

**IN THE HIGH COURT OF JUSTICE, WESTERN REGION, HELD AT SEKONDI
ON THE 30TH DAY OF MAY, 2023, BEFORE HER LADYSHIP AFIA N. ADU-
AMANKWA (MRS.) J.**

SUIT NO. E2/63/20

MOSES BOSOMPEM

PLAINTIFF

VRS.

UBOSS GHANA LIMITED

DEFENDANT

JUDGMENT

The plaintiff's claims are for:

- i.) The recovery of the amount of GHc80,000.00 being the outstanding balance of the amount of GHc100,000.00 given as financial assistance to the Defendant to augment its business operations.
- ii.) The recovery of the amount of GHc60,000.00 being the agreed accrued interest on the total amount given to the Defendant by the Plaintiff.
- iii.) Interest on the amount of GHc100,000.00 from January 2019 to date of final payment.
- iv.) Cost incidental to this action".

It is the plaintiff's case that in 2016, at the defendant's request through an application, he granted the defendant financial assistance in the sum of GHc100,000.00 in two different instalments of GHc50,000.00 each. Per the terms of the agreement, the parties agreed that the amount would attract an annual interest of 20%. The defendant had paid only GHc20,000.00 out of the total amount, leaving an unpaid balance of GHc80,000.00 and the agreed interest of

20% per annum. All efforts to reach the defendant's officers to settle her indebtedness had proved futile.

The defendant has denied the plaintiff's claims. She contends that the GHc100,000.00 she received was for the purchase of stock to be sold and the profits shared between the parties at an agreed ratio. According to the defendant, the plaintiff promised to top up to the needed amount but failed, making it difficult for her to take any meaningful step with the money already given her. Subsequently, the plaintiff proposed to her to use the GHc100,000.00 to buy stock for sale and give him 30% of profits on the first GHc50,000.00 and 20% of the profits on the second GHc50,000.00 and later followed up with another proposal to consolidate all monies payable to him and same used to acquire shares accordingly. In February, 2020, she paid GHc20,000.00 when the plaintiff demanded a refund of his invested sum. However, due to the harsh effect of the Covid 19 pandemic, she had been out of business and could not effect any further payment. She counterclaimed for the following reliefs:

- “a) A declaration that the said amount sent to the Defendant by the Plaintiff was not financial assistance but a deposit of the investment package agreed upon by both parties;
- b) A declaration that the Plaintiff is only entitled to the agreed percentages of profits (if any) made on the said investment sums and not interests as claimed”.

The following issues were adopted for trial:

- i. Whether or not the amount provided by the plaintiff to the defendant was financial assistance or to invest in the business of the defendant.
- ii. Whether or not the plaintiff is entitled to its claim.
- iii. Whether or not the defendant is entitled to its counterclaim.

BURDEN OF PROOF

By the principle of proof in civil suits as expounded by Kpegah JA (as he then was) in **Zambrama vs. Segbedzie [1991] 2 GLR 221**, the plaintiff herein must prove the averments in his pleadings to the standard required by law. The burden of persuasion, which rests on a party, has been defined in **section 10 (1) of the Evidence Act, 1975 (NRCD 323)** as follows:

“...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”.

As a civil suit, the plaintiff must establish the existence or non-existence of the facts he alleges by a preponderance of the probabilities. In discharging this onerous burden, the plaintiff is required under section 11(4) of NRCD 323, supra, to produce sufficient evidence which, on the totality of the evidence, leads a reasonable mind to conclude that the existence of the facts is more probable than their non-existence. As it is the plaintiff's case that the defendant is indebted to him to the tune of over GHc100,000.00, he has the duty to lead such facts from which such inference of debt can be made against the defendant. The evidence of the defence only becomes important if it can upset the balance of probabilities which the plaintiff's evidence might have created in the plaintiff's favour. See the case of **Barima Gyamfi vs. Ama Badu [1963] 2 GLR 596**. The same principle applies to the defendant who has counterclaimed for certain reliefs. For once made, a counterclaim proceeds as an independent action even if the original action were concluded, stayed, discontinued or dismissed. The rules provide that in proceedings arising out of a counterclaim, the counterclaim is deemed as a writ and statement of claim. The party making the counterclaim and the party against whom it is made are also deemed the plaintiff and defendant, respectively. Therefore, both parties bear the burden of proving their claims on a balance of probabilities.

The defendant does not dispute the plaintiff's payment of GHc100,00.00 to her. Whereas she considers the money as a deposit of the investment package they agreed upon, the plaintiff considers it a loan to the defendant attracting an annual interest of 20%. On the issue of whether this money was financial aid or investment, the plaintiff's attorney, Kojo De-Graft Aidoo, a sales executive, testified that he was a former employee of the defendant. He stated that the directors of the defendant company were the plaintiff's good friends. Sometime in 2016, the defendant, through her managing director, formally applied for financial assistance in the form of a loan from the plaintiff to augment the defendant's business activities. Based on the defendant's request, the plaintiff demanded documents from the defendant to ascertain whether the defendant would be able to repay the requested amount. The defendant complied by sending one of such documents titled "Investment Review" from the defendant indicating her business projections with one of her partners (Castolin) for 2016. The plaintiff's attorney further testified that in March 2016, the plaintiff initially provided an amount of GHc50,000.00 to the defendant as a loan and later gave an additional GHc50,000.00 in January 2018 to make a total of GHc100,000.00 as the principal amount given to the defendant for her business. It was agreed between the parties that the total sum given to the defendant would attract an annual interest of 20%. The defendant had only paid GHc20,000.00 of the total sum to the plaintiff and failed to pay any of the accrued interest on the principal amount. The current amount of the principal owed by the defendant stood at GHc80,000.00. All efforts by the plaintiff to get the defendant to pay her principal amount and the accrued interest debt had proved futile. The plaintiff's attorney denied that the agreement between the parties was for the plaintiff to invest in the defendant's business by purchasing stocks or goods for the defendant's business. He also denied that the plaintiff promised to inject more funds into the defendant's business by investing in her business operations.

Francis Moses Aggrey- Bosu, the managing director of the defendant company, testified that the plaintiff was a friend to one of the defendant's officers. In 2006, the plaintiff enquired about investment opportunities in Ghana. After several discussions, he requested a proposal on the defendant's investment packages. The defendant's officer and the plaintiff's friend, in a proposal, made known three (3) investment options to the plaintiff, namely:

- a) Purchase Order finance, where an investor financed a purchase order and shared the profits with the company.
- b) Inventory finance, where the money provided by the investor was used to purchase stock which was sold and the profits shared at an agreed ratio accordingly.
- c) Partnership where the investor acquired shares in the company.

According to the defendant's representative, the plaintiff opted for the second option, i.e. inventory finance, but failed to deliver on his numerous promises to send money to the defendant. It took him about two years to send an amount of GHc100,000.00 (One Hundred Thousand Ghana Cedis) in separate tranches. Thereafter, the plaintiff promised to top up to the needed amount but failed to do so, making it difficult for the defendant to take any meaningful step with the money already given to her. Later, the plaintiff proposed to the defendant to use the GHc100,000.00 sent to buy stock for sale and give him thirty per cent (30%) of profits on the first GHc50,000.00 and twenty per cent (20%) of the profits on the second GHc50,000.00. Subsequently, he followed that up with another proposal to consolidate all monies payable to him and same used to acquire shares accordingly. The defendant's representative further testified that around October 2018, the plaintiff, rather strangely, started demanding records and monthly reports of the defendant's businesses and dealings. This continued till the latter part of 2019 when the plaintiff indicated that he was no longer interested in doing any business with the defendant contrary to all that had been discussed and

agreed upon. Upon the plaintiff's persistent demands for a refund of his invested sum, the defendant paid the plaintiff an initial amount of GH¢20,000.00 in February 2020. However, due to the harsh effect of the Covid 19 pandemic, the defendant could not effect any further payment as she had been out of business to date. The defendant's representative contended that the defendant had been greatly embarrassed by the instant suit as the plaintiff had entirely deviated from what the parties discussed, arranged and agreed upon.

The plaintiff tendered in evidence as exhibit "B" the unsigned letter from the defendant's managing director requesting financial assistance of GH¢200,000.00. Even though the letter is unsigned, the defendant's representative and managing director has admitted authorship of the exhibit. This is what transpired under cross-examination:

Q: But regardless of your friendship, the plaintiff made you write Exhibit "B" formally to you.

A: Yes

Q: Based on Exhibit "B", you produced Exhibit "C".

A: Yes

Q: And to find assurance to the plaintiff, based on Exhibit "C", the company would be in a position to pay the money given to it.

A: Yes

Q: Exhibit "C" was one of the factors that made the plaintiff provide the money to UBoss.

A: Yes

This discourse is consistent with the plaintiff's testimony that the defendant solicited financial assistance or aid of GH¢200,000.00, based on which the defendant produced exhibit "C" to show the viability of the business to pay up

the debt. Exhibit "B" speaks for itself. The plaintiff provided this money as financial assistance to the defendant. The defendant's contention that the monies were meant for investment purposes to buy the defendant's stock is disbelieved in light of her representative's admissions of writing exhibit "B". For a company that kept records, it was unusual for her not to tender any proof of such an investment transaction with the plaintiff. The explanation by the defendant's representative that most of the defendant's transactions with the plaintiff were verbal can hardly be believed, given that her appeal to the plaintiff for GHc200,000.00 was documented.

On the whole, it is quite clear that the plaintiff granted the defendant a loan of GHc100,000.00 which was to attract an annual interest of 20%. Out of this amount, the defendant paid GHc20,000.00 in February 2020. The plaintiff is entitled to recover the balance of the principal of GHc80,000.00 and GHc60,000.00, which is the interest that had accrued over the years, i.e. from March 2016-July, 2020, when the writ was issued. The plaintiff is also entitled to recover the interest on the GHc80,000.00 calculated at 20% from August 2020 (and not July 2019) to the date of judgment. The judgment debt shall bear the interest at the prevailing bank rate from the date of the judgment till the date of final payment. The defendant's counterclaim is dismissed.

(SGD.)

**H/L AFIA N. ADU-AMANKWA (MRS.)
JUSTICE OF THE HIGH COURT.**

COUNSEL

Victor Owusu appears for the Plaintiff.

Emmanuel Tsibuah appears for the Defendant.