

**IN THE CIRCUIT COURT “B”, TEMA, HELD ON TUESDAY, THE 19TH DAY OF
SEPTEMBER, 2023, BEFORE HER HONOUR KLORKOR OKAI-MILLS, CIRCUIT
COURT JUDGE**

SUIT NO. C11/78/23

RITA KONO

PLAINTIFF

DAVIES WALLEN

**SUING AS THE ADMINISTRATORS OF THE
ESTATE OF THE LATE MERCY ASHIE ALL
OF PLOT NO RP 3/L31
COMMUNITY 3, TEMA**

VRS.

KWADWO MENSAH

DEFENDANT

PLAINTIFF

PRESENT

DEFENDANT

ABSENT

**PERPETUAL DZIDEFO AHIADOME, ESQ. HOLDING BRIEF FOR JAMES ENU,
ESQ FOR THE PLAINTIFF PRESENT**

JUDGMENT

FACTS

The plaintiff caused a writ of summons to issue against the defendant on 6th December, 2022, praying this court for the following reliefs;

1. A declaration that the deceased, Mercy Ashie acquired the interest of the defendant in residential house with property No. RP/12/B/WE/29 situate at Community 12, Tema, with building thereon.

2. An order that residential house with property number RP/12/B/WE/29 Tema with building thereon, be transferred by TDC Development Company Limited into the name of the head of Family Davies Wallen, the 2nd plaintiff herein.
3. Any other relief that the court may deem fit under the circumstances.

The plaintiffs' case is that they are the administrations of the estate of the late Mercy Ashie, herein after referred to as "the deceased" and the defendant is resident in Tema. The Plaintiff states that the defendant legally acquired property No. RP/12/B/WE/29 from the Tema Development Company Ltd sometime in the year 1985. The plaintiffs further state that the defendant sold and the deceased purchased the property No. RP/12/B/WE//29 in 1986 and have since relinquished his interest, rights and title to the said property to the deceased. The plaintiffs say that all attempts made to get the defendant to complete the process of transfer of ownership to the deceased has proved futile and his whereabouts is unknown. According to the plaintiffs, they have been paying ground rent and property rate to date in defendant's name to the TDC Development Company and prays the court to order the Defendant to transfer the ownership of house No. RP/12/B/WE//29 situate at Community 12, Tema into the name of the head of family, who is the second plaintiff herein.

The plaintiffs served the writ of summons and the statement of claim by substituted service when all attempts made to serve him personally failed. On 24th May, 2023, the court granted interlocutory judgment in default of defence for the plaintiff to lead evidence to prove his ownership of the land in dispute.

ANALYSIS

The principle of law is that he who asserts must prove and the standard of proof is on the preponderance of the probabilities only. The burden on a party to prove his claim on a balance of probabilities remains the same even when the action is uncontested. In the case of **Tei & Anor v. CEIBA Intercontinental** [2017-2018] 2 SCGLR 906 at 919, per Per Pwamang JSC stated as follows:

“It must be remembered that the fact that defendant does not appear to contest a case does not mean that the Plaintiff would be granted all that he asks for by the court. The rule in civil cases is that he who alleges must prove on the balance of probabilities and the burden is not lightened by the absence of the defendant at the trial. The absence of the defendant will aid the plaintiff only where he introduces sufficient evidence to establish a prima facie case of entitlement to his claim. The onus in this case lies on the plaintiff who claims that the defendant sold the land in issue to him to lead cogent and admissible evidence to prove his ownership of the house based on which the court can order that the property be transferred to him.”

To prove the deceased's ownership of the property in dispute at trial, the plaintiffs filed their witness statement and attached exhibits A series to H. The exhibits attached are as follows:

- Exhibit A series – A copy of the Letters of Administration granted to the plaintiffs to administer of the late Mercy Ashie.
- Exhibit B series – A copy of the TDC offer letter to the defendant and site plan.

- Exhibit C – Defendants acceptances of the offer letter dated 27th day of May, 1985.
- Exhibit D – Receipt of payment made by the defendant on the property.
- Exhibit E – TDC assessment of property and payment of initial ground rent by defendant.
- Exhibit F – Deed of assignment between the defendant and the deceased dated 3rd day of September, 1986.
- Exhibit G series – copies of ground rent paid in the name of the defendant to TDC by the deceased dated 19th day of May, 1992 and 21st April, 1995.
- Exhibit H series – receipt of ground rent payment made by the plaintiffs on the 27th day of April, 2022 in the name of the defendant.

1st plaintiff testified at the trial that she will rely on her witness statement as her entire evidence in chief. She also testified that due to the lapse of time and circumstances beyond their control, some of the documents in respect of the transaction are either lost or cannot be traced, particularly since the deceased, Mercy Ashie, died outside the jurisdiction. Per the deed of assignment between the defendant and the deceased, the latter purchased the property in question described as **No. RP/12/B/WE/29 situate at Community 12, Tema** at a cost of Three Hundred and Fifty Thousand Cedis (350,000.00). According to the plaintiffs, the defendant started the process of transfer of ownership into the deceased's name but not able to complete same; but gave her the document for the payment of the ground charges to the TDC Company Ltd. According to the evidence presented, the deceased has paid ground rent in the name of the defendant since she acquired the property. In support, the plaintiffs tendered in evidence receipts of payment of ground rent admitted and marked as **Exhibit "G" series**.

In the Supreme Court case of **Tonado Enterprises & Others v. Chuo Sen Lin** (2007 – 2008) 1 SCGLR 135, Supreme Court held in its holding that:

“Payment of ground rent may be some evidence of ownership. It is however, not an invariable rule that any payment of any ground rent should be construed as evidence of ownership because caretakers and tenants can pay ground rents and when that happens, it will be wrong to interpret the payment as conclusive of ownership. The principle that can be laid down on such payments is that payment of ground rent may in some circumstances represent evidence of occupation, control (by caretakers) or in some cases evidence of ownership (where payment is by the landlord) but it cannot be taken that payment of any ground rent is conclusive of ownership...”

From the receipts of ground rent tendered by the plaintiff as **Exhibit “G”** series, the payment is in the name of the defendant. There is no indication on the face of the ground rent as proof that it is the deceased who had been making the payment in the name of the defendant. However, to prove that indeed the deceased is the one who has been paying in the name of the defendant, the plaintiffs also produced evidence of payment of ground rent paid in 2022 by the administrators of the estate of the deceased. The fact that plaintiffs submitted the original acquisition record of the original purchaser, Kwadwo Mensah, supported by **Exhibits “B, “C” and “D”** and also and very importantly, **Exhibit “F”**, the deed of assignment between the defendant and the deceased, is a strong uncontroverted evidence that the defendant indeed, did sell the property to the deceased.

CONCLUSION

On the totality of the evidence led by the plaintiffs, I hold that the plaintiffs have established the late Mercy Ashie's title to House **No. RP/12/B/WE/29** on a preponderance of probabilities, which entitles Plaintiff's to the reliefs sought. I therefore enter judgment for the plaintiff against the defendant as follows;

1. I hereby grant a declaration that the deceased, Mercy Ashie acquired the interest of the defendant in residential house and property described as **No. RP/12/B/WE/29** situate at Community 12, Tema with building thereon.
 2. I hereby order the administrators of the estate of the late Mercy Ashie to administer same according to law.
- No order as to costs.

SGD

**H/H KLORKOR OKAI-MILLS(MRS)
CIRCUIT COURT JUDGE**