CORAM: IN THE AMASAMAN DISTRICT COURT B HELD ON 21st NOVEMBER, 2023 BEFORE HER WORSHIP ANNETTE SOPHIA ESSEL (MRS.) SITTING AS MAGISTRATE

SUIT NO: A9/132/21

DORIS AWOMEE **PLAINTIFF**

VRS

PASTOR MICHAEL KWABENA SOWAH **DEFENDANT**
OF NARMAN

JUDGEMENT

INTRODUCTION:

The immediate background to this hotly fought dispute was a tussle for a recovery of possession by the plaintiff; landlady of her chamber and hall residential facility located and situate at Taifa in the Ga-East District of the Greater-Accra Region of the Republic of Ghana which same was occupied by the defendant herein on grounds of acts of nuisance performed by the defendant herein, the effluxion of his tenancy since 21st May, 2021 and also for her personal and family occupation. Each party has their version of the basis of the dispute which I will set out anon.

On 14th May, 2021, the Plaintiff by a Rent Manager recommendation from the Rent Control Office, Amasaman in accordance with section 5(1) (b) of the Rent Act, 1963 (Act 220) following an enquiry into the plaintiff's complaint hauled the defendant before the court seeking the following reliefs in accordance with Section 17(1)(a) & (g) of the Rent Act, 1963 (Act 220):

i. *Eject Respondent from the premises.*
ii. *Enforce payment of Five Hundred Cedis (GHC 500.00) only as rent arrears as at 21st May, 2021.*

iii. *Enforce payment of One Hundred and Twenty Cedis (GHC 120.00) and Fifty Cedis (GHc 50.00) as arrears of electricity and sanitary fee respectively.*

iv. *Make such orders as to cost or in connection with proceedings.*

FACTS OF THE CASE AS PRESENTED BY THE PLAINTIFF:

The plaintiff is a post-mistress at the Taifa Post Office and landlady of the subject matter of this suit. businessman resident at Mayera in the Ga-West Municipal Area of the Greater-Accra Region and also at Apam in the Gomoa-West District of the Central Region of Ghana.

It is the case of the plaintiff that the defendant occupies her chamber and hall self-contained residential property at Taifa (hereinafter referred to as "the facility"). She asserted that rent at this facility was fixed at a monthly rent rate of Two Hundred and Fifty Cedis (GHC 250.00) only which same he had refused neglected and failed to pay since 21st May, 2021 thus amounting to Five Hundred Cedis (GHC 500.00) only as at the commencement of this suit. She further asserted that not all the defendant had also refused neglected and failed to pay for the utility services rendered to him at his facility being electricity worth One Hundred and Twenty Cedis (GHC 120.00) only and toilet fee of Fifty Cedis (GHC 50.00) only.

She concluded that for the reasons above-mentioned and also for her personal and family occupation, she had served a notice to vacate and yield up vacant possession of the facility on the defendant however he had failed, refused and neglected to respond to same, hence her mounting the instant action against the defendant for the reliefs above-mentioned.

FACTS OF THE CASE AS PRESENTED BY THE DEFENDANT:

Quite naturally the defendant stoutly resisted the claims of the plaintiff. It is the case of the defendant that in the year 2019, whilst prospecting for a residential facility to occupy, he inspected the subject matter of this suit which same belongs to the

plaintiff. He stated that he observed that the facility was in an uncompleted state yet expressed interest in renting same.

He stated that monthly rent following negotiations was fixed at Two Hundred and Fifty Cedis (GHC 250.00) only for a period of two years thus totaling Six Thousand Cedis (GHC 6,000.00) only. According to the Defendant, the plaintiff required of him that he paid to her this amount in full in advance so that within three months from date of payment of same, she could develop the facility into a habitable state for his occupation. In this regard, he paid same in installments by tranches as follows; an initial payment of Two Thousand Cedis (GHC 2,000.00) only and in subsequent weeks he paid Three Thousand Cedis (GHc 3,000.00) only and Five Hundred Cedis (GHC 500.00) only respectively till the agreed amount of Six Thousand Cedis (GHC 6,000.00) only was paid in full to the plaintiff.

According to the defendant, after the three-month development period as stated by the plaintiff, he visited the facility to inspect the progress of work only to meet to his dismay that the plaintiff had not fulfilled her part of the agreement in fixing the facility for his occupation within time. Defendant asserted that he sought an explanation for the failure on the part of plaintiff only to be met with an explanation that she had used his rent money paid her to offset a loan she had earlier taken and was thus not in a position to perform her part of the bargain.

The defendant stated that for this reason, parties agreed that the Plaintiff expend additional funds to develop the facility into a habitable state for same to be used to defray rent. In this regard the defendant took a further step of securing a loan of Two Thousand Cedis (GHC 2,000.00) only for a six-month period [with an exhorbitant monthly interest rate of twenty-five percent (25%) on every One Hundred Cedis (GHC 100.00) only) which same was witnessed by parties herein and Nii Nortey; Chief of Narman. It is the claim of the defendant that this loan amount coupled with interest had bloated to Eight Thousand Cedis (GHC 8,000.00) only as at the date of

filing his response to the claim of the plaintiff. The defendant stated that try as he did to get this agreement documented, the plaintiff would not budge with explanation that the chief of Narman was their witness to this additional transaction.

It is the case of the defendant that in October, 2020 he received a notice to quit from the facility upon the effluxion of time of his initial tenancy of two years. Instinctively disturbed by this turn of events he demanded from the plaintiff the monies coupled with interest amounting to Eight Thousand Cedis (GHC 8,000.00) only which same he had expended in developing the facility to its present state. Yet disappointingly the plaintiff declined to pay same. In this context, he reported the plaintiff's conduct to the chief of Narman who directed the plaintiff to refund to the defendant the said amount requested for so that he could accordingly yield to the plaintiff's request. The defendant contends that to date the plaintiff has refused to pay this money.

It is the plaint of the defendant that on the contrary, the plaintiff had resorted to various acts of harassment to compel him to vacate the facility such as destruction of his door and the disconnection of electricity supply to the facility since 10thh March, 2021 till date with explanation that the defendant was in arrears of payment which same is false. He consequently counterclaimed for the court to compel the plaintiff to pay him the above-mentioned amount of Eight Thousand Cedis (GHC 8,000.00) only and an additional One Thousand Cedis (GHc 1,000.00) only for the damage caused to his door to enable him to comply with her demand for recovery of possession. The plaintiff did not file a reply to the counterclaim of the defendant.

PROCEDURE OF TRIAL:

Parties filed their respective pleadings at the commencement of this case. The defendant elected not to file a Reply to the counterclaim of the defendant. At the close of pleadings, parties were referred to Court-connected A.D.R which same proved futile hence the Court proceeded to hear the matter. For purposes of expediency of Hering, parties filed their respective witness statements with exhibits attached.

Parties thus went through a full trial and relied on their witness statements and exhibits tendered without objection together with their viva-voce evidence during Hearing. Plaintiff was represented by Counsel and the defendant was self-represented. In support of their respective testimonies before the court, the plaintiff called two witnesses and the defendant one witness only. Parties thereafter announced the closure of their respective cases. At the close of Hearing, the case was closed for judgement.

EXHIBITS FILED:

In addition to their witness statements and viva voce evidence, the Plaintiff filed no exhibit to buttress her case. The Defendant tendered the following exhibits in support of his case:

Exhibit "1" Series: Photocopies of receipts of monies paid to the plaintiff amounting to Five Thousand Five Hundred Cedis (GHC 5,500.00) only.

Exhibit "2": Letter of Ejection by plaintiff dated 13th October, 2020.

Exhibit "3" Series: Coloured image of disconnected electricity supply and damaged wooden door.

ISSUES FOR DETERMINATION:

This Court mindful of the pleadings of the parties, their respective witness statements, the exhibits tendered in evidence and the cross-examination of the parties and also the nature of the reliefs sought, set down the following issues for determination:

i. Whether or not the plaintiff made the facility ready for occupation on the set date of 5th March, 2019 as agreed between parties.
ii. Whether or not the plaintiff compelled the defendant to seek additional funds via loan for the further development of the premises.

STANDARD OF PROOF:

When a court is called upon to resolve conflicting versions of facts, the duty of the court is distilled in a crucial question articulated by her Ladyship Georgina Theodora Wood (Mrs.) CJ. at page 69 of the case of **Sarkodie v. F.K.A Co Ltd [2009] SCGLR 65** in these words:

> *"The main issue for the court to determine is simply that, on a preponderance of the probabilities, whose story is more probable than not?"*

That question put differently is - whose evidence had more weight and credibility? This being a civil suit, **Sections 11(1) & (4), and 12 of the Evidence Act 1975 (NRCD 323)** has well settled the evidential and the persuasive burden that the law casts of parties in a civil matter. The standard of proof required of a party who makes assertions which are denied, is one on a balance of probabilities. This therefore requires a party making assertions to adduce such evidence in proof of the assertions, such that the court is convinced, that the existence of the facts he asserts are more probable than their non-existence. **Sections 10, 11(1) & (4) of the Evidence Act, 1975 (NRCD 323)** provides that:

"Section 10 - Burden of Persuasion Defined

(1) For the purposes of this Act, the burden of persuasion means the obligation of a party to establish a requisite degree of belief concerning a fact in the mind of the tribunal of fact or the Court.

(2) The burden of persuasion may require a party

(a) to raise a reasonable doubt concerning the existence or non-existence of a fact, or

(b) to establish the existence or non-existence of a fact by a preponderance of the probabilities or by proof beyond a reasonable doubt.

Section 11 - Burden of Producing Evidence Defined.

(1) For the purposes of this Decree, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling against him on the issue.

(4) In other circumstances the burden of producing evidence requires a party to produce sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of the fact was more probable than its non-existence."

Section 12 of the Evidence Act, 1975 (NRCD 323) also provides that:

Proof by a preponderance of probabilities

12(1) except as otherwise provided by law, the burden of persuasion requires proof by a preponderance of probabilities.

"Preponderance of probabilities" means that degree of certainty of belief in the mind of the tribunal of facts or the court by which it is convinced that the existence of a fact is more probable than its non-existence".

In explaining the principles relating to the duty to produce evidence, S.A Brobbey JSC. states at page 31 of his book **Essentials of the Ghana Law of Evidence** thus;

"This literally means the proof lies upon him who affirms, not on him who denies, since by the nature of things, he who denies a fact cannot produce proof. Where the Plaintiff makes a positive assertion at the start of the trial, he bears the legal burden. At the same time, he bears the evidential burden to adduce evidence at the start of the trial."

In the case of **Beatrice Butor Hammond v Adjei Agboh Suit No: LD/0437/2017** Kweku T. Ackaah Boafo J. (as he then was) in his erudite judgement noted that that there is no paucity of case law interpreting the provisions of the Evidence Decree, 1975 (N.R.C.D 323). In the case of **Ababio v Akwasi 111 [1994-95] GBR at 774** the

Supreme Court reiterated the point of a party proving an issue asserted in his pleadings. Aikins JSC. delivering the lead opinion of the court held thus:

> *"The general principle of law is that it is the duty of the plaintiff to prove his case that is, he must prove what he alleges. In other words, it is the party who raises in his pleadings and issue essential to the success of his case who assumes the burden of proving it. The burden only shifts to the defence to lead sufficient evidence to tip the scales in his favour when on a particular issue the plaintiff leads some evidence to prove his claim. If the defendant succeeds in doing this, he wins, if not he loses on this particular issue.*

Also, in the case of **Patrick Barkers-Woode v Nana Fitz [2007-2008] SCGLR 879 at 891 the** Supreme Court held per Dr. Date-Bah JSC. that:

> *"The common law has also followed the common-sense approach that the burden of persuasion on proving all facts essential to any claim lies on whoever is making the claim."*

EVIDENCE ADDUCED BY THE PLAINTIFF:

The Plaintiff averred that she was the landlady of the facility which is the subject matter of this suit. She admitted that indeed the defendant rented her facility and made an advance rent payment of Six Thousand Cedis (GHC 6,000.00) only in the presence of witnesses such as Stanley Park (PW 1), Nana Adjoa Frans (DW 1) and Jennifer Egah and was duly issued with receipts acknowledging same. She claimed that his mount was for the following works only; fixing of tiles, toilet seat, electrical; system and painting only. she consequently made the facility ready for occupation by the agreed deadline date in February, 2019 and subsequently invited the defendant too inspect same before moving in.

Upon inspection of the facility, the defendant registered his displeasure with the choice of paint used in the facility ceiling and bath. He therefore requested to use a paint of his choice which parties agreed to subject to the defendant paying for the paint and also cost of workmanship of Fifty Cedis (GHC 50.00) only. The plaintiff

asserted that he introduced PW 1; a painter to the defendant who painted the facility using Andrea paint as preferred by the defendant. Upon completion of the painting works, the defendant refused to pay PW 1 for his workmanship thus compelling the plaintiff to pay off PW 1 with her faulty freezer.

The plaintiff asserted that keys to the premises was handed over to the defendant on 5th March, 2019 and he subsequently moved in to occupy same on 2st March, 2019; which she recorded as the start date of the tenancy period. The plaintiff narrated that shortly after moving into occupation of the facility the defendant started exhibiting conduct amounting to nuisance such as his unwillingness and failure to pay the bills for utility services (such as electricity, repair of water pump and sanitation) supplied to the facility and also raising a false claim that she had made an illegal electricity connection to the facility. The plaintiff stated that she registered her displeasure at the defendants conduct to Nii Nortey; the chief of Narman which yielded no fruit as the defendant continued with same conduct. In this regard, she issued an initial notice to quit to the defendant six months prior to the expiration of his initial tenancy period and subsequently repeated same notice in January 2021 which was three months to the expiration of the defendant's tenancy. To her dismay, the defendant refused to accept service of the notices on him and rather reported the plaintiff to Nii Nortey; the chief of Narman.

According to the plaintiff, Nii Nortey summoned parties to a meeting to resolve this issue which same she attended in the company of her brother; Stanley Park (PW 2) Following deliberations, the defendant was found not to have made any additional expenses to the facility. This decision did not sit well with the defendant and he refused to vacate the premises on the scheduled date. The plaintiff narrated that she took a further step to report the defendant to the elders of his church who were clearly not ready to take up this mater for resolution, thus the plaintiff resorted to reporting this matter at the Rent Control Office, Amasaman and same referred to the court. The plaintiff consequently prayed for the reliefs above-mentioned. During trial, the

plaintiff denied in toto the claim of the defendant and stated that she only called Rev. Klottey when the defendant refused to yield up vacant possession of the facility upon the expiration of his tenancy period.

Stanley Park (PW 1) testified that he was an employee caretaker of a one-storey building complex of which the facility is contained belonging to the plaintiff. He further stated that on 5th January, 2019 he met parties herein to negotiate on the rental of the facility at the agreed rate above-mentioned. He narrated that as at that date the outstanding works on the facility were tiling, painting, installation of toilet seat and trap door fixation. He further narrated that upon negotiations and payment of Five Thousand Cedis (GHC 5,000.00) by the defendant, he together with the plaintiff commenced works on the facility as above mentioned including electrical supply to the facility. At the stage of painting the facility, the defendant visited that place to inspect works ongoing. He informed the plaintiff of his intention of using Andrei paint for the ceiling. He was thus introduced to the painter; PW 2 to instruct on his preferences.

Following the payment of the full rent for two years, the defendant was issued with a tenancy agreement which he signed and kept his copy and returned the other to the plaintiff after several months of demand for same by the plaintiff. He asserted that following several complaints from adjoining tenants on the acts of nuisance perpetrated by the defendant, he together with the plaintiff, adjoining tenants and defendant held a meeting where the defendant was notified that his current tenancy would not be renewed upon expiration of same. This was further communicated in writing to the defendant on two occasions which same he failed to respond to. A further notice was issued to the defendant through his employers; the church elders of Anglican Church, Naamah Branch. The employers of the defendant responded to the plaintiff to seek redress elsewhere.

In this regard, the plaintiff resorted to the Rent Control Office, Amasaman which sent several invitations out to the defendant to attend a meeting to resolve the issue which same proved futile, hence this suit.

To further buttress her case, the plaintiff called Roger Honu (PW2) who testified that he was a painter engaged by the plaintiff to undertake painting works in the facility. He corroborated the testimony of the plaintiff to the effect that the plaintiff initially painted the facility only for the defendant to request for another type (android) and coat of paint of his choice to be used in the facility which same the defendant purchased two buckets of and yet failed to pay him upon completion of the job thus the plaintiff settled his cost of workmanship of Fifty Cedis (GHC 50.00) only with an old freezer of hers.

EVIDENCE ADDUCED BY THE DEFENDANT:

The Defendant averred that on 5th January, 2019 he rented the facility from the plaintiff at a negotiated rent of Six Thousand Cedis (GHc 6,000.00) only for a period of two years and made payment for same. In support of his averment, he tendered Exhibit 1Series. According to the defendant, following this payment, the keys to the facility were handed over to him and in support of his testimony tendered Exhibit 2 without objection.

According to the defendant, following the full payment of the full rent, after three months, the plaintiff did not put the facility into a habitable state for him to enter into possession with explanation that she had used that money to offset a loan she earlier had taken. Thus, the plaintiff rather directed the defendant to seek additional funds as a top-up to fix the facility for his use for same to be defrayed as rent at a later date.

The defendant claimed in paragraph seven of his witness statement that he informed the plaintiff that he would be compelled to take a loan with an exhorbitant interest rate to which the plaintiff categorically stated that she was not interested in the

repercussions of same on the defendant. According to the defendant, he paid PW 1; the painter Five Hundred Cedis (GHC 500.00) only for his service and further took a loan of Two Thousand Cedis (GHC 2,000.00) only with a monthly interest rate of twenty-five percent (25%) on every One Hundred Cedis (GHC 100.00) only from an unnamed financial institution. The defendant stated that try as he did to compel the plaintiff to sign a memorandum of understanding for the defraying of this amount as rent proved futile. He claimed that to date he had paid Six Thousand Cedis (GHc 6,000.00) only in settlement of this loan amount.

The defendant asserted that shortly after he completed the additional works on the facility, the attitude of the plaintiff towards him turned sour and was subsequently served with an eviction notice. He therefore demanded of her the loan amount coupled with interest to enable him to yield up vacant possession of the premises to which she has failed to oblige him and rather resorted to acts of harassment to compel him to yield up vacant possession of the premises. He claimed that all attempts at reconciliation with the chief of Narman had also failed thus causing him grave embarrassment and stress.

During trial he added that Rev. Klottey and the Chief of Narman were his witnesses when the plaintiff requested of him to seek additional funding for the completion of works in the facility. He further asserted that he did not opt for the use of andrill paint in the facility but rather PW 1 recommended that due to the poor plastering works undertaken at the facility.

To buttress his testimony, the defendant called Nana Adjoa Frans; DW 1 who also testified that in December 2019 the plaintiff told her that she had intentions of letting out the facility and was thus prospecting for tenants. In this regard she introduced parties herein to each other and was part of negotiations for the initial tenancy arrangements. She corroborated the testimony of the defendant that the room was not available for occupancy as at three months following payment of the full rent.

She stated that it was the plaintiff who directed the defendant to seek additional funds for the completion of the room with assurance that whatever interest would be incurred on this loan, same would be used to defray rent to which direction the defendant proceeded t take a loan of Two Thousand Cedis (GHC 2,000.00) only. She claimed that following this assurance, same was not committed into writing and no agreement was executed following this either. DW 1 concluded that she was later informed by the defendant that he had been served with an eviction notice and also her subsequent acts of harassment to compel the defendant to yield up vacant possession of the facility.

ANALYSIS:

In this instant suit the right which the plaintiff seeks to exercise is reentry which same is contained in this instant suit for recovery of possession. Under the Rent Act, 1963, the landlord's right to commence proceedings for recovery of possession or ejectment for non-payment of rent accrues to him 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.

The pith of the plaintiff's plaint was that with the effluxion of time the tenancy of the defendant had expired, thus her intention of recovery of her possession for her use which same the defendant vehemently contended. She was therefore required to produce the facts to support the allegations on which her case is founded. How did she discharge this burden? In the case of **Dzaisu and Others v Ghana Breweries Limited [2007-2008]1 SCGLR 539** at page 545 HL. (Mrs.) Sophia Adinyira JSC. stated as follows:

> *"It is a basic principle in the law of evidence that the burden of persuasion on proving all facts essential to any claim lies on whosoever is making the claim."*

She stated the start and end date of the tenancy agreement which same was tendered as Exhibit 1 without objection by the defendant during trial. In support of her testimony PW 1 corroborated this testimony that on 5th January, 2019 around 7pm

negotiations for the facility took place between partis and himself and in accordance with their agreement, on 5th March, 2023 the keys to the premises were handed over to the defendant. He narrated that the defendant subsequently moved in to occupy same on 2st March, 2019. The burden now shifted to the defendant to prove that this was not so.

The defendant's defence to the claim of the plaintiff was in the nature of a confession and avoidance, it is this witness wh0 tendered Exhibit 1. Below is a snippet of what transpired during cross examination of the defendant on 15th May, 2023:

Q: *Now your two years rent or tenancy was started on 21st March, 2019 and was to end on 20th March, 2021, is that not correct.*

A: *It is correct.*

Moreso below is a snippet of what transpired during cross-examination of DW1 on 3rd July, 2023:

Q: *Whatever was the case, the defendant lived in the room alright for the two years.*

A: *Yes, he did.*

Q: *You do not agree but he lived there as a tenant not so?*

A: *Defendant lived in the building for 2 years. After the 2 years, the Defendant called me to inform me that the Plaintiff informed him that his tenancy had expired. I in turn called Plaintiff and told her that this was not the agreement we had because Plaintiff instructed defendant to complete the premises to a habitable state and that the cost of works done by Defendant would be used to defray rent.*

In the testimony of the defendant and his witness, they vehemently maintained that the property was not ready for occupation on the date above-mentioned by the plaintiff yet they do not deny that they have lived in the facility for two years being the period which their receipts tendered attest to.

As at when the facility was not ready for occupation, the defendant reserved the option to rescind the contract or sue the defendant for specific performance of same thus the explanation provided by the defendant is unacceptable. I have had the privilege of examining the demeanour of the defendant during proceedings, He came across as an articulate and independent-minded individual. I do not at all doubt that if he had maintained his ground for the facility to be made ready, he plaintiff wud have dragged her feet in compliance. The above serves that there was overwhelming evidence that the plaintiff yielded up the facility to the defendants as agreed on the said date.

On the totality of evidence in respect of this issue, Plaintiff adduced cogent and sufficient evidence. This averment was supported with exhibits. These exhibits were tendered in Court together with Witness Statement of the defendant without objection and same was admitted by Court. To this extent the Court admits same and places a high value on it. In the case of **Re Asere Stool; Nikoi Olai Amontia IV (substituted by Tafo Amon II v Akotia Oworsika III substituted by Laryea Ayiku III [2005 -2006] SCGLR 637** the Court held that:

> *"Where an adversary has admitted a fact advantageous to the cause of a party, the party does not need any better evidence to establish that fact than by relying on such admission which is an example of estoppel by conduct."*

The opinion that the court gathers is that it is the defendant who sought to do additional works on the facility which same the plaintiff obliged him upon his informing her at his own cost whilst she lent her support with the introduction of a workman for same which she eventually had to pay for the service rendered to the defendant. During trial this workman testified to same and the court notes with disappointment the response of the defendant as below. He did not testify to any money paid to PW2 for the works done under his instruction:

Q: *Are you the Roger, I took by taxi to buy building materials and Andril paint before handing them over to proceed to my place at Osu by then?*

A: *Yes, please.*

Q: *Are you the person I engaged to work for me within the building for three and half to four weeks because you said GH¢50 is what you charged?*

A: *Yes, my Lady I am the one that did the work but I was not paid by Defendant.*

Q: *What then did you do with all the monies I gave you for, you are telling lies that Plaintiff paid you with her deep freezer which is false.*

A: *Defendant never paid me any money.*

From the evidence on record, the Court finds that the defence of the defendant though ingenious, is rather far-fetched and rejects same as not being reasonably probable. The Court prefers that version of the Plaintiff testimony to that of the defendant that she duly yielded up the facility for occupation on the set date as agreed between parties. **Section 1(4) of the Evidence Act, 1975 (N.R.C.D. 323)** stipulates as follows:

> *"Where the Court determines that a party has not met the burden of producing evidence on a particular issue the Court shall as a matter of law determine that issue against that party."*

The final issue for determination to bring finality to this suit is whether or not the plaintiff compelled the defendant to seek additional funds for the completion of works on the facility. It is the contention of the defendant that he was compelled in pre-financing the facility for same to be defrayed as rent by the plaintiff. He asserted that this agreement being a gentleman agreement was made in the presence of two persons he mentioned. He claimed that in this regard he secured a loan facility of Two Thousand Cedis (GHc 2,000.00) at a only which same had astronomically accrued an interest rate leaving Nine Thousand Cedis (GHc 9,000.00) to be paid as at the commencement of proceedings which same he continued to pay. In respect of this averment the burden of proof was placed on the defendant. How did he discharge this burden? In the case of **Zabrama vs. Segbedzi [1991] 2 GLR 221** per Kpegah J.A.

(as he then was) commenting on the aforementioned dictum from the Majolagbe case stated on page 246 as follows:

> *"The current practice of the dictum becoming the touchline in all cases to determine proof is clearly unjustified. Its unrestrained application will defeat justice in some cases. I will therefore venture to state the position to be: a person who makes an averment or assertion, which is denied by its opponent has the burden to establish that its averment or assertion is true. And, he does not discharge this burden unless he leads admissible and credible evidence from which the fact or facts he asserts can properly and safely be inferred. The nature of each averment or assertion determines the degree and nature of that burden."*

There is no evidence of an agreement between parties before the court in respect of prefunding the construction works on the facility, neither is there any loan facility agreement between defendant and any financial institution or registered money lender before the court. No interest rate was provided by the defendant to assist the court in the calculation of interest rate for the said loan nor any terms and conditions from any credible institution in respect of this loan facility or guarantors of the said loan in court. It is settled in law what exactly a loan agreement involves and the quality of evidence to adduce in support of same and in this the defendant woefully failed to discharge his burden like.

The said witnesses who the defendant claimed were present when the gentleman agreement was being made did not testify in court to same. It is the claim of this witness that he was making payment to offset this loan and that as at the commencement of proceedings the amount outstanding stood but sadly no payment statement in this respect was tendered by the defendant. All told the Court is not convinced that the plaintiff compelled the defendant to prefund any works for which an extension of tenancy must be credited to him following the expiration of the current tenancy. In the case **of Takoradi Flour Mills vs. Samir Faris [2005-2006] SCGLR 882 at page 884**, the Supreme Court held as follows on Section 12(2) of the Evidence Act, 1975 (NRCD 323):

"It is sufficient to state that this being a civil suit the rite of evidence requires that the Plaintiff produces sufficient evidence to make out its claim on a preponderance of probabilities is defined in section 12(2) of the Evidence Decree. In assessing the balance of the probabilities all the evidence be it that of the Plaintiff or the Defendant must be considered and the party in whose favour the balance tilts is the person whose case is the more probable of the rival version and is deserving of a favourable verdict."

Section 1(4) of the Evidence Act, 1975 (NRCD 323) states as follows:

"Where the Court determines that a party has not met the burden of producing evidence on a particular issue the Court shall as a matter of law determine that issue against that party."

The defendant in the instant case is a pastor who swore on the bible to speak the truth in court and yet he together with his witness only came to court to do the most dishonorable act of peddling so much untruth, the court consequently admonishes them in the wise words of Kweku T. Ackaah-Boafo J. in the case of **Dr. E.L.A Chinebuah & Captain Nyamekye v The Attorney General Suit No: GJ/378/2016:**

"The court therefore wishes to remind …. and all witnesses who take the oath in court that the need to tell the truth is still a hallowed virtue in court."

The Court consequently holds that in the absence of proof of his averments, the plaintiff cannot be compelled to pay the defendant any money whatsoever. If indeed the defendant expended funds on any additional works for the improvement of the facility, he was on a frolic of his own. In the case of **Okudzeto Ablakwa No. 2 v Attorney General and Another [2012] 2 SCGLR 845** the Supreme Court emphasized that:

"… a party cannot win a case in court if the case is based on an allegation which he fails to prove or establish. This rule is further buttressed by section 17(b) which emphasizes on the party on whom lies the duty to start evidence."

Upon a careful consideration of the reliefs sought by the plaintiff herein as endorsed on her statement of claim and the law as is applicable in the instant case, the court hereby proceeds to enter judgement in favour of the plaintiff against the defendant as per her reliefs prayed. Accordingly, the defendant is directed to yield up vacant possession of the facility within thirty days. He is additionally to pay all mesne profits from the date his tenancy expired till his final date of stay in the facility. He has informed the court that he is in full compliance in the payment of utility services supplied to the facility, he is directed to settle the bill for any utility services consumed in full.

Cost of Three Hundred Cedis (GHC 300.00) only is awarded against the defendant in favour of the plaintiff.

H/W ANNETTE SOPHIA ESSEL (MRS.)

MAGISTRATE