

IN THE SUPERIOR COURT OF JUDICATURE  
 IN THE HIGH COURT OF JUSTICE (COURT 1) HO HELD ON TUESDAY 29  
 NOVEMBER 2022 BEFORE JUSTICE GEORGE BUADI, J

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SUIT NO. E2/05/2021

SPARE PARTS LAST STOP CO. LTD } ..... PLAINTIFF

*Versus*

APSONIC MOTORS CHINA AFRICA & 3 ORS} ..... DEFENDANTS

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**JUDGMENT**

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**1 Background**

On 8 September 2020, Michael Ozioko (MO, claiming curiously to be trading under the name and style of an incorporated company - Spare Parts Last Stop Company Ltd commenced this action by a writ of summons against Defendants. Upon promptings and leave of the court, his lawyers amended the writ on 30 June 2021, *intituled* this time around *Spare Parts Last Stop Co. Ltd*, suing curiously “per its Managing Director, Michael Ozioko” for the following reliefs against Defendants:

- a A declaration that the removal of the Apsonic Spare Parts from plaintiffs store and warehouse is unlawful.
- b General damages for conversion.
- c Alternatively, an order for payment of GH¢450,000 being the value of the spare parts taken by the defendants.
- d An order for the refund of GH¢79,740.00 to the plaintiff with interest at the prevailing bank rate.
- e Cost including solicitor fees in full indemnity basis.

f Further or other reliefs at the Honourable Court may deem fit.

## **2 Parties' statements of case.**

Plaintiff is a limited liability company that deals in vehicle and motorcycle spare parts in the Ho Municipality. Plaintiff's case is that on 5 November 2018, officers of 1<sup>st</sup> Defendant company, namely, Messrs Edem, Kadjo, Iddi Sanni and Anthony Kuada, with the assistance of about six armed police officers invaded its shop at Ho and packed into a taxi-cab all Apsonic products in its shop and conveyed the goods to the duty station of 2<sup>nd</sup> Defendant (the Municipal Police Commander, Ho)

1<sup>st</sup> Defendant's officers and police personnel later proceeded to Plaintiff's warehouse where four armed policemen were already positioned. Plaintiff avers that 1<sup>st</sup> Defendant's officers and the police forced its managing director MO to open the warehouse after which the police and 1<sup>st</sup> Defendant packed out all goods they claim to be Apsonic motorcycle spare parts. Plaintiff avers that the seized Apsonic branded products were conveyed in three vehicles to the Central Police Station, Ho where its MO was detained till the next night when he was released. Plaintiff claims that the policemen took inventory of the goods, after which officers of 1<sup>st</sup> Defendant company started to make money demands on him, and accusation that MO had smuggled in and had been selling Apsonic motorcycle spare parts into the country without payment of customs duties. Plaintiff avers that 2<sup>nd</sup> Defendant was present when officers of 1<sup>st</sup> Defendant made these accusations; and that 2<sup>nd</sup> Defendant supported claims that 1<sup>st</sup> Defendant is the sole entity permitted to deal in Apsonic motorcycle spare parts in Ghana.

Plaintiff claims that it had at the material time imported through the Tema Port Apsonic motorcycle spare part products worth about GH¢550,000 and paid the requisite import duties but 2<sup>nd</sup> Defendant advised him to enter into a negotiation

with 1<sup>st</sup> Defendant. Plaintiff avers that its MO and officers of 1<sup>st</sup> Defendant went to the White House Restaurant, Ho where 1<sup>st</sup> Defendant demanded from MO an amount of GH¢600,000 but he managed to raise cash amount only of GH¢79,740, which he was made to pay, albeit reluctantly into the accounts of Ho Apsonic agent - Kuada Enterprise with GCB Bank Ltd, Ho.

Plaintiff adds that MO paid the amount - GH¢79,740 - amidst threats from 1<sup>st</sup> and 2<sup>nd</sup> Defendants and showed the pay-in-slip to officers of 1<sup>st</sup> Defendant with the hope that the goods would be released, but 1<sup>st</sup> Defendant not only failed to release the goods but also went back to the Central Police Station and took away the goods and left a small quantity there for Plaintiff. Plaintiff's case is that his business has suffered and continues to suffer loss as a result of the actions of Defendants, and that all his several demands through 2<sup>nd</sup> Defendant for the return of the goods to him have proved futile, and that the only appropriate option left is to resort to the court for the reliefs as endorsed on the writ of summons.

1<sup>st</sup> Defendant filed a separate statement of defence denying Plaintiff's claims. The 2<sup>nd</sup> Defendant per the Attorney-General's Department, Ho filed his statement of defence denying Plaintiff's claims. The 3<sup>rd</sup> and 4<sup>th</sup> Defendants did not. Defendants admit however that Plaintiff deals in motorcycle spare parts in Ho. Defendants state that Plaintiff was found to be dealing in fake or imitated Apsonic motorcycle spare parts which the 1<sup>st</sup> Defendant is the authorized importer and dealer in Ghana. Defendants contend that they were alerted that Plaintiff had piled up imitated Apsonic motorcycle spare parts in its warehouse and selling them in Ho and its environs for which sole reason 1<sup>st</sup> Defendant lodged a criminal complaint with 2<sup>nd</sup> Defendant who led its personnel to Plaintiff's warehouse at Ho Housing Estate where Apsonic motorcycle spare parts were retrieved.

1<sup>st</sup> Defendant maintains that no one forced MO to open his warehouse and that he did so under lawful police arrest. 1<sup>st</sup> Defendant admits that the suspected products were conveyed to the Central Police Station, Ho. 1<sup>st</sup> Defendant could not admit nor deny Plaintiff's claim of detention of its managing director MO overnight at the Central Police Station, Ho; neither could it admit nor deny Plaintiff's claim that the police took inventory of the goods taken from the shop and warehouse. 1<sup>st</sup> Defendant denies Plaintiff's claim that they made the money demand on MO.

1<sup>st</sup> Defendant denies Plaintiff's claim that it had imported goods worth about GH¢550,000 through the Tema Port. It contends that Plaintiff is not an accredited agent of Apsonic, and could not, therefore, have imported and be selling such brand of Apsonic products except fake/or imitated Apsonic products, contending further that upon the arrest of MO, he told 2<sup>nd</sup> Defendant that he imported the goods through a friend from Togo. MO further admitted before the police that the goods were not original spare parts from the manufacturer Apsonic Motor Company China but that they were supplied by or through a friend in Togo.

It is the case of the 1<sup>st</sup> Defendant that MO went on his knees and pleaded for an amicable settlement. The plea was considered and agreed to, for which the parties held discussions with MO at the White House Restaurant Ho. 1<sup>st</sup> Defendant denies however that they made any money demand on MO. According to 1<sup>st</sup> Defendant, it was the fervent desire of MO to have the matter settled out of the police station to avoid criminal prosecution for his unlawful business practices, and it was to this end that Plaintiff's MO offered to pay to 1<sup>st</sup> Defendant GH¢450,000 for unlawfully importing and selling imitated Apsonic motorcycle spare parts. 1<sup>st</sup> Defendant avers that MO made the monetary offer - GH¢450,000 – based on claims that he

could not quantify the value of Apsonic products he had dealt with over the period.

1<sup>st</sup> Defendant states further that its officers could not have succeeded in taking any money from MO because it was he who made the offer and proceeded to show good faith when he paid the first tranche of GH¢80,000 into a named bank account of Apsonic agent in Ho. 1<sup>st</sup> Defendant avers that as part of the negotiations for settlement out of the police station, Plaintiff agreed to the destruction of the seized Apsonic spare parts and a further promise not to transact any such business again and that they were expecting Plaintiff to honour its promise by making the second tranche payment but rather resorted to issuing a writ. 1<sup>st</sup> Defendant denies having taken any Apsonic motorcycle spare parts from the police station, as they were all destroyed in the presence of Plaintiff. 1<sup>st</sup> Defendant adds they were looking forward to Plaintiff proceeding to conclude the payment he started in satisfaction of terms of the settlement. 1<sup>st</sup> Defendant describes Plaintiff's writ as one of utter bad faith and therefore counterclaims for the following reliefs:

- a A declaration ... that Plaintiff engaged in an unlawful trade to the detriment of 1<sup>st</sup> Defendant's business.
- b A declaration that the imitated spare parts imported by Plaintiff and distributed onto the market had the potential of affecting and or lowering the confidence of the consuming public in 1<sup>st</sup> Defendant's spare parts and or its products.
- c An order of the court directed at Plaintiff to complete the payment in the sum of GH¢370,000] to 1<sup>st</sup> Defendant [of] his own pledge which led him to pay the initial deposit into 1<sup>st</sup> Defendant's accounts
- d General Damages

e Costs including lawyer's fees.

2<sup>nd</sup> Defendant's case is that in November 2018, 1<sup>st</sup> Defendant lodged a criminal complaint with 2<sup>nd</sup> Defendant at Ho Central Police Station that Plaintiff was dealing in imitated Apsonic motorcycle spare parts. Defendant aver that 1<sup>st</sup> Defendant in the company of Plaintiff and police personnel went to Plaintiff's warehouse at Ho Housing Area where quantities of Apsonic motorcycle spare parts were found, retrieved, and sent to the police station. 2<sup>nd</sup> Defendant avers that in the presence of 1<sup>st</sup> Defendant, Plaintiff admitted dealing in Apsonic motorcycle spare parts and pleaded with 1<sup>st</sup> Defendant to allow the matter to be settled amicably. 1<sup>st</sup> Defendant reluctantly agreed whereupon the police allowed Plaintiff and 1<sup>st</sup> Defendant to settle the matter. 1<sup>st</sup> Defendant states that Plaintiff and 1<sup>st</sup> Defendant did settle the matter and reported the outcome of the settlement to the Police that include terms to destroy the seized products and that 1<sup>st</sup> Defendant shall discontinue pressing for the prosecution of the action against Plaintiff. 2<sup>nd</sup> Defendant avers that the arrest and detention of Plaintiff's managing director were undertaken based on official police investigations into the matter. 2<sup>nd</sup> Defendant denies that the police made any money on Plaintiff averring further that during their interrogations, Plaintiff's MO claimed that he got the goods from a dealer in Togo but MO failed to lead the police to the said dealer to authenticate the claim. Defendants contend that the settlement of the matter was upon Plaintiff's agreement with 1<sup>st</sup> Defendant.

2<sup>nd</sup> Defendant avers that, though the police were aware of the settlement at the White House Restaurant, he was not a party; neither was he aware of any money demand the police or 1<sup>st</sup> and 2<sup>nd</sup> Defendant on Plaintiff during the settlement of the matter nor the fact of any payment by MO unto the account of an Apsonic

Agent in Ho. Defendants contend that the police were only made aware that Plaintiff would pay some money to 1<sup>st</sup> Defendant for expenses incurred. According to Defendants, the Apsonic products that were retrieved from Plaintiff's warehouse were utterly destroyed as hitherto agreed between Plaintiff and 1<sup>st</sup> Defendant. 2<sup>nd</sup> Defendant denies that Plaintiff made a demand for the return of goods, contending that after Plaintiff's admission of the offence and its agreement with 1<sup>st</sup> Defendant to have the goods destroyed, the Apsonic products were utterly destroyed.

### **3 Issues for trial**

After the close of pleadings, the court set these issues down for trial:

- a Whether or not Plaintiff engaged in selling imitated [or fake] spare parts of 1<sup>st</sup> Defendant's brand to the detriment of 1<sup>st</sup> Defendant's business
- b Whether or not the imitated spare parts imported by Plaintiff and distributed onto the market had the potential of affecting and or lowering the confidence of the consuming public in the 1<sup>st</sup> Defendant's spare parts and or its product
- c Whether or not Plaintiff willingly deposited GH¢80,000.00 or less into 1<sup>st</sup> Defendant's accounts as he promised.
- d Whether or not Plaintiff agreed that the imitated parts be destroyed and same done in the presence of all the parties.
- f Whether or not 1<sup>st</sup> Defendant is entitled to its counterclaims.
- ii Whether or not the 1<sup>st</sup> Defendant has been registered as the sole importer of Apsonic products (spare parts) into the country.

- iii Whether or not the 2<sup>nd</sup> defendant facilitated the removal of spare parts products from the plaintiff's warehouse.
- iv Whether or not the release of the goods and payment to 1<sup>st</sup> defendant was through duress and undue influence of 2<sup>nd</sup> defendant.

#### **4 Findings of facts: preliminary and primary, and the applicable law**

Per the outcome of the case management conference, Plaintiff's case comprises, firstly, the witness statement that its managing director MO filed on 15 December 2021<sup>1</sup>; secondly, the witness statement that Adimoha Luke (PW2) filed<sup>2</sup>; and thirdly, the witness statement that Alex Anku (PW1) filed<sup>3</sup>. PW1 and PW2's witness statements do not contain attachments as Exhibits. Plaintiff's case including the testimonies of its two witnesses is contained ultimately in a 28-page case pack.

1<sup>st</sup> Defendant contests the suit per the witness statement that Edem Akpakli filed on 16 February 2021.<sup>4</sup> 1<sup>st</sup> Defendant called no witnesses. Per the pretrial checklist, the 2<sup>nd</sup> Defendant's case is contained in the witness statement he filed on 10 March 2021.<sup>5</sup> He called no witness. I need to remark here that the 3<sup>rd</sup> and 4<sup>th</sup> Defendants (the IGP and the Attorney General) filed no statement of defence nor a witness statement. Perceptively as nominal defendants, they seem to rely on the case of the 2<sup>nd</sup> Defendant, giving him support, therefore.

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<sup>1</sup> That is, a 21-page document of a 5-page 25-paragraph deposition; the rest of the pages (pages 6 to 21) being exhibits attached to the witness statement.

<sup>2</sup> A 4-page 14-parag deposition contained in pages 22-25 of Plaintiff's case pack.

<sup>3</sup> A 3-page 6-parag deposition that spans from pages 26 to 28 of Plaintiff's case pack

<sup>4</sup> A 13-page witness statement that comprises a 2-page 24-parag deposition attached with Exhibits 1, 2, 2A, 3, 3A, 3B,4, 4A, 4B, 4C, and 4D that add up to a total of 13 pages.

<sup>5</sup> A 9-page document that consists of a 3-page 16-parag. deposition attached with Exhibits AG, AG 1A, AG 1B, AG 2, and AG3.



My core duty as the trial judge is to find the primary facts in the case, and having correctly done so, apply the applicable law to the findings. Invariably, the search for and the application of the relevant law on the issues depends on the primary facts that I shall correctly find and resolve. *Quaye vs. Mariamu* [1961] GLR 93, SC at page 95. See also *Addison vs. A/S Norway Cement Exp Ltd* [1973] 2 GLR 151; *Domfeh vs. Adu* [1984-86] 1 GLR 653, CA.

Based on the pleadings and evidence adduced at the trial, I proceed to make the following finding from facts that are evident on the amended writ; facts, the parties admitted or deemed to have admitted on the pleadings or at the trial, particularly at the cross-examination for which reason the law requires no evidence or further evidence to back up the claim or the denial. *Bank of West Africa Ltd v Ackun* [1963] 1 GLR 176 SC; *Kusi & Kusi v Bonsu* [2010] SCGLR 60.

I find it needful to reiterate here that despite the amendment of the writ that changed the suit from its initial perceived personal or representative status to one of legal corporate status, Plaintiff avers all the same on the amended writ as “suing per its managing director Michael Ozioko”. Needlessly, that seems to suggest to me that Michael Ozioko (MO) and Plaintiff<sup>6</sup> are indistinguishably the same. Indeed, I find at the trial that MO is the sole owner, main shareholder *cum* managing director, and thus the controlling mind of the company. The settled law is that the legal incidents of acts of an incorporated company are not the same but are different from the acts of its owners, directors, and officers, including the owners. Companies Act, 2019 (Act 992, s.18); *Salmon v Salmon* [1897] AC 22 HL.

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<sup>6</sup> Spare Parts Last Stop Company Limited.

Having filed the suit, amended the writ and conducted the case upon the guidance of his choice lawyers, MO is deemed to be not unaware of the legal implications attached to his needless choice as described on the writ as “suing per its managing Director Micheal Ozioko, I shall within the context of his choice hold him as having personally broken and stripped himself off the protective incorporation veil and deemed to have held himself up to be held personally liable for the acts and omissions of Plaintiff in the course of Plaintiff’s business dealings as held in *Morkor v Kuma* (No.1) [1999-2000] 1 GLR 721 SC at page 723; *Akoto v Akoto* [2011] 1 SCGLR 533, at 535 (Holding 3); *Amartey v Social Security Bank Ltd; SSB Ltd; Robertson (Consolidated)* [1987-88] 1 GLR 497, CA (Holding 2).

I have looked at and considered the issues set down for trial. I need to state here at the outset that a trial court must discern the real or core issue of controversy per the substance, not necessarily the form the parties’ complaint or cause of action had been couched. My candid view of the respective causes of action in the suit and the core issue set out for determination is whether 1<sup>st</sup> Defendant has the sole exclusive franchise or dealership rights to import and to sell Apsonic motorcycle spare parts in Ghana, or whether Plaintiff has the right also to import or/and sell Apsonic brand motorcycle spare parts in Ghana. The cause of action, indeed, the issue, strictly speaking, is not one of forgery of an Apsonic trade mark. I find therefore the written submission of Plaintiff’s counsel that followed his path of cross-examination that largely concentrates on the issue of forgery of a trademark as having respectfully misconceived the core issue implicated for trial in this suit.

Setting off to resolve the issues for trial, I shall start with “Issues ‘a’, ‘ii’, and ‘iii’”. That is - whether Plaintiff engaged in selling motorcycle spare parts of Defendant’s

Apsonic brand to the detriment of 1<sup>st</sup> Defendant's business; whether 1<sup>st</sup> Defendant has been registered as the sole importer of Apsonic products spare parts into the country; and whether 2<sup>nd</sup> Defendant facilitated the removal and seizure of the spare parts products from Plaintiff's store and warehouse. I proceed to find admissions on the issue in the pleadings and at the trial, particularly during cross-examination.

Plaintiff does not contest that 1<sup>st</sup> Defendant lodged a criminal complaint with the 2<sup>nd</sup> Defendant at Central Police Station Ho of Plaintiff's unlawful business dealings and that it was based on this complaint that MO was arrested and detained overnight for investigations into the matter. I find that the 2<sup>nd</sup> Defendant was at all material time the Commander in charge of the Central Police station, indeed, a Superintendent of Police, who directed police officers to investigate the complaint. The complaint was that Plaintiff is unlawfully selling Apsonic motorcycle spare parts to the public. I find Exhibit 1, a receipt of purchase of some Apsonic products from Plaintiff's shop in Ho is the basis for 1<sup>st</sup> Defendant's complaint to the police.

I find that the arrest and detention of MO overnight by the Police for investigation was based on Exhibit 1 for which reason the police, accompanied by officers of 1<sup>st</sup> Defendant seized the Apsonic spare parts upon claims of 1<sup>st</sup> Defendant that the Plaintiff has no right whatsoever to sell in Ghana, as they, per Exhibits 3A and 3B hold the sole franchise or dealership to import and sell Apsonic motorcycle spare parts and that no other entity or person including Plaintiff has right or authorization to deal in and to sell Apsonic motorcycle spare parts in Ghana. MO's evidence on his detention by the police was that he was detained "... for thirty (30) hours until friends of mine managed to bail me". Certainly, MO was not detained

beyond the mandatory and permissible forty-eight (48) hours. *1992 Const. art. 14, clause 3b.*

Cross-examination remains part of our adversarial judicial system; indeed, a vital means of assessing the veracity, credibility, and/or probability of belief in a party's case. Indeed, the success or failure of a party's case is determinable largely by its ability to survive the crucible of cross-examination. I find that MO made some crucial admissions of what I find as the core issues of controversy in this suit. Plaintiff admitted under cross-examination that the Police informed him of the reason for his arrest; that is, "[he is] being arrested for importing Apsonic goods". MO admitted further that on 5 November 2018, motorcycle spare parts were taken from his store and warehouse, and that the goods were all Apsonic products. Plaintiff further admitted that he is not an accredited agent or dealer of 1<sup>st</sup> Defendant; neither had Apsonic Motors China, the manufacturer of Apsonic motorcycle spare parts granted him any such right or authorization.

In his answer to a question under cross-examination: "[s]o Plaintiff ... could not be selling goods of 1<sup>st</sup> Defendant's company on its behalf", MO answered that "[w]e can be selling the goods for and on behalf of 1<sup>st</sup> Defendant's company". As night is always followed by day, the penultimate question was "[w]hat is the authority of Plaintiff to do this". Plaintiff responded, thus:

I would then have to say that **Plaintiff has no authority to sell Apsonic products** but when the goods came, Plaintiff saw four different brands inside the container. **They are Apsonic**, MTN brand, LKD brand, and Lucky Lily brand when I saw the goods. The customs authorities passed the goods without detaining them on grounds that Plaintiff is not authorized

to deal with those products. I did not go to China. **We ordered them**, and they were shipped to us. (Emphasis added)

Professing just above not to have gone to China but that he placed orders for the Apsonic motorcycle parts, MO stated further under cross-examination that Apsonic products were not part of his order. I find MO to be untruthful on this core issue. This is because, per learned counsel's suggestion, "there would be no way such brands of products would be shipped to [plaintiff] here in Ghana when [plaintiff] ha[s] not made [an] order for that brand".<sup>7</sup>

To further demonstrate MO's untruthfulness on this issue, I find that Exhibit B is a port document that strictly describes goods in the container. On the face of Exhibit B Michael Ozioko admits that his goods were not shipped by Apsonic Motors China the manufacturer of Apsonic but rather HK Martina Machines Parts Co. Ltd of China. Indeed, Exhibit B does not show anywhere particulars of Apsonic products, or anything related to Apsonic products. Ozioko, nonetheless insisted that the goods are related to Apsonic, contending, that "[the exporter] did not write any brand name; so, it could be any of these brands". I am afraid the witness did not appear to appreciate the effect of his insistence that the goods are related to Apsonic. Indeed, his testimony just above was that he ordered the goods. The question is, if the imports as per Exhibit B do not include Apsonic goods, how did Plaintiff secure the Apsonic motorcycle spare parts that were found in his store and warehouse as evidenced by Exhibit 1 that forms the basis of 1<sup>st</sup> Defendant's complaint to the Police?

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<sup>7</sup> See 5<sup>th</sup> Nov. 2021 trial proceedings, page 10.

Section 35 of the Trade Mark Act, 2004 (Act 664) provides that, inclusive of application processes of registration under section 20, the fact that a person is registered as the owner of a trademark is *prima facie* evidence of the validity of the original registration of the trade mark and subsequent assignments and transmission of the mark. Section 9 of Act 664 id further provides that “[a] **person other than a registered owner** of a trademark shall not use the mark in relation to goods or services for which the trademark was registered **without the agreement of the owner**”. (Emphasis added)

Exhibit 1 shows that Plaintiff was selling Apsonic motorcycle spare parts. Plaintiff assumes the evidential burden to provide proof of his authorization from Apsonic Motors China, the manufacturer or 1<sup>st</sup> Defendant to import and sell Apsonic motorcycle spare parts in Ghana. Plaintiff, I find failed to discharge this burden. The duty is also on the 1<sup>st</sup> Defendant to provide proof of registration of the Apsonic trademark. I find Exhibit 3A, particularly Exhibit 3B, as evidence of due registration of the trademark ‘TSZ’ and ‘Apsonic’ mark, respectively that had been issued under the Trade Marks Act to 1<sup>st</sup> Defendant by the Registrar of Trade Marks, indeed signed/certified by Sarah Anku on behalf of the Registrar of Trade Marks.

I have to reiterate MO’s admission that neither 1<sup>st</sup> Defendant nor Apsonic Motors China, manufacturer of Apsonic products has conferred any right or authorization to sell Apsonic products in Ghana. Certainly, Plaintiff provided no evidence of authorization. I hold that per the evidence at the trial, Plaintiff has no right, permit or authorization to import and/or to sell Apsonic products in any form particularly motorcycle spare parts in Ghana per Exhibit 1 to sell to the public here in Ho. This is because the franchise and dealership to sell Apsonic brands in Ghana are per

the law - Act 664, s. 9 and s. 35 held by 1<sup>st</sup> Defendant. I hold therefore that Plaintiff's act, as evident in Exhibit 1, the subject matter of 1<sup>st</sup> Defendant's complaint to 2<sup>nd</sup> Defendant is unlawful, and that it constitutes a flagrant breach of 1<sup>st</sup> Defendant's dealership in Apsonic brand of motorcycle spare parts in Ghana.

I find at the trial that 2<sup>nd</sup> Defendant facilitated the seizure and removal of Apsonic motorcycle spare parts products from Plaintiff's store and warehouse. I find that it was based on a legitimate complaint by 1<sup>st</sup> Defendant of breach of its dealership right of Apsonic motorcycle spare parts in Ghana evident by and upon production of Exhibits 1, 2, 2A, 3A and 3B to the police by 1<sup>st</sup> Defendant. As part of their duties to enforce law and order, peace and security, the police upon reasonable grounds have powers of arrests, extending to searches without a court warrant under the Criminal & Other Offences (Procedure) Act (Act 30) (s.10(1)e, s.10(2)a, s. 93, and s.94. Upon the production therefore of Exhibits 1, 3A and 3B to the police by 1<sup>st</sup> Defendant, which I find grounds a legitimate complaint founded on a breach of a trade or commercial right guaranteed under Act 664 that triggered the investigative powers of the Ghana Police Service, the latter represented by 2<sup>nd</sup> Defendant and acting within the facts I have found so far in the issue did nothing wrong or anything outside their powers of arrest, detention, as well the search and the seizure of the Apsonic motorcycle spare parts.

I hold therefore that the detention of MO at the police station "... for thirty (30) hours until friends of ... managed to bail [him]" as claimed by MO, is not unlawful, as the period of detention is within the forty-eight (48) hours that is permissible under the Constitution of Ghana. All the same, having admitted not to possess the right to deal in or sell Apsonic motorcycle spare parts from the manufacturer Apsonic Motor China, or 1<sup>st</sup> Defendant who holds the Apsonic trade mark

franchise, MO's arrest and detention, and the subsequent search and seizure of Apsonic goods from Plaintiff's shop and warehouse by the police cannot be unlawful. I reiterate once again that Plaintiff provided no evidence to the contrary that 2<sup>nd</sup> Defendant acted outside the lawful. Per my findings and conclusions, I settle 'Issues 'a', 'ii', and iii' not in Plaintiff's favour.

I turn my attention now to 'Issue 'iv', and 'Issue c', that is - whether the release of the goods and payment to 1<sup>st</sup> Defendant was through duress and undue influence by 2<sup>nd</sup> defendant", and 'whether Plaintiff willingly deposited GH¢80,000 or less into 1<sup>st</sup> Defendant's accounts as promised. In his evidence in chief, MO claims that officers of 1<sup>st</sup> Defendant demanded of him an amount of GH¢600,000, "which I insisted I would not be able to pay". MO claims to have been "forced under duress to pay ... an amount of [GH¢79,740] into Account No. 5011130003998" with the hope of getting his goods back but to his surprise, that was not to be.

I have looked at paragraphs 11, 13, & 15 of MO's witness statement. I find in paragraph 21 in particular that MO did enter into a negotiation with 1<sup>st</sup> Defendant to settle the matter except that he claims to have done so "in the state of great fear when I became completely exhausted due to the long hours of detention". The pieces of evidence as captured in his evidence in chief suggest that MO settled the matter outside the police station and that per Exhibit D, he paid GH¢79,740 at the bank in favour of 1<sup>st</sup> Defendant, claiming that he did so under duress, failing however to state who in particular coerced, forced, pressured and influenced him not only to enter into the settlement but also make payment at the bank for 1<sup>st</sup> Defendant as in Exhibit D.

The question as to which party assumes the *onus* of evidential proof of an issue in a civil case largely depends upon the nature of the pleadings. The law - Evidence



Act, NRCD 323 section 11 places the burden of producing evidence, not necessarily on a plaintiff but 'a party' "to introduce sufficient evidence to avoid a ruling on the issue against "that party". *Bank of West Africa Ltd v Ackun* [1963] 1 GLR 176 SC; *In Re Ashalley Botwe Lands: Adjetey Agbosu & Ors v Kotey & Ors* [2003-2004] SCGLR 420. Besides, section 14 of the law - NRCD 323 id. provides that 'a party' who in his pleadings or his evidence at trial raises issues that are essential to the success of his case assumes the burden to establish proof of those claims. A person who asserts a claim that is denied assumes the evidential burden of proof whilst a negative averment does not require proof.<sup>8</sup>

Defendants deny the alleged coercion, duress or influence both on the pleadings and at the trial. Plaintiff assumes the evidential burden to produce satisfactory evidence on the issue of coercion or duress. Plaintiff is required by law to provide the evidence that supports the particulars of duress and undue influence that he recounted in the pleadings. In his evidence in chief in paragraphs 11, 13, and 15, Ozioko did not provide the name of the person who "coerced, pressurized, and threatened [him to] negotiate with officers of 1<sup>st</sup> Defendant". What possibly could be the requisite proof of the person Ozioko claim to have coerced, and unduly influenced him to negotiate to settle the matter and further offer to pay the amount to 1<sup>st</sup> Defendant can be found in paragraph 21 of his witness statement:

For more than 30 hours I was detained at the 2<sup>nd</sup> Defendant's cell during which I was not allowed to rest and was subsequently brought out to go and enter into [a] negotiation with the 1<sup>st</sup> Defendant, **which I did** in [a] state

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<sup>8</sup> See S.A. Brobbey *Practice and Procedure in the Trial Courts & Tribunals of Ghana* 2<sup>nd</sup> ed page 368 para. 853

of fear when I became completely exhausted due to the long hours of detention. (Emphasis added)

I am afraid, the above statement, standing alone, without any other or further evidence in support, cannot add credence to Plaintiff's allegation of coercion, and influence to negotiate a settlement and to make payments as in Exhibit D. All the same, I have earlier held that detention of a person by the police within forty-eight hours upon good or reasonable cause is not, and cannot unlawful.

A case is decided, not per isolated piecemeal evidence but within the context of the totality of evidence on record whether from the plaintiff or the defendant. In his evidence, PW1 stated that the 2<sup>nd</sup> Defendant "advised [MO] [to] go for out of court settlement ... with [1<sup>st</sup> Defendant] otherwise if the case goes to court, [MO] would be jailed". Beyond the advice, indeed, from the trail of PW1's evidence in chief, I find that Plaintiff heeded the advice and proceeded with steps to negotiate for the settlement of the matter with officers of 1<sup>st</sup> Defendant. Plaintiff admitted under cross-examination that he did not want the matter to proceed to court and so negotiated with 1<sup>st</sup> Defendant though claiming to be "not in a hurry to negotiate". Advice is advice! It may be followed or disregarded. If it is followed, the person who heeded the advice, not the giver that bears the consequences of any action that is taken based on the advice.

Ozioko further admitted under cross-examination by learned counsel for the 2<sup>nd</sup> 3<sup>rd</sup> and 4<sup>th</sup> Defendants that after the grant of police enquiry bail, he negotiated with the 1<sup>st</sup> Defendant for settlement, and that the 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> Defendants were not present at the negotiation at the White House Restaurant, Ho. Indeed, I find that Sani Iddi and his other colleague are workmen of 1<sup>st</sup> Defendant, who Plaintiff

admit to having negotiated with; admitting further that the Police represented by 2<sup>nd</sup> Defendant was not involved in his settlement meeting with 1<sup>st</sup> Defendant at the White House Restaurant, Ho. I reproduce here some aspects of Plaintiff's evidence under cross-examination on this issue:

Qn The meeting you had with 1<sup>st</sup> Defendant on the Apsonic products was voluntary.

Ans **We all agreed to meet.**

Qn You reached an agreement at the meeting.

Ans **Yes, we did.** (Emphasis added)

On this same issue, PW1 and PW2's evidence on the matter gave a much better perspective on the negotiation for settlement and the voluntariness thereof, in fact, in my view that is contrary largely to the sweeping claims of MO. PW1 (Adimoha Luke) gave a much-detailed account of the negotiation processes. PW1 also provided details of the terms of the settlement. According to PW1, 1<sup>st</sup> Defendant demanded GH¢600,000 as a settlement fee but "the plaintiff objected to the amount due to its being exorbitant and excessive". PW1 added that MO initially offered GH¢20,000, then GH¢60,000, but officers of 1<sup>st</sup> Defendant finally agreed to accept GH¢100,000 as compensation. This piece of PW1 evidence is in contrast with MO's evidence that an ultimate amount of GH¢80,000 was imposed on him to pay. I take note also that 1<sup>st</sup> Defendant denies the GH¢100,000 sum that PW1 states as the settlement fee.

According to 1<sup>st</sup> Defendant, "[i]n his haste to have the matter amicably settled, [P]laintiff rather offered to pay GH¢450,000" for unlawfully dealing in Apsonic brand products, as according to Plaintiff he could not put a monetary value on the

Apsonic goods that he had released onto the market. 1<sup>st</sup> Defendant continued that MO demonstrated good faith by depositing GH¢80,000 into a named bank account in Ho and showed the pay-in slip to 1<sup>st</sup> Defendant's agent in Ho, ostensibly, as having concluded the settlement. Per Exhibit D, I find that Plaintiff deposited a cash amount rather of GH¢79,740 into the Ho GCB Bank account of 1<sup>st</sup> Defendant agent Kuada Enterprise, Ho. I find also that Michael Ozioko admitted at the trial that there was no officer of 1<sup>st</sup> Defendant with him at the bank when he caused the amount GH¢79,740 to be lodged in 1<sup>st</sup> Defendant's agent Kuada Enterprise account.

MO's further evidence under cross-examination on the issue was that:

Yes, but I brought them cash GH¢79,740 but they i.e. 1<sup>st</sup> Defendant told me they could not take cash so they gave us their account number here in Ho where we made the payments.

Michael Oziko continued in his evidence under cross-examination, thus:

Qn You demonstrated your good faith by carrying GH¢80,000 cash for 1<sup>st</sup> Defendants agent in Ho.

Ans I did it on their demand.

Qn 1<sup>st</sup> Defendant requested that you made payment at the bank.

Ans Yes, that is correct.

Qn I am putting it to you that you have no claim against 1<sup>st</sup> Defendant.

Ans Not correct; I have a claim.

As regards the evidence of PW2, he admitted under cross-examination to having also witnessed the negotiation that took place between Plaintiff and 1<sup>st</sup> Defendant. PW2 admitted further that the 1<sup>st</sup> Defendant asked for the amount to be lodged in its account in Ho. PW2 explained that “it was at the bank that Plaintiff realized after counting that the [GH¢80,000] was not up to but less of [GH¢260]”.

From the trail of evidence on record, particularly evidence of Plaintiff’s witnesses PW1 and PW2, I fail to see any trace of duress, or undue influence in the payment of the cash amount at the bank. I find Plaintiff’s witnesses, largely as, corroborative of the evidence of 1<sup>st</sup> Defendant on the issue under consideration. The law obliges me to disbelieve Plaintiff’s version of the evidence on the issue. I find MO therefore as untruthful in his claim that he was coerced to settle the matter, and that he also made the payment at the bank to 1<sup>st</sup> Defendant under duress. I have the calmness to hold that Plaintiff voluntarily deposited GH¢79,740 at the bank into Defendant’s accounts, in my view, as part-payment or fulfilment of his obligation agreed under the settlement of the matter for his unlawful sale of Apsonic motorcycle parts.

All the same, the law is that, whoever alleges the commission of wrongdoing, in the instant case, coercion, force, or undue influence, assumes the burden of proof; in fact, a higher and stricter standard of proof. Plaintiff, in my view, failed. I accept and believe therefore the probability of 1<sup>st</sup> Defendant’s version of the story: that is, as part of the settlement, Plaintiff agreed not only for the seized Apsonic goods to be destroyed but also to pay GH¢450,000 as compensation to 1<sup>st</sup> Defendant, and that it was for this cause that MO made an initial deposit of GH¢79,740 (Exhibit D) as a demonstration of his abiding good faith in the concluded settlement. I hold the payment by Plaintiff as voluntary and not under any coercion or undue influence.

None of the parties produced a written agreement on the settlement agreement or the terms thereof. All the same, the law does not fail to recognize and enforce oral non-written agreements that the court finds to have been validly entered into by consenting parties. I find Exhibit D as a material piece of evidence of a valuable consideration that I believe Plaintiff offered, which Defendant accepted with intent to create a binding agreement between the two to close the matter as settled and to foreclose any further police investigation for criminal prosecution. The court upholds and protects agreements validly concluded, except on good grounds including fraud. The court does not permit parties to resile from nor negate their contractual obligations. On the face of Exhibit D in particular, I hold that Plaintiff is *estopped* by conduct from resiling from his obligation under the settlement.

2<sup>nd</sup> Defendant's name did not appear or feature in the course of the negotiation processes and the ultimate settlement between Plaintiff and 1<sup>st</sup> Defendant. Besides, I find no evidence on record of any act of the 2<sup>nd</sup> Defendant that was performed not within his statutory police duties. If there was any act of 2<sup>nd</sup> Defendant that was *ultra vires*, indeed, impermissible and unlawful, Plaintiff assumes the duty to provide the evidence but I find none on record that suggests that 2<sup>nd</sup> Defendant played a role in demanding or compelling the settlement of the case out of the police station, and/or matters concerning the negotiation and the outcome thereof including the payment of the sum of GH¢79,740 by Plaintiff to 1<sup>st</sup> Defendant. I resolve the issues, once again not in favour of the Plaintiff.

I turn my attention to 'Issue 'd'; that is, whether Plaintiff agreed that the Apsonic spare parts are destroyed and that same was indeed destroyed in the presence of all the parties. Plaintiff avers that "it is not true that the goods were destroyed in

[his] presence”, and that only “a few of the products were released to me” as in Exhibit E.<sup>9</sup> Plaintiff’s witness Alex Anku confirms Plaintiff’s claim that MO was not present during the destruction of the seized goods. 1<sup>st</sup> Defendant denies this assertion. Per paragraphs 17, 18, 19, and 20, 1<sup>st</sup> Defendant avers that the destruction of the seized goods forms an integral part of the settlement, to which Plaintiff in particular agreed. 1<sup>st</sup> Defendant states further that the goods were destroyed in MO’s presence, “except that he left the scene to attend to hospital”.

PW2 evidence tends to support Plaintiff’s claim that, not all the seized Apsonic products were destroyed. PW2 is the driver who carted the goods from Plaintiff’s warehouse to the police station and later from the police station a couple of days later to the land site for destruction. His evidence is that:

When I got to the police station, only a few of the goods were released to me to be taken to Kuada’s land ... to be burnt. Two policemen were assigned to escort me to the land where the spare parts of the plaintiff were to be burnt.

Upon a challenge under cross-examination, whether he counted, that is, had an inventory of the goods he was carrying in his truck, Alex Anku answered in the negative - “I did not know”. In his evidence in chief in paragraph 5, PW2 states that there were some people at the land site including Kuada’s son, a spare parts dealer at Juapong who on off-loading the truck started packing some of the spare parts and took away and that a few of the goods were burnt. I need to add that both at the pleadings and the trial, these claims were not only denied but

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<sup>9</sup> See paras. 16 and 23 of Plaintiff’s witness statement.

challenged at the cross-examination by the defence lawyers as untrue. The evidential burden of proof swings back to Plaintiff to provide further evidence to support this claim.

Such requisite evidence may include the fact of an inventory of the seized goods and evidence that PW2 took a copy thereof, assuring himself of the quantity and specifics of all the items in his truck both on loading and offloading and that all were indeed not totally destroyed at the land site. Even if MO could not stand the sight of the destruction, and therefore left the land site to attend to the hospital as claimed by the witness, he owes to himself the duty to compel a witness to stay at the land site who would confirm that the items in the inventory of stock that MO claims were taken by the police were indeed all totally destroyed at the land site.

Furthermore, the Plaintiff, by a writ of *subpoena* could have easily compelled the attendance in court of some of the persons including Kuada's son who the witness claims were not only at the land site but also took away some of the goods from the site, for purposes of their testimony on this issue. In the absence of any such evidence, which I deem as material, and that, by failing to provide the reason for the default or inability to call such witnesses, the law obliges me to cause Plaintiff to suffer the consequences thereof. *Owusu vs Tabiri* [1987-1988] 1 GLR 287.

I reiterate the remarks I made earlier that an issue in a case is determined not by piecemeal strictures of evidence but rather by the totality of the available evidence on the issue whether from the plaintiff or the defendant. *In re: Presidential Election Petition No.4 Akuffo Addo & Ors vs. Mahama & Ors* [2013] SCGLR (Special Edition) 73. Based upon evidence available, with regards particularly to what I find as a concluded settlement, coupled with the illegality of the goods in the hands of any



person, I find it improbable of belief that any or some of the articles of illegality could be left undestroyed, or could be taken away from the land site. I find no evidence credible on record to compel me to decide otherwise. Here too, I am compelled to decide the issues, not in Plaintiff's favour.

Concerning 'Issue 'b' and the second leg of 'Issue 'a'; that is, whether Plaintiff's dealings, sale, and distribution onto the market of Apsonic motorcycle parts "had the potential of affecting and or lowering the confidence of the consuming public in 1<sup>st</sup> Defendant's [Apsonic] spare parts or its products", the law is settled that, breach of a right under common law or a right conferred by statute triggers a corresponding judicial remedy, as there cannot be any unjustifiable wrong without a remedy. 1<sup>st</sup> Defendant prays for general damages. They are the sort of damages the law will infer from the nature of the act that follows in the ordinary course, most often without proof of the actual damage or loss in contrast to a claim in special damages. *Stroms Bruks Aktie Bolag v Hutchison* [1905] AC 515 at 525-526 HL.

Writing on the subject of 'general damages', the learned authors in Halsbury's Laws of England, Volume 12 (Fourth Edition), paragraph 1114 at page 417 state:

A plaintiff is entitled to '[general] damages' where (1) his rights have been infringed, but he has not in fact sustained any actual damage from the infringement or fails to prove that he has; or (2) although he has sustained actual damage, the damage arises not from defendant's wrongful act but from the conduct of the plaintiff himself; or (3) the plaintiff is not concerned to raise the question of actual loss, but brings his action simply with the view of establishing his right.

That is the position of the law. However, the primary facts I have found here in this suit do not in my view provide the basis for the application of the law on the award of general damages as espoused in *Stroms Bruks Aktie Bolag v Hutchison* id. I find 1<sup>st</sup> Defendant's claim for general damage as duplicitous, which if granted shall amount to a situation of unfair or unjust enrichment. The reason is not far-fetched: 1<sup>st</sup> Defendant had calculated its loss arising from infringement of its trademark which by the settlement Plaintiff has agreed to compensate her with GH¢450,000, which the court has, indeed, upheld here in this suit. Just as Plaintiff is *estopped* by conduct from resiling from its performance of his obligation under the settlement agreement with 1<sup>st</sup> Defendant, the latter is equally *estopped* from making any other or further claim like general or nominal damages. I shall decline, indeed, refuse 1<sup>st</sup> Defendant's counterclaim for general damages.

## 5 Conclusion

In conclusion, I need to say here that the catchword for success in a court of law is 'evidence! evidence! and evidence; indeed, credible evidence! that compels a certainty or probability of belief in the mind of the court; not just the repetition of a denied claim, as the bare repetition of the same piece of evidence by or from the lips of multiple witnesses adds no judicial value thereto. *Okudzeto Ablakwa (No. 2) vs. Attorney General & Obetsibi-Lamptey* [2012] 2 SCGLR 845, at 867. A case is decided based on credible evidence on the issue in controversy, not on a multiplicity of witnesses whose evidence do not address or resolve the core issue in controversy. I hold that Plaintiff's case lacks credible evidential support. I dismiss it in its entirety as unproven. Indeed, having concluded a negotiated settlement on the matter with 1<sup>st</sup> Defendant that is evidenced by Exhibit D, Plaintiff is *estopped* by conduct from initiating the action.

On the other hand, I endorse and uphold 1<sup>st</sup> Defendant's counterclaim as satisfactorily proven. I grant all her reliefs, except the claim for general damages.

I declare and order as follows:

- That Plaintiff engaged in an unlawful trade/business to the detriment of 1<sup>st</sup> Defendant's business.
- That the Apsonic motorcycle spare parts that Plaintiff imported and distributed unto the market had the potential of affecting and or lowering the confidence of the consuming public in 1<sup>st</sup> Defendant's spare parts products.
- That, the Plaintiff is estopped by conduct, and that, in the nature and form of specific performance, the court directs Plaintiff to complete the payment of GH¢370,000.00 to 1<sup>st</sup> Defendant in fulfilment of his promise and obligation under the negotiated settlement as evidenced by his voluntary payment of GH¢79,740 into 1<sup>st</sup> Defendant's accounts at GCB Bank, Ho.
- That 1<sup>st</sup> Defendant counterclaim for general damages is hereby refused and dismissed on grounds of amounting unjust or unfair enrichment.<sup>10</sup>

Declared and ordered accordingly.

**(Sgd.) George Buadi, J.**

High Court (1)

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<sup>10</sup> The end of the judgment in the suit - *Spare Parts Last Stop Co. Ltd vs. Apsonic Motors China Africa & 3 Ors* (Suit No. E2/05/2021)

Ho.

**Lawyers:**

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- 2 Gordon Akpadie, Esq. for 1<sup>st</sup> Defendant
- 3 Senyo Axame, Esq. for the 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> Defendants.