

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE, COMMERCIAL DIVISION HELD IN ACCRA ON THE 1<sup>ST</sup> DAY OF FEBRUARY, 2023 BEFORE HIS LORDSHIP JUSTICE JUSTIN KOFI DORGU

CM/RPC/0226/2021

JADE E SERVICES (GH) LTD } PLAINTIFF

VRS.

DAVID DANSO } DEFENDANT

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<b>PARTIES:</b>	<b>PLAINTIFF ABSENT</b>
	<b>DEFENDANT PRESENT</b>

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### JUDGMENT

On or about the 17<sup>th</sup> December, 2020, the Plaintiff herein a private limited liability company dealing in general goods and merchandise including household and electronic appliances sued the Defendant an entrepreneur also trading in smart appliances claiming the following reliefs;-

- “a. An Order directed at the Defendant to pay the sum of GH¢144, 910.00 owed the Plaintiff
- b. Interest on the sum of GH¢144, 910.00 at the prevailing bank rate from 8<sup>th</sup> October, 2020 till date of final payment
- c. Costs inclusive of Lawyer’s fees”

The Plaintiff's Writ of Summons was accompanied by a Statement of Claim. The pertinent paragraphs of the Statement of Claim are as follows;-

- "5. The Plaintiff avers that even though payment became due on 8<sup>th</sup> October, 2019, the Defendant has only paid GH¢246, 780.00 leaving outstanding the sum of One Hundred and Forty-Four Thousand, Nine Hundred and Ten Ghana Cedis (GH¢144, 910.00).
6. The Plaintiff says that the Defendant has failed and or/refused to pay up the outstanding debt of GH¢144, 910.00 despite repeated demands made on him to do so.
7. The Plaintiff says that the Defendant has evinced an intention not to pay his outstanding debt of GH¢144, 910.00 to the Plaintiff unless compelled by this Honourable Court"

The Defendant upon service also entered appearance and filed a Statement of Defence. The case proceeded through the pretrial stage and when no settlement was reached, the following were set down as the issues for the determination by the Court. They are;-

- "1. Whether or not a credit sale agreement was entered into on the 1<sup>st</sup> day of August, 2019
2. Whether or not the failure of the Defendant to comply with the payment terms under the agreement was due to the Plaintiff's delay in delivering the goods to the Defendant.
3. Whether or not the Defendant is indebted to the Plaintiff in the sum of GH¢144, 910.00
4. Whether the Plaintiff is entitled to the reliefs endorsed on the Writ of Summons and
5. Any other issues arising from the pleadings".

When the case came up for trial, the Plaintiff filed the instant motion for judgment on admissions on the 25<sup>th</sup> day of November, 2022. The basis of the application is contained in the Affidavit in Support particularly paragraphs 6, 7, 8 and 9 of the said Affidavit in Support.

For purposes of emphasis, I reproduce the said paragraph as

- “6. That while the Defendant’s Statement of Defence did not disclose any reasonable defence, the Defendant also made material admissions of facts averred to in the Plaintiff’s statement of Claim.
7. That in particular, the Defendant admitted paragraphs 3, 4 and 5 of the Plaintiff’s Statement of Claim which contains all the material facts of the Plaintiff’s claim
8. That the Defendant denied paragraph 7 of the Plaintiff’s Statement of Claim where the Plaintiff stated that the Defendant had evinced an intention not to pay the outstanding debt of GH¢144, 910.00 to the Plaintiff.
9. That in paragraph 7 of the Defendant Statement of Defence, the Defendant admitted his debt to the Plaintiff by necessary implication when he pleaded as follows;-  
  
“Defendant denies paragraph 7 of the Statement of Claim. In answer to the said paragraph, the Defendant states that he has not refused to pay the Plaintiff but has proposed a payment term that the Defendant has refused to accept”

It is based upon the said averments by the Defendant that the Plaintiff filed the instant motion under Order 23 Rule 6 of the C.I 47.

Order 23 rule 6 provides;-

*“Where an admission of the truth of a fact or the authenticity of a document is made by a Party in a pleading or is made or deemed to be made by a party in response to a request to admit, any*

*party may apply by motion to the Court or to the Judge for such order as the Party may be entitled to on admissions without waiting for the determination of any question between the Parties, and the Court or Judge may make such order as is just”.*

Now, admission as defined by Black’s Law Dictionary (7<sup>th</sup> Edition) is “a voluntary acknowledgement of the existence of facts relevant to an adversary’s case”. Thus in the case of SAMUEL OKUDZETO ABLAKWA & ANOR V. JAKE OBETSEBI LAMPTEY & ANOR [2013-2014] 1 SCGLR 16, the Supreme Court held that “where a matter is admitted, proof is dispensed with”. In such case, then once it is established that there are unequivocal admissions, the other party, in this case the Plaintiff, is entitled to apply and truncate the full trial and take judgment on admission.

See MICHELLETI POLLA V. CRABBE [1976] 1 GLR 108.

In fact, reading through the whole of the Defendant’s Statement of Defence, the only irresistible conclusion that will be reached is that the Defendant admitted the debt. All the other averments were only explanations as to why he was unable to pay the Plaintiff. There is nowhere the Defendant challenged the Plaintiff’s figures or denied the transaction. Indeed, I dare say that the whole defence is just a ruse and to me no issues arise as the Defendant virtually admitted the claim.

And as held in the case of WESTERN HARDWOOD LTD VS. WEST AFRICAN ENTERPRISE LTD [1998-99] SCGLR 105 @ 117;-

*“In such a situation when the pleadings of the Parties are ad idem that there was a valid lease between the Apowa Stool and TBL, the Plaintiff would not be bound to lead evidence to emphasize the validity of such a lease. Such being the case, why should the Court of Appeal be compelled to tale any account of and go to the extent of articulating the legal implications of the lease to call or lead evidence to establish that the lease transaction received the requisite ministerial concurrence under Act 123”*

So do I ask in the present case, why should a Court pay any attention to a party that seeks to approbate and reprobate at the same time and require full trial of a case in

which no issues are joined. The Defendant after denying the Plaintiff's claim in his paragraph 7 goes ahead to state that the liability still lingers on because the terms of payment proposed by him were not accepted by the Plaintiff who is not bound in any way to accept them if not favourable to him. This cannot be a denial of the claim but an admission. It is necessary to point out that the Defendant never filed any opposition to the instant application. In any case, I find it meritorious and hereby grant same.

Accordingly, I hereby enter judgment on admissions for the Plaintiff against the Defendant. The Plaintiff shall recover the unpaid balance of GH¢144, 910.00 as due and owing.

Interest on the said amount at the prevailing Commercial Bank Lending Rate (GCB PLC) rate from the 8<sup>th</sup> October, 2020 till date of final payment.

I award cost of GH¢20, 000.00 against the Defendant.

**(SGD)**

**JUSTICE JUSTIN KOFI DORGU**

**(JUSTICE OF THE HIGH COURT)**

### **LEGAL REPRESENTATION**

**THOMAS ESHUN FOR THE PLAINTIFF**

**JOHN AGBOTEY FOR THE DEFENDANT**

### **CITED CASES**

SAMUEL OKUDZETO ABLAKWA & ANOR V. JAKE OBETSEBI LAMPTEY & ANOR [2013-2014] 1 SCGLR 16,

MICHELLETI POLLA V. CRABBE [1976] 1 GLR 108.

WESTERN HARDWOOD LTD VS. WEST AFRICAN ENTERPRISE LTD [1998-99] SCGLR 105 @ 117;-

