

IN THE CIRCUIT COURT "A", TEMA, HELD ON WEDNESDAY, THE  
25<sup>TH</sup> DAY OF JANUARY, 2023, BEFORE HER HONOUR AGNES OPOKU-  
BARNIEH, CIRCUIT COURT JUDGE

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SUIT NO. C11/97/22

MADAM CHARITY AYEE ---- PLAINTIFF  
(ACTING PER HER TRUE AND  
LAWFUL ATTORNEY MRS RUBY COMLA)

VRS.

MR. DICKSON DEI ASARE --- 1<sup>ST</sup> DEFENDANT

TDC DEVELOPMENT CO. LTD. --- 2<sup>ND</sup> DEFENDANT

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PLAINTIFF/ATTORNEY ABSENT

DEFENDANTS ABSENT

JOHN LOUIS NEIZER, ESQ. FOR THE PLAINTIFF PRESENT

SOPHIA ELIKPLIM, ESQ. FOR THE 2<sup>ND</sup> DEFENDANT ABSENT

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**JUDGMENT**

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**FACTS**

The plaintiff caused a writ of summons to issue against the defendants on 22<sup>nd</sup> February, 2022, claiming against the defendants the following reliefs;

1. A declaration that the plaintiff is the owner of house number AX 41 Community 7, Tema.
2. An order directed at the 2<sup>nd</sup> defendant to effect transfer of house number AX 41 Community 7, Tema into the Plaintiff's name.
3. An order for costs.

The plaintiff's case is that in the year 1980, she was living in house number AX 41 Community 7, Tema with the 1<sup>st</sup> defendant who was a brother of her bossom friend. The first defendant received money as a token of appreciation, left her in occupation of the property and left Tema for good. In the same year that the 1<sup>st</sup> defendant left, he applied to the 2<sup>nd</sup> defendant with a supporting statutory declaration, to transfer the property into the plaintiff's name. The plaintiff also supported the 1<sup>st</sup> defendant's application with a similar statutory declaration to that effect. The plaintiff avers that she has since been in occupation and possession of the house in dispute and paid all utilities, property rate, electricity, water, Development permit fee, in her own name etc. The plaintiff further states that throughout this period, she never received a letter from the 2<sup>nd</sup> defendant requesting her to fill an application for transfer of ownership. As a result, the house still remains in the name of the 1<sup>st</sup> defendant. The 2<sup>nd</sup> defendant informed her that it is only by a court order that the property will be transferred in the name of the plaintiff.

The writ of summons and the statement of claim were duly served on the 1<sup>st</sup> defendant by substituted service including publication in the Daily Graphic issue of Friday, May 20, 2022 page 30 when personal service proved futile but the 1<sup>st</sup> defendant failed to enter appearance and to appear to contest the suit.

The second defendant on the other hand entered appearance and filed a defence on 28<sup>th</sup> June, 2022. The gravamen of the defence put up by the 2<sup>nd</sup> defendant is that it is not aware of the transaction between the plaintiff and the first defendant. The 2<sup>nd</sup> defendant admits that the 1<sup>st</sup> defendant applied to it with supporting statutory declaration to transfer the property in the plaintiff's name and the plaintiff also filled a similar statutory declaration. The

2<sup>nd</sup> defendant avers that unfortunately, the plaintiff and the 1<sup>st</sup> defendant did not avail themselves to complete the transfer process. As such the property remains in the name of the 1<sup>st</sup> defendant. The 2<sup>nd</sup> defendant says that not being privy to the agreement between the 1<sup>st</sup> defendant and the plaintiff, and in the absence of the 1<sup>st</sup> defendant who is the lessee of the property it has no legal right to complete the transfer process commenced by the lessee. The 2<sup>nd</sup> defendant says it shall abide by the orders of the court as to who is adjudged the owner of the property.

At the application for directions stage, the court set down the following issues for determination;

### **LEGAL ISSUES**

1. Whether in the year 1980 the 1<sup>st</sup> defendant voluntarily vacated the house number AX 41 Community 7 Tema in favour of the plaintiff and left Tema for good, after receiving a token money from the plaintiff as appreciation.
2. Whether the plaintiff is the owner of house number AX 41 Community 7, Tema.
3. Whether an order should be made by the court directed at the 2<sup>nd</sup> defendant to effect transfer of house number AX 41 Community 7, Tema into the Plaintiff's name.
4. Any other issues arising out of the pleadings.

### **ANALYSIS**

It is trite that he who alleges must prove. The burden on a party to prove his claim on a balance of probabilities remains the same even when the action is uncontested. In the case of **Tei & Anor v. CEIBA Intercontinental** [2017-2018] 2SCGLR 906 at 919, per Per Pwamang JSC stated as follows:

*“It must be remembered that the fact that defendant does not appear to contest a case does not mean that the Plaintiff would be granted all that he asks for by the court. The rule in civil cases is that he who alleges must prove on the balance of probabilities and the burden is not lightened by the absence of the defendant at the trial. The absence of the defendant will aid the plaintiff only where he introduces sufficient evidence to establish a prima facie case of entitlement to his claim.”*

Thus, the plaintiff must lead sufficient evidence to prove her claim on a balance of probabilities and the absence of a defendants at the trial does not relieve her of this obligation.

The plaintiff attorney testified on behalf of the plaintiff and tendered in evidence the power of attorney admitted and marked as **Exhibit “A”**. According to her, the plaintiff is her grandmother and she has lived in the disputed property with her since the year 1993. She states further that the 1<sup>st</sup> defendant was the original tenant in the house and in support, she tendered in evidence **Exhibit “B”** a rent card issued by the Tema Development Corporation in the name of D.D. Asare. The Attorney further testified that in the year 1980, the 1<sup>st</sup> defendant voluntarily vacated the house in issue in favour of the plaintiff after receiving a token money from her in appreciation of the offer, and left Tema for good. In support, she tendered in evidence **Exhibits “C”– “C2”**. Exhibit C is a letter written by the first defendant to the 2nd defendant company for formal change of tenancy in respect of *House No. 7/AX, 41 Comm. 7, Tema* into the name of the plaintiff herein. **Exhibit “C1,”** is also a statutory declaration made by the 1<sup>st</sup> defendant declaring that he is the legal tenant of the house in dispute where he was dwelling with the plaintiff who he described as his sister’s friend and that he has given it up for her to leave Tema for good and was therefore authorizing to cause a formal change

of ownership in the plaintiff's name. *Exhibit C2* is also a statutory declaration to that effect.

The Plaintiff attorney further testified on behalf of the plaintiff that the plaintiff has since the year 1993 been in occupation and possession of the property without let or hindrance nor adverse claim from any quarters. The plaintiff has also paid all bills; utilities, property rates, electricity, water bills, development permit and in support tendered in evidence **Exhibits D-D11**, which are receipts of payment of property rate, sewer rate and utilities. The defendant further testified that TDC wrote to the plaintiff to fill a form for the necessary transfer but the plaintiff never received any such letter, and hence the house still remains in the 1<sup>st</sup> defendant's name in spite of her Counsel's letter to TDC and has advised her in the circumstances to come to court for an order directing the second defendant to effect the transfer. The defendants failed to appear to cross-examine and the 2<sup>nd</sup> defendant did not file a witness statement and did not appear to lead evidence at the trial.

From the evidence led by the plaintiff, the 1<sup>st</sup> defendant was a tenant in the property in issue. Being a tenant, the first defendant could only transfer the interest he had in the property to the plaintiff. Consequently, the first defendant not being the owner could not have transferred ownership of the property in dispute to the plaintiff. The interest the plaintiff has in the property in dispute is therefore that of a tenancy since the relationship between the 1<sup>st</sup> defendant and the 2<sup>nd</sup> defendant is that of a landlord and tenant in respect of the property in dispute as evidenced by the rent card issued by the 2<sup>nd</sup> defendant to the first defendant admitted in evidence and marked as **Exhibit "B"**. From the conditions of the tenancy, the tenancy was

on a month-to-month basis at a rent stated payable monthly in advance on the first day of every month. There is no evidence on record to show that the property was subsequently sold to the plaintiff or the 1<sup>st</sup> defendant. The over forty(40) years that the plaintiff has been in occupation of the property in issue per se will not convert a tenancy into ownership.

On the totality of the evidence led, I find that the plaintiff is a tenant of the property in dispute since the 1<sup>st</sup> defendant assigned his interest in the property in dispute to the plaintiff. The plaintiff, after the agreement with the 1<sup>st</sup> defendant has performed acts of possession of the property in dispute by paying all rates in respect of the property. I therefore hold that the 1<sup>st</sup> defendant, who was a tenant of the property in dispute voluntarily transferred his interest in the property in dispute to the plaintiff who has at all material times performed acts and obligations of a tenant in possession of the property in dispute. The 2<sup>nd</sup> defendant shall therefore amend its records and acknowledge the plaintiff as the tenant of the property in dispute.

### **CONCLUSION**

In conclusion, I hold that the plaintiff proved on a balance of probabilities that the first defendant assigned his interest in the property in dispute to the plaintiff and pursuant to that commenced processes to transfer the tenancy into the name of the plaintiff with the 2<sup>nd</sup> defendant Company. I accordingly enter judgment for the plaintiff in the following terms;

1. I hereby declare the plaintiff as the tenant in possession of house number *AX 41 Community 7*, Tema.

2. I hereby grant an Order directed at the 2<sup>nd</sup> defendant to transfer the tenancy of the property in dispute in the name of the plaintiff and amend its records to reflect the change.
3. No Order as to costs.

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