

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 15TH JANUARY 2024.

SUIT NO. A9/178/22

EMMANUEL COLEMAN

H/NO. 162/2

::

PLAINTIFF

LATERBIOKORSHIE, ACCRA

VRS.

1. GODWIN AKWASI ASARE

2. KOBINA EBO

3. PROSPER AKWASI MENSAH

4. PETER ADAMS

5. CHRISTOPHER TONYE

::

DEFENDANTS

6. DOREEN OCRAN

7. ODELIA AMEGBEDZI

ALL OF H/NO. 162/2

LATERBIOKORSHIE, ACCRA

JUDGMENT

INTRODUCTION

The Plaintiff caused the issuance of a Writ of Summons on 26th January, 2022 against the Defendants praying this Court for the following reliefs:

- i. Recovery of possession;*
- ii. Damages; and*
- iii. Legal costs.*

When the matter was called on 21st February, 2022, the 1st, 3rd, 5th and 6th Defendants who were present in Court pleaded liable and prayed for a waiver in respect of the damages and cost. Based on their admission of liability, the Court entered judgment for the Plaintiff against them. The 2nd and 4th Defendants also subsequently vacated the property. The Plaintiff therefore proceeded against only the 7th Defendant.

PLEADINGS

According to the Plaintiff, he is the owner and landlord of the house numbered 162/2, Laterbiokorshie, near Korle-Bu in Accra and ordinarily resident in the United Kingdom. He averred that the Defendants are his tenants who have lived in the said house without paying rent for more than six months. The Plaintiff's claim against the Defendants was that he is desirous of renovating the house and using same for his personal abode and that of his family. According to him, he has on several occasions communicated to the Defendants to vacate the house but they have refused to yield vacant possession to him.

The Plaintiff averred that in August 2021, he caused his lawyers to write to the Defendants to vacate the premises by the end of December 2021 but the Defendants have continued to remain in possession of the house to his detriment. According to him, the conduct of the Defendants has caused him to be anxious of where he and his family will lodge when he returns to Ghana in a few weeks. He therefore prayed for an order directed at the Defendants to yield vacant possession to him, damages as well as legal fees assessed at GH¢ 10,000.00.

According to the 7th Defendant's Statement of Defence filed on 2nd August, 2022, she has been staying in the house, the subject matter of the suit for over twenty years now and had been the one responsible for collecting all the rents from the property on behalf of the Plaintiff and accounting same to him. It was her case that she rented a single room from the Plaintiff and per an agreement between them, she made significant extension to the single room. She averred that after the extension was made, the Plaintiff agreed for the cost of the renovation to be used in offsetting her rent until the year 2019.

It was the case of the 7th Defendant that the Plaintiff informed her of his decision to evict some of the tenants from the house excluding her and others but that he would cause his lawyers to write to all the tenants including her to vacate the premises so that he does not appear to be discriminatory. She further stated that because she was not one of the tenants Plaintiff wanted to eject from the house, she was not served with the Plaintiff's Writ of Summons. According to her, she has been occupying two rooms since 2020 in addition to the room she had already been staying in and she has been paying her rents diligently.

7th Defendant added that she renovated Plaintiff's late mother's house with her own money upon Plaintiff's request and the latter delayed in refunding her money to her. She averred that the money was intended for constructing her house and at the time Plaintiff settled the debt, the prices of building materials had increased tremendously. As such, Plaintiff asked her to stay in the house for three years or until she completed her house. It was her case that the rooms the Plaintiff occupies when he returns into the country are different from the ones she occupies. She stated that the Plaintiff is not entitled to the reliefs sought.

In a Reply filed on 17th August, 2022, the Plaintiff averred that the agreement between the parties was for the cost incurred by 7th Defendant in renovation to be used in defraying her rent until the end of 2019 after which she will be made to pay rent. According to him, after the said period, 7th Defendant failed to pay rent. It was as a result of her failure to pay rent

that he caused his lawyers to serve her with an eviction notice and subsequently instituted this action due to her failure to vacate the premises. It is therefore not true that he did not intend to eject the 7th Defendant from the premises, Plaintiff asserted. He added that regarding the renovation 7th Defendant made in relation to his house at Dansoman, he paid timeously and in full, all the expenses 7th Defendant incurred.

ISSUE

The issue for determination is whether or not the 7th Defendant is liable to be ejected from Plaintiff's property.

RESOLUTION OF ISSUE

It is trite that in civil cases, the general rule is that the party who in his/her pleadings or writ raises issues essential to the success of his/her case assumes the onus of proof. The one who alleges, be (s)he a plaintiff or a defendant, assumes the initial burden of producing evidence. It is only when (s)he has succeeded in producing evidence that the other party will be required to lead rebuttal evidence, if need be. Proof lies upon him who affirms or alleges, not upon him who denies since, by the nature of things, he who denies a fact cannot produce any proof. See the following:

Sections 11(1) & (2), 12(2) and 14 of the Evidence Act, 1975 (NRCD 323)

Takoradi Flour Mills vs. Samir Faris [2005-2006] SCGLR 882 @ 900

GIHOC Refrigeration & Household vs. Jean Hanna Assi (2005-2006) SCGLR 458

Tagoe v. Accra Brewery [2016] 93 GMJ 103 S.C

Deliman Oil v. HFC Bank [2016] 92 GMJ 1 C.A.

In the case of **Agbosu v Kotey; In Re Ashalley Botwe Lands [2003 – 2004] SCGLR 420**, His Lordship Brobbey JSC on the burden of proof held as follows:

“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...” See also **Tagoe v. Accra Brewery [2016] 93 GMJ 103 @ 123 S.C** per Benin, JSC.

The Plaintiff therefore assumes the burden of producing sufficient evidence in respect of his claims on a balance of probabilities. The 7th Defendant also equally has a duty to help her cause by adducing such evidence that will induce a determination to be made in her favour where the Defendant desires a determination to be made in her favour.

The Plaintiff himself did not testify at the trial. It was one Francis Quayson who testified in support of Plaintiff’s case. The law is settled that a party need not testify in person. See the cases of **Nyamekye v Ansah [1989-90] 2 GLR 152**, **Adjei fio v Mate Tesa [2012-2013] SCGLR 1537 @ holding 1** and **William Ashitey Armah v Hydrafoam Estate (Ghana) Ltd [2014] DLSC 3000**.

The evidence of the Plaintiff’s witness (PW1) was that he is the caretaker of the subject matter house and that the Plaintiff who is ordinarily resident in the United Kingdom is desirous of relocating back to Ghana with his family and is therefore in need of the house for renovation. According to him, Plaintiff caused his lawyers to serve the Defendants with eviction notices

to vacate the premises by 31st December, 2021 but they failed to vacate and were thus sued, whereupon they have all vacated, save 7th Defendant. He testified further that 7th Defendant had from the beginning of the year 2022 failed to pay rent for the apartment she occupies and she had also moved her belongings into two other rooms which became vacant after the tenants occupying those rooms vacated. It was the testimony of PW1 that the 7th Defendant's continuous stay in Plaintiff's house was unjustifiable and she had had sufficient time to give vacant possession of the rooms.

The 7th Defendant's evidence was basically as her averments in her Statement of Defence. She added that she was informed by an agent of Plaintiff by name Wendy, of the Plaintiff's decision to eject her together with the other tenants from the house in question. She therefore informed the said Wendy to speak to the Plaintiff and ask that she, 7th Defendant be made to stay in the premises subject to continuous payment of rent till three years or until she completes her house. She stated that she did not hear from Plaintiff until sometime in April 2022, when she saw a hearing notice pasted on her room. She prayed this Honourable Court for some time within which to look for a suitable place in order to vacate Plaintiff's premises.

The relevant statute for the Court to avert its mind to is the **Rent Act, 1963 (Act 220)**. Section 17(1)(a) and (g) of the said Act provides as follows:

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;

(g) where the premises are reasonably required by the landlord for personal occupation as a dwelling house by the landlord, a member of the family of the landlord or any person in his whole time employment, such premises being constructed to be used as a dwelling house, so, however, that —

(ii) no such order shall be made if the Magistrate or Judge is satisfied having regard to all the circumstances of the case, including any alternative accommodation available for the person for whose occupation the premises are so required or for the tenant, that greater hardship would be caused by granting the order than by refusing it;

The payment of rent in tenancy agreements is a fundamental obligation of the tenant under the contract so made. The right of the landlord accrues whenever this obligation is breached by the tenant. A breach of this obligation is a ground for the termination of the agreement. The court in **Gyato v. Pipim [1980] GLR 71-76** succinctly held that: *“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. Once this cause of action has accrued to the landlord and he has commenced proceedings for recovery of possession or ejectment, the subsequent payment or tendering to the lessor or landlord of the arrears of rent claimed by his writ does not abate the cause of action. Indeed, any payment of rent made after the commencement of action for recovery of possession or ejectment for non-payment of rent, must be construed as an admission that the plaintiff’s action was well-founded and that he is entitled to judgment.”*

From the evidence, it is a fact I have found that the 7th Defendant expended some monies on renovations and the parties agreed for same to be used to offset her rent until the end of the

year 2019. The 7th Defendant therefore was to pay rent from January 2020. From the summary of subject matter of claim, the Plaintiff's prayer for Defendants to be made to vacate the premises was anchored on his need of the property for personal occupation with his family and not as a result of a failure to pay rent. It is instructive to note that even the reliefs sought attest to this as there is no relief for recovery of any rent arrears.

The evidence of PW1 was that the 7th Defendant had from the beginning of the year failed, neglected or refused to pay rent for the apartment she occupies (see Paragraph 8 of his witness statement). The witness statement was filed on 28th June 2022 and it implies that the reference made by the witness to 'the beginning of this year' is referrable to the year 2022. The witness therefore tacitly admits that rent has not been in arrears until the year 2022. PW1 could not even tell how much rent he claimed the 7th Defendant owed. Quite apart, the witness also expressly admitted that the Defendants inclusive of the 7th Defendant was not owing rent up to 2021. This ensued when he was being cross examined:

Q: I put it to you that defendants including 7th Defendant did not owe rent for the premises for their stay even up to 2021

A: Yes

The 7th Defendant was insistent that she was not in arrears of rent and tendered in evidence Exhibits '2A', '2B' and 3 to show the rents she had taken for 2020 and 2021 on behalf of the Plaintiff, which included her rent as well. These were not in any way discredited or subject to dispute by Plaintiff's Counsel when the 7th Defendant was under cross examination. I note that the suit was instituted on 26th January 2022 and as per the evidence of PW1 who stated that the rents were payable at the end of each month, it meant that as at the date of the institution of the suit, the 7th Defendant was not owing any rent since the rent for 2021 had been paid and the rent for January 2022 was not even due to be paid. There would therefore be no reasonable justification for the Plaintiff to want to recover possession on the basis of non-payment of rent since obviously, no rent was in arrears at the date of institution of the

suit.

The Plaintiff as landlord expressed his intention of recovering possession of the subject matter for his personal dwelling and also to accommodate his family upon his return to Ghana. Exhibit '4' which was tendered by 7th Defendant proves that she was notified to vacate the premises for Plaintiff's personal use. From the evidence on record, the 7th Defendant has absolutely no basis to entrench herself in the property which is obviously not owned by her, but by the Plaintiff. She could not give any cogent reason why she should remain in the premises. This ensued when she was being cross examined by Counsel for the Plaintiff:

Q: Why have you refused then to leave Plaintiff's house when he asked you to leave at the end of 2021?

A: The extension was made to enable me stay in the house and not for him to eject me.

Q: Was the extension made so you live in the house perpetually?

A: Not so. It was because I was not ready when he asked me to leave.

Q: If you were not to live there perpetually why are you still there?

A: I expect him to do it in a manner that is appropriate. Now that I have been sued, I leave it to the Court's mercy.

Q: In Exhibit 4, a letter was written to you and you were to leave by 14th November 2021 so which other method did you want the notice for you to leave to be in?

A: The landlord assured me that even though he wanted to eject other tenants, I would be excluded so due to that I felt relaxed and that was why when he later asked me to leave, I resisted.

Q: It was because you failed to leave on the date he had communicated to you that Plaintiff sued you in Court, I put it to you.

A: That is not so.

The 7th Defendant in her witness statement dated 8th August 2022 (which was adopted as her evidence-in-chief) prayed the Court for a reasonable time to be given her to search for suitable place and move. As at the time she opened her defence in June 2023, she was still in occupation of the premises. The Court is of the considered opinion that, 7th Defendant has shown by her conduct not to make any effort to vacate the premises. She has by her conduct which is evident from the evidence adduced before this Court shown that she intends to stay in the house in question and vacate same on her own terms; perhaps after she completes her own building. If from 9th August 2021 when the notice of eviction was issued, to this day was not enough time for 7th Defendant to search for an alternative accommodation, I do not think an additional time granted her would aid her in any way. She has had more than enough time to secure another accommodation if she is indeed desirous of moving out of Plaintiff's house. She will continue to remain in possession of the house in question at the expense of the Plaintiff and his family, if she is given more time.

There is no sufficient evidence which has been adduced by the Defendant that the Plaintiff and his family have any available alternative accommodation to occupy aside the house, subject matter of this suit and that greater hardship would be occasioned the Defendant if an order is made on her to vacate the premises. This Court therefore does not see why the Plaintiff's prayer for an order for recovery of possession should not be granted. It will be unfair to the Plaintiff to be denied the comfort of his own house and greater hardship would rather be occasioned him.

Plaintiff in his relief also prayed for damages. The Court does not find any cogent basis for the grant of this relief and same is therefore dismissed.

A prayer has also been made for cost. The policy rationale behind the institution of costs in litigation has been judicially articulated in **SCOA Motors v Koranteng [1967] GLR 263**,

where Azu Crabbe JA (as he then was) said; *"The real object of awarding costs is to recoup a plaintiff who had successfully established his right to maintain the litigation which he had commenced or the defendant who had been wrongly dragged into court and harassed with litigation."* **Rule 1(1) of Order 7 of C.I. 59** provides that costs in a suit is at the discretion of the Court and the Court may after hearing the parties award costs it considers just.

The Court considers the peculiar circumstances of each case in arriving at the quantum of costs such as amount of expenses incurred by the party or his lawyer, amount of Court fees paid, length and complexity of proceedings, conduct of parties and/or their lawyers during proceedings, length of trial, number of witnesses. The Court must be fair to both parties in awarding cost. See: **Bank of Ghana v Nyarko (1973) 2 GLR 265, GATCO Chempharam v Pharmadex Gh. Ltd. (1999-2000) 2 GLR 262 @ 275, Neuseite Meditek and Konsult vs. United Bank for Africa (Gh) Ltd. [2021] DLCA 10755.** It has been held in **Sega Exports Ltd. v. Dart Hills Ltd (2013) JELR 69694 (CA)** that it is unlawful for a Court to award lawyer's fees under a separate heading and that the Court in assessing costs is to take into consideration reasonable remuneration for the lawyer in respect of the work done by him in the proceedings and compensate the victor for reasonable expenses incurred and as well as the cost fees paid. Relying on these authorities cited *supra*, and having regard to the circumstances of this case, I award costs of GH¢ 3,000.00 in favour of Plaintiff against 7th Defendant.

CONCLUSION

Having considered the evidence adduced by the Plaintiff's witness and the 7th Defendant and having duly evaluated same, I find that the Plaintiff has been able to discharge the burden of proof on him generally in respect of the claims levelled against the 7th Defendant and judgment is accordingly entered for him against the 7th Defendant to the following extent:

- a. The 7th Defendant is to give vacant possession of the Plaintiff's property she occupies to the Plaintiff within two (2) weeks.
- b. Cost of GH¢ 3,000.00 is awarded for Plaintiff against 7th Defendant.

AMA ADOMAKO-KWAKYE (MS.)

MAGISTRATE

Counsel

Ishmael Classpeter-Williams, Esq. holding brief of Samuel Andrews, Esq. for the Plaintiff.

Obed Wordu, Esq. for the 7th Defendant.