

IN THE DISTRICT COURT 2, TAMALE
HELD ON THURSDAY 18TH NOVEMBER, 2022
BEFORE HIS WORSHIP D. ANNAN

SUIT NO: A1/10/22

BETWEEN

AMINA AMADU - **PLAINTIFF**
[SUING PER HER LAWFUL ATTORNEY MOHAMMED ABDULLAH]

AND

MR. KOJO - **DEFENDANT**

JUDGMENT

INTRODUCTION

1. The plaintiff through her lawful attorney, Mr. Mohammed Abdullah, instituted this action against the defendant on 8th June, 2022. Per the writ of summons, plaintiff claims against the defendant the following:
 - a. An order restraining the defendant from carrying out himself as having any interest or right over the space in front of the plaintiff's store no. C9, Aboabo, Tamale.

- b. An order directed at the defendant to remove all the bags of salt from the frontage of plaintiff's store no. C9, Aboabo, Tamale.
 - c. A perpetual injunction restraining the defendant from interfering with plaintiff's peaceful enjoyment of her property of store no. C9, Aboabo, Tamale.
 - d. Costs.
2. On 16th June, 2022 defendant pleaded not liable to plaintiff's claim. Noting that the defendant is illiterate, the court set down the case for trial and parties to be heard viva-voce.

PLAINTIFF'S CASE

3. According to the plaintiff, she owns store no. C9, Aboabo, Tamale and that the defendant trades in salt in front of her shop which is disturbing her quiet enjoyment of the store and its operations. Through her lawful attorney, Mr. Mohammed Abdullah, the plaintiff contends that defendant was granted permission to trade in front of the store with the understanding that any time plaintiff needed the space/place, defendant would readily move. This has been their agreement for over 20years and the defendant has been paying monthly rent to plaintiff. Plaintiff stated that sometime In 2014 the market had to be reconstructed and that everybody had to move. Later in 2016, after the reconstruction the plaintiff was given an allocation to store no. C9, Aboabo. Tamale. Plaintiff argues that when she was unable to go to the store and she decided to rent it out, it was the defendant who introduced the tenant, Olivia Tetteh, with the understanding that should plaintiff rent out the store to an unknown person, he the defendant would not get the opportunity to bring back his trade in front of the shop. Here again, the defendant was granted permission to use the space in front of the store and was paying rent. However, in 2019 the former Mayor, Musah Superior, wanted to carry out a decongestion exercise and that all those

trading in front of the shops had to move. Plaintiff stated that the defendant led his colleagues to the Dakpema Palace to report the mayor to allow them trade there. Plaintiff stated further that through the intervention of the Dakpema, the mayor allowed them to continue their business. It was after this period that the defendant ceased paying rent to the plaintiff. So when plaintiff sent her daughter, one Rashida, to inquire why defendant was not paying the rent, defendant indicated that the space had been given to him by the Dakpema so he had stop making payments. Plaintiff claims she then summoned the defendant but defendant denied ever saying that and that it was due to low sales that was why he had not continued payment of the rent. According to the plaintiff, defendant later paid GHS300.00 and also paid some monies to which plaintiff was to consider when renewing the rent period. In 2020, when the rent expired, the amount paid by the defendant was deducted from the new rent. Plaintiff indicated that when her daughter needed the place to start a business, defendant has refused to move and insisting that the place had been given to him by the Dakpema. Hence, the plaintiff instituted this action as per the aforementioned reliefs.

4. The plaintiff called in evidence two witnesses, Baba Igmatsu (PW1) and Evelyn Atta Otumfuo (PW2) and tendered the following exhibits:
 - a. Exhibit A - Allocation of market store at Aboabo HD Lorry Park to Hajia Amina Amadu dated 1/12/16
 - b. Exhibit B - Upgrading of Aboabo & Lorry Park Registration of Project Affected Person dated 1/12/14
 - c. Exhibit C - Receipt of payment of allocation of store to plaintiff dated 1/12/16
 - d. Exhibit D - Tenancy agreement between plaintiff and Olivia Tetteh dated 9/2/18

5. PW1 and PW2 corroborated the evidence of plaintiff. According to PW1, it was her grandmother who introduced defendant to the plaintiff and that there had been no issue over the past 20years until she heard that defendant is claiming that the space had been given to him by the Dakpema. PW2 added that she is presently the tenant in store no. C9, Aboabo, Tamale.

DEFENDANT'S CASE

6. The defendant, on his part, indicated that indeed he has been paying rent to the plaintiff. However, this whole issue started when the Tamale Metropolitan Assembly instructed them to move. He contends that when the market was rebuilt and he went back, he was unable to trade at the old place so he moved away a little from the plaintiff's store. Again, when the mayor came back to move them, he and the other salt traders reported the issue to the Dakpema. He stated that the Dakpema invited the mayor and informed him that since they were paying rent, the mayor should allow them trade. He indicated that the mayor replied that the rent was not paid to the Assembly but to some other people. So, the Dakpema pleaded with the mayor to allow them trade and advised them to liaise with the Assembly. So to him, he now deals with the Assembly and not the plaintiff.
7. Defendant did not call any witness or tendered any exhibits.
8. The court takes judicial notice that it is the Metropolitan or District Assemblies that operate markets. What is unclear to this court is whether or not a place at the market can be owned by an individual to which he can claim rent to the exclusion of the Assembly. On that note, the court invited the Chief Executive Officer of the Tamale Metropolitan Assembly or his representative to come to court. However, the Chief Executive Officer or his representative failed to come to court or responded to the

issues raised. The issues were, (a) whether where the defendant trades, i.e. in front of stores no. C9, Aboabo market belongs to the plaintiff, (b) whether or not the Assembly has allocated the said space/place to the plaintiff or defendant, and (c) who collects rent in respect of the said space/place? On three occasions the Chief Executive Officer of the Tamale Metropolitan Assembly was served to come to court, but he failed to come or his representative did not come to court or filed any response in court. This court then concluded that the Tamale Metropolitan Assembly was not interested in the matter and therefore will proceed with it.

ISSUES FOR DETERMINATION

9. The issues borne out of the facts are:

- a. Whether or not the defendant is a licensee of the plaintiff?*
- b. Whether or not defendant in his actions forfeits the space/place of his trade?*

BURDEN OF PROOF

10. In civil cases, the general rule is that the party who in his pleadings raises issues essential to the success of his case assumes the onus of proof on the balance of probabilities. See the cases of **Faibi v State Hotels Corporation [1968] GLR 471** and **In re Ashalley Botwe Lands; Adjetey Agbosu & Ors. v. Kotey & Ors. [2003-2004] SCGLR 420**. The Evidence Act, 1975 (NRCD 323) uses the expression 'burden of persuasion' and in section 14 that expression has been defined as relating to, 'each fact the existence or non-existence of which is essential to the claim or defence he is asserting.' See also ss. 11(4) and 12(1) and (2) of NRCD 323 and **Sarkodie v FKA Company Ltd. [2009] SCGLR 65**.

11. In the celebrated case of **Majolagbe v. Larbi [1959] GLR 190** per Ollennu J (as he then was) at 192 held thus:

“Where a party makes an averment capable of proof in some positive way, e.g. by producing documents, description of things, reference to other facts, instances, or circumstances, and his averment is denied, *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.” *Emphasis mine.*

ANALYSIS OF THE ISSUES

Issue a

12. Issue a, thus, *whether or not the defendant is a licensee of the plaintiff?* In relation to land, a licensee is a person who has been granted permission by an occupier to do acts that would not have otherwise ordinarily constituted to trespass on that land. A license relationship can be gratuitous (bare license) or requires some form of payment (contractual license). The author, **N. A. Josiah Aryeh** in his book **Law of Landlord and Tenant in Ghana, [2015] 2nd Edition**, defines a contractual license as one of the forms of license, where there are arrangements between the parties, falling short of a tenancy, paying a fixed sum of money for the right of occupation.

13. It is trite law that he who asserts must prove. In the case **Okudzeto Ablakwa (No. 2) v. Attorney-General & Obetsebi-Lamprey (No. 2) [2012] 2 SCGLR 845**, the Supreme Court in dealing with the onus of proof of an allegation held at page 867 as follows:

“...What this rule literally means is 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.”

14. From the evidence, plaintiff claims that he granted defendant the permission to use the space/place in front of her shop to trade and that anytime she need the space/place the defendant will move. It is also not in doubt that the defendant had been paying rent to the plaintiff over the past 20years. What the defendant now claims is that since the former mayor of the Tamale Metropolitan Assembly was seeking to move them out but due to the intervention of the Dakpema, the space has been allocated to them and that he now pays his rent to the Assembly. Defendant further contends that he has moved a little bit away from the said store. This is what ensued during when defendant was under cross-examination:

Q: I am putting it to you that after the rebuilding of the market, you are still trading in front of plaintiff’s store?

A: I am not sitting in front of plaintiff’s store, because I have moved away.

Q: But is it still directly in front of plaintiff’s store?

A: That is so.

...

Q: I am putting it to you that because of your trade in front of plaintiff’s store, you are adversely impacting on the trade of plaintiff’s tenant in the store?

A: Plaintiff's tenant also sells salt. There is some gap between where I sit and that store. So my trade cannot negatively impact the plaintiff's tenant's trade.

Q: I am putting it to you that the place you sit to trade is under the permission of the plaintiff and not the Dakpema and the Assembly?

A: I am sitting there under the authority of the Assembly.

15. From the above, I find that there exist a license relationship between the parties, where the plaintiff is the licensor and the defendant is the licensee. Reason being that the defendant was granted permission to ply his trade in front of store no. C9 with the understanding that he would move anytime plaintiff needed the space/place. The defendant failed to lead any evidence that the space belongs to the Dakpema or has been allocated to him by the Assembly. I also find that defendant is literally trading in front of the plaintiff's store. Also as earlier pointed out, although the Tamale Metropolitan Assembly failed to come to court to assist the court in establishing whether the said space/place has been allocated to the defendant or otherwise, it does not in my opinion preclude this court from determining this matter. In evidence, it is noted that the plaintiff and the defendant had their agreement long before the Tamale Metropolitan Assembly rebuilt the place. With no other evidence to the contrary that the said space/place belongs to the plaintiff to which she gave out for rent to the defendant, I therefore find that the space/place in front store no. C9, Aboabo, Tamale to which the defendant plies his trade belongs to the plaintiff and that the defendant is there as a licensee, see the case of **Okudzeto Ablakwa (No. 2) v. Attorney-General & Obetsebi-Lampsey (No. 2) (supra)**.

Issue b

16. Issue a, thus, whether or *not defendant in his actions forfeits the space/place of his trade?* It is well settled law that a licensee who claims title to his licensor's property, forfeits his or her interest in the subject property. In **Antie & Anor. v Ogbo [2005-2006] SCGLR 494**, Wood JSC (as she then was) stated at page 543 as follows:

“The common law rule as to forfeiture by a licensee or tenant who challenges the title of his licensor or landlord has received statutory recognition under sections 27 and 28 of NRCDC 323. The law is that a licensee or tenant who denies the title of his or her licensor or landlord, either by claiming that title to the subject matter is vested in himself or herself or someone else forfeits his or her interest.”

17. In the instant case, defendant contends that he no longer pays rent to plaintiff because the said space/place was given to him by the Dakpema and that he now deals with the Assembly. He failed to lead sufficient evidence to establish that the Dakpema or the Assembly gave him the said space/place. It is, however, on record that he was paying his rent to the plaintiff as his licensor/landlord. On the authority of **Antie & Anor. v Ogbo (supra)**, I therefore have no hesitation at all in concluding that the actions of the defendant in claiming that the said space/place vests in another person other than the plaintiff herein, he forfeits his interest thereof.

CONCLUSION

18. I hereby enter judgment in favour of the plaintiff for the following:

- a. The defendant is restrained from carrying out himself as having any interest or right over the space/place in front of plaintiff's store no. C9, Aboabo, Tamale.

- b. The defendant to remove all the bags of salt from the frontage of plaintiff's store no. C9, Aboabo, Tamale, within two (2) weeks.
- c. The defendant, his servants, workmen, agents or whosoever claiming through him are perpetually restrained from interfering with plaintiff's peaceful enjoyment of her property store no. C9, Aboabo, Tamale.
- d. Costs assessed at GHS1,000.00 is awarded in favour of the plaintiff.

H/W D. ANNAN ESQ.

[MAGISTRATE]

PLAINTIFF REPRESENTED BY HER LAWFUL ATTORNEY

DEFENDANT APPEARED IN PERSON

References:

1. *ss. 11(4), 12(1) and (2) and 14 of Evidence Act, 1975 (NRCD 323)*
2. *Faibi v State Hotels Corporation [1968] GLR 471*
3. *In re Ashalley Botwe Lands; Adjetey Agbosu & Ors. v. Kotey & Ors. [2003-2004] SCGLR 420*
4. *Sarkodie v FKA Company Ltd. [2009] SCGLR 65*
5. *Majolagbe v. Larbi [1959] GLR 190*
6. *Okudzeto Ablakwa (No. 2) v. Attorney-General & Obetsebi-Lamptey (No. 2) [2012] 2 SCGLR 845*
7. *Antie & Anor. v Ogbo [2005-2006] SCGLR 494*

