

CORAM: HER WORSHIP AMA ADOMAKO-KWAKYE (MS.), MAGISTRATE,
DISTRICT COURT '2' KANESHIE, SITTING AT THE FORMER STOOL LANDS
BOUNDARIES SETTLEMENT COMMISSION OFFICES NEAR WORKERS'
COLLEGE, ACCRA ON 1ST SEPTEMBER, 2023.

SUIT NO. A9/090/23

PATIENCE HALM

H/NO. 506, ACCRA

::

PLAINTIFF

VS

MR. SAMUEL AZIATI

H/NO. 506, ACCRA

::

DEFENDANT

JUDGMENT

Introduction

In her Writ of Summons issued out on 15th November 2022, the Plaintiff herein prayed this Court to grant her the following reliefs against the Defendant:

- a. An order for immediate ejection of the Defendant from the Plaintiff's shop for non-payment of rent for over one year.
- b. An order to compel the Defendant to return to the Plaintiff her 350 crates of bottles and other items and the breakdown is as follows:
 - i. Pepsi crates, Guinness, Club Fanta, Malt, Star, Coca Cola.
 - ii. Standing fridge long one, and one counter, speakers (2) and container.

- c. A further order to compel Defendant to remove any fittings in the shop and fix it at former state and cost.
- d. Punitive cost.

The Plaintiff's case is that she is the landlady of House Number 506, Accra whereas the Defendant is her tenant, having rented her shop to him and also added some crates of drinks, a standing fridge and container. According to the Plaintiff, the Defendant had failed to pay his rent for a year despite numerous demands made on him. She averred that the Defendant had also fixed some fittings in the shop which she did not want and thus prayed for the reliefs she seeks.

Upon the grant of an order for substituted service, the Defendant was served with the Writ of Summons with attached claim, and Hearing notices in the suit by substituted service. Notwithstanding service of all these processes on him, the Defendant failed to appear in Court and the Court proceeded to hear the Plaintiff prove her claims in accordance with **Order 25 Rule 1(2)(a) of the District Court (Civil Procedure) Rules, 2009 (C.I. 59)**.

Issue

The main issues for determination by this Court, which would be determined together are:

- a. Whether or not the Defendant is liable to be ejected from the premises.
- b. Whether or not the Defendant has in his custody any items of the Plaintiff.

Evaluation of Evidence

It is the duty of a Plaintiff to prove his or her case for a determination to be made in his/her favour. A party who raises issues essential to the success of his/her case assumes

the onus of proof and as such a person who alleges, whether a plaintiff or a defendant, assumes the initial burden of producing evidence. It is only when such a person has been successful in producing evidence that the other party will be required to lead rebuttal evidence, if need be. In the case of **T. Chandiram v. Tetteh [2018] 120 GMJ 112 @ 147 C.A**, Her Ladyship Agnes M. A. Dordzie, J.A (as she then was) noted on the standard of proof in civil cases as follows:

“[T]he standard of proof in a civil suit is placed on the ‘balance of probabilities. Section 12 (2) of the Evidence Act defines it as follows: “Preponderance of the probabilities” means that degree of certainty of belief in the mind of the tribunal of fact or the court by which it is convinced that the existence of a fact is more probable than its non-existence.”

Again, in the case of **Agbosu v Kotey; In Re Ashalley Botwe Lands [2003-2004] SCGLR 420**, His Lordship Brobbey, JSC (Rtd.) noted:

“The effect of sections 11(1) and 14 and similar sections in the Evidence Decree 1975 may be described as follows: A litigant who is a Defendant in a civil case does not need to prove anything. The Plaintiff who took the Defendant to court has to prove what he claims he is entitled to from the defendant... At the same time if the court has to make a determination of a fact or of an issue, and that determination depends on the evaluation of facts and evidence the defendant must realize that the determination cannot be made on nothing. If the defendant desires a determination to be made in his favour, then he has a duty to help his own cause or case by adducing before the court such facts or evidence that will induce the determination to be made in his favour...”

The Plaintiff therefore had the responsibility of adducing evidence which is sufficient enough to avoid a determination against her on the issues before the Court. The Plaintiff

testified herself and also called one witness, Emmanuel Ayaa Armah to support her case. The Plaintiff testified that a man known as Mr. Ayaa (PW 1) introduced the Defendant to her. She said she rented out her shop and everything therein to the Defendant for two years, with the rent being GH¢200 per month and the Defendant duly paid for the two years. She tendered in evidence a copy of the tenancy agreement between the parties. She said that she had about 350 empty bottles in the shop which she permitted the Defendant to use since he was selling drinks. She added that there was also a fridge, a glass showcase used as a counter, two speakers, chairs and tables in the shop.

The Plaintiff stated that she had no agreement with the Defendant to put up any structure in addition to what she had rented to him but the Defendant went ahead to put up a structure. She further testified that the Defendant told her he wanted to do pallets and she informed him that he would have to remove them when he was leaving the shop. It was Plaintiff's evidence that after the expiration of Defendant's tenancy, she asked him to vacate her shop but he refused and she lodged a complaint with Rent Control Department but the Defendant himself did not turn up but sent a representative. She stated that there was no conclusive determination there and she was advised to institute an action in Court. She prayed for an order of the Court for Defendant's ejectment, for him to hand over all her things in the shop to her and to remove all the pallets.

PW1's evidence was that he went to see the Plaintiff on Defendant's behalf and convinced her to rent out her shop to the Plaintiff. He said he also went to meet the Plaintiff with the Defendant to discuss the tenancy and the Plaintiff magnanimously reduced the rent for the Defendant to GH¢ 200 monthly for two years, with the tenancy to commence on 3rd November 2019. He testified that the Plaintiff left a fridge, about 6 chairs, speaker, and crates of drinks in the shop. He stated that when Defendant's tenancy expired, he was unwilling to vacate the shop and he had also taken the keys to the shop away.

It has been held in the case of **Royal Investment Company v Madam Ruth Quarcoopome and Another [2021] DLSC 11154** that even though the nature of a lease is to create an interest in land for a fixed period of time, it is also a contractual agreement between a lessor and a lessee and, therefore, must be determined in accordance with its terms. Thus, once a lease expires, a lessee would be expected to give up vacant possession to the lessor.

From all indications as the evidence abundantly portrays especially per Exhibit 'A', the Tenancy Agreement between the parties dated 3rd November 2019 and duly executed by the parties and their respective witnesses, it was mutually agreed that the Plaintiff was letting her bar joint known as Drinking Spot located at Washing Bay-Tea Garden, Chorkor, Accra to the Defendant at a monthly rent of GH¢200, of which Defendant paid rent advance for two years from 3rd November 2019 to 3rd November 2021, with an option to renew. From the same agreement, it is evident that there were some items of the Plaintiff which were put at Defendant's disposal which included Electricity metre, tables, chairs, crates of empty bottles, speakers, fridge and a glass counter. As part of the covenants, the Defendant was to pay new rent upon renewal of the agreement after its expiration and also not to make any alterations or additions to the existing structures without obtaining the landlady's prior approval.

It appears the Defendant seems unbothered and has entrenched himself in property not belonging to him and has failed to either vacate the premises or to renew his tenancy and pay the rent due. The Defendant from 4th November 2021 became a statutory tenant. As a statutory tenant, he was under a duty to still pay his rent. Section 29 of the Rent Act 1963 (Act 220) states in part as follows on this point:

Section 29—Obligations of Statutory Tenants.

(1) A statutory tenant shall, so long as he retains possession, hold the premises of the landlord upon the following terms and conditions, namely—

(a) he shall hold as a tenant from month to month, and, subject thereto, shall observe and be entitled to the benefit of all the terms and conditions of his original tenancy, as the case may be, so far as the same are consistent with the provisions of this Act, so, however, that, in the case of a tenant who has become a statutory tenant by reason of the provisions of paragraph (c) of the definition of "statutory tenant" in section 36, he shall in addition hold the premises subject to any restrictive covenants contained in the terms and conditions of the lease between the landlord and the principal tenant;

(b) his tenancy shall be determinable by him by such notice as would have been required by law to determine a monthly tenancy of the premises containing no express provision for determination thereof; and

(c) he shall be subject to all the rights and powers conferred upon a landlord under and by virtue of any provision of law relating to distress for arrears of rent.

This statutory provision has found judicial expression in cases such as **Mrs. Veronica Sarhene and Another v Edward Nassar & Co. Ltd & Others and Paul Otchere & 14 others [2019] DLSC 6577**. The Defendant still occupies the premises notwithstanding the expiration of his tenancy over a year ago and he has blatantly refused to pay his rent to his landlady. The non-payment of rent is a breach for which an order of recovery of possession can be made. **Section 17(1)(a) of the Rent Act, 1963 (Act 220)** is clear on this:

Section 17—Recovery of Possession and Ejectment.

(1) Subject to the provisions of subsection (2) of section 25 and of section 28, no order against a tenant for the recovery of the possession of, or for the ejectment from, any premises shall be made or given by the appropriate Rent Magistrate, or any other Judge of a court of

competent jurisdiction in accordance with the provisions of any other enactment for the time being in force, except in any of the following circumstances:—

(a) where any rent lawfully due from the tenant has not been paid or tendered within one month after the date on which it became lawfully due;

I find as a fact that the Defendant has not paid rent since the expiration of his tenancy on 3rd November 2021 and once at least one month's rent has not been tendered by a tenant, Section 17(1)(a) of the Rent Act, 1963 (Act 220) permits an order to be made against a tenant for recovery of possession or ejection except in the circumstances specified under the said section. The Defendant did not appear in Court to proffer any evidence to rebut the credible evidence of the Plaintiff and her witness. The Defendant has failed to perform his rent obligations as a tenant and has therefore breached this covenant under the said agreement. The Plaintiff's right under Section 17(1)(a) of the Rent Act, 1963 (Act 220) has accrued and as such, the Plaintiff's reason for praying for an order for recovery of possession is supported by law.

The evidence of Plaintiff and her witness also established that the Plaintiff has in his possession some items of the Plaintiff which were in the shop rented to him and which he was permitted to use, specifically, crates of empty bottles, fridge, glass counter, speakers, tables, chairs. Once the Defendant has breached an obligation of his tenancy in respect of payment of rent and is to be ejected, he has to hand over these items to the Plaintiff, remove all fixtures he has made to the shop and leave the shop in a tenantable condition fair wear and tear excepted.

Conclusion

Upon a careful consideration of the evidence adduced by the Plaintiff and her witness in the trial, the Court is satisfied that the Plaintiff has been able to discharge the burden of

proof on her on the preponderance of probabilities. Judgment is accordingly entered for the Plaintiff against the Defendant as follows:

- a. **The Defendant is to yield vacant possession of the premises to the Plaintiff forthwith, leaving same in a tenantable state fair wear and tear excepted.**
- b. **The Defendant is to return to the Plaintiff forthwith her crates of empty bottles, refrigerator, tables, chairs, glass counter and speakers.**
- c. **The Defendant is to remove any fittings and fixtures he has made to the shop.**
- d. **Cost of GH¢1,500.00 is awarded for the Plaintiff against the Defendant.**

**[SGD]
AMA ADOMAKO-KWAKYE (MS.)
(MAGISTRATE)**