

IN THE SUPERIOR COURT OF JUDICATURE, IN THE COMMERCIAL DIVISION
(COURT 1) OF THE HIGH COURT OF JUSTICE ACCRA, HELD ON THURSDAY
THE 25TH DAY OF APRIL, 2024 BEFORE
HER LADYSHIP JUSTICE SHEILA MINTA

SUIT NO. CM/RPC/0553/2023

B5 PLUS LIMITED - PLAINTIFF

VRS.

1. ERICALEM ENTERPRISE - DEFENDANTS
2. ERIC KURUG

PARTIES: ABSENT

**COUNSEL: TONNY NYARKO, ESQ., WITH ANITA DABI, ESQ., HOLDING
BRIEF FOR SAMUEL CODJOE, ESQ., FOR
PLAINTIFF/APPLICANT – PRESENT**

**ESINAM KPORKU, ESQ., HOLDING BRIEF FOR SETH
GYAPONG OWARE, ESQ., FOR DEFENDANTS/
RESPONDENTS – PRESENT**

COUNSEL FOR PLAINTIFF/APPLICANT:

My Lady before you is an Application for Final Judgment in respect of Reliefs (a), (b) and (d), and Interlocutory Judgment in respect of Relief (c) as per the endorsement on the

Writ of Summons. We move in terms of the Motion Paper and the Supporting Affidavit together with the attached Exhibits. We rely on all depositions contained in the affidavit in support and state that the application has been brought under Order 13 Rule 1 and 2 of C.I.47 which permits the present application upon failure of Defendants to file their Statement of Defence.

We have attached as Exhibit 'A' a Search result indicating that in spite of Defendants entering appearance they have since failed to file their Statement of Defence within the stipulated time. We have not been served with any Affidavit in Opposition to our application. In the circumstances, we pray that this Court grants by way of Final Judgment Applicant's reliefs (a), (b) and (d) and further by way of Interlocutory Judgment, relief (c). We pray accordingly.

COUNSEL FOR DEFENDANTS/RESPONDENTS:

My Lady, respectfully we apologize for not filing any processes in the matter. Our inability to have filed any processes stem from the fact that the parties were considering amicable resolution of the matters before this Court. I have the instructions of the substantive lawyer in the matter to pray this Court for one final adjournment.

Respectfully we acknowledge the fact that this Honourable Court has extended courtesies to the Defendants, however considering the fact that the Defendant is at the brink of concluding terms of settlement with the Plaintiff, and in line with an expeditious settlement of the matters before this Court, we will pray for one very last adjournment so as to enable the parties file their terms of settlement to be adopted as the Consent Judgment of this Honourable Court. We pray accordingly.

JUDGMENT

This is an application filed by Counsel for the Plaintiff/Applicant on 19th January, 2024 praying for Final Judgment to be entered in favour of the Plaintiff against the Defendants

for its Reliefs (a), (b) and (d) and Interlocutory Judgment for general damages for breach of contract. The application was brought under Order 13 Rules 1 and 2 of C.I47.

The Plaintiff issued a Writ against the Defendants on 20th June, 2023 and the Defendants entered appearance on 10th August, 2023. Till date the Defendants have failed to file a defence and also file an affidavit in opposition to the current application even though they had notice of same. Indeed it was at the request of Counsel for the Defendant that this application was adjourned to today. This simple application cannot be sitting on the record for more than four (4) months, so I am unable to grant the request by Counsel for Defendants today for another adjournment.

I have heard from Counsel for the Plaintiff and Counsel for the Defendants, I have also reviewed all the processes on file, and since the Defendants have failed to file the requisite processes within the periods specified by the rules, I am minded to grant the Plaintiff's application as follows:

- a. Judgment is hereby entered in favour of the Plaintiff against Defendant for the sum of GHS752,310.00.
- b. Interest on the said sum of GHS752,310.00 at the prevailing Commercial Bank rate from 28th November, 2022 till date of Judgment.

Cost of Five Thousand Ghana Cedis (GHS5,000.00) is awarded in favour of the Plaintiff against the Defendants. On the issue of damages, the Plaintiff has to prove same. The matter is adjourned to 3rd June, 2024 for the Plaintiff to prove their damages.

(SGD.)

SHEILA MINTA, J.

JUSTICE OF THE HIGH COURT