

IN THE CIRCUIT COURT "A", TEMA, HELD ON THE WEDNESDAY 30TH
DAY OF AUGUST, 2023, BEFORE HER HONOUR AGNES OPOKU-
BARNIEH, CIRCUIT COURT JUDGE

SUIT NO. C11/141/21

NIU YONGJUN ---- PLAINTIFF

VRS.

SOCIAL SECURITY AND NATIONAL INSURANCE TRUST ---- 1ST
DEFENDANT

REBECCA AMA ANSAH ---- 2ND DEFENDANT

PLAINTIFF & 1ST DEFENDANT ABSENT

2ND DEFENDANT PRESENT

WEIQIANG YANG, ESQ. FOR THE PLAINTIFF PRESENT

SELORM AGBLEY, ESQ. FOR THE 1ST DEFENDANT PRESENT

REBECCA AMA ANSAH, ESQ. FOR THE 2ND DEFENDANT PRESENT

JUDGMENT

FACTS

The plaintiff originally caused a Writ of Summons with an accompanying Statement of Claim to be issued against the defendant. Per an order of the Court dated 28th July, 2021, the Court, based on the pleadings, suo motu joined the second defendant as a necessary party to the suit. The Plaintiff, per a consequential order for amendment to the order for joinder, filed an Amended Writ of Summons and Statement of claim on 3rd August, 2021 and claims against the defendants as follows;

- a. An order to revoke the purported sale of Garage No. 58 at SSNIT flats, Community 3, Tema by the first defendant to the second defendant.
- b. An Order of specific performance directed at the 1st defendant to effect a change of ownership of Garage No. 58 at SSNIT Flats, Community 3, Tema to the plaintiff.
- c. An order for recovery of possession of Garage No. 58, SSNIT Flats, Community 3, Tema.
- d. General damages
- e. Costs including legal costs.
- f. Any other reliefs as this Honourable Court may deem fit.

THE PLAINTIFF'S CASE

The plaintiff in his statement of claim states that he is a Chinese businessman resident in Ghana and describes the first defendant as an agency of the government of Ghana administering the National Pension Scheme. The 2nd defendant is also a Ghanaian residing in the adjoining flat next to the Plaintiff's flat in Tema. The plaintiff avers that the 1st defendant developed an estate of flats at Community 3, Tema known as SSNIT Flats, Site A, together with a number of garages attached to some of the apartments. The plaintiff avers that on 15th December, 2003, the first defendant sold Flats *No. C3/BLK.13A/1A* to one Mr. John Ekpor Yamson. The plaintiff further avers that based on the sale of the *Flat No. C3/BLK.13A/1A*, the first defendant also granted a tenancy of one Garage *No. 58* for use by the then owner, Mr. John Ekpor Yamson.

The plaintiff further avers that on 17th January, 2019, the said Mr. Yamson assigned all his interest in *Flat No. C3/BLK 13A/1A* together with the tenancy

of the *Garage No. 58* to him and that he has since moved into possession of the said flat and garage. According to the plaintiff, the said Mr. John Ekpor Yamson wrote to the 1st defendant, by a letter dated 17th January, 2019 notifying the first defendant of the transfer of his interest in the said property to him. The plaintiff further avers that the 1st defendant therefore wrote to the TDC Development Company, in a letter dated 24th January, 2019 for the site plans and consent to assign him. Further to that, the TDC by a letter dated 23rd June, 2020 issued a formal consent to enable the 1st defendant to process the assignment of the property to the plaintiff. Again, the plaintiff says that the 1st defendant delivered a letter dated 22nd February, 2021 addressed to his assignor, Mr. John Ekpor Yamson, offering the garage for sale at a price of GH¢12,254 payable by instalments.

The plaintiff further claims that as the new owner of the flat and the new occupant of the *Garage No. 58*, he caused his lawyers to respond to the 1st defendant's notice of sale of the garage by a letter dated 24th February, 2021, accepting the offer of the first defendant regarding the sale of the *Garage No. 58* and issued a banker's draft of GH¢12,254 as full payment for the purchase price of the garage. The plaintiff avers that the said acceptance letter and banker's draft of GH¢12,254 were duly received by the first defendant on 9th March, 2021. However, to his utmost dismay, the first defendant by a letter dated 26th May, 2021 wrote to his lawyers withdrawing the offer of sale of *Garage No. 58* previously served on him.

The plaintiff contends that the 1st defendant's purported withdrawal of the offer of sale of the garage is unlawful and in breach of contract which was formed on 9th March 2021 when the offer was accepted and full payment

made. The plaintiff states further that the 1st defendant alleged that it had sold the garage to the 2nd defendant, who had made part payment. The plaintiff therefore states that the purported sale of the garage to the 2nd defendant by the 1st defendant is unlawful and void a ploy to overreach the plaintiff's legitimate interest. The plaintiff avers that if not compelled by the Honourable Court, the first defendant would not abide by the terms of the contract and sell the Garage No. 58 to him.

THE 1ST DEFENDANT'S CASE

The 1st defendant in its amended Statement of Defence denies the claim of the plaintiff and states that the tenancy of the garage in question was granted to Mr. John Yamson based on his occupation of his flat as staff of the United Nations Information Centre (UNIC). According to the 1st defendant, in the 1980's, it put up blocks of flats to be rented to SSNIT contributors through their employers. The UNIC was allocated two flats numbered *C3/BLKA13/A/01A* occupied by Mr. John Yamson and *C3/BLKA10/A/01B* occupied by the 2nd defendant herein. The institution was however allocated only one garage i.e., the garage in dispute due to the limited number of garages. The garage was originally assigned to flat number *C3/BLKA13/A/01A* which was occupied by Mr. John Ekpor Yamson. In the 1990's when the first defendant offered the flats for sale to the sitting tenants, both Mr. Yamson and the 2nd defendant applied for, and bought their respective flats. The garages, including garage number 58, however remained on rental, on monthly basis, in the name of the institutions.

The 1st defendant says further that Mr. Yamson was therefore in occupation of the garage in dispute as an institutional monthly tenant. The said Mr. John

Ekpor Yamson, after assigning his interest in Flat number *C3/BLKA13/A/01A* to the plaintiff, then transferred Garage number 58 to his former colleague, the 2nd defendant who has since paid the associated rent till date. The first defendant states further that in any event, as a monthly tenant, Mr. John Ekpor Yamson had no assignable interest in the garage to transfer to the plaintiff. According to the 1st defendant, the letter sent out was not an offer for sale but rather a notice of sale of garage as clearly stated on the letter. However, the plaintiff purported to accept what was erroneously construed to be an offer and says further that the plaintiff neither occupied, nor was in possession of the garage. The 1st defendant says that indeed the garage has been sold to the 2nd defendant the true occupant of the garage in question and that the plaintiff is misguided in his claim and is not entitled to any of the reliefs prayed for.

THE 2ND DEFENDANT'S CASE

The 2nd defendant on her part states that the garages were rented separately from the flats although they were attached to some of the flats and that the 1st defendant only sold the Flat No. *C3/BLKA13/4/01A* to Mr. John Ekpor Yamson but did not grant tenancy in *Garage No. 58* to him. The 2nd defendant says that prior to 2002, the 1st defendant rented out its flats to companies and individuals including garages attached to some of the flats separately. The 2nd defendant further says that Flat No. *C3/BLKA13/4/01A* which the plaintiff occupies presently and Flat No. *C3/BLKA10/4/01B*, which she occupies in addition to Garage No. 58 was originally rented to United Nations Information Centre who were their employer who then gave them to plaintiff's grantor Mr. John Ekpor Yamson and herself as service occupants. However, their employer rented garage No. 58 separately to be used by their staff. The 2nd defendant says that somewhere around 2002, the 1st defendant

offered only the flats for sale to interested tenants including their employer and because the plaintiff's grantor and herself were occupying the flats, their employer offered it to them and they bought it. However, tenancy in the garage remained with their employer. According to the 2nd defendant, the plaintiff's grantor who occupied the garage before he transferred his interest did not grant tenancy in garage No. 58 to the plaintiff but rather gave it to her since it was for their employer. The 2nd defendant maintains that the plaintiff's grantor did not and could not have transferred the garage which is in the name of UNIC to the plaintiff.

The 2nd defendant further says that when the plaintiff's grantor relinquished his interest in the flat, she took possession of the garage and continued to pay rent in the name of UNIC until the 1st defendant offered the garage for sale. The 2nd defendant says that she has been using the garage for parking since plaintiff's grantor assigned his interest in the flat. The 1st defendant wrote an offer letter to all tenants using their garages and offering them for sale including Garage No. 58. The 1st defendant wrote to her offering her the first option to buy garage as a sitting tenant and she accepted the offer and paid an amount GH¢9,000 out of the selling price of GH¢12,254. The 2nd defendant maintains that the plaintiff has never been in possession of garage and only got to know after he received the notice of sale.

At the application for directions stage, the court set down the following issues for trial.

LEGAL ISSUES

1. Whether or not Garage No. 58 was attached to flat No. C3/BLK 13A/1A at the time when the plaintiff bought the said flat from his grantor (Mr. John Ekpor Yamson).
2. Whether or not the notice for sale letter of the 1st defendant dated 22nd February, 2021 for sale of Garage 58 constitutes a valid offer or an invitation to treat.
3. Whether or not the Plaintiff's acceptance letter dated 24th February, 2021 and received by the 1st defendant in addition to a Banker's Draft of GH¢12,254 as full payment of No. Garage 58 on 9th March, 2021 constitutes a valid acceptance of the first defendant's offer.
4. Whether or not a valid and enforceable contract was formed after the Plaintiff's acceptance of the 1st defendant's offer of sale of Garage No. 58.
5. Whether or not the 1st defendant's purported withdrawal of its offer to the plaintiff after the said offer was accepted, was valid.
6. Whether or not the validly formed contract by virtue of the Plaintiff's acceptance of the 1st defendant's offer vitiates and renders null and void the subsequent purported sale of the Garage No. 58 by the 1st defendant to the 2nd defendant.
7. Whether or not plaintiff's grantor (Mr. Yamson) has the right to transfer Garage No. 58 to the 2nd defendant after assigning his interest in the Flat No. C3/BLK 13/1A to the plaintiff.
8. Whether or not the Plaintiff's grantor (Mr. Yamson) transferred Garage No. 58 to the 2nd defendant.

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 he or she is able, through the witnesses 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 defendants to court bears the burden to prove his case on a balance of probabilities for a favourable verdict failing which his claim will be dismissed.

ANALYSIS

ISSUE 1: Whether or not Garage No. 58 was attached to flat No. C3/BLK 13A/1A at the time the plaintiff bought the said flat from his grantor (Mr. John Ekpor Yamson).

On this issue, the plaintiff testified that on 15th December, 2003, the 1st defendant sold Flat No. C3/BLK.13A/1A to one Mr. John Ekpor Yamson. Subsequent to that, on 17th January, 2019, the said Mr. Yamson sold all his interest and rights in Flat No. C3/BLK 13A/1A together with the tenancy of *Garage No. 58* to him and he has since taken possession of the said Flat and placed a padlock on the gate of garage. The plaintiff testified that by a letter dated 17th July, 2017, the said Mr. Yamson wrote a letter to the 1st defendant who was his grantor at the time to notify the 1st defendant of the transfer of all his interest and rights in respect of the said property to him (the plaintiff). In support, the plaintiff tendered in evidence a copy of the notification of transfer of property letter admitted and marked as **Exhibit "A"**.

Subsequent to that, the 1st defendant wrote to the TDC Development Company Ltd. (TDC), in a letter dated 24th January, 2019 for the site plans and consent to assign the *Flat No. C3/BLK 13A/1A* to him. In support, he tendered

in evidence **Exhibit "B"**. Again, TDC by a letter dated 23rd June, 2020 issued a formal consent to enable the 1st defendant to process the assignment of the property to him. In support, he tendered in evidence **Exhibit "C"**. The plaintiff therefore maintains that the said Mr. John Ekpor Yamson transferred all his interests and rights in both the flat and the garage in issue to him.

The defendants in their defence vehemently deny that the garage was assigned together with the flat to the plaintiff. The 1st defendant's witness, Daniel Dankyi Addo, a staff at the Properties Department of the 1st defendant's Organisation testified that in the late 1980s, the 1st defendant put up blocks of flats for rent across the country and one of such flats was sited at Tema in the Greater Accra Region. According to his testimony, two of such flats were allocated to the United Nations Information Centre (UNIC) as institutional tenant, for the use of its staff. However, due to the limited number of garages, one garage was allocated to the UNIC in Tema. In the 1990s, the flats in Tema were put up for sale but the garages were maintained on rental basis. Therefore, the sitting tenants of the two apartments rented to the UNIC, the plaintiff's grantor, and the 2nd defendant applied and purchased their respective apartments only and that the garage remained in the name of UNIC as the tenant.

The 2nd defendant also testified that she is a retired employee of UNIC where the plaintiff's grantor also worked. According to her testimony, prior to 2002, the 1st defendant rented out its flats to companies and individuals including garages attached to some of the flats separately. *Flat No. C3/BLKA13/4/01A* which the plaintiff occupies presently and *Flat No. C3/BLKA10/A/01B* which she occupies in addition to garage No. 58 was rented out to UNIC by the 1st

defendant who in turn gave the garage to plaintiff's grantor and herself as service occupants. Somewhere around 2002, the 1st defendant offered only the flats for sale to interested tenants including UNIC (their employer) and because plaintiff's grantor and herself were occupying the flats, their employer offered the flats to them and they bought it but the tenancy in the garage still remained with their employer. The 2nd defendant testified that although the garage is close to her flat, her former colleague occupied it until he transferred his interest in the flat to the plaintiff. The 2nd defendant maintains that the flat was not sold together with the garage to the plaintiff.

The grantor of the plaintiff, Mr. John Ekpor Yamson testified in support of the defence of the 2nd defendant that they both occupied their respective flats as workers of UNIC and subsequently, the 1st defendant offered the flats for sale and because they were the occupants of the flats, their employer offered them the opportunity to buy the flats they occupied. However, tenancy of the garage remained with their employer. According to him, their employer rented the garage separately to be used by its staff so he occupied it and paid monthly rent in the name of UNIC until he transferred his interest in his flat to the plaintiff and handed over the garage to the 2nd defendant to use since it belonged to their employer and was originally assigned to both of them. He vehemently denies that he assigned the garage to the plaintiff and states that he only told the plaintiff that he used to occupy the garage but it belongs to their employer and as such, he could not have transferred the garage to the plaintiff.

From the evidence led by the plaintiff and the defence put up by the defendants, the plaintiff's assertion that Mr. John Ekpor Yamson sold the

garage together with the flat to him strains credulity in the face of the documentary evidence tendered by the plaintiff himself and in the face of the corroborative evidence of his own grantor confirming the defence of the defendants and rejecting the plaintiff's assertion. From **Exhibits "A", "B", and "C"**, the property which is the subject-matter of the sale is the flat and nowhere is the transfer of the garage mentioned. The exhibits also do not state that the garage forms part of the sale. In the case of **Benyak Co. Ltd v. Paytell Ltd** [2013-2014] 2 SCGLR 976, the Supreme Court held that:

"Where rival parties claim property as having been granted to each by the same grantor, the evidence of the grantor in favor of one of the parties should incline a court to believe the case of the party in whose favor the grantor gave evidence unless destroyed by the other party." See also the case of **Ogbarmey-Tetteh v. Ogbarmey-Tetteh** [1993-94] 1 GLR 353 (SC).

The defendants' defence is strengthened by the principles enunciated in these cases since even though the 2nd defendant is not claiming through the plaintiff's grantor, the probative value of the testimonies of the defendants is further enhanced by the testimony of the plaintiff's grantor against the case of the plaintiff. The credibility of the plaintiff's grantor's testimony was not impeached since the plaintiff's own documentary evidence regarding the transaction between himself and his grantor confirms the stance of the defendants that the garage was not sold to the plaintiff.

On the totality of the evidence led by the plaintiff and the defence put up by the defendants, I hold that the flat was not sold together with the garage to the plaintiff and that tenancy of the garage at all times material to this case,

remained in the name of UNIC even after the 2nd defendant and the plaintiff's grantor had purchased their respective flats.

ISSUES 2,3,4,5: Offer/ Acceptance/ Withdrawal of Offer

I propose to discuss issues 2, 3, 4, and 5 set down by the court together since they all relate to the offer, acceptance and withdrawal of the offer by the first defendant to the plaintiff.

The general principle is that for a contract to be valid, there must be an offer, acceptance, capacity, consideration and intention to create legal relation. Christine Dowuona-Hammond in her book, **"The Law of Contract in Ghana"** 2011, states that in determining whether the parties have reached an agreement, the courts normally begin by looking out for an offer and a corresponding acceptance. It is noteworthy that not all contracts are formed by a process of a direct offer and an acceptance. The courts have consistently distinguished between an offer and invitation to treat. In the case of **NTHC Ltd. v. Antwi** [2009] SCGLR 117, the Supreme Court distinguished between an offer and invitation to treat when it held in its holding 1 that:

"an offer was an indication in words or by conduct by an offeror that he was prepared to be bound by a contract in the terms expressed in the offer in the event of the offeree communicating to the offeror his acceptance of those terms. Thus, the mere acceptance of an offer would be sufficient to turn the offer into a contract, if there was consideration for it, together with an intention to create a legal relation." Accordingly, the offer had to be definite and final and must not leave significant terms open for further negotiation; and by the words "significant terms" was meant terms that were essential to the bargain contemplated. However, where a communication during negotiations was not the final expression of an alleged offeror's willingness to be bound, it might be interpreted as an invitation to the other party to use it as a basis

for formulating a proposal emanating from him that would be definite enough to qualify as an offer. Thus, the indefinite communication might be what would generate an offer from the other side. An invitation to treat was thus to be distinguished from an offer, on the basis of the proposal's lack of an essential characteristic of an offer, namely, its finality which would give capacity to the offeree to transform the offer into a contract by the mere communication of his assent of its terms."

The plaintiff strenuously contends that the 1st defendant by a letter dated 22nd February, 2021 addressed to his assignor, offered Garage No. 58 for sale at a total sale price of GH¢12, 254 payable by instalments. In support, the plaintiff tendered in evidence **Exhibit "D"**, the alleged offer letter. The plaintiff further maintains that since he is the new owner of the flat, he caused his lawyers to respond to the 1st defendant's notice of sale of the garage and by a letter dated 24th February, 2021, accepted the offer and enclosed a Banker's draft with a value of GH¢12,254 as full payment for the purchase of the garage. In support, the plaintiff tendered in evidence **Exhibit "E"** series evidencing this fact. The plaintiff further states that the 1st defendant acknowledged receipt of this letter and by a letter dated 10th March, 2021, the 1st defendant promised to issue another formal letter in the name of the plaintiff and returned his Banker's draft. In support, the plaintiff tendered the 1st defendant's letter admitted and marked as **Exhibit "F"**. However, to his utter dismay, the first defendant by a letter dated 26th May, 2021 purported to withdraw the offer of sale of garage to him and purported to sell the said it to the 2nd defendant. According to the plaintiff, the actions of the 1st defendant in taking away his garage which he made full payment for and are unfair and unlawful.

The 1st defendant's representative on his part, does not challenge the notice sent the plaintiff's grantor and admits the correspondences between the plaintiff and the 1st defendant regarding the notice sent, the purported acceptance of an offer by the plaintiff, and the withdrawal letter sent to the plaintiff. However, the gravamen of the contention of the 1st defendant is that, the notice was not addressed to the plaintiff but the plaintiff's grantor and that it was a mere notice of sale and not an offer for the sale of the garage to the plaintiff. According to his testimony, when the plaintiff's grantor and the 2nd defendant purchased their respective flats, the plaintiff's grantor occupied the garage as a monthly tenant. After he sold the apartment, he transferred the garage to the 2nd defendant who has since been in occupation and been paying rent. In the year 2020 when the 1st defendant decided to sell the garage to sitting tenants, the 1st defendant was under the mistaken belief that the plaintiff's grantor was still in occupation of the flat and the garage and sent the notice of sale to his address. According to him, when the plaintiff attached the Banker's draft, the 1st defendant had to return it pending the issue of the formal offer letter. However, before it could issue the formal letter, it received a complaint from the 2nd defendant concerning the sale of the garage which she believed should have been offered to her. She provided evidence of payment of rent for the garage to prove her occupancy of same as evidenced by **Exhibit "4"** series. According to him, investigations conducted by the 1st defendant, including a call to Mr. Yamson, revealed that the 2nd defendant was indeed in possession of the garage, same having been transferred to her by Mr. Yamson after he sold his flat to the plaintiff. A letter was accordingly written to the plaintiff through his lawyer withdrawing the notice of sale and giving reasons for the decision. Subsequent to that, it offered the garage to the 2nd defendant who purchased same. The 1st defendant's witness maintains that the plaintiff wanted to take unfair advantage of the misdirection of the notice to purchase the garage being occupied by the second defendant.

In the letter, tendered as **Exhibit "A"** by the plaintiff and **Exhibit "1"** by the 1st defendant, it is titled "*Notice of Sale of SSNIT Garages-Community 3 SSNIT Flats Tema.*" addressed to Mr. John Yamson (Garage No. 58). The relevant portions of the said letter states that:

"This is to inform you that, the Trust has reviewed the sale of the garage you occupy to GH¢12,254.00. As a sitting tenant, you are being given the first option to buy the garage based on the following terms;

- *You are required to indicate by writing your readiness to purchase the garage by 31st May, 2021 to enable us issue you with a formal offer letter. (Emphasis mine)*
- *Acceptance letter must be received from you within **one month** from the **date of formal offer letter** and the offer is subject to you fulfilling all your outstanding rent obligations., if any..." (Emphasis mine).*

From the notice of sale reproduced above, the sitting tenant described as Mr. Yamson, was required to indicate in writing his readiness to purchase the garage by 31st May, 2021 to enable the 1st defendant issue a formal offer letter. Also, after a formal offer letter is issued, the sitting tenant is required to accept the terms of the offer letter in writing within one month from the date of issue of the formal offer letter. This explains why when the plaintiff caused his solicitors to write to the 1st defendant accepting the offer stating that he is in possession of the flat and attached a Banker's draft being full payment as stated in **Exhibits "E" and "E1"**, the 1st defendant in **Exhibit "F"**, prompted the plaintiff's solicitors that the next stage for the sale of the garage is for the 1st defendant to issue a formal offer letter before payment. This condition is clearly stipulated in the notice of sale. The position of the 1st defendant that

before issuing the offer letter, it received a complaint from the 2nd defendant indicating that it was the 2nd defendant who was in possession of the garage and has been paying rent in the name of their former employer UNIC as evidenced in **Exhibit "4" series**. Thus, in **Exhibit "5"**, it informed the lawyers of the plaintiff that their investigations revealed that another tenant was in occupation of the garage since when grantor of the plaintiff left the employment of UNIC, the garage was transferred to the second defendant who has honoured all her obligation. Thus, **Exhibit "6"**, the formal offer letter issued to the 2nd defendant by the 1st defendant is more definite and without any doubt that upon acceptance the 1st defendant would be bound.

The notice of sale is therefore an invitation to treat and the plaintiff by accepting the terms of the notice did not amount to a valid acceptance of an offer of sale of Garage No 58. The plaintiff has also not demonstrated that the garage was sold to him or that he was in possession. The plaintiff admitted under cross-examination that he has never been in possession of the property though he states that he put padlock on the property.

Also, assuming, without admitting that it was an offer, the offer was addressed to Mr. John Ekpor Yamson and not the plaintiff. In the case of **Boulton v. Jones** (1857) E.R 232; 6 W.R.107 193, where Jones sent an order for the supply of goods specifically addressed to a shop owner named Brocklehurst at a time that Brocklehurst had transferred ownership of the store to Boulton, who decided to respond to the request for goods by supplying the requested goods. Jones had intended to offset the cost of the goods with a debt owed him by Broklehurst and refused to pay Boulton when he demanded payment for the supplied goods. The issue for the consideration

of the court was whether the defendant in that case was liable to pay the claimant the price of the goods supplied. The court held that since Jones had intended to transact with Brocklehurst, there was no contract formed between the parties.

In the instant case, the 1st defendant was under the mistaken belief that the sitting tenant was Mr. Ekow Yamson. Thus, at the time the plaintiff received the notice, and purported to accept the alleged offer, he was not the sitting tenant. The 1st defendant did not intend to contract with the plaintiff but rather the sitting tenant. The formal offer letter issued to the 2nd defendant is different in form and substance from the notice of sale relied on by the plaintiff which confirms that it was a mere notice of sale and not a definite offer of the garage for sale. I therefore hold that there was no offer to the plaintiff and thus, no valid acceptance which constitutes a valid contract binding on the 1st defendant.

ISSUE 6: Whether or not the validly formed contract by virtue of the Plaintiff's acceptance of the first defendant's offer vitiates and renders null and void the subsequent purported sale of the Garage No. 58 by the first defendant to the 2nd defendant.

The court has found from the preceding analysis that no valid contract was formed between the plaintiff and the 1st defendant. The 1st defendant never made an offer to the plaintiff. The evidence shows that at all times the garage was rented to the employers of the 2nd defendant and the plaintiff's assignor, and that at the time the notices were issued and addressed to the 2nd defendant's colleague, it was the 2nd defendant who was in possession of the

garage and had been paying rent in the name of UNIC. When the notice of sale to the plaintiff's Assignor was withdrawn, the 2nd defendant properly wrote to the first defendant as per **Exhibit "6a" and "6b"** expressing her readiness to purchase the garage. The 1st defendant issued a formal offer letter dated 7th June 2021 embodying all the terms of a valid contract and the 2nd defendant in **Exhibit "3"** tendered by the first defendant. accepted the formal offer of the sale of Garage No. 58 and has made part-payment. Thus, there is a valid subsisting sale of garage agreement between the first defendant and the second defendant.

ISSUE 7& 8: Whether or not plaintiff's grantor (Mr. Yamson) has the right to transfer Garage No. 58 to the second defendant after assigning his interest in the Flat No. C3/BLK 13/A/1A to the plaintiff / Whether or not the Plaintiff's grantor (Mr. Yamson) transferred Garage No 58 to the second defendant.

The plaintiff's grantor testified in support of the 2nd defendant's defence and consistently maintained that he was not the owner of the garage in dispute and that their employer originally was allocated the two flats with one garage assigned to the flats. According to his testimony, all along, he used the garage and that when he sold his interest in the flat, he gave the garage to the 2nd defendant to also use since UNIC was the tenant in whose name he was using the garage. According to him, the garage did not form part of his block and it was meant for the use of both blocks which he had enjoyed for a long time. Hence, when he was leaving, he had to pass it to the 2nd defendant because the garage was in the name of UNIC and he could not have sold it to the plaintiff. Thus, on the evidence, the garage did not belong to the plaintiff's grantor. It was assigned to him and the 2nd defendant. Thus, Mr. Ekpor Yamson rightfully handed over the property which was still in the name of

UNIC to the 2nd defendant who took possession and paid rents in the name of UNIC.

CONCLUSION

In conclusion, I hold that the plaintiff failed to prove his case on a balance of probabilities against the defendants to entitle him to the reliefs endorsed on the writ of summons. I accordingly dismiss the claim of the plaintiff against the defendants and enter judgment for the defendants.

COST

It is trite learning that costs always follow the event and the award of costs is at the discretion of the court. However, the court is enjoined to exercise the discretion judiciously. In awarding cost in this case, the court takes into consideration the oral submissions made by Counsel for the plaintiff and Counsel for the defendants who are praying for GH¢20,000 costs for each of the defendants. **Order 74** of the High Court (Civil Procedure) Rules, 2004 (C.I. 47) provides useful guidance on the factors to consider in awarding costs. Thus, to compensate each of the defendants for expenses reasonably incurred in defending the suit in terms of filing fees and reasonable remuneration of the lawyers of the defendants for work done, the travel expenses of the defendants to court, the nature of the case and the length of the trial, I will award costs of Eight Thousand Ghana Cedis (GH¢8,000) in favour of each of the defendants against the plaintiff.

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