IN THE DISTRICT COURT, LA, TRADE FAIR-ACCRA, HELD ON THE 31ST DAY OF MARCH, 2023, BEFORE HIS HONOUR JOJO AMOAH HAGAN SITTING AS AN ADDITIONAL MAGISTRATE

SUIT NO. A9/35/2020

BETWEEN

MRS JULIANA OKOH……PLAINTIFFS
MRS HENRIETTA ABEBRESEH
DR FRANCIS WERNER OFEI
SUING AS THE ADMINISTRATORS OF THE
ESTATE OF VICTORIA GRACE OFEI ALL OF
CANTONMENTS, ACCRA.

AND

STANDARD CHARTERED BANK……DEFENDANT
HIGH STREET, ACCRA.

JUDGMENT

Introduction

1. The Plaintiffs are administrators of the estate of the late Madam Victoria Ofei [the intestate] who had an unexpired term of a fifty-year lease of house number F665/1, Cantonments Road, Osu [the property]. The intestate and her estate represented by the Plaintiffs have been in a landlord-tenant relationship with Defendant in respect of the property since 1995. On 16 October 2013, the parties herein executed a tenancy agreement wherein Plaintiffs let the property to Defendant for a 4-year term certain with an option to renew. The Plaintiffs claimed by their statement of claim filed on 1 June 2021 that upon the expiration of the said term in early 2017, the parties herein renewed the agreement for a further term of two (2) years to expire in December 2019. Defendant denied this allegation and averred that upon the expiration of the tenancy in 2017 the parties renewed the same for a further term of one (1) year to expire on 31 October 2018.

2. Being of the view that the interest of the Plaintiffs in the property expired on 31 October 2018, Defendant attorned tenant to the personal representatives of the headlessor of the property and thus

refused to pay any more rent to the Plaintiffs. Plaintiffs however contend that since their interest in the land subsisted until December 2019 and considering that they entered into an addendum with Defendant in that regard, they prayed for a declaration that Defendant breached the terms of the addendum to the tenancy agreement the parties executed. Plaintiffs further prayed for an order for the recovery of rent arrears in the sum of GHC1,058,182.12 for the period between October 2018 and December 2019 and for an order compelling Defendant to furnish them with all withholding tax certificates for the previous rents paid, and for legal costs.

Issues for trial

3. In their address filed on 2 February 2023 Plaintiffs raised the following issues for the resolution of the Court:

I. whether or not the Plaintiffs' interest in H/No. F665/1,

II. Whether or not the Defendant was required to yield the premises to the Plaintiffs at the end of the tenancy agreement; and

III. whether or not Defendant paid the withholding tax on the rent payable and submitted the withholding tax certificates to the Plaintiffs.

4. Defendant also raised two issues for the Court's resolution:

firstly, whether the Plaintiffs retained a leasehold interest in the property known as F665/1 Cantonments Road, Osu which expired in December 2019, and secondly, whether the Plaintiffs had a formal tenancy agreement with the Defendant for the period for which they are claiming the outstanding or unpaid rent (i.e 1st November 2018 to December 2019). Given that by *Armah v Hydrofoam Estates (GH) LTD [2013-2014] 2 SCGLR 1551, 1560* and *Fatal v Wolley [2013-2014] 2 SCGLR 1070* it is the duty of the trial judge to identify the core issue(s) for trial and pronounce on the same after carefully examining the pleadings and evidence at the trial, I have determined that the issues that arise from the pleadings and evidence put differently are:

I. whether the Plaintiffs had an interest in the property for the period between October 2018 and December 2019;

II. whether the parties executed an addendum wherein the tenancy was renewed for the period of two years commencing from early

2017 to December 2019;

III. whether Defendant breached the terms of the said addendum; IV. whether Defendant breached their covenant to yield vacant

possession upon the expiration of exhibit C [the tenancy

agreement which expired in October 2018]

V. whether Plaintiffs are entitled to recover rent arrears of GHC1,058, 182.12 from Defendant; and

VI. whether Plaintiffs are entitled to withholding tax certificates from Defendant and if they are, whether Defendant supplied Plaintiffs with the said certificates for the year 2016 to 2018.

The burden of persuasion and producing evidence

5. From the nature of the pleadings and the issues above, the Plaintiffs bear both the burden of persuasion and of producing evidence on all the issues except the issue of whether Defendant supplied the Plaintiffs with the said certificates for the year 2016 to 2018. Section 10 of the Evidence Act, 1975 [NRCD 323] defines the burden of persuasion as *'the obligation of a party to establish a requisite degree of belief concerning a fact in the mind of the … Court*' … which may *'require a party to establish the existence or non-*

existence of a fact by a preponderance of the probabilities….' Under section 11 of the Evidence Act, a party establishes the existence or non-existence of a fact by a preponderance of probabilities where to avoid a ruling on the issue against that party, she introduces sufficient evidence which on the *totality of the evidence*, leads a reasonable mind to conclude that the existence of a fact was more probable than its non-existence: see ***In re Wa Na; Issah Bukari (substituted by) Mahama Bukari & Anor v Mahama Bayong & Ors [2013-2014] 2 SCGLR 1590.*** **As the Supreme Court explained in *Takoradi Flour Mills v Samir Faris [2005-2006] SCGLR 882, 883-884,*** cited by Defendant in its address:

> *'It is sufficient to state that…the rules of evidence require that the plaintiff produces sufficient evidence to make out his claim on a preponderance of probabilities. 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 on this premise that I shall proceed to resolve the issues raised herein.

Issue 1—whether Plaintiffs had an interest in the property for the period between October 2018 and December 2019.

6. On this issue, the Plaintiffs submitted that based on the headlease dated 7 December 1959 (Exhibit A1), a tenancy agreement dated 18 October 2017 (Exhibit C), a letter dated 9 December 2009 (Exhibit D3, and a record or communication between the parties via email (Exhibit 9) they had established the irrefutable fact that their interest was to expire in 2019. According to the Plaintiffs Exhibit A1 granted a 50-year lease with an option to renew for 10 years certain.

They submitted further that Defendant did not deny the Plaintiffs' option to renew the lease which was duly exercised by Plaintiffs and recognised by Defendant. This they believed constituted an admission of fact that discharged them of their burden of proving that they renewed the lease for a further 10-year period considering that in *Okudzeto Ablakwa (No.2) v Attorney General & Anor [2012] 2 SCGLR 854 and Darko v Ofei [2018-2019] 1 GLR 165* (both cited by Plaintiffs), the Supreme Court thought that the admission by a party of a fact beneficial to his opponent constituted better evidence to be relied

upon by the said opponent to establish that admitted fact. Having admitted that the headlease was renewed, it stood to reason, in the estimation of the Plaintiffs, that the interest of the Plaintiffs in the property started in 1959 and determined in 2019.

7. Plaintiffs argued further that since by a letter dated 9 December

2009 (Exhibit 3), they notified Defendant that their interest would expire in 2019, and subsequently entered into a series of tenancy agreements with Defendant from 2009 Plaintiffs had confirmed that their title in the property would be valid until 2019. Therefore, relying on section 27 of the Evidence Act Defendant was estopped from denying their title and interest in the property. The defendant could
not thus claim that the Plaintiffs' interest expired in 2018.

8. Another source of proof presented by the Plaintiffs in support of their interest in the property for 2019 was their letter to Defendant dated 14 August 2017 (Exhibit D). In the said letter, the Plaintiffs informed Defendant of their intention to renew the tenancy for one more year. Notwithstanding that this letter preceded the letter from the headlessors (Exhibit 5) Defendant claimed that the said letter was essential to its decision to unilaterally terminate the tenancy

agreement it had with Plaintiffs. In the opinion of the Plaintiffs, "[i]f the Defendant truly believed the Plaintiffs' interest was bound by Exhibit 3A (lease dated 20th October 1958) and not Exhibit A1 (lease Agreement dated 7th December 1959), then it would not have entered into the Tenancy Agreement dated 18th October 2017 (Exhibit C) expiring on 31st October 2018 with an option to renew for another year as same would have run contrary to the alleged information it had on its records and any due diligence it would have carried."

9. Plaintiffs averred that because at all material times, they had represented to Defendant that their interest in the premises in question would expire in 2019, and since Defendant transacted with them on that basis, a conclusive presumption was raised against Defendant because it knew and recognised Plaintiffs' interest would expire in 2019.

10. Defendant took a different view of the matter altogether.

Defendant argued that it was the Plaintiffs' burden to establish that they "retained a leasehold interest in the property … which expired in December 2019." Defendant submitted on this issue that the Plaintiffs failed to lead evidence [especially regarding a Court of Appeal decision they claimed confirmed their interest would expire in 2019] to

establish their root of interest in the property which entitled them to a ten-year extension to determine in 2019. A fortiori, first Plaintiff admitted that the intestate's name did not appear on the 1959 lease from which Plaintiffs purported to derive their interest. Defendant on the other hand presented evidence of the Plaintiffs' root of interest through the 1958 lease and did establish that the intestate was an assignee of the property.

11. Defendant submitted further that the evidence on record demonstrated that the first Plaintiff gave evidence which conflicted with her depositions contained in an affidavit in support of a motion for interlocutory injunction and a statement of case filed in 2014 to restrain the headlessors from forfeiting the lease granted Plaintiffs. It is the case of Defendant that since the said processes were tendered without objection and were not subjected to cross-examination by Plaintiffs, Plaintiffs were deemed to have admitted their content on the authority of *Hammond v Amua [1991] 1 GLR 89-93.* Defendant urged the Court to take judicial notice of the said processes and the firm assertion by first Plaintiff in the said processes that they derived their interest in the property from the headlease dated 20 October 1958.

12. Additionally, Defendant drew the attention of the Court to the orders of this Court wherein I ordered Plaintiffs to file a court order counsel for Plaintiff referred to in an email to Defendant claiming the said court order protected and preserved the possessory rights of Plaintiffs until the final determination of presumably the 2011 suit referred above. According to Defendant, the Plaintiffs did not file the said order but informed the court the said order was the same as exhibits 10A and 10B which were tendered by Defendant's witness. As

it turned out, according to Defendant, both exhibits were rulings based on suits initiated by the headlessors to enforce rights contained in the headlease dated 1958.

13. My view of the case is that the pleadings of the Plaintiffs were more particularly centred on the alleged addendum entered into between the parties, the alleged rent arrears due, and the issue regarding the withholding tax certificates. In her witness statement filed on 24 September 2021, however, the first Plaintiff testifying for herself and on behalf of the second and third Plaintiffs indicated that the intestate acquired a lease of the parcel of land and the premises situated thereon [the subject matter of the suit] through a headlease dated 7 December 1959. Despite not mentioning the duration of the lease, she indicated that the lease was subject to renewal for a further

term of ten years certain to determine in 2019. The first Plaintiff tendered a copy of the said lease in evidence and the same was admitted as exhibit A. During cross-examination, however, it became apparent that exhibit A could not have been the document the first Plaintiff had referred to as the 7 December 1959 headlease. Counsel for Defendant brought this to the Court's attention. The Plaintiffs therefore by a supplementary witness statement filed on 1 September 2022 tendered a headlease dated 7 December 1959 and the same was admitted as exhibit A1.

14. Defendant's case from its pleadings, however, was that it had concerns with Plaintiff's interest under the headlease which interest was to expire in October, 2o18. This concern was based on documents in the possession of Defendant and documentary evidence in the form of an affidavit deposed and sworn to by the first Plaintiff in 2014 in support of a motion for an order of interlocutory injunction against the headlessors. In the said affidavit, the first Plaintiff was said to have

averred that having paid a sum of money equivalent to 10 years' rent in advance in accordance with the headlease dated 20 October 1958, the headlessors should be restrained from interfering with their quiet enjoyment of the property.

15. Testifying for Defendant, Mr Stephen Asare, Head of Property of Defendant tendered a lease dated October 1958 in evidence. To clarify its concerns regarding the interest of the Plaintiffs in the premises beyond October 2018, Defendant took a one (1) year term from 23

October 2017 to 22 October 2018 despite the Plaintiffs' allusion to the existence of a headlease by a letter dated 14 August 2017 [exhibit 4] purportedly granting them an interest which was to expire on 19 December 2019. The reason for the one-year term, as explained by the Defendant's witness, was that there was a discrepancy between exhibit 3A [being the lease dated 20 October 1958] which Plaintiffs had presented and relied upon throughout their transactions and exhibit A1 based upon which Plaintiffs were later claiming [by exhibit 4] that their interest in the premises was to expire on 19 December 2019.

16. During the subsistence of the tenancy for the period 2017 and 2018, the headlessors wrote a letter [exhibit 5] to the Plaintiffs and copied Defendant to the knowledge of the Plaintiffs. In the said letter the headlessors informed Plaintiffs that the lease granted to the intestate was to expire on 30 September 2018. To avoid any disruption to its business and use of the property, Defendant executed a tenancy agreement dated 25 September 2018 with the lawful attorney of the beneficiaries of the estate of the headlessor [Simon Mensah Okantey]

in whom the reversionary interest in the property resided. Therefore, when Plaintiffs by a letter dated 13 March 2019 [exhibit 7] notified Defendant of the expiration of the 2017 to 2018 tenancy agreement [exhibit C] and reminded it of the requirement to give three (3) months' notice of its intention to renew the tenancy agreement for a further term, Defendant indicated categorically that Plaintiffs interest in the property had determined. The defendant could therefore not enter into any further landlord-tenant relationship with Plaintiffs. On 16 May 2019 counsel for Plaintiffs per an email [exhibit 9] forwarded to Mr Joseph Eghan, an Asset Manager of Defendant, a lease document for 50 years commencing from 1959 with a renewal clause for a further term of 10 years certain to expire in December 2019.

17. The net effect of the foregoing is that the Plaintiffs alleged that they derived their interest in the property from exhibit A1. The first Plaintiff in her testimony under cross-examination told the Court that exhibit A1 was the basis for the execution of exhibits B and C which are the tenancy agreements between Defendant and the Estate of the intestate dated 16 October 2013 and 18 October 2017 respectively. Defendant challenged this assertion under cross-examination as the following extract from the record would show:

Q. Please look at exhibit A1. I put it to you that there is nothing in this indenture that points to the fact that Victoria Ofei was a beneficiary of a lease interest in exhibit A1.

A. I have the documents to prove that.

Q. So do you agree that exhibit A1 does not disclose that any interest was transferred to the Estate of Victoria Ofei?

A.Looking at exhibit A1 alone her name does not appear here. However, subsequent documents prove that the said property was transferred to her.

Q. Do you have any of these subsequent documents or MOUs … to show to this Court as the basis for executing the tenancy agreements with the bank?

A.Yes. I have the documents to prove that the basis of our agreement with SCB is founded. The bank also has those documents.

Q. You have not produced any such documents to the Court, have you?

A.The family and my mother went on trial over the issue of tenancy. The Court of Appeal judgment together with other documents was requested to the bank and

at the time their legal representative was not the present counsel. He took photocopies of all the documents.

Q. I finally put it to you that exhibit A1 is irrelevant to the issue of your interest in that property and cannot constitute the basis of your tenancy agreements, that is, exhibits B and C which you executed with the bank. A.I don't agree because even as far back as 1988 we do have one such written understanding of this headlease effective 1959 from the three sisters all hand printed and the bank must have a copy.

18. In addition to the above extract, it ought to be noted that the Plaintiffs' case has been that upon the expiration of the initial term under the headlease in 2009 they exercised their option to renew the lease for a further term of ten years certain to expire in 2019. By reason of this claim, Defendant challenged the first Plaintiff to provide evidence of a lease renewing their interest under exhibit A1 in the following extract from the record:

Q. Let me make the question clearer. Do you have a copy of a renewal of a lease for 10 years between the Ocantey

Family and Victoria Ofei as you stated in paragraph 4 of your witness statement?

A.I do have the appeal court ruling that states that the family could not withhold the 10 years extension of the lease from us.

19. Defendant challenged the first Plaintiff's claim that the Court of Appeal decision determined that the Plaintiffs' interest subsisted

beyond 2018 and put it to the witness that the said decision rather determined that the interest effluxed in October 2018. The first Plaintiff denied this.

20. A cursory examination of exhibit A1 shows that it is a lease between Comfort Okarley Okantey, Victoria Okarley Okantey and Rebecca Okarkor Okantey of the one part and Hani Hassan Jojo of the other. There is no evidence whatsoever from exhibit A1 that the intestate derived her interest in the property from exhibit A1 because her name does not appear anywhere in exhibit A1. The first Plaintiff admitted this under cross-examination from the first extract above. Therefore, once Defendant denied that the Plaintiffs derived their interest from exhibit A1 as a basis for the execution of exhibits B and C, and considering that the Plaintiffs claimed they had documentary

evidence to support their claim including a Court of Appeal ruling, and since it is trite that a transfer of an interest in land must be in writing unless excepted, inter alia, by the rules of equity and considerations of part-performance, unconscionability, fraud, and duress[1] Plaintiffs have a duty to lead such evidence as would constitute proof in law in the instant case beyond their oral testimony: see *Sarpong (Dec'd) (substituted by) Koduah v Jantuah [2017-2020] 1 SCGLR 736.* As the Court of Appeal held in *Zabrama v. Segbedzi [1991] 2 GLR 221,*

> *"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. The nature of each averment or assertion determines the degree and nature of that burden."*

21. It would be recalled from the extract above that first Plaintiff testified that subsequent documents proved that the property was

[1] See sections 1 and 3 of the Conveyancing Act, 1973 (NRCD 175) now repealed, and sections 35 and 36 of the Land Act, 2020 (Act 1036).

transferred to the intestate. She told the Court she had those documents and when reminded that she had not produced any such documents before the Court she told the Court Defendant must have photocopies of the said documents. Plaintiffs must have misunderstood the nature of the legal burdens upon them. Defendant does not have a duty to provide any evidence regarding the Plaintiffs' claim that they derived their interest in the premises from exhibit A1 which prima facie shows no evidence of their interest in the property. The duty lay on the Plaintiffs to tender those documents which they claimed were in their possession.

22. Admittedly, the Plaintiffs tendered documents making allusions to their interest in the property in question wherein they claimed their interest subsisted till 19 December 2019. These are exhibits D-series. I have examined those documents and neither of them is an instrument affecting land nor the Court of Appeal ruling first Plaintiff mentioned under cross-examination. They are letters written by the Plaintiffs or on their behalf asserting that the interest of the Plaintiffs expired in 2019. In my estimation, they are mere self-serving correspondences and it does not matter therefore the number of times Plaintiffs purported through those correspondences to inform Defendant that their interest was to determine in 2019. They carry very little weight

with me: see *Asante v the Republic [2016-2017] 1 GLR 140, 154* (cited by Plaintiffs) and *In re Ashalley Botwe Lands; Adjetey Agbosu & Ors v Kotey*

& *Ors [2003-2004] 1 SCGLR 420, 426* where a statutory declaration purporting to transfer interest in land was roundly rejected as self-serving and therefore of no probative value. What is of enormous weight in my estimation however is the first Plaintiff's sworn

statements and statements made on behalf of the Plaintiffs in solemn proceedings before the High Court regarding their root of title and the duration of their interest in the property.

23. To put things in proper context for ease of comprehension without a desire to be repetitive, on the issue of the statements of the first Plaintiff before the High Court I have to state that in the course of the proceedings, Mr Zaney, counsel for the Defendant applied for an order to compel Plaintiffs to file copies of a court order referred to in an email which was sent by Mr Banson, counsel for the Plaintiffs, to

Mr Eghan [exhibit 9] in which Mr Banson had claimed that his clients' "possession of the premises [had] been secured by a Court order…" The plaintiffs did not file a copy of the said order but at the next sitting Mr Banson informed the Court that the court order referred to in exhibit 9 was exhibit 10A tendered by the witness for the Defendant.

24. Exhibit 10A is a ruling of the High Court regarding an application for interlocutory injunction filed by the Plaintiffs herein as Defendants therein. In that application, Plaintiffs sought to restrain the headlessors from interfering with the possession and quiet enjoyment of the Plaintiffs herein in respect of the unexpired term of the lease of the property pending the final determination of that suit. That application [exhibit 3B] was filed on 10 June 2014 pursuant to a Writ of Summons[2] issued by the headlessors against the Plaintiffs herein claiming amongst others a termination of the lease between the headlessors and the Plaintiffs herein for breach of covenant and non-payment of rent in respect of the headlease of the property in issue dated 20 October 1958. By paragraph 7 of an affidavit in support of the said application for interlocutory injunction, the first Plaintiff herein as the deponent thereto swore

> *"that on the 6th day of June 2011, the Defendant/Applicants [the Plaintiffs herein] paid into court an amount of Eight Hundred and Eighty-Seven Ghana Cedis and Forty Pesewas (GHS 887.40) being the Cedis equivalent of* ***the ten (10) years rent advance in***

[2] It was subsequently amended on 2 December 2013

accordance with the Head lease dated 20th October 1958."(emphasis added)

25. Additionally, in a statement of case filed on behalf of Plaintiffs herein in support of their application for interlocutory injunction, Plaintiffs herein narrated the brief facts of that case on page 8 as follows:

> *"By a Lease dated* ***20th October 1958, the property known as House No. F 665/1 Osu, Accra*** [the property in issue in the instant case] *was leased to Messrs Abu Latif Bitar and Hani Hassan Jojo for a period of* ***50 years with an option for a further term of 10 years***
>
> ***commencing from the 20th day of October 1958*** *and paying a monthly rent of three Pounds … payable ten years in advance.*
>
> *By a Deed of Assignment dated the 18th day of August 1964, the unexpired term of the lease was conveyed to Mrs Victoria Ofei, deceased* [the intestate] *subject to the Covenants contained in the Head lease.* ***When the lease expired in 2008****, the Defendants* [Plaintiffs herein] *exercised the option to renew the lease for a*

further term of 10 years ***based on Court of Appeal's decision in Suit No. H1/116/2006****.*

The Defendants [Plaintiffs herein] *entered into negotiations with the Plaintiffs for a new rent payable and an extension of the term of the lease. After exchanging several mails in pursuance of the settlement, the Plaintiffs instituted the present action claiming the payment of rent advance for the 10 years. The Defendants [Plaintiffs herein] paid into court the amount of Eight Hundred and Eighty-Seven Ghana Cedis and Forty Pesewas (GHC 887.40) being the cedi equivalent of the ten years rent in advance in accordance with the* ***Head lease dated 20th October 1958****…."*

26. Exhibit 3B is evidence of the fact that the Plaintiffs did pay the sum of GHC887.40 into Court and notified the headlessors and the High Court to that effect.

27. The foregoing, therefore shows that the Plaintiffs have, in the respect of the same property made sworn and unsworn statements before the High Court controverting their claim before this Court that

the intestate's root of title in the property is traceable to exhibit A1. These being extrinsic evidence of prior inconsistent statements made by Plaintiffs this Court has the discretion to exclude them under section 76 of the Evidence Act unless there is evidence from the record that the first Plaintiff was amongst others given an opportunity to explain or deny the statement. I have examined the record which shows the first Plaintiff was granted ample opportunity to explain or deny the said prior inconsistent statements as the following extract would show:

> *Q. Do you recall that you and your co-administrators applied for an interlocutory injunction in a matter between the administrators of the Estate of the late Simon Okantey to restrain them from re-entering the property on the grounds that you failed to pay the necessary rent for the renewal of the lease for a further 10 years?*
>
> *A.No, I do not recall.*
>
> *Q. I put it to you that you the 1st Plaintiff on 10/6/2014 swore by an affidavit in support of this interlocutory*
>
> *application and in paragraph 7 of your affidavit you*
>
> *stated "that on the 6th day of June 2011, the*

Defendant/Applicants paid into court an amount of Eight Hundred and Eighty-Seven Ghana Cedis and Forty Pesewas (GHC887.40) being the Cedi equivalent of the ten (10) years rent advance in accordance with the Head Lease dated 20th October 1958."

A.What I recall is that throughout our tenancy relationship with the Defendant one document and one document alone is what we used as the basis for the tenancy. And that is the 9 December 1959 indenture.

28. On the Plaintiffs' statement regarding the assignment, despite having stated in their statement of case that there was indeed an assignment of the unexpired term of the 1958 lease [exhibit 3A] to the intestate, first Plaintiff testified in contrary terms as the following extract would show:

Q. Do you agree that the 1st ever initial interest of Victoria Ofei in the property in question was through an assignment from 2 Lebanese dated 18/8/1964 namely Abdu Latif Bitar and Hani Hassan Jojo? A.That is not correct.

On further cross-examination, she stated that,

> *A.The assignment before it got to my mother moved from between three hands the last being the assignment from Mr Omar Captan. However, I believe that the assignment from Mr Omar Captan passed through the two Lebanese mentioned by counsel.*

29. Elsewhere on the record the first Plaintiff was examined on the Court of Appeal decision as follows:

> *Q. Do you recall a Court of Appeal decision in favour of the Estate of Victoria Ofei with suit no. H1/116/2006 in which it was adjudged that the Estate of Victoria Ofei had the right by virtue of a deed of assignment to renew a lease with the headlessors for a further 10 years.*
>
> *A.Yes for the Estate to renew its lease which at the time had been withheld.*
>
> *Q. The lease in question was a lease dated 20/10/1958. Is that correct?*
>
> *A.No. That is not correct.*

30. Firstly, regarding the first Plaintiff's prior inconsistent statements on which deed Plaintiffs derived their interest from, I have examined the signatures ascribed to the first Plaintiff on her witness statement filed on 24 September 2021, her supplementary witness statement filed on 1 September 2022, exhibit D3 which is a letter personally written by the first Plaintiff to the Area Head of the Defendant, and the affidavit in support of the motion for interlocutory injunction [exhibit 3B] and they are without question strikingly similar. And I am in no doubt that the first Plaintiff is the author of those signatures and by extension the documents that bear her signature. Therefore the denials and explanations of the first Plaintiff are not worthy of any credit as are her denials and explanations regarding the assignment. She indeed approbated and reprobated on whether the intestate's interest was granted by the assignment dated 18 August 1964.

31. Secondly, on the issue of the Court of Appeal decision, the first Plaintiff denied without more that the said Court extended the interest of the intestate to 20 October 2018 and claimed the said interest was by that decision extended to 2019 in the following extract:

Q. Do I take it that the tenancy agreements referred to in paragraphs 5 and 6 of your witness statement that is exhibits B and C are based on this 1959 lease?

A.I recall that even after the tenancy agreement was executed we sought to renew and extend the headlease which matter went to court for an extension of the lease with the owners of the land and that extension was granted by the Court of Appeal the date of which I am not 100% sure but that gave my mother then who was alive the opportunity to extend the lease that she had granted to Standard Chartered Bank to the year 2019.

32. The first Plaintiff denied as earlier shown, that the Court of Appeal ruling rather extended or confirmed that their interest in the

property would efflux in October 2018 despite the Plaintiffs' averments in their statement of case before the High Court reproduced above and claimed that the Court of Appeal extended their interest in the property to 2019. Having been challenged regarding that allegation, the Plaintiffs ought to have tendered in evidence the said Court of Appeal ruling especially in the face of the first Plaintiff's prior inconsistent statement before the High Court that

the Court of Appeal decision extended the interest of the intestate to 2018. The plaintiffs failed to tender the Court of Appeal ruling and this altogether demonstrates to me that there is no such Court of Appeal ruling purporting to extend or confirm the interest of Plaintiffs beyond 2018. In my opinion, the Plaintiffs have made irreconcilable prior inconsistent statements before the High Court about the root of their title and the duration of their interest and their explanation or denial before this Court regarding those inconsistencies carries no weight with me.

33. Under paragraph (g) of subsection (2) of section 80 of the Evidence Act a witness is not worthy of credit who makes a statement which is inconsistent with her testimony at the trial unless she gives a satisfactory explanation for the inconsistencies when given the opportunity. The same principle was restated in *Gyabaah v. the Republic [1984-86] 2 GLR 461* to the effect that a witness whose evidence on oath was contradictory to a previous statement made by her, whether sworn or unsworn, was not worthy of credit and her evidence could not be regarded as being of any importance in the light of her previously contradictory statement *unless she can give a reasonable explanation* (emphasis added). I am not satisfied with the denials and explanations of the first Plaintiff who does not qualify

under this exception and is therefore not worthy of credit on this issue. In my opinion, it is more probable than not that the Plaintiffs derive their interest in the property from exhibit 3A [the 1958 lease] dated 20 October 1958. This has been the sworn case of the Plaintiffs in solemn proceedings before the High Court and is consistent with the case of Defendant. Having found that it is more probable than not that the root of the Plaintiffs' interest in the property is from exhibit 3A dated 20 October 1958, I find further that the Plaintiffs' had no interest in the said property beyond October 2018.

34. I find it rather curious that the Plaintiffs would rather argue that Defendant was conclusively estopped from denying their title and are

deemed to have admitted that Plaintiffs' interest subsisted till December 2019 because Defendant did not deny the Plaintiffs' option to renew exhibit A1. Conclusive presumptions are not absolute. They are subject to the law and the rules of equity. An example is section 27 of the Evidence Act cited by Plaintiffs which provides that "[e]xcept as otherwise provided by law, including a rule of equity, against a claim by a tenant, the title of a landlord at the commencement of their relation is conclusively presumed to be valid." This provision is evidently not absolute but subject to the law and the rules of equity one of which I consider to be the immutable rule that *qui non habet,*

ille non dat or to put it in the more popular Latin maxim, nemo dat quod non habet. The plaintiffs had no interest in the property beyond October 2018 and cannot hold Defendant to an imaginary conclusive presumption nor an admission that the ten-year option of renewal commenced in 2009 and determined in 2019 because the Plaintiffs exercised an option to renew. It is a non-sequitur from the above findings. Accordingly, on the issue of ***whether the Plaintiffs had an interest in the property for the period between October 2018 and***

December 2019, I find that the Plaintiffs had no interest whatsoever in the property post-October 2018.

Issues 2 and 3—***whether the parties executed an addendum wherein the tenancy was renewed for the period of two years commencing from early 2017 to December 2019***; and ***whether Defendant breached terms of the said addendum***

35. The plaintiffs did not directly address the second issue in their written address but Defendant did. Defendant argued that it expressly denied the assertion that there was a tenancy agreement between the parties post-2018. Exhibit C [the tenancy agreement which expired in 2018] provided that the term was to be extended only upon terms mutually agreed upon by both parties. Defendant admitted that

Plaintiffs made overtures to extend the tenancy agreement but Defendant refused because it had reasonable grounds to believe that Plaintiffs lacked the requisite capacity to make an offer considering that their interest in the property determined in 2018.

36. On the third issue of whether Defendant breached the terms of an addendum or tenancy agreement between the parties, Plaintiffs argued that given that Defendant attorned tenant to the headlessors during the subsistence of exhibit C and failed to yield vacant possession to Plaintiffs upon the expiration of exhibit C despite clause 3(i) of exhibit C, Defendant breached exhibit C. Plaintiffs contended further that despite notifying Defendant that their possessory right in the property had been secured by an injunction order Defendant proceeded to attorn tenant to the headlessors. Defendant submitted however that there was no tenancy agreement between the parties post-2018 which could be said to have been breached by Defendant and since Plaintiffs lacked the capacity to execute a further term beyond 2018 the issues raised by Plaintiffs regarding compliance with clause 3 (i) of exhibit C on the duty of Defendant to yield vacant possession at the end of the tenancy and 9 (a) of exhibit C on notice prior to termination of the agreement were moot.

37. As I stated in my introduction Plaintiffs claimed by their statement of claim filed on 1 June 2021 that upon the expiration of exhibit B wherein Plaintiffs granted Defendant a four-year term commencing from 1 November 2013 to 31 October 2017 with an option to renew for a further term, the parties herein renewed the tenancy agreement by an addendum for a further term of two (2) years to expire in December 2019. Defendant denied this allegation and averred that upon the expiration of the tenancy in 2017 the parties renewed the same for a further term of one (1) year to expire on 31 October 2018. The Plaintiffs bear the burden of persuasion and proof on this issue and this they must discharge by adducing evidence of the said addendum granting the two-year term which was to expire in December 2019.

38. Contrary to the averments in their statement of claim to the effect that the parties entered into a two-year tenancy agreement by an addendum for the period between 2017 and 2019, the first Plaintiff provided no evidence of such an agreement as the following extract from the record shows:

> *Q. Let's go back to exhibit D paragraph 4. A portion quotes "based on these and the circumstances of the*

present case we have our clients' instructions to offer you an annual tenancy from 23/10/2017 to 22/10/2018 with an option to renew for a further one year. To my understanding, the last tenancy agreement was for one year. Is that the case?

A.That is incorrect. [amongst other evidence to the effect that the Plaintiffs did not hear from the Defendant when they sent them a lease to cover the period between 2018 and 2019 (my addition)]

Q. Can you show the court a tenancy agreement between the Defendant and yourself beyond the period mentioned [which from the previous question was the period after 31/10/2018 (my addition)]?

39. The witness went on an excursion and did not answer the question. Counsel asked her again:

Q. Do you have any document to show the court that there was a tenancy agreement between the Estate of Victoria Ofei and the Bank beyond the period 1/11/2017 and 31/10/2018?

A.Yes I have email correspondence. If the court allows me I will show that correspondence did take place, calls were made but there was no response from the Defendant.

40. When pressed further about whether there was a tenancy agreement between the parties for that period the witness asserted that there was such a tenancy agreement and yet provided no addendum or other documentary evidence to support her oral testimony about the existence of the supposed tenancy agreement between the parties herein beyond 2018. The evidence on record however controverts the assertions of the Plaintiffs.

41. Exhibit C is evidence of the fact that the parties executed a tenancy agreement the term of which was to commence from 1 November 2017 to 31 October 2018 with an option to renew for a further term upon terms to be mutually agreed by both parties. There is no other tenancy agreement thereafter. The evidence further shows that the parties disputed over whether the Plaintiffs had an interest in the property post-31 October 2018. Indeed the inference to be drawn from the conduct of the parties is that they seem to have transacted on the basis that Plaintiffs had an interest in the property between

2018 and 2019. The Defedant's witness told the Court they received a letter from the headlessors [exhibit 5] during the pendency of the last term between November 2017 and October 2018 wherein the said headlessors notified them of the expiration of the interest of Plaintiffs. He testified further that the records of Defendant showed that the interest of Plaintiffs was to expire in October 2018. In my opinion, Defendant would not have executed exhibit C with a renewal clause for a further term if it already had evidence in its custody and was certain at the time of the execution of exhibit C that Plaintiffs' interest was to expire in October 2018. I come to this conclusion despite the Defendant's witness' claim that "the Plaintiff gave the Defendant a different view of when the headlease was to expire and since the Defendant also had a different view of when the headlease was to expire, the parties put in a renewal clause in case Defendant formed the opinion subsequently that the Plaintiffs were right." Additionally, Defendant would not have relied on exhibit 5 dated 28 March 2018 to enter into a tenancy agreement with the headlessors [exhibit 6] when it was already well aware that Plaintiffs' interest determined in October 2018. Indeed, by exhibit 8 [a letter from the witness for the Defendant to Plaintiffs] dated 7 May 2019, the defence witness stated categorically that "the Bank's attention was drawn to the fact that your clients' interest in the land expired in October, 2018. Accordingly,

with your clients' [sic] no longer having any interest in the premises, the Bank is unable to enter any further landlord/tenant relationship with same." It is, therefore, in my opinion, more probable that Defendant became apprised of the Plaintiffs' want of interest in the property post-October 2018 after the parties executed exhibit C.

42. This notwithstanding, it would have been gross negligence on the part of the officers of the Defendant in charge of estate if they had executed a further term beyond October 2018, despite being apprised of exhibit 5, the prior inconsistent statements of the first Plaintiff contained in sworn and unsworn statements in solemn proceedings before the High Court and exhibit 3A. This stems from the fact that firstly, as the witness stated in his testimony before the Court,

Defendant's due diligence [which cannot be said to exclude their estimation of the import of exhibit 5] had shown that Plaintiff's interest was to extinguish in October 2018; secondly, an option to renew is not mandatory. It is indeed contradictory to suggest that an *option* to renew is mandatory. Therefore there was no obligation on Defendant to renew exhibit C [the tenancy agreement ending October 2018] after discovering that Plaintiffs' interest in the property was to expire in October 2018 neither is there any evidence of renewal of the said tenancy agreement.

43. An issue that arose from the pleadings and testimony on record is whether Defendant breached exhibit C by failing to yield vacant possession upon its expiration. The evidence on record shows that the parties agreed by clause 3(i) of exhibit C that Defendant would yield vacant possession of the property to Plaintiffs at the end of the tenancy. The evidence shows further that Defendant did not yield vacant possession of the property to Plaintiffs but proceeded even before the expiration of exhibit C to enter into a tenancy agreement with the headlessors who had the reversion. This represents a breach of clause 3(i) of exhibit C entitling Plaintiffs to nominal damages.

44. Accordingly, on the issues of ***whether the parties executed an addendum wherein the tenancy was renewed for a period of two years commencing from early 2017 to December 2019; and whether Defendant breached the terms of the said addendum*** I find that Plaintiffs failed to lead credible evidence to show that any such addendum or tenancy agreement was executed by the parties herein for two years commencing from early 2017 to December 2019. I further find that since there was no such agreement, Defendant could not be held to have breached the terms of a non-existent agreement. However, by failing to yield vacant possession of the property to

Plaintiffs at the expiration of exhibit C, Defendant breached clause 3(i) of exhibit C a breach which entitles Plaintiffs to general damages in nominal terms: see *Lizori Ltd v Boye & School of Domestic Science & Catering [2013-2014] 2 SCGLR 889*.

Issue 5—***whether Plaintiffs are entitled to recover rent arrears of GHC1,058, 182.12 from Defendant***

45. In their address on this issue, the Plaintiffs submitted that considering that an order of interlocutory injunction preserved their possessory right to the property till the final determination of the matter which had not determined at the time Defendant attorned tenant to the headlessors, and having failed to yield vacant possession upon the expiration of exhibit C, Defendant must pay to Plaintiffs rent for all the period that Defendant failed to yield vacant possession of

the property. Defedant's witness denied that Defendant had any tenancy agreement with the Plaintiffs for the period October 2018 to December 2019. Accordingly, Defendant owed Plaintiffs no such rent arrears covering the said period.

46. This issue receives a restricted answer. There is no evidence before me regarding whether the 2011 suit is still pending before the

High Court and the Defendant's witness made no admission that it was pending. That notwithstanding, whether or not there is an interlocutory injunction restraining the headlessors from interfering with the property is, for the purposes of this case, of little probative value to the extent that by the Plaintiffs' representations and admissions in solemn proceedings in that same suit before the High Court they corroborated the case of the Defendant by admitting that their interest in the property effluxed in 2018. And considering that I have found that the Plaintiffs' interest in the property determined in 2018, they could not have purported to enter into a tenancy agreement with Defendant to grant Defendant a further term beyond 2018 since they had no interest to demise. Any such agreement would have been a nullity: see *Seidu Mohamed v Saanbaye Kangberee [2012] 2 SCGLR 1182*. Accordingly, the Plaintiffs are not entitled to recover any rent from Defendant.

Issue 6—***whether Plaintiffs are entitled to withholding tax certificates from Defendant and if they are, whether Defendant supplied Plaintiffs with the said certificates from 2016.***

47. The Plaintiffs' case is that by the tenancy agreement, Defendant was to pay withholding tax to the Ghana Revenue Authority on behalf

of the Plaintiffs regarding the rent paid since 2016. According to the Plaintiffs, despite claiming that all the withholding tax on the rent paid had been paid Defendant has failed to submit to the Plaintiffs the withholding tax certificates to that effect since 2016. The defendant in its statement of defence denied that by the tenancy agreement, it was to withhold tax on the rent paid. Defendant further denied that it had failed to submit withholding tax certificates to Plaintiffs on the rent paid despite several demands made by Plaintiffs. At the trial, the defence witness did not contest the claim of the Plaintiffs that Defendant had not supplied the Plaintiffs with all withholding tax certificates since 2016. The witness assured the Court the said certificates could be produced if the Court so ordered. Counsel for Plaintiffs thereupon made an application for an order directing Defendant to produce the tax certificates and the same was granted. By a letter dated 27 June 2022, Mr Zaney, counsel for Defendant submitted photocopies of withholding tax certificates in respect of the rent paid to Plaintiffs for the years 2013, 2017, and 2018 being the years of assessment. This notwithstanding, the Plaintiffs argued that Defendant produced a self-serving letter alleging that all withholding taxes had been paid. They argued further that the letter merely contained a reference to emails exchanged between the parties without attaching the certificates or copies thereof. I was taken aback

by these submissions considering that although those certificates were not tendered in evidence, I do take judicial notice of the fact that the said certificates for the years 2013, 2017, and 2018 were filed and placed on the Court's docket to the knowledge of the Plaintiffs. And whether they were not supplied to Plaintiff prior to the suit but rather during the pendency of the suit is *de minimis* bearing in mind that by their second relief, Plaintiffs prayed for an order directing Defendant to furnish them with the tax certificates.

48. As rightly argued by Plaintiffs in their address it is undisputed that by sections 117 and 119 of the Income Tax Act, 2015 (Act 896) as amended Plaintiffs were to pay tax on the rent received from Defendant who is mandated to withhold the said tax and pay the same on behalf of Plaintiffs to the Ghana Revenue Authority. By virtue of section 118 of the Income Tax Act, the Defendant is mandated to serve withholding tax certificates on Plaintiffs covering a calendar month. Defendant in its address alleged that it could not furnish the Court with some of the certificates despite its best efforts. In my opinion this

allegation is of no probative value considering that the Defendant's witness did not give evidence on the same. A written address filed after the trial, just like a statement of case cannot be used to introduce fresh evidence into a case. In *Aboagye v Controller & Accountant-*

General & Anor [2012] 1 SCGLR 538, 551-552 the Supreme Court held that it was impermissible for the appellant, in that case, to purport to introduce fresh evidence through his statement of case and accordingly disregarded the same as unproved allegations of fact which were not established from the evidence already on record. Given that from the record, the defence witness assured the Court that Defendant could produce all the withholding tax certificates in respect of the rent paid from 2016, and considering that all Defendant produced were certificates for the period 2013, 2017 and 2018, Defendant has failed to discharge its mandate in accordance with section 118 of the Income Tax Act. Accordingly, I hold that the Plaintiffs are entitled to withholding tax certificates from Defendant for the year 2016.

Conclusion

49. The parties herein had been in a landlord-tenant relationship since 1995 based on representations made by the Plaintiffs to Defendant that their interest was derived from a 1959 lease which meant their interest in the property would determine in 2019. Based on this representation, several tenancy agreements were executed between the parties the last of which commenced from 2017 to 2018 with an option to renew for a further term. However, during the

pendency of the last tenancy agreement, Defendants had information from the headlessors and after having conducted internal due diligence were put on notice that Plaintiffs' interest in the property was to determine in October 2018. This was based on a 1958 lease and sworn and unsworn statements made by Plaintiffs in solemn proceedings before the High Court wherein Plaintiffs traced their root of title through an assignment to the 1958 lease copies of which were in the custody of Defendant. Being convinced of the veracity of the information discovered, and not intending to disrupt their business activities, before the expiration of the tenancy agreement commencing from 2017 to 2018, Defendant attorned tenant to the headlessors in whom the reversion resided. Plaintiffs claiming that Defendant by relying on their representation that their root of title was the 1959 lease; that they had by a Court of Appeal ruling and an injunction order retained possession of the property; and that they had executed a tenancy agreement or an addendum with Defendant commencing from 2017 to 2019, submitted that Defendant was estopped from denying their title and liable to pay rent for the period commencing from 2018 to 2019. They further submitted that Defendant breached the terms of the agreement commencing from 2017 to 2018 and failed to serve them with withholding tax certificates for rent paid from 2016. After evaluating the evidence led by both

parties I found that the Plaintiffs more probably than not derived their interest from the 1958 lease thereby having no interest in the property post-2018. I also found that there was no evidence of a tenancy agreement between the parties commencing from 2017 to 2019 but rather there was such an agreement commencing from 2017 to 2018. Additionally, I found that since they had no interest in the property nor a tenancy agreement post 2018 Plaintiffs were not entitled to rent for that period. However, since Defendant failed to yield vacant possession of the property contrary to the terms of the agreement commencing from 2017 to 2018, Defendant breached the said agreement. Defendant also failed in its duty to serve the Plaintiffs with a withholding tax certificate for the year 2016. Accordingly, I dismiss the Plaintiffs' claim for the recovery of the amount of GH1,058,182.12 which is the cedi equivalent of USD192,396.75 being rent from October 2018 to December 2019. Regarding the withholding tax certificates, I hereby order Defendant to serve the Plaintiffs with the withholding tax certificate in respect of the rent paid for the year 2016. Additionally, I declare that by failing to yield the property to the Plaintiffs upon the expiration of exhibit C, Defendant breached exhibit C. Accordingly, Plaintiffs are entitled to nominal damages of GHC500.00. Finally, on the issue of legal costs, it ought to be noted that costs in proceedings are not awarded in the air. There must be

evidence before the Court to provide bases for the award and quantum thereof by way of invoices or receipts to show how much costs a party incurred in payments to their counsel: see *Owuo v Owuo [2017-2018] 1 SCGLR 780.* I am not unmindful of the Supreme Court's decision on costs in the case of *Juxon-Smith v KLM Dutch Airlines [2005-2006] SCGLR 438* except that that decision was based on Order 74 of the High Court (Civil Procedure) Rules, 2004 (C.I. 47) as amended and therefore inapplicable to this Court except those provisions in the said Order that have attained the status of a rule of practice such as the length and complexity of the proceedings, the conduct of the parties and their counsel, and the expenses and court fees incurred. From the record, the parties and their counsel conducted themselves in the most efficient manner ever geared towards an expeditious disposal of the case. Furthermore, the case was bereft of complexity. Therefore, considering the foregoing, and the fact that I have dismissed the primary relief of Plaintiffs, and considering the nature of the default of Defendant regarding the withholding tax certificates and breach of exhibit C, I hereby award cost of GHC5,000.00 in favour of Plaintiffs.

SGD

JOJO AMOAH HAGAN
CIRCUIT COURT JUDGE

LEGAL REPRESENTATION
BOBBY BANSON ESQ FOR PLAINTIFFS
DAWN KWESI ZANEY FOR DEFENDANT.