



2. Interest on the said **Nine Hundred and Ninety-Six Thousand, Three Hundred and Fifty-Six Ghana Cedis (GH¢996,356.00)** calculated at the prevailing bank rate from 23<sup>rd</sup> November, 2017 till date of final payment.

3. Damages for breach of contract.

And against 2<sup>nd</sup> Defendant the following reliefs:

4. Recovery of the sum of **Two Hundred and Seventeen Thousand, Three Hundred and Eighty-Five Ghana Cedis (GH¢217,385.00)** being the outstanding indebtedness of the 2<sup>nd</sup> Defendant as at 23<sup>rd</sup> November, 2017.

5. Interest on the said **Two Hundred and Seventeen Thousand, Three Hundred and Eighty-Five Ghana Cedis (GH¢217,385.00)** calculated at the prevailing bank rate from 23<sup>rd</sup> November 2017 till date of final payment.

6. Damages for breach of contract.

And against Defendants;

7. Costs including Solicitor's fees

2.0 Although the suit was originally against 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Defendants (Vish Ashiagbor, Eric Nana Nipah, GCB Bank Limited and Bank of Ghana respectively) as well, upon an application filed on behalf of Plaintiff, the suit against the said Defendants was struck out as discontinued on 20<sup>th</sup> November, 2019. This effectively made variations 1<sup>st</sup> and 2<sup>nd</sup> Defendants, the only Defendants in this suit.

## **PLAINTIFF'S CASE**

- 3.0 Plaintiff's case is that pursuant to a Distribution Agreement between Plaintiff and 1<sup>st</sup> Defendant Company, Plaintiff agreed to and in fact supplied the 1<sup>st</sup> Defendant Company with agro-chemicals and agro-machinery.
- 4.0 1<sup>st</sup> Defendant Company was to sell the said products and pay within Ninety (90) days from the invoice date.
- 5.0 That 2<sup>nd</sup> Defendant also personally requested for goods from Plaintiff which were subsequently supplied.
- 6.0 That 1<sup>st</sup> and 2<sup>nd</sup> Defendants despite receiving and selling the said goods have failed to pay for all the goods.
- 7.0 That the outstanding sum in respect of the goods supplied to 1<sup>st</sup> Defendant company is **Nine Hundred and Ninety-Six Thousand, Three Hundred and Fifty-Six Ghana Cedis (GH¢996,356.00)** and that in respect of 2<sup>nd</sup> Defendant is **Two Hundred and Seventeen Thousand, Three Hundred and Eighty-Five Ghana Cedis (GH¢217,385.00).**
- 8.0 Upon incessant demands on both Defendants to pay the outstanding amount of money, 2<sup>nd</sup> Defendant issued a cheque with face value of **Two Hundred and Seventeen Thousand, Three Hundred and Eighty-Five Ghana Cedis (GH¢217,385.00)** to pay off his debt. The said cheque was however dishonoured for insufficient funds. That Defendants' indebtedness to Plaintiff has remained unpaid till date.

## DEFENDANTS' CASE

- 9.0 1<sup>st</sup> Defendant Company's case is that upon receipt of the products supplied by Plaintiff, 2<sup>nd</sup> Defendant realized that a substantial number of the said goods had expired. When he notified Plaintiff of same, the said expired products were returned.
- 10.0 According to 2<sup>nd</sup> Defendant, when he also realized that an equally substantial number of the products had less than Four (4) months to expire, he caused he and 1<sup>st</sup> Defendant's Solicitor to write to Plaintiff notifying Plaintiff of same.
- 11.0 2<sup>nd</sup> Defendant denied personally requesting for goods from Plaintiff and denied ever issuing the said cheque. That the cheque he issued was a blank cheque for a different transaction which did not even materialize. Defendants denied being indebted to Plaintiff in respect of the amounts indicated on the Writ of Summons and Statement of Claim.
- 12.0 Plaintiff in its Reply to the Statement of Defence admitted that some of the goods supplied that were near expiry were returned by Defendants to Plaintiff; the latter upon receipt of the said goods duly credited the Defendants' account.

13.0 That the letter Defendants claimed was from their Solicitor was written after they had returned to Plaintiff the said expired goods which had been accepted by Plaintiff and duly credited to the Accounts of Defendants.

#### **THE ISSUES TO BE DETERMINED BY THE COURT**

14.0 After failure of Pre-Trial-Settlement-Conference, the following issues were set down for trial:

1. Whether or not pursuant to the Distribution Agreement dated 20<sup>th</sup> January 2017, Plaintiff supplied Plaintiff's products to the 1<sup>st</sup> Defendant for distribution and sale.
2. Whether or not the 1<sup>st</sup> Defendant has defaulted in its payments for the products supplied by Plaintiff.
3. Whether or not at the request of the 2<sup>nd</sup> Defendant, Plaintiff supplied Plaintiff's products to 2<sup>nd</sup> Defendant for 2<sup>nd</sup> Defendant's use.
4. Whether or not the 2<sup>nd</sup> Defendant has defaulted in 2<sup>nd</sup> Defendant's payment for the products supplied by Plaintiff.
5. Whether or not Plaintiff is entitled to the reliefs endorsed on the Writ of Summons.

6. Any other issues arising from the pleadings.

## THE STANDARD AND BURDEN OF PROOF IN CIVIL MATTERS

15.0 It is trite law that a party who asserts a factual position assumes the burden of proving same.

16.0 This position is buttressed by **Section 14 of the Evidence Act, 1975 (NRCD 323)** which provides as follows:

*“Except as otherwise provided by the 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.”*

17.0 The Supreme Court in the case of **Ababio v. Akwasi III [1994-1995] GBR Part II at page 774**, where Aikins JSC held as follows:

*“...a party whose pleadings raised an issue essential to the success of a case assumed the burden of proving such issue. The burden only shifted to the Defendant when Plaintiff has adduced evidence to establish the claims.”*

In the Court of Appeal case of **Fordjour v Kaakyire [2015] 85 GMJ 61 @85**, his Lordship Ayebi J.A. stated the principle of the law on civil proof as follows:

*“In civil claims, the burden of first proving the existence or non-existence of a fact lies on the party against whom judgment would be given if no evidence was*

*produced on either side, regard being had to any presumption that may arise on the pleadings”.*

18.0 The burden of persuasion and the burden of producing evidence in all civil cases is proof by preponderance of probabilities. This standard was affirmed by the Supreme Court in the case of *Adwubeng v. Domfeh* [1996-97] SCGLR 660.

The burden of persuasion is defined in **Section 10 of the Evidence Act, 1975 (NRCD 323)** as follows:

*“(1) For the purposes 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 of fact or the Court.*

*(2) The burden of persuasion may require a Party:*

*(a) to raise a reasonable doubt concerning the existence or non-existence of a fact, or*

*(b) to establish*

*the existence or non-existence of a fact by a preponderance of the probabilities or by proof beyond a reasonable doubt.”*

19.0 **Section 12 of the Evidence Act, 1975 (NRCD 323)** defines proof by the preponderance of the probabilities as follows:

*“Proof by a preponderance of the probabilities*

- (1) *Except as otherwise provided by law, the burden of persuasion requires proof by a preponderance of the probabilities.*
- (2) *“Preponderance of the probabilities” means that degree of certainty of belief in the mind of the tribunal of fact or the court by which it is convinced that the existence of a fact is more probable than its non-existence.*

**20.0 Section 11(1) of the Evidence Act, 1975 (NRCD 323)** states as follows:

*“For the purposes of this Act, the burden of producing evidence means the obligation of a Party to introduce sufficient to avoid a ruling on the issue against that Party”*

**21.0 Section 11(4) of the Evidence Act, 1975 (NRCD 323)** spells out the burden of proof required in civil cases as follows:

*“In other circumstances the burden of producing evidence requires a party to produce sufficient which on the totality of the evidence, leads a reasonable mind to conclude that the existence of the fact was more probable than its non-existence.”*

**22.0** In the case of *Citizen Kofi Entertainment Concept Ltd v Guinness Ghana Breweries Ltd [2012] 46 GMJ 167*, the Court of Appeal held as follows:

*“The general principle of law is that it is the duty of a Plaintiff to prove his case, i.e., he must prove what he alleges. In other words, it is the Party who raises in his pleadings an issue essential to the success of his case who*



*assumes the burden of proving it. The burden only shifts to the defence to lead sufficient evidence to tip the scales in his favour when on a particular issue, the Plaintiff leads some evidence to prove his claim, if not he loses on that particular issue."*

23.0 In the case of **Hammond v. Odoi** [1982-83] GLR 1215, the Supreme Court held as follows:

*"Where a Party has pleaded facts but led no evidence in support of the facts, the facts merely pleaded cannot be the foundation for the Judgment on the merits".*

#### **SUMMARY OF EVIDENCE ADDUCED BY PLAINTIFF'S REPRESENTATIVE – ABRAHAM BENSON**

24.0 Plaintiff's representative, Abraham Benson stated that he is Plaintiff's General Manager, Finance and Administration. He stated that per a Distribution Agreement between Plaintiff and 1<sup>st</sup> Defendant (attached as Exhibit 'A'), Plaintiff agreed to supply its goods to 1<sup>st</sup> Defendant for distribution and sale in Brong Ahafo, Northern, Upper East and Upper West Regions. That per the Agreement, 1<sup>st</sup> Defendant was to fully pay to Plaintiff the cost of all the goods supplied within Ninety (90) days of the invoice date.

25.0 In accordance with the terms in Exhibit 'A', 1<sup>st</sup> Defendant caused the erstwhile UT Bank Limited to offer a Bank Guarantee dated 24<sup>th</sup> March, 2017 (attached as Exhibit 'B') by which UT Bank Limited

undertook to pay up to a total sum of **Five Hundred Thousand Ghana Cedis (GH¢500,000.00)** to Plaintiff in the event that 1<sup>st</sup> Defendant defaults in its payment obligations to Plaintiff.

- 26.0 Pursuant to the terms in Exhibit 'C', Plaintiff supplied the goods to 1<sup>st</sup> Defendant for distribution and sale in the said regions. Exhibit 'C' series are copies of Sales Invoices/proof of sale or delivery.
- 27.0 That although 1<sup>st</sup> Defendant accepted and sold the goods supplied by Plaintiff, it has defaulted in its payment obligation under the said Agreement.
- 28.0 Plaintiff's representative further stated that 2<sup>nd</sup> Defendant requested to be supplied with goods from Plaintiff for his personal use. Plaintiff supplied him with goods worth **Two Hundred and Sixty-Seven Thousand, Three Hundred and Eighty-Five Ghana Cedis (GH¢267,385.00)** per Sales Invoices/proof of sale or delivery attached as Exhibit 'D' series.
- 29.0 That 2<sup>nd</sup> Defendant also defaulted in his payment obligations to Plaintiff under the Agreement and so as of 23<sup>rd</sup> November 2017, 1<sup>st</sup> Defendant's indebtedness to Plaintiff stood at **Nine Hundred and Ninety-Six Thousand, Three Hundred and Fifty-Six Ghana Cedis (GH¢996,356.00)** whilst that of 2<sup>nd</sup> Defendant stood at **Two Hundred and Seventeen Thousand, Three Hundred and Eighty-Five Ghana Cedis (GH¢217,385.00)**. Exhibit 'E' is a copy of 1<sup>st</sup> Defendant's

Statement of account and Exhibit 'E1' is a copy of 2<sup>nd</sup> Defendant's statement of account showing proof of these.

- 30.0 That upon Defendants' default, Plaintiff served them with a demand notice dated 23<sup>rd</sup> November, 2017 (Exhibit 'F') through 2<sup>nd</sup> Defendant.
- 31.0 That 2<sup>nd</sup> Defendant issued to Plaintiff a cheque with face value of **Two Hundred and Seventeen Thousand, Three Hundred and Eighty-Five Ghana Cedis (GH¢217,385.00)** (Exhibit 'G') to liquidate his outstanding indebtedness but the said cheque was dishonored for insufficient funds.
- 32.0 Exhibit 'H' series are copies of Demand Notices from Plaintiff to Defendants urging them to liquidate their respective indebtedness to Plaintiff.
- 33.0 According to Plaintiff's representative, sometime after the goods were delivered to Defendants but before Exhibit 'F' was served on Defendants, 1<sup>st</sup> Defendant informed Plaintiff that some of the supplied goods were near expiry.
- 34.0 That Plaintiff promptly directed 1<sup>st</sup> Defendant to return the said goods; which were returned and the accounts of Defendants duly credited. Exhibit 'J' series are copies of proof of goods returned by Defendants.

- 35.0 That the letter dated 13<sup>th</sup> January, 2018 written by Defendants' current Solicitor in which Defendants claimed they had brought to Plaintiff's notice that some of the goods had expired was written in response to Plaintiff's letter dated 11<sup>th</sup> January, 2018. That Defendants' letter was written a couple of months after Plaintiff had made several demands on Defendants to pay their outstanding debt.
- 36.0 That it was when Plaintiff demanded that Defendants pay their outstanding indebtedness after Defendants had returned the near expired goods that Defendants further alleged that Plaintiff's goods supplied them which were in other locations had also expired or were near expiry. So, they could not honour their payments to Plaintiff.
- 37.0 That based on these new allegations, representatives of Plaintiff together with that of Defendants audited all the goods in Defendants' possession but discovered that the alleged expired goods could not be accounted for. A report on the said auditing was attached as Exhibit 'K'.

**SUMMARY OF EVIDENCE ADDUCED ON BEHALF OF  
DEFENDANTS BY 2<sup>ND</sup> DEFENDANT**

- 38.0 2<sup>nd</sup> Defendant stated that pursuant to the said Agreement, Plaintiff delivered the goods to 1<sup>st</sup> Defendant in or around April, 2017. He stated that due to the bulky nature of the agro chemicals, Plaintiff

would deliver them to 1<sup>st</sup> Defendant's premises. 1<sup>st</sup> Defendant would thereafter check whether they are fit for sale and those determined not to be fit for sale would be returned to Plaintiff.

39.0 According to 2<sup>nd</sup> Defendant, 1<sup>st</sup> Defendant upon taking delivery of the goods in contention realized that some of them including Backstone worth **Eighty-Nine Thousand Ghana Cedis (GH¢89,000.00)**, Super Guard 500g worth **Nine Hundred and Sixty Ghana Cedis (GH¢960.00)** and Super Guard 100g worth **Nine Thousand, Two Hundred Ghana Cedis (GH¢9,200.00)** had expired. He sought to prove this assertion with Exhibit '1' series which are copies of waybills issued by 1<sup>st</sup> Defendant to Plaintiff's drivers when they took the expired goods.

40.0 That even though 1<sup>st</sup> Defendant by the Terms of the Agreement was to distribute the goods within one calendar year, Defendants discovered that a significant number of the goods had less than Four (4) months to reach expiry; and called Plaintiff's attention to take delivery of the said products. That they also caused their Solicitor to formally write to Plaintiff to pick up the expired goods as per Exhibit '2'.

41.0 That although Plaintiff's initial invoice showed that some products such as Mofarno-Quizalop (300 pieces), Seed Power 44 WS 10G Pack (20,000 pieces) and XP-16 Manual Jacto Sprayer (1000 pieces) worth **Fifteen Thousand, Three Hundred Ghana Cedis (GH¢15,300.00)**,

**Twenty-Eight Thousand Ghana Cedis (GH¢28,000.00) and One Hundred and Forty-Three Thousand Ghana Cedis (GH¢143,000.00)** respectively were received by 1<sup>st</sup> Defendant, a reconciliation of the stock by Plaintiff and 1<sup>st</sup> Defendant showed that the goods were never received by 1<sup>st</sup> Defendant as Plaintiff's invoice (Exhibit '3') suggested.

42.0 He tendered a list of the prices of the goods Plaintiff supplied to 1<sup>st</sup> Defendant as Exhibit '4'. He denied Plaintiff's assertion that 1<sup>st</sup> Defendant could not account for the expired goods at its warehouse. He stated that the said goods are still at the said warehouse because Plaintiff has refused to take delivery of them. He tendered photographs of the said expired goods at the 1<sup>st</sup> Defendant's warehouse as Exhibit '5' series.

43.0 He stated that because of the near expired condition of the goods Plaintiff supplied, 1<sup>st</sup> Defendant had to distribute and sell the ones that were wholesome and consumable and made payments to Plaintiff.

44.0 That in all, 1<sup>st</sup> Defendant through UT Bank and later GCB Bank made direct payments totaling **One Hundred and Forty-Six Thousand, Eight Hundred Ghana Cedis (GH¢146,800.00)** to Plaintiff in respect of the goods 1<sup>st</sup> Defendant supplied to farmers. That Exhibit '6' is the Account Statement to that effect.

- 45.0 That 1<sup>st</sup> Defendant also made a payment in the sum of **One Hundred and Seventy- Four Thousand, Four Hundred and Eighty Ghana Cedis (GH¢174,480.00)** through Sinapi Aba Savings and Loans directly to Plaintiff for goods supplied. Exhibit '7' is a copy of the Bank statement of 1<sup>st</sup> Defendant showing the said payments.
- 46.0 According to 2<sup>nd</sup> Defendant, Plaintiff instructed others to take goods from 1<sup>st</sup> Defendant's warehouse and payments thereof (totaling **One Hundred and Seven Thousand, One Hundred and Thirty-One Ghana Cedis (GH¢107,131.00)**) were made by the said persons to Plaintiff directly.
- 47.0 That aside the expired goods that Plaintiff has failed to take delivery off, Defendants do not owe Plaintiff any money; especially as 1<sup>st</sup> Defendant has fulfilled its obligations under the said Agreement. That 2<sup>nd</sup> Defendant is not a Party to the Agreement and does not owe Plaintiff the amount being claimed against him.
- 48.0 2<sup>nd</sup> Defendant denied issuing any cheque with face value of **Two Hundred Seventeen Thousand, Three Hundred and Eighty-Five (GH¢217,385.00)** which was dishonoured when presented at the Bank.
- 49.0 He explained that all the parties had agreed that 2<sup>nd</sup> Defendant signed blank cheques issued by 1<sup>st</sup> Defendant to Plaintiff on the understanding that if 1<sup>st</sup> Defendant needed some products from

Plaintiff and the products are ready for delivery to 1<sup>st</sup> Defendant, both Parties will agree on the quantity to be supplied and the cost thereof would be written on the cheque to be presented at 1<sup>st</sup> Defendant's Bank.

50.0 However, Plaintiff without supplying any goods surreptitiously wrote the said amount on the said cheque which it presented at 1<sup>st</sup> Defendant's Bank for clearance. That when he was notified of the intended clearance, he instructed his Bankers not to pay the money because he had not instructed anyone to cash the said amount.

51.0 He maintained that Defendants do not owe Plaintiff any amount of money for goods supplied.

## **RESOLUTION OF ISSUES**

**ISSUE 1: WHETHER OR NOT PURSUANT TO THE DISTRIBUTION AGREEMENT DATED 20<sup>TH</sup> JANUARY 2017, PLAINTIFF SUPPLIED PLAINTIFF'S PRODUCTS TO THE 1<sup>ST</sup> DEFENDANT FOR DISTRIBUTION AND SALE.**

52.0 Plaintiff sought to prove that pursuant to the Distribution Agreement dated 20<sup>th</sup> January, 2017 (Exhibit 'A'), it supplied products to 1<sup>st</sup> Defendant for distribution and sale.



53.0 2<sup>nd</sup> Defendant at paragraph 5 of his Witness Statement admitted to entering into the said Distribution Agreement with Plaintiff in January, 2017.

54.0 He admitted under cross examination that 1<sup>st</sup> Defendant's relationship with Plaintiff commenced by the signing of a Distribution Agreement.

55.0 The relevant excerpts of the record of proceedings of 11<sup>th</sup> October, 2022 at page 2 are as follows:

*"Q: You state at paragraph 5 of your Witness Statement that your relationship with Plaintiff began by the signing of a Distribution Agreement dated January 2017. Is that so?"*

*A: That is so."*

56.0 Exhibit 'A' is dated 20<sup>th</sup> January, 2017 and was in fact executed between Plaintiff and 1<sup>st</sup> Defendant acting through the 2<sup>nd</sup> Defendant. The said Exhibit 'A' is therefore the Distribution Agreement that governed the relationship between Plaintiff and 1<sup>st</sup> Defendant.

57.0 2<sup>nd</sup> Defendant at paragraph 6 of his Witness Statement admitted that Plaintiff delivered agro chemicals to 1<sup>st</sup> Defendant on or about April' 2017.

58.0 The said paragraph reads as follows:

*"Pursuant to this agreement, the Plaintiff delivered agro chemicals to 1<sup>st</sup> Defendant on or about April, 2017."*

*He admitted under cross examination that the first time goods were received from Plaintiff was in April, 2017.*

59.0 The relevant excerpts of his cross examination as per page 3 of the record of proceedings of 11<sup>th</sup> October, 2022 are as follows:

*"Q: Do you still stand by your testimony that the first time you received goods from Plaintiff was in April, 2017?"*

*A: Yes."*

60.0 It is clear from the above that pursuant to Exhibit 'A', Plaintiff supplied goods to 1<sup>st</sup> Defendant. This is further supported by paragraphs 7, 8, 9 and 10 of 2<sup>nd</sup> Defendant's Witness Statement.

61.0 The Court therefore finds for a fact that pursuant to the Distribution Agreement dated 20<sup>th</sup> January 2017, Plaintiff supplied Plaintiff's products to the 1<sup>st</sup> Defendant for distribution and sale.

**ISSUE 2: WHETHER OR NOT THE 1<sup>ST</sup> DEFENDANT HAS DEFAULTED IN ITS PAYMENT FOR THE PRODUCTS SUPPLIED BY PLAINTIFF**

62.0 Plaintiff stated that 1<sup>st</sup> Defendant is indebted to it in respect of the products (agrochemicals) it supplied to 1<sup>st</sup> Defendant.

63.0 Defendants however stated that apart from the products that expired about which Plaintiff was notified but Plaintiff failed to pick up, all the other products had been paid for.

64.0 Plaintiff therefore bears the burden of proof in establishing that 1<sup>st</sup> Defendant is indebted to Plaintiff for the products supplied.

65.0 In paragraphs 6 and 7 of 2<sup>nd</sup> Defendant's Witness Statement, he stated that Plaintiff's products that 1<sup>st</sup> Defendant requested for were transported and delivered by Plaintiff at 1<sup>st</sup> Defendant's warehouse at Sunyani.

66.0 He maintained this stance under cross examination. The relevant excerpts at pages 2 and 3 of the Record of Proceedings of 11<sup>th</sup> October, 2022 are as follows:

*"Q: Do you still stand by your testimony that the first time you received goods from the Plaintiff was in April, 2017?"*

*A: Yes.*

*Q: So according to you the goods are transported by the Plaintiff to Sunyani after you place an order?"*

*A: That is so....*

*Q: You admit that when you placed the order for the goods, the goods are checked before you direct a driver to pick up to your warehouse in Sunyani.*

*A: I placed the order myself but I did not give any directives in terms of the transportation of the goods.*

*Q: I am suggesting to you that the Plaintiff in the normal course of their business do not transport goods that have been requested by a customer to that customer's warehouse.*

*A: The Plaintiff Company transported the goods using their own trucks to my warehouse.*

*Q: I am suggesting to you that this testimony is not true.*

*A: It is the truth."*

67.0 Article VI specifically Clause 6.1 of Exhibit 'A' which regulated the relationship between Plaintiff and 1<sup>st</sup> Defendant states as follows:

*"OWNER guarantees that the quality of Product supplied under this Agreement shall meet, at the time of delivery to DISTRIBUTOR, which for greater certainty is the time when Product is picked up by DISTRIBUTOR, its agent or transport carrier at OWNER's warehouse, the same quality and standards as product sold to OWNER's customers in Ghana."*

68.0 It is clear from the above that delivery of the products to the Distributor (1<sup>st</sup> Defendant) took effect when the Distributor (1<sup>st</sup> Defendant), its agent or transport carrier picks up the said products from the Owner's (Plaintiff) warehouse.

69.0 The burden therefore shifted to 1<sup>st</sup> Defendant (represented by 2<sup>nd</sup> Defendant) to prove that Plaintiff itself transported and delivered the requested goods to 1<sup>st</sup> Defendant's warehouse in Sunyani.

70.0 Aside merely asserting the above, 2<sup>nd</sup> Defendant could not adduce any credible evidence in support of that assertion.

71.0 In any case, **Section 19 of the Sale of Goods Act, 1962 (Act 137)** states as follows:

*“Section 19 - Place of Delivery*

*Unless a contrary intention appears the place of delivery is the seller’s place of business if he has one, and if not, his residence:*

*Provided that in a contract for the sale of specific goods which to the knowledge of the parties when the contract is made are in some other place, the subject to any contrary intention that place is the place of delivery.”*

72.0 Although Plaintiff insisted that it has only one warehouse which is in Accra, 2<sup>nd</sup> Defendant stated he was not aware of that and so did not know where the goods actually came from. He could also not adduce any evidence to show that aside Plaintiff’s warehouse in Accra, Plaintiff had another warehouse where the goods could have emanated from.

73.0 It is clear from the discussions above that it was 1<sup>st</sup> Defendant, its Agent or Transport Carrier who had the duty to transport the said goods from Plaintiff’s warehouse in Accra to 1<sup>st</sup> Defendant’s warehouse in Sunyani.

- 74.0 Under Clause 6.2 of Article VI of Exhibit 'A', 1<sup>st</sup> Defendant as the Distributor was duty bound to promptly inspect the products upon receipt of the said products to satisfy itself that the goods are in good condition.
- 75.0 It stated therein that for a claim in respect of shortages to be valid, the said claim must be made upon delivery of the products to the Distributor (1<sup>st</sup> Defendant).
- 76.0 It further stated that for a claim in respect of defective products (other than with respect to latent defects), 1<sup>st</sup> Defendant ought to have made a claim in writing to Plaintiff within Seven (7) days of the date such products arrived at 1<sup>st</sup> Defendant's warehouse; same not having been caused whilst the products were in transit from Plaintiff's warehouse to 1<sup>st</sup> Defendant's warehouse.
- 77.0 In summary, Clause 6.2 provides that if Plaintiff is not notified by 1<sup>st</sup> Defendant by the end of 7 days after products are delivered, the said products are deemed to have been accepted.
- 78.0 1<sup>st</sup> Defendant could not adduce any evidence that within Seven (7) days after the products were delivered to it, it informed Plaintiff in writing that there were any defects in the products supplied.

79.0 **Section 52 of the Sale of Goods Act, 1962 (Act 137)** provides that a buyer is deemed to have accepted goods supplied by the seller when;

- (a) He intimates to the seller that he accepts them; or
- (b) He does not, within a reasonable time after delivery of the goods, inform the seller that he rejects them; or
- (c) He wrongfully refuses or neglects to place the goods at the disposal of the seller after notifying that he rejects them.”

80.0 Per the above provision, a buyer cannot reject goods which he (the buyer) has already accepted.

81.0 It is clear from the totality of the evidence adduced before the Court and per the provisions in Exhibit ‘A’ that 1<sup>st</sup> Defendant accepted the goods Plaintiff supplied it.

82.0 Learned Counsel for Defendants in his written address argued that none of the invoices tendered by Plaintiff as the basis of the goods it supplied to Defendants was stamped as required by **Section 32 (6) of the Stamp Act, 2005 (Act 689)**; a Mandatory Statutory Law.

83.0 That for flouting this mandatory legal requirement, they are inadmissible in evidence. He further submitted that none of the

invoices for the alleged supply of the products had been signed by either 1<sup>st</sup> Defendant or any employee of 1<sup>st</sup> Defendant. That in view of the above, there is no documentary evidence before the Court to ascertain the quantity of goods Plaintiff supplied to 1<sup>st</sup> Defendant pursuant to Exhibit 'A' and so Plaintiff's claims against 1<sup>st</sup> Defendant ought to fail.

84.0 Exhibit 'C' series are copies of invoices which Plaintiff sought to use to prove that it supplied products to 1<sup>st</sup> Defendant.

85.0 These invoices which are documents which seek to define or confer the rights and liabilities of the parties to the suit qualify as instruments which require stamping in order to be admissible in evidence in compliance with *Section 32 of the Stamp Duty Act, 2005 (Act 689)*.

86.0 This provision was applied in the case of *Lizori Limited v. Boye & School of Domestic Science & Catering [2013-2014] 2 SCGLR 889*.

87.0 A careful study of the said invoices shows that none of them had been stamped in compliance with **Section 32 (6) of the Stamp Duty Act, 2005 (Act 689)**.

88.0 Although the said invoices not having been stamped were received in evidence, this Court rejects same as it is legally inadmissible evidence which ought not to have found its way into the records.



- 89.0 Exhibit 'F' is a copy of Final Demand Notice dated 23<sup>rd</sup> November, 2017 from Plaintiff to 1<sup>st</sup> Defendant. On this Exhibit, Plaintiff stated 1<sup>st</sup> Defendant's indebtedness to Plaintiff in respect of the goods supplied.
- 90.0 It is also important to note that Defendants did not respond to this letter. It was in a letter dated 13<sup>th</sup> January, 2018 at page 5 of Exhibit 'H' series that Plaintiff was notified in writing (as required in Exhibit 'A') in respect of any alleged expired products. This was more than Six (6) months after 1<sup>st</sup> Defendant's claim that the goods were supplied to him.
- 91.0 This was however denied by Plaintiff's Lawyer per email correspondence with Defendants' lawyer dated 17<sup>th</sup> January, 2018 at page 7 of Exhibit 'H' series. In the said communication, Counsel for Plaintiff at the time demanded to be provided with details of any alleged expired goods. He also requested that Defendants provide details of payments that they claimed had been omitted from the summarized accounts. The evidence does not show that Defendants provided any details of the alleged payments requested for which had not been captured.
- 92.0 Exhibit '2' which is a copy of a letter by the Defendants' Lawyer to Plaintiff purporting to attach a copy of the expired products had no attachments.

93.0 2<sup>nd</sup> Defendant under cross examination admitted that the said Exhibit 'F' was the final demand notice he received from Plaintiff. The relevant excerpts at page 3 of the record of proceedings on 24<sup>th</sup> January, 2023 is as follows:

*"Q" Take a look at Exhibit 'F' attached to Plaintiff's Witness Statement. I am suggesting to you that that was the Final Demand Notice you received from Plaintiff.*

*A: That is so.*

*Q: You admit that in that letter, the meetings had with your Accounts team together with your indebtedness was stated there.*

*A: None of my workers ever had a meeting with Plaintiff anywhere.*

*Q: In fact, I am suggesting to you that your claims that the goods had expired is an afterthought.*

*A: That is not so.*

*Q: Take a look at Exhibit 'H' series, specifically page 5, you admit that this was the first time your lawyers wrote to Plaintiff about any claims about expired goods. Not so?*

*A: Yes.*

*Q: Turn to Page 7 of Exhibit 'H' series. You admit that by a correspondence via email, the lawyers at the time for Plaintiff were*

*emphatic to your lawyers that Plaintiff was unaware of any expired goods.*

*A: The Plaintiff was very much aware of the expired goods because I had already informed them about the expired goods.*

*Q: Take a look at your Exhibit '5' attached to your Witness Statement. According to you the picture in Exhibit '5' is indicative of the expired goods, not so?*

*A: Yes.*

*Q: You admit that by just looking at this picture, you are not able to tell the expiry dates of these goods assuming they were from Plaintiff.*

*A: These goods were from Plaintiff even though you cannot see the expiry date in the picture, it is stated on the goods.*

*Q: When you filed your Witness Statement in 2021, you alleged that the goods indicated in Exhibit '5' were still at your warehouse. Is that not so?*

*A: Yes, and as I speak, they are still at my warehouse.*

*Q: And you want this Court to believe that you have kept at your warehouse goods you allege have expired for Six (6) years.*

*A: Yes. As I speak, they are still at my warehouse.*

*Q: You admit Exhibit '5' is not dated?*

*A: Yes, I admit.*

*Q: I am suggesting to you that aside the goods that were returned and accepted by Plaintiff for which credit notes were issued, you sold all other goods supplied to you but have refused to pay.*

*A: I have not sold any goods."*

94.0 Defendants in their quest to show that some of the goods supplied by Plaintiff had expired tendered Exhibit '5'. The said Exhibit '5' is however of no probative value to the Court because it does not display any expiry dates of any goods and it is also not dated to help the Court conclude on the date the said photographs were taken. There is also no indication that they are goods the Plaintiff had supplied to 1<sup>st</sup> Defendant.

95.0 This Court is minded to agree with Learned Counsel for Plaintiff's submission in his written address that Defendants' claims that some of the goods Plaintiff had supplied 1<sup>st</sup> Defendant were expired and so could not be sold are afterthoughts; especially as 1<sup>st</sup> Defendant could not adduce credible evidence that the said goods had expired.

96.0 1<sup>st</sup> Defendant sought to use Exhibit '3' series to prove that some of the goods namely Mofarno-Quizap (300 in number), Seed Power 44 WS 10G Pack (20,000 in number) and XP-16 Manual Jacto Sprayer worth **Fifteen Thousand, Three Hundred Ghana Cedis (GH¢15,300.00), Twenty-Eight Thousand Ghana Cedis**

(GH¢28,000.00) and **One Hundred and Forty-Three Thousand Ghana Cedis (GH¢143,000.00)** respectively that Plaintiff alleged that it supplied to 1<sup>st</sup> Defendant were never received by 1<sup>st</sup> Defendant.

97.0 This Court is of the humble opinion that the said Exhibit is of no probative value as it does not in any way prove that the said products were not received by 1<sup>st</sup> Defendant.

98.0 Furthermore Exhibit 3 series are unstamped invoices which are of no probative value to this Court because they are instruments that requires stamping before they can be relied upon by the Court.

99.0 In any case the Mofarno-Quizap worth **Fifteen Thousand, Three Hundred Ghana Cedis (GH¢15,300.00)** is shown at page 3 of Exhibit 'E' on 29<sup>th</sup> April, 2017. If not received, 1<sup>st</sup> Defendant had up to Seven (7) days to formally write to Plaintiff about the alleged shortage but there is no evidence on the records to the effect that it was done.

100.0 The Seed Power 44WS 10G Pack referred to in 2<sup>nd</sup> Defendant's Witness Statement does not appear in Exhibit 'E'.

101.0 The Manual Jacto Sprayer worth **One Hundred and Forty-Three Thousand Ghana Cedis (GH¢143,000.00)** has been deducted from the total amount outstanding at page 4 of Exhibit 'E'.

102.0 Aside the fact that 1<sup>st</sup> Defendant's indebtedness to Plaintiff was stated in Exhibit 'F', Plaintiff stated that Exhibit 'E' gives a breakdown of how 1<sup>st</sup> Defendant's indebtedness to Plaintiff was arrived at after factoring all goods that were returned by 1<sup>st</sup> Defendant for which credit notes were issued by Plaintiff.

103.0 However, a summation of the figures indicated in Exhibit '6' as payments made by 1<sup>st</sup> Defendant through UT Bank and later GCB Bank which are referable to Plaintiff is a total amount of **One Hundred and Fifteen Thousand, Eight Hundred Ghana Cedis (GH¢115,800.00)** and not the amount of **One Hundred and Forty Six Thousand Ghana Cedis (GH¢146,000.00)** as stated by 2<sup>nd</sup> Defendant in paragraph 16 of his Witness Statement.

104.0 Exhibit '7' indicates payments through 1<sup>st</sup> Defendant's Bankers, Sinapi Aba Savings and Loans to Plaintiff. It shows a total amount of **One Hundred and Seventy-Four Thousand, Four Hundred and Eighty Ghana Cedis (GH¢174,480.00)**. Although an amount of **One Hundred and Twenty-Four Thousand, Four Hundred and Eighty Ghana Cedis (GH¢124,480.00)** was captured in Exhibit 'E', the other amount of **Fifty Thousand Ghana Cedis (GH¢50,000.00)** was not captured.

105.0 In paragraph 18 of 2<sup>nd</sup> Defendant's Witness Statement, he alleges that Plaintiff instructed others to take goods from 1<sup>st</sup> Defendant's

warehouse and payments for the said goods were made by these people directly to Plaintiff.

106.0 He alleges that these people and or entities made a total payment of **One Hundred and Seven Thousand, One Hundred and Thirty-One Ghana Cedis (GH¢107,131.00)** directly to Plaintiff; an assertion denied by Plaintiff. 2<sup>nd</sup> Defendant however failed to adduce any evidence in proof of this assertion.

107.0 Plaintiff stated that 1<sup>st</sup> Defendant returned some of the supplied products which were near expiry or had expired as defective. Although 1<sup>st</sup> Defendant did not notify Plaintiff per the terms of Exhibit 'A', there is evidence that Plaintiff accepted same and issued credit notes in respect of the goods they had accepted which are Exhibit 'J' series.

108.0 A look at Exhibit '1' series shows that even as late as October 2017, Plaintiff accepted goods that had expired or were near expiry.

109.0 Furthermore, at page 4 of Exhibit 'E' there is an indication that "Price Difference – **Twenty-One Thousand, One Hundred and Ninety-Five Ghana Cedis, Fifty-Five (GH¢21,195.55)**" "stock given to Albert – **Twelve Thousand, Eight Hundred and Seventy-Two Ghana Cedis (GH¢12,872.00)**" and "stock sent to Kumasi – **Fifteen Thousand, Three Hundred Ghana Cedis (GH¢15,300.00)**" were all considered in arriving at the outstanding amount of **Nine Hundred**

**and Ninety-Six Thousand and Fifty-Six Ghana Cedis, Eighty-Five (GH¢996,056.85).**

110.0 Although there is evidence that 1<sup>st</sup> Defendant is indebted to Plaintiff, it is the quantum of the said indebtedness that is yet to be determined.

111 From Exhibit '6', 1<sup>st</sup> Defendant's GCB Bank Statement, the following payments were made by 1<sup>st</sup> Defendant to Plaintiff:

<u>DATE</u>	<u>AMOUNT (GH¢)</u>
5 <sup>th</sup> July, 2017	19,000.00
1 <sup>st</sup> June, 2017	10,000.00
2 <sup>nd</sup> June, 2017	10,000.00
5 <sup>th</sup> July, 2017	30,000.00
6 <sup>th</sup> October, 2017	15,000.00
15 <sup>th</sup> November, 2017	15,000.00
26 <sup>th</sup> January, 2018	3,800.00

112.0 Aside the 2<sup>nd</sup> June, 2017 entry of **Ten Thousand Ghana Cedis (GH¢10,000.00)**, 15<sup>th</sup> November, 2017 entry of **Fifteen Thousand Ghana Cedis (GH¢15,000.00)**, and the 26<sup>th</sup> January, 2018 entry of **Three Thousand, Eight Hundred Ghana Cedis (GH¢3,800.00)**, all the other amounts of money have been duly captured in Exhibit 'E'.



113.0 In Exhibit '7', 1<sup>st</sup> Defendant's Sinapi Aba Savings and Loans Bank Statement, the following payments were made in Plaintiff's favour:

<u>DATE</u>	<u>AMOUNT (GH¢)</u>
28 <sup>th</sup> August, 2017	124,480.00
10 <sup>th</sup> August, 2017	50,000.00

114.0 Aside the 28<sup>th</sup> August, 2017 entry of **One Hundred and Twenty-Four Thousand, Four Hundred and Eighty Ghana Cedis (GH¢124,480.00)**, the 10<sup>th</sup> August, 2017 entry of **Fifty Thousand Ghana Cedis (GH¢50,000)** is not captured in Exhibit 'E' as having been paid by 1<sup>st</sup> Defendant in Plaintiff's favour.

115.0 The left-out figures of **Ten Thousand Ghana Cedis (GH¢10,000.00)** plus **Fifteen Thousand Ghana Cedis (GH¢15,000.00)** plus **Three Thousand, Eight Hundred Ghana Cedis (GH¢3,800.00)** plus **Fifty Thousand GH¢50,000.00)** when added up amount to **Eighty-Eight Thousand, Eight Hundred Ghana Cedis (GH¢88,800.00)**. This amount of **Eighty-Eight Thousand, Eight Hundred Ghana Cedis (GH¢88,800.00)** when subtracted from the amount being claimed by Plaintiff from 1<sup>st</sup> Defendant which is **Nine Hundred Ninety-Six Thousand and Fifty-Six Ghana Cedis, Eighty-Five Pesewas (GH¢996,056.85)** amounts to **Nine Hundred and Seven Thousand, Two Hundred and Fifty-Six Ghana Cedis, Eighty-Five Pesewas (GH¢907,256.85)**.

116.0 The Court finds that 1<sup>st</sup> Defendant is indebted to Plaintiff on the amount of **Nine Hundred and Seven Thousand, Two Hundred and Fifty-Six Ghana Cedis, Eighty-Five Pesewas (GH¢907,256.85)** as of 27<sup>th</sup> January, 2018.

117.0 Judgment is therefore entered in Plaintiff's favour against 1<sup>st</sup> Defendant on the amount of **Nine Hundred and Seven Thousand, Two Hundred and Fifty-Six Ghana Cedis, Eighty-Five Pesewas (GH¢907,256.85)** being the outstanding indebtedness of 1<sup>st</sup> Defendant to Plaintiff as of 27<sup>th</sup> January, 2018.

118.0 Interest is to be calculated on the amount of **Nine Hundred and Seven Thousand, Two Hundred and Fifty-Six Ghana Cedis, Eighty-Five Pesewas (GH¢907,256.85)** at the prevailing bank rate from 27<sup>th</sup> January, 2018 till date of final payment.

**ISSUE 3: WHETHER OR NOT AT THE REQUEST OF 2<sup>ND</sup> DEFENDANT, PLAINTIFF SUPPLIED PLAINTIFF'S PRODUCTS TO 2<sup>ND</sup> DEFENDANT FOR 2<sup>ND</sup> DEFENDANT'S USE**

119.0 Plaintiff stated that at the request of 2<sup>nd</sup> Defendant, it supplied products to 2<sup>nd</sup> Defendant for his personal use. That the products supplied amounted to GHC267, 385.00 out of which 2<sup>nd</sup> Defendant had paid **Fifty Thousand Ghana Cedis (GH¢50,000.00)**. That 2<sup>nd</sup> Defendant has defaulted in payment of the outstanding amount of

**Two Hundred and Seventeen Thousand, Three Hundred and Eighty-Five Ghana Cedis (GH¢217,385.00).**

120.0 Plaintiff sought to prove that it supplied 2<sup>nd</sup> Defendant with the said products with Exhibit 'D' series which are copies of invoices that were raised in respect of the products supplied.

121.0 Exhibit 'D' series which are copies of invoices are unstamped and are therefore of no probative value to the Court.

122.0 Counsel for Plaintiff in his written address submitted that 2<sup>nd</sup> Defendant in his quest to delink himself from the said transaction engaged in deliberate falsehood by stating that the first time he dealt with Plaintiff was in January, 2017 when he had in fact issued a cheque to Plaintiff sometime in 2016 to cover his indebtedness to Plaintiff because he indeed owed Plaintiff the said amount.

123.0 The relevant excerpts of 2<sup>nd</sup> Defendant's cross examination at pages 2 and 3 of the records of proceedings of 11<sup>th</sup> October, 2022 are as follows:

*"Q: You state at paragraph 5 of your Witness Statement that your relationship with Plaintiff began by the signing of a Distribution Agreement dated January, 2017. Is that so?*

*A: That is so.*

*Q: So it is your case that before this Agreement was signed, neither you nor the 1<sup>st</sup> Defendant had engaged the Plaintiff in any transaction.*

*A: That is so. We had no relationship with the Plaintiff. Our relationship with the Plaintiff started in January, 2017."*

124.0 2<sup>nd</sup> Defendant from the foregoing was emphatic that before 2017, neither he nor 1<sup>st</sup> Defendant had had any transaction with Plaintiff whatsoever.

125.0 This response was however found not to be true when he contradicted himself under further cross examination.

126.0 The relevant excerpts of his cross examination at pages 4 and 5 of the record of proceedings of 24<sup>th</sup> January, 2023 are as follows:

*"Q: Take a look at Exhibit 'G' series, specifically page 4, I am suggesting to you that the last cheque indicated on page 4 is dated 15<sup>th</sup> December 2016, I am suggesting to you.*

*A: Yes.*

*Q: As a businessman, I am suggesting to you that if you had no dealings with Plaintiff at the time, you would not have issued this cheque.*

*A: I don't agree. I needed irrigation kits to buy and I was directed to the Plaintiff by Agrimat and I went to Plaintiff to buy them.*

...

*Q: It is untrue that the first time you or 1<sup>st</sup> Defendant dealt with Plaintiff was in 2017.*

*A: It is the truth. I needed irrigation kits to buy and I was directed to the Plaintiff and I went there to buy them. It was in 2017 that I signed a contract with the Plaintiff to be their distributor.*

*Q: You admit that the 2017 contract is only between Plaintiff and 1<sup>st</sup> Defendant.*

*A: I agree.*

*Q: Therefore, I am suggesting to you that your testimony before this Court that you never in your personal capacity requested for any goods from Plaintiff is untrue.*

*A: I have personally not asked the Plaintiff to supply me with goods because I work for the 1<sup>st</sup> Defendant.*

*Q: I am further suggesting to you even after the contract was signed in 2017 between Plaintiff and 1<sup>st</sup> Defendant, you personally requested for goods and same have been indicated in invoices and waybills before this Court.*

*A: I have never in my personal capacity requested for goods from Plaintiff to be delivered to me."*

127.0 It is clear from the above discourse that despite 2<sup>nd</sup> Defendant's denials of never ever transacting business with Plaintiff before 2017, he indeed had had dealings with Plaintiff before 2017.

128.0 Plaintiff sought to indicate that it was because 2<sup>nd</sup> Defendant personally owed Plaintiff the amount of **Two Hundred and Seventeen Thousand, Three Hundred and Eighty-Five Ghana Cedis (GH¢217,385.00)** that he issued a cheque dated 8<sup>th</sup> September, 2017 with the same face value (Exhibit 'G').

129.0 2<sup>nd</sup> Defendant however denied this, he stated that it was for a different transaction and because Plaintiff did not have the quantity of the products he wanted, he left a blank cheque with Plaintiff so that when the goods arrive and are supplied, before Plaintiff will know how much to write on the cheque.

130.0 He said he was shocked when the said cheque with the said face value was presented at the Bank and he was called for verification. 2<sup>nd</sup> Defendant stated that he did not give his approval for the money to be paid because Plaintiff had not informed him about anything before presenting the said cheque.

131.0 2<sup>nd</sup> Defendant stated that he only wrote Plaintiff's name, the date and signed on page 1 of Exhibit 'G' series which Plaintiff has denied.

132.0 Supposing without admitting that 2<sup>nd</sup> Defendant indeed wrote the said cheque at page 1 of Exhibit 'G' series, the Court is of the opinion that it does not mean that it was meant to pay off any alleged debts he (2<sup>nd</sup> Defendant) personally owed Plaintiff. This is especially so as

the said cheque is 1<sup>st</sup> Defendant Company's cheque and not 2<sup>nd</sup> Defendant's personal cheque.

133.0 Although 2<sup>nd</sup> Defendant has not been candid to the Court in his dealings with Plaintiff especially in respect of the when he started transacting business with Plaintiff and also denied personally requesting Plaintiff to be supplied with Plaintiff's products for his personally use, Plaintiff is required to adduce credible evidence in proof of that.

134.0 As already discussed, Exhibit 'D' series which are copies of invoices Plaintiff relied on to prove its case are unstamped contrary to the Stamps Act and so are of no probative value to the court.

135.0 This leaves the Court with Exhibit 'E', the Account Statements of 1<sup>st</sup> Defendant and 2<sup>nd</sup> Defendant.

136.0 The Account Statement that is purportedly referable to 2<sup>nd</sup> Defendant is found at page 6 of the said Exhibit 'E'.

137.0 The said page 6 is titled "DIZENGOFF GHANA LIMITED.  
STATEMENT OF ACCOUNT AS AT 9<sup>TH</sup> JANUARY, 2018  
CUSTOMER NAME: KOFI VINYO COMPANY LIMITED  
ACCOUNT CODE: 61KOFIV01"

- 138.0 From the above, the Customer name indicated is the name of the 1<sup>st</sup> Defendant Company and not that of 2<sup>nd</sup> Defendant.
- 139.0 There is therefore no credible evidence adduced by the Plaintiff to support its assertion that 2<sup>nd</sup> Defendant requested Plaintiff to supply him some of its products which Plaintiff supplied to 2<sup>nd</sup> Defendant for his own use.
- 140.0 Supposing without admitting that 2<sup>nd</sup> Defendant indeed made that request, there is no credible evidence adduced that Plaintiff supplied the said products to 2<sup>nd</sup> Defendant for his personal use.
- 141.0 The determination of this third issue renders moot the determination of the fourth issue of whether or not 2<sup>nd</sup> Defendant has defaulted in 2<sup>nd</sup> Defendant's payment for the products supplied by Plaintiff.
- 142.0 There being no evidence that Plaintiff supplied 2<sup>nd</sup> Defendant with any of Plaintiff's products for 2<sup>nd</sup> Defendant's personal use, 2<sup>nd</sup> Defendant could not have owed Plaintiff any amount of money for goods supplied to him personally.
- 143.0 In summary, the evidence adduced shows that the Distribution Agreement was between Plaintiff and 1<sup>st</sup> Defendant; and 2<sup>nd</sup> Defendant being 1<sup>st</sup> Defendant's Chief Executive Officer only acted for and on 1<sup>st</sup> Defendant's behalf.



144.0 On the fifth issue of whether or not Plaintiff is entitled to the reliefs endorsed on the Writ of Summons and Statement of Claim, the Supreme Court in the case of **Dalex Finance and Leasing vrs. Denzel Ebenezer Amanor (unreported) Civil Appeal No. J4/02/2020 dated 14<sup>th</sup> April, 2021** stated that this issue as formulated ought not to be determined singly because that is the essence of the whole trial.

## **GUARANTEE**

145.0 When Counsel for Defendant was cross examining Plaintiff, he sought to say that Plaintiff did not trigger the Guarantee which was valid from 24<sup>th</sup> March, 2017 to 23<sup>rd</sup> March, 2018. That because 1<sup>st</sup> Defendant defaulted on 23<sup>rd</sup> November 2017, Plaintiff could have claimed the amount under the said Guarantee.

146.0 This Court has taken judicial notice of the fact that Bank of Ghana revoked the banking license of UT Bank on 14<sup>th</sup> August 2017; by this time the Guarantee was still valid. By virtue of the said revocation, GCB Bank Limited completed a take-over of the erstwhile UT Bank Limited in or around August, 2017.

147.0 Plaintiff's representative under cross examination stated that although Plaintiff tried to engage with GCB Bank and the Bank of Ghana to claim the amount under the Guarantee, 1<sup>st</sup> Defendant's claim that it did not owe Plaintiff scuttled that effort.

148.0 The relevant excerpts of this cross examination at pages 1 and 2 of the Record of Proceedings on 27<sup>th</sup> January, 2022 are as follows:

*“Q: I am putting it to you that Plaintiff sued Vish Ashiagbor and Eric Nana Nipah (Receivers appointed by the Bank of Ghana pursuant to the revocation of the banking license of UT Bank Limited), GCB Bank Limited and the Bank of Ghana because the Guarantee given by UT Bank Limited.*

*A: My lady, the Defendant in our attempt to recover the money through his Guarantors indicated to us and the receivers that they did not owe us and as a result neither the Receivers nor the Guarantors and the Defendants themselves could pay us. The Defendant repeated its assertions in our pre-trial conference engagements. Therefore, it is not correct that we sued the receivers because we think the ultimate liability falls on them.”*

149.0 This was not challenged in any way by Defendants. Furthermore Exhibit ‘2’ is a letter dated 4<sup>th</sup> April 2018 which Defendants’ Lawyer formally wrote to Plaintiff and kept GCB Bank Limited in copy. In the said letter the said Bank was informed that 1<sup>st</sup> Defendant was not liable for the cost of Plaintiff’s products supplied to 1<sup>st</sup> Defendant which were alleged to have expired.

150.0 This invariably was an instruction to GCB Bank Limited not to pay the sums owed under the said Guarantee.

151.0 Plaintiff therefore could not have claimed the amount under the said Guarantee from GCB Bank Limited.

## SUMMARY

152.0 In summary, Judgment is entered in Plaintiff's favour against 1<sup>st</sup> Defendant on the amount of **Nine Hundred and Seven Thousand, Two Hundred and Fifty-Six Ghana Cedis, Eighty-Five Pesewas (GH¢907,256.85)** being the outstanding indebtedness of 1<sup>st</sup> Defendant to Plaintiff as of 27<sup>th</sup> January, 2018.

153.0 Interest is to be calculated on the amount of **Nine Hundred and Seven Thousand, Two Hundred and Fifty-Six Ghana Cedis, Eighty-Five Pesewas (GH¢907,256.85)** at the prevailing bank rate from 27<sup>th</sup> January, 2018 till date of final payment.

154.0 Plaintiff's claims against 2<sup>nd</sup> Defendant personally fails.

155.0 Due to 1<sup>st</sup> Defendant's default in liquidating its indebtedness to Plaintiff; which amounts to a breach of the contract between both of them, the Court will exercise its discretion and award General Damages of **Eighty Thousand Ghana Cedis (GH¢80,000.00)** against 1<sup>st</sup> Defendant for Plaintiff.

156.0 Cost of **Eighty Thousand Ghana Cedis (GH¢80,000.00)** is awarded against 1<sup>st</sup> Defendant for Plaintiff.

(SGD)

**AFI AGBANU KUDOMOR, J (MRS.)  
(JUSTICE OF THE HIGH COURT)**

**COUNSEL**

1. YAW KYERE AMPADU WITH VANESSA AWURABENA DAVIS  
HOLDING BRIEF FOR DR. KWEKU AINUSON FOR THE PLAINTIFF  
PRESENT

2. EUGENE ADDAI KYEREME HOLDING BRIEF FOR MATTHEW  
APPIAH FOR THE DEFENDANTS PRESENT

**LIST OF CASES**

1. ABABIO VRS. AKWASI III [1994-1995] GBR PART II AT PAGE 774.

2. FORDJOUR VRS. KAAKYIRE [2015] 85 GMJ 61 @85.
3. ADWUBENG VRS. DOMFEH [1996-97] SCGLR 660.
4. CITIZEN KOFI ENTERTAINMENT CONCEPT LIMITED VRS. GUINNESS GHANA BREWERIES LIMITED [2012] 46 GMJ 167.
5. HAMMOND VRS. ODOI [1982-83] GLR 1215.
6. DALEX FINANCE AND LEASING VRS. DENZEL EBENEZER AMANOR (UNREPORTED) CIVIL APPEAL NO. J4/02/2020.

#### **STATED LAW**

1. SECTION 14 OF THE EVIDENCE ACT, 1975 (NRCD 323).
2. SECTION 10 OF THE EVIDENCE ACT, 1975 (NRCD 323).
3. SECTION 12 OF THE EVIDENCE ACT, 1975 (NRCD 323).
4. SECTION 11(1) OF THE EVIDENCE ACT, 1975 (NRCD 323).
5. SECTION 11(4) OF THE EVIDENCE ACT, 1975 (NRCD 323).
6. SECTION 19 OF THE SALE OF GOODS ACT, 1962 (ACT 137).
7. SECTION 52 OF THE SALE OF GOODS ACT, 1962 (ACT 137).

8. SECTION 32 (6) OF THE STAMP ACT, 2005 (ACT 689).