

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT
OF JUSTICE (COMMERCIAL DIVISION), HELD IN SEKONDI
ON WEDNESDAY, THE 1ST DAY OF FEBRUARY, 2023

CORAM: G. K GYAN-KONTOH 'J'
JUSTICE OF THE HIGH COURT

SUIT NO: BFS 47/20

BETWEEN:

FIRST RATE MICRO FINANCE LTD :: PLAINTIFF
TAKORADI

VS

1. MR JOSHUA KYEI-YEBOAH
2. CECIALIA HANSON OGOE :: DEFENDANTS

JUDGMENT:

The Plaintiff herein on 6/8/2020 instituted the instant civil action against the 1st Defendant herein for the following reliefs:

- (i) *The Plaintiff's claim against the Defendant is for recovery of cash the sum of One Hundred and Fifty Two Thousand, Six-Hundred and Sixty-Six (Gh¢152,666.00) being the outstanding balance as at 20/07/2020 on loan facility granted to Defendant*

at his request and which he has failed and or refused to repay repeated demands notwithstanding.

- (ii) Interests on the said sum of Gh¢152,666.00 as per the loan agreement from 20/7/2020 to the date of final payment.*
- (iii) Costs incidental to this action.*

The Plaintiff, attached to its writ of summons a 5 paragraphed statement of claim. Service of the process could not be effected personally on the Defendant until eventually the Plaintiff effected same by a substituted process.

BACKGROUND:

The Plaintiff, a registered micro finance firm duly incorporated under the laws of Ghana entered into a contractual agreement whereupon a loan transaction between the parties was formed on 4/4/2019 in respect of an amount of Gh¢100,000.00 to be repaid at Gh¢13,334.00 per month commencing on 4/5/2019 and to be retired on 4/4/2020. As of 20/7/2020, the balance unpaid by the Defendant on the said loan agreement was Gh¢152,666.00 and the Defendant ignored all demands on him resulting in the instant action.

Later, after Defendant had been served with the court processes by substituted service, the Plaintiff on 30/11/2020 applied and joined the 2nd Defendant to the suit, as according to the records, the 2nd Defendant used her house No. PT 61, Fijai – Anaji, El Nino Street, Takoradi as mortgage for the loan granted to the 1st Defendant by the Plaintiff and particularly as the 2nd Defendant had been notified of the non-payment of the loan which she secured with her property.

The Defendants entered appearance on 17/2/2021 through E. Acquaaah Arhin; and upon a prompt for judgment for default of defence filed on 22/3/2021, the Defendants filed a 4 – paragraphed defence on 30/3/2021. The generality of the defence is that the Defendants indeed did admit the agreement with the Plaintiff but only denied the balance unpaid.

On 10/5/2021, Pre-trial settlement process was initiated; but on 7/6/2021, the records show that memorandum of issues were set as follows:

- (1) Whether or not the 1st Defendant is indebted to the Plaintiff in a sum of One Hundred and Fifty-Two Thousand, Six Hundred and Sixty-Six Ghana Cedis (Gh¢152,666.00), as at 20th July, 2020.*
- (2) Whether or not the 2nd Defendant has been notified to redeem her mortgage on her property with respect to the loan.*
- (3) Whether or not the Plaintiff is entitled to its claim.*

On 2/6/21, the case was referred to Commercial Court “B” for trial. On 12/7/2021, witness statements of the parties was ordered. The process filed, the Plaintiff on 29/6/2022 opened its case. The Plaintiff offered his witness statement filed on 26/6/2022 together with his Exhibit “A” being the statement of account of the Plaintiff in respect of the Transaction with the Defendant; and Exhibit “B” being a copy of the notice to the 2nd Defendant to redeem the mortgage.

The court adjourned the matter to 26/7/2022 to give the Defendants the opportunity to cross-examine the Plaintiff and Hearing Notices ordered to be served on the Defendant. On 10/1/2023, the proceedings in the matter were adopted. It was then the time for the Counsel for the Defendants to cross-examine the Plaintiff wherein Counsel threw in the towel and succumbed to judgment. Supporting Counsel’s case, he informed the court that

upon his advice to his clients, they admitted their liability to the Plaintiff and pursuant to that Counsel for the Defendant informed the Solicitor for the Plaintiff that, they had made a payment of Gh¢5,000.00 to the Plaintiff. It was at this stage of the matter that this court has decided to deliver this judgment.

Although the Defendants did not contest the matter, it is the law that a Plaintiff must win on the strength of his own case but not to rely on the weakness, apparent weakness of the Defendant's case. This position of the law is supported by the case of **R v HIGH COURT, ACCRA, EXP; DR. ERNEST ASIEDU OSAFO [2011] 2 SCGLR 845.**

In this case, the pleadings revealed that the Defendants did admit the loan transaction between them and the Plaintiff. Their only defence is their liability to the quantum owed, by their defence. The Defendants also never complied with the order to file their witness statement. More so, the Defendants never showed interest in the Pre-trial Conference. The Defendants also never cross-examined the Plaintiff when he opened his case and testified and tendered the Exhibits "A" and "B" in evidence.

It is worthy to note that when the Defendants failed to comply with the order of the court to file their witness statement, the court was enjoined to strike out the statement of defence. But the court out of its own magnanimity did not invoke Order 32 r 7 (A) of the High Court Civil Procedure (Amendment) Rule, 2014, C.I. 87. The court opted to proceed with the trial under Order 36 r 1 (2) (a) of C.I. 47 wherein the Plaintiff was allowed to prove its case.

"r 1(2) where an action is called for trial and a party fails to attend, the trial Judge may

(a) When the Plaintiffs attends and the Defendant fails to attend, dismiss the counterclaim, if any, and allow the Plaintiff to prove the claim.

It is upon the above provision that the court directed the Plaintiff to prove his claim wherein he testified and Exhibited Exhibits "A" and "B". The Plaintiff's case is just as has been stated in the background to the case supra.

Simply put and as admitted by the Defendants, the parties entered into a loan agreement and the 1st Defendant was offered a loan facility to be repaid by an agreed date but defaulted eventually by the 1st Defendant resulting in the instant action.

ADMISSION, in simple language, is a voluntary acknowledgment of the existence of facts relevant to an opponent's case. The position of the law on admission is that where a matter is admitted, proof is dispensed with. This position is supported by the Supreme Court case of **SAMUEL OKUDZETO ABLAKWA & ANR v. JAKE OBETSEBI LAMPTEY & ANR [2013 – 2014] 1 SCGLR 16**. It has also been held that there cannot be a better proof than an adversary admitting a fact in contention. Cases abound on this position of the law and which includes **FYNN v. FYNN [2013 - 2014] SCGLR 727**.

In the instant case, the Defendants formally pleaded that indeed, they are indebted to the Plaintiff. This, in my view is an admission by a party in a case. Their only contention was the quantum. And this contention was resolved through the Defendants' Counsel when he threw in the towel and to support that position, the Defendants commenced the payment of their indebtedness to the Plaintiff of the sum of Gh¢5,000.00. Paying Gh¢5,000.00 to the Plaintiff through their Account with the Plaintiff, to this court, is quite significant. It symbolises a shift of a person's readiness to settle his loan facility with the counterpart in a loan transaction.

From the records, it is clear that indeed the Defendants do not intend to contest the matter. The Defendants, from the records do not intend to challenge the Plaintiff on Gh¢152,666.00.

The Plaintiff's evidence has not been challenged by the Defendants. I therefore find that the Plaintiff has established his claim on the preponderance of probabilities. And I hereby enter judgment in favour of the Plaintiff for the reliefs sought.

I therefore order the Defendants to pay to the Plaintiff the sum of Gh¢152,666.00 being the outstanding balance as at 20/7/2020 on loan facility granted to the Defendants at his request and which he failed to repay inspite of repeated demands on him to do so.

I also order that interest calculable on the sum of Gh¢152,666.00 shall be paid based on the prevailing bank rate from 20/7/2020 until the date of final payment and not as per the rate on the loan agreement.

I also award costs of 10% of the amount of Gh¢152,666.00 against the Defendants in favour of the Plaintiff.

SGD

G.K. GYAN-KONTOH 'J'
JUSTICE OF THE HIGH COURT

COUNSEL:

1. E. K GYAMFI ESQ. FOR THE PLAINTIFF.
2. KWEKU SAM-AMOAHAH ESQ. FOR THE DEFENDANTS.