

IN THE CIRCUIT COURT HELD AT AMASAMAN – ACCRA ON
WEDNESDAY THE 30TH DAY OF NOVEMBER, 2022 BEFORE HER
HONOUR ENID MARFUL-SAU, CIRCUIT COURT JUDGE

SUIT NO:C2/45/2021

BILLINGS FRED BEKOE
H/NO. CFC ESTATE 354
DOME
PLAINTIFF

...

VRS.

EUGENE ZUMAKPE
ASHONGMAN ESTATE
DEFENDANT

...

PARTIES: PLAINTIFF PRESENT

DEFENDANT PRESENT

PLAINTIFF IN PERSON

JUDGMENT

By a Writ of Summons and Statement of Claim filed on 29th June, 2021
Plaintiff claims against Defendant the following reliefs:

- a. "An order directed at the Defendant to pay Plaintiff an amount of GH¢20,400 being his indebtedness to him for occupying his store for 17 months comprising GH¢1000 goodwill per month and GH¢200 rent per month.
- b. Interest on such amount from 1st January, 2020 till date of final payment
- c. Cost"

It is the case of Plaintiff that the Defendant has been occupying his shop since 1st January, 2020. He says that Defendant initially worked with Top Health Services Ltd which was Plaintiff's tenant. According to him, the tenancy of Top Health expired on 31st December, 2019 but the Defendant occupied the shop without the Plaintiff's knowledge. Plaintiff says that he got his solicitor to write to Defendant to vacate the premises but he did not comply with same so he went to court and succeeded in causing his ejection. He says that

Defendant occupied his premises from 1st January, 2020 till May, 2021 covering a period of 17 months at goodwill of GH¢1,000 every month and a rent of GH¢200 every month therefore Defendant is indebted to Plaintiff in the sum of GH¢20,400. He says that the Defendant has failed to settle his indebtedness hence the instant action.

Defendant entered Appearance to the action on 31st August, 2021 and filed a Statement of Defence on 27th September, 2021. Therein he contends that after Plaintiff found that he was occupying the shop, the Plaintiff negotiated terms of payment with him to regularize his stay. He says that he paid goodwill and rent until 2020 when Plaintiff brought a tenancy renewal agreement. According to him, the Agreement increased the rent to an amount of GH¢120,000 which he asked for a reduction, but Plaintiff refused and asked that the Defendant leaves the premises. He says that Plaintiff has seized his belongings and has refused them to him. He therefore counterclaims for the release of the items seized or for a sum of GH¢48,000.00 being the cost of drugs destroyed as a result of the seizure.

The following issues were adopted and set down for trial:

1. "Whether or not Defendant did stay in Plaintiff's premises without paying rent and goodwill.
2. Whether or not the Defendant did occupy Plaintiff's premises for a period of 17 months.
3. Whether or not Plaintiff is entitled to his claim.
4. Whether or not Defendant is entitled to his counterclaim.
5. Any other issues borne out of the pleadings."

The Standard of proof required in a Civil action was set out in the case of **BISI AND OTHERS v. TABIRI ALIAS ASARE [1987-88] 1 GLR 360; SC**

"The standard of proof required of a plaintiff in a civil action was to lead such evidence as would tilt in his favour the balance of probabilities on the particular issue. The demand for strict proof of pleadings had however never been taken to call for an inflexible proof either beyond reasonable doubt or with mathematical exactitude or with such precision as would fit a jig-saw puzzle. Preponderance of evidence became the trier's belief in the preponderance of probability. But "probability" denoted an element of doubt or uncertainty and recognised that where there were two choices it was sufficient if the choice selected was more probable than the choice rejected. Consequently the trial judge was justified in accepting the case of the plaintiff on the materials and money he had contributed towards the construction of the house, in spite of the

discrepancies in the evidence of the first and fourth plaintiff witnesses on the quantities.”

I shall consider issues 1, 2 and 3 together. They are ‘1. whether or not Defendant did stay in Plaintiff’s premises without paying rent and goodwill, issue 2. Is whether or not the Defendant did occupy Plaintiff’s premises for a period of 17 months and issue 3 is whether or not Plaintiff is entitled to his claim’.

It is the case of Plaintiff that Defendant has been occupying his store since 1st December, 2020 till May, 2021 without paying rent or goodwill. According to him, he had a tenancy agreement with Top Health which expired on 31st December, 2019 but strangely the Defendant occupied the stores without his knowledge and consent. According to him, he made his solicitor write to Defendant to vacate but this was not complied with. Plaintiff tendered as *Exhibit ‘A’* a tenancy agreement between Mr. and Mrs. Billings Fred Bekoe and Top Credit Limited/Top Health Services Ltd for a period of 10 years. *Exhibit B* is an ejection notice from counsel for Plaintiff to Mr. Sadat Musah dated 13th August, 2019. *Exhibit C* is a notice of Ejection dated 1st August, 2019 from Plaintiff to the Defendant.

Defendant testified that he purchased a company from Mr. Sadat Musah and showed the transaction document to Plaintiff who informed him that Mr. Sadat owes him money, so he settled the said amount. He testified that he continued to pay rent and goodwill until 2020 when Plaintiff brought a tenancy renewal document, but the rent had increased so he asked for a reduction which Plaintiff refused and Plaintiff asked him to leave his premises.

Defendant tendered the following:

- Exhibit 1 is dated 20th May, 2016 and issued in the name of Defendant being rent from 1st January, 2016 – 30th July, 2018
- Exhibit 1A is dated 23rd July, 2016 issued in the names of Sadat Musah and Defendant for rent from March 2014- December, 2014
- Exhibit 1B is dated 6th April, 2018 in the name of Sadat Musah being part payment of rent for March 2018 (Exhibit 1C and 1D are one and the same copies as Exhibit 1B)
- Exhibit 1E is dated 30th August, 2017 in the names of Sadat Musah and Defendant being part payment of rent from January, 2015 till December, 2015. (Exhibit 1F is one and the same copy as Exhibit 1E)

- Exhibit 1G is dated 9th October, 2018 in the name of Sadat Musah being part payment of rent from September.

In the case of **DON ACKAH VRS PERGAH TRANSPORT [2011] 31 GMJ 174** the Supreme Court stated as follows:

'It is a basic principle of the law of 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. It is trite law that matters that are capable of proof must be proved by producing sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of the fact is more probable than its non-existence'

As Defendant has denied the claim of Plaintiff, Plaintiff bore a burden to prove on a balance of probabilities that Defendant indeed occupied his shop for 17 months without paying rent from 1st January, 2020. Though Plaintiff claimed that Defendant occupied the store rent free hence he caused his lawyer to write to him, no such letter was produced before the court. Again, Plaintiff claimed that his original tenant Top Health's tenancy expired in December, 2019 and strangely Defendant occupied his shop without his knowledge, yet Plaintiff's has tendered before this court *Exhibit C* which is a letter he wrote to the Defendant in August, 2019 in his capacity as a store manager notifying him of the end of the tenancy on 31st December, 2019. There is no further evidence of an eviction notice from either Plaintiff or his counsel between January, 2020 till May, 2021. Again, Plaintiff testified that Defendant was ejected from the shop by a decision of a court which was never produced before this court. As such, there is indeed no evidence of Defendant staying in the property from January, 2020 till May, 2021.

In the case of **ZABRAMA v. SEGBEDZI [1991] 2 GLR 221** it was stated per curiam as follows:

"...The correct proposition is that, a person who makes an averment or assertion, which is denied by his opponent, has the burden to establish that his 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..."

Besides a repetition of his pleadings, Plaintiff has failed to adduce credible evidence before this court to prove his claim. Having failed to introduce sufficient evidence of the probability of his case, Plaintiff's claim fails in its entirety, and I so hold.

Defendant has a counterclaim for the release of items seized or for a sum of GH¢48,000.00 being the cost of drugs destroyed as a result of the seizure. He therefore also bore a burden to prove his case on a balance of probabilities. Plaintiff denied under cross examination that he had not seized any drugs of Defendant except that he had indeed seized some shelves and other items mentioned. The said other items mentioned by Defendant during cross examination of Plaintiff were glass and wooden counters, air condition and poly tank. Defendant failed to produce evidence of the said drugs which had been destroyed. Plaintiff indicated to the court that he had kept the seized items of Defendant in his warehouse and has not sold them. Accordingly, Plaintiff is to release the items belonging to Defendant which he seized to the Defendant forthwith. I shall make no order as to costs.

**H/H ENID MARFUL-SAU
CIRCUIT JUDGE
AMASAMAN**