

GHANA / JUDGMENT

Investpro Agri Africa Ltd. Vrs Ghana Cocoa Marketing Association Coop)

[2023] GHAHC 358 (25 January 2023)

[2023] GHAHC 358

COURT
High Court

Source: ghalii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE SUPERIOR COURT OF JUDICATURE. IN THE HIGH COURT OF JUSTICE (COMMERCIAL DIVISION '9') ACCRA HELD ON WEDNESDAY, THE 25TH DAY OF JANUARY, 2023 BEFORE HER LADYSHIP JUSTICE AKUA SARPOMAA AMOAH (MRS.)

===== SUIT NO. CM/RPC/0045/2023
INVESTPRO AGRI AFRICA LTD 2ND FLOOR, YELLOW BUILDING PASSION HILL STREET OGBOJO, ACCRA ... PLAINTIFF/APPLICANT VRS. GHANA COCOA MARKETING ASSOCIATION (COOP) COOP BUILDING ADABRAKA ACCRA

===== ... DEFENDANT/
RESPONDENT PARTIES: - ABSENT COUNSEL: - GAFARI ALI WITH ANDREW BENIN & HAROLD KWABENA FEANU FOR PLAINTIFF/APPLICANT – PRESENT GEORGE ANKOMAH MENSAH HOLDING BRIEF FOR PETER KWESI NUMO FOR DEFENDANT/RESPONDENT – PRESENT SUIT NO. CM/RPC/0045/2023 INVESTPRO AGRI AFRICA LTD VS GHANA COCOA MARKETING ASSOCIATION (COOP) NOTES: RULING ON MOTION FOR SUMMARY JUDGMENT

JUDGMENT

On the 17th of October, 2022, the Plaintiff /Applicant (Plaintiff) herein instituted the present suit against the Defendant/Respondent (Defendant) praying inter alia for the following reliefs:

- a) An order for the payment of an amount of One million US Dollars (US\$1,000,000) being an amount given to the Defendant under an executed Agreement.
- b) An order for the payment of Six Hundred and Eighty-One Thousand, Seven Hundred and Fifty Ghana Cedis (GH¢681,750.00) being the amount outstanding due Plaintiff as its share of margin for the month of October 2021, July 2022, and August 2022.
- c) An order for the payment of a monthly amount of Two Hundred and Twenty-Seven Thousand Two Hundred and Fifty Ghana Cedis (GH¢ 227, 250.00) being an amount due the Plaintiff for the use of the facility amount for the month of September 2022 following the failure of Defendant to repay when the Agreement expired in August 2022.

- d) An order for the payment of a monthly amount of Two Hundred and Twenty-Seven Thousand Two Hundred and Fifty Ghana Cedis (GH¢ 227, 250.00) from the month of October, 2022 till the month of final determination and payment by Defendant of the facility amount due and owing
- e) General damages against Defendant for breach of contract. SUIT NO. CM/RPC/0045/2023 INVESTPRO AGRI AFRICA LTD VS GHANA COCOA MARKETING ASSOCIATION (COOP) Plaintiff's case may be summarized as follows: It is a private company that deals in investments in Agriculture and related services. In or about the year 2021, the Defendant requested Plaintiff's assistance to provide security for an overdraft facility that the Defendant planned to take from its bankers, to finance its cocoa purchasing activities for the 2021/22 Cocoa Buying Season. This request resulted in an agreement being executed between the parties for the provision of a One Million United States Dollars (US\$ 1, 000,000.00) Overdraft facility for the Defendant. Under this agreement, the Defendant undertook to honor in full all its repayment obligations to its bankers for any overdraft facility taken from its bankers and secured by the Plaintiff. Plaintiff says the Defendant further undertook to pay the Plaintiff a monthly amount for the use of the overdraft facility provided by the Plaintiff. A few days after the parties entered into the said agreement, Defendant requested an amendment of same due to its inability to secure the intended facility from its bankers. This led to the execution of an addendum to the original Overdraft Security agreement. By the addendum, the Defendant undertook to use the Overdraft security amount provided by Plaintiff to purchase cocoa for the 2021/22 Cocoa season and to repay same to the Plaintiff. It further undertook to pay to the Plaintiff an amount of Two Hundred and Twenty-Seven Thousand Two Hundred and Fifty Ghana Cedis (GH¢ 227,250.00) as Plaintiff's share of margin (25,000 per bag out of Forty Ghana Cedis (GH¢ 40.00) per bag margin) of the total number of bags of cocoa the facility will be used to be purchased monthly. SUIT NO. CM/RPC/0045/2023 INVESTPRO AGRI AFRICA LTD VS GHANA COCOA MARKETING ASSOCIATION (COOP) The Defendant however failed or refused to pay the monthly share of margin amount of Two Hundred and Twenty-Seven Thousand Two Hundred and Fifty Ghana Cedis (GH¢ 227,250.00) for the months of October 2021, July 2022, and August 2022 as agreed. Prior to the expiration of the tenure of the facility, the Plaintiff had informed the Defendant of its intention not to renew the facility and demanded payment of the amount of One Million United States Dollars (US\$ 1, 000,000.00) advanced to the Defendant. Defendant has however refused to pay the One Million United States Dollars (US\$ 1, 000,000.00) as well as the share of margin totaling Six Hundred and Eighty-One Thousand, Seven Hundred and Fifty Ghana Cedis (GH¢ 681,750.00) when the agreement terminated on the 25th of August, 2022. Despite its default the Defendant has continued to use the facility provided by Plaintiff and was indebted to the Plaintiff for an additional amount of Two Hundred and Twenty-Seven Thousand Two Hundred and Fifty Ghana Cedis (GH¢ 227,250.00) for the month of September at the time the writ was issued. The Plaintiff's case therefore is that the Defendant was indebted to Plaintiff in the total sum of Nine Hundred and Nine Thousand Ghana Cedis (GH¢ 909,000.00.) as of the end of September,

2022, which amount continues to accrue for as long as the facility provided the Defendant remains unpaid. The Plaintiff contends that the Defendant has no defence to its claims hence the present application. The record shows that the Defendant was served with the Plaintiff's writ as far back as 19th October, 2022 but has failed or refused to file a defence. Ordinarily, Plaintiff's assertions will have to be taken as unchallenged. SUIT NO. CM/RPC/0045/2023 INVESTPRO AGRI AFRICA LTD VS GHANA COCOA MARKETING ASSOCIATION (COOP) However, a Defendant who has entered appearance to a suit is entitled by Order 14 (3) to show cause against an application such as the present even, if he has not filed a defence. In its affidavit in opposition, the Defendant admits having taken the facility from the Plaintiff to purchase Nine Hundred and Ninety (9,090) bags of cocoa and to pay the Plaintiff the amount of Twenty-Five Ghana Cedis (Gh¢ 25.00) agreed as margin. It further admits that such payment was supposed to be made not more than three days after the date of receipt of payment from Ghana Cocoa Board (GCB) for any purchase cycle. It however denies owing the Plaintiff the monthly amounts claimed as share margin for the months stated. It says that the facility dated the 11th of October, 2021 was assessed late October 2021 and that parties had agreed at that time for repayment of same will start running from November 2021. Defendant further alleges that the parties had agreed that once the facility was assessed in late October, 2021 that month will not be included in the computation of payments under the Agreement. It says that by the terms of the facility, payments to the Plaintiff were contingent upon receipt of payments from GCB however GCB has not paid any of the licensed cocoa buyers since April 2022. Defendant's also deposes to the fact that the parties had subsequently reached certain oral agreements which effectively compromised certain terms of the written agreement reached between the parties as well as its addendum. This, according to Defendant included the fact that the loan of One Million United States Dollars (US\$ 1, 000,000.00) will be rolled over to the year 2022 and the 2023 cocoa season as a facility for the SUIT NO. CM/RPC/0045/2023 INVESTPRO AGRI AFRICA LTD VS GHANA COCOA MARKETING ASSOCIATION (COOP) Defendant, after the payment of all outstanding monthly margins. It therefore resists the Plaintiff's claim on grounds that it has a defence to Plaintiff's claim. Now, in the case of Sam Jonah v Duodu Kumi, [2004-2005] SCGLR 50 the Supreme Court @ page 54 shed light on the scope and purpose of Applications brought under Order 14 of the High Court (Civil Procedure) Rules, 2004. The Court said: "The objective of order 14 ... is to facilitate the early conclusion of actions where it is clear from the pleadings that the Defendant has no cogent defence. It is intended to prevent a plaintiff being delayed when there is fairly no arguable defence to be brought forward. What [the Court] is therefore required to do is to ascertain... whether on the totality of the pleadings and all matters before the court the respondent had , demonstrably any defence, in law or on the available facts, such as to justify his being granted leave to defend the [Plaintiff's] claim." (Brackets supplied) First, I note that the Defendant's Director of Finance, Andrews Ofori Addo in his affidavit deposes to the fact that the Defendant was served with the Plaintiff's writ on the 10th of November, 2022. This assertion is however not borne out by any evidence on record. What the record discloses is that the Defendant, despite being served with the Plaintiff's writ and statement of claim as far back as the 19th of

October, 2022 has failed to file a defence till date. There is therefore no joinder of issues as matters currently stand. In my opinion, the absence of a defence to the Plaintiff's claim imposes an even greater burden on Defendant to show cause by credible and cogent evidence that it has a "solid Defence" to Plaintiff's claims as it alleges. For this reason the depositions of Defendant will have to be critically examined in the backdrop of all papers filed by the Plaintiff. SUIT NO. CM/RPC/0045/2023 INVESTPRO AGRI AFRICA LTD VS GHANA COCOA MARKETING ASSOCIATION (COOP) In think it is significant to note as a starting point that the fact that the Defendant duly executed the Overdraft Security Agreement (Exhibits D) and its Addendum (Exhibit E) is not in dispute. This puts the issue as to whether or not the terms contained therein are binding on Defendant beyond question. The salient portions of Exhibits D and E disclose that the Plaintiff advanced a loan facility of One million United States Dollars to the Defendant to purchase Nine Thousand and Ninety (9,090) bags of cocoa per agreed turnaround times per month. Defendant further undertook to pay the Plaintiff an amount of Twenty-Five Ghana Cedis (GH 25.00) out of its net margin of Forty Ghana Ghana Cedis (GH¢ 40.00) for each bag of cocoa purchased with the loan facility. It was further agreed that payment of these amounts was not to be in arrears for more that 3 days from the date of receipt of payment from GCB and that the Agreement will terminate on the 25th of August 2022. Exhibit F is proof that the Plaintiff on the 25th of August, 2022 made a formal demand on the Defendant for the repayment of the loan facility of One million Ghana cedis (GH¢ 1,000,000.00) as well as an amount of Six Hundred and Eighty-One Thousand Seven Hundred and Fifty Ghana Cedis (GH¢681,750.00.) representing its share of margins for the months of October 2021, July 2022 and August

2022. Plaintiff further made it clear that it did not intend it extend or renew the facility upon its expiration. The Defendant's response to Exhibit F, was attached to the Plaintiff's affidavit as Exhibit H. In Exhibit H, Defendant concedes its inability to honour "some part" of the contract and prays for a year's extension of the facility to enable it "put itself together". It is important to note however that the Defendant did not deny being indebted in the sums stated in Exhibit F particularly the returns due Plaintiff for the months of October 2021, July 2022 and August 2022. SUIT NO. CM/RPC/0045/2023 INVESTPRO AGRI AFRICA LTD VS GHANA COCOA MARKETING ASSOCIATION (COOP) The text and the tenor of Exhibit F1 is veritable proof that the Defendant's request did not find favour with the Plaintiff. This was followed by Exhibits G and G1 which reveal that the Plaintiff remained adamant in its demand for repayment of the monies owed by the Defendant. It made clear that it would seek legal redress if the Defendant failed to make good its indebtedness within the timeline set by Plaintiff. True to its word, Plaintiff instituted the instant suit about a month after Exhibit G1. I find that Exhibit H belies the Defendant's claim that it does not owe the Plaintiff any monies on Plaintiff's share of margins for the months stated. This is because the Defendant, as already noted, did not in Exhibit H, deny this assertion of the Plaintiff in Exhibit F. Instead the Defendant lists a litany of reasons for its default. Chief among them being that GCB had not made any payments to Licensed Buying Companies. Clause 5.5 of Exhibit D requires the Defendant to notify the Plaintiff in the event of such a difficulty,

however there is no evidence to show that this was done. In any event the said Clause states expressly that such notification even if given shall not relieve the Defendant of its payment obligations. Again, upon a careful consideration of all the facts and circumstances of this case I am inclined to take a jaundiced view of the Defendant's claim that the terms of Exhibits D and E had been compromised through some verbal agreements reached between the Parties. I say so because it is, to me, inconceivable that any subsequent agreement to vary the terms of Exhibits D and E would be by any means other than formal. It is obvious from the papers filed that the communication between the parties had always been documentary. SUIT NO. CM/RPC/0045/2023 INVESTPRO AGRI AFRICA LTD VS GHANA COCOA MARKETING ASSOCIATION (COOP) Secondly, in light of the unbending position taken in Exhibits F, F1, G and G1, I find it highly improbable that the Plaintiff would suddenly make a volte -farce and enter into a verbal agreement with Defendant that the amount of One Million United States Dollars (US\$ 1,000,000.00.) be rolled over to the 2022 and 2023 Cocoa season. My inclination to doubt the sincerity of the Defendant's assertion is re-enforced by the fact that the Plaintiff indeed proceeded to launch the instant suit. Not surprisingly, Defendant was unable to state the date(s) this oral agreement(s) was purportedly entered into. Thirdly and more importantly, it is a well-received principle of law that where parties have embodied the terms of their contract in a written document, oral or extrinsic evidence will be inadmissible to add to, vary or subtract from or contradict its terms. See Sections 25 and 177 of the Evidence Act, 1975 (NRCD 323). The Defendant has failed to persuade this Court that this case falls under any of the exceptions listed under Section 177 of NRCD 323. All in all, except perhaps for the amount of damages claimed, I find that the Defendant's affidavit does not disclose any substantial issue(s) of fact or law which require resolution through a plenary trial. I am compelled to think that its claim about the so- called "verbal agreements" have just been thrown in to give the matter a sheen of controversy. Its assertions are obviously an attempt to escape its obligations under Exhibits D and E and to borrow the words of Lord Lindley in the case of Codd v Delap [1905] 92 LT 510 (H. L.) the matters deposed to in its affidavit are clearly "frivolous and practically moonshine". It has no viable defence to the Plaintiff's claims for which reason the instant application must succeed. In the result the Application is granted as prayed and Summary Judgment is accordingly entered for Plaintiff to recover from the Defendant as follows: SUIT NO. CM/RPC/0045/2023 INVESTPRO AGRI AFRICA LTD VS GHANA COCOA MARKETING ASSOCIATION (COOP)

- a) An amount of One Million United States Dollars (US\$ 1, 000,000.00) being the loan facility advanced to the Defendant for its cocoa purchasing business.
- b) Interest shall be payable on the said sum at the prevailing commercial bank rate from the 1st of September, 2022 till date of final payment. Payment of the said sum together with interest calculated thereon may be paid in the cedi equivalent at the prevailing exchange rate on the date of payment.

- c) An amount of Six Hundred and Eighty-One Thousand, Seven Hundred and Fifty Ghana Cedis (GH¢681,750.00) being the amount outstanding and due Plaintiff as its share of margin for the months of October 2021, July 2022, and August 2022.
- d) Interest shall be computed on the respective amounts at the prevailing commercial bank rate from the day each became due until date of payment.
- e) An amount of Two Hundred and Twenty-Seven Thousand Two Hundred and Fifty Ghana Cedis (GH¢ 227,250.00) payable monthly from October, 2022 till full and final payment of the loan facility of One Million United States Dollars (US\$ 1, 000,000.00) granted the Defendant by Plaintiff In a bid to encourage and facilitate the Parties' plans to settle this matter, I make no order as to costs. (SGD) AKUA SARPOMAA AMOAH J. JUSTICE OF THE HIGH COURT
SUIT NO. CM/RPC/0045/2023 INVESTPRO AGRI AFRICA LTD VS GHANA COCOA
MARKETING ASSOCIATION (COOP) Cases referred to: SAM JONAH V DUODU KUMI,
[2004-2005] SCGLR 50 CODD V DELAP [1905] 92 LT 510 (H. L.) Statute referred to: The High
Court Civil Procedure Rules, 2004 (CI 47) The Evidence Act, 1975 (NRCD 323) SUIT NO. CM/
RPC/0045/2023 INVESTPRO AGRI AFRICA LTD VS GHANA COCOA MARKETING
ASSOCIATION (COOP) 11

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE	https://ghalii.org/judgments/all/2023/?alphabet=i
CASE PAGE	https://chat.esheria.ai/case-law/ghana/summaryjudgment-high-court-2023--6a3ea50a3b1caa91298054de

Prepared on 29 October 2026 · Esheria