

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 5TH FEBRUARY, 2024.

SUIT NO. A9/154/23

OBENG KWADWO

MADINA, ACCRA.

::

PLAINTIFF

VS.

ANYAN BOTCHWAY

APARTMENT F.202/14B

BLOHUM STREET, DZORWULU - ACCRA ::

DEFENDANT

JUDGMENT

INTRODUCTION

In his Writ of Summons issued out on 11th January 2023, the Plaintiff herein prayed this Court to grant him the following reliefs against the Defendant:

- a. An order of eviction directed at the Defendant to quit and vacate the apartment he occupies located at Dzorwulu, Blohum Street numbered F.202/14B, Accra.
- b. An order directed at the Defendant to pay the accrued rent of Nine Thousand, Six Hundred Ghana Cedis (GH¢ 9,600.00) being exigible rent for the year 2022.

- c. Interest on the amount as stated in paragraph (b) at the prevailing commercial bank interest rate from the date same fell due till date of final payment.
- d. A further order directed at the Defendant to pay exigible monthly rent of Eight Hundred Ghana Cedis (GH¢ 800.00) for all subsequent months he would be in occupancy of the apartment until his final eviction of same.
- e. Cost including solicitor's fee.
- f. Any other order(s) that this Honourable Court may deem fit.

According to the Plaintiff's claim, the Plaintiff is a landlord of apartment numbered F.202/14B situate at Dzorwulu, Blohum Street whereas the Defendant is his tenant in a chamber and hall self-contained apartment in the said property. The Plaintiff averred that he rented the chamber and hall self-contained apartment to the Defendant in the year 2016 at a monthly rent of Five Hundred Ghana Cedis (GH¢500.00) and it was subsequently increased to Six Hundred Ghana Cedis (GH¢ 600.00). He further averred that he notified the Defendant of an increment to Eight Hundred Ghana Cedis (GH¢ 800.00) in the year 2021.

The Plaintiff's case is that the Defendant notwithstanding the notice was determined on paying the old rent of Six Hundred Ghana (GH¢600.00) but he refused to accept it. He averred that he caused his Lawyers to write to the Defendant to demand payment of accrued rent which was by then Nine Thousand, Six Hundred Ghana Cedis (GH¢9,600.00). According to the Plaintiff, the Defendant failed to go by the tenets of the demand letter and rent remains in arrears. He averred that the Defendant had failed to pay electricity bills since he took occupancy but has resorted to illegal electricity connection, which has been reported to the Electricity Company of Ghana. He stated that the failure of the Defendant to settle his indebtedness to him has affected him financially

and the Defendant's failure to desist from the illegal electricity connection is frowned on by the law.

Notwithstanding due service of all processes in the suit on the Defendant, he failed to make an appearance in Court either personally or even through a representative. The Court proceeded to hear the Plaintiff prove his claims in accordance with **Order 25 Rule 1(2)(a) of the District Court (Civil Procedure) Rules, 2009 (C.I. 59)**.

ISSUE

The main issue for determination by this Court is whether or not the Defendant is in arrears of rent and consequently ought to be ejected from the premises.

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 him on the issue before the Court. The Plaintiff testified by relying on his witness statement filed on 5th June 2023 which was duly adopted by the Court. He testified that he rented a chamber and hall self-contained apartment to the Defendant in his property numbered F. 202/14B, Accra, in the year 2016 with the monthly rent at the time fixed at GH¢ 500.00. He stated that the rent was subsequently increased to GH¢ 600.00 and four years thereafter in 2021, increased to GH¢ 800.00, with the Defendant given notice of same but Defendant was insistent on still paying GH¢ 600.00.

It was Plaintiff’s testimony that he did not accept the GH¢ 600.00 and demanded that the GH¢ 800.00 be paid but Defendant failed to pay same and as such, his rent arrears accrued to GH¢ 9,600.00 in the year 2022. He said he instructed his lawyer to write a demand letter to the Defendant in respect of his rent arrears but Defendant failed to comply with the

tenets of the letter. A copy of the letter was tendered as Exhibit 'A'. The Plaintiff further testified that the Defendant had also failed to pay electricity bill but resorted to doing illegal electricity connection and a complaint was thus lodged with ECG officials but Defendant persists with his conduct.

The Plaintiff's evidence points to the fact that the Defendant who is his tenant owes rent from the year 2022 and despite the demand notice (Exhibit 'A') served on him, he has neglected to settle his indebtedness to the Plaintiff. The Defendant failed to appear to contest any of the claims made against him and as such the Plaintiff's evidence remained unchallenged. **Section 17(1)(a) of the Rent Act, 1963 (Act 220)** on recovery of possession provides as follows:

Section 17—Recovery of Possession and Ejection.

(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 ejection 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 from the year 2022 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 has failed to perform his rent obligations as a tenant and has therefore breached this covenant. The Plaintiff's right under Section 17(1)(a) of the Rent Act, 1963 (Act 220) has accrued and as such, the Plaintiff's prayer for the Defendant to be evicted from the premises is

supported by law and as such, the Plaintiff is to recover all the rent arrears from 2022 to date and the Defendant ought to vacate the premises.

The Plaintiff prayed for interest as part of the reliefs he seeks from this Court. In **Senedza v Djokoto [1991] 2 GLR 8**, His Lordship Benin J. (as he then was) noted that the Defendant's breach of agreement to pay entitled the Plaintiff to recover interest. In the case of **Royal Dutch Airlines (KLM) v Farmex Ltd [1989-90] 2 GLR 623 at 644-645**, the Supreme Court held that interest was usually awarded to a party where the other party's default or breach of contract had deprived the first party of the opportunity to work with the money to earn profit or income. Also, in the case of **Metropolitan Insurance Co. Ltd. v Francis Nsiah-Afriyiee (2012) JELR 63964 (CA)** it was noted that the rationale for the award of interest is that the party awarded money as a judgment debt but which money had been kept by the other party for some time had lost the use of the money so kept and the award of interest was meant to compensate that party for the loss of the use of the money. See also: **McJohn Odei Cleve (Suing Per His Lawful Attorney Kofi Wadie) v. Raphael Abdallah Semekor (2019) JELR 65368 (HC)** and **Standard Chartered Bank (Ghana) v. Nelson (1999) JELR 66323 (SC)**.

From the evidence adduced, the Defendant has breached his covenant as a tenant to pay rent for well over a year now, depriving the Plaintiff of monies rightly due him which could have been put to some good use. The value of the amount from the time it was due to be paid, compared to the value now, having regards to the general economic situation, would have whittled down. The Plaintiff is therefore entitled to be awarded interest on the outstanding rent.

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**. Relying on these authorities cited *supra*, and having regard to the circumstances of this case, I award costs of GH¢ 2,500.00 in favour of Plaintiff against Defendant.

CONCLUSION

Upon a careful consideration of the evidence adduced by the Plaintiff at the trial, the Court is satisfied that Plaintiff has been able to discharge the burden of proof on him on the preponderance of probabilities. Judgment is accordingly entered for the Plaintiff against the Defendant as follows:

- a. The Defendant is to pay to the Plaintiff the sum of Nine Thousand, Six Hundred Ghana Cedis (GH¢ 9,600.00) being the accrued rent for the year 2022.
- b. The Defendant is to pay interest on the amount in a. *supra* at the prevailing commercial bank interest rate from January 2023 to date of final payment.
- c. The Defendant is to yield vacant possession of the premises he occupies in House Number F.202/14B, Dzorwulu, Blohum Street to the Plaintiff by 18th February 2024.

- d. The Defendant is to pay to Plaintiff rent from January 2023 until he vacates at a monthly rent of Eight Hundred Ghana Cedis (GH¢ 800.00)
- e. Cost of GH¢ 2,500.00 is awarded for the Plaintiff against the Defendant.

AMA ADOMAKO-KWAKYE (MS.)

(MAGISTRATE)

Counsel

Dorothy Esinam Tettey, Esq. for Plaintiff.

No legal representation for Defendant.