

IN THE SUPERIOR COURT OF JUDICATURE IN THE HIGH COURT  
OF JUSTICE (COMMERCIAL DIVISION) ACCRA HELD ON  
MONDAY THE 31<sup>ST</sup> DAY OF JULY, 2023 BEFORE HER LADYSHIP  
AKUA SARPOMAA AMOAH J. (MRS.) JUSTICE OF THE HIGH  
COURT

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SUIT NO.: CM/RPC/0549/2021

POLYTANK GHANA LIMITED .... PLAINTIFF

VS.

AFRICAN INVESTMENT AND MANUF. GH. LTD ... DEFENDANT

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PARTIES: ABSENT

COUNSEL: TONY NYARKO HOLDING BRIEF FOR SAMUEL  
CODJOE FOR PLAINTIFF – PRESENT

COUNSEL FOR DEFENDANT – ABSENT

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## J U D G M E N T

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This is a default judgement not because the Defendant failed to file a  
defence but because it failed to testify in this suit. The matters for

determination are therefore not complicated. At least not from the one-sided evidence available to this Court.

On the 20<sup>th</sup> of April, 2021, the Plaintiff instituted the present suit against the Defendant for inter alia the following reliefs;

1. *The sum of Two Hundred and Seventeen Thousand Nine Hundred and Fifty-Seven Ghana Cedis Twenty-Two Pesewas (GH¢ 217, 957.22)*
2. *Interest on the sum of Two Hundred and Seventeen Thousand Nine Hundred and Fifty-Seven Ghana Cedis Twenty-Two Pesewas (GH¢ 217, 957.22) from the 1<sup>st</sup> of April 2019 till date of final payment*
3. *Costs*

Plaintiff says it is a Ghanaian registered limited liability company engaged in the production of general plastic materials and water reservoirs. Defendant, like the Plaintiff is also a Ghanaian Registered Company engaged in the production of soft drinks and energy drinks

Between the years of 2016 to 2019 the Defendant approached the Plaintiff for the supply of clear PET preforms (hereinafter referred to as the goods). By the cause of dealing between the parties, the said goods were purchased on credit upon the issuance of post-dated cheques as security for the due repayment of the goods.

Details of the goods supplied to the Defendant on credit and payments made to Plaintiff during the period are copiously set out in the Plaintiff's Statement of Claim.

Plaintiff says that the Defendant's indebtedness to Plaintiff stood at *Two Hundred and Seventeen Thousand Nine Hundred and Fifty-Seven Ghana Cedis Twenty-Two Pesewas (GH¢ 217, 957.22)* as at the 1<sup>st</sup> of April, 2019. However, the Defendant for no valid reason has failed or refused to make good its indebtedness despite persistent demands.

By its Statement of Defence filed on the 8<sup>th</sup> of April, 2022, the Defendant does not deny being supplied with goods by the Plaintiff. Its case however is that the parties had agreed that payment for same would be contingent upon profits being made from the use of the goods. According to Defendant its failure to make further payments to Plaintiff is due to the defective state of a large consignment of goods supplied which to Plaintiff's knowledge rendered them unfit for purpose.

Upon the failure of the parties to resolve their dispute at the Pre-trial Settlement Conference, two main issues were settled for determination at the trial. These were;

- 1) *Whether or not as at the 1<sup>st</sup> day of April 2019 Defendant was indebted to the Plaintiff for goods supplied to it (Defendant)*
- 2) *Whether or not Defendant is estopped from claiming that the goods supplied to it were defective.*

The record shows that Counsel for Defendant with leave of this Court, withdrew his representation for Defendant after this Court had given directions for trial of the suit. The reason given for the withdrawal of his representation was that he had lost touch with Defendant abruptly. All subsequent processes were therefore served on the Defendant personally albeit by substituted service.

Having failed to comply with directions given at Case Management Conference and to appear despite being notified of the hearing dates, trial proceeded in the absence of the Defendant.

Plaintiff's Sales and Marketing Manager, Vrushang Patel testified on its behalf.

His testimony was in line with the Plaintiff's pleadings. In proof of the Plaintiff's case, he tendered in evidence the following;

- i) *Exhibits A, B, E and F series* being account statements evidencing supplies made to Defendant for the period 2016-2018
- ii) *Exhibits C and C1* being evidence of dishonored cheques
- iii) *Exhibit D* being a letter written by the Defendant to the Plaintiff proposing a payment plan for liquidating its indebtedness to Plaintiff by installments
- iv) *Exhibit G* being evidence of the Defendant's confirmation that its indebtedness to the Plaintiff stood at *Two Hundred and Seventeen*

*Thousand Nine Hundred and Fifty-Seven Ghana Cedis Twenty-Two Pesewas (GH¢ 217, 957.22)* as at the 31<sup>st</sup> of December, 2019.

- v) *Exhibit H* being evidence of post-dated cheques issued to Plaintiff by Defendant with the agreement that the same would be presented upon confirmation of sufficiency of funds in Defendant's account but which Defendant has failed or refused to do making it impossible for Plaintiff to present same.

Of significance was the Plaintiff's testimony that it had never in the course of its dealings with the Defendant, received any complaints about defects in the goods. Its case is that the Defendant's subsequent purchases after the first transaction is ample evidence that Defendant has been satisfied with the quality of the goods at all times material to the present suit.

Plaintiff's case (as I understand it) is therefore that the Defendant's complaint about defects in the goods is clearly an afterthought.

Now, as noted earlier, the Defendant chose to absent itself from the trial even though duly notified at every step of the proceedings. The record will show that the matter was adjourned on the 3rd of April, 2023 to the 26<sup>th</sup> of April, 2023 to afford the Defendant the opportunity to appear to cross-examine the Plaintiff,

This is because *Section 62* of the *Evidence Act, 1975 (NRCD 323)* makes it clear that the testimony of a witness is of little or no probative value if not cross-examined upon, unless of course the opponent waives his right to cross-examine. The Defendant having spurned the opportunity to cross-examine Plaintiff, it meant that Plaintiff's evidence stood unchallenged the end of the trial

The Defendant's Statement of Defence also did not serve to advance its case in any way. This is because the pleadings contained therein remained mere averments which did not constitute evidence. The principle that pleadings except for admissions made by one's adversary, do not constitute evidence unless established by clear, credible and cogent evidence is so trite that I need not cite any authorities in support of same.

That said, I have, notwithstanding the absence of the Defendant at the trial subjected the Plaintiff's evidence to the standard set under *Sections 10, 11, 12 and 14* of *NRCD 323* and I am left in no doubt that the Plaintiff has established its case on a balance of probabilities. The Defendant's proposal to pay its debts by installments as evidenced by *Exhibit D* and its acknowledgement of its indebtedness to Plaintiff as evidenced by *Exhibit G* belies its claim about defects in the goods and shows that "story" up as an afterthought.

In the result Plaintiff's claim succeeds. Judgement is hereby entered for Plaintiff to recover from the Defendant as follows;

1. *The sum of Two Hundred and Seventeen Thousand Nine Hundred and Fifty-Seven Ghana Cedis Twenty-Two Pesewas (GH¢ 217, 957.22)*
2. *Interest shall be payable on the sum of Two Hundred and Seventeen Thousand Nine Hundred and Fifty-Seven Ghana Cedis Twenty-Two Pesewas (GH¢ 217, 957.22) from the 1<sup>st</sup> of April 2019 till date of final payment.*

I award Plaintiff costs of *Twenty-Five Thousand Ghana Cedis (GH¢ 25,000.00)* against the Defendant

**AKUA SARPOMAA AMOAH (MRS.)**  
**JUSTICE OF THE HIGH COURT**

*Statute referred to:*

*The Evidence Act, 1975 (NRCD 323)*