

**IN THE CIRCUIT COURT OF GHANA HELD IN ACCRA ON TUESDAY, 13TH DAY
OF DECEMBER 2022 BEFORE HIS HONOUR KWABENA KODUA OBIRI-
YEBOAH, CIRCUIT COURT JUDGE.**

C4/03/2020

TIMOTHY TAWIAH

VRS

PROSPER SOBO

JUDGEMENT

The Plaintiff commence this action per Writ of Summons and Statement of Claim issued from the registry of this Court against the defendant, dated 25/09/19, claiming the following:

- a. An order for the ejectment of the Defendant from his rented room within plaintiff H/No. 22101016, Queensland at Baatsona, Nungua Railway, Accra on grounds of non-payment of rent since April 2019 at the agreed rent of GHC 70 per month as a monthly tenant till date.
- b. An order directed at the Defendant to pay the accrued rent of GHC 70.00 per month from April 2019 till date of ejectment from the rented room in the plaintiff's house being H/No. 22101016, Queensland at Baatsona, Nungua Railway, Accra.
- c. Interest on the said accrued unpaid rent from April 2019 till date of final payment at the prevailing commercial bank rate on a prorate basis as and when the rents remained unpaid.

- d. An order for the automatic forfeiture against the Defendant in respect of his right to live in plaintiff's rented room situate within H/No. 22101016, Queensland at Baatsona, Nungua Railway, Accra for challenging Plaintiff to be the owner of the said rented room when he is not the owner thereof.
- e. Cost

The Defendant filed an appearance on 1/10/2019 through his Counsel and a Statement of Defence and Counterclaim on 24/10/2019 denying the claims made by the Plaintiff. On the 21/11/19 the Plaintiff filed a reply and defence to counterclaim joining issues with the defendant.

At the application for directions stage, the following issues were set down for trial:

- a. Whether or not the Defendant rented the original single room in contention in H/No. 221010/16 Queensland Nungua Railway, Accra from the Plaintiff in error?
- b. Whether or not Plaintiff allegedly misrepresented the actual ownership of the land on which the said single room structure is situate to the defendant.
- c. Whether or not the defendant is justified in his action by ceasing to pay further rents to the Plaintiff?
- d. Whether or not the Plaintiff acquired the bare land on which the said single room was put in H/No. 221010/16, Queensland Nungua Railway, Accra from the Ghana Railway Authority by his land documents?
- e. Whether or not the said single room within H/No. 221010/16, Queensland Nungua Railway, Accra was constructed originally by the plaintiff or by the defendant?
- f. Whether or not the said single room within H/No. 221010/16, Queensland Nungua Railway, Accra was rather rehabilitated by the Defendant and the cost of rehabilitation was set off against rent as pleaded by the Plaintiff?

- g. Whether or not the Defendant is justified in ceasing the recognition of Plaintiff as Defendant's Landlord and therefore refused to pay further rents to Plaintiff after the cost of rehabilitation was used as a set off against rent had been exhausted?
- h. Whether or not Defendant is estopped by his conduct or action by ceasing to recognize plaintiff as Defendant's Landlord in respect of the said single room.
- i. Whether or not Plaintiff is entitled to his claims against the Defendant?
- j. Whether or not Defendant is entitled to his counterclaim?

The defendant did not file additional issues and therefore the issues above which were the issues filed by the Plaintiff were set down as issues for the trial.

Principles of Law in Civil Cases

In civil cases the plaintiff has a burden to prove his case by the preponderance of probabilities and this is indicated in sections 11(4) and 12(1) of the evidence Act 1975 (NRCD) 323. Section 11(4) provides that: "In other circumstances the burden of producing evidence requires a party to produce sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of the fact was more probable than its non-existence." Section 12(1) also provides that: "except as otherwise provided by law, the burden of persuasion requires proof by preponderance of the probabilities". See the case of **Adwubeng v Domfeh (1996-97) SCGLR 660**

Also, the basic principle of proof in civil suits, a party whose positive assertions are denied by his opponent bears the onus of proof of those assertions. See: Agbesi v Ghana Ports & Harbours Authority (2009) 20 MGLR 109 @ 137.

Furthermore, it is trite that,

"Where the evidence led by the witness was just a repetition of the averments in the pleadings, that is not proof in law as enunciated in **Majolagbe v Larbi [1959] GLR 190** and explained in **Zabrama v Segbedzi [1991]2 GLR 221"**

In **Zabrama v Segbedzi [1991] 2 GLR 221** the court said:

“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 the averment or assertion determines the degree and nature of that burden.”

It is trite law that a bare assertion by a party of his pleadings in the witness box without proof did not shift the evidential burden unto the other party. See: *Adjetey Agbosu & others v Kotey & others (in Re Ashalley Botwe Lands) [2003-2004] SCGLR 430*.

Section 14 of the Evidence Act states; Except as otherwise provided by law, unless and until it is shifted, a party has the burden of persuasion as to each fact, the existence or non-existence of which is essential to the claim or defence he is asserting.” Therefore, the burden of producing evidence is not fixed. See **Yorkwa v Duah (1992-93) GBR 278 at page 282**.

Also, when a defendant files a counterclaim, then the same standard or burden of proof would be used in evaluating and assessing the case of the plaintiff against the defendant. See **JAAS Company Limited and another v Appau and Another (2009) SCGLR 263 at page 270** where the Supreme Court speaking through Dotse, JSC, stated, “We wish to observe that the burden of proof is always on the Plaintiff to satisfy the court on a balance of probabilities in cases like this. Thus, where in a situation, the Defendant has not counterclaimed; and the plaintiff has not been able to make out a sufficient case against the defendant, then the Plaintiff’s claims be dismissed. The same standard will be used for the defendant, if the defendant counterclaims”.

Trial Proceedings

At the hearing of the case, the plaintiff testified for himself. The evidence of the plaintiff was that he is the defendant's landlord and in August 2013, he rented a single room self-contained, situate at H/No. 22101016, Queensland, Baatsona, Nungua Railway, Accra to the Defendant at an agreed rent of GHC70 per month. The plaintiff said that at the time the said single room self-contain was rented to the defendant, it became necessary to renovate and /or rehabilitate the said rented room and the parties agreed to same, the cost of which was agreed as a set off against rent and covered a period of 25th August 2013 to September 2018.

Thereafter the defendant continued to live in the said rented room as the tenant of the Plaintiff and started paying physical cash of GHC 70 per month to him the plaintiff from October 2018 to March 2019 and after refused to pay rent despite several demands. The plaintiff said for the payment of rent for October, November and December 2018 and January 2019 the defendant paid to him in the presence of his wife, Patience Tawiah and his son Shadrack Tawiah and that of February and March was paid in bulk in the presence of one Mansah.

The plaintiff said he caused his Lawyer to write to the defendant who also caused his lawyer to respond accordingly as he tendered them as exhibit B and C. The plaintiff said the defendant has started laying claim as owner of the rented single room self-contained for which he is entitled to an order for automatic forfeiture of the said rented room. The plaintiff gave further evidence of various steps he has taken including paying property rate of the entire house to LEKMA, receipts of payments of ground rent to the Ghana Railway Authority among others, including as the plaintiff said the express admission of the defendant that he was his landlord to the police among others.

The plaintiff tendered Exh. A-Terms of Agreement, Exh. B – Letter dated 6 May 2019, exh. C – Letter dated 11/09/2019, Exhibit D – Receipt from LEKMA, D1- Site Plan of Tema Line Railway Land Occupiers in the name of the plaintiff, D2-D3 Receipts from Ghana Railway

Co. Ltd in the name of the Plaintiff, Exhibit E and E1 are Photographs of the building from different directions.

The plaintiff after his testimony was cross examined by the Counsel for the defendant after which the plaintiff did not call any other witness and closed his case before the court. The suit was adjourned to 05/07/22 for the defendant to open his defence. At the next adjourned date Counsel for the defendant submitted that, "The business for today was for the defendant to open his defense. We have studied the records and the testimony of the plaintiff, and we elect to adjudicate based on the testimony of the plaintiff. It is our belief that the plaintiff has failed to prove his case against the defendant and there will be no need for the defendant to open his defense. That is our submission". Parties were then ordered to file their addresses and the suit was adjourned for judgment.

Analysis of the Evidence

The issues that were set down for trial supra will be considered together as they are all very much related. From the record before the court, the plaintiff sued the defendant by issuing writ of summons and statement of claim from the registry of this court. The defendant filed a statement of defence and counterclaim. However as indicated supra, at the end of the case of the Plaintiff, the defendant did not open his defence and therefore there was no evidence before the court with respect to the case of the defendant and the counterclaim. Hence the defendant did not pursue his counterclaim.

Again, from the record before the court, the defendant also did not challenge the evidence of the plaintiff, by way of cross examination, as the plaintiff was cross examined only on the fact that there has not been any proper transfer of title to him the plaintiff and he has not been given permission to stay on the property. Therefore, the case of the defence which they confronted the plaintiff with through cross examination was that the plaintiff

was not the owner of the land, and he does not have title to the land. All the other plaintiff's evidence, he was not challenged as he was not cross examined on same.

The position of the law is settled by a legion of authorities that, when a party makes an averment and the averment was not denied, no issue is joined, and no further evidence need to be led on that averment. Also, when a party had given evidence of a material fact and was not cross-examined upon it, he even need not call further evidence to establish that fact. See: **Fori v Ayerebi (1966) GLR 622 SC page 627, Bonsu v Kusi (2010) 26 GMJ 20 SC**

In the case of **Danielli Construction Limited v Mabey & Johnson (2007-08) SCGLR 60** the Supreme Court said at page 65 of the report that, "The plaintiff company did not cross examined the witness of the defendant company in the witness box when he gave the evidence; the plaintiff company did not also tender any evidence to challenge the veracity of the evidence in exhibit 2 and the inference was that it admitted the import of the evidence: **See Fori v Ayerebi (1966) GLR 627, SC and Browne v Dunn (1894) 6 R 67"**

With respect to the case before the Court the plaintiff was not cross examined on all the other issues, his evidence before the court on those issues were not denied. And a plaintiff is to win his or her case on the preponderance of probabilities as provided under sections 11 (4) and 12 (1) of the Evidence Act, Act 232.

See: **Takoradi Floor Mills V Samira Faris (2005-06) SCGLR 985, Ackah v Pergah Transport Limited & Ors (2011) 31 GMJ 174**

Therefore, the unchallenged evidence before the court is that the plaintiff rented his room to the defendant, and they agreed on the monthly rent. The parties also agreed for the defendant to renovate the said single room and the amount spent was used as a set off. The rent for the period from 25th August 2013 to September 2018 is what was used as the set off. After this period the defendant then started paying rent to the plaintiff and

continued to stay in the house. The parties then entered into a landlord and tenant agreement signed by the parties which was tendered in as exhibit A by the plaintiff without objection. Per exhibit A it stated the amount of money to be paid at the end of every month which is every thirty days (30), which will start from 31st October 2018.

Again, from the records before the court it is not in doubt that the land in question belongs to the Ghana Railway Authority and exhibit D1 actually says so and indicate specifically Ghana Railway Engineering Department, Tema Line with the name of the Plaintiff Timothy Tawiah, shewn red indicating the location of the plaintiff's property on the land. This is in line with the evidence of the Plaintiff when he was asked during cross examination this question:

Q5. Can you tell the court who at the Ghana Railway Corporation gave you the piece of land.

A. It was Ghana Railway Engineering section that gave me the land.

Q6. So, the Engineering section gave you the land and document to that effect.

A. Exactly so

It must be put on record that per the evidence before this court there is no evidence of transfer of land by the Ghana Railway Authority to the Plaintiff. The evidence on record are receipts that were tendered by the plaintiff to show the payments he makes to the Ghana Railway Authority with respect to the land on which his property occupies. These exhibits were also tendered by the plaintiff with no objection from the defendant. The receipt indicates where the property of the plaintiff is located, the exhibit says Tema line. The receipt gives the particulars and description as "being the full payment of ground rent/vendor fee for the year 2002 and 2003 and is dated 4th February 2010". The plaintiff tendered three of such receipts before the court.

Therefore, from the record the plaintiff is not the owner of the land he has built his house but has an arrangement with the rightful owner to build his house on same and has been paying ground rent. Again, exhibit E and E1 were photographs of the building, which was also admitted in evidence without any objection, shows the house which includes the one single room in contention before the court. In totality, the evidence on record supports the case of the plaintiff. The defendant in line with the authority of the Supreme Court decision in the case of **John Dramani v EC and Nana Addo Dankwa Akuffo-Addo** as submitted by counsel opted not to open his defence which also meant he has abandoned the counterclaim.

From the totality of the evidence on record I make a finding of fact that the plaintiff rented his property to the defendant, who is in occupation of the said property, which is obviously located on the land of the Ghana Railway Authority, who allowed the plaintiff and to whom the plaintiff pays ground rent. Counsel for defendant in his written submission before the court stated that, "My Lord, it is my humble submission that the said single room self-contained did not exist as of August 25, 2013, and that it was a bare land on which the plaintiff allowed the defendant to construct his house". Unfortunately, I disagree with Counsel for the defendant on that as same is not borne out of the record before the court.

Counsel for the defendant again submitted that, "The Plaintiff has failed to prove his title based on which all the other reliefs he seeks lie and so his action should be dismissed, and the defendant granted his counterclaim". Again, the record shows the counterclaim was not proved before the court and this case does not involve the prove of title but a case of landlord and tenant relationship and the payment of rent.

The defendant knew his landlord and was paying rent to him and has been in occupation for a number of years and he cannot be allowed to wake up one day and say I am not going to pay rent again to my landlord of all these years because I have just realized he

does not have title to the land. The question to be asked is, the tenant now knowing that the plaintiff does not have title, and challenging his title, not himself but a third party, if same is upheld, is he going to vacate the premises or he is still going to occupy the premises. It is not for the defendant to challenge the land title of the plaintiff as he the defendant does not have title and he is also not the owner of the land.

If the plaintiff does not have title to the land, he has his property on the land, and it does not lie in the mouth of the defendant who is a tenant to challenge his landlord who has allowed him to stay in a room in his house all these years. If there is any person who can challenge the plaintiff title, then it is the Ghana Railway Authority and not the defendant.

The issues, which are many, will therefore be resolved in favour of the plaintiff. I am convinced by the unchallenged evidence on record that the plaintiff has proved his case before the court and the plaintiff is entitled to his reliefs.

The Rent Act, 1963 (Act 220) provides for various instances in which a landlord may be entitled to re-enter or recover possession of his property and eject the tenant from the property. See section 17 of the Rent Act.

The Supreme Court also per Georgina Wood JSC, as she then was in the case of **Antie & Adjuwuah vrs Ogbo (2005-06) SCGLR page 49** said, "The common law rule as to forfeiture by a licensee or tenant who challenges the title of his licensor or landlord has received statutory recognition under the sections 27 and 28 of the Evidence Decree 1975, [NRCD 323].

The law is that a licensee or tenant who denies the title of his or her licensor or landlord, either by claiming that title to the subject matter is vested in himself or herself or someone else forfeits his or her interest. In view of the Respondent's direct challenge to the Appellants lawful claim to ownership, he has forfeited his right to remain in the premises.

In the result, this appeal succeeds". By this I agree with Counsel for the plaintiff in his submission before the court.

The plaintiff is therefore entitled to all his reliefs per his writ of summons before the court and judgment will accordingly be entered in his favour. The defendant is to vacate the premises within 3 month and Cost of GHC 10,000 will be awarded in favour of the Plaintiff against the defendant.