

**IN THE CIRCUIT COURT ONE (1) HELD AT ACCRA ON WEDNESDAY, 22<sup>ND</sup> DAY  
OF MARCH, 2023 BEFORE HER HONOUR AFIA OWUSUAA APPIAH (MRS)**

**SUIT NO.: A8/3/2018**

**ALHAJI ABDULAI KWAME SHOWUMI WILLIAMS**

**VRS.**

- 1. SISTER SHEILA**
- 2. ALIMATU ODEIBEA-AMU**
- 3. REGINA WILLIAMS**
- 4. CHARLOTTE WILLIAMS**

**JUDGMENT**

Plaintiff on 19/5/2020 instituted this action against 1<sup>st</sup> and 2<sup>nd</sup> Defendants herein Plaintiff in his statement of claim stated that he is the owner of the house in dispute whilst Defendants at all material times were bare licenses resident in the house in dispute by virtue of domestic services rendered to Hajia Fatima Williams (deceased) on of Plaintiff's wives. The said Hajia Fati Williams died on 23/2/2019 but several notices served on Defendants to vacate and yield vacant possession of the residence peacefully have proved futile. Plaintiff stated that the fair letting value of the property is GHC500 per mensem Plaintiff therefore claimed against the Defendants as follows;

- a. An order directed at the Defendants to vacate and yield possession of the property House No. 3691/18 Bubiashie, Accra.

- b. Mesne profit at GHC500 per mensem (month) with effect from May 2019 to date of vacant possession and
- c. Further other order(s) as the court may deem fit.

Upon an application by the two children of deceased in their capacity as administrators of the estate of the late Hajia Fati Williams, the court on the 22/4/2021 joined the 3<sup>rd</sup> and 4<sup>th</sup> Defendants to the suit as Co-Defendants. Plaintiffs filed an amended Writ of summons and statement of claim on 5/5/2021.

Defendants in their statement of Defence filed on 21/6/2021 denied Plaintiff's claim and reliefs and contended that the house in dispute was jointly acquired by the Plaintiff and late Hajia Fatima Williams. Defendants stated that the deceased lived peacefully in the property from 1997 till 2012 when Plaintiff instituted divorce proceeding against the deceased and take the property from her. That in the course of the trial, parties agreed that the marriage be dissolved and property in dispute vested in the late Hajia Fatima Williams for her lifetime with reversionary interest given to their children. same was reduced into writing and signed by Plaintiff but the deceased died before she could sign the same. Defendants contends that after the one year anniversary of the deceased, Plaintiff rekindled his desire to take away the disputed property from the children of the late Hajia Fatima Williams for his new wife and lodged a complaint at Rent control. That Plaintiff being unsuccessful at the Rent control instituted this action. Defendants therefore counterclaimed against the Plaintiff as follows;



- a. Declaration that the property of House No. 3691/18 Bubiashie, Accra forms part of the estate of the Hajia Fatima Williams.
- b. Declaration that by the agreement in respect of suit number BMIC/59/2012 entitled ALHAJI ABDULAI KWAMI SHOWUMI WILLIAMS VRS FAMITA KWATIOKOR WILLIAMS, is estopped from claiming sole ownership of House No. 3691/18 Bubiashie, Accra.
- c. Damages for trespass and disturbance of quiet enjoyment of the property.
- d. An order of perpetual injunction restraining the Plaintiff whether by themselves or their agents, workmen , employees, appointees, assigns and successor-in title whatsoever from interfering with the Defendants' occupation, rights and enjoyment of the property, House No 3691/18 Bubiashie, Accra.
- e. Costs
- f. Any further or other orders or reliefs as the Court may deem fit in the circumstances.

From the pleadings of the parties, the following issues were set down as issues for trial.

- i. Whether or not a valid terms of settlement exists between the Plaintiff and Hajia Fatima Williams over House No. 3691, Bubuashie;
- ii. Whether or not House No. 3691, Bubuashie, Accra was jointly acquired by the Plaintiff and Hajia Fatima Williams (deceased) and, if so, whether upon her death intestate her portion devolves unto any of the defendants; alternatively,

- iii. Whether or not House No. 3691, Bubuashie formed part of the intestate estate of Hajia Fatima Williams (deceased);
- iv. Whether or not the 1st and 2nd Defendants have any beneficial interest in the property, subject matter of dispute, to enable them live in it; and
- v. any other issues arising out of pleadings.

The Standard of proof in civil case such as the present action is proof of the preponderance of probabilities. See sections 11(4) and 12 of the Evidence Act, 1975, NRCD 323(hereinafter referred to as NRCD 323. Section 12(2) of Act 323 defines preponderance of probabilities as *“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.* In the case of **ADWUBENG V DOMFEH (1997-98) 1 GLR 282** it was held per holding 3 as follows: *“ And sections 11(4) and 12 of NRCD 323 clearly provided that the standard of proof in all civil actions, without exception, was proof by a preponderance of probabilities. Accordingly, the cases which had held that proof in title to land required proof beyond reasonable doubt no longer represented the present state of the law”.* **Section 14** of the Evidence Act 1975, NRCD 323 provides *“except as 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”.* This has always been the position of the law. Also in the case **Faibi vs. State Hotels Ltd [1968] GLR 411,** it has been held that the onus in law lay on the party

who would lose if no evidence were led in the case and where some evidence were led, it lay on the one who would lose if no further evidence were led.

- i. **Issue 2 & 3** – Whether or not House No. 3691, Bubuashie, Accra was jointly acquired by the Plaintiff and Hajia Fatima Williams (deceased) and, if so, whether upon her death intestate her portion devolves unto any of the defendants; alternatively,
- ii. Whether or not House No. 3691, Bubuashie formed part of the intestate estate of Hajia Fatima Williams (deceased);

Plaintiff's evidence on oath is that on 4/12/1959 he acquired a land at Bubiashie and built the house in dispute. According to him he was then called Evelyn Showumi Class-peter Williams but changed his name to Abdulah Showumi Williams following a change in religion and a declaration sworn on 15/5/1986. Plaintiff tendered in evidence as exhibit A and B the statutory declaration of change of name and a lease dated 4/12/1959 between Nii Akraha II Asere Mantse Division of Accra and Evelyn Showumi Class-Peter Williams. He denied building the subject matter with his deceased wife.

2<sup>nd</sup> Defendant gave her full and actual name as Alimatu Offeibea Amu and testified that the property in dispute formed part of the estate of the deceased. Under cross-examination however, 2<sup>nd</sup> Defendant admitted that she moved into the property in dispute for less than two (2) months before the deceased passed on. She stated that it was the deceased who informed her the house belonged to her and admitted not having any personal knowledge about the acquisition of the property.

Emmanuel Kotei Armon, the lawful attorney of the Co-Defendants who are children of the late Hajia Fatima Williams and Plaintiff herein and administratrix of the estate of the late Hajia Fatima Williams testified on their behalf as DW1. According to the lawful attorney, the house in dispute was acquired by the deceased whilst married to Plaintiff and lived in same peacefully from 1997 until 2012 when Plaintiff filed to divorce the deceased at the High Court Accra in suit number BMIC/59/2012 titled Alhaji Abdulai Kwame Showumi Williams vrs Fatima Kwatiokor Williams. He stated that the deceased cross-petitioned in that suit. In the course of the trial, parties agreed that the marriage be dissolved and the property in dispute be settled on the deceased for her lifetime with a reversionary interest to their children. He stated that Plaintiff and his lawyers duly signed their column of the terms of agreement on 13/2/2019 awaiting the signing of same by the deceased and her husband. Unfortunately, the deceased died on the 23/2/2019. A year after, Plaintiff rekindled his desire to claim the disputed house for his new wife and was opposed by the children of the deceased. He further stated that Plaintiff instituted this action when his attempts to attempts to recover the property through Rent Control. He contended that the property therefore formed part of the estate of the deceased and the defendants are lawful licenses. Under cross-examination however, he could not tell the court to the best of his knowledge how the deceased acquired the house since his evidence was what the deceased had told him. . He insisted that the deceased told him in 2012 that the house belonged to her and same had been vested in her upon the dissolution of the marriage. Copies of the Power of Attorney, letters of administration in respect if the estate of the deceased granted to

the Co-defendants herein, Response and cross-petition in suit No BMIC/59/2012, terms of settlement signed by Plaintiff herein and rent control summons were tendered in evidence by Dw1 as exhibit 1, 2, 3, 4 and 5 respectively.

The principle, as stated in the case of Zabrama vs Segbedzi [1991] 2 GLR 221 per incuriam 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”. Hence, where a party makes an averment and same is denied he is unlikely to be held by the court to have sufficiently proved that averment by his merely going into the witness box and repeating the averment on oath if he does not adduce that corroborative evidence which (if his evidence be true) is certain to exist. See also the cases of Manu vrs Nsiah [2005/06] SCGLR 25 and Yarkwa vrs Ansah [1992-93] GBR 278 @ 282 per Brobbey J.A. (as he then was).

Proof entails no more than credible evidence of a fact in issue. It did not matter that the evidence was given by one or several witnesses. The important thing was the quality of the evidence. See the case of Akrofi vs Oteng & Anor [1998] 2GLR 224.

Both 2<sup>nd</sup> Defendant and lawful attorney of Co-Defendants admit that they have no personal knowledge about the acquisition of the property in dispute and that their evidence on oath are what the deceased told them. The court has carefully considered the principle in the case of Kusi & Kusi vs Bonsu [2010] SCGLR 60, which is to the



effect that to charges or claims made against dead persons should be viewed with suspicion and care. At page 82 of the case, the court per the majority decision stated as “Fundamentally, the authorities do not lay down any intractable rule of law that charges or claims against a dead person cannot succeed without corroboration. To the contrary, the discernible principle is that a court can proceed on uncorroborated evidence if satisfied about its truthfulness. The only rider or caution is that the court must examine the evidence critically, with utmost care, weighing or sifting it thoroughly to ensure that there are no loopholes or that the charge or claim does not suffer from any absurdities or the like. A Judge in receipt of uncorroborated evidence consisting in the main charges against a deceased person does not swallow the story lock stock and barrel, but first views it from a suspicious stand point. If the story as presented is neither incongruous, the judge may proceed to give it the weight it deserves. The exercise relates to the cogency or the weight to be attached to the evidence given. In this regard, the question of the credibility of a witness is critical to a determination of the cogency issue...”. (Emphasis is mine)

In this instance case, although the deceased in exhibit C her answer to petitioner and cross-petition to the High Court contended that she acquired the property in dispute, exhibit c is an unsworn document and the maker of same unavailable to be subjected to cross-examination for the truthfulness or otherwise of the contents of exhibit C to be ascertained. On the other hand, Plaintiff’s evidence on oath that he acquired the land

on which the house in dispute is situated and built the said house was not challenged under cross-examination. It therefore amounts to same being admitted by the Defendants herein. Exhibits A and B series further establishes that Plaintiff formerly bearing the name Evelyn Showumi Class-Peter Williams as far back as 1959 acquired the land on which the subject matter in dispute is situate. Apaloo JSC (as he then was) allowing the appeal in the case of Osei & Anor vs Domfeh [1965] GLR 418-442 quoting the dicta of Ollennu J. (as he then was) in Tsrifo vs Dua III [1959] GLR 63 @ 64-66 stated the principle as follows:

*“... A court ought not to accept the uncorroborated version in preference to the corroborated one, unless for some good reason (which must appear on the face of judgment) the court finds the corroborated version incredible or impossible”.*

Supreme Court per Brobbey JSC in the case of Tonado Enterprises & Others vs Chou Sen Lin [2007/2008] SCGLR 135 re-emphasized the principle that *“where the evidence of a party remains uncorroborated but that of his opponent is corroborated even by the witness of his opponent, the Court ought not to accept the uncorroborated version in preference to the corroborated one”*. See also the cases of Agyeiwa vs P & T corporation [2007/08] SCGLR 985 and Asante vs Bogyabi [1966] GLR 232, SC.

Defendants from the record appear not to know detail about the acquisition of the property in dispute. They claim the property in dispute as acquired by the deceased but in another breathe DW1 claim same was a jointly acquired property of the deceased and the Plaintiff and further claim the property to be vested in the deceased in the course of the divorce proceedings at the High Court. The evidence of Defendants in respect of the ownership of the property in dispute is therefore inconsistent and contradictory Plaintiff's evidence however is corroborated by exhibit A and B respectively. The court therefore finds on the preponderance of probability that the property in dispute was acquired by the Plaintiff herein and same not a self-acquired or jointly acquired property of the deceased Hajia Fatima Williams and Plaintiff.

**Whether or not a valid terms of settlement exists between the Plaintiff and Hajia Fatima Williams over House No. 3691, Bubuashie;**

Defendants as part of their case contended that in the course of the petition for divorce filed at the High Court by and prior to the death of the deceased, parties agreed for the house in dispute to be settled on the deceased for life and thereafter same reverts to the children of the deceased and Plaintiff. The said terms were signed by Plaintiff and his lawyer awaiting the signing of same by the deceased but she unfortunately died before she could sign same. Defendants therefore contends that the house forms part of the estate of the deceased and as lawful licensees and Administratrix of the estate of the deceased, they have a beneficiary interest in the property.

Plaintiff does not deny entering into an agreement with the deceased for the house in dispute to be settled on her for lifetime and reversionary interest in their children. He stated that he did so upon the advise of the court and his counsel but was fortunate that the said agreement could not be signed by the deceased before she passed on. He therefore challenged the validity or binding nature of the said agreement. Exhibit 3 is the said terms of settlement that was partially executed i.e same is signed by Plaintiff herein and his counsel only with the column of the deceased an her counsel blank.

A settlement agreement like any other contract is of no use to a party intending to enforce it unless it is valid. The validity of the Settlement Agreement include the basic elements of a contract. Since settlement agreement is a different type of contract which involves disputes which are already pending in a court of law, Parties mutual consent or approval of the terms of settlement in the form of his signature or seal is a mandatory requirement for the adoption of the said terms of settlement in respect of the suit. Plaintiff herein and his counsel duly executed Exhibit 3. Until the execution of the said terms by the deceased and or her counsel, the said terms of settlement remained an offer. The execution of exhibit 3 by the deceased and or her counsel would have amounted to acceptance of the said terms of settlement. Unfortunately the deceased passed on before she or her counsel could execute the terms for same to be a legal defendants. The court therefore finds that there's no valid terms of settlement between document. Exhibit 3 therefore is not legally binding document as claimed by the Plaintiff and deceased.

**Whether or not the 1st and 2nd Defendants have any beneficial interest in the property, subject matter of dispute, to enable them live in it**

Plaintiff as part of the reliefs sought from the court prays the court for the ejection of Defendants from the house in dispute and yielding of vacant possession to him. From the analysis supra, Defendant have no legal or beneficial title to the property in dispute. It is not in dispute that only 2<sup>nd</sup> Defendant is in occupation of the house in dispute. It is further not in dispute that the sole purpose of 2<sup>nd</sup> Defendant moving into the house was to take care of the late Hajia Fatima and upon the death of the deceased, 2<sup>nd</sup> Defendant's deriving her license for being living in the house from the Co-defendants. A licensee's licence is subject to the consent of whoever has legal authority over the house. And the permit or license can be revoked at any time subject to reasonable notice by the licensor or any person with legal authority over the property. See.

**HORSEY ESTATE LTD V STEIGER [1899] 2 QB 79.**

2<sup>nd</sup> Defendant's license to occupying the house was granted by Co-Defendants whom per the findings of the court supra have no legal or beneficial interest in the property on dispute. The court has found and declared Plaintiff as the owner of the property in dispute. Co-Defendant's licence granted to 2<sup>nd</sup> Defendant's to occupy the property terminates upon Plaintiff having been declared the owner of the property. Plaintiff from the evidence on record has on several occasions demanded the vacation of the premises by 2<sup>nd</sup> Defendant. this clearly discloses that 2<sup>nd</sup> Defendant does not have the license and or consent of Plaintiff to occupy the premises.

Plaintiff being the owner or the property in dispute need not assign reasons for the revocation of the license of 2<sup>nd</sup> Defendant to live in the property so long as reasonable notice is given to the licensee 2<sup>nd</sup> Defendant herein of the revocation. The court of appeal in the case of **QUAGRAINE V ADAMS (1981) GLR 599** at page 605 held that **“now licensee is entitled to a reasonable time to remove himself and his property after the license has been revoked. This is so whether the license was gratuitous or contractual”**.

Per the record, 2<sup>nd</sup> Defendant and co-Defendants have been put on notice by Plaintiff to vacate the premises prior to the filing of this suit on 19/5/2021. 2<sup>nd</sup> Defendant and Co - Defendants therefore have had reasonable notice and are liable to be ejected from the house in dispute.

Plaintiff further prayed the court for Mesne profit at GHC500 per mensem (month) with effect from May 2019 to date of vacant possession. From the record, 2<sup>nd</sup> Defendant is in who is in occupation of the property in dispute occupied same as a licensee of Hajia Fatima and subsequently as a licensee of Co-Defendants herein. She has at no point in time occupied the premises as a tenant subject to the payment of rent. Her licence to occupy the premises also terminated upon the court's pronouncement of Plaintiff as the owner of the property. Plaintiff's claim of mesne profit of GHc500 a month from 2<sup>nd</sup> Defendant and co -Defendants therefore is unfounded and same dismissed.

Accordingly judgment is entered in favour of Plaintiff against the Defendants as follows;

1. Defendants herein are ordered to vacate the house in dispute i.e House No 3691/18, Bubiashie Accra.
2. Defendants are to vacate and yield vacant possession of the property to Plaintiff herein within one (1) month from date of judgment.

Considering the relationship between the plaintiff and Co- Defendants herein i.e father and children respectively, the court with intention of preventing or deepening the already visible cracks in the family Shall award no cost in this matter. Accordingly there shall be no order as to cost.

**Parties absent.**

**MR LAMBERT KERIBA FOR PLAINTIFF PRESENT**

**MR FOSRTER OWUSU FOR DEFENDANT ABSENT**

**(SGD)**

**H/H AFIA OWUSUAA APPIAH (MRS.)  
CIRCUIT JUDGE**