

IN THE DISTRICT COURT HELD AT WEIJA, ACCRA ON WEDNESDAY THE 19TH
DAY OF OCTOBER, 2022 BEFORE HER WORSHIP RUBY NTIRI OPOKU (MRS),
DISTRICT MAGISTRATE

SUIT NO. G/WJ/DG/A9/15/2022

1. LOMOKO SOPHIA EWUDZI

2. OPONG NANA YAW

PLAINTIFF

VRS

NANA JOSEPH AFUM MIREKU

DEFENDANT

PLAINTIFFS ARE PRESENT AND REPRESENTED BY JOHN LISTOWELL SEKLE ESQ.
DEFENDANT IS ABSENT

JUDGMENT

On 21st December 2021, the Plaintiffs caused a writ of summons to issue against the Defendant for the following reliefs;

1. A declaration that shop 1 which was built by the Defendant in H/No B6/5 Kaneshie first light Accra as per the lease agreement between the defendant and the deceased (the late Emmanuel Yaw Ewudzi) of which the terms of the said agreement has long expired in 2015 forms part of the estate of the deceased.
2. An order by the honourable court directed at Defendant to vacate the said shop forthwith and to pay rent arrears of Ten Thousand Ghana Cedis (GHC10,000.00) to the plaintiffs covering the period between 2016 and 2021.
3. Recovery of possession

It is worthy of note that the defendant was served with the writ of summons and hearing notices by substitution pursuant to the orders of the court on 6th January 2022 inviting him to contest the suit however for unexplained reasons, the defendant did not file any process or appear in court personally to be heard even though he was served with hearing notices on all the days the case was heard.

The court therefore proceeded to hear the matter without the defendant pursuant to Order 25 Rule 1(2) (a) of the District Court Rules 2009, (C.I. 59) which provides as follows;

“Where the plaintiff attends and the defendant fails to attend, dismiss the counterclaim if any and allow the plaintiff to prove the claim.”

In *Ankumah v City Investment Co Ltd* [2007-2008] 2 SCGLR 1064, Baffoe Bonnie JSC held at page 1076 as follows;

“A court is entitled to give judgment in default 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.”

THE CASE OF THE PLAINTIFFS

The 1st plaintiff speaking on behalf of plaintiffs informed the court that plaintiffs are administrators of the estate of Emmanuel Yaw Ewudze (deceased) who died intestate on the 15th day of August 1990 at the Korlebu Teaching Hospital, Accra.

Upon his death, the plaintiffs applied for and obtained Letters of Administration to administer the estate of the deceased. Plaintiffs tendered a copy of the said Letters of Administration. Same was admitted in evidence and marked as Exhibit A.

It is the case of the plaintiffs that during the lifetime of the deceased, he entered into a lease agreement with the defendant, Nana Joseph Afum Mireku in the year 1975 for the

lease of a land in front of his house measuring 34 feet more or less by 22 feet more or less and lying at H/No. B6/5 Kaneshie First Light in Accra to the Defendant for a period of 40 years from 1975 to 2015. Per the terms of the lease, the defendant was to build shop 1, the subject matter of this dispute on the said land and after expiration of forty years, the said shop was to become the property of the deceased.

It is the further case of the plaintiffs that after the expiration of the lease, defendant continued to occupy the said shop without paying any rent to the beneficiaries of the estate of the deceased.

Plaintiffs add that defendant owes a total of GHC10,000.00 being rent arrears for the occupation of the shop from the year 2016 to 2021.

According to plaintiffs, they have instituted this action because the grantors of the deceased, State Housing Company Limited have requested the administrators of the estate of the deceased to pay ground rent arrears of GHC19, 200.00 to the company and also renew their interest in the said property. Plaintiffs tendered a copy of the letters from the State Housing Company limited and same were admitted in evidence and marked as Exhibits B and C.

Plaintiffs prayed the court for the reliefs as contained on the face of their writ of summons and particulars of claim.

At the end of the trial, the following issues were set down for determination by the court;

1. Whether or not the Plaintiffs are entitled to recovery of possession of the shop the subject matter of this dispute
2. Whether or not the Plaintiffs are entitled to recover rent from the defendant from 2016 to 2021

BURDEN OF PROOF

It is trite that the burden of proof will generally lie on the party asserting the affirmative of an issue, the absence of the defendant notwithstanding.

Section 11 of the Evidence Act, 1975 NRCD 323 provides;

(i)For the purposes of this decree, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling against him on the issue.”

Section 14 of NRCD 323 also provides that in a trial, the burden of proof may shift but unless and until it is shifted, a party has the burden of persuasion as to each fact, the existence or non-existence of which is essential to the claim or defence he is asserting.

This principle of law is reiterated in the case of **RE: ASHALLEY BOTWE LANDS; ADJETEY AGBOSU & OTHERS V KOTEY & OTHERS [2003-2004] SCGLR 420** where Woode JSC (as she then was) at page 444 stated;

It is trite learning that by the statutory provisions of the Evidence Decree 1975,(NRCD 323) the burden of producing evidence in any given case is not fixed, but shifts from a party to party at various stages of the trial depending on the issues asserted and or denied.

The law is that when a party makes an averment and same is not denied by the adversary, no issue is joined and the party does not have to lead any evidence to prove same. Again when a party gives evidence of a material fact and same was not cross examined upon, the court is bound to accept the evidence.

This position of the law was given judicial blessing in the case of in Re Presidential Election Petition; Akuffo-Addo, Bawumia & Obetsebi-Lampsey (No 4) vrs. Mahama,

Electoral Commission & National Democratic Congress (No 4) [2013] SCGLR (Special Edition) 73 when at page 425, Anin Yeboah JSC (as he then was) held;

“I accept the proposition of law that when evidence led against a party is left unchallenged under cross examination, the court is bound to accept that evidence:”

Applying the law cited supra, I find that the defendant was not in court to cross examine the plaintiffs on their claim even though he was served with a hearing notice to attend court.

On the totality of the evidence before this court, I find that the plaintiffs are entitled to their reliefs as follows;

1. I hold that the lease agreement between the late Emmanuel Yaw Ewudzie and the defendant expired in the year 2015 and forms part of the estate of the deceased.
2. Defendant is ordered to vacate from the shop the subject matter of this dispute and yield up vacant possession to the plaintiffs by 31/10/2022
3. Defendant is ordered to pay the sum of GHC10,000.00 being rent arrears from 2016 to 2021

I award costs of GHC2, 000.00 in favour of the plaintiffs against the defendant.

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**H/W RUBY NTIRI OPOKU (MRS.)
(DISTRICT MAGISTRATE)**

