

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE (GENERAL JURISDICTION DIVISION) SITTING IN ACCRA, ON FRIDAY THE 28TH DAY OF JULY, 2023.

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SUIT NO: GJ/244/2015

GEORGINA OPOKU AGYEMANG } PLAINTIFF

*VERSUS*

1. JACOB KWAME ASIAMAHA } 1<sup>ST</sup> Defendant  
2. LEBBATT INVESTMENT LIMITED } 2<sup>ND</sup> Defendant

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***PARTIES:***

**Plaintiff – Present**

**Defendant – Present**

***COUNSEL:***

**Doris M. BANGFU for the Plaintiff - Present**

**F. Paa Kwesi ABAIDOO for the Defendants – Present**

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**JUDGMENT**

**Ackaah-Boafo, JA**

**i. Overview:**

[1] I will prefix this judgment with the quote attributed to an unknown author which states that *“Friendship is delicate as a glass, once broken it can be fixed but there will always be cracks”*. It is common ground from the facts and the available evidence that the Plaintiff, Georgina Opoku Agyemang and the 1st Defendant, Jacob Kwame Asiamah were very good and close friends. Their

friendship led to them becoming business partners in the 2nd Defendant Company, Lebbatt Investment Limited. Sadly, their friendship is broken with serious cracks due to events revealed by the evidence led in this case. The Plaintiff who initiated the action is seeking declaratory and other orders by way of formal pronouncement from this court. The Defendants seek orders of their own in the counterclaim filed.

[2] It is sad to say that, due to many reasons including the fact that the Plaintiff has had not less than four lawyers to represent her since the suit was filed almost eight years ago on December 17, 2015 at the Registry of the Court, failure of counsel to meet deadlines, filing of applications, some of which with respect were needless and adjournment requests at the instance of the parties and the court after the trial commenced in March 2019 have all led to the delay in the determination of this case. In effect, this case has taken many years with twists and turns to reach its final destination today.

[3] Per a writ of summons with a statement of claim issued in the registry of the High Court, Accra [Fast Track Division] on December 17, 2015, the Plaintiff sued for the following judicial reliefs:

- (a) A declaration that the Plaintiff is and was at all material times a shareholder with equal shares with the 1st Defendant in Lebbatt Investment Company Limited.
- (b) Interim order for the 1st Defendant to preserve the assets of the 2nd Defendant Company.
- (c) An order for the payment of the Plaintiff's salary from June 2014 to date.
- (d) An order appointing an Auditor to ascertain the assets and liabilities of the 2nd Defendant Company.

- (e) An order directing the 1st Defendant to account for his stewardship when Plaintiff was made to stay out of the operations of the 2nd Defendant from June 2014 to date.
- (f) An order for the 1st Defendant to buy the Plaintiff out of the 2nd Defendant Company or in the alternative an order for the dissolution of the 2nd Defendant Company.
- (g) Costs.
- (h) Any further relief(s) that this Honourable Court may deem fit

[3] After the service of the writ and its accompanying statement of claim on the Defendants, a Notice of Entry of Appearance was entered on December 29, 2015 by counsel followed by a statement of defence. On July 8, 2016 the Court granted the Defendants' leave to amend their statement of defence and counterclaim. The Defendants complied with the order and filed the Amended Joint Defence and Counterclaim on July 13, 2016. The Defendants' Counterclaim is as follows:

- i. Recovery of 2nd Defendant's Tata Vista Saloon Car with Registration No. ER 2299-11 in the possession of the Plaintiff;
- ii. A declaratory order that the Plaintiff is neither a shareholder or a member of the 2nd Defendant Company.

[4] Counsel for the Plaintiff relied on the Reply to the Joint Statement of Defence and defence to counterclaim filed on May 11, 2016 despite the amendment of the joint statement of defence filed by the Defendants. An application for directions was later filed by Counsel for the Plaintiff who formulated about seven issues for determination by the court. Defendants' counsel also filed additional issues.

ii. **Background Facts:**

- [5] The Plaintiff contends that she is a businesswoman and says she formed a company called Lebat Company Limited with one John Kofi Arthur to export lemon grass and used car batteries. According to her, the 1st Defendant, Jacob Kwame Asiamah later joined as partner of the Company and they became three partners with equal shares. The Plaintiff says John Kofi Arthur left the Company and so she and Mr. Asiamah became two partners with equal shares. It is the case of the Plaintiff that the said Lebat Company Limited subsequently became Lebbatt Investment Limited, the 2nd Defendant Company in this suit. The Plaintiff further contends that she and Mr. Asiamah became the only two shareholders with equal shares of 2nd Defendant Company with her acting as Director/Secretary and Mr. Asiamah acting as Director of the Company.
- [6] The further case of the Plaintiff is that during the first year of the Company, that is in 2008, she combined her full time employment at Consumer Finance Company and worked part time at the 2<sup>nd</sup> Defendant Company. According to her, the experience she gathered from working at Consumer Finance Company and Supreme Furnishers stood her in a good stead and enabled her to make contacts with suppliers who supplied items on very affordable terms for the work of the 2<sup>nd</sup> Defendant Company. It is her case that her decision was to enable the 2<sup>nd</sup> Defendant Company to be on a sound footing. Madam Opoku Agyemang says she contributed her time and resources including resources from her family members in the formation of 2<sup>nd</sup> Defendant Company in 2008. She contends she provided vehicles and her mother's money which was later paid back with interest to 2<sup>nd</sup> Defendant.
- [7] According to the Plaintiff, even though she was the directing mind of the Company, she continued to receive only allowances until 2013 because the company was at the formative stages. The Plaintiff contends that she started receiving full salary in 2013 but same was stopped at the instance of Mr. Asiamah in May 2014. The Plaintiff further contends that in October 2013, Mr.

Asiamah informed her that the 2nd Defendant Company needed to be re-registered and brought some forms for the re-registration and she filled her portion of the forms and gave same back to Mr. Asiamah. According to her, she later found out that two other persons had been added as directors of the Company without her knowledge and without due process during the re-registration of the 2nd Defendant Company.

[8] The Plaintiff further says sometime in 2014, she also discovered that her name had been removed as a signatory to the bank accounts set up in the name of the 2nd Defendant Company without her consent or prior notification. She contends that further checks later revealed that her name had been removed as a shareholder of the 2nd Defendant Company. According to the Plaintiff she confronted Mr. Asiamah but he was unable to offer any tangible explanation.

[9] The Plaintiff further stated that on 13th June 2014, Mr. Asiamah verbally barred her from entering the premises of the 2nd Defendant's Company. According to Madam Opoku Agyemang, she was subsequently served with a Letter of Interdiction on the same day. The Plaintiff stated that, as result of the action of the 1st Defendant, she has since June 2014 until when the suit was filed neither received any salary nor been involved in the management of the affairs of the 2nd Defendant Company. According to her all attempts including letters from her lawyers to Mr. Asiamah to reinstate her have been resisted by the 1st Defendant, hence the instant action because he has evinced a clear intention not to re-instate her and determined to persist in his unlawful acts unless otherwise directed by the Court. She also indicated that the Defendants are not entitled to their Counterclaim.

[10] The 1st Defendant on his part stated that Lebat Company Limited was formed by himself, the Plaintiff and one John Kofi Arthur in 2005. He disputed that

Lebat was formed by the Plaintiff and Mr. Arthur before he joined. According to Mr. Asiamah, prior to the formation of Lebat Company Ltd, he ran his own sole proprietorship under the name Jakmah Enterprise at Abossey Okai in Accra, and was in the business of supply of spare parts and pipes to Ghana Water Company Ltd all over Ghana. He also stated that Jakmah Enterprise was also into the importation of second hand vehicles from Asia. According to him, the financial resources of Jakmah Enterprise enabled him to sponsor the formation of Lebat Company Ltd from its promotion and registration to the first attempt at purchase of products for export from 2005 to 2015.

[11] The further case of the 1st Defendant is that he gave Mr. Arthur money for the purchase of car batteries and lemon grass but the money was squandered. According to him after the experiment with Mr. Arthur failed, the Plaintiff approached him to be a supplier of home appliances to Consumer Finance Company due to the attractiveness of the profit margins but he (the 1st Defendant) declined the idea and rather preferred establishing his own hire purchase company which resulted in the birth of Lebbatt Investment Limited. It is the case of the 1st Defendant that he was solely responsible for the formation, establishment of office premises, first capital for its entire operations as the company was essentially into the supply of building materials. His case is that he agreed to have the Plaintiff serve as the General Manager while he (Mr. Asiamah) assumed the position of Managing Director.

[12] Mr. Asiamah further contended that after the company was set up, he was surprised to discover later that the Plaintiff had on her own, without his consent, allotted 50% of the shares of the company which were of *no par value* to herself. He says this was the beginning of the estrangement of the relationship between him and the Plaintiff because he pressured her to correct the share index of the company by reversing the 50% shares she has taken into

the name of the 1st Defendant to make him the absolute 100% shareholder of the company but she failed to do so.

[13] The 1st Defendant further stated that the opportunity presented itself for the rectification of the share index of the company when all companies in Ghana were directed by the Registrar General's Department to re-register in 2013. According to him, for peace to prevail, the Plaintiff on her own signed a deed of transfer, a resolution and a covering letter ceding off all her shares to him and same was presented to the Registrar General's Department. It is the case of Mr. Asiamah that it was based on that the shares held by the Plaintiff were transferred to him and it was done during the process of the re-registration without any protest by the Plaintiff.

[14] The further case of the 1st Defendant is that in 2014 he detected strange withdrawals from the company's account with Fidelity Bank Towers, Accra which was operated mainly with the Abeka Lapaz branch and started monitoring the account. According to him, one day while on a trip to Cape Coast, he received an alert of cash withdrawal from the account by one Jonathan Osei Adomako, one of the employees of the 2nd Defendant Company. Mr. Asiamah said he became apprehensive because he had not counter - signed any cheque with the Plaintiff for withdrawal on the day. He contends that upon his return from Cape Coast, he quizzed the said Jonathan Osei Adomako who in turn disclosed that he (Mr. Asiamah's signature) on the presented cheque was forged by the Plaintiff in his presence and given to him to be cashed from the bank. The 1st Defendant states that following this, he raised a query against the Plaintiff and also lodged a complaint with the Hong Kong Police Station near Kwashieman, Accra. According to the 1st Defendant, based on the complaint, the Plaintiff was invited to the said Police Station and she admitted the offence in her Police Cautioned Statement.

[15] The 1st Defendant further contended that from the inception of the Plaintiff's employment with the 2nd Defendant Company until she was interdicted, she was always paid salary. Mr. Asiamah said the Plaintiff was interdicted because she forged his signature. It is also the case of the 1st Defendant that the Plaintiff apologized to him for the unlawful way she acquired the 50% shares in the company and so they mutually agreed to the reversal of the shares. According to Mr. Asiamah, as the sole-shareholder after the Plaintiff's illegal 50% shares had been transferred, he was at liberty to bring to the Board "any number of Directors to steer the affairs of the Company".

[16] The Defendants further averred that after the detection of the forged cheque the Plaintiff got her mother and her husband, together with a mutually known friend to plead for leniency from the 1st Defendant but he did not budge. In response to the Plaintiff's averments, the Defendants also pleaded that they responded and explained every issue raised by the Plaintiff's Solicitors. According to the Defendants, the Plaintiff's action of forging the signature of the 1st Defendant is a criminal act and they could not work with her until the matter was resolved by the police. They therefore stated that the Plaintiff is not entitled to her claims and prayed for the dismissal of same and the grant of their counterclaim. As stated earlier, the Plaintiff filed a reply to rebut the averments of the Defendants and defence to their counterclaim.

**iii. Issues for Trial:**

[17] At the close of pleadings, the under-listed issues were set down for determination by the court;

[a] Whether or not the Plaintiff is and was at all material times a partner with equal share with the 1st Defendant in Lebbatt Investment Company Limited;



- [b] Whether or not there existed a company called Lebat Company which was later changed to Lebbatt Investment Ltd;
- [c] Whether or not the 1st Defendant joined the Lebat Company before it was changed to the 2nd Defendant Company;
- [d] Whether or not the Plaintiff consented to ceding her shares in the 2nd company to the 1st Defendant;
- [e] Whether or not the removal of the Plaintiff's name as a signatory to the 2nd Defendant's Company's accounts was legitimate;
- [f] Whether or not the 1st Defendant verbally asking the Plaintiff not to step foot on the premises of the 2nd Defendant Company and subsequently following it up with a letter of interdiction was lawful;
- [g] Whether or not the Plaintiff is entitled to the reliefs endorsed on her writ.
- [h] Any other issues arising from the pleadings

**The additional issues are as follows;**

1. Whether or not Lebat Company Limited has been officially liquidated or amalgamated with Lebbatt Investment Company Ltd.
2. Whether or not the 1st Defendant has been a Director/shareholder of Lebat Company Ltd from its inception.
3. Whether or not Plaintiff contributed towards the formation of Lebat Investment Ltd.
4. Whether or not Defendants are entitled to their counterclaim against the Plaintiff.

[18] After the mandatory pre-trial conference the matter was set down for trial. At the trial, the Plaintiff testified herself and called three other witnesses to close her case. The 1st Defendant also testified in his own defence and on behalf of the 2nd Defendant called one witness. The Defendants also subpoenaed

witnesses some of whom only tendered documents and thereafter announced the closure of their case.

**iv. The Court's Evaluation & Analysis of the Evidence:**

[19] Now, in resolving the dispute among the parties, I am of the opinion that the issues to be determined are both legal and factual. The factual issues are to be determined by credible evidence adduced before the court. However, in the determination of the factual issues, the court applies tests based on legal principles to arrive at a conclusion as to whether or not any of the parties has proved his case to the standard required by law. This is because the law is trite and same supported by statute that for a court to decide a case one way or the other, each party to the suit must adduce evidence on the issues to be determined by the court to the standard prescribed by law.

[20] The above legal position is supported by various provisions of the Evidence Act 1975 (NRCD 323). Section 14 of the Act for instance provides:

*“(14). Except as otherwise provided by law, unless and until it is shifted a party has the burden of persuasion as to each fact the existence or non existence of which is essential to the claim or defence he is asserting”.*

[21] The burden of producing evidence by both sides in the suit as well as the burden of persuasion is one to be determined on the preponderance of probabilities as defined by Section 12(2) of the Evidence Act 1975 (NRCD 323). The Defendants having endorsed in their pleadings with a counterclaim also carries the burden of proving the facts alleged in the Defence and Counterclaim to the same degree as the burden the Plaintiff carries in proving his claim against the Defendant.

[22] Further, the law on proof is, in civil cases like the instant, quite clearly, stated in sections 10(1) (2) (b), 11(1) (4), 14 and 17 of the Evidence Act, 1975 (NRCD 323). In **Okudzeto Ablakwa (No. 2) v. Attorney General & Another [2012] 2 SCGLR 845** at 867 the court explained the law governing proof when it stated 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. This rule is further buttressed by section 17 (b) which, emphasizes on the party on whom lies the duty to start leading evidence...”

[23] It is also trite law that for every case there is a burden of proof to be discharged and the party who bears the burden will be determined by the nature and circumstances of the case and there is no paucity of case law interpreting the provisions of NRCD 323. One of such cases is the case of **Ababio v Akwasi III [1994-95] GBR, Part 11, 74** in which the court stated that a party whose pleadings raise an issue essential to the success of the case assumes the burden of proving such issue. I shall now proceed to examine the evidence adduced in support of the Plaintiff’s case and will relate same in the context of the standard of proof I have already set out in this judgment.

[24] I will now deal with the issues set down by the parties for determination by the court, but not in the order set out above. I propose to combine the Plaintiff’s issue “C” and the additional issue 2 and deal with them simultaneously first. Those issues are as follows:

*Whether or not the 1st Defendant joined the Lebat company before it was changed to the 2nd Defendant Company; and*

*Whether or not the 1st Defendant has been a Director/shareholder of Lebat Company Ltd from its inception.*

[25] Giving evidence as per the adopted witness statement on the above issues, Madam Opoku Agyemang testified that “sometime in the year 2005, I formed a company with John Kofi Arthur to export lemon grass and used car batteries for our mutual benefit”. She tendered **Exhibits A1, A2 and A3** being the Certificates of Incorporation, Certificate to Commence Business and VAT Certificate of Registration. According to Madam Opoku Agyemang, the Company’s name was *Lebat* and the name was derived from the first two letters of “*lemon*” and the first three letters of “*batteries*”. The Plaintiff further testified that sometime after the establishment of the company, the 1st Defendant, Mr. Kwame Asiamah joined and they became three partners with equal shares in the company. The Plaintiff further testified that the man she started the Company with, John Kofi Arthur embezzled an amount of GH¢18,000.00 and was found guilty by an Accra Circuit Court. She tendered a copy of the statement she made to the Police during the investigation as **Exhibit “B”**. The further testimony of the Plaintiff was that Mr. John Kofi Arthur later left the company and the 1st Defendant and herself became the only two partners with equal shares in the company, with the 1st Defendant as Director and she, the Plaintiff as the Director/Secretary.

[26] As stated in the facts above, the 1st Defendant, Mr. Kwame Asiamah’s version of how he joined the Lebat Company is different from the Plaintiff’s narrative. The testimony of Mr. Asiamah was that prior to the formation of the company, which is the 2nd Defendant in these proceedings he “together with one John Kofi Arthur and the Plaintiff herein formed a company by name LEBAT Company Limited with the object of exporting lemon grass and used car batteries and the three of us remained the Directors/Shareholders of this

company". He tendered the Certificate of Incorporation of the Company as **Exhibit "5"** and the Certificate to Commence Business as **Exhibit "6"**.

[27] According to Mr. Asiamah "The one and only attempt to export by this LEBAT Company Ltd. was when John Kofi Arthur embezzled an amount of GH¢10,000.00 raised by me for the purchase of lemon grass and batteries for export. As a result John Kofi Arthur was reported to the police, arraigned before the Accra Circuit Court and subsequently convicted which made him inactive. Yet no step was taken to take out his name as a member/director of LEBAT Company Ltd. and the said company has ever since gone into complete oblivion. It is therefore not true that with the exit of John Kofi Arthur, I and the Plaintiff herein became partners with equal shares in the said LEBAT Company Ltd. I wish to tender the Regulations on Lebat Co. Ltd in evidence marked as **Exhibit "7"**.

[28] Writing on this issue, Counsel for the Plaintiff stated at page 8 of the submission filed that "Per the evidence on record (Exhibits 5, 6 & 7), it is not in doubt that Lebat Company was incorporated in September 2005 with Plaintiff, 1st Defendant and one John Kofi Arthur as Directors and equal shareholders". Counsel for the Defendants on his part stated at page 15 of his submission that "It is my humble submission that these are hard facts which if established by documentary evidence cannot by the stretch of any human imagination be changed. Intrinsically within these two (2) issues is the incontrovertible admissions of the fact that there existed an entity called Lebat Company Ltd and the existence of this company preceded Lebbatt Investment Ltd". To Abaidoo, there was no need for the issues to be discussed because he referred to the exhibits tendered by the Plaintiff and the Defendants referenced above and said there was no controversy that there was a company called "Lebat" and later "Lebbatt" also followed.

[29] The Court respectfully disagrees with Defendants' Counsel and how he perceived the issues under discussion because the narratives of the parties are not the same. While the Plaintiff contends she started the Lebat Company with John Kofi Arthur and the 1st Defendant later joined, the 1st Defendant says the three of them started the company together. From the exhibits tendered by the Plaintiff being the certificate of incorporation, the certificate to commence business and the VAT Certificate it is difficult to know who the shareholders of the Company were. However, **Exhibit "7"**, tendered by the Defendants, being the Regulations of the Company reveals that when the Lebat Company was registered, there were three shareholders with equal shares of 5,000 each. The named shareholders were "Georgina Opoku Agyemang, John Kofi Arthur and Jacob Kwame Asiamah". To that extent, it is my holding that at the time of incorporation of Lebat Company Limited, the 1st Defendant, Jacob Kwame Asiamah was part of same and the Plaintiff's position that Mr. Asiamah joined after the incorporation is not supported by the evidence heard. I therefore resolve the combined issues under discussion against the Plaintiff.

[30] I next turn to deal with the Plaintiff's issue "**B**" and the additional issue "**1**".

Those are as follows:

*Whether or not there existed a company called Lebat Company which was later changed to Lebbatt Investment Ltd, and*

*Whether or not Lebat Company Limited has been officially liquidated or amalgamated with Lebbatt Investment Company Ltd*

[31] Speaking to the issues, the Plaintiff testified that following the exit of the said John Kofi Arthur, "it became necessary to change the name of the Company to Lebbatt Investment Company in 2008, which then became a hire purchase Company. The 1st Defendant and I so did". She tendered Exhibit "**C**", the

Certificate of Incorporation. She further stated that “My Lord, I wish to respectfully state with certainty that from 2008 till I was unlawfully removed, I was an integral part of the 2nd Defendant Company. Attached and marked as **Exhibits D1, D2, D3 and D4** are Daily call sheets, Memo on phone numbers and call sheets, memo on commission payment and a memo to all staff”.

[32] On the issues under discussion, the 1st Defendant’s evidence was that “It is not true that LEBAT Company Ltd subsequently changed into LEBBATT Investment Limited. There has never been a conversion of LEBAT Company Ltd into another company neither has it amalgamated with any other company or undergone liquidation. Thus the claim of change of LEBAT Company Ltd into LEBBATT Investment Limited by the Plaintiff remains very much unfounded. This is confirmed by an application for a search at the Registrar General’s Department by my lawyer and the result confirmed same. I shall tender copies of both the application and the result in evidence as **Exhibits “8”** and **“9”** respectively.

[33] Again, writing on issue “B”, Counsel for the Plaintiff stated in the written submission as follows:

Per the evidence on record (Exhibits 5, 6 & 7), it is not in doubt that Lebat Company was incorporated in September 2005 with Plaintiff, 1st Defendant and one John Kofi Arthur as Directors and equal shareholders.

Again per the evidence on record, (Exhibits 3 and 4) 2nd Defendant was incorporated in 2008 with Plaintiff and 1st Defendant as the only Directors and shareholders with equal shares.

The issue is however whether Lebat Company which was later changed to Lebbatt Investment the 2nd Defendant Company.

Even though, it is a fact per the evidence on record that both Plaintiff and 1st Defendant were directors and shareholders of the two companies and that the

names of the two companies are similar, we concede that Lebat Company was not changed into Lebbatt Investment the 2nd Defendant in the strict sense of a corporate variation either by way of merger, acquisition or otherwise.

[34] Defendants' Counsel on his part submitted that there is evidence that there was a company called Lebat Company Ltd before Lebbatt Investment Ltd was incorporated but there is no evidence that the two companies amalgamated and/or merged together. Counsel further submitted that;

“... for all intents and purposes in law, they stand as two different corporate entities as Lebat Company Ltd only went into oblivion but was not liquidated. I am guarded in this submission by tenets of Section 238(1)(a) and (b) (i) and (ii) of the Companies Act 2019 (Act 992) which in résumé state among other recommendations that for a lawful merger of two or more companies, the transferor company may be put into voluntary liquidation, there must be a special resolution of members unanimously agreeing to the transfer of the company to a transferee company for shares and there must be a winding-up procedure for the transferor company under the Body Corporate ( Official Liquidation) Act, 1963 (Act 180) and the law insists that any such arrangement or merger and the sale and distribution “...**SHALL NOT BE VALID UNLESS SANCTIONED BY THE COURT**”. My Lord, no shred of evidence was led by the Plaintiff to establish her accomplishment of any of these imperatives of law in relation to a merger. Therefore for her to make a sheer acidic utterance in law that one company was absorbed by another or in specific terms Lebat Company Ltd was absorbed by the 2nd Defendant herein is indeed very fallacious”.

Learned Counsel further submitted that while there is evidence that the two companies are different entities, there is no evidence that Lebat is the Company that became Lebbatt Company, the 2nd Defendant herein.



[35] From the evidence, the Plaintiff contends that it is Lebat that changed to become Lebbatt, but the Defendants disagree. So, whose position is supported by the evidence? I note that Counsel for the Defendants cross-examined the Plaintiff on her position and that is captured in the proceedings of April 16, 2019. The following is a snippet of the said proceedings:

“Q: Yet from 2005 to date no step was taken to liquidate Lebat Company Limited in the records of registrar of companies

A: My lord I did not know any liquidation of companies.

Q: I put it to you that the entity Lebat Company Limited has to date not been liquidated in the records of the Registrar of companies.

A: My lord we abandoned the company when we failed to do the purpose for which it was established, so the company was abandoned so I do not know of any liquidation.

Q: Again, Lebat Company Limited did not merge with any other company so far as the Registrar of Companies is concerned.

A: There has not been any merger between Lebat Company and any other.

Q: Therefore, Lebat Company Limited has not changed so far as the records of the Registrar General records is concerned into any other new entity.

A: It is still the same because it was abandoned....

Q: That entity called Lebat Company Limited was never changed as an entity into Lebbatt Investment Limited.

A: It was not changed as an entity.

Q: Therefore, your testimony that there was such a change is untrue.

A: My lord that is the truth because Lebbatt and Lebat was formed from the same words.

Q: I am suggesting to you that sheer semblance in pronunciation of the first word of these two companies do not make them one and the same company or a change from one to the other

A: Yes my lord”.

[36] The above evidence to my mind speaks loud and clear that there is no evidence that Lebat Company Limited is what became Lebbatt Company Limited, the 2nd Defendant herein. Indeed, Exhibit 12 tendered by the Defendants shows that the Regulations of Lebbatt Company Limited was registered with the Registrar of Companies to give it the standing as a legal entity that became the 2nd Defendant herein. As was held by the Supreme Court in the case of **Dupaul Wood Treatment v. Asare**<sup>1</sup>:

“.... a company comes into existence when its regulations are delivered to the Registrar of Companies and he enters the same into his register. It is the act of registration that incorporates the company, such incorporation being evidenced by the Registrar’s certificate of incorporation”.

[37] Based on the evidence and the consideration of the exhibits tendered, it is my holding that though there existed a company called Lebat Company Limited, there is no evidence it is the same company which later became Lebbatt Investment Limited, the 2nd Defendant herein. There is also no evidence that Lebat Company Limited was officially liquidated or amalgamated with Lebbatt Investment Company Ltd. In my view, based on the evidence nobody would and should plausibly accept the Plaintiff’s contention that Lebat Company Limited is what has become Lebbatt Investment Limited. I therefore resolve the two combined issues against the Plaintiff.

[38] I now turn my attention to issue (A) and the additional issue “3”. Those issues are as follows:

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<sup>1</sup> [2005-2006] SCGLR 667 @ 696-697

*Whether or not the Plaintiff is and was at all material times a partner with equal share with the 1st Defendant in Lebbatt Investment Company Limited; and*

*Whether or not Plaintiff contributed towards the formation of Lebbatt Investment Ltd.*

These issues are certainly the most contentious issues in this suit. Like the earlier ones discussed above, the parties took different positions.

[39] The Plaintiff's evidence was that she was an integral part of the 2nd Defendant Company and was a shareholder with the 1st Defendant until she was forcibly removed. She tendered documents such as the Company's Daily call sheet, Memo and call sheets to show that she was part of the company. According to her, to help in the smooth running of company, "we opened two bank accounts with Standard Chartered Bank, Opeibia Branch with account no. 0100117812000 and GCB Bank, Abelemkpe Branch with account no. 1331130000330 in 2008 with only the two of us as signatories". Madam Opoku Agyemang further stated that she contributed her time and resources including "a Hyundai Mighty Truck with registration number GW 3534 X which we used for two years to do deliveries. This truck was sold in February 2013 for GH¢12,500.00, but the 1st Defendant out of greed paid GH¢8,500.00 into my account after a year, on 25th February, 2014 saying that the GH¢4,000.00 had been paid into Lebbatt account because the engine broke down in the course of using it to do deliveries for the company and that amount was used to purchase a new engine for the truck".

[40] The Plaintiff's further testimony was that, for the use of the truck, she did not collect anything from the company despite the wear and tear that occurred when the truck was used because according to her "I believed then that it was my contribution towards the building of the "baby" Company of which I was a partner". She further testified per the witness statement that she put up her "Isuzu pickup with Registration Number GW 499 R and Nissan Primera with Registration Number GW 4632 S all for the use of the company". The Plaintiff

further testified that her own mother “who had gone on pension also loaned the company some money in the name of helping the 2nd Defendant Company of which I am a partner to grow”. She tendered Exhibits F1, F2, F3 and F4 as “Loan Agreement, a reminder from the lender, Mrs. Elizabeth Opoku Agyemang, a receipt of loan repayment and a letter acknowledging full payment of loan respectively”. She said despite her immense contribution to the establishment of the 2nd Defendant Company, she initially received only allowances because the Company was a growing one.

[41] The Plaintiff called as a witness, Madam Elizabeth Opoku Agyemang to testify in support of her case. Her evidence was as follows:

“In the year 2010, the Plaintiff told me that the 2nd Defendant Company which she had just formed with 1st Defendant needed some capital injection so I loaned the company GH¢40,000.00 to be refunded over a period with interest. My Lord, even though management of the 2nd Defendant Company defaulted in the course of repaying the money, it was finally paid in full to me and I acknowledge receipt of same”.

[42] Mr. Emmanuel Ashirifi was also called as a witness. His evidence was that he joined Lebbatt Investment Company Ltd as an accounts officer in 2009/2010. He testified that he had known the Plaintiff from the time when she worked with Consumer Finance Company Ltd. According to him, he worked with the 2nd Defendant Company as an Accountant and in the course of his work he came across documents to Registrar General’s Department which showed the Plaintiff and the 1st Defendant as the only shareholders in the 2nd Defendant Company”.

[43] The 1st Defendant on his part testified per the witness statement that the 2nd Defendant is a company registered under the laws of Ghana and engaged in

the business of hire purchase. Mr. Asiamah says he formed the company and presently he owns all the shares. He tendered the Current Certificate of Incorporation and the Regulations of the company as **Exhibits "3" and "4"** respectively. Mr. Asiamah testified that he left the registration of the 2nd Defendant Company with the Plaintiff and it was when she returned the registration forms that he detected that she had allocated 50 percent of the total shares of the company to herself leaving him with the remaining 50 percent shares. The initial incorporation document was tendered as Exhibit "10" and the Certificate to Commence Business was also tendered as **Exhibits "11"** together with the old Regulations of the Company marked which was also tendered as **Exhibit "12"**.

[44] Based on the above, the 1st Defendant maintained that the Plaintiff's acquisition of the 50 percent shares in 2nd Defendant Company was without his approval and it "became a serious bane of misunderstanding between the Plaintiff and I since she did not make any contribution be it in cash or kind towards the formation of this company. I raised the initial capital including my placement of a 10 years leased property at the disposal of the company for use as its office premises". Mr. Asiamah said "as a result the Plaintiff's arrogation unto herself of the position of Director and Secretary of the company was constantly challenged by me".

[45] The 1st Defendant further testified that all the monies spent by him on the 2nd Defendant came from his then existing sole proprietorship business called Jakmah Enterprise. He tendered the Certificate of Registration of Jakmah Enterprise as **Exhibit "13"** and the Registrar General's Form A on Jakmah Enterprise also as **Exhibit "14"**. The 1st Defendant also told the Court that Jakmah Enterprise was into the importation and sale of spare parts and used cars from Dubai and South Korea before the incorporation of the 2 Defendant

herein. Mr. Asiamah tendered Exhibits 15 and 16 series to support his testimony. The said documents included Annual Statements of the business from 2005 to 2015, Financial Statements, Business Incorporation documents, etc. Mr. Asiamah's position is that he single handedly financed the 2nd Defendant Company and the Plaintiff did not provide any financial support.

[46] Writing on these issues, Counsel for the Plaintiff rehashed the evidence of the 1st Defendant that he had no idea as to how the Plaintiff acquired the shares and submitted that the Plaintiff maintains that, she has not ceded her shares in 2nd Defendant and therefore any purported alteration of her shares was without her knowledge. Counsel stated that "Plaintiff is in Court seeking for amongst other reliefs a declaration that the Plaintiff is and was at all material times a shareholder with equal shares with the 1st Defendant in Lebbatt Investment Company Limited". On whether the Plaintiff contributed towards the formation of the 2nd Defendant, Counsel referred to the testimony and the documents submitted by the 1st Defendant and stated as follows:

"...There is however evidence on Record (Exhibit M, N, P, Q and S) that Plaintiff's mother PW2 loaned some money to 2nd Defendant which loan was subsequently repaid. It is Plaintiff's case that the money her mother PW1 gave to 2nd Defendant was to help augment the finances of 2nd Defendant as 2nd Defendant was in financial distress. (cf pages 43 to 45 of the Record of Proceedings.)

The irony of the situation is that while 1st Defendant insisted that he singlehandedly financed the affairs of 2nd Defendant without any contribution from Plaintiff, he indicated under cross examination that pages 86 to 89 of the Record of Proceedings that 2nd Defendant was insolvent and they were not able to pay for rent advance and pay salaries. It is also on record that Defendants on 7/02/2020 filed an application for leave to convey entire office

items of 2nd Defendant Office equipment to another location for the reason that the rent had expired which application was granted.

If it is actually the case that it was only 1st Defendant was financing the affairs of 2nd Defendant without any contribution from Plaintiff as he sought to suggest, then 2nd Defendant Company should not be insolvent after the purported interdiction of Plaintiff.

We submit that the insolvency of 2nd Defendant after the purported interdiction of Plaintiff lends credence to Plaintiff's case that she was the directing mind of 2nd Defendant Company and that 1st Defendant was not involved in the day to day running of 2nd Defendant and that explains why 2nd Defendant started having challenges in the absence of Plaintiff".

[47] Counsel for the Defendants on his part submitted that;

"the determination of this issue is a pure question of fact which should not generate any controversy at all. It is whether there existed any official document pointing to LEBBATT INVESTMENT LTD as a Partnership. The answer is an emphatic "NO", per the Plaintiff's own **Exhibit 'F'** (the Certificate of Incorporation on Lebbatt Investment Ltd dated 8<sup>th</sup> January, 2008) and **Exhibit 'G'** (the Certificate to Commence Business dated 9<sup>th</sup> January, 2008). Lebbatt Investment Ltd was simply registered as a Limited Liability Company. It is therefore totally strange for anyone to refer to such an entity as a Partnership. The legal *maxim res ipsa loquitur* to wit (let the matter speak for itself) must be invoked here. From all the character manifestations and inscriptions on the face of these 2 Exhibits expressly suggest or impliedly point to a partnership as properly understood in law in accordance."

Counsel went on to write about partnership as stated in law and referred to parts of the testimony of the Plaintiff and concluding that the court "requires no further shred of evidence in discrediting the Plaintiff on this score by

holding that the Plaintiff could not and is not a corporate partner of the 1st Defendant”.

[48] On whether the Plaintiff contributed towards the formation of the 2nd Defendant, Counsel for the Defendants submitted that “In order to unravel this issue, this question could be put bluntly as follows;- Who financed the formation of Lebbatt Investment Limited?. Although this issue seems simple and unassuming yet same remains the nerve centre of the whole litigation between the parties as the issue of ownership of shares in the 2nd Defendant Company and share transfer stems out of this issue”. Counsel again retailed the story of the Plaintiff where she stated among others that after the termination of her employment with Supreme Furniture in Cape Coast, she was given a terminal award / severance award which funds enabled her to even travel to Dubai for wares to sell in Ghana and also establish her own water delivery business. Counsel stated that interestingly the Plaintiff failed to prove or exhibit any documents in proof of her financial status at the time and could not put before the Court any Bank Statement reflecting her capital base for business neither could she furnish the Court with any way bill of lading on her alleged imports from Dubai or on the water business.

[49] Based on the above, Counsel cited the oft quoted case of **Majolagbe v. Larbi and Others [1959] GLR 190** where Ollennu (J) held at holding 4 that “*where corroborative evidence must exist, the Court expects party who makes an averment ( which the other side denies) to cause such corroborative evidence in support of his own.*” Counsel backed the case law with Statutory law by referring to Section 11(1) of the Evidence Act 1975 (NRCD 323) which reads;- “*for the purposes of this decree, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling against*



*him on the issue.*” Counsel further submitted that none of the witnesses called by the Plaintiff at the trial corroborated the facts about her finances.

[50] On the contrary, Counsel submitted that the 1st Defendant tendered in evidence such as the Certificate of Incorporation of Jakmah Enterprise and the financial statements from 2005 to 2015, invoices on his sales from October 2002 to January 2008 as Exhibit 16 to further establish his financial status and to demonstrate that he had the financial wherewithal to support the formation of the 2nd Defendant Company.

[51] In the opinion of the Court the resolution of the first issue, which was the issue set down by the Plaintiff are in two parts. The first part is *whether or not the Plaintiff was a partner with equal shares before the registration and whether she remains a partner?* In resolving the first part, I am of the respectful opinion that Defendants’ Counsel’s approach to the issue was too narrow. I say so because it is clear that the Plaintiff’s use of “partnership” in her testimony which she repeated *ad nauseam* had no legal basis and Counsel did not have to focus on same in his submission. In the same vein, the Court with respect also did not find the submission of Plaintiff’s Counsel on the issue useful at all.

[52] The 1st Defendant’s testimony that he solely had 100% shares in the 2nd Defendant’s Company and did not understand the circumstance by which the Plaintiff got for herself 50% shares after he filled the forms for the registration of the 2nd Defendant Company did not persuade me. I find his story not believable because according to him he became aware soon after the registration when he and the Plaintiff went to open a bank account but there is no evidence that he took any action to reverse same. The evidence before this court per **Exhibit 12**, the Regulations of the Company is that at the time of the registration the 1st Defendant and the Plaintiff were equal shareholders.

[53] In the case of **Yorkwa v. Duah** [1992-93] GBR 275 it was held that “*The practice of the courts was to lean favourably towards documentary evidence especially where the documentary evidence was found to be authentic and the oral evidence was conflicting*”. The same principle was re-echoed in the case of **Fosua & Adu-Poku v. Dufie (decd) & Adu Poku Mensah** [2009] SCGLR 310, which held that it was settled law that documentary evidence should prevail over oral evidence. Thus, where documents supported one party’s case as against the other, the court should consider the latter party was truthful but with faulty recollection. Since the documentary evidence confirms who the shareholders were in 2008 when the 2nd Defendant Company was registered, I reject the 1st Defendant’s explanations which, to mind are not convincing and persuasive. If indeed, the Plaintiff acquired the shares at his blind side, he should have taken steps to immediately reverse same. I therefore hold that the Plaintiff was at all material times a partner with equal share with the 1st Defendant in Lebbatt Investment Limited at the time of incorporation.

[54] The holding above leads me to consider the second part of the issue, and it is *whether or not the Plaintiff is still a partner of the 2nd Defendant Company*. It is the case of the 1st Defendant that the Plaintiff ceded her shares in the company sometime in 2013 when the company was re-registered. The 1st Defendant tendered Exhibit 19, being a letter dated 16th October, 2013 titled “*Notice of Ceding of Shares in Lebbatt Investment Ltd*”. The letter is signed by the Plaintiff and it is addressed to the Registrar, Registrar General’s Department. It is the case of the 1st Defendant that based on the said letter, upon re-registration, he became the sole shareholder with 100% shares in the 2nd Defendant Company as per Exhibits ‘4’ and CE15.

[55] The Plaintiff disagrees and says she did not author Exhibit 19 and also did not file any deed of transfer of shares. To the Plaintiff therefore, Exhibit 19 was forged and she remains a shareholder of the 2nd Defendant Company. The Court finds the Plaintiff's position to be untenable and without legal basis. First and foremost, she did not plead "forgery" in her reply and defence to counterclaim filed on May 11, 2016. In my opinion, it was revealing and clear to know that in the course of the trial, the Plaintiff attempted to take certain action ostensibly to overreach the Court on this issue in order to bolster her position that her signature on Exhibit 19 was forged.

[56] On July 22, 2020 when the Madam Opoku Agyemang was cross-examined the following crucial evidence was elicited:

"Q: Could you please take a second look at the 1st Defendant's Exhibit 19 at page 243. When did you first see this document?

A: My Lord, I saw this document here.

Q: Here, as in this very Court room?

A: Yes, my Lord.

Q: And when did you allegedly detect that your name had been removed as a supposed director of Lebbatt Investment Limited?

A: My Lord in May 2014 when I went to Registrar General for copies of the documents re-registered, that was when I realised the changes in the shareholding structure and I still remains as the director.

Q: Was it before or after your commencement of this action?

A: My Lord it was before I had commenced this action, it was based on that result that I took action.

Q: You will agree with me that the only person who could remove your name as a shareholder of Lebbatt Investment Limited was the Registrar of Companies?

A: Yes, my Lord but they can only do that based on a deed of transfer signed by me of which a share certificate will be issued.

Q: Have you petitioned the Registrar of Companies for the removal of your name from Lebbatt Investment Limited as a shareholder?

A: My Lord I have not petitioned but an action is being taken against them.

Q: What sort of action have you taken against the Registrar of Companies?

A: My Lord an action for them to explain why my 50% had been taken away without my consent and damages.

Q: Your supposed action is at what forum?

A: My Lord I am taking them to a competent Court of jurisdiction.

Q: By your choice of the present continuous “I am taking them”; are you suggesting that you are about to take them or have you taken the action?

A: My Lord I said that action is being taken against them and in a competent Court of jurisdiction.

Q: What is this ‘competent Court of jurisdiction’?

A: My Lord I do not remember, unless I check.

Q: When did you take this action?

A: My Lord beginning of the year”.

Despite the testimony of the Plaintiff, it turned out that no action in any “competent court of jurisdiction” was taken by the Plaintiff.

[57] Also even though the Plaintiff claimed that her signature was forged, it became clear that she only reported the alleged forgery during the pendency of this suit. On 23 October, 2020 the following exchange took place between the Plaintiff and the Defendants’ Counsel:

“Q: I put it to you that if indeed your allegation of forgery of Exhibit “19” with regards to your signature was to be true and not an afterthought, you would have taken an action against the 1st Defendant to that effect.

A: My Lord Exhibit "19" is true that my signature had been forged and it is not an afterthought, for action has been taken against the 1st Defendant and it is still with the CID which he (1st Defendant) had been called more than twice to the CID. The process is still ongoing.

Q: **You initially lodged this complaint of forgery against the 1st Defendant with the Greater Accra Regional Police. Am I right?**

A: **Yes, my Lord.**

Q: The Greater Accra Regional Investigators **went into the matter and realised that your complaint was baseless for which the docket was closed.** Am I right?

A: That is **not so my Lord and no docket has been closed.**

Q: You subsequently **repeated your complaints with CID Headquarters.** Am I right?

A: **Yes, my Lord.**

Q: If the matter had not been closed by the Greater Accra Regional Police, why do you repeat your complaint with CID Headquarters over the same matter?

A: My Lord it was not closed, after my report at the CID Headquarters, they liaised with the Greater Accra Regional Command for the docket and there was no proper investigations done so the CID Headquarters have done proper investigation and the matter is still with them.

Q: **It was while you were under cross-examination in this very forum that you decided to commence this action against the 1st Defendant with CID Headquarters. Am I right?**

A: **Yes, my Lord.**

Q: Your Writ in this particular case never alleged forgery nor particularised forgery. Is that not so?

A: Yes, my Lord.

Q: **So confronted with that situation, you have decided to resort to the police to fill in with your case of forgery.** Is that not so?

A: **Yes, my Lord**". [Emphasis Mine].

[58] In my respectful opinion, the above speak plainly to the fact that there is no legal basis to the Plaintiff's contention that her signature on Exhibit 19 was forged. Applying the principle stated above that documentary evidence should prevail over oral evidence, I hold that based on **Exhibits 4** and **CE15**, the 1st Defendant is now the sole shareholder of the 2nd Defendant Company. The Court's position is fortified by the testimony of the subpoenaed witness, Mr. Vincent Darku from the Registrar General's Department who testified that their record show Mr. Asiamah as the sole shareholder. He also confirmed that they have in their record a deed of transfer signed by the Plaintiff. On 17th January 2023, the following evidence was elicited when he was cross-examined by the Plaintiff's Counsel.

"Q: Also per page 3 of your Exhibit CE16, Plaintiff and 1st Defendant are equal shareholders with 2,500 shares each.

A: That is so. Again, the update changes the share structure of the company and that we have a sole shareholder in our new system i.e. the E-Registrar.

Q: There is a procedure for the change of shareholding and directors in the records of the Registrar General's Department. Is that right?

A: **Yes, my Lord.**

Q: And as part of such procedure, there should be supporting documents to evidence the said changes.

A: Yes my Lord, the office of the Registrar of Companies relies on the document by name Deed of Transfer of Shares and without this Deed of Transfer of Shares, shares will not be transferred to any other party. And it was based on this, that is why the Registrar effected the changes for

the company to have sole shareholder currently and there is no way the Registrar could do this without the Deed of Transfer of Shares and whether the deed is retrieved or not, there is a presumption of regularity”.

- [59] Again, despite the protestations of the Plaintiff that there was no deed of transfer, the evidence is clear that there was and it was based on that, the transfer was effected by the registrar of Companies. The legal effect of the re-registration and everything done in connection therewith at the Registrar-General’s Department in their normal official duties is presumed regular. See: **Seidu Mohammed v Saanbaye Kangberee (2012) 2 SCGLR 1182**. The Supreme Court in held:

*“It is presumed that institutions of State like the Lands Commission, Survey Department and the Land Title Registry conduct their affairs with a certain degree of regularity in line with statutes that established them. Thus unless there is a strong evidence to the contrary, such a presumption should not be washed away.”*

I apply the above decisional law and also invoke the presumption of regularity under section 37(1) of the Evidence Act, 1975 (NRCD 323), popularly known by its Latin expression *omnia praesumuntur rite esse acta* to hold that the re-registration is *prima facie* evidence of the 1st Defendant’s present shares or equity in the company. Consequently, based on all of the above therefore, I resolve the second part of the issue under discussion against the Plaintiff and hold that she is not at this material time a partner with equal share with the Plaintiff in Lebbatt Investment Company Limited.

- [60] The next issue to resolve is whether or not Plaintiff contributed towards the formation of Lebbatt Investment Ltd. On this issue, in my respectful opinion, Plaintiff’s Counsel’s submission failed to address the question. Counsel

recounted the position of the Plaintiff by repeating the loan granted to the 2nd Defendant by the Plaintiff's mother and the unsupported story of the Plaintiff that the Company had a paltry sum of money in its account before the loan from her mother. With respect to the Plaintiff, the evidence is clear that at the time the company took the loan from Madam Elizabeth Opoku Agyemang, the Company had been registered and in existence. In any case, the Plaintiff herself confirmed that the said loan has been paid.

[61] The issue is the contribution towards the formation of the company. Having reviewed the evidence heard and the documents tendered, I endorse the submission of Defendants' counsel that the Plaintiff's testimony of the contribution were mere words without substance. The Plaintiff testified that before meeting Mr. Asiamah she had money and was in business, interestingly, in this trial apart from the loan documents of her mother, the Plaintiff never offered any scintilla of evidence in regards to her financial means. She did not tender any financial statement, bank records or proof of any investment to show how she contributed to the formation of the 2nd Defendant Company. The general rule is that where a party in a civil suit raises an issue which is essential to the success of his claim, he assumes the onus of proof. Discharging this burden requires that a party goes beyond merely repeating the averments in his pleadings on oath and produce proper evidence of other facts and circumstances from which the Court can ascertain that what he claims is true.

[62] In this case, the 1st Defendant on his part testified and tendered documents showing that he was operating Jakmak Enterprise before the setting up of the 2nd Defendant Company. As stated above, he tendered financial statements, invoices, bank records etcetera to demonstrate that he had the financial means to contribute to the formation of the company. In my view, it is important to stress that whereas the 1st Defendant tendered evidence to show that he had



the requisite financial means at the time of the incorporation of the company, the Plaintiff only repeated on oath without more, her assertion that she was resourceful and contributed to the formation of the company. To reiterate, Mr. Asiamah, unlike Madam Opoku Agyemang, did not assert mere words but produced evidence, which is the basic rule of litigation on the balance of probabilities for this court to enter a verdict in his favour. See the case of **France v Golightly & Anor [1991] 1 GLR 74, CA**. Based on the evidence heard, it is my holding that there is no evidence that the Plaintiff contributed to the formation of the 2nd Defendant Company.

[63] The next issue set down to be determined by the court is *“Whether or not the Plaintiff consented to ceding her shares in the 2nd Defendant Company to the 1st Defendant”*. It is important to recognize that membership of a company with shares continues until a valid transfer of all the shares held by the member is registered by the company, or until all the shares are transmitted by operation of law to another person or forfeited for non-payment of calls under the Regulations, or until the member dies. In my respectful opinion there is no need for further rehash of the facts because my analysis above based on Exhibit 19 and the testimony of Mr. Vincent Darku resolves this issue. I have already held that Exhibit 19 was not forged and it speaks in plain language that the Plaintiff gave notice to cede her shares in the company. Mr. Darku testified that a deed of transfer was also provided before the transfer was effected. Consequently, I hold that the Plaintiff consented to the transfer of her shares in the 2nd Defendant Company.

[64] The next issue set down for determination was *“Whether or not the removal of the Plaintiff’s name as a signatory to the 2nd Defendants Company’s accounts was legitimate”*. The 1st Defendant’s testimony on this issue was that;

“I was compelled to change the Plaintiff’s mandate on the 2nd Defendant’s accounts with Ghana Commercial Bank, Abelemkpe Branch, Fidelity Bank, Ridge Towers Branch, and Bank of Africa, Kwashieman when it was detected that the Plaintiff had forged my signature on the Company’s cheque leaflet to order payment by the bank. This was discussed by the Board of Directors as dishonest and criminal conduct a resolution was passed to remove the name of the Plaintiff from the said Bank Account. I shall tender in evidence a copy of this resolution and its accompanying letters to all the 3 Banks of the 2<sup>nd</sup> Defendant on this change of mandate marked as Exhibits “27”, “28”, and “29”.

[65] The Plaintiff in her testimony, I note, did not talk about the alleged forgery of the 1<sup>st</sup> Defendant’s signature on the Company’s cheque. At trial, the Defendants’ subpoenaed Chief Inspector Anselem Bielle Dery to tender documents in Court. I note that the documents tendered and the cross-examination conducted by the Plaintiff’s counsel confirmed that the Plaintiff was charged and faced prosecution at the Circuit Court for forging the signature of the 1st Defendant on a cheque. The Officer confirmed that after the prosecution closed its case, the defendant (Plaintiff herein) was ordered to open her defence but further to an intervention of a mediator, the parties agreed to have an out of court settlement. That evidence corroborated the 1st Defendant’s testimony when he was cross-examined. I note that **Exhibit CE9**, the Forensic Examination report, concluded that it was highly probable that the signature on the cheque for which the Plaintiff was charged was forged.

[66] Counsel for the Plaintiff in her submission referred to the evidence and stated that Chief Inspector Dery though confirmed that the Plaintiff was charged with forgery and stealing “the charges against Plaintiff were withdrawn” and there was therefore no conviction against the Plaintiff. Counsel submitted “that in the absence of a conviction against Plaintiff, 1st Defendant’s claim that Plaintiff

forged his signature remains a mere allegation which cannot in any way be a legitimate basis for her removal as a signatory of 2nd Defendant's accounts".

[67] In my respectful opinion, while it is true that the Plaintiff has not been convicted of any criminal offence, taking into consideration the fact that she was charged in June 2014 and was thus facing criminal charges of forgery and stealing, I do not think that removing her name as a signatory to the cheques of the company was wrong. To have allowed her to continue to sign cheques for the company would rather have been illogical and unreasonable. The action taken was common sense approach and that is also justice and a sign of good governance. In my view, the decision was in the interest of the company and therefore same cannot be faulted. I therefore resolve the issue against the Plaintiff.

[68] The next issue set down was "*whether or not the 1st Defendant verbally asking the Plaintiff not to step foot on the premises of the 2nd Defendant Company and subsequently following it up with a letter of interdiction was lawful*". I shall adopt my reasoning above as the answer to this issue. Indeed, the Plaintiff had been reported to the police for forging the signature of the 1st Defendant, the sole shareholder as of June 2014. She had been charged with criminal offences. To therefore be barred from entering the premises, which for all intents and purposes was where the offence took place and later served with an interdiction letter cannot be said to be unlawful. It is not unusual for officers of companies to be routinely interdicted in similar situations. I therefore resolve the issue against the Plaintiff.

[69] The other issues set down were "Whether or not Plaintiff is entitled to the reliefs endorsed on her writ" and "Whether or not Defendants are entitled to their counterclaim". The setting down of these issues with respect was unnecessary

and indeed superfluous and needless because as was held by the Supreme Court per Pwamang JSC in *Dalex Finance and Leasing Company Limited v. Ebenezer Denzek Amanor, L.G.G Company Limited and Huawei Technologies (Ghana) SA Limited* Civil Appeal No. J4/02/2020 delivered 14 April, 2021 - reported as [2021] DLSC10163 the whole task for any court or adjudicating body called upon to deal with a matter comes down to whether or not a party's claim is to be granted or dismissed by the Court. To that extent, I do not see the need to separately discuss these issues.

[70] Before concluding this judgment, I wish to refer to parts of the proceeding and to make a comment on the Plaintiff's general evidence. On 16th April, 2019 the Plaintiff testified that she had huge sums of money before she first met the 1st Defendant and this is what she said:

"My lord I was in business, my former company Supreme Furnishers was a hire purchase company and when it was folded up I was the branch Manager then in charge of Cape Coast and overseeing Takoradi, when it was folded I was given huge money, at that same time I lost my first husband so I decided to relocate to Accra and do my own business. So I registered a company called Andygina, the Andy was the Andrew of my late husband and the Gina was Georgina. I was doing the same hire purchase of home appliances. I was taking my stock from Dubai. So when we met at Regina's office I had come to Accra for her to assist me look for accommodation and that is where I met the 1st Defendant. So I was in serious business then".

[71] Again, on May 28, 2019 during the evidence of the Plaintiff, the following dialogue went on between her and Counsel for the Defendants:

"Q: Do you remember telling this court at the last sitting that after leaving Supreme Furniture in Cape Coast you registered a company by name

Andygina Ventures Limited and operated same before meeting the 1st Defendant in this matter?

A: Yes my lord. I told this court that I registered a company called Andygina and not operated before meeting the 1st Defendant.

Q: When was Andygina Ventures Limited registered with the Registrar of Companies?

A: I do not exactly remember the year but between 2004 and 2005.

Q: **The Company had first directors, am I not right?**

A: **Yes my lord....**

Q: The directors of Andygina Ventures Limited were two

A: Yes my lord

Q: Could you mention their names to the court

A: **The first director was my son Ambrose Tioh Dery and the second one was Jacob Kwame Asiamah**

Q: Likewise this company has two shareholders, am I right

A: Yes my lord

Q: Could you mention the names of these two shareholders to the court

A: **Ambrose Tioh Dery and Jacob Kwame Asiamah**

Q: **The Jacob Kwame Asiamah mentioned in relation to Andygina Ventures Limited is the same as the 1st Defendant in this case, is that not so?**

A: **Yes my lord.**

Q: **Under what circumstance did Jacob Kwame Asiamah have his name as a director and shareholder of a company allegedly formed by you at a time you did not know him?**

A: The Andygina Company Limited was formed after I have lost my first husband. I decided to use my son's name for him to own the company because the father has died. In my layman view I made my son a 50% shareholder and Jacob Kwame Asiamah a 50% shareholder because I did

not know he can own 100%. The first time I met Jacob Kwame Asiamah...

[72] Also, on July 22, 2022 the Plaintiff told this Court that she has taken action against the Registrar General in regards to the ceding of her shares in the 2nd Defendant Company and said processes have been filed in Court when she was cross-examined by counsel. The following is a snippet of same;

“Q: When did you take this action?

A: My Lord beginning of the year.

Q: What is the name of the Judge hearing the matter?

A: My Lord I do not know unless, I check also.

Q: Where has the case reached?

A: My Lord documents were filed then the Covid came so all I know is that we have filed documents.

Q: What kind of documents did you file?

A: My Lord, the 2008 registration documents and others”.

Despite the positive statement above, the Plaintiff at the next adjourned date when she was further questioned to produce copies of the documents filed which she said she could produce, rather informed the court that she could not produce same because according to her the lawyer she consulted did not file any process.

[73] Having considered all of the evidence including those referenced above, it is my opinion that, many aspects of the Plaintiff’s evidence presented in this case and through her witnesses, some of whom told the court that they were informed about the case by the Plaintiff herself and thus did not have personal knowledge of some of the facts demonstrate that she was not a witness of truth. In my opinion, a Judge in testing the credibility of the testimony of a witness is

allowed to have recourse to the criteria set down in section 80 of the Evidence Act, 1975 (NRCD 323) which includes, among others, the substance of the testimony, the existence or non-existence of any fact testified to by the witness; the capacity and opportunity of the witness to perceive, recollect or relate any matter about which he testifies; the character of the witness as to traits of honesty or truthfulness or their opposites etc. A gamut of these factors for assessing the credibility of Plaintiff, in my view no doubt shows that she exhibited traits of dishonesty and untruths in her answers under cross examination as shown supra in this judgment. In some instances it was clear that her answers were at variance with her previous answers when she was cross examined and that was very unfortunate. As I stated in another case previously, as a nation, truth and honesty seem to elude us in many aspects of our discourse at various levels; that notwithstanding, in my view the Plaintiff and people like her ought to know that speaking the truth is a hallowed virtue in a court of law and it is non-negotiable.

**v. Conclusion & Disposition:**

[74] From the evidence, both oral and documentary it is clear that the Plaintiff failed to adduce credible and admissible evidence in accordance with the standard prescribed by law on the balance of probabilities for this court to grant the reliefs endorsed on her writ of summons. Based on the evidence heard I make the following orders:

- i. The Court declares that the Plaintiff was at all times a shareholder with equal shares with the 1st Defendant in Lebbatt Investment Limited from its inception until about 2013 when the Company was re-registered.
- ii. The Plaintiff is not presently a shareholder with equal shares with the 1st Defendant in the 2nd Defendant Company.

- iii. The Plaintiff's reliefs (B) to (H) endorsed on the writ of summons are all dismissed by the Court.
- iv. The Court shall **grant** the Defendants declaratory order which is relief (ii) of the counterclaim.
- v. The Court shall however, **dismiss** the Defendants relief (i), which is the recovery of Tata Vesta Saloon Car with Registration No. ER 2299-11.

In this trial no serious evidence was led by the Defendants/Counterclaimants for the said relief except the cross-examination of counsel when he questioned the Plaintiff on the said vehicle. I am not convinced that the Defendants have proved their claim for the recovery of the vehicle.

Also, I am of the view that the said vehicle was allocated to the Plaintiff at the time she had shares in the company and played a part in the running of same. There is no evidence of any dividend which was declared by the company to benefit her before the re-registration and the ceding of her shares.

[75] Having heard the submission of counsel on cost today (July 28, 2023), I hereby award the Defendant cost of GH¢ 20,000.00. I note that the Defendant's Counsel asked for cost of GH¢50,000 and Plaintiff offered GH¢5,000.00. I have awarded the cost based on the consideration of the factors set out under Order 74 of C.I. 47 and the fact that this was a full-blown trial, which lasted more than four years.

(Sgd) **KWEKU T. ACKAAH-BOAFO, JA**  
**(JUSTICE OF THE COURT OF APPEAL)**



