his possession he paid for the insurance and roadworthy certificates.

The question which arises from the response given by the Claimant is whether same is tenable. I do not find his explanation about how the Defendant came to be described as the owner of the disputed vehicle and indeed incurred regulatory expenses in respect of the disputed vehicle as tenable. I say so because as recently as 23<sup>rd</sup> September, 2022, the defendant made payments to DVLA in respect of the roadworthiness of the disputed vehicle.

When I examine Exhibit "A", the failure of the claimant to show proof of transfer of ownership and receipt covering the payment of GH¢20, 000.00, and Exhibit "1", it is my considered view that the Claimant have suppressed some evidence regarding the complete history of documentation in respect of the disputed vehicle lodged with the DVLA. Indeed more specifically, the history of the disputed vehicle between 2016 to date. The question again which arises is why the Claimant even failed to tender evidence of actual possession in the nature of some receipts covering his statutory payment to DVLA since 2016 in proof that he had actual possession, albeit the absence of evidence of legal title.

In conclusion I do find that the claimant has failed to put before this court evidence to establish on the balance of probabilities his claim that the disputed vehicle belongs to him. His claim is accordingly dismissed. It is further ordered that the Plaintiff is at liberty to continue with the execution process. Cost of Two thousand Ghana Cedis (GH¢2,000.00) against the Claimant.

(SGD)

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

### **Lawyers**

1. Augustine Gyamfi, Esq. for the Plaintiff/Judgment Creditor



2. Emmanuel Agyri, Esq. for the Defendant/Judgment Debtor