

CORAM: HER HONOUR BERTHA ANIAGYEI (MS) SITTING AT
THE CIRCUIT COURT 'B' OF GHANA HELD AT TEMA
ON WEDNESDAY, 14TH DECEMBER, 2022

SUIT NO. C11/195/21

AGNES SIKA NARTEY - PLAINTIFF

VRS

MIRACLE TOUCH COMPANY - DEFENDANT

JUDGMENT

The plaintiff per the reliefs endorsed on her writ of summons and statement of claim is claiming from this court;

- (a) Recovery of rent arrears of nine (9) months at six hundred and sixty united states dollars (USD 660) or its cedi equivalent of three thousand eight hundred and sixty six Ghana cedis (Ghs 3,866) from the 15th day of September 2020 to June, 2021 which is thirty four thousand, eight hundred Ghana cedis (Ghs 34,800)
- (b) Ejectment of the defendant from the shops, OfoLiwa plaza plot no. SAK/MKT/A/7
- (c) Recovery of shops rented by the defendant
- (d) Payment of the rent until date of final ejectment
- (e) Interest on claim (a) from the 15th day of September to June, 2021 until date of final payment.

The defendant entered appearance to the action and filed a statement of defence. She admitted that she rents the said shops from the plaintiff and that she is in arrears of rent. According to her, she is in arrears of rent of twenty seven thousand Ghana cedis (Ghs 27,000) less her cost of painting which is ten thousand Ghana cedis (Ghs 10,000).

Thus she owes the plaintiff only seventeen thousand Ghana cedis (Ghs 17,000). That although the rent control officer allowed her to pack out of the shops, the plaintiff restrained her from doing so. She counterclaimed for the cost of painting, hiring a truck and laborer's and damages for unlawful locking of the shop and she being prevented from removing her goods.

THE CASE OF THE PLAINTIFF

In her written evidence in chief, the plaintiff said that she is the owner of a store called Oforiwa plaza situated at Sakumono. That on the 21st day of August, 20219, she entered into a tenancy agreement with the defendant represented by one Joyce Ahwireng for the rental of a shop space made up of four shops merged into one at Oforiwa Plaza. That the term was for one year commencing from 15th September. 2019 to 14th September, 2020 at an agreed annual rent of eight thousand united states dollars (USD 8,000).

The monthly rent was six hundred and sixty six united states dollars, seventy cents (USD 660.70). That the defendant paid for the rent in instalments. She tendered in evidence EXHIBIT A and B as the tenancy agreement and receipt of payment. She continued that the defendant after the expiration of the first year, confirmed the tenancy.

That she agreed and requested the defendant to pay the rent for the year which was eight thousand united states dollars (USD 8,000). The defendant promised to pay but failed to. That due to COVID 19, upon the request of the defendant, she agreed that the rent should commence on the 1st of December, 2020 instead of 15th September, 2020.

Further that she wrote two demand letters to the defendant for payment but defendant still refused to pay. She tendered same in as EXHIBIT C and C1. That she reported the matter to rent control officer in Tema on the 7th of April, 2021. She tendered that in evidence as EXHIBIT D.

The rent control officer after hearing both of them requested the defendant to pay the rent. Defendant promised to but failed to make payment. That on the 6th of May, 2021, the defendant removed all items from the shop into a van without paying for the rent arrears. That she reported to the police and the defendant was stopped from removing the items.

THE CASE OF PW1

PW1 said he is the son of the plaintiff. That he is a professional photographer and he has his office in the building where the defendant shop is. That it was him that the defendant representative approached when it needed the shops and he agreed to rent the shops out to defendant. That the rent agreed was eight thousand united states dollars (USD 8,000) or its cedi equivalent of forty four thousand, four hundred Ghana cedis (Ghs 44,400). That the defendant made payment in instalments.

That a letter was written to the defendant for the rent due for the year 2020-2021 but the defendant said business was not going well and requested for an extension of the time within which to pay the money. That in spite of several excuses that the defendant gave, it never paid the rent.

Plaintiff closed her case after this.

The defendant entered appearance and filed a statement of defence to this action. Thereafter, she failed to file her witness statement and pre trial check list as ordered by

the court. She engaged the services of counsel who later withdrew from the action. Defendant stopped appearing in court and the subsequent proceedings were carried out in her absence.

Order 36 rule 2 (a) of C.I.47 provides in unambiguous terms that the proceedings at a trial where the defendant fails to attend is for the court to strike out the counterclaim if any and allow the plaintiff to prove his claim.

It is the duty of a court to give a party to a case before it a hearing, the failure of the defendant to appear in court to be heard is taken to mean that she did not wish for the court to hear her before deciding on the matter. Dotse JSC speaking for the Supreme Court in the case of *Julius Sylvester Bortey Alabi v. Paresh & 2 Others [2018] 120 GMJ 1 at p. 11* held: “We are therefore of the view that, if a party voluntarily and deliberately fails and or refuses to attend a court of competent jurisdiction, (such as the High Court which determined this case) to prosecute a claim against him, he cannot complain that he was not given a fair hearing or that there was a breach of natural justice. The Defendants must be respected for making such a choice, but they must not be allowed to get away with it”.

The Court of Appeal also in the case of *Ghana Consolidated Diamonds Ltd. v. Tantuo [2001-2002] 2 GLR 150* held at holding 4: “A party who was aware of the hearing of a case but chose to stay away out of his own decision could not, if the judgment went against him complain that he was not given a hearing”. See also the case of *Accra Hearts of Oak Sporting Club v. Ghana Football Association [1982-83] GLR 111 at page 117*.

CONSIDERATION BY COURT

The law according to *section 14 of the Evidence Act 1975, Act 323* is that unless and until it is shifted a party has the burden of persuasion as to each fact the existence or

non-existence of which is essential to the claim or defence he is asserting. This burden of persuasion is the obligation of a party to establish a requisite degree of belief on a balance of probabilities concerning the existence or non existence of a fact in the mind of the tribunal of fact or the court.

The burden of proof is that of a balance of probabilities. In the case of *Adwubeng v. Domfeh* [1996-97] SCGLR 660, the Supreme Court held that “sections 11 (4) and 12 of the Evidence Decree, 1975 (NRCD 323) have clearly provided that the standard of proof in all civil actions was proof by a preponderance of probabilities – no exceptions.

In the case of Ackah v. Pergah Transport Ltd (2010) SCGLR 728, the Supreme court held that it is a basic principle of the law of evidence, that a party who bears the burden of proof is to produce the required evidence of facts in issue that has the quality of credibility short of which his claim may fail. The method of producing evidence is varied and it includes the testimonies of the party and material witnesses, admissible hearsay, documentary evidence and things (often described as real evidence) without which the party might not succeed to establish the requisite degree of credibility concerning a fact in the mind of the court” See also the decision of the Supreme Court in the case of Sarkodie v. F.K.A CO. LTD [2009] 65 SCGLR and Adjetey Agosu v. Kotey & Ors [2003-2004] SCGLR 420.

The plaintiff aside from calling a witness, also relied heavily on documentary evidence. I would rely not only on the testimonies but on the documentary evidence on record. It is trite that ordinarily a court would prefer documentary evidence to an inconsistent oral testimony. In the case of *Adei and Anor v. Robertson and Anor* [2016] 101 GMJ 160 *Pwamang JSC* stated that “the law is settled that unless a document in evidence is invalid on the grounds of breach of a statute or has been shown not to be authentic, a

court of law would consider it favourably in preference to inconsistent oral testimony''. See also the case of *Hayford v. Egyir* [1984-86] 1 GLR 682.

EXHIBIT A is a tenancy agreement between the plaintiff and the defendant company herein. It is dated the 21st day of August, 2019. In same, the plaintiff as the landlord and the defendant as the tenant entered into an agreement for the defendant to rent out premises on the ground floor of Oforiwa Plaza. The term was for one year at an agreed monthly rent of six hundred and sixty six united states dollars and seventy cents (USD 666.70) totaling eight thousand united states dollar (USD 8,000). The commencement date was the 15th September, 2019 and the expiry date was 14th September, 2020.

EXHIBIT B is a receipt from Kissad Ventures dated 15th September, 2019 for the sum of thirty thousand Ghana cedis (Ghs 30,000). The amount was received from Joyce Ahwireng- Miracle Touch Company Ltd. The amount paid is described as "being part payment of rent ground floor Oforiwa plaza from 15th September, 2019 to 14th September, 2020".

EXHIBIT C is a letter dated the 10th day of September, 2020. It is written by the plaintiff herein and addressed to the defendant per Madam Joyce Ahwireng. It is titled "annual rent due". The letter sought to remind the defendant that from the 15th of September, 2020, it was due to pay rent for one year for the space no 1, 1st Floor.

The rent was still eight thousand united states dollars (USD 8,000) per annum at a monthly rent of six hundred and sixty six united states dollars and seventy cents (USD 666.70). The cedi equivalent was quoted as forty four thousand, four hundred Ghana cedis (Ghs 44,400).

Per EXHIBIT C, the defendant was expected to make full payment by the 21st day of September, 2020. A 10% increment scheduled for the year was waived due to business challenges. EXHIBIT C1 is a letter dated the 20th day of November, 2020. It is written by the plaintiff and addressed to the defendant. In a nutshell, the letter indicated that the defendant's rent had been rescheduled to commence from 1st December, 2020 instead of the initial date of 15th September, 2020.

EXHIBIT D and D1 are from the rent control office. EXHIBIT D is a complaint form. In same, the plaintiff herein made a complaint against Joyce Ohemaa Ahwireng for non payment of rent. The complainant requested that defendant be compelled to settle her accumulated rent and also vacate the shop without fail. EXHIBIT D1 is a summons by the rent control officer to Joyce Ahwireng to appear at its offices on the 6th day of May, 2021.

The documentary evidence corroborates all the claims of the plaintiff. Her witness also corroborated her claim as to the agreement between the plaintiff and the defendant and the amount that is in issue. I found the plaintiff to be a credible witness. Although she was not cross examined, she generally gave a good account of herself in her evidence in chief as she testified only on relevant matters. I find that on a balance of probabilities, that she has established her claim in my mind.

However, what the documentary evidence, particularly EXHIBIT C1, the second demand notice shows is that the plaintiff as an additional concession, waived the rent for two and a half months. Whereas initially, the rent was to commence on the 15th day of September, 2020, she agreed that same should commence from 1st December, 2022.

The plaintiff herself testified to this in her written evidence in chief. Per EXHIBIT C1, the default clause for non payment of the rent was the termination of the whole agreement and not the concession for two and half months. EXHIBIT C1 was signed by the plaintiff herein and addressed to the defendant. Thus the plaintiff is bound by her own deed and she can only seek to recover rent from 1st December, 2020 and not 15th September, 2020.

Thus a simple mathematical calculation from 1st December 2020 to mid June 2021 when the parties were scheduled to appear before the rent control officer would be six and a half months and not nine months. Upon that basis, I hereby find that the plaintiff is entitled to recovery of rent arrears from the defendant for six and a half months. That would be rent arrears of six and a half months at six hundred and sixty six united states dollars, 70 cents (USD 660.70) per month.

The total amount to be recovered is four thousand, three hundred and thirty three United States Dollars, fifty cents (USD.4, 333.55) or or its cedi equivalent per the prevailing exchange rate as used in the annual rent demand notice dated the 20th of November, 2020. The defendant is to pay interest on the said amount calculated from the date 30th day of June, 2021 till the date of final payment.

The defendant is hereby ordered to vacate the shops within twenty one (21) days from the date of judgment and hand over vacant possession to the plaintiff. In awarding costs, I have taken into account the fact that the plaintiff had to take steps to serve the defendant with several court processes. Despite the fact that defendant was aware of this case, she decided save for one date not to appear in court.

She had also unduly delayed this case by engaging a lawyer who never appeared in court and contrary to the rules of court, was refusing service of processes even though he was on record as counsel for the defendant.

When the said lawyer filed an application to withdraw, service of same on the defendant unduly delayed the matter. All this time, the plaintiff who is quite aged with a full head of grey hair had to keep appearing in court.

Later, another lawyer appeared in court for the defendant without filing a notice of appointment. The matter was adjourned for him to put his house in order. He did not appear again. It appeared that the defendant was out to frustrate the plaintiff and protract this matter for as long as she could. On the basis of the provisions of *order 74, rule (2)*, I hereby award costs of including legal fees of ten thousand Ghana cedis (Ghs 10,000) to the plaintiff.

(SGD)

H/H BERTHA ANIAGYEI (MS)
(CIRCUIT COURT JUDGE)

MODESTO KPODOVIA FOR THE PLAINTIFF PRESENT