

**CORAM: IN THE DISTRICT COURT, ACHIMOTA – ACCRA HELD BEFORE HIS
WORSHIP PRINCE OSEI OWUSU SITTING AS DISTRICT MAGISTRATE ON
THE 13TH DECEMBER, 2023**

SUIT NUMBER: G/AC/DG/A11/28/23

**CONSTANCE ODURO MINTAH
RACE COURSE – LAPAZ, ACCRA**

- PLAINTIFF

VS

**1. DERRICK OSEI BONSU
2. MR. KWAKYE
LAPAZ, ACCRA**

- DEFENDANTS

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TIME: 9: 35AM

PLAINTIFF PRESENT

DEFENDANT ABSENT

JUDGMENT

Per a writ of summons issued by the Plaintiff on 22/4/23, the Plaintiff claimed against the Defendant the following reliefs;

- (a) Plaintiff claimed against the Defendant immediate ejectment of the 2nd Defendant from the store he occupies at Lapaz belonging for Plaintiff.

It is the Plaintiff's case per writ of summons, with its summary of subject matter of claim that she rented the store to the 1st Defendant who happened to be her nephew for a period of 10 years with the expiration on 2019. Plaintiff stated that the 1st Defendant has travelled outside the country and has also handed over the store to the 2nd Defendant. Plaintiff further stated the 2nd Defendant is occupying the store and has

failed to yield vacant possession. The Plaintiff averred that the 2nd Defendant has no legal agreement with her.

The Defendant was duly served with the writ of summons and hearing notice by substituted service per order of the Court. The case was adjourned to 13/6/23 for trial.

Under order 25 Rule 1(2) (a) of the District Court Rules, 2009 (CI 59) where an action is called for trial and the Defendant fails to attend, the Plaintiff would be allowed to prove her claim. The Defendant had the opportunity to come to Court to cross examine the Plaintiff, but he eluted not be present to challenge the Plaintiff's claim by his conduct of not appearing in Court the Defendant can therefore not raise at any point that the door of Justice was shut to him.

It has been held that,

"It is a salubrious principle of Law of our Jurisdiction that a litigant should have the opportunity of being heard, of telling his side of the story, or of being there to present evidence and put argument to buttress his case, but it is also settled that once the opportunities have been extended to the litigant but litigant decides not to avail himself within period of the trial, he would not on Judicial consideration be permitted to come later and plead for the reactivating of the very opportunities he declined to embrace".

The Court on the strength of these authorities, therefore proceeded to hear, the Plaintiff prove her claim

The Plaintiff had the onus of discharging the burden of producing sufficient evidence in respect of her claim on a balance of probabilities. Notwithstanding, the fact that the Defendant was not in Court, the Court must satisfy itself that the Plaintiff has satisfied the burden on him of proving his or her case on the balance of probabilities.

The Plaintiff testified on 13/6/23. The Plaintiff in her evidence in chief has testified that her father died in 2007 and gave her a land where the current shop in dispute was built. The Plaintiff further averred that her father gave her an amount of GH¢ 25,000.00, which she used the money to build 9 shops in 2009 and subletted the shop for 10 years including the 1st Defendant. She further averred that the tenancy agreement between her and the 1st Defendant. She further averred that the tenancy agreement between her and the 1st Defendant, has expired but the 1st Defendant has rented out the shop to the 2nd Defendant without her consent. She averred that 2nd Defendant is refusing to yield vacant possession unless ordered by the Court.

From the evidence adduced, I find that the Plaintiff indeed entered tenancy agreement with the 1st Defendant, for a period of 10 years. The Defendant in breach of the agreement he had with the Plaintiff and has failed to give vacant possession to Plaintiff.

Since the suit was instituted the Defendant has not appeared to challenge the claims of the Plaintiff or file any process to that effect. The Defendant having failed to react to any of the averment of the Plaintiff, it is deemed that he admits the allegation made against them, where a party had evidence which is not challenged by that opponent, in cross examination nor does the opponent tender evidence to the contrary, these facts deposed to are deemed to have been admitted by the opponent and must be accepted by the Court. See the case of **Samuel Adrah vs. ECG [2018] 119 GMJ 143 @ 184 CA per Dzamefe, J.A.** the Court having considered the Plaintiff uncontestable evidence finds that the Plaintiff has been able to prove his claim on a balance of probabilities and judgment is accordingly entered for her as follows;

- a) The Plaintiff is entitled to recover the store, she rented to the 1st Defendant and now being occupied by the 2nd Defendant.
- b) Cost of GH¢ 1,000.00 is awarded for the Plaintiff against the Defendants.

SGD
HIS WORSHIP PRINCE OSEI OWUSU
DISTRICT MAGISTRATE