

IN THE DISTRICT COURT HELD AT TAKORADI MARKET CIRCLE HELD ON FRIDAY THE 30TH DAY OF APRIL 2021. BEFORE HER WORSHIP CATHERINE OBIRI ADDO ESQ:

SUIT NO. A9/10/2021

ANITA SACKY
HOUSE NO. PT E5
MPATADO ANAJI

PLAINTIFF

VRS

ESTHER OSEI BONSO
ISAAC OSEI BONSO
HOUSE NO. PT 8CI
EFFIA-ANAJI, WEST LINE

DEFENDANTS

JUDGMENT

The Plaintiff initiated this action at the registry of this court on the 8TH day of October 2020, and claims against the defendants the following:

- (a) An order for the refund of the sum of GHC 16,632.00 which comprises advance rent and expenses incurred on a store room rented by the Plaintiff from the Defendants in house No. PT 8CI, Effia-Anaji West line owned by the Defendants.
- (b) Interest on the said sum at the current bank rate from October 2020 till date of final payment.

PLAINTIFF'S CASE

Plaintiff's case is that she is a business woman and she rented a store room from the defendants to operate a "pay point services" from 16th day of August, 2020 to August 2021 for 1year at a monthly rent of GHC250.00. The plaintiff avers she paid a 1year advance rent in the sum of GHC3, 000.00 however two weeks after she started her business, the 1st defendant started misbehaving towards her by raining insults and curses on her because 1st defendant allegedshe asked the 1st defendant house help to come and live with her which is untrue.

The plaintiff avers one midnight the 1st defendant called her and informed her 2nd defendant wants her to vacate the shop. Subsequent upon that, the 2nd defendant called her personally that she should vacate the shop by the end of September 2020 and he will refund her money to her. The plaintiff avers she parked everything from the shop before the 1st day of October. Between the 1st and 2nd of October 2020, she called the defendants asking for her money and the defendants promised to pay same but has failed to refund her money despite persistent demands.

The plaintiff alleged she did some renovations at the shop which includes a counter, a slide door, air conditioner as well as a displayed fridge and the drinks and the pastries all got spoilt. The plaintiff tendered in evidence Exhibit A, which is the list of the renovations she did in the shop, Exhibit B, the text message between her and the 2nd defendant, Exhibit C, the demand letter she sent to the defendants and Exhibit D series the receipt for the air conditioner and the glass fabrication respectively in prove of her case.

The plaintiff prays this honourable court to grant her the reliefs as endorsed on the writ of summons.

DEFENDANTS CASE.

It is important to note that the defendant after been served with the writ of summons and hearing notices did not appear in court to contest the case and the plaintiff gave evidence and the court adjourned for judgment on the 26th day of February 2021. However on the said date the defendant appeared and intimated to the court he intend to defence to the suit. The court indulged the defendant to defend same and proceedings typed accordingly but the defendant and his counsel failed to appear in court to contest same on two subsequent adjournments and the court adjourned for judgment today.

Order 25 r 1(2) (a) of the District court rules, 2009 (C.I. 59) provides that where a plaintiff attends court and the defendant fails to attend, the court may dismiss the counterclaim, if any, and allow the Plaintiff to prove his/her claim. The Supreme Court stated in the case of

ANKUMAH V. CITY INVESTMENT CO. LTD (2007-2008) 1SCGLR 1064 per holding 2 as follows:

“The defendant, after several attempts, was finally served but failed to appear in court. The trial court therefore rightly adjourned the case for judgment. A court is entitled to give a default judgment, as in the instant case, if the party fails to appear after notice of the proceedings has been given to him. For then, it would be justifiable to assume that he does not wish to be heard”

From the above position of the law, it is the considered view of the court that the Defendants in this current suit, does not wish to be heard.

ISSUE FOR DETERMINATION

Whether or not the Plaintiff is entitled to recover the GHC 16,632.00 from the Defendants.

EVALUATION OF EVIDENCE AND APPLICATION OF THE LAW.

The Plaintiff bears the burden of proof in this case to establish his claims. The standard of proof required from the Plaintiff is proof by the preponderance of probabilities. It is a basic principle of law of evidence that in a civil case, a party who bears the burden of proof is to produce the required evidence of facts in issue that has the quality or credibility short of which his claim may fail. See the case of ACKAH V PERGAH TRANSPORT LTD (2010) SCGLR 728 at P. 736. PER ADINYIRA JSC.

The burden demands that a party produces sufficient evidence such as will lead a reasonable man on all the evidence to conclude that the existence of the fact in issue is more probable than its non-existence. **See sections 11(4) and 12(1) of the evidence Act.** It is only after the Plaintiff has discharged his burden that the Defendant is required to adduce evidence in rebuttal of the Plaintiff's evidence.

The Plaintiff in proof of her case tendered in evidence Exhibit A which is the renovations the Plaintiff alleged she did at shop, a cursory look at the said exhibit A, are things the

Plaintiff did to help her business it does not in any way enhanced the shop for Defendant to pay same except the sliding door she alleged she did, all the list on the Exhibit A were done for the convenience of the Plaintiff to help her with her business.

The list on the Exhibit A includes: Air conditioner, display fridge, waiting chairs, sliding door, air con fixing and cage, ceiling fan, paint and painting fees, pre-paid, padlocks, light bulbs, extension cord, 3 mobile phones, TV mounts, TV decoder and dish, TV mount fees, dustbin, mob and broom, first aid box, wall clock, business certificate, Vodafone scratch cards, airteltigo scratch cards, MTN scratch cards, desk table and chair, transportation, water and drinks, pastries, printing inks, sign board, advert stickers.

The court do not see how the Defendant should be liable to these above listed items in exhibit A. all the things in exhibit A, are fittings which could easily be removed by the Plaintiff.

The Plaintiff tendered in exhibit D series which are the receipts to the sliding door and the air conditioner the Plaintiff claimed he had fixed in the said shop. With regard to the Air condition, it is a fitting which the Plaintiff could have taken away when vacating the said shop as alleged by her. Similarly with the sliding door, the Plaintiff did not lead any evidence to prove that when she occupied the said shop, there were no doors and base on that she fixed sliding door. All the items are for the benefit of the Plaintiff and not the Defendant.

In Exhibit B tendered by the Plaintiff in proof of her case, which was the whatsapp conversation between the Plaintiff and the Defendants' states; "please I will return your money to you before end of this month. Make sure you restore the shop to the way we gave it to you".

Clearly the Defendant wants the shop restored in its original state and neither did the Plaintiff lead evidence to the fact that the Defendant agreed in their contract to pay for the alleged items in Exhibit A. and that the money 2nd defendant admitted to pay per Exhibit B,

was her rent which includes the renovations. The Plaintiff did not lead evidence neither did she clarify same.

The court finds that all the items the Plaintiff alleged she did were for her own benefit. The Plaintiff having failed to prove to the satisfaction of the court her claim in respect of her alleged renovations it is the determination of the court that she cannot proceed to recover the cost of the alleged renovations in the sum of GHC 13,632.00 from the Defendants.

TEI & ANOTHER V CEIBA INTERNATIONAL (2017-2018) 2 GLR 906 at 919, Pwamang JSC opined as follows:

“It must be remembered that the fact that a Defendant does not appear to contest a case does not mean that the Plaintiff would be granted all that he asks for by the court. The rule in civil cases is that he who alleges must prove on the balance of probabilities and the burden is not lightened by the absence of the Defendant at trial. The absence of the Defendant will aid the Plaintiff only where he introduces sufficient evidence to establish a prima facie case of entitlement to his claim”.

In view of the foregoing, it is the determination of the court that the Plaintiff is entitled to recover only her rent advance of GHC 3,000.00 from the Defendant with interest on the said sum from August 2020 till date of final payment. Cost of GHC1000.00 awarded in favour of the Plaintiff.

(SGD)

H/W CATHERINE OBIRI ADDO ESQ

(M A G I S T R A T E)

30/4/2021

REPRESENTATION

PLAINTIFF: J.E K ABEKA ESQ:

DEFENDANT: ABSENT