

**IN THE DISTRICT COURT HELD AT WEIJA, ACCRA ON WEDNESDAY THE 26<sup>TH</sup>  
DAY OF JULY, 2023 BEFORE HER WORSHIP RUBY NTIRI OPOKU (MRS),  
DISTRICT MAGISTRATE**

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SUIT NO. G/WJ/DG/A9/57/2022

**HARRIET SARBENG**

**PLAINTIFF**

**VRS**

**ADAM TETTEH**

**DEFENDANT**

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PARTIES ARE PRESENT AND SELF REPRESENTED

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### **JUDGMENT**

On 25<sup>th</sup> April 2022, the Plaintiff caused a writ of summons to issue against the Defendant for the following reliefs;

1. Recovery of an amount of GHC9,600.00 being outstanding rent advance defendant has failed to refund to plaintiff despite demands from February 2022 plus interest from February 2022 to date of final payment, costs and any further order(s) as the court may deem fit.
2. An order for interests to be calculated on each amount from date of judgment to date of final payment, costs and any further order(s) as the court may deem fit.

The defendant pleaded not liable to the claims of the plaintiff and parties were referred to the court connected ADR for a possible settlement of the dispute on 19<sup>th</sup> May 2022. The parties were unable to reach settlement and as a result the court ordered the defendant to file his affidavit in opposition.

Defendant filed his defence on 6<sup>th</sup> October 2022 and denied the claims of the plaintiff and stated that the sum owed to plaintiff is GHC2, 475.00. He counterclaimed for the following;

- a. The sum of GHC500.00 being cost incurred in working on the bio digester
- b. Rent of GHC1,200.00 being rent arrears for March 2022
- c. Order directed at plaintiff to pay the sum of GHC2,330.00 being the costs of repairs of damage caused to the floor tiles by plaintiff when she brought a big truck to offload her belongings from the property

At the end of the pleadings, the court set down the following issues for trial

1. Whether or not the plaintiff is entitled to recover the sum of GHC9,600.00 from the defendant?.
2. Whether or not Defendant is entitled to recover from the plaintiff rent arrears for March 2022 and costs he allegedly incurred from repairing the bio digester and the floor tiles in the compound of the apartment.

### **PLAINTIFF'S CASE**

Plaintiff's case is that upon an agreement by both parties, defendant offered and granted his two bedroom self-contained rooms at Gbawe CP to her at a monthly rent of GHC1, 200.00. It is her further case that she paid rent for one year which totalled Ghc14, 400.00

She added that she made the payment on 28<sup>th</sup> October 2021 and moved into the apartment on 1<sup>st</sup> November 2021.

According to her, she was in the apartment when her electricity supply was disconnected in that same November 2021. When she enquired from the defendant why her lights had been disconnected, he told her that there was an accumulation of bills by old tenants and that the issue was being resolved by the police. She testified that the lights were reconnected illegally and as a result she went to the offices of the Electricity Company of Ghana where she was furnished with an invoice showing the accumulated light bills. She

tendered the invoice without any objection and same was admitted and marked as Exhibit A.

She stated that she was billed GHC100.00 per month as maintenance fee, GHC50.00 as water bill even though other tenants were paying GHC30.00

She added that she was confronted with another electricity bill in January 2022 which included the old bills outstanding. She then decided to move out of the premises in February 2022. She tendered the bill and same was admitted and marked as Exhibit B.

She stated that prior to moving out of the premises, she called the defendant and informed him of her intentions to vacate from the premises. She stated further that she handed over the keys to the premises to the defendant and his day security man. It was agreed between the parties that defendant would rent out the premises to another tenant and pay her outstanding balance to her. She added that defendant asked her to come back and pay her outstanding light bill for March and as a result she paid the sum of GHC1,000.00 as electricity bill. She tendered the receipt acknowledging payment and same was admitted and marked as Exhibit C.

Plaintiff testified that she paid a personal visit to the premises and noticed that the defendant had rented out the apartment to a Caucasian man in March 2022. When she confronted the defendant, he denied and said the Caucasian man was a visitor and not a tenant. She insisted on being paid her balance and lodged a complaint at the police station where she was advised to sue him in court hence the instant action.

#### **DEFENDANT'S CASE**

Defendant on the other hand stated that plaintiff came to his premises in October 2021. It is his case that when plaintiff went to him, he opened the premises and asked her to inspect same and indicate whether or not she is interested. She inspected the rooms and

having satisfied herself that everything was in good condition, parties spoke about the rent and agreed on the sum of GHC1,200.00 as rent per month after which she paid a total sum of GHC14,400.00 for a year. Parties then entered into an agreement. He tendered the agreement in evidence and same was marked as Exhibit 1.

He added that he informed the plaintiff that the rent was exclusive of water and light bills and she understood.

According to the defendant, he noticed that plaintiff was bringing a lot of visitors to the premises and was giving the security man the keys to her apartment and cautioned her against it. Not long after, the plaintiff decided to move out of the premises without informing him and as a result when she requested for her outstanding balance, he informed her that if he rents out the apartment, he will pay the balance to her.

A month thereafter, another tenant moved into the apartment. He tendered the tenancy agreement he reached with the said tenant and same was admitted and marked as Exhibit 2.

Defendant stated that when plaintiff left the premises, he informed the man who brought her to the apartment about damages that the plaintiff had caused and the man assured him that plaintiff will come and fix the damages. All that was repaired was a broken glass door and the man never returned. He added that he told the man that if the items damaged at the premises were not fixed, he will fix same and surcharge the plaintiff with the costs.

He stated that the man gave him the go ahead to fix the damages and deduct the costs of the repairs from plaintiff's balance outstanding.

Defendant informed the court that he fixed tiles that were damaged by the plaintiff inside the compound. He tendered invoices and pictures of the broken tiles he had fixed and same were admitted and marked as Exhibits 3 series.

He again stated that he was informed that the bio digester was also full and needed to be dislodged. When the chamber of the bio digester was opened, he saw socks, paper and other items that had allegedly been placed there by the plaintiff. He tendered costs incurred for dislodging the bio digester and same was admitted and marked as Exhibit 4.

Defendant stated that he made the plaintiff aware of the costs he had incurred and also that he was going to deduct the costs from plaintiff's balance of GHC9,600.00 leaving a balance of GHC4,795.00 which he was willing to pay to the plaintiff.

### **BURDEN OF PROOF**

The law is trite that for a court to decide a case one way or the other, each party to the suit must adduce evidence on the issues to be determined by the court to the standard prescribed by law. This position is supported by various provisions of the Evidence Act, 1975 (NRCD 323). Section 14 of Act 323 provides as follows;

Except 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.

The means of effecting proof was explained in **Majolagbe v Larbi [1959] GLR 190**, where Ollenu J. (as he then was) held that:

“Proof, in law is the establishment of fact by proper legal means; in other words, the establishment of an averment by admissible evidence. Where a party makes an averment and his averment is denied, he is unlikely to be held by the court to have sufficiently proved that averment by his merely going into the witness box, and repeating his

avermment on oath, if he does not adduce that corroborative evidence which (if his averment be true) is certain to exist.”

In civil matters, such as this matter, the requisite standard of proof that must be satisfied is on the preponderance or balance of probabilities. See **Serwah v Kessie [1960] GLR 227**.

The nature of the evidence that may be adduced by a party in support of his claims may be either oral or documentary evidence. However, where there is oral and documentary evidence relating to the same transaction, the rule is that the court should lean favourably towards the documentary evidence, especially where the oral evidence is conflicting, and the documentary evidence is authentic. See **Hayfron v Egyir [1984-86] 1 GLR 682-694**.

Again, where the evidence given by a party in court is in conflict with his previously written statement, the court will attach little weight to the oral testimony and the credibility of the witness will be adversely affected. See **State v Otchere [1963] 2 GLR 463; Akowuah v COP [1963] 2 GLR 390**.

Has the plaintiff been able to discharge this legal burden?

#### ISSUE ONE

From the evidence, the defendant does not dispute the claim of the plaintiff save that he claims the plaintiff caused some damages which costs he ought to deduct from the balance to be paid to the plaintiff. These assertions have been denied by the plaintiff.

The defendant therefore had the burden to prove his counterclaim.

It is trite that a person who is denying a fact is under no obligation to prove a negative either by documentary evidence or otherwise.

The question to be answered is whether or not the defendant led sufficient evidence to persuade the court that on the balance of probabilities, his version was by and large more credible than that of the plaintiff.

Defendant claimed that plaintiff caused damage to the tiles in his compound with the truck that had carried out her belongings from the premises. He tendered in evidence exhibits 1 and 1A which are pictures of broken tiles. He again tendered Exhibits 2 and 2A which were pictures of the repairs of the alleged broken tiles.

From the face of Exhibits 1 and 2, I find that there is nothing to show that the plaintiff was responsible for the alleged damage caused to the tiles in the compound of the premises.

Defendant again testified that when the plaintiff left the apartment, he called a man who had accompanied plaintiff to rent the room and complained about the said damages to him. According to him, the said man assured him that he should go ahead and repair the damages and that he would ensure that plaintiff pays for the cost of the damage.

Defendant failed to call the said man who is a material witness to prove his assertions which had been vehemently denied by the plaintiff.

Defendant also alleged that plaintiff had blocked the chamber of the bio digester and he had incurred costs to dislodge same. As a result he was praying the court to deduct the said costs from Plaintiff's outstanding balance.

He called Stephen Kwasi Nyarko as his witness. According to Mr. Nyarko, defendant contracted the services of his deceased boss early March 2022 to dislodge the bio digester. According to him, when the chamber was opened, he found that some materials had been flushed down into the bio digester causing it to be choked. He added that same was

dislodged at a cost of GHC2,500.00 exclusive of materials used. He stated that evidence of the choked bio digester was in the custody of his deceased boss.

The following information was elicited during cross examination of defendant's witness;

Q: Does the chamber serve just my apartment or it serves all the apartments in the block?

A: I do not know. All I know was that we worked on the chamber.

From the evidence, I find that defendant has been unable to link plaintiff to the blockage of the bio digester. Accordingly I find that defendant has been unable to prove his counterclaim on the balance of probabilities. His claims fails and same is dismissed.

From the totality of the evidence before the court, I find that plaintiff has been able to prove on the preponderance of probabilities that she is entitled to recover the sum of GHC9, 600.00 from the defendant.

## **DECISION**

Defendant is ordered to pay the sum of GHC9, 600.00 to the plaintiff. Defendant is ordered to pay interests on the sum of GHC9, 600.00 from March 2022 to the date of full and final settlement of the said sum.

Costs of GHC2, 000.00 is awarded in favour of the plaintiff against the defendant.

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

