

**IN THE CIRCUIT COURT “A”, TEMA, HELD ON THE THURSDAY  
16<sup>TH</sup> DAY OF NOVEMBER, 2023, BEFORE HER HONOUR AGNES  
OPOKU-BARNIEH, CIRCUIT COURT JUDGE**

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**SUIT NO. C11/55/22**

**EMELIA AYIH                    ----                    PLAINTIFF**  
**VRS.**

**MABEL AYIH                    ----                    DEFENDANT**

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|---|----------------|
| <b>PLAINTIFF</b>                          | <b>ABSENT</b>  |
| <b>DEFENDANT</b>                          | <b>PRESENT</b> |
| <b>C. K. KOKA, ESQ. FOR THE PLAINTIFF</b> | <b>ABSENT</b>  |
| <b>ERIC PONGO, ESQ. FOR THE DEFENDANT</b> | <b>ABSENT</b>  |

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**JUDGMENT**

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**FACTS**

The American Journalist/Poet, Ambrose Bierce (1842-1914) opines that ***“Death is not the end. There remains the litigation over the estate.”*** This is a litigation over the estate of the late Eric Ayih, who died intestate on 1<sup>st</sup> September, 2017, brought by the daughter of the deceased, against her step mother, the surviving spouse of the deceased. The plaintiff, per her Writ of Summons issued out of the Registry of this Court on 25<sup>th</sup> November, 2021, claims against the defendant the following reliefs:

(a) Declaration that the plaintiff is the beneficial owner of the 2-bedroom outhouse in house No. 16 Christian Village Ashaiman which house forms part of the estate of late Eric Ayih.

(b) An order for recovery of vacant possession of the one bedroom in the said 2-bedroom outhouse in house No.16 Christian Village Ashaiman from the defendant, which bedroom the defendant has wrongfully rented out.

(c) An order for the recovery of rent collected by the defendant in respect of the said room from July, 2019 to date of final judgment.

(d) Interest on the amount in (c) above at the prevailing commercial bank lending rate from July, 2019 to date of final payment.

(e) General damages.

(f) An order for perpetual injunction to restrain the defendant by herself, her assigns, agents, tenants, workmen, privies and all claiming through her and all who comes unto the said outhouse at the instance of the defendant from dealing in any form with the said 2-bedroom outhouse in House No. 16 Christian Village Ashaiman and from interfering with plaintiff's ownership, possession and or enjoyment of the said outhouse the subject of this suit.

(g) Cost in this suit including Solicitor's fees.

(h) Any other reliefs found due.

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

The plaintiff describes herself as the first daughter of the late Eric Ayih, and a joint administratrix of the estate of her late father. The plaintiff also describes the defendant as the widow and a joint administratrix of the estate of the leased intestate. The plaintiff avers that her late father died intestate on 1<sup>st</sup> September, 2017, at the Tema General Hospital after a brief illness leaving behind five children and a spouse, the defendant herein. After the final funeral rites, the plaintiff attempted to involve the defendant in obtaining Letters of Administration for the estate, but the defendant refused. As a result, the plaintiff applied for and

obtained the Letters of Administration on her own. However, the defendant later filed a caveat and was subsequently joined, and they both obtained the Letters of Administration on 13<sup>th</sup> June, 2019.

The plaintiff states that the estate of the late Eric Ayih consists of a 5-bedroom self-contained house with an outhouse located at House No. 16 Christian Village, Ashaiman, another 5-bedroom self-contained house in Tsrukpe Dukuma in the Volta Region, and personal effects. According to the plaintiff, after the estate was distributed among the beneficiaries, she received the outhouse in *H/No. 16 Christian Village Ashaiman*, which has 2 single bedrooms, as well as one bedroom in the house in Tsrukpe Dukuma in the Volta Region. The plaintiff further avers that the defendant and her children were given 4 bedrooms in *H/No. 16 Christian Village Ashaiman* and 3 bedrooms in the house at Tsrukpe Dukuma. The plaintiff states that the personal effects of the deceased, such as suitcases, ice chests, fridges, and clothes, were distributed to all beneficiaries. The plaintiff and the defendant, as administrators of the estates, executed a vesting assent to properly vest the properties in all the beneficiaries.

Additionally, the plaintiff maintains that prior to obtaining the grant of Letters of Administration, the defendant had rented some rooms in *H/No. 16 Christian Village*, including the outhouse which forms part of her share of the estate. The plaintiff claims that despite their efforts, the defendant has refused to vacate one of the plaintiff's rooms in the outhouse and has rented it out, wrongfully keeping the rent for herself. The plaintiff argues that the defendant's claim to the room is illegal and violates the plaintiff's property rights. The plaintiff asserts that the defendant has no right to the 2-bedroom outhouse and she is therefore entitled to an order for accounts of proceeds of rents received by the defendant since July

2019. She states that she solely bore the expenses relating to legal processes and estate duty but the plaintiff has received rents without accounting for same.

### **THE CASE OF THE DEFENDANT**

The defendant vehemently denies the claim of the plaintiff and avers that the plaintiff is the second daughter of the deceased and that the first daughter, by name Jemima Ayih, is deceased. The defendant states that prior to the death of the deceased, he received both orthodox and herbal treatment for eight years before he died at Tema General Hospital on 1<sup>st</sup> September, 2017. In further denial of the claim of the plaintiff, the defendant states that the plaintiff secretly applied for letters of administration without informing her which caused her to file a caveat and was subsequently joined as a co-administratrix of the estate of the deceased.

The defendant raises issues about the distribution of the estate of the deceased. She states that there was a disagreement about the manner of the distribution of the Ashaiman property, as one of the siblings did not receive any room whilst the plaintiff took two rooms instead of one. The defendant states further that after the estate was distributed, the beneficiaries were satisfied but the administratrix could not complete the vesting of the properties in the beneficiaries. According to the defendant, during the lifetime of the deceased, he rented one room in the boys' quarters to a tenant and the plaintiff does not even live in that house.

The defendant contends that the plaintiff, out of sheer malice, has kept the only single room allocated to the deceased's sister locked up for nearly nine years without occupying it. Despite this, the plaintiff continues to fight for the disputed room, which is currently occupied by a tenant and was rented out by her late

husband before his death and denies being the one who rented the room to the tenant. The defendant maintains that the plaintiff is trying to claim more than she is entitled to by denying the other siblings a single room from their father's assets in the house

Again, the defendant asserts that she has not made any adverse claim to the plaintiff's share of the property and argues that any expenses incurred by the plaintiff in obtaining the letters of administration were done without informing her. The defendant also mentions that, their elder daughter, Linda, who currently resides in Australia, did not receive a share of the estate to her dissatisfaction. The defendant therefore contends that the plaintiff is not the rightful owner of the property in dispute and that she has also not received proceeds of rent to account for same and therefore states that the plaintiff is not entitled to her reliefs.

When various attempts made by the parties and their Counsel to settle the matter failed, the Court, at the application for directions stage, set down the following issues for resolution:

### **LEGAL ISSUES**

1. Whether or not the plaintiff is the beneficial owner of the 2-bedroom outhouse in H/No. 16 Christian Village Ashaiman which form part of the estate of the late Eric Ayih.
2. Whether it is the defendant who rented out one bedroom in the two-bedroom outhouse in H/No. 16 Christian Village Ashaiman and whether same was wrongful.

3. Whether or not the plaintiff is entitled to accounts of rent and the rent collected by the defendant in respect of the said one bedroom since December, 2017.
4. Any other issues arising from the pleadings but not specifically set down.

### **BURDEN OF PROOF**

It is settled law that in civil cases, the party who bears the burden of proof is to prove his case on a balance of probabilities. In the case of **Okudzeto Ablakwa (No.2) v. Attorney-General & Obetsebi Lamptey (No. 2)** [2012] 2 SCGLR 845, the Supreme Court in pronouncing on the burden of proof held at page 867 that:

*“...the established rule, which is that he who asserts, assumes the onus of proof. The effect of that principle is the same as what has been codified in the Evidence Act 1975(NRCD 323), s 17(a) ... What this rule literally means is that if a person goes to court to make an allegation, the onus is on him to lead evidence to prove that allegation, unless the allegation is admitted. If he fails to do that, the ruling on that allegation will go against him. Stated more explicitly, a party cannot win a case in court if the case is based on an allegation, which he fails to prove or establish.”*

It is also trite that witnesses are not counted but weighted. Thus, it is not the host of witnesses that a party calls in proof of a case that matters but whether the witnesses called have been able to lead the requisite evidence in proof of the case of the party who calls them. The Supreme Court succinctly puts this principle in the case of **Aryee v. Shell Ghana Ltd.** [2017-2020] 1 SCGLR, 721-735, at page 733, where the Supreme Court per Benin JSC stated as follows:

*“It must be pointed out that in every civil trial all what the law required is proof by preponderance of probabilities: See section 12 of the Evidence Act, 1975 (NRCD 323). The amount of evidence required to sustain the standard of proof would depend on the nature of the issue to be resolved. The law does not require that the court cannot rely on the evidence of a single witness in proof of a point in issue. The credibility of the witness and his knowledge of the subject-matter are the determinant factors...Indeed, even the failure by a party himself to give evidence cannot be used against him by the court in assessing his case.”*

Therefore, in the instant case, the plaintiff who brought the defendant to court bears the burden to prove her case on a balance of probabilities for a favourable outcome failing which her claim will be dismissed.

## **ANALYSIS**

**ISSUE 1: Whether or not the plaintiff is the beneficial owner of the 2-bedroom outhouse in H/No. 16 Christian Village Ashaiman which form part of the estate of the late Eric Ayih.**

From the pleadings and the evidence led by the parties, the deceased died intestate. Consequently, the law applicable to the devolution of his estate is the Intestate Succession Act 1985, PNDC Law 111. **Section 4** of the PNDC Law 111 provides that:

*“(1) Despite this Act,*

*(a) where the estate includes only one house, the surviving spouse or the child or both of them is or are entitled to that house and where it devolves to both the spouse and the child, they shall hold the house as tenants in common.”*

*(b) where the estate includes more than one house, the surviving spouse or child or both of them shall determine which of those houses shall devolve to the spouse*

*or the child or both of them and where it devolves to both the spouse and the child, they shall hold the house as tenants in common.*

*(2) Where there is disagreement as to which of the houses devolves to the surviving spouse or child, or both of them, the surviving spouse or child, or both of them have, the exclusive right to choose any of those houses.*

*(3) Where the surviving spouse or child or both of them is or are unwilling or unable to make the choice, the High Court shall, on application made to it by the administrator of the estate, determine which of those houses shall devolve to the surviving spouse or child or both of them”*

The purpose of PNDC Law 111 is succinctly stated in the Memorandum to the Act which is to cater for spouses and children of a deceased intestate who were hitherto afforded little or no protection upon the death intestate of a spouse or parent. The Memorandum also states that:

*“The growing importance of the nuclear family brings with it its own logic of moral justice. Simply put, this argues that a surviving spouse be compensated for his or her services to the deceased spouse; that a spouse is more likely to look after the children on the death of the other partner than anybody else; and that expectation of the spouses are probably best satisfied by giving the property of one to the other on the former’s death.”*

The Administration of Estates Act, 1961(Act 63) and Order 66 of the High Court (Civil Procedure) Rules, 2004(C.I. 47) make it mandatory for the grant of Letters of Administration by a court of competent jurisdiction upon death intestate and the grant is the authority for the administrators to deal with the estate in accordance with law. The law casts an obligation on the administrators to distribute the estate in accordance with the sharing formula provided under the PNDCL 111. The grant of letters of administration to a person does not entitle him to a beneficial interest in the estate which he would not otherwise have and



the grant imposes a duty on the administrators to discharge their duties in accordance with law and any fraction in the performance of the legal duty may attract legal actions. This position is amplified in the decision of the Supreme Court per Adade JSC (as he then was) in the case of **Re Asante, Owusu v. Asante** [1993-94] 2 GLR 271 SC, that:

*“A grant of letters of administration only entitles the grantee to administer the estate; it does not give him any beneficial interest whatsoever in the estate, which he does not have otherwise. A grant in fact imposes on the grantee, not privileges, but legal obligations of a serious character, a failure to discharge which may lead to grave consequences. I wish that the courts emphasised these obligations in their rulings, rather than couch rulings and decisions in such forms as to create the impression that the grant suddenly thrusts the grantee into a fortune. And it has not been unknown for grantees, after discovering that the estate is after all not a gold mine, to refuse to act, or, at best, they adopt a lackadaisical approach to their assignment.”*

Thus, the administrators of the estate are appointed to administer and distribute deceased person’s estates strictly according to law and cannot enjoy the estate to the detriment of the beneficiaries.

The provisions in the PNDC Law 111 are clear on how the property should be distributed upon death intestate. Sections **3 and 4** of PNDC Law 111 provide for what should go to the surviving spouse and children exclusively and the law further provides the fractions for distributing the residue of the estate after taking out the household chattels and the only house which devolves exclusively on the surviving spouse and children. The law further provides that three-sixteenth of the residue shall devolve on the surviving spouse, nine-sixteenth to his child, one-eighth to his surviving parent and one-eighth will devolve on the persons who are

entitled according to customary law applicable to the disposition of the property of the deceased. Again, the rationale for giving the surviving spouse a greater part of the residue as stated in the Memorandum to the Act is that it is expected that a greater part of the responsibility for the maintenance, care and education of the surviving spouse and children which was hitherto the responsibility of the customary successor in his representative capacity will now be shifted to the wife and children.

Subsequent to the distribution of the estate, **Section 96** of Act 63 imposes an obligation on the administrators of an estate to prepare vesting assents in respect of the immovable properties of the deceased distributed. In the case of **Yaw v. Apenteng and Anor [2011] GHASC 33**, the Supreme Court underscored the need for administrators of an estate to prepare a formal vesting assent transferring the ownership of the property to the beneficiaries. The Supreme Court after referencing **sections 1(1), 2(1) and 96(1)** of Act 63 held that:

*“It is therefore necessary that before carrying out the intentions of the testator, the will must first be admitted to probate and thereafter a beneficiary of any real estate under the will must have a vesting assent executed in his favour by the executors to whom probate has been granted. Until this is done, any purported sale of the real estate will be of no legal consequence and the purchaser thereof will not have a valid title.”*

The plaintiff testified that she is the first daughter of the late Eric Ayih and a joint administratrix of his estate. The defendant, who is also a joint administratrix, is the widow of the late Eric Ayih. Eric Ayih, who died intestate on September 1, 2017, at the Tema General Hospital. The deceased left behind a spouse and the five children including the plaintiff herein. The plaintiff further testified that after

the final funeral rites of her late father, she made attempts to engage the defendant in obtaining letters of administration but she was unsuccessful. When she proceeded to apply for letters of administration on her own, the defendant filed a caveat and was subsequently joined to the application as a co-administratrix and the court granted the Letters of Administration to them on June 13, 2019. In support, she tendered in evidence the Letters of Administration admitted and marked as **Exhibit "A"**.

According to the plaintiff, the estate of the her late father consisted of a 5-bedroom self-contained house with an outhouse at *H/No. 16*, Christian Village, Ashaiman, and another 5-bedroom self-contained house in Tsukpe-Dukuma, the deceased's hometown in the Volta Region, along with personal belongings. The plaintiff further testified that the estate was distributed among the beneficiaries and she received her share the outhouse in *H/No. 16* Christian Village, Ashaiman, which has 2 single bedrooms. Additionally, she was given one bedroom in the 5-bedroom self-contained house in Tsrukpe-Dukuma, Volta Region. The personal effects of the deceased, such as suitcases, ice chests, fridges, and clothes, were distributed among all the beneficiaries. After that, she and the defendant, as administrators of the estate, executed a Vesting Assent that legally transferred the properties to all beneficiaries. In support, she tendered in evidence as **Exhibit "B"**, a copy of the Vesting Assent. Under cross-examination by Counsel for the defendant, the plaintiff answered as follows;

*Q: You see your father died on 1<sup>st</sup> September, 2017, is that so.*

*A: That is so.*

*Q: And he was buried roughly 3 months after his death, is that not so?*

*A: My Lord I have already told the court that the date of burial has escaped me.*

*Q: And you also told the court that the distribution was made after about three months after the burial, is that not so?*

*A: My Lord, that is why I wanted to explain to the court how it was done.*

*Q: You got the letters of administration granted to you and the defendant by the High Court in Tema on 13<sup>th</sup> June, 2019. So the distribution could not have been done after the grant of the letters of administration.*

*A: Yes, My Lord. We shared the property before obtaining letters of administration. After the distribution, I informed the family to hold on to enable us obtain the letters of administration so I contacted my Lawyer who invited the family. When the family came, my lawyer gave me a letter inviting the defendant to participate and she told me she was not coming. The letters of administration we obtained she refused to contribute towards it. My Lord, after obtaining the letters of administration, she was invited by the family for the distribution of the estate, she did not come but sent two of my siblings. So she told my siblings to tell the family that she will not be able to come but whatever is decided by the family she will go by it and the family responded that they have maintained the earlier decision.*

*Q: So as a fact it is not you and the defendant who did the distribution of the estate?*

*A: No, my lord. But she was present when the distribution was done.*

*Q: Madam, a few minutes ago you told the court that when the defendant was invited, she did not come and now you are saying*

*when the distribution was done she was present. Which one do you want the court to believe?*

*A: She sent my siblings that she will not be able to come*

*Q: I am putting it to you that the property was distributed before the both of you obtained letters of administration.*

*A: Yes, My Lord. After we obtained letters of administration, the estate was redistributed.*

*Q: Who did the distribution after you obtained the letters of distribution?*

*A: This distribution was done by Mr Miemie, Daniel Ayih, Papa Ayih, Akotse Sulia, Paul Adzato and many others but these are the people I can remember.*

*Q: Some of these people you just mentioned were the very people who did the first distribution?*

*A: Yes, My Lord.*

*Q: I am putting it to you that all this people had no authority to do the distribution when the ones to do the distribution are there.*

*A: My Lord I do not know that the law does not allow members of family to do the distribution when the administrators are alive.*

*Q: Finally, I put it to you that to the defendant there was no distribution up to today.*

*A: To the best of my knowledge, the estate of my late father has been distributed.*

The defendant on her part testified that she was married to Eric Ayih through Ewe customary rites, cohabited with him and the marriage was blessed with four children namely; Linda Ayih, Ethel Ayih, Maxwell Ayih, and David Ayih. Prior to the celebration of the marriage with the deceased, he had two children, Jemima Ayih (who pre- deceased her father) and Emelia Ayih, the plaintiff herein. The defendant further testified that during their marriage, she and her late husband built a residential home at Community 21. Unfortunately, he suffered from stroke for eight years and became visually impaired before his death on 1<sup>st</sup> September, 2017.

The defendant further testified that after the death of her late husband, the plaintiff locked up the room that one Jemima was occupying and took the keys, leaving only one other room, which had already been rented out by her late husband and the said room has remained locked up by the plaintiff for nine years now. The defendant states that the family gathered in their hometown of Tsrupke to distribute the deceased's estate according to customary practices. During the distribution, two of the deceased's children, Linda Ayih and Ethel Ayih, did not receive a share, which made her upset and angry. She expressed her concerns to the Head of the Family, questioning why the plaintiff alone was given three rooms while denying the other two siblings. After the sharing, the plaintiff secretly applied for Letters of Administration at the High Court in Tema without notifying her as the surviving spouse based on which she caveated and was joined as a co-administratrix to the estate of the deceased.

She explains that after being joined to the application to administer her late husband's estate, the plaintiff has unexpectedly brought her to court, claiming two additional rooms in the house for herself. This is in addition to the late sister's

room, making a total of three rooms exclusively for the plaintiff. The defendant states that she finds the plaintiff's behaviour regarding the sharing of her husband's property questionable and is surprised by the frivolous claim seeking all of the reliefs endorsed on her writ of summons. The defendant, under cross-examination by Counsel for the defendant, the following exchanges took place;

*Q: You live in House No. 16 Christian Village in Ashaiman which is the property of your late husband.*

*A: That is correct*

*Q: It is to this house that your husband's relatives from Tsrukpe came and invited you to come and distribute the property is that not right?*

*A: My Lord they had already distributed the property before coming, leaving 2 of the children out of the distribution.*

*Q: You will agree with me that the sharing of the property was done long before you obtained the letters of administration from the High Court.*

*A: Yes My Lord, the family members distributed the property before we went to the High Court.*

*Q: You protested the first distribution is that right?*

*A: Yes, My Lord, because they shared it without giving two of the children and everyone is supposed to get a share*

*Q: I am suggesting to you that because of your protest and the fact that the earlier distribution was not properly done that the family came from Tsrukpe and invited you.*

*A: My Lord, when they came once they did not come back again.*

*Q: You see the ones that they came they informed you and invited you to a meeting in your house, H/ No 16 Christian village and told you that their mission was to come and distribute.*

*A: My Lord, that is not correct.*

*Q: You intimated to them that you were not well so you will not attend the meeting*

*A: My Lord it is not correct*

*Q: Your delegated 2 of your children to attend the meeting to have the property distributed.*

*A: My Lord, the meeting was not held here, the meeting was held in our home town and it was after they had distributed the property leaving 2 of the children that they came and said they are taking 2 of the rooms.*

From **Exhibit “B”**, the Vesting Assent was only signed by the defendant as the first Administratrix vesting the entire House No 16 Christian Village, Ashaiman in the defendant, the plaintiff, Linda Mawusi, Ethel Mawusi, Maxwell Dzavie, David Dzavie.

The evidence led by both the plaintiff and the defendant shows that before the court could grant letters of administration to enable them administer the estate of the deceased, the family had already met and distributed the estate in accordance with Ewe custom. Also, after the grant, the family met again to distribute without the defendant who is an administratrix of the estate. This conduct is in clear breach of the law since it amounts to intermeddling with the estate of the deceased since the court had not granted authority to anyone to distribute or deal with the estate. The head of family could also not have purported to distribute the estate



after the grant of the letters of administration since it behoves on the administratrixes of the estate to ensure that the estate is distributed according to law and not according to the whims and caprices of the head of family. I therefore hold that the distribution of the estate before the grant of the letters of administration was unlawful. I therefore order for the redistribution of the estate of the deceased in strict compliance PNDC Law 111.

**ISSUE 2: Whether it is the defendant who rented out one bedroom in the two-bedroom outhouse in H/No. 16 Christian Village Ashaiman and whether same was wrongful.**

The plaintiff testified that before obtaining the letters of administration, the defendant had rented out rooms in *House No. 16 Christian Village, Ashaiman*, including the outhouse. After acquiring the Letters of Administration, she received the outhouse as her share of her late father's estate. However, the defendant has refused to vacate one of the rooms in the outhouse and has wrongfully kept the rent for personal use. The plaintiff further asserts that the defendant's claim to the room in the outhouse at *H/No. 16 Christian Village* is both wrongful and illegal. The defendant has no legitimate interest in the 2-bedroom outhouse and should not be involved with it. She states that she solely paid the expenses regarding the estate but the defendant is receiving rent without accounting for same.

The defendant denies renting the room to the tenant and in support tendered in evidence **Exhibit "1"**, which is a tenancy agreement dated 31<sup>st</sup> July, 2017 allegedly made between the deceased and one Mr. Wolanyo Eklu for a period of five years to expire on 14<sup>th</sup> August 2022. It is trite learning that evidence against the dead must be looked at with suspicion since the dead cannot appear in human

form respond to the assertions. Thus, in the case of **Osei (Substituted by) Gilard v. Korang** [2013-2014] 1 SCGLR 221, the Court held that the law is not that a claim against the estate of a deceased must be rejected outright on the ground of his death per se. But rather, in such cases, the entire claim ought to be scrutinised meticulously and carefully for its probative value. The reason the court gave for this rule was that that person was dead and therefore cannot contradict, explain or give evidence of his version of the case that may be considered. See also **Mondial Veneer (GH) Ltd v. Amuah Gyebu XV** [2011]1SCGLR 466, SC.

The defendant, during cross-examination by counsel for the plaintiff, the following exchanges took place.

*Q: You filed a supplementary witness statement in this court on 22<sup>nd</sup> March, 2022 is that right?*

*A: Yes My Lord.*

*Q: And to this supplementary witness statement you have attached Exhibit “1”, a tenancy agreement?*

*A: Yes My Lord.*

*Q: By this Exhibit “1”, you maintained that your late husband rented the boys’ quarters out to one Mr. Worlenyo Eklu in 2017 is that right?*

*A: Yes My Lord.*

*Q: Your late husband was literate and could read and write, is that right?*

*A: Yes, My Lord.*

*Q: Your Exhibit “1” was supposedly thumbprint by your late husband without a jury.*

*A: My Lord, I was with my husband when he came and the agreement was prepared. At the time my husband was suffering from stroke and could not write so he requested that I thumbprint so I was the one who thumb printed.*

*Q: I am finally suggesting to you that you illegally rented the boys quarters to Mr. Worlenyo Eklu.*

*A: My late husband was around.*

The defendant maintains that she did not rent out the property but rather her later husband who was down with stroke asked her to thumbprint the tenancy agreement on his behalf. The same defendant stated that her late husband was also visually impaired during the final stages of his life but there is no jurat on the tenancy agreement that she thumb printed under the instructions of the deceased. The tenant was also not called as a witness to corroborate the testimony of the defendant that it was the deceased rather than the defendant who rented the room to him.

The court having held that the estate was not distributed according to law and having ordered for a redistribution of the law, the administratrixes of the estate be it the plaintiff and the defendant and their respective lawyers must gather in the estate and distribute same and persons who has unlawfully received proceeds of the estate must account for same

**ISSUE 3: Whether or not the plaintiff is entitled to accounts of rent and the rent collected by the defendant in respect of the said one bedroom since December, 2017.**

The plaintiff claims an order of accounts of the proceeds of rents received from renting her share of the estate. The plaintiff requests that the defendant be held

accountable for the rent collected from July 2019 to the present in relation to the rented bedroom. The defendant on her part maintains that her late husband rented out the room to the tenant before his demise which the court has found not to be supported by the evidence on record since the defendant admits that she thumbprints the alleged tenancy agreement. Account, as a remedy in law, is available to a party who establishes facts that render the opponent liable in law or equity to render account. See Kwame Tetteh, **Civil Procedure-A practical Approach** at page 551 and the case of **Marfo & Ors. v. Adusei** [1963]1 GLR 225 at 232 per Mills Odoi J.S.C.

In my considered opinion, the administrators of an estate are in a fiduciary relationship to the beneficiaries of the estate and they may be called upon to render account of the proceeds received from the estate. In the absence of evidence that it was indeed the deceased who rented out the property, the defendant, in her capacity as a co-administratrix of the estate, must account for proceeds of rent received from the estate. The administratrices of the estate must also gather in the estate and hold persons who have unlawfully received from the estate accountable before the distribution of the estate is done according to law as ordered by the court.

## **CONCLUSION**

In conclusion, I hold that the plaintiff being an administratrix and a beneficiary of the estate, having failed, acting jointly with the defendant to distribute the estate according to the dictates of PNDC Law 111, and not having properly vested in the properties in the beneficiaries is not entitled to the reliefs sought. Whatever account that the defendant needs to make must first be to the estate of the deceased in general before the distribution. I hereby order the parties, in their

capacities as administratrices of the estate to distribute the estate according to law within two month from the date of this judgment and prepare vesting assents to properly vest the properties in the beneficiaries of the estate.

### **COSTS**

In my considered opinion, since this suit is a direct consequence of dereliction of duty on the part of both the plaintiff and the defendant in their capacities as the administratrices of the estate of the late Eric Ayih, the parties shall bear their own costs incidental to the proceedings.

**SGD.**

**H/H AGNES OPOKU-BARNIEH  
(CIRCUIT COURT JUDGE)**