

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT
OF JUSTICE (GENERAL JURISDICTION COURT 5) HELD IN ACCRA
ON TUESDAY THE 18TH DAY OF APRIL, 2023 BEFORE HIS LORDSHIP
JUSTICE WILLIAM BOAMPONG ESQ, HIGH COURT JUDGE

SUIT N^o: GJ/ 1286/2018

JAMES NII ADDY

HOUSE NO. 119

NII AMASA OSEIKU AVENUE

AMASAMAN



PLAINTIFF

VS

1. **WILLIAM SARFO**

2. **GEORGE BERKO**

ALL OF UNNUMBERED

HOUSE, POKUASE



DEFENDANT

J U D G M E N T

The Plaintiff herein issued out his Writ of Summons jointly and severally against the Defendants claiming as follows:

- a) Cash the sum of One Hundred Thousand Ghana Cedis (GH¢100,000.00) consisting of the principal sum of Fifty Thousand

Ghana Cedis (GH¢50,000.00) Defendants borrowed from the Plaintiff on 12th November 2017 for four (4) months and interest of Fifty Thousand Ghana Cedis (GH¢50,000.00) for four (4) months which principal sum with interest of One Hundred Thousand Ghana Cedis (GH¢100,000.00) became due and payable from 24th March 2018 but which Defendants have failed to pay.

- b) Interest on the sum of GH¢100,000.00 at the Commercial Bank Rate from 24th March 2018 till final payment.
- c) Damages for breach of contract.
- d) Cost.

On the 18th October, 2018 this Court differently constituted entered final judgment against the 1st Defendant on Plaintiffs reliefs (a) and (b). The Court then constituted entered Interlocutory Judgment against the 1st Defendant on Plaintiff's Relief (c). No cost was also awarded against the 1st Defendant in respect of his Relief (c) which prayed for costs as well as Reliefs (a) and (b).

Plaintiff's Case:

On the 12th November 2017, the Defendants approached the Plaintiff for a loan of GH¢50,000.00. The Defendants promised the Plaintiff to pay the loan of GH¢50,000.00 after four (4) months and further pay an interest of GH¢50,000.00 to the principal sum. The Plaintiff gave the said loan to the Defendants.

The 2nd Defendant then relinquished his land document and building plan to the Plaintiff as collateral security for the loan. The Defendants further executed a document evidencing the contract.

According to the Plaintiff the repayment date of 24th March 2018 has elapsed but the Defendants have refused or neglected to repay the GH¢50,000.00 with the agreed interest of GH¢50,000.00 despite repeated demands by the Plaintiff.

2nd Defendant's case:

2nd Defendant admits that both Defendants took a loan of GH¢50,000.00 at an interest of GH¢50,000.00 to be paid within four (4) months from the Plaintiff's wife.

2nd Defendant adds that after some negotiations between him and the 1st Defendant, the 1st Defendant absorbed the loan. This had been captured in the Memorandum of Understanding they entered into. In effect the 1st Defendant had taken upon himself to be responsible for the loan the Defendants contracted from the Plaintiff.

According to the 2nd Defendant when the 1st Defendant was delaying in paying the loan to the Plaintiff, he summoned the 1st Defendant before some Traditional Authority where the 1st Defendant confirmed that he was responsible for the payment of the GH¢100,000.00 debt to be paid to the

Plaintiff. 1st Defendant had further admitted before one Eric Lamptey @ Parker who led them to acquire the loan from the Plaintiff that he the 1st Defendant had agreed to be responsible for the payment of the loan and the interest.

2nd Defendant therefore states that he is not now responsible for the payment of the said loan.

ISSUES:

At the closed of pleadings the following issues were set down for trial.

1. *Whether or not the Plaintiff loaned an amount of GH¢50,000.00 to the Defendants on the 12th November 2017?*
2. *Whether or not the Defendant have repaid the Plaintiff the loan of GH¢50,000.00?*
3. *Whether or not the 2nd Defendant relinquished to the Plaintiff his land and building documents as security for the repayment of the loan?*

DETERMINATION OF ISSUES:

Issue One (1):

“Whether or not the Plaintiff loaned an amount of GH¢50,000.00 to the Defendants on the 12th November 2017”.

In respect of this Exhibit ‘A’ tendered in evidence by the Plaintiff speaks for itself. The contents of Exhibit ‘A’ is very clear that the two Defendants that is William Sarfo and George Berko on the 12th November 2017 received a

loan of GH¢50,000.00 from the Plaintiff with an interest of GH¢50,000.00 totaling GH¢100,000.00 to be paid on the 24th March 2018.

The Defendants do not challenge the existence of Exhibit 'A' and the contents contained therein.

The 2nd Defendant however denied taking the loan from the Plaintiff but instead from the Plaintiff's wife. The 2nd Defendant despite this denial stated in paragraph 16 of his Witness Statement among others as follows:-

"It was Parker who led us to acquire the loan from the Plaintiff".

Eric Lamptey @ Parker gave evidence as PW1. His evidence was that he led the Defendants to acquire the loan from the Plaintiff himself. He did not mention the Plaintiff's wife. He (PW1) is as well a signatory to Exhibit 'A'. This Exhibit 'A' is clear that the Defendants took the loan from the Plaintiff.

It is clear therefore and settled that the Defendants took the loan from the Plaintiff per the terms as contained in Exhibit 'A'.

Issue (2):

"Whether or not the Defendants have repaid the Plaintiff the loan of GH¢50,000.00"

Under the Cross-Examination of the Plaintiff by Counsel for the 2nd Defendant, these questions were put to the Plaintiff.

Q. "So out of GH¢50,000.00 that you gave them as financial assistance, how much have they paid"?

A. "I was in the house when Mr. Lamptey brought GH¢5,000.00 that Defendant's lawyer said this is what he had received from his client so they should pay me"?

Q. "And you received it"?

A. "Yes".

The question itself which Counsel for the 2nd Defendant asked the Plaintiff is an admission that the Defendants own the Plaintiff a principal sum of GH¢50,000.00.

The answer provided by the Plaintiff indicates that out of the said principal sum only GH¢5,000.00 had been paid.

It is clear that this payment of GH¢5,000.00 was effected to the Plaintiff after the issuance of this writ but the exact date of payment was not provided.

As of the date of this delivery therefore the Defendants owe the Plaintiff the principal sum of GH¢45,000.00 plus interest.

Issue 3:

"Whether or not the 2nd Defendant relinquished to the Plaintiff his land and building documents as security for the repayment of the loan"

In relation to the determination of this issue this is what transpired when Counsel for the Plaintiff was Cross-Examining the 2nd Defendant.

Q. *“As Security for the loan, you gave your original land document and building plan to the Plaintiff not so”?*

A. *“Yes”.*

This settles issue 3:

However the 2nd Defendant sought to create the impression that because of the “Memorandum of Understanding (MOU) made being him and the 1st Defendant, the 1st Defendant had taken full responsibility to pay the loan and he the 2nd Defendant is no more responsible to pay the debt.

It is clear that the Parties in the “MOU” i.e. Exhibit “1” are

- 1) William Sarfo (1st Defendant herein)
- 2) Kwabena Boateng/Vincent Sam
- 3) George Kwaku Berko (2nd Defendant herein)

These 3 people are the signatories to the “MOU” Exhibit 1. Exhibit ‘1’ therefore will bind the Parties as stated therein.

Exhibit ‘A’ (the loan Agent) is however between the Plaintiff on one side and the Defendants on the other side. It is the binding of Exhibit ‘A’ against the Parties in this suit that makes the 2nd Defendant still responsible to be liable in this case.

If Exhibit ‘1’ (MOU) really exist then the only option that would avail the 2nd Defendant is after been held liable for the payment of this debt, the 2nd Defendant may call in the 1st Defendant to indemnify him.

I hold that Exhibit '1' (MOU) does not bind the Plaintiff in this case.

I further hold that the 2nd Defendant cannot therefore rely on Exhibit '1' to exonerate himself from Exhibit 'A'.

The 2nd Defendant is as well liable to pay the loan the Defendants took from the Plaintiff.

It is on the records that the Defendants had paid GH¢5,000.00 out of the GH¢50,000.00 principal sum. In respect of the principal loans I therefore enter judgment for the Plaintiff against 2nd Defendant for GH¢45,000.00. The Plaintiff had not provided me with the date the GH¢5,000.00 was paid to him to enable me to know how to treat same to exert interest. I am however convince that same was paid after the issuance of this writ.

I also see the interest of GH¢50,000.00 on the principal sum of GH¢50,000.00 for only 4 months as very unconscionable.

For the justice and fairness of this case I will re-open the terms of the contract and Order the 2nd Defendant to pay interest on the GH¢50,000.00 at the current Bank rate to be calculated from 24th March, 2018 to the date of this delivery.

The 2nd Defendant is further Ordered to pay interest on the GH¢45,000.00 at the current Bank rate from the day of delivery of this judgment till the final date of full payment.

I award General Damages of GH¢10,000.00 against both Defendants as the earlier judgment awarded against the 1st Defendant did not mention the award of interest against the 1st Defendant.

The said earlier judgment did not award cost against 1st Defendant.

I award cost of GH¢25,000.00 against both Defendants.

This judgment is jointly and severally against the Defendants. The Court had however awarded judgments against the two Defendants in different sums.

The Plaintiff is therefore caution to respect these different sums awarded against the two Defendants more so that the judgment is jointly and severally against the Defendants.

(SGD)

WILLIAM BOAMPONG

(JUSTICE OF THE HIGH COURT)

COUNSEL:

KOFI KONLAN ESQ, FOR LEONARD SEDZRO ESQ, FOR THE
PLAINTIFF

ABDUL-GAFAR ABLORH ABORDO ESQ, FOR THE 1ST DEFENDANT

FRANK K. NIKOI ESQ, FOR THE 2ND DEFENDANT