**IN THE DISTRICT COURT HELD AT OSINO**
**ON THURSDAY THE 18TH DAY OF MAY, 2023**
**BEFORE HIS WORSHIP AYAGIBA SALIFU BUGRI**
**DISTRICT MAGISTRATE**

**CASE NO. A9/01/2023**

**EVELYN VANDERPURE ……. PLAINTIFF**
**OF ABOMOSO**

**VS**

**MR. OTI ……. DEFENDANT**
**OF ANYINAM**

## J U D G M E N T

Relief sought:

1. Cash the sum of GHC500.00 being two (2) months' rent arrears defendant owes plaintiff.
2. Any other orders the court may deem fit to make.
3. Interest and costs

**Brief Facts**

The case of plaintiff is that, she is a landlord resident in Anyinamu, whilst defendant is a tenant, occupying one of her apartments in her compound house in Anyinamu. Plaintiff avers that defendant's tenancy commenced in January and ended in December of the year 2022. The rent for the period was GHC250.00 monthly and defendant paid in advance for a year, to wit GH₵3000.00.

At the expiration of the tenancy, she notified defendant and he asked for some time to pay up his rent. After two months defendant informed plaintiff that his rent was ready and both agreed to meet but that never happened and for three days defendant did not show up until she called to remind him of their agreement to meet. Defendant indicated that he had travelled hence his inability to meet her. A week later when she called to remind defendant about the rent, defendant said he had vacated the apartment. Plaintiff demanded two months' rent from the defendant being the period he continued to stay in the apartment after the expiration of the tenancy, (i.e. January and February 2023) however, defendant kept giving excuses hence the matter is before the instant court.

Opening his defense, defendant admitted that he resided in plaintiff's apartment for one year and paid the rent amount aforementioned by plaintiff. Defendant said even though he paid the said rent in respect of a chamber and hall self-contained apartment, he was not offered his preference. Moreover the toilet facility in his apartment was not installed hence he had to attend nature's call in the bush. Additionally the apartment was not connected to flowing water, and his next-door neighbour had turned her corridor into a kitchen where she cooked, a situation that inconvenienced his family. Because the issues aforementioned were not addressed, he opted to move out of the apartment.

**Issues for Determination**

**Whether or not plaintiff's notice of expiration of tenancy to defendant was made timeously.**

**Whether or not plaintiff is right to recover two months' rent from the defendant.**

The rent act, Act 220 is the law that regulates landlord and tenant proceedings.

In Ghana the only grounds on which a tenant can be lawfully ejected and landlord recover possession of an apartment are those spelt out at section 17 and 25(2) and 28 of Act 220.

In the instant case there is no evidence that plaintiff sought to eject or recover possession of the premises from the defendant. The evidence suggests that plaintiff informed defendant about the expiration of his tenancy and the next rent due. Defendant has not denied that he pleaded with plaintiff for time to make due his rent and she granted that request. Even though it is not in evidence, I can infer that it was the reason plaintiff allowed defendant to continue staying in the apartment with his family even though the tenancy had expired and a new tenancy agreement and a commensurate rent not agreed. To ask for time, suggest that the rent was ready, and plaintiff to meet with him for payment implied that defendant intended to renew the tenancy. Moreover since it is not in evidence that plaintiff had indicated an upward or downward adjustment of rent, it implied that that the rent was maintained as the previous, hence defendant already knew how much to pay and was ready with that amount by implication.

Under normal circumstances under the rent act, the length of the notice to recover rent or possession depends on the terms of the tenancy contract if written. Where it is not written, it depends on the manner of paying rent, which has become a usage or convention between the landlord and tenant. It is after the notice has been shown to effectively terminate the tenancy that the landlord may proceed to give the statutory terms under Act 220. Otherwise, a tenant who pays a monthly rent will require a month notice for recovery of the next rent.

In the case of union trading company limited v Karam [1975] 1GLR 212@216 and Act 220, section 36. It does not matter whether the landlord rejects or accepts the rent.

In the instant case even though defendant paid the previous rent in advance of a year, it is explicit that he had assumed the position of a statutory tenant by his intention to vacate the apartment even though not divulged to the landlord. Similarly, if defendant had notified plaintiff of his intention to vacate the apartment, he would have been entitled to continue staying in the apartment, entitled to pay his rent monthly under statutory tenancy, until such time that he gets a new accommodation and moves out. However, since defendant decided unilaterally to move out, equity demands under the same statutory tenancy that he pays the accrued monthly rent for the period that he occupied the apartment under the same law.

It is evident from cross-examination that defendant had actually opted for a certain apartment but it was not availed. Moreover, it is in evidence that there were modifications to the substituted apartment that defendant finally settled on at his own cost with the consent of plaintiff. Plaintiff further admits that even though there was no toilet bowl installed, she had asked defendant to install it at his own cost as other tenants had done. In the opinion of this court upon analyzing the above evidence among others, defendant was aware of the defects and incomplete nature of the apartment but paid for it even though he preferred another. There is no evidence from the evidences adduced that defendant was coerced by plaintiff to opt for the apartment he finally opted for or that he entered into the verbal contract or tenancy under duress. In view of the nuisance created by defendant's neighbour, it is the view of this court that, there was no way that both plaintiff and defendant could have envisaged that nuisance until it became a matter of concern to defendant and his family.

Both plaintiff and defendant's argument is about when the tenancy should have ended but is not backed by any documentary evidence. Whereas plaintiff says defendant paid his initial rent in December and moved into the apartment in the first week of January 2022, defendant argues that he moved into the apartment early in February 2022 because renovation of the apartment was still ongoing in January 2022.

What is clear is that defendant has not disputed that he paid rent for the apartment in December. Even though both have not indicated December of which year the rent was paid, I infer from the circumstances of the case that it was in December 2021. Hence, the tenancy commenced in January 2022 and ended in December 2022, which references were made by the parties. In the absence of any evidence to rebut plaintiffs claim and on the balance of probabilities of the evidences adduced, the likelihood that defendant moved into the apartment in January is greater. My reason being that the evidences do not suggest that defendant raised any issue when informed in December that his rent had expired. If defendant had issues, it was the appropriate period to raise it. Moreover, defendant is the district NIA boss resident in Anyinamu, whilst plaintiff is a farmer per the court records and evidences adduced by the parties. It is the expectation of this court that, defendant ought to know better than to enter into a tenancy agreement that is undocumented. The consequence is what we are faced in the instant court to weigh the evidences on the balance of probabilities.

In a court of law the truth is determined by the evidence availed to it. It may not be the actual truth that is mostly concealed in the minds or brains of the parties, but truth according to evidence before it. In the end, it is actually the court that is on trial so to speak.

From the above analysis, it is the opinion of this court that defendant could have rejected the apartment he was offered instead of his preference but waived that preference when he occupied what was availed to him. Additionally defendant admitted upon cross-examination that plaintiff asked him to install a toilet bowl at his own cost to be deducted from subsequent rents, however it was the non-availability to raise funds that compelled him and his family to patronize a dugout latrine within the compound house.

Accordingly, to the extent that defendant was aware of all defects and inconveniences associated with the apartment in question, but still moved into it, defendant cannot

blame plaintiff for the lapses. There is no evidence that whilst defendant occupied the apartment and when informed of the expiration of his tenancy, he raised these concerns. Therefore, the decision to move out of the apartment is his right to exercise. However, it must not be to the disadvantage of plaintiff to lose her rent.

In the light of the above, I determine that the notice of expiration of tenancy that plaintiff made to defendant was too short; it should have at least been three months to the expiration and not the month of expiration.

Secondly, defendant had a duty to inform plaintiff that he was no longer interested in the apartment because of the defects and nuisance that were of concern to him and his family. To take a unilateral decision to vacate the apartment, having given the impression to plaintiff that he was renewing and paying his tenancy and rent respectively and to deviate from that, is most unfair. It is probable that plaintiff was induced by that impression to commit herself financially to a third party or contract in the belief that she was receiving rent soonest.

Having determined that the tenancy was for a year and rent paid in advance, I determine that the tenancy commenced in January 2022 and not February 2022 as defendant wants this court to believe. Accordingly, defendant is liable to pay two months' rent arrears, to wit GHC500.00 being the two months that he continued to stay in the apartment after the expiration of his tenancy in December 2022.

It is the opinion and finding of this court per the evidences adduced that the parties minds were at cross-purposes as to the commencement of the tenancy, especially when it was not written. Thus, both were mistaken as to the date of commencement of the tenancy. Whereas plaintiff started counting from January, defendant counted from February, a mistake if cured early might avert the instant litigation. Consequently, I deny the order for interest on the accrued rent arrears. Moreover, the period that the amount has been in arrears is not substantial enough that if interest was calculated it will yield much profit.

I however award costs of GHC300.00 for the plaintiff.

**HIS WORSHIP AYAGIBA SALIFU BUGRI,**
**MAGISTRATE**