

IN THE CIRCUIT COURT "A", TEMA, HELD ON THURSDAY, THE 23<sup>RD</sup> DAY  
OF FEBRUARY, 2023, BEFORE HER HONOUR AGNES OPOKU-BARNIEH,  
CIRCUIT COURT JUDGE

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SUIT NO. C11/101/19

VICTORIA AIDOO ---- PLAINTIFF

VRS.

JOYCE QUANING ---- DEFENDANT

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PLAINTIFF PRESENT

DEFENDANT ABSENT

FRED SETH THOMAS MIREKU JNR, ESQ. HOLDING THE BRIEF OF EDWIN  
KUSI-APPIAH, ESQ. FOR THE PLAINTIFF PRESENT

ANTHONY ADU-NKETIAH HOLDING THE BRIEF OF PRINCE KWEKU  
HODO, ESQ. FOR THE DEFENDANT PRESENT

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JUDGMENT

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FACTS

The plaintiff caused a writ of summons to issue on 16<sup>th</sup> May, 2019 claiming against the defendant the following reliefs;

- a. Recovery of an amount of Forty-Four Thousand Ghana Cedis (GH¢44,000) as being cost of container and thereon.
- b. Interest of the sum till date of final payment.
- c. Damages for breach of contract.
- d. Damages for fraud.
- e. Costs.

## **THE CASE OF THE PLAINTIFF**

The case of the plaintiff is that she is a trader who sells plumbing materials for building. In February, 2018, the defendant offered to sell a container to her to use as a shop for her business. The plaintiff avers that the defendant informed her that she is a lessee of the land on which the container was situated and the term of the lease was for a period of five (5) years with an unexpired period of four years remaining. The defendant also assured her that she had secured the consent of the landlord to sublet the land to her. Based on these representations, she accepted the offer to purchase the container. Further to this, she paid an amount of Forty-Four Thousand Ghana Cedis (GHC44,000) for the value of the container, three showcases, a big sign board, three ceiling fans and lights fixed in the container. The plaintiff further alleges that inclusive in the purchase price was the consideration for the sublease of the defendant's four years unexpired lease of the land.

Again, the parties agreed that the defendant will furnish the plaintiff with a receipt covering the transaction which spells out the terms of the agreement. The plaintiff says further that when the defendant provided the receipt for the payments she had made, she realized to her chagrin that the defendant had represented on the receipt that she was renting the land to the plaintiff for a period of three years and not four years as agreed upon by the parties. The plaintiff says she rejected the receipt by refusing to append her signature to it.

Additionally, the plaintiff avers that after making payment, she moved into occupation of the container and discovered to her disappointment that the defendant had removed two of the showcases and the sign board contrary to their agreement but she did not raise issues. Subsequently, the landlord of the defendant confronted her on her occupation on the land and informed her that the defendant did not seek

his consent before subletting the land to her and that the unexpired term of the lease with the defendant was three years and not four years. Consequently, he had informed the defendant to vacate the land since he needed it for his personal use.

The plaintiff further states that she and the defendant had a discussion with the landlord over the issue but he was unyielding on his demand for vacant possession of his land. When she asked the defendant why she misrepresented to her that she had four years when in fact she had only three (3) years unexpired term of the lease, the defendant did not give her any tangible explanation but asked her to lobby the landlord for an extra one-year lease and that she could sue the landlord if she was not interested in the current arrangement.

The plaintiff contends that the defendant deceived her and the actions of the defendant constitutes fraud since she was aware she had three years lease per her tenancy agreement with the landlord yet she told her she had four years, by giving her a receipt covering three years when she had taken money for four years in an attempt to cover her misdeed, by using the long lease as an inducement for her to purchase the container and the defendant's action of removing the sign board and the two showcases included in their agreement from the container.

The Plaintiff says further that she caused her lawyer to write to the Defendant on 14<sup>th</sup> of March, 2019 to demand a refund of the Forty-Four Thousand Ghana Cedis (GHC44,000) since she was no longer interested in the agreement. The defendant through her lawyer responded on the 20<sup>th</sup> of March, 2019, that she would not pay the money because as far as she is concerned the sale had been completed. The plaintiff says that the only reason she purchased the container from the Defendant was because she was assured of an uninterrupted stay of 4 years and that had proven to

be a sham. Worse, defendant is not even interested in litigating the landlord but has rather asked the plaintiff to sue the landlord. Plaintiff says she is not interested in any drawn litigation with anyone and that unless the Honourable Court compels the defendant, she will not pay plaintiff her due.

The plaintiff in her reply to the statement of defence of the defendant states that the landlord took the defendant to court in respect of the land but the defendant failed to appear in court to defend the suit and judgment was given against the defendant. After the judgment, the landlord pasted copies of the court order on the container. The landlord subsequently gave her three months to vacate after the police had intervened and after the expiration of the three months, he demolished the container. The plaintiff further says that she rented a shop from the landlord at a cost of GHC39,000.

### **THE CASE OF THE DEFENDANT**

The defendant in her statement of defence denies the claim of the plaintiff and states that sometime in the year 2018, she put up a container for sale and the plaintiff approached her and offered to buy the said container. The plaintiff also expressed interest in obtaining a grant of the land on which the container was situated. The defendant says that she made the plaintiff aware that she was only a tenant on the land and not the landlord. The defendant states that she told the plaintiff that she had informed her Lessor, Mr. Korang Harrison of plaintiff's interest in obtaining a sub-lease of the land in dispute as he was about to travel outside the country. On the return of Mr. Korang Harrison from abroad, she took the plaintiff to meet him and also introduced the plaintiff to him.

The defendant further says that in February 2018, she entered into a sale and purchase agreement with the plaintiff for which the plaintiff paid an amount of Forty-Four Thousand Ghana Cedis (GHC44,000) and the plaintiff has since taken possession and occupation of the said container. The defendant says that the amount was for the value of the container, three ceiling fans, lights and a showcase. Before the purchase price was paid, it was agreed between the parties that the said amount was for the value of the container, three ceiling fans and lights and a four-year unexpired residue on the land subject to agreement by the landlord. According to the defendant, she removed the showcases and the sign board because both parties had agreed prior to payment that these items did not form part of the agreement. It was rather the plaintiff who kept sending her reminders to come and collect the showcases.

The defendant further says that before the receipt was issued, her landlord brought it to her attention that she had an unexpired residue of 3 years only. She brought this to the attention of the plaintiff who agreed to go with her to see Mr. Korang Harrison for a regularization of the agreement on the unexpired lease term. At the said meeting Mr. Korang Harrison agreed to extend plaintiff's 3-year sublease by some unspecified years. It is the case of the defendant that sometime after taking possession and occupation of the said container she was served with a demand notice from plaintiff for a refund of the money paid for the container.

The defendant further contends that the plaintiff later complained about Mr. Korang Harrison's actions in disturbing her quiet enjoyment of the land and further sought the defendant's assistance to appear as a witness in the event that she initiated a court action against him. The defendant says that plaintiff has been on the said land since February, 2018 and has been operating her plumbing shop from the container

till date. According to the defendant, the plaintiff has enjoyed peaceful and quiet enjoyment of the land in dispute. The defendant says that at all material times, the plaintiff has been aware that the defendant granted her the 3 years unexpired term of her lease agreement. The defendant further denies the allegation of fraud and states that she has been truthful to the plaintiff and this is evidenced by the several meetings held between herself, plaintiff and Mr. Korang Harrison at the landlord's residence. The defendant says that the plaintiff's demand for the refund of Forty-Four Thousand Ghana Cedis is in bad faith especially when she has been on the land for well over a year and still operates her business from the said site in the container. Thus, she maintains the plaintiff is not entitled to her reliefs.

At the Application for Directions Stage, the Court set down the issues in the Plaintiff's Application for Directions for trial. The lawyers of the parties in their respective written addresses agree that per the recent Supreme Court decision in the case of **Dalex Finance and Leasing Company Limited v. Ebenezer Denzek Amanor, L.G.G Company Limited and Huawei Technologies (Ghana) S A Limited** [Civil Appeal No. J4/02/2020] delivered 14<sup>th</sup> April, 2021 reported as DLSC10163, the issue(f) of whether or not the plaintiff is entitled to her claims should not be discussed by the court. Under the circumstances the issues for the determination by the court are as follows;

### **LEGAL ISSUES**

1. Whether or not the amount of GHC44,000 paid by the plaintiff to the defendant covered the unexpired residue of the lease, the container, three show cases, a big sign board, three ceiling fans and lights.

2. Whether or not the defendant informed the plaintiff that the unexpired residue of the lease was for four (4) years when indeed it was left with only three (3) years.
3. Whether or not the defendant took away two show cases and the big sign board without the Plaintiff's consent.
4. Whether or not the Landlord obtained judgment against the defendant and evicted the plaintiff from the land.
5. Whether or not the Plaintiff had to rent another shop at the cost of GH¢39,000
6. Any other issue(s) raised by the pleadings.

### **BURDEN OF PROOF**

It is settled law that in civil cases, the party who asserts bears the burden to prove his or her case on a balance of probabilities. In the case of **Takoradi Flour Mills v. Samir Faris** [2005-2006] SCGLR 885, the Supreme Court held in its holding 5 that:

*"It is sufficient to state that this being a civil suit, the rules of evidence require that the plaintiff produces sufficient evidence to make out his claim on a preponderance of probabilities, as defined in **section 12(2)** of the Evidence Decree, 1975(NRCD 323). In assessing the balance of probabilities, all the evidence, be it that of the plaintiff or the defendant, must be considered and the party in whose favour the balance tilts is the person whose case is the more probable of the rival versions and is deserving of a favourable verdict."*

It is also trite that witnesses are not counted but weighted. Thus, it is not the host of witnesses that a party calls in proof of a case that matters but whether the witnesses called have been able to lead the requisite evidence in proof of the case of the party who calls them. To this end, a party in a civil case cannot be compelled to testify provided the she is able, through the witnesses able to discharge the legal burden for a determination in his or her favour. The Supreme Court succinctly puts this

principle in the case of **Aryee v. Shell Ghana Ltd.** [2017-2020] 1 SCGLR, 721-735, at page 733, where the Supreme Court per Benin JSC stated as follows:

*“It must be pointed out that in every civil trial all what the law required is proof by preponderance of probabilities: See section 12 of the Evidence Act, 1975 (NRCD 323). The amount of evidence required to sustain the standard of proof would depend on the nature of the issue to be resolved. The law does not require that the court cannot rely on the evidence of a single witness in proof of a point in issue. The credibility of the witness and his knowledge of the subject-matter are the determinant factors...Indeed, even the failure by a party himself to give evidence cannot be used against him by the court in assessing his case.”*

Therefore, in the instant case, the plaintiff who brought the defendant to court bears the burden to prove her case on a balance of probabilities for a favourable outcome failing which her claim will be dismissed.

## **ANALYSIS**

**ISSUE 1: Whether or not the amount of GH¢44,000 paid by the plaintiff to the defendant covered the unexpired residue of the lease, the container, three show cases, a big sign board, three ceiling fans and lights.**

The plaintiff testified that the defendant offered to sell a container to her to use as storage space for her plumbing materials business. Additionally, the defendant told her that the land on which the container was situated had been leased to her for a period of five (5) years with an unexpired term of four (4) years. The defendant further assured her that she had secured the consent of the landlord to sublet the land and based on that assurance, she agreed to purchase the container.

The plaintiff further testified that the agreement covered three showcases, a big sign board, three ceiling fans and lights fixed in the container. Based on that, she paid an amount of Forty-Four Thousand Ghana Cedis (GH¢44,000) to the defendant for the value of the container, the four years unexpired residue on the land, the three showcases, the big sign board, the three ceiling fans and lights. According to the

plaintiff, when she took possession of the container, she discovered that the defendant had removed two of the showcases and the sign board contrary to their agreement but she decided to let it slide. The plaintiff was insistent under cross-examination by Counsel for the defendant that the agreement covered the three showcases and the signboard when she answered as follows;

*Q: It is your case that you entered into a transaction for the sale of a container by the defendant to you. Is that correct?*

*A: Yes My Lord.*

*Q: You would admit that you saw the container in its state before negotiations.*

*A: Yes my Lord. I saw the container and its contents which she said she was selling together with the content.*

*Q: Can you tell the court what and what were in the container.*

*A: There was a fan, three showcases, there was light, sign board. These were the items in the container.*

The defendant in her defence admits the agreement between herself and the plaintiff for the sale of a container and the unexpired residue of a five-year tenancy agreement she had with Mr. Korang Harrison. The purchase price paid is also not controverted. However, the defendant maintains that the agreement covered the value of the container, one show case, three ceiling fans and lights and the unexpired residue of the land subject to agreement by the landlord. Under cross-examination, the defendant maintained that the agreement did not cover the two showcases and the signboard that she took from the shop and it was the plaintiff who called her severally to come for the said items not covered under their agreement.

On the evidence led, the testimony of the defendant that the agreement did not cover the two show cases she took from the shop strains credulity since **Exhibit A**, the

receipt prepared by the defendant and signed by her is headed' *"Sale of Container on Plot Number BAE 28/9 And All Accessories"*. The use of the term *"All Accessories"* without any exclusion and without any contrary meaning makes the testimony of the plaintiff to be more probable than that of the defendant. I therefore find as a fact that the purchase price paid covered the container, the unexpired residue, three show cases, a big sign board, three ceiling fans and lights.

**ISSUE 2: Whether or not the Defendant informed the Plaintiff that the unexpired residue of the lease was four (4) years when indeed it was left with only three (3) years.**

The plaintiff testified that at the time of negotiations, the defendant represented to her that the land on which the container was situated had been leased to her for a period of five years with an unexpired period of four (4) years. The defendant also assured her that she had obtained the consent of the land owner to sublet the land to her. However, after full payment, when the defendant issued her with a receipt, **Exhibit "A"**, she noticed that the defendant had indicated that she was renting the place to her for a period of three (3) years instead of the four (4) years and as a result, she refused to sign the receipt. Also, when she took possession of the container, the landlord confronted her and informed her that the defendant did not seek his consent before subletting the land to her and that the defendant had an unexpired period of three (3) years. According to her, this is confirmed by the tenancy agreement executed between the plaintiff and the landlord admitted and marked as **Exhibit "B"**.

The plaintiff further testified that when she informed the defendant about what the landlord had said and confronted her on why she misrepresented the facts to her, the defendant informed her that she could lobby the landlord for an extra year. The

defendant then took her to the landlord and introduced her to him as the new tenant. The landlord queried the defendant on why she failed to seek his consent but she explained that the landlord had travelled out of the jurisdiction. The landlord then informed the parties that the only way he would allow the plaintiff to stay on the land was for him to increase the rent. The defendant then said the landlord only wanted to increase the rent in order to complete his building which provoked the landlord and he asked both parties to vacate the land. The defendant then advised her to sue the landlord. She then asked a mutual friend called Alhaji to inform the defendant that she was no more interested in the agreement and demanded a refund of the Forty-Four Thousand Cedis (GHC44,000) paid. However, all efforts to recover the money from the defendant proved futile and the landlord also continued to harass her to vacate the land.

The defendant on her part testified that when the plaintiff expressed interest in acquiring the container and the land, she informed her landlord about the plaintiff's interest in obtaining a sub-lease of the land in dispute since the landlord was about to travel out of the country. On the return of the landlord, she took the plaintiff to meet him. According to her testimony, at the time of the transaction, the landlord brought it to her attention that she had an unexpired period of 3 years on her tenancy which she assigned to the plaintiff. After payment of the purchase price, the plaintiff immediately took possession of the container and occupied same.

The plaintiff then agreed with her to go and see Mr. Korang Harrison for a regularization of the agreement on the unexpired lease term. At the said meeting, Mr. Korang agreed to extend the three-year sublease of the plaintiff for a further term but she did not have the benefit of the full details of the discussion between the landlord and the plaintiff. However, the plaintiff after taking possession and

occupation of the said container and operating for some time, caused her lawyers to write to her demanding a full refund of the purchase price paid. According to the defendant, the demand for a refund is in bad faith since the plaintiff had taken possession of the container and operated her plumbing shop since February 2018 and was still in occupation at the time of instituting the present suit. In support, the defendant tendered Exhibit "1" as evidence of the plaintiff's business in the shop evidencing the fact that the plaintiff has had quiet enjoyment of the property. The defendant further testified that the plaintiff after taking possession and agreeing with the landlord for regularization of the sublease, the plaintiff complained to her about the landlord's actions in disturbing her quiet enjoyment and asked the defendant to be a witness in the event that she institutes an action against him.

From the evidence led by the plaintiff and the defence put up by the defendant, the defendant in her statement of defence states that she had an unexpired period of four (4) years and it was when she informed the landlord about her decision to sublet to the plaintiff that he brought it to her attention that she had an unexpired period of three years. Thus, although the negotiations preceding the agreement was for four years, the written receipt issued by the defendant to the plaintiff was for a period of three years unexpired lease. As the plaintiff testified, after paying the money, the parties agreed that the defendant will issue a receipt spelling out the terms and conditions of their agreement. The **Exhibit "A"**, the receipt issued by the defendant states that;

*"I Mrs. Joyce Quanning have today receive an amount of GHC42,000 from Mrs. Victoria Aidoo as full payment of the sale of the above container.*

*It is agreed that the land on which the container is situated is rented from Mr. Harrison Koran and the advance payment made by Mrs. Quanning will expire 30<sup>th</sup> January, 2021 as*

*per the attached. Mrs. Aidoo will, after the expiry of the rent advance take over the renegotiation of the rent with Mr. Harrison Korang”*

Thus, when the defendant issued the receipt that in the view of the plaintiff did not reflect what the parties had originally intended, it was well within the right of the plaintiff to repudiate the agreement but the plaintiff failed to do so and took possession of the container and conducted her business in it for a year before demanding a refund of the money. Learned Counsel for the plaintiff in his written address contends that there is an implied covenant not to sublet without the written consent under **Section 23** of the Conveyancing Decree, 1973, (NRCD 175), the law in force at the time of the transaction, which is *in pari materia* with **Section 51** of the Land Act, 2020 (Act 1036). Learned Counsel for the defendant on his part argues that the tenancy agreement between the defendant and the said Harrison Korang, admitted and marked as **Exhibit “B”** does not require the defendant to obtain the consent of the landlord before subletting. Also, the plaintiff having been issued with a receipt indicating that the unexpired period was for three year and still having taken possession and operated for a year, by her conduct, she has waived her right to terminate and is also estopped by her conduct.

Admittedly, on the face of **Exhibit “B”**, the tenancy agreement between the defendant and the said Harrison Korang, there is no express clause on subletting. However, as rightly pointed out by Counsel for the plaintiff, this covenant is implied by law into subleases. Thus, the defendant required consent to sublet although the agreement between her and the said Harrison Korang did not say so. The defendant’s answer under cross-examination is conclusive of the fact that she did not seek the consent of the landowner before entering into the agreement with the plaintiff. The defendant, under cross-examination by counsel for the plaintiff, the following exchanges took place;

*Q: So at what point did you introduce the plaintiff to the landlord. Was it before or after you concluded your agreement with the plaintiff.*

*A: My Lord, I took her to the landlord after she purchased and moved into the container. Prior to me selling the container to the plaintiff, I informed the landlord about my intention and after the purchase, he agreed that once I have more years to stay, I should go ahead. So when the landlord came, I introduced the plaintiff to him.*

*Q: You will agree with me that the landlord only got to know of the plaintiff after you had taken your money and subsequently put plaintiff into possession of the container.*

*A: Yes my Lord.*

*Q: I am putting it to you that per your own testimony you did not seek the consent of the landlord before putting plaintiff into possession of the container.*

*A: My Lord, the tenancy agreement between myself and the landlord did not state that I seek consent of the landlord before giving out the place or assigning. That is why she signed the document and moved into occupation so when the landlord came, the only thing was for me to introduce her to the landlord.*

*Q: So at the time of putting plaintiff into possession, you did not inform the landlord about it.*

*A: I informed the landlord.*

On the totality of the evidence led by the plaintiff and the defence put up by the defendant, I find as a fact that the defendant did not seek written consent of the landlord to sublet. The issue then is whether the plaintiff is entitled to repudiate the agreement between herself and the defendant? The evidence on record shows that in the face of the breaches on the part of the defendant in terms of the items included in the transaction, the number of unexpired period and the implied condition for written consent to sublet, the plaintiff still took possession of the container and the

land and occupied it for well over a year before demanding a refund of the purchase price from the defendant. The plaintiff in the face of the breaches was busy negotiating and discussing with the landlord whilst occupying the container. From **Exhibit 1**, the photograph taken on 20<sup>th</sup> March, 2019, it is evident that the plaintiff was in full occupation of the container doing her business. Under cross-examination by the counsel for the defendant, the following exchanges took place;

*Q: The transaction for the sale of the container was in which year?*

*A: February 2018.*

*Q: From Exhibit "1" you took possession of the container in issue since February 2018. Is that so?*

*A: I bought the container in February 2018 and commenced business in the container in March 2018.*

*Q: So you took possession of the shop for well over a year not so.*

*A: I took possession in March 2018 and in July 2018, the landlord came around to ask who I was. I told the man that the defendant has sold the container to me. The man said he does not know me since the agreement between the defendant and himself is that before the defendant could release the land to anyone he had to there because he had plans for the land.*

According to her evidence under cross-examination, upon receipt of **Exhibit A**, she moved into the container because the defendant assured her that upon the return of the landlord, the issue will be resolved but when the landlord returned, the issue was not resolved. On the issue of estoppel raised by Counsel for the defendant, the general principle is that estoppel must be pleaded and that a party cannot invoke estoppel which has not been pleaded and in respect of which no evidence has been led. In the case of **Sasu v. Amua-Sekyi** [2003-2004] 2 GLR 777, it was held in holding 1 that:

*“Where on the facts, an estoppel which was not pleaded, should nonetheless be obvious to the party against whom it was raised, the court may ignore the failure to plead and give effect to it. The justification for this line of thought is that the party affected is not likely to be surprised where the evidence on record makes the estoppel obvious.”*

The defendant in the instant case pleaded facts and led evidence to show that the plaintiff after the agreement took possession of the container and operated in it for a year before demanding a refund on the basis of an alleged harassment by Mr. Harrison Korang. **Section 26** of the Evidence Act, NRCD 323 provides that:

*“Except as otherwise provided by law, including a rule of equity, when a party has, by that party’s own statement, act or omission, intentionally and deliberately caused or permitted another person to believe a thing to be true and act upon that belief, the truth of that thing shall be conclusively presumed against that party or his successors in interest in any proceedings between that party or successors in interest and such relying person or successors in interest.”*

In the case of **Social Security v. Agyarkwa** [1991] 2 GLR 1992 holding 1,

*“The principle of estoppel by conduct was applicable only in those circumstances where it was just to invoke it, namely in those circumstances in which it would be unjust, inequitable or unconscionable to permit a party against whom a plea of estoppel is raised to go back on his word or conduct. Consequently, in invoking a plea of estoppel by conduct, one has to have regard to the circumstances surrounding the particular conduct which was the subject of the plea. Invariably, each case has to be decided on its particular facts.”*

The evidence on record shows that the plaintiff, notwithstanding the receipt which showed that she had been granted a term of three years instead of 4 years, proceeded to take possession of the container and conducted her business normally for a whole year before her alleged eviction by the landlord. According to her, the only action she took upon receiving **Exhibit “A”** was to refuse to sign. It is trite that a purchaser need not sign a receipt of payment for it to be valid. Thus, the plaintiff should have

shown by overt acts that she was objecting to the change in the agreement between the parties.

In the circumstances of this case, it will be unjust for the plaintiff to demand for a refund of the purchase price after occupying the container for a year and having by her conduct shown that she was not repudiating the agreement with the benefit of the information that the unexpired lease was for three years and not four years and that the defendant did not seek the consent of the landowner to sublet.

Additionally, on the principle of waiver, the plaintiff waived her right to repudiate the agreement and to demand a refund of the money when she took possession of the container without any challenge. In the case of **Social Security Bank Ltd. V. CBAM Services Inc.** [2007-2008] 2 SCGLR 894, the Supreme Court held in its holding 2 that:

*“A waiver of the right to terminate a contract of a forbearance may be either oral or written and may be inferred from the conduct of the party affected by the breach complaint of. The question whether a particular conduct would amount to a waiver that it is intended to be acted upon is, of course, determinable on a case-by-case basis....”*

The evidence on record shows that the plaintiff continued to be in possession even when the landlord returned from abroad. Thus, the plaintiff by her conduct in taking possession for well over a year when she became aware that the defendant had an unexpired lease period of three years instead of the four years she envisaged, has waived her right to terminate the agreement between herself and the defendant.

On the totality of the evidence led, I find that the defendant had an unexpired period of three years lease. The plaintiff became aware when she was issued with her

receipt. The act of the plaintiff in failing to sign the signature is not sufficient proof of repudiation since signature is not a requirement on a receipt. The actions of the plaintiff in failing to repudiate the agreement, having discussions to extend the lease with the landlord and taking possession of the container and occupying it for a year, she has, by her conduct accepted to be bound by the agreement between the parties.

**ISSUE 3: Whether or not the Defendant took away two showcases and the big sign board without the Plaintiff's consent.**

The plaintiff maintains that the defendant took the two showcases and the big signboard without her consent. The defendant on her part testified that after the plaintiff had taken possession of the shop, she subsequently removed two of her showcases from the container and the signboard, as both parties had agreed prior to payment that these items did not form part of the arrangement between them. The defendant further contends that it was the plaintiff who kept calling her and sending her reminders to come and collect the showcases which did not form part of the agreement. The defendant failed to tender such messages in evidence. As discussed supra, I hold that the defendant took away the two showcases without the consent of the plaintiff. The plaintiff, instead of insisting on her right to the items, states that *"she decided to let it slide"*.

**ISSUE 4: Whether or not the Landlord obtained judgment against the defendant and evicted the plaintiff from the land.**

It is the contention of the plaintiff that the landlord sued the defendant and obtained default judgment against her. She went to the site one day and found that the landlord had taken off a canopy on the container. She reported the incident to the defendant but the defendant rather asked her to take the landlord to court. She reported the matter to the police because she was of the conviction that the

defendant had defrauded her and the police officer handling the matter accompanied her to the landlord. They pleaded with the landlord who granted her only three months to pack her goods and vacate the land. According to her, she had no peaceful occupation of the land as the Landlord kept intimidating her. In view of this, she served a demand notice on the defendant when the landlord finally gave her 3 months to pack her goods and vacate the land. She packed her goods after the expiration of the three months' grace period and the container was demolished by the Landlord.

The plaintiff further testified under cross-examination that the landlord pasted notices on the container that he was going to demolish it and since the defendant also has a container on a portion of the land, they all went for a meeting where they were told that the landlord needed the land so they should leave the land vacant. She asked the defendant to refund her money but she only offered to pay GHC5,000 which she refused.

It can be gleaned from the evidence of the plaintiff that at the time the landlord allegedly evicted her from the property in issue, the plaintiff was in full possession of the property and the transaction between the parties had been concluded. The plaintiff has not tendered in evidence any court processes showing that the said Harrison Korang obtained judgment against the defendant for breach of the agreement between them based on which she was ejected from the property in issue. From the plaintiff's own evidence, the landlord invited all the tenants including the defendant who also had a property on the land in dispute and informed them that he needed vacant possession of the land. Thus, the plaintiff failed to show that her eviction was related to the agreement between the parties. Accordingly, I hold that

the plaintiff failed to prove that the landlord obtained judgment against the defendant based on which she was evicted.

**ISSUE 5: Whether or not the Plaintiff had to rent another shop at the cost of GHC39,000**

The plaintiff further testified that when the landlord ejected her from the plot of land, fortunately for her, the landlord had built other shops. She therefore pleaded with the landlord and rented one of the shops at the cost of Thirty-Nine Thousand Ghana Cedis (GHC39,000). The defendant admits that the plaintiff is occupying one of the shops constructed on the land but maintains that it is the decision of the plaintiff to expand her business and not a consequence of their agreement. Contrary to the plaintiff's assertion that she rented the property from the same landlord, In **Exhibit 1**, tendered through the plaintiff, the new tenancy agreement is between one Mrs. Justina Melissa Ackom, of the one part, and the plaintiff herein of the other part. The plaintiff under rigorous cross-examination testified that the said Justina Melissa Ackom is the wife of the landlord. The plaintiff having occupied the land for more than a year and operated her business in the said shop, it cannot be said that it was the default of the defendant that led her to rent the shop. As the plaintiff states in her evidence, the same landlord who allegedly harassed her and evicted her is the same landlord who rented one of the stores he constructed on the land in dispute to her.

**ISSUE 6: Any other issue(s) raised by the pleadings.**

Another issue raised by the parties on the pleadings and addressed on by the lawyers is the issue of fraud. It is trite learning that fraud vitiates everything. Under **section 13** of the Evidence Act, 1975(NRCD 323), an allegation of crime in civil cases requires a party to prove it beyond reasonable doubt. In the case of **Aryeh &**

**Akakpo v. Aryaa Iddrisu** [2010] SCGLR 891 at 903, Brobbery JSC (as he then was) held that:

*“The rule in section 13(1) of the Evidence Act, 1975 emphasizes that where in a civil case, crime is pleaded or alleged, the standard of proof changes from the civil one of the balance of probabilities to the criminal one of proof beyond reasonable doubt...”* See also the case of **Sasu Bamfo v. Simtim** [2012] SCGLR 985.

The particulars of fraud alleged by the plaintiff in the statement of claim is that the defendant was very much aware that she had three years unexpired lease per her tenancy agreement with the landlord but took money for four years unexpired lease which shows that there was no mistake. The defendant gave her a receipt covering three years when she is fully aware that she took money for four years in order to cover her misdeed. The defendant using the long lease of four years as a ploy to lure the plaintiff to buy the container which the plaintiff would not have otherwise bought. The defendant on the other hand maintains that she has never deceived plaintiff, but on the contrary, she has been transparent and truthful to plaintiff and this was evidenced by several meetings she had with Plaintiff and Mr. Korang at his residence.

The evidence so far shows that the parties agreed that the terms and conditions for their transactions will be stipulated in the receipt. Once the receipt was issued and it specified three years which was in fact the remaining term, it was well within the right of the plaintiff to reject same. Also, the defendant’s insistence on taking the two showcases since the items did not form part of the agreement will not in itself amount to fraud. Additionally, failure to seek the written consent to sublet is a breach of a covenant and will not on its own amount to fraud unless the plaintiff proves beyond reasonable doubt that there was an intent to defraud. On the totality

of the evidence led, I hold that the plaintiff failed to meet the requisite standard of proof of crime alleged in a criminal case which is proof beyond reasonable doubt.

### **CONCLUSION**

On the totality of the evidence led, I hold that the plaintiff failed to prove her claim against the defendant on a balance of probabilities. The plaintiff is therefore not entitled to recover from the defendant the amount of GH¢44,000 paid to the defendant with interest and damages for breach of contract. The plaintiff also failed to prove her allegation of fraud beyond reasonable doubt to entitle her to damages for fraud. Accordingly, I dismiss the claim of the plaintiff against the defendant.

### **COSTS**

Having regard to the oral submissions of both lawyers on the issue of costs and in accordance with **Order 74** of the High Court (Civil Procedure), Rules, 2004(C.I. 47) on Costs, to compensate the defendant for expenses reasonably incurred in defending the claim of the plaintiff which has been dismissed to provide reasonable remuneration for counsel for defendant, and having regard to the duration of the case, I hereby award costs of GH¢10,000 against the plaintiff in favour of the defendant.

**H/H AGNES OPOKU-BARNIEH**  
**(CIRCUIT COURT JUDGE)**