

**IN THE CIRCUIT COURT '3' HELD AT ACCRA ON THURSDAY THE 20<sup>TH</sup> DAY OF  
APRIL, 2023 A. D. BEFORE HER HONOUR SUSANA EDUFUL CIRCUIT JUDGE**

**CASE NO. C8/22/2021**

**1. HENRIETTA TANDOH**

**PLAINTIFFS**

**2. ISABELA TANDOH**

**VRS**

**ISSAH AMIDU**

**DEFENDANT**

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**JUDGMENT**

In the Writ of Summons and Statement of Claim filed in July 22 2021 by the Plaintiff  
claimed the following reliefs:

- i. Recovery of Possession of Room 2 Block 2 Dansoman SSNIT Flat Accra
- ii. An Order for perpetual injunction restraining the Defendant and his agent's,  
servants and assigns from ever interfering with Plaintiffs enjoyment of the  
said property.
- iii. Damages for trespass
- iv. Award of cost.

The Defendant contested and denied the claim of Plaintiffs and stated that the Plaintiffs are not entitled to her claim. The Defendant filed a counterclaim as well. The Defendant failed to appear in court at trial even though he was duly notified. The court struck out the Defendants statement of defence and counterclaim as well as his witness statement under order 36 rule (1) (2) of C.I 47 (High Court) Civil Procedure Rules.

### **PLAINTIFF'S CASE**

The 1st Plaintiff testified for herself and on behalf of the 2nd Plaintiff. The Plaintiff's case is that the Defendant introduced himself to the Plaintiffs that his late mother was the Plaintiffs cousin and also informed the Plaintiffs that he is a business man who shuttles between abroad and Ghana. After the death of their sister Winifred, the Defendant complained to Plaintiffs that whenever he is in Accra he has nowhere to lay his head. Based on this the 1st Plaintiff in 2012 sent Defendant to the apartment which is the subject matter of dispute in this suit. According to 1st Plaintiff, when Winifred was alive she was living in the apartment and so some of Winifred's belongings were in the apartment at the time she handed to the Defendant the keys to the apartment. The 1st Plaintiff made Defendant aware that he was to occupy the apartment temporally. The Defendant returned abroad and informed the Plaintiffs he was getting married therefore directed the Plaintiffs to remove their sister's belongings from the apartment so that the apartment will be available for him. The Defendant got married in 2014. In January 2017, the 1st Plaintiff gave

Defendant four months' notice to vacate the premises. The Defendant informed the 1st Plaintiff in June 2017 that he would not vacate the premises because the apartment was now for him. This is because the Plaintiffs' sister Winifred had gifted the apartment to him. This is therefore the basis for the Plaintiffs action in court.

### **ISSUES FOR DETERMINATION**

The pertinent issues for determination are set out in the application for directions filed. The issues set out for determination by the parties and adopted by the court at the close of pleadings were as follows:

- i. Whether or not the Defendant is a member of the Plaintiffs family.
- ii. Whether or not the Plaintiffs obtained letters of administration in respect to the estate of their sister the late Winifred Esi Yamoah.
- iii. Whether or not the Plaintiffs permitted the Defendants to occupy the said Dansoman SSNIT Flat for a short time.
- iv. Whether or not the late Winifred Esi Yamoah ever owned property at Adenta.
- v. Whether or not the said apartment was ever gifted to Defendant.
- vi. Any other issues arising out of the pleadings.

## **BURDEN OF PROOF**

The general position of the law is that the party who assert must prove. Sections 11, 12 and 14 of the Evidence Act, NRCD 323 is clear on the respective burdens assumed by the parties in a civil suit. In this regard Dr. S. Twum, JSC noted in the case of **BAKER-WOODE v NANA FITZ** [2007-2008] SCGLR 879 that:

*'the common law has always followed the common sense approach that the burden of persuasion on proving all facts essential to any claim lies on whoever is making the claim'*

The Supreme Court had earlier reiterated this principle in the case of **ABABIO v AKWASI III** [1994-95] GBR 774 where the court noted as follows:

*"a party whose pleadings raised an issue essential to the success of his case assumed the burden of proving such issue. The burden only shifted to the defendant when the plaintiff has adduced evidence to establish the claim"*

In this regard, the Plaintiffs have the burden to discharge the burden cast on them. They adduce sufficient evidence on any of the issues raised to avoid a ruling against him. The standard of the burden is one of preponderance of probability.

**EVIDENCE ADDUCED AND DETERMINATION OF THE ISSUES Whether or not the Defendant is a member of the Plaintiffs family**

What is Plaintiff's evidence on this issue? According to the 1st Plaintiff the Defendant introduced himself to them that his late mother was the Plaintiff's cousin. According to the 1st Plaintiff she met the Defendant for the first time at her late sister's canteen at the Electoral Commission and for the 2nd time at 37 military hospital where Plaintiffs sister the late Winifred was on admission just before she died. It was after the death of the late Winifred that Defendant came to her that he needed a place to live whenever he returned from abroad to Ghana. Based on this request 1st Plaintiff sent Defendant to the SSNIT Flat and handed over the keys to him.

The Plaintiff has not called her head of family to corroborate her evidence. There is no other evidence on record to prove this issue. As the records stand the Plaintiffs have made the above assertion without any proper legal proof. The court can therefore not make a determination on this matter.

**Whether or not the Plaintiffs obtained Letters of Administration in respect to the subject matter in issue.**

The 1st Plaintiff who testified for herself and on behalf of the 2nd Plaintiff, tendered exhibit A which is a Letter of Administration obtained from the Circuit Court Accra dated August 28, 2012.

According to the Plaintiffs exhibit A was granted to them by the Court to administer the estates of the late Winifred Esi Yamoah.

The Plaintiff evidence stand uncontested, the court therefore find that the Plaintiff obtained Letters of Administration to administer the estate of the late Winifred Esi Yamoah.

**Whether or not the Plaintiffs permitted the Defendants to occupy the said Dansoman SSNIT Flat for a short time.**

The 1st Plaintiff stated in her evidence to the court that stated that she was the one who sent the Defendant to the SSNIT Flat Dansoman and handed over the keys to the Flat to him for temporary use.

This piece of evidence from the 1st Plaintiff stands uncontested. Consequently, the court finds that it was the 1st Plaintiff who took the Defendant to the said property (Block 2 of SSNIT Flat) situate in Dansoman and also handed over the keys to the Flat to the Defendant.

**Whether or not the late Winifred Esi Yemoah ever owned property at Adenta.**

The Plaintiffs evidence is that upon the demise of Winifred Esi Yamoah he obtained Letters of Administration to administer her estate. They subsequently took steps to obtain Exhibit B which is an

Assignment between the SSNIT and the Plaintiffs (Henrietta Tandoh and Isabella Tandoh).

The property before the court is at Dansoman and the exhibits refer to the property at Dansoman. The Adenta as stated may be a mistake as it does not relate to the property in issue. The evidence adduced support the property situate at Dansoman however the evidence on record does not show the Plaintiffs' deceased sister Winifred is the owner of subject matter save the assertion made by Plaintiffs which is not contested.

The court can glean from the evidence that the ownership of the subject matter being for the said Winifred is not contested.

**Whether or not the said apartment was ever gifted to Defendant.**

The court finds nothing on record to proof that the Defendant was gifted the property in issue. The court can therefore not make a determination on this issue.

Guided by the principle in the case of **QUAGRAINE v ADAMS** [1966]

GLR 599 that:

*“where a party has given evidence of a material fact and he was not cross examined on the issue he need not call further evidence of that fact”*

And also in the case of **MARTEY v BOTWE** [1989-90] 1 GLR 479 that:

*'where a party's testimony of a material fact was not challenged under cross examination the rule of implied admission for failure to deny by cross examination would be applicable and the party need not call further evidence on that fact'*

I find that the Plaintiffs are entitled to the relief(s) they seek.

### **DECISION**

1. Judgment is entered in favour of the Plaintiffs and against the Defendant.
2. The Plaintiffs are ordered to recover possession of Room 2 Block 2 Dansoman SSNIT Flat Accra from April 30, 2021.
3. The Defendant, his agents, servants, and assigns are accordingly restrained by this court from interfering with the use and enjoyment of the subject property.
4. Cost of GHC1,000.00 is awarded in favour of the Plaintiff

### **LEGAL REPRESENTATION**

**EWURAESI JEFFREY AMOAKO FOR THE PLAINTIFFS**

**(SGD.)**

**H/H SUSANA EDUFUL (MRS)**

**(CIRCUIT COURT JUDGE)**