

The Plaintiff accompanied his Writ of summons with an 11 paragraph Statement of Claim. The gravamen of the Plaintiff's case is as contained in his paragraphs 5 to 10 of the Statement of Claim filed on 8th July, 2021 as follows;-

- “5. Plaintiff says it renders services to Defendant in the area of vehicular repairs.
6. Plaintiff says that upon completing a particular task, it will raise invoice to be paid by the Defendant within two weeks or up to one month.
7. Plaintiff says somewhere between 2017 to about 2019, it issued various invoices based on services rendered to Defendant of which Defendant made part payment but failed to fully settle its indebtedness.
8. Plaintiff says that it demanded full payment for the outstanding invoices totaling Ninety-Eight Thousand, Five Hundred and Seventy-Two Ghana Cedis (GH¢98, 572) but Defendant failed and refused to pay.
9. Plaintiff says it wrote two (2) Demand Notices dated 2nd March 2021 and 31st March 2021 to the Defendant.
10. Plaintiff says that Defendant responded to the Demand Notice dated 31st March 2021 claiming that it had fully paid the outstanding balance and that it is not indebted to the Plaintiff in any way”.

The Defendant also upon service filed an 8 paragraph Statement of Defence. Of particular importance are paragraphs 4 through 6 which I reproduce hereunder. They are;-

- “4. In further denial of paragraph 6 of the Plaintiff's Statement of Claim, Defendant says that it would invariably issue a work order detailing the scope of work to Plaintiff before Plaintiff undertakes any work for Defendant. Defendant says that Plaintiff would usually raise an invoice upon completing specific work orders based upon which Defendant would pay Plaintiff.

5. Defendant categorically denies paragraphs 7 and 8 of Plaintiff's Statement of Claim and shall put Plaintiff to strict proof thereof" and

"6. In further denial of paragraph 7 of Plaintiff's Statement of Claim, Defendant says that it has fully paid Plaintiff for every work order it (Defendant) has issued and all undisputed invoices issued by Plaintiff so far".

Then after service of the Statement of Defence, Plaintiff filled an amended Reply on the 2nd December, 2021. The essential paragraphs are as follows:-

Paragraphs 2 to 4

"2. Plaintiff denies paragraph 4 of Defendant's Statement of Defence and says that the process of issuing work order detailing scope of work to Plaintiff before Plaintiff undertakes any work for the Defendant did not occur at all material time. There were times Defendant issued work order and there were other times Defendant did not do so.

3. Plaintiff in further response to paragraph 4 says that there were occasions Defendant referred vehicles to Plaintiff without work order and when the Plaintiff asked for work order, Defendant informed Plaintiff to proceed to do the work and that the work order will be delivered later" and

"4. Plaintiff in further response to paragraph 4 says that there were occasions that Plaintiff worked for Defendant without Defendant first issuing work order and subsequently issued invoices and Defendant paid."

Now, at the close of pleadings and failure to settle at the pretrial, the following were set down and adopted as the issues for trial and determination. They are:-

"1. Whether or not there is a written or oral agreement between Plaintiff and Defendant for rendering services in the area of vehicular repairs

2. Whether or not the terms of the agreement between Plaintiff and Defendant are that Defendant issues work order detailing the scope of work for Plaintiff before Plaintiff undertakes any such work for Defendant
3. Whether or not there were occasions that Defendant referred work to Plaintiff without accompanying work done
4. Whether or not there were occasions that Plaintiff undertook work for the Defendant without work order, raised invoices and Defendant paid for the work done
5. Whether or not Defendant is indebted to Plaintiff
6. Whether or not Plaintiff is entitled to the reliefs being sought”.

Now, there is no doubt that this is a civil case and like all civil cases, the onus of proof is on the person who is asserting a scenario and this is done upon the balance of probabilities or preponderance of probabilities. That is the standard in civil litigation and the principle has been put succinctly thus, in the case of GIFTY AVADZINU VRS. THERESA NJOMA [2010] MRLG 105 at 108 where the Court held;-

“The law relating to the standard of proof in civil actions without exceptions was stated to be proof by preponderance of probabilities having regard to Sections 11 and 12 of the Evidence Decree 1975 (NRCD 323). This means that the successful party must show that the claim is more probable than that of the other”.

Similarly, in the Supreme Court case of BISI & ORS VRS. TABIRI @ ASARE [1987-88] 1 GLR 360-413 held inter alia;-

“Standard of proof required of a Plaintiff in a civil action was to lead such evidence as would tilt in his favour the balance of probabilities on the particular issue. The demand for strict proof of pleadings had however never been taken to call for an inflexible proof either beyond reasonable doubt or with mathematical exactitude or with precision as would fit a jigsaw puzzle. But “probability” denoted an element of doubt and uncertainty and recognized

that where there were two choices, it was sufficient if the choice selected was more probable than the choice rejected”.

The question then arises as to how this degree of proof is determined. It is trite that proof is never achieved if a party only goes into a witness box and or with his witnesses to repeat only the very things that have been averred to in their Statements be it statement of claim or defence. Thus in the case of MAJOLAGBE VRS. LARBI & ORS [1959] GRL 190 @ 192, the Court stated the principle thus;-

“Proof in law is the establishment of fact by proper legal means. Where a party makes an averment capable of proof in some positive way e.g by producing documents, descriptions of things, reference to other facts, instances or circumstances and his averment is denied, he does not prove it merely by going into the box and repeating that averment on oath, having it repeated on oath by his witness. He proves it by producing other evidence of facts and circumstances from which the Court can be satisfied that what he avers is true”.

Similarly, in the case of TAKORADI FLOUR MILLS VRS. SAMIRA FARIS [2005-2006] SCGLR 882 @ 900, the Supreme Court held;-

“In assessing the balance of probabilities, all the evidence, be it that of the Plaintiff or the Defendant must be considered and the party in whose favour the balance tilts is the person whose case is more probable of the rival version and is deserving of a favourable verdict”.

Now, at the trial, the Plaintiff testified through the Managing Director and later subpoenaed an additional witness whilst the Defendant also testified through one Mac Dennis Kobina Ackon who described himself as the Internal Control Manager. It is worth noting that the Parties maintained their evidence which they filed as Witness Statements in tune with pleadings.

What then is the evidence proffered by both Parties in support of their claim and defence in a bid to resolving the issues as set down. The first issue as stated above but which I reproduce hereunder for the sake of emphasis is;-

“Whether or not there was a written or oral agreement between the Plaintiffs for rendering services in the area of vehicular repairs?”

Candidly, I must say, there is no controversy on this matter as the evidence of both Parties reveal that there was such an agreement. Indeed, both Learned Counsel also in their written submission conceded to that which in fact led to the Counsel for Defendant submitting that the issue is redundant and in fact raises no issue at all since both Parties admit to that. Learned counsel further submitted that whether or not agreement was written or oral was immaterial to which I totally agree.

Now, on the 10th of October, 2022 when the Defendant testified and was cross-examined, he gave the following answers to questions asked (excerpts only)

“Q. You will agree with me that there is no written agreement between the parties regarding vehicular repairs

A. Yes My Lord. When we started working with them, there was no written agreement.

Q. Do you have any minutes of the meeting to substantiate what you are saying?

A. My Lord I will have to go back to the office

Q. As it stands now, you agree with me that there is no formal agreement

A. No

Again, on the 15th October, 2022 when the subpoenaed witness Van Herman Nyamedor testified, he was cross-examined thus and gave the following answers (page 5 of the day’s proceedings)

“Q. You agree with me that some of the drivers go to the Plaintiff’s workshop with job orders for particular work to be done for them

A. Yes My Lord

Q. You also agree with me that some of the drivers go to the Plaintiff’s workshop without job orders, is that the case

A. *Yes My Lord*

Q. *And when that happens Plaintiff calls you on phone to say that a particular vehicle has come to the workshop for repairs or maintenance but does not have a job order, is that correct?*

A. *Yes, when he calls that a car has come to the workshop without a job order, we give a job order on the phone.*

Q. *Can you recall telling the Plaintiff to proceed with work and that you will send the job number later?*

A. *Yes"*

It must be observed that this witness being a worker at the Defendant's company was sometimes economical with the truth which inadvertently rather goes to support the Plaintiff's case with the contradictions. For example, just before the last question quoted above, witness was asked

"Q. Can you confirm giving the Plaintiff the permission to proceed with the work without a job order?

A. *No*

No, what is worth noting is that even though the witness was subpoenaed at the instance of the Plaintiff, he was treated as a Court witness. The Learned Counsel was therefore asked to cross-examine the subpoenaed witness but he declined saying "No My Lord, I have no questions for him". What it means also is that the Defendant admitted the evidence of the subpoenaed witness. In view of the admissions by the Defendant that there was no written agreement between the Parties for the repair of Defendant's vehicles but such transactions went on between the Parties, I find as proved that there was a valid contract to repair Defendant's vehicles or the vehicles of the Defendant's agents for which the Defendant was obliged upon the presentation of

the relevant invoice to pay. (See ADORMISON VRS. TETTEH [2013] 59 GMJ 62 (CA) at page 79.

Since the evidence as perused revealed clearly that there was no fast and dry rule binding the Parties to only the issuance of job orders before jobs are undertaken and also for the fact that the Defendant did in fact pay for some jobs for which no job orders were provided, that conduct estops them from denying the said convention. I therefore find as resolved the issues set down as issues 1 to 4 by the evidence.

Now, the only outstanding issue is whether or not Defendant is indebted to the Plaintiff. The evidence of the Plaintiff as testified to in his Witness Statement is that between 2017 and 2019, he issued to the Defendant various invoices for work done but the Defendant failed or refused to fully pay up the bills. In support of this assertion, the Plaintiff tendered into evidence the Exhibit C series which are invoices with the total amount of GH¢98,572. The Defendant in his evidence before this Court tendered through the Witness Statement testified via paragraphs 5 and 9 thus;-

“5. Defendant only refuses to pay for submitted invoices for work done issued by Plaintiff which has no corresponding job orders issued by the Defendant

9. Defendant is not in any way indebted to Plaintiff. Plaintiff is not entitled to any of its reliefs.”

Now, the law is that the primary obligation to introduce or produce evidence on a fact is on the party that is asserting that fact. Section 10 of the Evidence Decree NRCD 323 of 1975 provides;-

10(1) “For the purpose of this Act, the burden of persuasion means the obligation of a party to establish a requisite degree of belief concerning a fact in the mind of the tribunal or fact or the Court”.

Then under Section 17 of NRCD 323 of 1975, the provision is made thus;-

17. "Allocation of burden of producing evidence

Except as otherwise provided by law,

(a) The burden of providing 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 on the Party with the burden of persuasion as to that fact".

And so when the Plaintiff testified on the 29th June, 2022, he was cross-examined on his evidence. I will reproduce some of the questions and answers on the day for their full effect thus:-

"Q. As part of your agreement with the Defendant, you were supposed to carry out the repairs and servicing of the cars of the Defendant's customers only after you were duly authorized by the Defendants to do so, is that correct?

A. My Lord it is not true. At the beginning there was nothing like that type of an agreement. They only bring their vehicles and after repairing them I submit the invoices to them.

Q. When you say they, who are you referring to?

A. My Lord the drivers who have been bringing the vehicles

Q. Is it the drivers of Defendant customers who bring the vehicle?

A. Yes My Lord

Q. When the vehicles are brought to you for repairs, are you given specific job orders issued by the Defendant alongside?

A. Yes My Lord when I started working with them in the year 2016, there was nothing like what Counsel is saying. Somewhere along the line the Job Order System was

brought. Not all the time that the vehicles are accompanied with job orders. Sometimes I have to call to confirm what specific job I am supposed to do.

Q. So you will agree with me that the Defendant will not pay you for any work done which has no corresponding job orders issued by the Defendant

A. My Lord I do not agree"

At page 5 of the day's proceedings

"Q. Can you produce in this Court the specific corresponding job order in connection with all the invoices in Exhibit C series?

A. I did not receive any job order from the Defendant attached to the invoices classified as Exhibit C series

Q. So you don't expect the Defendant to pay you for all the novices classified as Exhibit C series

A. My Lord, the invoices covering the year 2017, the job orders system was not yet in operation

Q. Now you claim in paragraph 9 of your witness Statement that the Defendant owes you a whopping sum of GH¢98, 572.00 is that correct?

A. Yes My Lord

Q. Do you have any invoice or invoices together with specific corresponding job orders to substantiate this claim?

A. Yes I have the invoices but I do not have the job orders. They are with the Defendant."

Now, obviously and I find as a fact that it was the convention, which convention I am of the opinion was built on trust over time that the Plaintiff repairs all vehicles that came under the instructions and direction of the Defendant with or without job orders. This position to me is further corroborated with the evidence of the subpoenaed

witness who was and still a worker with the Defendant Company. I have equally, noted that the Exhibits or most of the Exhibits in the Exhibit C series was for jobs done in 2017 when the Plaintiff maintained were done during the period that the strict job order system was not operational. This assertion the Defendant could not debunk. It therefore fell on the Defendant after the Plaintiff has established this level of proof to produce the relevant persuasive evidence so as to avert a finding being made against him on that fact.

The Defendant then testified on the 10th October, 2022 by tendering in his Witness Statement and Exhibits as his evidence in chief. The Defendant insisted that they had a procedure with the Plaintiff which ought to be followed before a job is done and paid for. He could not however produce the minutes of the said meeting in which they communicated this procedure to the Plaintiff and all other garages they worked with. Defendant was asked “Q. *Do you have any minutes of the meeting to substantiate what you are saying?*”

A. *My Lord I will have to go back to the office”.*

Again, at page 3 of the day's proceedings Defendant was asked

“Q. *When was the online application created?*”

A. *My Lord, we have used two applications. First one in 2015 and the second one in 2020.*

Q. *Take a look at Exhibit B series, I put it to you that these invoices were paid even though work orders were not issued*

A. *My Lord, these invoices, the invoices we make payment are normally authenticated by myself, so before payment will be made, myself or any of my team members will sign on the invoices. So I cannot validate these invoices. However the last*

sheet in Exhibit B series which is our official document before payment of any maintenance work is done and this is generated only after job order has been created"

Now, this long winding answer to a simple question betrays the Defendant's denial of the obvious. Indeed, I have seen the Exhibit B series which were jobs equally done in 2017. They had no job orders but were paid and the word 'paid' written against the signatures and the sums. What it means is that the Defendant was simply being untruthful.

When again, whilst under cross-examination, the Defendant was asked and he answered the following questions thus;-

"Q. You did reconciliation on some invoices with Plaintiff before, is that not the case?"

A. Yes My lord

Q. And on one of the occasion, Delali was in attendance, is that not the case?"

A. Yes My lord

Q. Take a look at the last end of Exhibit C, on this invoice it was written " Plaintiff and McDenniss and Delali " have you seen that?"

A. Yes My Lord

Q. Do you agree with the Plaintiff after the reconciliation that instead of GH¢ 6, 636.00 that the Plaintiff has submitted, you will pay Plaintiff GH¢ 4, 636.00

A. My Lord I do not agree. When this reconciliation was done, the total invoices Frankwel submitted was the GH¢ 22, 186.00 and per our procedure, we go through the invoices to verify cost and work done. So deductions were made and we arrived at the difference of the GH¢ 6, 636.00 which is been asked here. So that difference, our initial position was, we cannot pay that because the cost was inflated. However, the Plaintiff came back to me to explain and plead if we can do something about the deduction

of GH¢ 6, 636.00. What I agreed with him then was since we are not going to work with him again, let's share it equally.

Q. Have you paid the 50%?

A. It was processed and payment was made

Q. Are you telling the Court that you have paid the 50%?

A. The Plaintiff called me to confirm the Defendant company paying all his outstanding claims and even as a way of appreciation, he sent GH¢ 500.00 to my mobile money but I returned that money back to him, stating it is his own money and that I only did my job

Q. Do you have any evidence of payment of the 50%?

A. From the statement we submitted from our account department, we have no outstanding claim to pay to the Plaintiff

Q. Take a look at some of the invoices in the Exhibit C series, all these invoices have job order numbers stated on them, is that the case?

A. Yes My Lord

Q. Take a look at invoice number 0000673 dated 28th March, 2019, this invoice has a job order number 28972 stated on it, not so?

A. Yes My Lord

Q. Look at invoice number 0000687 dated 12th April, 2019 with job order number 29212 stated on it, is that not the case?

A. Yes My Lord

Q. Look at invoice number 0000642 dated 15th March, 2019 with job order number 28632 stated on it, is that no so?

A. Yes My Lord

Q. Take a look at invoice number 0000698 dated 25th April, 2019 with job order number 29677 stated on it, is that not the case?

A. Yes My Lord

Q. Look at invoice number 0000607 dated 28th February, 2019 with job order number 28246 stated on it, is that not the case?

A. Yes My Lord

Q. Look at invoice number 0000610 dated 28th February, 2019 with job order number 28246 stated on it, is that not the case?

A. Yes My Lord

Q. Take a look at invoice number 0000611 dated 12th February, 2019 with job order number 27869 stated on it, not so?

A. Yes My Lord

Q. Take a look at invoice number 0000624 dated 7th March, 2019 with job order number 28014 stated on it, not so?

A. Yes My Lord

Q. Take a look at invoice number 0000694 dated 18th April, 2019 with job order number 29524 stated on it, not so?

A. Yes My Lord

Q. Look at invoice number 0000640 dated 13th March, 2019 with job order number 28405 stated on it, not so?

A. Yes My Lord

Q. I put it to you that these invoices have job orders but Defendant refused to pay Plaintiff, is that not the case

A. My Lord I cannot confirm"

Then on the 13th October, 2022, the dialogue continued thus;-

“Q. Take a look at Exhibit C series, invoice number 0000673 dated 28th March, 2019 and signed by Derrick Asare, is that not the case?”

A. Yes My Lord that is the case. It is signed by Derrick Asare but he is not a driver. He is one of the maintenance staff and as mentioned during the last sitting this particular invoice with job number 28972 has been paid. If I will clarify all the job number orders that was given previously, I can confirm that they have been paid.

Q. Can you provide evidence of payments?”

A. Yes My Lord

Q. Take a look at invoice number 0000687 dated 12th April, 2019 and signed by Derrick Asare, is that the case?”

A. Yes it is signed by Derrick and I can also confirm that this has been paid and all the other Exhibit C series

Q. Take a look at invoice number 0000642 dated 15th March, 2019 and signed by Stanley, can you confirm that?”

A. Yes My Lord I can confirm that it was signed by one Stanley and I can also confirm that this particular job order number 28632 has also been paid however the documents before the Court is not the same document the Plaintiff submitted to the Defendant Company for payment. There has been some alteration on this particular invoice. Three parts that has cost on the invoice presented were parts the company through its supplier supplied to the Plaintiff. So he was not supposed to attach cost to those three parts. So the original invoice that was submitted by the Plaintiff did not include the cost. He only had a total for two other parts, I might not be exact but about GH¢ 400.00, so this one had been altered. However the original had been paid.

Q. Can you provide evidence to substantiate?”

A. Yes My Lord

Q. Take a look at invoice number 0000698 dated 25th April, 2019 and signed by Derrick, can you confirm

A. My Lord the job number quoted 29677, I will confirm with the same car number had a total invoice of work done of about GH¢ 7, 000 which was presented to the Defendant to make payments and that particular invoice, I may not recall the invoice number because that number is different from what is attached but I will confirm the payment for that job number stated has been paid but this is a duplicated invoice for the same job. My Lord if I may clarify, two things happen, before payments will be made. We reconcile job order numbers in our system as against that provided by the Defendant and any other workshop we work with, so normally after the reconciliation, the job order numbers that is confirmed in our system are the ones we pay. So sometimes we have one job order number being used on different invoices which will not qualify for payment since every job has a unique job order number attached.

Q. Take a look at invoice number 0000640 dated 13th March, 2019 and signed by Jacob Owusu, can you confirm that

A. I will confirm that job order number 28405 has been paid

Q. These invoices were signed by defendant employees but you failed to pay them, is that not the case

A. My Lord all the job order numbers attached to these invoices, I will confirm they have been paid and are part of the attachments, the statement of account attached to our Witness Statement.

Q. In your Exhibit 2, the letter, you indicated you have no relationship with Francis Kodjo Ahonnon, is that the case?

A. My Lord as at the time we wrote this letter Exhibit 2, there was no relationship

Q. Do you agree with me that the Plaintiff is an enterprise registered under a business name known as Frankwell Auto Garage?

A. Yes My Lord all payments and all cheques were issued in the name of Frankwell Auto Garage

Q. Take a look at Exhibit C, these are invoices summing up to GH¢ 98, 572.00 submitted by Plaintiff to the Defendant, is that not the case

A. My Lord I cannot confirm

Q. And the Defendant has failed or refused to pay these invoices to the Plaintiff, is that not the case

A. That is not the case. All invoices with the correct job order and invoice numbers have been paid"

Now, apart from the defence that no job was done since no job orders were provided, the Defendant also vehemently maintained that they had paid all their liabilities to the Plaintiff. In the meantime, the evidence just quoted above shows clearly that this assertion is not true. It is also to be borne in mind that since it is the Defendants that are asserting full discharge, they were obliged to produce evidence of same by exhibiting receipts, bank statements and or endorsed invoices since it is in their exclusive possession. They cannot just keep saying we paid, we do not owe, without more. This position is emphasized by the principle in the cited case of *AGBEKO VRS. STANDARD ELECTIC CO. LTD* [1978] 1 GLR 432 @ 433 AS FOLLOWS;-

"It is a vital principle of evidence, a common place of law that proof lies upon the party who affirms and not the one who denies".

Yet again, in the Court of Appeal case of *ZABRAMA VRS. SEGBEDZI* (1999) 2 GLR 221, THE Court stated the principle thus;-

"The correct proposition is that a person who makes an assertion which is denied by his opponent has the burden to establish that his averment or assertion is true. And he does not

discharge this burden unless he leads admissible and credible evidence from which the fact or facts he asserts can properly and safely be inferred. The nature of each averment or assertion determines the degree and nature of that burden”.

On this point, I agree with the written submission of the Plaintiff’s Lawyer that Exhibit 3 did not satisfy the said criteria of proof. It failed to address the specific invoices as contained in the Exhibit C series and as rightly pointed out, the Exhibit 3 failed to state the invoice (s) number (s), that were presented by the Plaintiff for which those alleged payments were made and or job order/work order numbers which is the standard of the Defendants themselves. The approach of the Defendant is the very type or similar type that was deprecated by the Supreme Court in the case of *GHAHIN & SONS VRS EPOPE PRINTIG PRESS (1963) 1 GLR 163 (S.C)* per Blay JSC when he stated;-

“....They (Plaintiff/Respondent) merely presented a list of article they alleged they had lost, fixed prices on them and without attempting in any way to prove their values, expected the Court to award the damages to the tuen of the amounts claimed.”

In this instant case, I dare say, the Defendant only presented in Exhibit 3, a list of alleged payments without invoices and to whom the amounts were paid. How can that be?

At the close of trial, I have come to the conclusion that, the Plaintiff has been able to prove that there exist a contract or an agreement between the Defendant and the Plaintiff. That this contract was not in any formal written document and that the convention between the Parties was to execute the job brought to the Plaintiff with or without a job order and to submit invoices later on for payment. It is also clear that the Plaintiff has been able to substantiate its claims with unpaid invoices in the nature of the Exhibit C series and even though the Defendant contended that they have fully paid for all jobs executed, they could not produce evidence of payment except the bare assertion.

On the whole, I find the Plaintiff's case proved on the balance of probabilities and I award judgment for him on his claims. The Plaintiff shall recover from the Defendant the amount of GH¢98, 572.00 being the outstanding debt due and owing as at April 2019.

Interest on the said amount shall run at the prevailing Commercial Bank Lending Rate (GCB PLC) from April 2019 to date of final payment.

I award cost of GH¢7, 500.00 against the Defendants.

(SGD)

JUSTICE JUSTIN KOFI DORGU

(JUSTICE OF THE HIGH COURT)

LEGAL REPRESENTATION

MR. ERIC OSAE KORANTENG FOR THE PLAINTIFF

MR. AARON ARNOLD ANIM FOR THE DEFENDANT