

**IN THE TDC DISTRICT COURT HELD AT TEMA ON MONDAY THE 12TH DAY
OF FEBRUARY 2024 BEFORE HER HONOUR AKOSUA ANOKYEWAA
ADJEPONG (MRS.), CIRCUIT COURT JUDGE, SITTING AS AN ADDITIONAL
MAGISTRATE**

SUIT NO. A9/118/17

**GLADYS KABUKIE KUBI
H/NO. B55
COMMUNITY 5, TEMA**

PLAINTIFF

VRS

- 1. STEWARD NANA WOODE**
- 2. ESTHER NANA AMA WOODE**
BOTH OF H/NO. B55
COMMUNITY 5, TEMA
- 3. THEODORA OLERKI ACKWERH**
TEMA
- 4. TEMA DEVELOPMENT COMPANY**
TEMA



**PARTIES: PLAINTIFF PRESENT
 DEFENDANTS ABSENT**

THIRD DEFENDANT REPRESENTED BY ERNEST ACKWERH

COUNSEL: JUDE YAW ASIEDU HOLDING THE BRIEF OF IVAN MENSAH

DADZIE,

ESQ. FOR PLAINTIFF PRESENT

MRS EDITH AWUKU ASABRE FOR FIRST, SECOND AND THIRD

DEFENDANTS PRESENT

OPOKU-WARE BOATENG, ESQ. FOR FOURTH DEFENDANT

PRESENT

JUDGMENT

On the 18th day of August 2017, the Plaintiff herein originally caused a Writ of Summons to be issued in this Court claiming against the 1st and 2nd Defendants the following reliefs:

1. Ejectment of Defendants from House No. B55 at Community 5 Tema.
2. Recovery of possession of House No. B55 at Community 5 Tema.
3. Cost.

The 1st and 2nd Defendants filed their defence and denied the claims of the Plaintiff that, she is not entitled to her claims. Plaintiff filed a Reply to the Statement of Defence by the 1st and 2nd Defendants.

The 3rd Defendant applied to be joined to the suit and the 4th Defendant was also joined to the suit subsequently, upon an application by the 3rd Defendant. The 3rd and 4th Defendants filed their respective Statement of Defence where the 3rd Defendant counterclaimed against the Plaintiff as follows:

- a. A declaration that House No. B55/C5 Tema is family property for the Plaintiff and all the children of the late Mr. Ackwerh.
- b. A declaration that the Plaintiff holds the property in trust for herself and all the children of the late Mr. Ackwerh.
- c. An order directed at Tema Development Corporation to amend their records accordingly.
- d. Any other order(s) relevant to the issues raised by the pleadings.

The Plaintiff filed a Reply and Defence to the Counterclaim of the 3rd Defendant; and denied the allegations contained in the 3rd Defendant's Statement of Defence. She further stated that the 3rd Defendant is not entitled to the reliefs sought in her Counterclaim. The 3rd Defendant also filed a Reply to the 4th Defendant's Statement of Defence.

THE CASE OF THE PLAINTIFF

In her further amended Statement of Claim filed on 29th April 2020, the Plaintiff averred that she is a widow and resides at House Number B55 Community 5, Tema. That the 1st and 2nd Defendants are her step grandchildren being children of her late husband, Ebenezer Tetteh Ackwerh's children. That the 3rd Defendant is one of her stepchildren and the auntie of the 1st and 2nd Defendants. That the 4th Defendant is a public entity with responsibility of planning and developing the City of Tema and her lessor. The Plaintiff further stated that she and her late husband resided at H/No. B55, Community 5, Tema during the lifetime of her late husband. That in the course of time during the lifetime of her late husband, he was apparently offered the opportunity to acquire the rented property under a long lease under the house ownership scheme operated by the 4th Defendant. According to the Plaintiff, after the death of her husband, officials of the 4th

Defendant informed her that her late husband had failed to obtain a lease in respect of H/No. B55 and therefore she needed to vacate. That in danger of being kicked out of the house because of her late husband's inability to obtain a long lease of H/No. B55 as he was offered, she applied to the 4th Defendant, the owners of the house, to acquire it in her own name and for her own benefit. She further stated that her application was accepted, and she was offered the house on a sixty-year lease subject to the payment of the assessed rent. That she accepted the offer and made payment accordingly whereafter the 4th Defendant made those necessary administrative changes. That following the grant of the lease to her, she allowed the 1st and 2nd Defendants, who had moved from their father's house at Community 5 extension to continue to live with her as she considered them her grandchildren too.

The Plaintiff further averred that the 3rd Defendant who previously during the lifetime of her late husband lived with them in the same house, was put in a shop constructed by her late husband to enable 3rd Defendant to operate her sewing business but she abandoned same and left. That the 1st and 2nd Defendants have consistently with the least or no provocation, abused and assaulted her both physically, verbally and emotionally. That on many occasions, she spent days going to and from the hospital as she recovered from the effects of the assaults by the 1st and 2nd Defendants. According to the Plaintiff, in one instance, the 1st and 2nd Defendants procured a young girl who lives with her to put a substance suspected to be poison in her food. That the matter was reported to the Community 2 Police Station and the 1st and 2nd Defendants were arrested. That she has consistently reported to the Community 2 Police Station the conducts of the 1st and 2nd Defendants as she has to live every day under fear of being harmed by the 1st and 2nd Defendants. That the continuous stay of the 1st and 2nd Defendants in her house poses a great threat to her life as an old woman and she can no longer continue to live with them, cope with their difficult demands and endure their assaults. That she has asked the 1st

and 2nd Defendants to leave her house but they have refused to do so and their conduct amounts to trespass on her property. She claims against the Defendants as follows:

- a) A declaration that the leasehold agreement between the 4th Defendant as lessor and the Plaintiff as lessee is valid.
- b) An order of immediate ejection of the 1st and 2nd Defendants from Plaintiff's property.
- c) An order of perpetual injunction restraining the 1st, 2nd and 3rd Defendants, either by themselves, or through their agents, assigns, thugs, hirelings, workmen, servants or however so described from interfering with Plaintiff's ownership, possession, use and/or development of H/No. B55, Community 5, Tema.
- d) Any other order(s) as this honourable Court shall deem fit.

THE CASE OF THE FIRST AND SECOND DEFENDANTS

In their Statement of Defence, the 1st and 2nd Defendants admitted that the Plaintiff was staying in the said house with her husband but denied that the husband could not purchase the house. They further stated that even if the Plaintiff acquired the house, she did so fraudulently. The particulars of fraud is as follows:

- a. That the Plaintiff failed to tell TDC the whole truth about the house that she is staying there with her stepchildren and the Defendants.

That it was true their father rented the house for them but later they came to stay in the house with their mother who is now dead. According to the 1st and 2nd Defendants, it was only the 2nd Defendant who was sent to Eguase to continue her education there. That the 1st Defendant was at all times in the house. They denied that they are vagabonds and robbers; and stated that it is rather the Plaintiff who has been harassing them and on one

occasion threw their things out in an attempt to eject them unlawfully. That the house belongs to their grandfather Ebenezer Tetteh Akweh and that they were staying in that house before their mother died. That their aunty Theodore Ackwerh had made an extension in the house and was staying there before she travelled outside the country. That their uncle Theophilus Ackwerh also started an extension in the house but could not complete it before he travelled but since then all attempts to complete it have been resisted by the Plaintiff. That they are informed and verily believe same to be true that their grandfather accepted the offer to buy the house, which was offered for sale at three million, three hundred cedis (¢3,300,000) in 1998. That their grandfather made part payment but could not complete paying for the house in full before he died. That if the Plaintiff paid for the balance, she cannot claim the house to be hers alone since at the time the legal owner died they were all in occupation of the house. That their aunty and uncle have all invested in the house and have interest in the house therefore the Plaintiff is not entitled to her claims.

THE CASE OF THE THIRD DEFENDANT

The 3rd Defendant in her Statement of Defence and Counterclaim stated that the late Mr. Ackwerh married her mother, and they had four children, all born in H/No. B55/C5 Tema. That her father later divorced her mother and married the Plaintiff with whom he had four children; and they were all living in the house peacefully. That her father married another woman called Comfort with whom he had three children, one died leaving two. That when TDC offered rented houses to be sold to sitting tenants, her father accepted the offer to buy House No. B55/C5 Tema. That the total amount was ¢3,300.00 at the time and her father was paying by installment. That per the record on the rent card her father paid more than half of the purchase price. That her father died on 3rd June 2009 and at that time the Plaintiff and all the children were in the house except Comfort's children

who were staying in New Town. That she made an extension and constructed a store in the house and her brother Theophilus also made an extension at the back of the house. That her sister, the mother of 1st and 2nd Defendant was staying in the house with her children before she died. That after her father's funeral she got the chance to travel abroad but before going she left her store in the care of a neighbour and settled the 1st and 2nd Defendants in the house. That when she came back, she got to know that Plaintiff was making attempt to transfer the house into Plaintiff's name alone, so she instructed a lawyer to write to TDC and notify them that the house is a family house. That she then took steps to apply for Letters of Administration for the Estate to be administered but the other administrators refused to sign the documents. According to the 3rd Defendant, the Plaintiff misrepresented to TDC to acquire House No. B55/C5 Tema and did not disclose the full and correct facts on the house thus acting fraudulently. She particularized the fraud as: failing to disclose that at the time of Mr. Ackwerh's death she was occupying the house with her children and step children.

That she made several attempts to resolve the issue about the house, but Plaintiff did not cooperate. She counterclaimed against the Plaintiff as stated above in this judgment.

THE CASE OF THE FOURTH DEFENDANT

The 4th Defendant in its Statement of Defence averred that the late Ebenezer Ackwerh applied to purchase House No. B55 with an option to pay the selling price in installments over a period of 5 years. According to the 4th Defendant, the deceased, Ebenezer Ackwerh failed to pay the full purchase price of the property within the stipulated time which resulted in the property being reverted to its original rental status. That this was brought to the notice of the 3rd Defendant by letter dated 9th December 2016 when she instructed her counsel to petition it against the recognition of the Plaintiff in respect of the said property. The 4th Defendant denied the Plaintiff's claim that she was going to be kicked

out because of her husband's inability to obtain a lease. That it caused a notice to be posted on the property for 21 days notifying the public and all interested persons of the termination of the tenancy of the late Ebenezer Ackwerh on grounds of death in favour of the Plaintiff herein. The 4th Defendant admitted that the Plaintiff applied to acquire the said property in her own name and for her own benefit and her application was accepted, and she was offered the house on a sixty-year lease subject to the payment of the assessed rent where the Plaintiff accepted the offer and made payment accordingly and it made the necessary administrative changes.

At the end of the hearing, none of the lawyers for the parties filed any written address.

LEGAL ISSUES

Based on the pleadings and the evidence led, the Court set down the following issues for determination.

- 1. Whether or not the late Ebenezer Ackwerh was the owner of the property in dispute or he was a legal tenant of the 4th Defendant at the time of his death.*
- 2. Whether or not the part payment made by the late Ebenezer Ackwerh in his pursuit to purchase the property in dispute from the 4th Defendant made him a part owner of the said property.*
- 3. Whether or not the purchase of the property in dispute by the Plaintiff was as a result of fraudulent misrepresentation to the 4th Defendant by the Plaintiff.*

4. *Whether or not the leasehold agreement between the 4th Defendant as lessor and the Plaintiff as lessee is valid.*
5. *Whether or not the Plaintiff is entitled to an ejectment order against the 1st and 2nd Defendants.*
6. *Whether or not the Plaintiff is entitled to an order of perpetual injunction against the 1st, 2nd and 3rd Defendants.*

BURDEN AND STANDARD OF PROOF

In civil cases, the general rule is that the party who in his pleadings raises an issue essential to the success of his case assumes the onus of proof. See **sections 10, 11(1) and (4) and 12(1) and (2) of the Evidence Act, 1975 (NRCD 323)**.

Section 12(1) of the Evidence Act, 1975 (NRCD 323), provides that:

“except as otherwise provided by law, the burden of persuasion requires proof by a preponderance of probabilities.”

In the case of *Adwubeng v. Domfe [1996-97] SCGLR 660*, the Supreme Court held thus:

“Sections 11(4) and 12 of the Evidence Decree, 1975 (NRCD 323)... have clearly provided that the standard of proof in all civil actions was proof by preponderance of probabilities – no exceptions were made.”

It is trite learning that in civil cases, the standard of proof is on the preponderance of probabilities. Thus, the Court determines whose case is more probable than not.

Section 12(2) of the Evidence Act, N.R.C.D 323 states:

“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.”

Section 11(4) of the Evidence Act explains the burden of proof in civil cases as follows:

“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”.

In the case of **Ackah v. Pergah Transport Ltd & Ors [2010] SCGLR 728** the Supreme Court held *inter alia* as follows:

“It is a basic principle of the law on evidence that a party who bears the burden of proof is to produce the required evidence of the facts in issue that has the quality of credibility short of which his claim may fail. The method of producing evidence is varied and it includes the testimonies of the party and material witnesses, admissible hearsay, documentary and things (often described as real evidence), without which the party might not succeed to establish the requisite degree of credibility concerning a fact in the mind of the Court or tribunal of fact such as a jury ...”

In the case of **In Re: Ashalley Botwe lands; Adjetey Agbosu and Others v. Kotey and Others (2003-04) SCGLR 420**, Brobbey JSC interpreted section 11(1) of the Evidence Decree 1975 (N.R.C.D 323) at pages 464 to 465 and held that:

“A litigant 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 the determination depends on evaluation of facts and evidence, the Defendant must realize that the determination cannot be made on nothing. If the

*Defendant desires the determination to be made in his favour, then he has the 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....".*

A counterclaim is a separate and independent action with the burden of proof no different from the Plaintiff's legal burden. In the case of *Op. Kwasi Asamoah v. Kwadwo Appea (2003-04) SCGLR 226 at 246*, it was held that:

"The position with regards to proof of the Defendant's case was that since they made a counterclaim, they assumed the same onus of proof as lay on the Plaintiff."

See also the case of *Nii Odoi Kwao Asumang & 2 Ors v. William Sowah Charwey & 14 Ors (2014) 75 GMJ 108 at 135*.

ANALYSIS

I shall now analyse and evaluate the evidence adduced by the parties in support of their respective cases within the context of their corresponding burdens and the prescribed standard of proof as provided under *the Evidence Act, 1975 (NRCD 323)* to resolve the issues raised.

- 1. Whether or not the late Ebenezer Ackwerh was the owner of the property in dispute or he was a legal tenant of the 4th Defendant at the time of his death.***

According to the Plaintiff, after the death of her husband, officials of the 4th Defendant informed her that her late husband had failed to obtain a lease in respect of H/No. B55 and therefore she needed to vacate.

The 1st and 2nd Defendants in their Statement of Defence, denied that their late grandfather could not purchase the house. According to them, the house in dispute belongs to their late grandfather Ebenezer Tetteh Ackwerh and that they were staying in that house before their mother died.

On the part of the 3rd Defendant, she stated in her Statement of Defence and Counterclaim that when TDC offered rented houses to be sold to sitting tenants, her father accepted the offer to buy House No. B55/C5 Tema. That the total amount was ₵3,300.00 at the time and her father was paying by installment. That per the record on the rent card her father paid more than half of the purchase price.

The 4th Defendant in its pleading stated that the late Ebenezer Ackwerh applied to purchase House No. B55 with an option to pay the selling price in installments over a period of 5 years. That the deceased, Ebenezer Ackwerh failed to pay the full purchase price of the property within the stipulated time which resulted in the property being reverted to its original rental status.

In her evidence on the above issue, the Plaintiff testified that after the death of her husband, TDC came to eject them from the house because her husband did not pay for the house. So, she called her brother that TDC wants to eject them from the house because her husband did not pay for it and her brother accompanied her to TDC. That after going through the process, they realized that her husband did not pay for the house, so she agreed to pay and actually paid for the house. That after paying that money, she always paid the monthly rent for 4 years. That one day TDC called her to say that they are now selling the house and if she does not buy it and she continues to pay monthly rent they will eject her so she told them she would pay. That they later posted a notice on the wall which was there for 21 days, and they came to remove it. That they thereafter called her and said that she could buy the house, so she started paying in installments until she

finished paying for the house. That after the payment for the house, there was a change of ownership, and the house is now in her name. She tendered a sublease of residential house as exhibit 'D'.

PW1 corroborated the evidence of the Plaintiff when she gave evidence that she and her brother accompanied the Plaintiff to the offices of TDC to enquire about the house in dispute where they were told that their late stepfather had failed to pay for the house which had been offered to him on long term lease as far back as 1998 thereabout and that the agreement between him and TDC regarding the sale of the house had therefore expired but was allowed to occupy the house under a tenancy and he also failed to pay the rent. That they were told what the total outstanding rents and property rates were, which the Plaintiff pleaded to be allowed to pay in installment. According to PW1, the rent and property rates were later fully paid by the Plaintiff. She tendered exhibits 'E' series being the receipts of payment in respect of the outstanding rent and property rates up to 2013.

The 1st Defendant in his evidence on the above issue stated that House No. B55, Community 5, Tema belongs to their grandfather Nomo Ebenezer Tetteh Ackwerh who is now dead. That his mother the late Victoria Olerkuor Ackwerh was the daughter of the late Nomo Ebenezer Tetteh Ackwerh and they were all staying with his grandfather, the Plaintiff and their children. That H/No. B55, belongs to his grandfather and not the Plaintiff and because they were all staying in the house, it should be declared a family house so that the Plaintiff is not entitled to throw them out.

The 2nd Defendant also gave evidence that House No. B55, Community 5, Tema belongs to their grandfather Nomo Ebenezer Tetteh Ackwerh and they were all staying with him, the Plaintiff and their children. That she was informed that she was born in the house.

That, after the death of her grandfather, they all continued staying in the house with her mother, the Plaintiff and her children until her mother died in 2011. That H/No. B55 belongs to their grandfather and not the Plaintiff so it should be declared a family house, so the Plaintiff is not entitled to throw them out.

The relevant evidence by the 3rd Defendant on the above issue was that before her father died, the house in question was formerly a rental unit offered to him on hire purchase scheme for an amount of GH¢330.00 and he paid more than half the amount before he died. The 3rd Defendant tendered in evidence a copy of the rent card as Exhibit '7'.

The 4th Defendant was represented by its Estate Officer, Anne Elemawusi Tawiah who gave evidence on the issue above to the effect that, the late Ebenezer Ackwerh applied to purchase H/No. B55 at a selling price of ₵3,300,000.00 from the 4th Defendant. She tendered in evidence a copy of the application as exhibit '18'. That one of the conditions attached to the sale was that the late Mr. Ackwerh was required to pay the full purchase price within 5 years. She tendered in evidence a copy of the conditions of sale as exhibit '19'. She further told the Court that the late E.T. Ackwerh failed to pay the full purchase price within the stipulated time which resulted in the house being reverted to its original rental status. Exhibit '20' which is a copy of the Statement of Account was tendered by the 4th Defendant's representative to that effect.

Both the 1st and 2nd Defendants gave similar evidence in support of their claim that the house in dispute belongs to their late grandfather. They only repeated their averments in their pleadings without leading any cogent evidence to establish their assertion that their late grandfather was the owner of the property in dispute. Under cross examination by the Plaintiff's lawyer, the 1st Defendant testified that when his grandfather was alive his name was on the property rate and all the bills. He further admitted under same cross examination that he simply assumed that the property belongs to Numo Ebenezer

Ackwerh because of the property rates. The 1st Defendant also answered in the negative when the 4th Defendant's lawyer asked him under cross examination if he has any document which shows his grandfather owned that house. The 1st Defendant maintained that the house is his grandfather's house yet he told the Court that he cannot explain how his grandfather became the owner of the house.

Exhibit '7' being rent card that contains the record of payment of the hire purchase houses which was tendered by the 3rd Defendant supports the case of the 4th Defendant that the late Ebenezer Ackwerh did not pay the full purchase price of the property in dispute as his last instalment payment per exhibit '7' was on 30th April 2001 which made his total payment at the time ₦2,000,000.00.

In **Klah v. Phoenix Insurance Company Ltd [2012] 2 SCGLR 1139**, it was held that:

“where a party makes an averment capable of proof in some positive way e.g. by producing documents, description of things, reference to other facts, instances, and his averment is denied, he does not prove it by merely going into the witness box and repeating that averment on oath or having it repeated on oath by his witness. He proves it by producing other evidence of facts and circumstances from which the Court can be satisfied that what he avers is true”

The 1st, 2nd and 3rd Defendants had a legal burden to adduce credible and admissible evidence to prove their assertion that the late Ebenezer Ackwerh was the owner of property in dispute at the time of his death. However they could not lead sufficient evidence to establish the said assertion. The 1st and 2nd Defendants only repeated their assertions whilst the 3rd Defendant's exhibit '7' rather supported the case of the 4th Defendant that the late Ebenezer Ackwerh did not fully pay the purchase price of the said property and so he could not have been the owner of same. The 1st, 2nd and 3rd Defendants could not lead satisfactory evidence to substantiate their claim that their deceased

grandfather and father respectively was the owner of the property in dispute. There is no iota of evidence on record to support the claim that the late Ebenezer Ackwerh was the owner of the property in dispute at the time of his death.

The evidence on record suggests that late Ebenezer Ackwerh took steps to purchase the property in dispute but he failed to pay the full purchase price within the given time; and the stipulated period he had to fully pay the purchase price expired in 2002 way before he died in 2009. Therefore even when he was alive he knew or ought to have known that he could not purchase the property as the conditions of the sale of the said property (the said conditions he was fully aware of because he executed exhibit '19'), gave him five years to make full payment or revert to a legal tenant which he originally was.

From the evidence on record, the last recording of payment he made was on 30th April 2001; and the period within which he was to make full payment expired in 2002 and he died in 2009, therefore the property reverted to rental status when he was alive but he did not do anything about it.

Under cross examination, the 4th Defendant's representative testified that when a legal tenant fails to complete payment within the stipulated period the house reverts to rental status and by extension to TDC. That irrespective of the amount Mr. Ackwerh paid, as long as he failed to pay the selling price in full within the stipulated period, the property reverted to a rental status. That the conditions of the sale were clearly stated and the legal tenant by endorsing the form showed that he was aware of the conditions. That in point 3 of the conditions of sale of the rental unit, that is exhibit '19', they had stated that the house ownership scheme shall not exceed five years from the commencement date of 20th February 1997. That tenants are made aware of this when they call at their offices to make further payment.

The evidence of the 4th Defendant's representative on the above issue is to the effect that the property in dispute was reverted to a rental unit by the failure of the late Ebenezer Ackwerh to pay the full purchase price before his death; and at the time of his death he was not a lessee of the 4th Defendant but a tenant.

In the absence of any evidence before this Court that the late Ebenezer Ackwerh was the owner of the property in dispute at the time of his death, I do hereby find from the entire evidence on record that, the late Ebenezer Ackwerh was a legal tenant of the 4th Defendant at the time of his death, and not the owner of the property in dispute at the time of his death. The owner of the property in dispute at the time of the death of the late Ebenezer Ackwerh was the 4th Defendant with the late Ebenezer Ackwerh as its legal tenant.

2. Whether or not the part payment made by the late Ebenezer Ackwerh in his pursuit to purchase the property in dispute from the 4th Defendant made him a part owner of the said property.

The 1st and 2nd Defendant in their Statement of Defence averred that their grandfather made part payment but could not complete paying for the house in full before he died. That if the Plaintiff paid for the balance, she cannot claim the house to be hers alone since at the time the legal owner died, they were all in occupation of the house. The 3rd Defendant also stated in her evidence that she instructed her lawyer to write to all the beneficiaries of her father's Estate for Letters of Administration to be obtained to administer the Estate because by paying half of the purchase price, the house formed part of his Estate.

As mentioned above in this judgment, the 4th Defendant's representative testified under cross examination that irrespective of the amount Mr. Ackwerh paid, as long as he failed

to pay the selling price in full within the stipulated period, the property reverted to a rental status. That the conditions of the sale were clearly stated and the legal tenant by endorsing the form showed that he was aware of the conditions.

Also under cross examination the representative of the 4th Defendant testified that from the way their rental House Ownership Scheme works, once a legal tenant fails to make full payment of the selling price within the period communicated to them, the property is automatically treated as a rental unit and payments made are deducted as rent.

It can therefore be reasonably inferred that since the late Ebenezer Ackwerh made the last payment by instalment in 2001 and did not complete the payment by 2002 as in exhibits '7' and '19', the property was reverted to its original rental status with the late Ebenezer Ackwerh's status in relation to the said property being reverted to a legal tenant; and the part payment of ₵2,000,000.00 he made towards the purchase of the property in dispute was deducted as rent. From exhibit '20', it can be gathered that as at 17th August 2011, the 4th Defendant was demanding an annual rent of GH₵130.00 on the property in dispute implying that the ₵2,000,000.00 paid by the late Ebenezer Ackwerh had exhausted in the deduction of same as rent from when the property reverted to a rental unit and the late Ebenezer Ackwerh reverted to a legal tenant.

Exhibit 'E' series tendered by PW1 also indicates that before the Plaintiff purchased the property in her name there were outstanding rent arrears as at 12th March 2013 in the name of the late Ebenezer Ackwerh in relation to the house in dispute which was paid by the Plaintiff. This goes to support the case of the 4th Defendant that, the part payment made by the late Ebenezer Ackwerh in his attempt to purchase the property in dispute was used to offset his rent since the property reverted to a rental unit. From the evidence on record, there was even outstanding rent in which the 4th Defendant issued demand notices in the name of the late Ebenezer Ackwerh. This implies that the amount of

¢2,000,000.00 he paid was unable to cover the outstanding rent prior to the sale of the property. Therefore the late Ebenezer Ackwerh had no money sitting in his account with the 4th Defendant for it to have given him any interest in the property in dispute as same was used as rent over the period of years after he was reverted to a legal tenant and indeed same could not even cover the entire outstanding rent.

The findings of the Court from the evidence on record indicates that the late Ebenezer Ackwerh, grandfather of the 1st and 2nd Defendants was not the legal owner of the property in dispute. Also, there is no evidence on record that the Plaintiff paid for the balance of the purchase price. The evidence on record rather suggests that when the property reverted to a rental unit, the 4th Defendant deducted his rent from the part payment the late Ebenezer Ackwerh had made for the purchase of the house. And the evidence on record further suggests that, there was even outstanding rent to be paid before the Plaintiff could purchase the property on a different agreement between herself and the 4th Defendant. Therefore from the evidence on record, the Plaintiff did not continue the agreement her late husband started with the 4th Defendant, but rather she had her own separate agreement with the 4th Defendant on the purchase of the house in dispute. Therefore the part payment made by the late Ebenezer Ackwerh did not make him part owner of the property in dispute as the said part payment from the evidence by the 4th Defendant, was used to offset his outstanding rent when the property reverted to a rental unit upon his failure to pay the full purchase price of the property in dispute.

Consequently, I find from the evidence on record that the part payment made by the late Ebenezer Ackwerh in his quest to purchase the property in dispute from the 4th Defendant did not make him a part owner of the said property.

1. I shall next consider issues 3 and 4 together. Issue 3 is '*whether or not the purchase of the property in dispute by the Plaintiff was as a result of fraudulent misrepresentation to the 4th Defendant by the Plaintiff*' and issue 4 is '*whether or not the leasehold agreement between the 4th Defendant as lessor and the Plaintiff as lessee is valid.*'

Under *section 13 (1) NRCD 323*, the burden of persuasion as to the commission of a crime by a party which is directly in issue requires proof beyond reasonable doubt.

In *Fenuku & Another v. John Teye & Another [2001-02] SCGLR 985*, it was held that the law regarding proof of forgery or any allegation of a criminal act in a civil trial was governed by section 13(1) of the Evidence Decree, 1975 (NRCD 323) which provided that the burden of persuasion required proof beyond reasonable doubt.

Also, in the case of *Derry v. Peek [1889] 14 AC 337*, Lord Herschell outlined the ingredients for a finding of fraud. He identified fraud to be *an absence of an honest belief in the truth of a false statement*, and held that the burden of proof is discharged when it is shown that *a false representation has been made knowingly, without belief in its truth or, recklessly, careless whether it be true or false.*

The 1st and 2nd Defendants pleaded fraud and particularized same as follows:

That the Plaintiff failed to tell TDC the whole truth about the house that she is staying there with her stepchildren and the Defendants.

The 3rd Defendant also pleaded fraud in her Statement of Defence. She particularized the fraud as: failing to disclose that at the time of Mr. Ackwerh's death she was occupying the house with her children and step children.

The Plaintiff denied these allegations therefore the 1st, 2nd and 3rd Defendants had the burden to prove the particulars of fraud listed above.

In their evidence the 1st and 2nd Defendants stated that the Plaintiff acted fraudulently by not disclosing that they were also staying in the house and thus convinced TDC to transfer ownership of the house into her name. That Plaintiff's transaction at TDC should be cancelled on grounds of fraud.

The 3rd Defendant also told the Court in her evidence that the Plaintiff acted deliberately and did not disclose the whole truth about the house to TDC and this got them to transfer the house into her name alone. That the Plaintiff deliberately failed to disclose at the time of Mr. Ebenezer T. Ackwerhs' death, she was occupying the house with her children and grandchildren. That Plaintiff also failed to disclose to TDC that she and her brother have made extensions to the house. That Plaintiff failed to disclose that the late Mr. Ebenezer T. Ackwerh paid more than half of the purchase price. That the Plaintiff's failure to disclose all the truth about the house which would have led TDC to come and do inspection in the house before transferring the house to the Plaintiff constituted fraudulent transactions on the house.

The Plaintiff denied that the 3rd Defendant made an extension to the house but the 3rd Defendant could not adduce sufficient evidence to establish that indeed she made an extension to the house. Moreover from the evidence of the 4th Defendant's representative, when extensions are made to the house they are considered as one to the initial structure. That on the death of the legal tenant, first consideration is given to the spouse of the deceased. That it is in the absence of the spouse who meets their condition for recognition that children and subsequently other parties are considered.

The 4th Defendant's representative also testified that the only recognized tenant is the person captured in their records as the legal tenant and not all occupants in the house. She further testified under cross examination that when a legal tenant dies, the first consideration is given to the spouse of the deceased. That the Plaintiff furnished them with proof of death of the legal tenant and also her status as wife. That they also visited the house for the purpose of confirming if she was in physical occupation. That during the termination process, a notice of termination was posted on the house, which allows all interested parties to raise an objection to the intended recognition which is the Plaintiff, but no such objection was received so the Plaintiff was recognized as the legal tenant and due process followed.

From the evidence on record, the 4th Defendant's representative indicated that per exhibit '22', the 4th Defendant caused a notice of termination of the tenancy of the late Mr. Ackwerh to be posted on the property in dispute after the property was reverted to a rental unit coupled with the death of Mr. Ackwerh who had then become 4th Defendant's tenant, and not its lessee.

Relevant portion of the cross examination of Plaintiff by counsel for 4th Defendant on 28th January 2021 is as follows:

"Q: At the time the notice was posted on the property who were living in the house with you?"

A: I was living with my children and grandchildren, the child of my husband who died and the child's children."

From the evidence, when the 4th Defendant caused the said notice to be posted on the property in dispute, no one raised any objection to same even though the 1st and 2nd Defendants were staying in the property with their mother at that time.

In the case of *TDC and Musah vrs. Atta Baffour [2005-2006] SCGLR*, the Supreme Court stated that it was basic principle that equity aids the vigilant and not the indolent.

They could have drawn the attention of the 3rd Defendant to same if indeed she was not in the jurisdiction at that time. There is no evidence on record to suggest that the 4th Defendant received an objection to the termination of the tenancy of the late Mr. Ackwerh in favour of the Plaintiff, **before** it followed its due process and procedure in selling the house to the Plaintiff. *[Emphasis provided]*

The 4th Defendant's representative testified that they followed due process and procedure in the sale of the property in dispute to the Plaintiff. Below is the relevant part of her testimony under cross examination.

Cross examination of 4th Defendant's representative by counsel for 1st to 3rd Defendants on 23rd September and 6th October 2022.

“Q: If TDC had done proper investigation on the house, you would not have given the house to the Plaintiff alone.

A: That is not correct, when a legal tenant dies, the first consideration is given to the spouse of the deceased. Madam Kubi furnished us with proof of death of the legal tenant and also her status as wife. Additionally, we visited the house for the purpose of confirming if she was in physical occupation. During the termination process, a notice of termination was posted on the house, which allows all interested parties to raise an objection to the intended recognition, in this case Madam Gladys Kubi. Since no objection was received, she was recognized as the legal tenant and due process followed.

Q: From your own property file Folio 36, I put it to you that it is written there the place was visited and the officer confirmed that the Plaintiff was staying there with the children.

A: Yes that is correct."

From the entire evidence on record, it is clear that the Plaintiff informed TDC that she was staying in the property in dispute with her children (see exhibit '21a'). The 4th Defendant's representative also admitted under cross examination that the officials of TDC visited the property in dispute and confirmed that the Plaintiff was staying there with the children. This is before the 4th Defendant decided to terminate the tenancy of the late Ebenezer Ackwerh. The 4th Defendant's representative gave evidence that the 4th Defendant caused a notice of the said termination of tenancy to be posted on the house in dispute before the sale of the said property to the Plaintiff but no objection was received so they proceeded to transact with the Plaintiff.

The Plaintiff did not have to inform the 4th Defendant that the late Mr. Ebenezer Ackwerh paid more than half of the purchase price because from the evidence on record, the 4th Defendant had this information in its record and was well aware of same at the time it terminated the said tenancy of the late Mr. Ebenezer Ackwerh. The evidence on record indicates that the part payment made by the late Mr. Ebenezer Ackwerh did not give him leasehold interest in the property as same was reverted to a rental unit and his part payment was used to offset his outstanding rent for the period he failed to pay rent and even after that he still had outstanding rent in his account to be paid.

On the issue of extensions made to the property in dispute as claimed by the 3rd Defendant, there is not sufficient evidence to establish the said claim by the 3rd Defendant

as she did not adduce adequate evidence to prove that indeed she and her brother made extensions to the said house. The 3rd Defendant's exhibit '8' is not conclusive and sufficient evidence that she made extensions to the property in dispute. This is because being a landlord or landlady does not necessarily make a person the owner of the said property they rented out. Without sufficient evidence properly adduced before this Court that supports the claim that the 3rd Defendant and her brother made extensions to the property in dispute, this Court is unable to make a finding to that effect.

From the evidence on record it can be safely concluded that indeed the Plaintiff was staying in the house with her children and stepchild who later died and the children of the said stepchild, when the notice of termination was posted on the house in dispute but they did not take any step to object to same or offer to buy the property or bring any concerns they had to the 4th Defendant. Therefore it cannot be said that the Plaintiff fraudulently purchased the property. From the evidence on record the Plaintiff and the 4th Defendant followed due process in the sale and acquisition of the said property. The 3rd Defendant attempted to halt the purchase of the property by the Plaintiff but she did not do that timeously; and more importantly the 4th Defendant's representative explained in her evidence that they give first consideration to spouses of deceased legal tenants and the Plaintiff fell within the said category when she applied to purchase the property after it became available for sale.

The 4th Defendant's representative also admitted under cross examination that, TDC as the legal owner of the property in dispute was entitled to do with the property as it pleased including selling to any person who expressed interest insofar as the interest of the legal tenant had been terminated.

Had the late Ebenezer Ackwerh been a lessee of the 4th Defendant at the time of his death and the Plaintiff after his death continued payment and subsequently transferred

ownership of the property in dispute to her name, then the said transfer could be set aside for all the beneficiaries of the estate of the late Mr. Ackwerh to benefit from the said property as that would have formed part of his estate. However in the instant case he was only a tenant of the 4th Defendant at the time of his death and even had outstanding rent to pay. Therefore he did not have any legal title in the said property to have bequeathed same to his beneficiaries upon his death.

In the case of *Adomako Anane v. Nana Owusu Agyemang & Others (supra)*, the Supreme Court held that the Defendant in his capacity as customary successor inherited the property in dispute as family property and so having renewed the lease in his personal name instead as family property acted in bad faith as it was a family property and not his self-acquired property.

Distinguishing the above case from the instant case, the evidence before this Court suggests that the property in dispute was not the personal property of the late Mr. Ackwerh as he was a legal tenant of the 4th Defendant and not the owner of he said property. Given the fact that the late Mr. Ackwerh did not pay the full purchase price of the property in dispute way before he died thereby making the said property revert to a rental unit which had outstanding rents to be settled, the 4th Defendant could have sold the said property to anybody at all, because same reverted to the 4th Defendant as the legal owner. Consequently it cannot be said that the Plaintiff having purchased the property in dispute which the 4th Defendant being the owner could have sold to anyone else, acted in bad faith or fraudulently.

I therefore find from the evidence on record and the analysis above that the 1st, 2nd and 3rd Defendants were unable to meet the standard of proof required to prove their allegation of fraud against the Plaintiff. Likewise they could not also discharge the burden of proof on them to establish their allegation of fraud against the Plaintiff. Accordingly I

hereby find from the evidence on record that the purchase of the property in dispute by the Plaintiff was not as a result of fraudulent misrepresentation to the 4th Defendant by the Plaintiff; and I further hold that the leasehold agreement between the 4th Defendant as lessor and the Plaintiff as lessee is valid.

5. Whether or not the Plaintiff is entitled to an ejectment order against the 1st and 2nd Defendants.

From the evidence on record the Plaintiff (and her children) on one part, and the 1st and 2nd Defendants on another part have not been able to live together in harmony or peacefully. There have been accusations and counter accusations of assault and attempt to cause harm against each other which has taken them to the police station many times where in the case of the attempt to cause harm, the police received advice from the Attorney General's Department against prosecution of the 1st and 2nd Defendants together with one other person. Their numerous reports of crimes to the police also led them to the criminal Court where the District Court acquitted and discharged the accused persons.

With the findings of the Court from the evidence on record that the Plaintiff validly purchased the property in dispute from the 4th Defendant, and given that the Plaintiff and the 1st and 2nd Defendants do not see eye to eye, it will not be prudent for them to live in the same place together. In view of the foregoing analysis, and considering that the property in dispute is for the Plaintiff, I find that the Plaintiff is entitled to an order of ejectment against the 1st and 2nd Defendants herein.

6. Whether or not the Plaintiff is entitled to an order of perpetual injunction against the 1st, 2nd and 3rd Defendants.

Injunction is an equitable remedy and as such is granted at the discretion of the Court. One of the reliefs asked by the Plaintiff is an order of perpetual injunction restraining the 1st, 2nd and 3rd Defendants, either by themselves, or through their agents, assigns, thugs, hirelings, workmen, servants or however so described from interfering with Plaintiff's ownership, possession, use and/or development of H/No. B55, Community 5, Tema.

An injunction is an order of the Court to a party to do or to refrain from doing a specified act. A perpetual injunction is one which is granted after the Plaintiff's right has been established.

In *Mumuni v. Nyamekye and Others; unreported (J4/1/2015) [2017] GHASC 34*, Gbadegbe JSC in delivering the lead judgment of the Court held that:

“Although generally, an injunction may not be granted for actionable wrongs where damages would suffice as adequate remedy, there are situations in which the wrong is irreparable In such cases, a Court may intervene at law if the right to the remedy is clearly established from the evidence placed before the Court.

In the case of *Owusu v. Owusu Ansah [2007-2008] 2 SCGLR 870*, Adinyira JSC stated:

“It is trite law that the granting or refusal of an injunction is at the discretion of the trial Court, but that discretion has to be exercised judiciously. In the exercise of such discretion, the trial judge ought to take into consideration the pleadings and evidence before it.”

Applying the principles above to the facts of the present case, since it is apparent from the evidence before this Court that the Plaintiff validly acquired the property in dispute when it became available for sale by the 4th Defendant, I find that the Plaintiff has been

able to establish a right in the subject matter property. For that reason, the Plaintiff is entitled to her relief for perpetual injunction to avoid interference of her ownership, possession, use and/or development of the property in dispute.

Accordingly, I hereby find that the Plaintiff is entitled to a grant of an order of perpetual injunction against the 1st, 2nd and 3rd Defendants either by themselves or anyone claiming through them.

CONCLUSION

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 Wood CJ in the case of *Sarkodie v. FKA Co Ltd* [2009] SCGLR 65 @ page 69 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?

The Court of Appeal applying the principle held in the case of *Fordjour v. Kaakyire* [2015] 85 GMJ 61 when His Lordship Ayebi J.A. espoused:

“It has to be noted that the Court determines the merits of every case based on legally proven evidence at the trial and not mere allegations or assertions in the pleadings”.

On the basis of the entire evidence before this Court and the findings above, I conclude that the Plaintiff has been able to prove her claims on a balance of probabilities; she is therefore entitled to her reliefs. On the other hand, the 1st, 2nd and 3rd Defendants have failed in their duty of providing and adducing sufficient evidence to substantiate their assertions in their defence and the reliefs under the counterclaim respectively. The

evidence adduced by 4th Defendant who was joined to the suit upon an application by the 3rd Defendant, substantially supports the case of the Plaintiff.

Flowing from the above, I hereby dismiss the 3rd Defendant's counterclaim and enter judgment for the Plaintiff as follows:

1. I hereby declare that the leasehold agreement between the 4th Defendant as lessor and the Plaintiff as lessee in respect of H/No. B55, Community 5, Tema is valid.
2. I hereby grant an order of immediate ejection of the 1st and 2nd Defendants from Plaintiff's property.
3. I hereby grant an order of perpetual injunction restraining the 1st, 2nd and 3rd Defendants, either by themselves, or through their agents, assigns, thugs, hirelings, workmen, servants or however so described from interfering with Plaintiff's ownership, possession, use and/or development of H/No. B55, Community 5, Tema.

Counsel for Plaintiff: I will leave the issue of cost to the discretion of the Court since I do not know much about the case.

Counsel for 1st, 2nd and 3rd Defendants: I pray the Court gives a lenient cost because the 1st and 2nd Defendants are unemployed and also remain relatives to the Plaintiff even though Plaintiff is not their biological grandmother.

Counsel for Plaintiff: If it is about any of the Defendants that threatened the Plaintiff, then I pray the Court should not entertain that plea.

By Court: Having considered the length and complexity of the proceedings as well as the conduct of the parties and their lawyers during the proceedings, and further considering

the expenses reasonably incurred by the Plaintiff in terms of filing fees; and the travel expenses to Court, I award costs of GH¢1,000.00 against the 1st and 2nd Defendants for the Plaintiff and a cost of GH¢3,000.00 in favour of the Plaintiff against the 3rd Defendant whose counterclaim was dismissed.

H/H AKOSUA A. ADJEPONG (MRS)
(CIRCUIT COURT JUDGE)