

IN THE DISTRICT COURT '1' AT CAPE COAST ON MONDAY THE 20TH OF MARCH 2023 BEFORE HIS HONOUR JAMES K. BOTAH ESQ. SITTING AS AN ADDITIONAL MAGISTRATE

SUIT NO. A9/15/2023

FATI MOHAMMED

-PLAINTIFF/COMPLAINANT

VRS

YUSSIF ALHASSAN KAMIL

-DEFENDANT/RESPONDENT

Parties

-Present

Michael Arthur Dadzie for Plaintiff

-Present

JUDGMENT

This case was referred to me by the Rent Officer, Cape Coast for enforcement of the following recommendations against the Defendant:

- (1) Enforce payment of GHC3,000.00 being four (4) months rent arrears (May 2022 to August 2022).
- (2) Enforce payment of GHC601.46 being water arrears as at May 2022;
- (3) Enforce payment of GHC3,065.00 being the cost of damaged items as contained in the pro-forma invoice and estimate (Exhibit A and B);
- (4) Eject Respondent forthwith; and
- (5) Make such orders as to cost or in connection with the proceedings.

On the 19th September 2022 the above recommendations of the rent officer were read and explained to the Defendant in the Fanti language. In respect of recommendation 1, the Defendant admitted liability of GHC2,250.00 leaving a disputed balance of GHC750.00.

Defendant pleaded not liable to recommendations 2 and 3. In respect of recommendation 4, the Defendant indicated to the court that he has vacated from the Plaintiff's premises.

Judgment on the Defendant's admission of GHC2,250.00 was entered in favour of the Plaintiff. The court referred the disputed balance of GHC750.00 as well as recommendations 2 and 3 to the court connected ADR for amicable settlement.

On the 29th September 2022 the mediator reported to the court that mediation of the matter between the parties was not successful and subsequently referred the case back to the court.

On the 12th October 2022 the court ordered the parties to file their pleadings. The parties duly complied. By order of the court the parties also filed their witness statements for the hearing.

THE PLAINTIFF'S CASE

The Plaintiff stated in her witness statement that she entered into a tenancy agreement with the Defendant in respect of her three (3) bedroom apartment situated at North Ola, Cape Coast at rent of GHC750.00 per month. The tenancy agreement was for a period of two (2) years effective from May 2020 to April 2022. According to the Plaintiff a month to the expiration of the tenancy agreement she served a notice on the Defendant not to renew the tenancy agreement for the reason that she needed the premises for her personal use. Plaintiff told the court the Defendant demonstrated an unwillingness to vacate the premises at the end of the tenancy agreement and so she took the matter to the Rent Control office in Cape Coast. According to the Plaintiff the Rent officer after deliberating on the matter gave a three (3) month grace period to the Defendant to look for alternative accommodation and then vacate the premises. The extended tenancy of the Defendant was to expire in July 2022. Defendant

was to continue to pay rent to Plaintiff at GHC750.00 per month during the grace or extended period of the tenancy and to yield the vacant premises to the Plaintiff in a tenantable state of repairs upon expiration of the extended tenancy.

Plaintiff told the court that the Defendant failed to vacate the premises when the extended tenancy expired in July 2022 and that to date the Defendant is in possession of the keys to the premises. Plaintiff further told the court that the Defendant has failed to pay rent to her for the period of the extended tenancy as well as other accrued rent. The Defendant has also failed to pay his water bills which is in arrears of GHC601.46 for the period November 2021 to May 2022.

At paragraph 15 of her witness statement the Plaintiff listed a number of damaged items in the premises the total value of claim throw more light on the damaged items the Plaintiff is talking about. The Plaintiff told the court that even though the Defendant has been notified about the damaged items and the cost he has failed to admit liability for the damage and has made no efforts to pay for the cost of the damaged items or put the premises in a tenantable state of repairs.

The Plaintiff attached a series of unnumbered documentary exhibits to her witness statement in further proof of her case. The Plaintiff closed her case without calling witnesses.

THE DEFENDANT'S CASE

The Defendant admitted that he entered into a two (2) year tenancy agreement with the Plaintiff in April 2020 in respect of a three (3) bedroom apartment at the rent of GHC750.00 per month. Defendant informed the court that when the tenancy expired, the Plaintiff took him to the Cape Coast Rent Control office saying that she will not renew the tenancy agreement and seeking vacant recovery of possession of the premises for her personal use. Defendant

confirmed that the Rent Officer gave him a grace period of three (3) months to look for alternative accommodation. He was to pay a total rent of GHC2,250.00 to the Plaintiff for the three months grace period. Defendant conceded that he was unable to pay the GHC2,250.00 to the Plaintiff.

Defendant told the court that in August 2022 he attempted to hand over the keys to the premises to the Plaintiff but she refused to collect same claiming that there are defects in the premises and that he should repair the defect before she will collect the keys. The Defendant explained that thieves broke into the apartment and stole various items from the room. The thieves damaged the door in the process of entering the room. Defendant said he also reported the incident to the police and was issued with a police extract by the police. Exhibit 7 attached to Defendant's witness statement is the police extract. Defendant told the court that he has already fixed the damaged close couple seat cover and mixer bath tap. The Defendant denied entering into any agreement with the Plaintiff to pay for the damaged doors by the thieves.

Defendant claims he owes the Plaintiff GHC2,250.00 being three (3) months rent arrears and not GHC3,000.00 as claimed by the Plaintiff.

The Defendant informed the court that he has paid the water bill arrears of GHC601.46 to the Ghana Water Company Limited. A receipt of payment i.e Exhibit 8 is attached to the Defendant's witness statement.

The Defendant closed his case without calling witnesses.

ISSUES FOR DETERMINATION

(1) Whether or not the Plaintiff is entitled to GHC3,000.00 as four (4)

months rent arrears from the Defendant for the period May 2022 to August 2022

- (2) Whether or not the Defendant is liable to pay GHC601.46 as water bill arrears to the Ghana Water Company Limited;
- (3) Whether or not the Plaintiff is entitled to recover GHC3,065.00 from the Defendant as the cost of certain damaged items in the premises; and
- (4) Whether or not the Plaintiff is entitled to eject the Defendant from the premises.

BURDEN OF PROOF

It is a cardinal principle of the law of evidence that the burden of producing evidence of a particular facts rests on the asserting party. Section 17 (1) of the Evidence Act, 1975 (NRCD 323) states the position as follows:

“17 (1) Except as otherwise provided by law, the burden of producing evidence of a particular fact is on the party against whom a finding on that fact would be required in the absence of further proof.”

In Ackah v. Pergah Transport Ltd [2010] SCGLR 728 the Supreme Court held that the party who bears the burden of proof in a case is required to produce credible evidence of the facts in issue if he is to succeed in his action.

Per the evidence on record and the proceedings at the rent tribunal, Cape Coast the Defendant’s tenancy agreement with the Plaintiff expired in April 2022 precisely on 30th April 2022. By reason of the three (3) months grace period allowed the Defendant by the rent officer, the Defendant continued to occupy the Plaintiff’s premises from 1st May 2022 to 31st July 2022 at rent of GHC2,250.00 for the three months.

In her statement of claim and also her witness statement, the Plaintiff did not indicate to the court the precise date the Defendant vacated the premises after the expiration of the three (3) months grace period.

It is only during cross-examination that a clear indication of the date of vacation begins to emerge. When the Defendant cross-examined the Plaintiff she answered as follows:

Q. You asked me to repair some damaged items in the house. Did I do the repairs or not?

A. As at 1st August 2022 when the inspection was done you did not do the work.

The Defendant on the other hand gave the following answers when counsel for Plaintiff cross-examined him:

Q. You were given three (3) months extension by the Rent Officer which was to expire in July 2022.

A. Yes. I was ordered to hand over the keys on 1/8/2022.

Q. The keys are as at today in your possession.

A. Yes. It is because of the reasons I have given.

Q. From June 2022 to date water bills have accrued.

A. I don't know about that. I left the premises on 1/8/2022.

Q. You agree with me that you have unpaid rent from May 2022 to date?

A. I don't agree with you.

From the cross-examination, I find as a fact that the Defendant vacated the Plaintiff premises on 1/8/2022. Counsel for Plaintiff did not challenge by further cross-examination the Defendant's assertion that he vacated the premises on 1/8/2022 or suggest to him that he vacated the premises on a date other than 1/8/2022.

Per the evidence on record even though the Defendant was vacated the premises the keys to the apartment are still in his possession. Plaintiff has interpreted non-surrender of the keys to mean that the Defendant is still holding on to the premises even though the grace period has expired and therefore he is liable in further rent payment.

In the case of Lava Ltd v. Vanose Enterprise and others [2006] GHACA 22 230 the Court of Appeal speaking through Akoto-Bamfo JA (as she then was).

"Where parties have voluntarily reduced a transaction into writing, it my view that all issues arising thereon should be settled within the four corners of the agreement and that extrinsic evidence should not generally be admissible to vary the terms expressly stated."

Per the proceedings at the rent tribunal, Cape Coast the parties guided by the Rent Officer agreed that the Defendant's expired tenancy agreement be extended for three months from precisely 1/5/2022 to 31/7/2022 for him to look for alternative accommodation and vacate the Plaintiff's premises for her to recover vacant possession of the premises. Even though the parties did not put the extended tenancy agreement into writing and executed same there is no controversy about the existence of such an agreement. The agreement did not say that should the Defendant fail to surrender the keys of the apartment to the rent officer or the Plaintiff in person he was to be charged with the payment of further

rent. Even though I have failed in my efforts to get a decided Ghanaian case on the legal consequences of retaining the keys to the premises after the expiration of a tenancy agreement, my general research on the matter is that if a tenant fails to return the keys, this is normally taken to mean he has not given up the tenancy and therefore can be opened to lots of issues from the landlord, even if the tenant has actually moved out.

Handing in your keys is your official surrendering of the property at the end of the tenancy. It may be deemed that as you have held on to the keys you were still intending to re-enter the property, may be you still had belongings inside.

The evidence however is that the Defendant vacated the premises on 1/8/2022. He told the court that he attempted to hand over the keys to the Plaintiff but she refused to collect same because the Defendant failed to put the premises in a tenable state of repairs.

Evaluating the evidence on the first issue for determination, I hold that the Plaintiff is only entitled to the three (3) months rent of GH¢2,250.00 as per the extended tenancy agreement. Defendant is accordingly ordered to pay GH¢2,250.00 as rent arrears from 1/5/2022 to 31/7/2022 to the Plaintiff.

The second issue in my opinion is redundant and does not worth spilling too much milk over. Exhibit "8" which is a receipt shows that on 8/11/2022 the Defendant paid GH¢602.00 to the Ghana Water Company Limited (GWCL) as water bill in satisfaction of the Plaintiff's relief 2.

With respect to the third issue for determination, I will be guided by the holding in the Lava Ltd case (supra) which requires me to look into the tenancy agreement the parties entered into. Per paragraph 2 Roman Numerals Xiii of the

expired original tenancy agreement the Defendant has an obligation to deliver up the premises to the Plaintiff upon expiration of the tenancy agreement in a tenantable state of repair and condition together with the Landlord's fixtures. The Defendant has failed to comply with this express covenant in the tenancy agreement. On the contrary he gave an extensive explanation to the court about how thieves broke into the apartment and damaged the doors of the premises and so on. An agreement is an agreement and the Defendant is bound by it. In his book Land Law Practice And Coveyancing in Ghana 1st Edition p. 169 the learned Justice Dennis Dominic Adjei JA stated as follows:

"A tenant who takes possession covenant with the Landlord to repair the premises and deliver it up to the Landlord in a tenantable repair but fails to repair the premises at the time of vacating it may be sued by the Landlord for damages. The damages for breach of covenant to keep the demised premises in tenantable repair are the cost of repair."

Having failed to repair the premises upon expiration of the tenancy agreement the Defendant is hereby found liable. Accordingly, he is hereby ordered to pay GHC3,065.00 to the Plaintiff towards the repairs as recommended by the Rent Officer, Cape Coast. Plaintiff is to recover the amount from the Defendant.

The final issue for determination also appears mute and redundant. The evidence is that the Defendant vacated the premises on 1/8/2022. He is hereby ordered to hand over the keys to the apartment to the Registrar of the court for same to be given to the Plaintiff.

I award GHC1,000.00 as costs in favour of the Plaintiff.

H/H JAMES K. BOTAH ESQ.
(CIRCUIT COURT JUDGE)

