IN THE CIRCUIT COURT HELD AT GOASO IN THE AHAFO REGION ON WEDNESDAY THE 27TH DAY OF MARCH 2024 BEFORE HIS HONOUR CHARLES KWASI ACHEAMPONG ESQ. CIRCUIT COURT JUDGE

A11/16/2022

KOFI AGYEI	**---**	**PLAINTIFF**
	VRS.	
AKWASI ATTA	**---**	**DEFENDANT**

JUDGMENT

Plaintiff describes himself as a business man who lives at Feteagya near Mim while Defendant is a professional Tailor who also resides in Mim. The parties have locked horns over a simple disagreement relating to the agreement entered into by the parties in or around the year 2013. This disagreement related to whether the actions of Defendant had caused an impediment to the business of the Plaintiff and whether the business being carried on by the Plaintiff in the store he rented from the Defendant was a breach of their tenancy agreement which entitled Defendant to abrogate the tenancy agreement and cause the eviction of Plaintiff.

According to his Statement of Claim filed on the 11th of April 2022, Plaintiff averred that in 2013 he entered into a tenancy agreement with the Defendant by which the latter rented out his store to him for a period of 17 years. According to Plaintiff, the purpose of the rent was for Plaintiff to use the premises for commercial activity which was agreed to by the Defendant, however in May 2021 Defendant caused a very big metal container to be placed directly in front of Plaintiff‟s store which has caused Plaintiff to suffer financial losses since it was obstructing the public‟s view of his store. Based on these facts Plaintiff sought the following reliefs;

a) "Declaration that the Plaintiff is entitled to carryout his business at a rented store-room attached to House Number BU-1227-9137 Mim without interference whatsoever from the Defendant or any of his cohorts until the agreed period both parties entered into is exhausted.

b) An order to compel the Defendant to immediately remove a metal container which the Defendant has unjustifiably placed directly in front of the Plaintiff's store-room attached to house number BU-1227-9137, Mim.

c) General damages for loss of profit at GH¢3,000.00 per month from May 2021 to such a period that the Defendant would remove the said metal container from the front of the Plaintiff's said store-room.

d) General damages for breach of Agreement.

e) Cost."

On his part, the Defendant in his Statement of Defence filed on the 25th of April 2022 conceded renting out the store to Plaintiff for the term and/or duration alluded to by Plaintiff but insisted that the purpose for which the premises was to be used, was for Plaintiff to trade in bicycle and motor-bike spare parts. He contended that contrary to their tenancy agreement, Plaintiff had altered his initial trade and had commenced trading in the sale of cement. According to Defendant, the present commercial activity of the Plaintiff was not what they agreed to at the commencement of the tenancy agreement and the continuous sale of cement by the Plaintiff in the store was causing the store room to deteriorate. He alleged that he accordingly referred the matter to the Rent Control Officer who subsequently directed the Plaintiff to quit the store room. Defendant did not counterclaim but averred that Plaintiff's action was baseless

and ought to be struck out in order for Defendant to pursue the rent officer's report.

With the respective pleadings of the parties in sight, the Court on the 4th of July 2022 set down the following issues for trial;

i. Whether or not the terms of the tenancy was to use the premises for the sale of bicycle and motorbike spare parts? ii. Whether or not Plaintiff breached the terms of the tenancy?

iii. If so, whether same entitles Defendant to repossess the premises?

iv. Whether or not the matter has been determined by the Rent Control Office?

v. Whether this Court is bound to comply with the recommendations of the Rent Control Officer?

It is trite that in any civil matter, a party who comes to court must prove his case on the balance of probabilities. This burden of proof is statutorily provided under **sections 10 to 14 of the Evidence Act 1975 (NRCD) 323**. Section 10 and 12 in particular provide respectively as follows;

Section 10

(1) For the purposes of this Act, the burden of persuasion means the obligation of a party to establish a requisite degree of belief concerning a fact in the mind of the tribunal of fact or the Court.

(2) The burden of persuasion may require a party (a) to raise a reasonable doubt concerning the existence or non-existence of a fact, or

(b) to establish the existence or non-existence of a fact by a preponderance of the probabilities or by proof beyond a reasonable doubt.

Section 12

(1) Except as otherwise provided by law, the burden of persuasion requires proof by a preponderance of the probabilities.

(2) **"Preponderance of the probabilities"** means that degree of certainty of belief in the mind of the tribunal of fact or the Court by which it is convinced that the existence of a fact is more probable than its non-existence.

These statutory provisions have been variously interpreted and applied in myriad of cases such as Ababio vrs. Akwasi IV [19941995] GBR 774 and **Jass Co. LTD & Other VS. Appau & Another [2009] SCGLR 265,**. In fact in the Jass case (supra), it was held that;

> "The burden of proof is always put on the plaintiff to satisfy the court on a balance of probabilities in an action for declaration of title to land. Where the defendant has not counterclaimed, and the plaintiff has not been able to make a sufficient case against the defendant, then the plaintiff's claims would be dismissed..."

Again in Ackah vrs. Pergah Transport Ltd. & Ors. [2010] SC GLR 728 per Sophia Adinyira JSC at page 763 where she propounded as follows;

> "It is a basic principle of law on evidence that a party who bears the burden of proof is to produce the required evidence of the facts in issue that has the quality of credibility short of which his claim may fail. The method of producing evidence is varied and it includes the testimonies of the party and material witnesses, admissible hearsay documentary and things … without which the party might not succeed to establish the requisite degree of credibility concerning a fact in the mind of the court or tribunal of fact such as a jury. It is trite law that matters that are capable

of proof must be proved by producing sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of a fact is more reasonable than its nonexistence. This is the requirement of the law on evidence under sections 10(1) and (2) and 11(1) and (4) of the Evidence Act 1975 (NRCD 323)"

Before proceeding it must be noted that the following facts are not disputed by the parties;

a. That Defendant rented out to Plaintiff a store room.

b. That the tenure or duration of store room was for a period of 17 years.

c. That the store room was to be used for a commercial activity.

The real bone of contention relates to the nature of the commercial activity the store was to be used for. While Plaintiff alleged that it was to be used for the trading of building materials, the Defendant contended that it was to be used for the sale of bicycle and motorbike spare parts. The determination of the nature of the commercial activity which the parties agreed to will ultimately resolve the first issue above identified.

In the course of trial Plaintiff tendered the tenancy agreement entered into between the parties which was marked as Exhibit A. One would expect that the contents of Exhibit A would put the matter to rest however this was far from reality. It turns out that Exhibit A was unfortunately silent on whether the storeroom was to be used for any commercial activity at all. However since the premises in question was a storeroom, it can rightly be presumed that the purpose of use of the storeroom was for same to be used for commercial activity. In fact this Court takes judicial notice of the fact that storerooms are largely used for commercial activities and the storeroom in this case is no exception.

However, Exhibit A falls short in identifying the nature of the commercial activity which the store was meant to be used for. It is trite that, "where the parties have formally recorded the whole of their agreement in writing, the written document, prima facie, is taken to be the

whole contract. The terms of the such a written contract are, therefore said to be limited to the contents of the written document and nothing more. As a general rule, where the agreement is whole reduced into writing, extrinsic evidence will not be admitted to add to vary or contradict the terms of the written agreement. This is known as the parole evidence rule".
(See: Christine Dowuona-Hammond, „The Law of Contract in Ghana" at page 129). In the case of Luigi Martinis V. Oumarou
Kanazoe (2018) JELR 64822 (HC), the Court observed that;

> "Where there is an allegation of an oral agreement beyond a written contract it situates the issue within the parole evidence rule. The parole evidence rule is to the effect that once parties to an agreement have reduced their contract into a written form, the parties will be debarred from adducing extrinsic evidence to add to, vary or contradict what they have written. The document of the agreement becomes the sole repository of the terms of the contract. This rule is to promote certainty to ensure that a party does not allege with impunity that there were other terms that were not included".

Again, in the case of A.R. Duodu-Sakyiama v. TDC [2016] DLSC 2826, the Supreme Court per Pwamang JSC explained the rule thus:

> "It is a common law rule which states that when two parties have made a contract and have expressed it in a writing to which they have both assented as an expression of their intentions, oral evidence is not

admissible to add to, vary or contradict the written agreement. The policy behind the parole evidence rule is that human memory is slippery and oral testimony, which is usually given sometime after a transaction, is not as reliable as documentary proof. What is more, the spoken word was viewed with skepticism. For these reasons the rule was invented to ensure certainty and finality of transactions which is in the public interest. But it was long ago conceded that there are instances where the strict application of the rule can result in injustice and lead to the enforcement of contracts that the parties really did not make or exclude oral terms that were intended by the parties to be binding".

In other words, where a transaction has been reduced into writing by agreement of the parties, extrinsic evidence is in general inadmissible to contradict, vary, add to or subtract from the terms of the document (See: Motor Parts Trading Co. V. Nunoo [1962] 2 GLR 195).

In the instant suit, since Exhibit A embodies the whole intention of the parties no extrinsic evidence would be permitted to vary same. The intention of the parties was for Defendant to rent out his storeroom to Plaintiff. Being a storeroom, the obvious and reasonable intention of the parties was for the storeroom to be used for commercial activities. The question is, was the sale of building materials or cement a commercial activity? Certainly so. However, as noted earlier Defendant contended that the parties agreed on the very nature of the commercial activity to be carried on by the Plaintiff and according to him the nature of the commercial activity which Plaintiff was to embark upon was for the sale of bicycle and motorbike parts only.

It is a fact that the specific nature of the commercial activity is not contained in Exhibit A. Hence Defendant's attempt to introduce facts not contained in Exhibit A sinned against the parole evidence rule above enunciated. There can

only be a consideration of Defendant's extrinsic parole evidence, if it can be established that it falls within any of the exceptions permitted by law.

Section 177 of the Evidence Act 1975 (NRCD 323) provides that;

> (1) Except as otherwise provided by the rules of equity, terms set forth in a writing intended by the party or parties to the writing as a final expression of intention or agreement with respect to such terms as are included in the writing may not be contradicted by evidence of any prior declaration of intention, of any prior agreement or of a contemporaneous oral agreement or declaration of intention, **but may be explained or supplemented**—

(a) by evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the intention or agreement, provided that a will and a registered writing conveying immovable property shall be deemed to be a complete and exclusive statement of the terms of the intention or agreement; and

> (b) by a course of dealing or usage of trade or by course of performance.

In simple terms this means that, the extrinsic evidence will only be allowed if it seeks to **explain or supplement** the written agreement. The question then to ask is whether or not Defendant's contention regarding the nature of the commercial activity seeks to explain or supplement Exhibit A.

> In answering this question, this Court takes due notice of the purpose identified earlier which is that the store is to be used for commercial activities. However commercial activities are broad in nature and includes a host of businesses and trade both legal and illegal.

For instance prostitution and sale of narcotic drugs are commercial activities yet these commercial activities are prohibited by the law and frowned upon by the Courts. Thus when the Court found that the purpose of the store was for same to be used in commercial activity, Plaintiff had not been granted a carte blanche to engage in any commercial activity on the face of the earth. He is only permitted to engage in only lawful commercial activities. The point being made here is that, by virtue of its silence on commercial activity to be engage in by Plaintiff, Exhibit A was ambiguous in that regard and hence any evidence that is available to fine tune and streamline the broad purpose on Exhibit A would be permitted. Thus Defendant"s assertion that the nature of the commercial activity was agreed upon ought to be considered by the Court as it seeks to explain and supplement Exhibit A. Clearly, Defendant"s contention falls within one of the exceptions to the parole evidence rule which is aimed to fill in the gaps in a written agreement which failed to contain all the terms of the contract. (See: Allen v. Pink (1838)4 M. & w. 140). The onus therefore rests upon Defendant to prove that the nature of the commercial activity which the parties agreed to was for Plaintiff to use the store only for the sale of bicycle and motorbike parts.

In this regard Defendant testified to the effect that in 2013, he rented the storeroom to Plaintiff after the latter had, "confided in me to be selling bicycle and motorbikes…". Defendant further alleged that, "…when Plaintiff took possession of the said store room, he later changed his trade and started selling cement". Plaintiff had the opportunity to challenge Defendant on this issue under cross examination but did not despite the issue being a very material one. Plaintiff only seemed to focus on the fact that a container had allegedly been placed in front of his storeroom and so a substantial portion of his cross examination related to the said container. The only time Plaintiff questioned

Defendant regarding the nature of the commercial activity in question was when he asked Defendant the following questions;

Q. You summoned me before the Rent Control Officer not so?

A. That is true. This was because when I rented the premises to you you were selling bicycles but later started selling cement which was causing the premises to crack. I asked you to vacate which you refused. So I summoned you.

He later questioned Defendant;

Q. Do you recall when I started selling cement?

A. You initially started selling bicycles for 3 years and later started selling cement for 6 years. I felt the cement would cause damage to my property hence I asked you to vacate.

From the evidence in chief of Defendant and the answers given by him under cross examination, one observes that, Defendant's case was that he rented out the storeroom to Plaintiff for the latter to use same for the sale of bicycle and motorbike parts and that in compliance with this purpose, Plaintiff commenced trading in the sale of bicycle and motorbike parts for three years. These material facts were not denied nor challenged by Plaintiff during the cross examination of Defendant. Plaintiff's failure to do so amounts to an admission of the truth of those assertions. In the case of Isaac K Kobi & 24 Ors Vrs. Ghana Manganese Company Ltd. (2004) JELR
67944 (CA) the Court of Appeal observed that;

"The law is quite succinct that where a party leads evidence and his opponent fails to take him on, shake or puncture the claims or allegations

of fact he has made, then there is a presumption in law that the opponent who has failed to cross examine on the fact, has conceded that the correctness of the fact alleged".

In any case, Plaintiff's sole witness, Peprah Thomas (Pw1) admitted Defendant's contention when he was cross examined by
Defendant as follows;

Q. Do you agree with me that when Plaintiff rented the room, he was selling bicycles? A. That is true.

This is a case where the testimony of a party"s witness corroborated that of his opponent and in that situation the Courts have long held the view that, the corroborated version ought to be relied upon by the Court. The case of Tsirifo v. Dua VIII [1959] GLR 63 is instructive in that regard. In that case, the Court observed;

"Where the evidence of one party on an issue in a suit is corroborated by witnesses of his opponent, whilst that of his opponent on the same issue stands uncorroborated even by his own witnesses, a Court ought not to accept the uncorroborated version in preference to the corroborated one, unless for some good reason (which must appear on the face of the judgment) the Court finds the corroborated version incredible or impossible". [See also: Asante v. Bogyabi [1966] GLR 232, Nana Fredua Agyemang Vrs. Nii Akotey Iv & 2 Others (2013) JELR 67165 (HC)].

Flowing from the above, this Court makes the following findings;

i. That Defendant rented out his storeroom to Plaintiff on the 1st of April 2013 as per Exhibit A.

ii. The purpose of the tenancy was for Plaintiff to use the storeroom for a commercial activity.

iii. The nature of the commercial activity was for the Plaintiff to use the storeroom for the sale of bicycle and motorbike spare parts.

iv. Pursuant to this understanding Plaintiff used the premises for the sale of bicycle and motorbike parts for not less than three years following the commencement of the tenancy.

The implication of the above findings is that by virtue of Plaintiff's conduct in changing the nature and character of the commercial activity he had earlier agreed to with Defendant, Plaintiff had in fact breached the term of the tenancy three years into his tenure. This thus resolves the second issue above enumerated.

What is the implication for such a breach? In other words does this breach entitle Defendant to repossess the storeroom? The answer is found in Section 17(1) (b) of Rent Act, 1963 (ACT 220). By that provision a Rent Magistrate or a Court of competent jurisdiction may in an action, grant the Landlord the relief for recovery of possession where the Tenant has breached a provision of the tenancy agreement. That section provides as follows;

> "...no order against a tenant for the recovery of the possession of, or for the ejectment from, any premises shall be made or given by the appropriate Rent Magistrate, or any other Judge of a court of competent jurisdiction in accordance with the provisions of any other enactment for the time being in force, except…where any obligation of the tenancy…so far as such obligation is consistent with the provisions of this Act, has been broken or not performed"

The application of this provision is however not automatic in the sense that, a Landlord cannot just repossess the premises without an order of the Court. In order to obtain the relief of recovery of possession under that provision;

i. There must be a breach of term of the agreement.

ii. The Landlord must institute an action for recovery of possession; and

iii. If the breach is established it is only a Rent Magistrate or a Court of competent jurisdiction that may order the abrupt termination of the tenancy agreement and order the recovery of possession.

It is however the considered opinion of the Court that, even though there may be a breach of a tenancy agreement and Section 17(1)(b) entitles a Landlord to recovery of possession by court action, a Court would not automatically and hastily grant recovery of possession if the breach is capable of being remedied by way of adequate compensation to the Landlord or rectification of the breach as was observed in the case of Royal Investment Company vs. Madam Ruth Quarcoopome and Madam Anna O. Quarcopome [2021]DLSC11154. In that case the Supreme Court observed that, "once the breach was capable of being remedied, the defaulting tenant should be allowed to enjoy the subsisting

lease and not suffer the consequences of a premature termination and eviction".

In the instant suit by operation of Section 17(1) (b) of Rent Act, 1963 (ACT 220) Defendant may very well be entitled to recovery of possession. Unfortunately for Defendant, he did not counterclaim for recovery of possession. Consequently, this Court is unable to make any such order in his favour. The Court is guided by the case of Nyamaah v. Amponsah (2009) SCGLR 361,which held, inter alia, that;

> "It is the duty of a trial court to make pronouncement on the reliefs that a party seeks. Therefore, the trial court is to ensure that the issues it set down for determination would aid it in making justifiable decisions on reliefs sought. Consequently, a judge who makes an order for a relief not sought for by a party can be held to have exercised an irregular jurisdiction".

Defendant may institute fresh action against Plaintiff for recovery of possession should the breach herein identified persist in a Court of law.

With regards to issues 4 and 5 which related to whether or not the matter has been determined by the Rent Control Office and whether this Court is bound to comply with the recommendations of the Rent Control Officer, same became otiose in the course of trial due to Defendant's assertion that the matters before the rent officer was in fact still pending.

According to paragraph 6 of Defendant's Statement of Defence filed on the 25th of April 2022, Defendant had alleged that he referred the matter to the Rent Control Office and that Plaintiff had been ordered to quit the store room. Surprisingly however, in paragraphs 6 and 7 of his witness statement filed on the 18th of
July 2022, Defendant states as follows;

> "6. That in view of the above circumstances, I decided to eject the Plaintiff from the store room but due to the fact that the rent advance had then not exhausted, the Plaintiff could not budge and this prompted me to refer same to the District Rent Officer, Goaso for redress.
>
> 7. That the rent issue is still pending but the Plaintiff has brought the instant matter just to divert my attention"

If the matter is still pending before the Rent Officer as alleged by Defendant, then no determination has been made for which this Court ought to make any pronouncements as to whether or not it is bound by such decision. In any case, for purely academic reasons, let it be known clearly that according to Section 6 of the Rent Act, 1963 (ACT 220) no Court is bound by the decision of the Rent Officer.

From the pleadings Plaintiff alleged that Defendant had caused to be placed a very big metal container directly in front of his store which prevented customers from having access to trade with him and had caused him to run at a loss. In his evidence in chief Plaintiff rehashed this assertion but added that he was running at a loss of GH¢3,000.00. This assertion was generally denied by Defendant in his statement of Defence and was further challenged under cross examination by Defendant as follows;

Q. I suggest to you that it is not true that a container in front of your store is preventing people from patronizing you goods.

A. It is true that the container is in front of my store and due to that my wares are not patronized.

Q. Take a look at these pictures. Can you identify your store?

A. Yes I can see my store.

Q. I suggest to you that the pictures do not show any container in front of your store?

A. Not true. The container is in front of my store. The picture you have taken is the side of the store not the main road where the store faces.

From the above discourse, one observes that Defendant had effectively denied Plaintiff's assertion regarding an alleged container being placed directly in front of Plaintiff's store as well as the alleged GH¢3,000.00 monthly losses. It thus became incumbent for Plaintiff to lead such evidence that would establish on the balance of probabilities his assertions but this was never done. Plaintiff's only witness Thomas Peprah (Pw1) led no corroborative evidence in support of Plaintiff's contention that Defendant had caused a container to be placed in front of his store and that he was making losses of GH¢3,000.00 monthly. Not even a picture was tendered by Plaintiff to at least give the Court a pictorial view of the relative positions of Plaintiff's store and the container he was talking about.

On the other hand, the Defendant tendered two pictures depicting the side view of Plaintiff's store. The said pictures were tendered and marked as Exhibits 1 and 2 and a perusal of same does not show any container directly in front of Plaintiffs store as he alleged. Exhibit 1, however depicts a blue container on platform or embankment positioned on the upper right view of Plaintiff store. It is unclear whether the said blue container is the container Plaintiff is referring to. If the blue container as identified in Exhibit 1 is the very same container Plaintiff is complaining about, then I must state clearly that by Exhibit 1 I do not see how same obstructs access to Plaintiff's store. The distance between the said container and Plaintiff's store is wide enough and access is not impeded. In Exhibit 2 one further observes that Plaintiff's customers generally access his shop by the side entrance to pick up or drop of purchased goods and hence access to the shop is not exclusively from the front entrance. No losses can therefore be said to have occasioned by the conduct of Defendant which in any case Plaintiff failed to establish.

Flowing from the holding in the case of Ackah vrs. Pergah Transport Ltd. (Supra), to the effect that it is the party who bears the burden of proof who is required to produce sufficient evidence of the facts in issue that has the quality of credibility short of which his claim may fail, this Court finds that Plaintiff failed to prove that Defendant had obstructed his store with a container and that he was making losses of GH¢3,000.00 each month.

It follows therefore that Plaintiff's case must fail given his inability to prove any of his assertions on the balance of probabilities. Had Defendant counterclaimed, judgment would very well have been entered in his favour. Nevertheless, his failure is not a bar for him to seek the appropriate legal redress in a Court of competent jurisdiction. The case of Plaintiff is dismissed with cost of GH¢3,000.00 awarded against Plaintiff.

SGD
H/H CHARLES KWASI ACHEAMPONG ESQ.
CIRCUIT COURT JUDGE - GOASO