

IN THE DISTRICT COURT 2, TAMALE
HELD ON WEDNESDAY 30TH NOVEMBER, 2022
BEFORE HIS WORSHIP D. ANNAN ESQ.

SUIT NO: A1/10/22

BETWEEN

ABDUL RAHAMAN MOHAMMED - **PLAINTIFF**

AND

ALHAJ MOHAMMED ISSAHAK -
DEFENDANT

JUDGMENT

INTRODUCTION

1. This judgment relates to landlord-tenant relationship. The plaintiff is the tenant and defendant is the landlord.

2. Per his amended writ of summons filed 27th July, 2021, plaintiff claims against the defendant the following:
 - a. An order directed at the defendant for the recovery of GHS4,400.00 paid by the plaintiff as rent but was never allowed access to the apartment.

- b. A declaration that the rent paid by the plaintiff was GHS600.00 per month.
 - c. An order directed at the defendant to release items belonging to the plaintiff in his apartment.
 - d. Damages.
 - e. Costs.
3. On 1st September, 2021 the defendant filed a statement of defence disputing plaintiff's claim. He added a counterclaim, praying the court that the plaintiff renovates his property by paying for cost of all damages caused.
4. The plaintiff in a reply, filed on 27th September, 2021 also disputed defendant's counterclaim.

PLAINTIFF'S CASE

5. In his testimony, plaintiff stated that he rented defendant's 3-bedroom apartment at H/No. GK 167, Kanville, Tamale from 28th January, 2020 to 28th January, 2021 at a monthly rent of GHS600.00. No tenancy agreement was signed. Plaintiff contends that when he moved into the apartment all the sinks and tabs in the room were damaged, so he drew defendant's attention and the defendant called in a plumber. However, when the plumber estimated the cost at GHS320.00, the defendant failed to pay for it but rather directed the plumber to give the bill to him (the plaintiff). Plaintiff claims that all the 12months he lived in the apartment, the plumbing works were undone, but he was not bothered. When his rent expired, he was out of Tamale so he asked his brother, Ibrahim Yayaha (PW2), to pick some documents from his apartment. Plaintiff stated that when his brother went there, defendant had locked the apartment and was unwilling to allow the brother access because he (plaintiff) had not paid or renewed the rent. So in March 2021, he paid GHS5,000.00 to defendant's mobile account

number. The plaintiff argues that the defendant again refused to open the apartment and was insisting on the rent paid in full. So he asked the brother to get the extra GHS2,200.00, but defendant would not take the money saying that the rent had increased to GHS700.00 per month.

6. Plaintiff argues that he could not afford the new rent so he demanded for the return of his GHS5,000.00 but defendant failed to do so. He then reported the issue to the police and the rent office. With the intervention of the rent office, plaintiff claims that the defendant opened the apartment for him to get his personal belongings, but defendant insisted that the apartment be put in a tenantable condition by fixing all the broken pipes and sinks before refunding any money. Plaintiff indicated that he was willing to paint the place but not fix the pipes and sinks since he was not liable for that. He, therefore, painted the apartment according to plaintiff's specifications. Plaintiff, however, in his reply stated that he had worked on all the damaged pipes and sinks.
7. Plaintiff says that the only rent that fell due was that of February 2021 and that since the defendant locked up the apartment in that month, defendant to refund GHS4,400.00. He also prays the court for the other reliefs as aforementioned.
8. In support of his case, plaintiff called two witnesses: Abdul Basit Ali Abdullah (PW1) and Ibrahim Yayaha (PW2). He also tendered in evidence:
 - Exhibit A - picture of the shower handle and water heater alleged to be damaged.
 - Exhibit B - picture of the shower handle alleged to be damaged.

9. PW1 stated that he works at the Rent Office and that when he intervened and visited the apartment it was only one sink that was functioning. He added that plaintiff painted the apartment according to defendant's specifications.

10. PW2 corroborated the evidence of plaintiff and added that he used to heat water for the plaintiff to bath because the water heater and shower were not functioning. He tendered in evidence Exhibits C and C1, being pictures of the hall with him cleaning the hall. He also tendered in evidence Exhibit D, being picture of the water heater which is similar to Exhibit A noted above. Lastly, he indicated that he has gone for plaintiff's belongings.

DEFENDANT'S CASE

11. Defendant's case is that he rented his apartment to plaintiff at a monthly rent for GHS700.00 from January 2020. He contends that only one sink had an issue and he had his plumber resolve it before the plaintiff moved in. He stated that soon after plaintiff moved in, he had fears for the security of the property because security agencies and angry clients visited the property. Defendant added that when the rent expired the plaintiff was not around, neither did he hand over the premises before leaving to Accra. He then locked up the place. Later, when plaintiff's brother, PW2, came there for plaintiff's document he was not around and that when his attention was drawn to it, he made a brother accompany plaintiff's brother to pick the documents.

12. Defendant further contends that without his consent plaintiff paid GHS5,000.00 into his mobile account even though they had not agreed on the rent or the further stay of

plaintiff. When he realized it was from the plaintiff, he decided to hold onto the money as security for the period plaintiff's belongings would remain in the apartment. With regards to the issue of damaged sinks and pipes, defendant maintains that all plumbing and in fact electrical works had been completed prior to giving out the keys to plaintiff. Rather, at time plaintiff decided to leave, damages had been caused to the shower handle, window, door locks and water heater, therefore plaintiff should put the apartment back in its tenantlike condition or pay for the repair. He confirmed that in May 2021, plaintiff packed out of the property.

13. Defendant did not call any witness but tendered in evidence Exhibits 1-8, being pictures of alleged damages to shower handle, window, door locks and water heater.

ISSUES

14. The issues borne out of the facts are:

- a. *Whether or not the monthly rent was GH600.00 from January 2020 to May, 2021?*
- b. *Whether or not there were damaged pipes and sinks before the tenancy and that same persisted during the tenancy?*
- c. *Whether or not plaintiff is entitled to his claim less defendant's counterclaim for cost of repair?*

BURDEN OF PROOF

15. In civil cases, the law is that he who asserts usually has the burden of proving his case on the preponderance of probabilities and he proves it by providing sufficient evidence in accordance with sections 11(4) and 12 of the Evidence Act, 1975 [NRCD 323]. In **Sakordie v FKA Company Limited [2009] SCGLR 65**, the Supreme Court held that

“...the burden of producing evidence requires a party to produce sufficient evidence which on the totality of the evidence, leads to a reasonable mind to conclude that the existence of the fact was more probable than its non-existence.”

16. In effect, the burden of proving any particular averment or allegation is on the one who made it. It is when the claimant has established an assertion on the preponderance of probabilities that the burden shifts onto the other party, failing which an unfavourable ruling will be made against him. The court in **Ababio v Akwasi III [1995-1996] GBR 774** puts it succinctly as follows:

“...it is the party who raises in his pleadings an issue essential of success of his case who assumes the burden of proving it. The burden only shifts to the defence to lead sufficient evidence to tip the scales in his favour when on a particular issue the plaintiff leads some evidence to prove his claim. If the defendant succeeds in doing this he wins, if not he loses on that particular issue.”

ANALYSIS OF THE ISSUES

17. Before I proceed to the issues, let me point out that relief c of plaintiff's claim, thus for an order to be directed at the defendant to release items belonging to the plaintiff is moot since parties in their respective witness statements confirmed that plaintiff has taken his belongings from the apartment.

Issue a

18. Issue a, *whether or not the monthly rent was GH600.00 from January 2020 to May, 2021?*
Based on the authority of **Ababio v Akwasi III (supra)** the onus of proof was on the plaintiff since he alleged that the monthly rent remained at GHS600.00.

19. Plaintiff testified that he paid GHS7,200.00 for the initial part of the tenancy which commenced on 28th January, 2020. When it expired on 28th January 2021, he communicated with the defendant and sent GHS5,000.00 to defendant's mobile account. Later, he asked PW2 to pay GHS2,200.00 to defendant in order for him to get access to his document in the apartment, but defendant declined it saying that the rent had increased to GHS700.00.

20. Defendant, on his part, stated that the rent was GHS700.00 from January 2020 to December, 2020. He locked up the apartment, reason being that plaintiff had not renewed the rent and had left for Accra.

21. From the evidence, no tenancy agreement was signed. There are, however, some inconsistencies in the testimonies of both parties regarding the tenancy period and the monthly rent. Below are some of them. First, when the plaintiff was under cross-examination:

"Q: You agree with me that you were in defendant's accommodation from *December 2019 to January 2022?*

A: It is not true. I took that apartment on *28/1/2019 and it ended in 28/1/2020.*

Q: You agree with me that the period you were in the defendant's accommodation you paid a monthly rent of *GHS700.00?*

A: No. I rented the apartment for *GHS600.00*. per month, for a year at *GHS7,200.00* in total.

...

Q: You agree with me that your rent ended in December 2020?

A: Yes.

Q: After your rent ended in December, 2020 did you have any discussion with defendant to extend your rent?

A: Yes. I had discussion with the landlord

Q: I am putting it to you that you did not conclude on any terms with the defendant regarding the rent?

A: It is not true. I had discussion with him regarding another one year payment and he agreed with the same amount which was *GHS700.00 a month.*

...

Q: I am putting it to you that you had a duty to hand over the property in a good state of repair?

A: *I have renovated the whole apartment, handed the keys to him through the Rent Control Officer and demanded my money which is GHS4,300.00, because after paying the GHS5,000.00 I stayed in the room for only one month and I asked him to take that out. The renovation was done to his own expectation, he chose to paint and I obliged to it, painted it and handed it to him through the Rent Control Officer who is also my witness.*

Q: I am putting it to you that your evidence is inconsistent with your witness statement?

A: It is not true.

Q: According to your witness statement, *the rent is GHS600.00 and not GHS700.00 as you mentioned today?*

A: I said in my statement that the rent *was GHS600.00 per month and in a year GHS7,200.00.*

22. On the part of the defendant, at paragraph 4 of both the statement of defence and witness statement, he stated that the initial rent was GHS700.00. However, this is what ensued when he was under:

Q: Can you tell this court whether it is true or not that the plaintiff rented your apartment *from January 2020 to December 2020?*

A: Yes.

Q: And you agree with me that he paid you in full that is a total of *GHS7,200.00 as rent?*

A: Yes.

...

Q: I am suggesting to you that in your own statement you stated that you locked up the apartment?

A: *I did not lock it.* But he sent a brother to the house to go and pick certain things from the room. *By that time, I took a padlock to locked it* telling him that

he has to settle me because the rent was over. By that time he (plaintiff) was in Accra.

Q: And that was in *February 2021, right?*

A: Yes.

Q: I am suggesting to you that *you locked up the apartment in February 2021* because you claim the plaintiff abandoned the room, per paragraph of your statement of defence?

A: *Yes. The reason why I locked the room is because he owed me rent."*

23. On the totality of the evidence, I deduce that the initial rent was GHS600.00 per month. Reason being that this sums up to the GHS7,200.00 which both parties confirmed.

24. Regarding the GHS700.00 monthly rent, defendant stated that nothing to that effect was agreed. He was waiting for plaintiff to come. Plaintiff, in one breath deducts GHS700.00 and in another breath the GHS600.00 from the GHS5,000.00 of his claim. I deduce that when the rent expired, the rent increased to GHS700.00 per month and the plaintiff knew about it, save that he insisted on the GHS600.00. In effect, I hold that the rent after the expiration of the tenancy increased to GHS700.00 per month.

25. With regards to when the rent expired, plaintiff puts it at 28th January, 2021. Defendant puts it at December 2020. I agree this time around with the plaintiff. Reason being that both parties confirmed that in February 2021 the rent had expired.

26. In effect, I hereby conclude that the initial rent from 28th January 2020 to 28th January, 2021 was at GHS600.00 per month and in February 2021 it increased to GHS700.00 per month.

27. Let me add that plaintiff indicated that he is willing to pay the rent for February 2021. Defendant claims rent from February 2021 to May 2021. It is trite that rent is recoverable after it has been incurred. In some instances, rent is paid in advance. The issue then is where the landlord locks the apartment in February 2021 such that the tenant does not have access to the property, could he be entitled to rent from that time till he allowed plaintiff access? Although, I did not find any authority in the course of writing this judgment, it is reasonable to me that he does not. At best, since plaintiff is willing to pay the rent of February 2021, defendant only gets that and nothing further.

Issue b

28. Now, issue b, *whether or not there were damaged pipes and sinks before the tenancy and that same persisted during the tenancy*, the onus of proof was on the plaintiff since he alleged that the damages were there but the defendant denied it. See the case of **Okudzeto Ablakwa (No. 2) v. Attorney-General & Obetsebi-Lamptey (No. 2) [2012] 2 SCGLR 845**, where the Supreme Court held that:

“...if a person goes to Court to make an allegation, *the onus is on him to lead evidence to prove that allegation*, unless the allegation is admitted. If he fails to do that, the ruling on that allegation will go against him. Stated more explicitly, a party cannot win a case in Court if the case is based on an allegation which he fails to prove or establish.”

29. The plaintiff to prove this allegation had to provide sufficient evidence, which Ollennu J (as he then was) in the celebrated case of **Majolagbe v. Larbi [1959] GLR 190 at 192** held thus:

“... he does not prove it by merely going into the witness box and repeating that averment on oath, or having it repeated on oath by his witness. He proves it by producing other evidence of facts and circumstances, from which the Court can be satisfied that what he avers is true.”

30. From the evidence, Defendant maintained that before renting out the apartment, he ensured that all plumbing and electrical works had been done. Plaintiff contends that at the time he entered the apartment the sinks and tabs were not working and that same were not repaired during the tenancy. He stated that when he reported the damages to the defendant, defendant sent his plumber to assess it but did not pay for the repair. Rather, the cost of the repair was sent to him, to which he also left it at that. Plaintiff in his reply stated that he fixed one of the sinks at the cost of GHS70.00, but the other plumbing works were left undone because defendant refused to pay the cost when his plumber estimated it at GH352.00. This was confirmed by PW2, the rent officer, who stated at paragraph 19 of his witness statement that, “when I entered the apartment, it was only one sink that was functioning well with the other two broken”. It is important to note that PW2 entered the apartment when plaintiff was about exiting the tenancy. He added that the exhibits of defendant were in fact taken by him, which is dated 3rd June, 2021. Defendant did not lead any evidence to the contrary, save his assertion that the plumbing and other works were done before plaintiff moved in.

31. In effect, I find that plaintiff has led sufficient evidence that when he took the apartment, there were damages to the sinks and tabs and same were left unrepaired during the tenancy and I so hold.

Issue c

32. Lastly, issue c, *whether or not plaintiff is entitled to his claim less defendant's counterclaim for cost of repair?* In a tenancy agreement, the law is that parties are free to contract, provided they conform to the law. The nature of the various rights and duties (i.e. covenants) under a tenancy agreement are determined by the contractual character of the agreement. The contracting parties are given rights and placed under a number of responsibilities either by express and implied covenants by the terms of agreement, common law rules and statutory provisions. In absence of express agreement, the common law and statutory provisions imply some covenants on the part of the landlord/lessor and tenant/lessee, Just to mention a few,

- a. On the landlord/lessor -
 - i. Not to derogate his grant
 - ii. To pay property rates/taxes
- b. On the tenant/lessee -
 - i. Obligation to pay rent
 - ii. Obligation not to commit waste on the premises
 - iii. Obligation to permit the landlord to view the premises
 - iv. Obligation to keep the property in a tenantlike manner; and among others.

33. Ideally, before a landlord rents out his property, the property must be in good state of occupation and that he would expect nothing in reversion other than in its tenantlike condition or good state of repair. In **Torrens v Walker [1906] 2 Ch. 166** it

was held that if the landlord does not reside on the premises, defects in repairs ought to be brought to his notice by express notification. However, the tenant needs not describe every defect in detail.

34. It is also trite that a tenant may undertake the repairs, where a landlord is in breach, and recover the cost from the landlord. He is not obliged to repair, however, if he allows the damage to persist, he will be liable for the resulting damage, see **Regis Property Co. Ltd v Dudley [1958] 3 ALL ER 491**.

35. As afore-determined in issue b, the damages to the sinks and pipes existed before the rent and same persisted during the tenancy. Therefore, the obligation to repair was on the defendant but not the plaintiff. Plaintiff will only be held liable for the resulting damages, if any, where he allowed the damages to persist. In the **Regis Property (supra)**, Lord Denning succinctly illustrated that a tenant would not be liable for a slate falling from the roof, but might well be liable for resulting dampness and damage if he did not take steps to replace the slate.

36. From the evidence, plaintiff in his reply to defendant's counterclaim contended that he had put the apartment in a tenantlike condition including painting the apartment. This is what ensued when he was under cross-examination:

A: ...So the Rent Officer said we should settle the matter, so the defendant said if I repair the broken things and all the things he claims were damaged, he would refund my money back to me. *So I used my money to fix everything in good shape.*

...

Q: I am putting it to you that *all the items you claimed you have repaired still remains damaged till today?*

A: It is not true.

37. On the part of the defendant regarding his counterclaim, he failed to lead any evidence as to the cost of damages caused. This is what ensued when he also under cross-examination:

Q: You have told this court that you only got to know the breakages of the apartment after the plaintiff had left the apartment?

A: Yes.

Q: When you discovered the breakages you took estimates of it, not so?

A: Yes.

...

Q: Can you tell this court how much was the estimate?

A: Unless I check, I cannot remember.

Q: I am putting it to you that you cannot remember because you did not take any estimates?

A: Yes.

Q: You did not do the estimate because there was no any breakages caused by the plaintiff?

A: That is not true.

Q: I am further suggesting to you that if you had prepared an estimate you would have brought same to court, but you did not?

A: That is true. I did not bring any estimate or calculations.

38. Let me rehash the decision in **Ababio v Akwasi III (supra)** where the court held that, “...it is the party who raises in his pleadings an issue essential of success of his case who assumes the burden of proving it. The burden only shifts to the defence to lead sufficient evidence to tip the scales in his favour when on a particular issue the plaintiff leads some evidence to prove his claim. If the defendant succeeds in doing this he wins, if not he loses on that particular issue.”

39. From the above, it is unclear to this court whether or not plaintiff has carried out all the repairs. The evidence only supports the painting, but that of the sinks, taps and the others are unclear. Unfortunately, the defendant did not put in any estimate as to the damages caused. As held earlier in issue b that the plaintiff is not obliged to repair the said sinks and taps and as such nothing to deduct either. I therefore find in favour of the plaintiff to recover the amount paid less that of the February 2021 rent.

CONCLUSION

40. In brief, I hereby enter judgment in favour of the plaintiff as follows:

- a. Recovery of GHS4,300.00 being the amount remaining after the February 2021 rent has been deducted.
- b. Costs is assessed at GH2,000.00.

H/W D. ANNAN ESQ.

[MAGISTRATE]

IBRAHIM YUSSIF ESQ. FOR THE PLAINTIFF

SHEIKH-ARIF ABDULLAH FOR THE DEFENDANT

References:

1. *sections 11(4) and 12 of the Evidence Act, 1975 [NRCD 323]*
2. *Sakordie v FKA Company Limited [2009] SCGLR 65*
3. *Ababio v Akwasi III [1995-1996] GBR 774*
4. *Okudzeto Ablakwa (No. 2) v. Attorney-General & Obetsebi-Lamptey (No. 2) [2012] 2 SCGLR 845*
5. *Majolagbe v. Larbi [1959] GLR 190 at 192*
6. *Torrens v Walker [1906] 2 Ch. 166*
7. *Regis Property Co. Ltd v Dudley [1958] 3 ALL ER 491.*