

IN THE DISTRICT COURT HELD AT WEIJA, ACCRA ON THURSDAY THE 20<sup>TH</sup>  
DAY OF OCTOBER, 2022 BEFORE HER WORSHIP RUBY NTIRI OPOKU (MRS),  
DISTRICT MAGISTRATE

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SUIT NO. G/WJ/DG/A2/31/2022

**ADOMAKO KENNEDY**

**PLAINTIFF**

**VRS**

**GARIBA ADAMU**

**DEFENDANT**

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PLAINTIFF IS PRESENT AND SELF REPRESENTED

DEFENDANT IS ABSENT

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### **JUDGMENT**

The plaintiff filed a writ of summons and particulars of claim in the registry of this court on 10<sup>th</sup> January, 2022 for the following reliefs;

1. Recovery of an amount of GHC25, 000.00 being outstanding balance of investment defendant has failed to pay to plaintiff despite demands since January 2019.
2. An order for interests to be calculated on the said sum from January 2019 to date of final payment
3. An order for costs and any further orders as the court may deem fit.

The defendant filed a statement of defence on 22<sup>nd</sup> February 2022 and failed to attend court when the case was called even though there is proof of service of a hearing notice on him.

Order 25 Rule 1(2) (a) of the District Court Rules 2009, (C.I. 59) provides as follows;

“Where the plaintiff attends and the defendant fails to attend, dismiss the counterclaim if any and allow the plaintiff to prove the claim.”

In *Ankumah v City Investment Co Ltd* [2007-2008] 2 SCGLR 1064, Baffoe Bonnie JSC held at page 1076 as follows;

“A court is entitled to give judgment in default as in the instant case, if the party fails to appear after notice of the proceedings has been given to him. For then, it would be justifiable to assume that he does not wish to be heard.”

### **THE CASE OF THE PLAINTIFF**

It is the case of the plaintiff that in March 2018, he returned from peace keeping operations on a one month disembarkation leave. It is the further case of the plaintiff that he had about GHC30,000.00 on him and he discussed investment opportunities with his father. He added that his father advised him to invest into the salt business of the defendant. According to Plaintiff he met with the defendant on 12<sup>th</sup> April 2018 and entered into an agreement with him. He tendered the agreement in evidence and same was admitted and marked as Exhibit A. Plaintiff informed the court that it was a term of Exhibit A that the defendant will pay to him at the end of every month the sum of GHC2,200.00 as interest on the principal sum of GHC30,000.00 he had invested into defendant's business. He stated that the defendant paid the said interests for three months that is from May, June and July 2018 and kept on tossing him about. Plaintiff added that defendant does not pick up his calls and pays the interests as and when he so desires. According to plaintiff, he called defendant early 2019 and reminded him that he was not going by the terms of Exhibit A. He retorted that if plaintiff needed his money, he should go for it from him. Plaintiff said he agreed and demanded for his principal. He concluded by stating that defendant has paid him only GHC5,000.00 leaving the balance of GHC25,000.00 unpaid hence the instance action. Plaintiff called Alhaji Issah Adomako as PW1.

PW1 informed the court that plaintiff went on a United Nations Peace Operations and returned with some money which he indicated to him that he wanted to invest same in a business. PW1 added that he introduced plaintiff to defendant and parties met at Lapaz at Amakye Dede's spot where plaintiff handed over the sum of GHC30,000.00 to defendant with the agreement that defendant will pay the sum of GHC2,400.00 to plaintiff as interests at the end of every month. According to PW1, defendant paid interests to the plaintiff on three occasions and subsequently stopped making payments. Defendant started making excuses as to why he could not make further payments. Per the terms of Exhibit A, plaintiff terminated the agreement and requested for his principal.

PW1 informed the court that defendant has made a total payment of GHC16,000.00 leaving a balance of GHC9,000.00 unpaid.

### **BURDEN OF PROOF**

It is trite that sections 11(4) and 12 of the Evidence Act, 1975 (NRCD 323) provide that the standard in all civil action is by a preponderance of probabilities.

In **ABABIO V AKWASI IV [1994-1995] GBR 774, AIKINS JSC** delivered himself thus;

“The general principle of law is that it is the duty of a plaintiff to prove what he alleges. In other words, it is the party who raises in his pleadings an issue essential to the success of his case who assumes the burden of proving it. The burden only shifts to the defence to lead sufficient evidence to tip the scales in his favour when on a particular issue, the plaintiff leads some evidence to prove his claim. If the defendant succeeds in doing this, he wins if not he loses on that particular issue.”

It is worthy of note that the defendant did not attend court to cross examine the plaintiff and his witness even though several hearing notices had been served on him.

The law is that when a party makes an averment and same is not denied by the adversary, no issue is joined and the party does not have to lead any evidence to prove same. Again when a party gives evidence of a material fact and same was not cross examined upon, the court is bound to accept the evidence.

This position of the law was given judicial blessing in the case of in Re Presidential Election Petition; Akuffo-Addo, Bawumia & Obetsebi-Lampitey (No 4) vrs. Mahama, Electoral Commission & National Democratic Congress (No 4) [2013] SCGLR (Special Edition) 73 when at page 425, Anin Yeboah JSC (as he then was) held;

“I accept the proposition of law that when evidence led against a party is left unchallenged under cross examination, the court is bound to accept that evidence:”

Applying the law cited supra, I find on the totality of the evidence before this court, that the plaintiff is entitled to his reliefs.

Accordingly, defendant is ordered to pay the sum of GHC9, 000.00 to the plaintiff forthwith. Defendant is ordered to pay interests on the sum of GHC9, 000.00 at the prevailing commercial bank rate from January 2019 to the date of full and final settlement of the said sum.

Costs of GHC2, 000.00 is awarded in favour of the plaintiff against the defendant.

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**H/W RUBY NTIRI OPOKU (MRS.)**

**(DISTRICT MAGISTRATE)**