

In his evidence in chief he averred that somewhere in October, 2017, the defendant company applied for a loan of GHC100,000.00 from the plaintiff company. However, the plaintiff company granted GHC70,000.00 to the defendant in November, 2017.

He averred that the defendant was to pay back the loan together with an interest of 8% by the end of September, 2018. Thus in a period of ten (10) months. However, if the defendant defaults, the defendant would pay additional 5% penalty by bringing the total interest to 13%.

According to the plaintiff, per the loan agreement the monthly loan principal payment was GHC7,000.00.

He averred that the monthly interest was GHC5,600.00 yielding a monthly total payment of GHC12,600.00. The total payment for the agreed period of ten months would be GHC126,000.00.

The plaintiff averred that the defendant only paid three monthly instalments in line with the loan contract, thus December, 2017 to February 2018, and defendant defaulted for several months.

By the end of the expiration of the loan agreement in September, 2018 the defendant had paid a total of **GHC37,830.17.**

After several demand notices to the defendant by the plaintiff, the defendant in October, 2018 sold its truck for the sum of GHC20,500.00 to pay part of the accrued loan interest outstanding.

The plaintiff further says that he wrote letters to defendant for the payment of the outstanding loan amount, however, the defendant informed the plaintiff that its business was challenged and could not make the monthly payment of

GHC12,600.00 but could only make a total payment of about GHC2,000.00 per month till its business was recovered. Even though, plaintiff did not accept the proposal, defendant proceeded to pay the proposed amount.

Plaintiff avers that the defendant used about four (4) years to finish paying the loan amount of GHC126,000.00 he was supposed to have paid within ten (10) months and his refusal to pay the loan balance which stood at GHC308,099.35 in accordance with the loan contract between the parties.

The plaintiff craved the indulgence of the court to grant the reliefs as endorsed on the writ of summons.

The plaintiff tendered the following exhibits to support his claim.

1. Exhibit "A" - Facility application form.
2. Exhibit 'B' - summary of Terms and Conditions of the loan.
3. Exhibit 'C' statement for Charles Arthur Ykk Mahanaim Ltd. Business loans

THE CASE OF THE DEFENDANT

One Charles Arthur who is the Managing Director of the defendant company testified on behalf of the defendant. He avers that the defendant is a company that engages in the distribution of beverages.

According to the defendant, the plaintiff granted a loan of GHC70,000.00 around October, 2017 for a period of ten (10) months with interest of GHC56,000.00. to the defendant company.

According to the defendant, the loan was secured with a KIA truck with registration number GT-1936-11 valued GHC30,000.00. It was in November, 2017 that the plaintiff disbursed the loan to the defendant. The defendant

made monthly payment to the plaintiff until in March 2018. However, the defendant went into distress and subsequently defaulted in the repayment of the loan.

By a letter dated 21st August, 2020 the defendant pleaded for a waiver of the accumulated interest on the loan and proposed to pay an amount of GHC20,634.71 in addition to all payments so far made as full and final, payment to retire the loan.

Since the plaintiff did not respond to the letter, the defendant also took it to be acceptance of its request. As a result, the defendant paid GHC20,63.74 to retire the said debt by May, 2021. The defendant therefore prayed the court to dismiss the reliefs of the plaintiff since the defendant is not owing the plaintiff.

The defendant tendered the following Exhibits to support his case.

1. Exhibit '1' loan agreement between Tailored Solutions Microfinance Ltd. And Ykk Mahanaim Ltd.
2. Exhibit '2' final Demand Notice.
3. Exhibit '3' final Demand Notice
4. Exhibit '3A' –statement from Charles Arthur. Ykk Mahanaim Ltd. Business loans.

ISSUES FOR DETERMINATION

After the closed of the pleadings, the parties set down the following issues for the determination of the suit.

1. Whether or not the defendant owes the plaintiff as per the loan contract between the parties
2. If yes to issue one (1), how much does the defendant owe the plaintiff

BURDEN OF PROOF

It is trite law that the standard of proof requires in civil cases is proof on the balance of probabilities which is clearly defined in the case of *Africa Mission Church V Seba Construction* (2013) 59 GMJ 176 @ pg 202 as follows.

“Preponderance of probabilities means that the degree of certainty of belief in the mind of the tribunal of fact or the court by which it is convinced that the existence of a fact is more probable than its non-existence”.

The general position is therefore that the burden of leading evidence is always on the person asserting the existence of a fact.

SEE: *ABABIO VRS AKWASI III* [1994/95] GBR 775

It is trite that proof in law does not mean mounting the box and repeating or for that matter reciting the pleading it must go beyond that. In the case of *MAJOLABI V LABI* [1957] GLR @ 190, the court among others held that proof in law is the establishment of facts by proper legal means, which includes producing relevant documents to the issue in controversy.

EVALUATION

From the evidence of the plaintiff, the plaintiff advanced a loan of GH¢70,000.00 to the defendant in October, 2017. Flowing from the evidence of both parties the defendant was to pay the loan within ten (10) months, while the plaintiff avers that the defendant was to pay an amount of GH¢126,000.00 during the period at the interest rate of 8% and if the defendant defaults in paying the loan, the defendant will pay an additional interest of 5% bringing it to 13% as indicated in Exhibit ‘B’ tendered in evidence by the plaintiff.

The defendant in his evidence also admitted taking a loan of GHC70,000.00 from the plaintiff company in October, 2017 but same was disbursed in November, 2017.

The defendant also admitted to pay an amount of GHC70,000.00 during the ten months' period with an interest of GHC56,000.00 bringing the total sum to GHC126,000.00. However, the defendant would pay additional interest of 5% on the money upon default.

For us to know the rate of the interest, which is part of the agreement, we have to look at the Exhibit 'B' and '1,' which of the two Exhibits is the contract agreement.

Exhibit 'B' states as follows:

ATTENTION YKK MAHANAIM LTD.

Dear sir,

Re Loan

We are pleased to advice you that Tailored Solutions Microfinance has approved your loan facility of Seventy thousand Ghana Cedis (GHC70,000.00) under the following terms and conditions.

Exhibit 'B' is dated 2nd November, 2017.

Exhibit '1', is also headed as follows:

Loan agreement

Between

Tailored Solutions Micro Finance Ltd. and Ykk Mahanaim Ltd.

Part of Exhibit '1' reads as follows

“This loan agreement is made the 23rd day of October 2017.”

Looking at Exhibits ‘B’ and ‘1’, it is clear that while Exhibit 1 is the agreement document for the parties, Exhibit ‘B’ explains how the loan was to be disbursed and paid back.

By Exhibit ‘1’ therefore, the interest to be paid within the ten months’ period is GHC56,000.00 on the GHC70,000.00. The loan was granted on 23rd October, 2017, while it was disbursed on 2nd November, 2017.

So any repayment of the loan was to start in December 2017 and the final repayment to be in September, 2018.

The question then is, as at 2nd September, 2018 when the defendant was supposed to have repaid all the loan, was the defendant able to pay all the loan?

Per the records, the answer is no. How much was then left? It is this amount that an interest will be paid on together with the 5% interest penalty.

Available records indicate that as at September, 2018 the defendant has repaid only GHC37,830.17 leaving a balance of GHC88,169.83.

It is this amount of money that the defendant is to pay interest on to the plaintiff for the period.

I am of the view that since the agreement between them did not mention an interest of 8% on the principal sum of GHC70,000.00, it will be a breach of their own agreement to ask the defendant to pay an interest of 8%.

However, the court will not be wrong to ask the defendant to pay interest on the GHC88,169.83. This is because under Rule (1) of CI 52 the court has power to award interest on the sum due the plaintiff even where the parties did not agree

on the payment of interest in their transaction or where the plaintiff did not initially plead interest in his claim.

This position was echoed in the case of SMITH V BLANKSON (2007/08) ISCGLR where in holding (3) the court states as follows:

“Even though, from the study of the record of appeal, plaintiff/appellant’s did not make any claim for an award of interest on the amount which was to be refunded by the defendant/respondent, the court would, in the interest of justice order that since the defendant/respondent did not immediately refund the money after the receipt of the request for refund, interest must be paid on the amount due at the prevailing commercial bank rate”

Also in the case of NTHC LTD. VRS ANTWI (2009) SCGLR 117 the court held that where no interest was applied for even in the Court of Appeal Supreme Court granted an interest on appeal in order to avoid unjust enrichment by one party.

Flowing from the above therefore, it is the considered view of this court that the defendant is to pay interest on the amount of GHC88,169.83 which was the balance of the loan he took from the plaintiff and its remaining interest as at 3rd September, 2018 at the prevailing commercial bank rate from the 3rd of September, 2018 till the date of judgment.

The defendant is also to pay 5% default interest on the remaining balance of GHC88,169.83 as at 3rd September, 2018 till the date of judgment.

However, during the default period, the defendant paid an amount of GHC89,470.48 to the plaintiff. This said amount should be deducted from the said judgment debt and the remaining amount be paid to the plaintiff.

I award cost of GHC20,000.00 against the defendant.

H/H SIMON NKETIAH GAGA
(CIRCUIT COURT JUDGE)

Jt.