

**IN THE DISTRICT COURT, NGLHSHIE AMAFRO HELD ON FRIDAY THE 23RD DAY
OF JUNE, 2023 BEFORE HER WORSHIP EMELIA K. ABRUQUAH ESQ., (MRS.)**

SUIT NO. A2/17//2023

TIME: 10:00AM

EMMANUEL TWENEBOAH DAMSON

PLAINTIFF

VRS:

1. HOPECE OBLI GILBERTSON

DEFENDANTS

2. REV. MOSES DAMSON AMIN

PLAINTIFF PRESENT

1ST DEFENDANT ATTORNY PRESENT

2ND DEFENDANT PRESENT

JUDGMENT

The Plaintiff per his Writ of summons against the Defendants is seeking an order to be directed at the Defendants jointly and severally to compensate Plaintiff with GHC20,000.00

after 1st Defendant invited Plaintiff when Plaintiff was peacefully working with LESDEP Company in Tamale to come and be a care taker at his house at Amanfro.

Plaintiff is also demanding that he should be given six months to vacate the house.

Plaintiff on the 10th day of May, 2023 filed his witness statement where he stated that he moved into that house when his mother asked his step father the 2nd Defendant to search for an accommodation for the family.

According to the Plaintiff, his mother paid for the rent for the period between 2009 to 2012. He was transferred to Tamale and only comes down occasionally and on one of his visits he met the landlord who had come from the UK and was staying in the same house. He indicated that he returned to Tamale and the landlord called him on phone to say he should come and be taking care of the house and that he will be paying him 50 pounds every month so he agreed and came back. He came and sat down with the landlord who told him he was divorcing his wife and that the Court knows that there is a care taker of the house whom he pays 50 pounds every month. He said the landlord did not fulfill his promise to pay him monthly and also did not pay the money he borrowed from his mother to rebuild a broken wall and a damaged pipe which he had informed the landlord but he did not say anything. Somewhere last year, the landlord (1st Defendant) and his step father (2nd Defendant) came to ask him to vacate the house. So, he told the landlord to pay him the 50 pounds he promised to be paying every month from 2012 to date and the money he borrowed from his mother to rebuild the fence wall and the pipeline but his landlord told him he has not said anything like that and so has nothing to give him. He was served with summons from the Rent office in February, 2023 and after everything done there, he was given one month to vacate the house hence the matter before the court.

In defense, the second Defendant stated that he approached the first Defendant's father in 2009 and was given the keys to the house which he stayed in for about three months before

bringing Plaintiff and his mother plus other relatives to the house. Second Defendant said he was asked by the father of the first Defendant to be taking care of the premises. The second Defendant indicated that when the first Defendant returned from the UK, he took him to the house and he told the Plaintiff to vacate the premises and that the first Defendant never told him he had entered into an agreement with the Plaintiff to be paying him GHC500 each month to take care of the house. That the Plaintiff too never told him of any negotiations between him and the first Defendant. According to the second Defendant, the Plaintiff's mother never gave him money to pay for the rent and that when his mother returned from the USA, he decides to go and stay with her at Awoshie. He later discovered that the Plaintiff has turned the garage into a kitchen and the kitchen has turned into a bedroom. He added that all the fittings and the WC's have broken down and the Plaintiff is preventing them from renovating the house. That he and the first Defendant visited the house again this year (2023) and he told them to vacate the house but they are still occupying it so he summoned them at the rent office and after hearing them, the rent officer gave an order that the Plaintiff should vacate the premises on 30th March, 2023.

The court will be determining the following issues

1. Whether or not there is any contractual agreement between the Plaintiff and the first Defendant to take care of the 1st Defendant's house.
2. Whether or not the first Defendant promised to be paying the Plaintiff 50 Pounds every month from 2012 to date.

The onus of proof in matters like the instant case is on the Plaintiff to lead credible and admissible evidence to establish his case and the standard of proof is by a preponderance of probabilities to avoid ruling against him. This rule of evidence regarding the onus of proof was appropriately stated by Kpegah J.A as he then was in **Zabrama vrs Segbezi (1991) 2 GLR 221** at 246 as follows. ...` a person who makes an

avermment or assertion which is denied by his opponent has a burden to establish that his averment and assertion is true. And he does not discharge this burden unless he leads admissible and credible evidence from which the fact or facts he asserts can properly and safely be referred" ...

Also, the standard of proof in civil matters has been codified in sections (11 (4) and 12 of the Evidence Act, 1975 (to NRCD) 323, as proof by preponderance of probabilities. This position of the law was aptly stated in **Adwubeng V. Domfeh(1996-1997) S CGLR 660, holding (3) at 662** that by section 11 (4) and 12 of the Evidence Decree 1975, (NRCD 323) the standard of proof in all civil cases is proof by preponderance of probabilities, no exceptions were made. This same rule of evidence was further echoed in head note (5) of *Takoradi Flour Mills V. Samir Farms* (2005-2006) S CGLR 1882 at 884 as follows; 'it is sufficient to state that this being a civil suit, the rules of evidence requires that the Plaintiff produces sufficient evidence to make out his claim on a preponderance of probabilities as defined in Section 12(2) of the Evidence Decree, 1975, (NRCD 323)

In this regard, it is expected that the Plaintiff herein, who mounted this action, should lead credible and sufficient evidence to establish that his assertion is more probable than the denial of the Defendants. It is only after the Plaintiff has introduced sufficient evidence of the probabilities of his case that the burden placed on him may shift on to the Defendants to equally produce evidence to avoid a ruling against him.

It is not in issue that the property belongs to the 1st Defendant in this case.

I proceed to determine the issues. The first issue is whether there is any contractual agreement between the Plaintiff and the 1st Defendant for the Plaintiff to take care of the 1st Defendant property. A contract is an agreement which is enforceable by law.

There must be a consensus ad idem in other words, there is the need for the meeting of minds by the parties. The Plaintiff avers that he was gainfully employed as a driver

mechanic with local Enterprise and Skill Development (LESDEP) and was later transferred to Tamale to head a plant and within three weeks at Tamale, the 1st Defendant phoned him and asked him to come and stay and take care of his house at a monthly payment of 50Pounds which he agreed. Even though the Plaintiff stated in his evidence that he was working with LESDEP when the 1st Defendant asked him to come and take care of his house, the following are the questions he asked the 1st Defendant under cross examination;

Q: Do you know I have ever worked with NADMO?

A: I don't know.

Q: Do you know I lost my job with NADMO because you asked me to take care of your house.

A: I don't know and I have asked you to bring evidence of that.

Considering the question asked by the Plaintiff visa vie his own evidence in court, it is undoubtedly clear that the testimony of the Plaintiff contradicts his own ... questions he asked the 1st Defendant.

The rule of principle of law is that, when the evidence of a party is in conflict with his own evidence or that of his witness bordering on a material fact, it is not open to a trial court to make a specific finding on the issue in favour of the party whose case contains the conflicting evidence on the issue.

See, the case of **Atadi V. Ladzekpo (1981) 1GLR 218 at 224.**

It should be noted that the 1st Defendant vehemently denied ever entering into any contractual agreement with Plaintiff to take care of his house. From the Plaintiff's own evidence the 1st Defendant told him he has never said anything like what he said that he will pay him 50Pounds a month. The 2nd Defendant through whom the Plaintiff first came to that house also denied the Plaintiff's assertion and said that he never rented the house and that he was asked by the 1st Defendant's father to live in and take care so he was rather the care taker and not the Plaintiff. It is trite that it is not

proof when a party mounts the witness box and repeat his averments on oath. That being the case, this court cannot rely on a mere allegation not supported by any other corroborative evidence in view of the fact that the 1st Defendant denied that he has ever agree with the Plaintiff to be a care taker of his house. The apex Court of our land speaking through **Justice Dr. DateBah, JSC** reiterated in the case of **T.K. Serbeh & Co. Ltd V. Mensah (2005 -2006) SCGLR** at 360 that “for however credible a witness may be, his bare affirmation on oath or the repetition of his averment in the witness box cannot constitute proof. The burden here is on the Plaintiff to produce concrete and credible evidence to his assertion which in the mind of this Court he has failed to provide. It is therefore the findings of this Court that there was no any agreement between the Plaintiff and 1st Defendant for Plaintiff to take care of his house as the Plaintiff could not lead any evidence to prove his assertion of the suppose agreement between them.

Regarding the second issue whether or not the 1st Defendant promised or agreed to be paying the Plaintiff 50 Pounds every month from 2012. I must say being able to resolve the first issue that there was no any agreement for Plaintiff to be a care taker of 1st Defendant’s house means no payment terms too on that. Assuming without admitting that the 1st Defendant agreed to be paying the Plaintiff 50 Pound every month from 2012 and he never for once paid this money and from 2012 to date you never saw the need to demand your monthly payment until you were told to vacate the premises makes his allegations not probable.

There was therefore not any agreement for the Plaintiff to leave his job at Tamale and to come and be a care-taker of the 1st Defendant house at a monthly salary of 50 Pounds, if that was so the Plaintiff would have demanded his monthly payment since 2012 when the “suppose” contract was agreed upon. With regard to the claims by the Plaintiff that he used his mother’s money to rebuilt a broken wall and a pipe line

reconstruction. It is worth nothing that the Plaintiff's evidence before the Court did not indicate that there was any agreement between him and the 1st Defendant for the Plaintiff to borrow money from his mother to do work in his house. He did not also tell the Court how much money he took from her mother to do the work, neither did he exhibit any receipt of any material bought for the work. In the case of **Acquah V. Oman Ghana Trust Holding Ltd**, it was stated that a party who makes improvements to the landlords premises without an agreement to do so does so for his own comfort and convenience and there is no intention to hold such expenses to the landlords accounts otherwise the party would have in accordance with normal business practice sent particulars of those expenditures together with supporting documents to the landlord.

Assuming without admitting that the 1st Defendant asked the Plaintiff to rebuild the broken wall and repair the broken pipe line, what evidence is on record to show that he has actually carried out these works and this is the cost of work done. The Court comes to the conclusion that these works done were carried out for the Plaintiff own comfort and benefits and cannot hold the 1st Defendant account for them.

From the facts and evidence adduced, the case of the Defendants is more probable as they were able to disprove or rebut the claims of the Plaintiff as his evidence is inconsistent which inconsistencies robbed him of the credibility of his case whilst that of the evidence of the Defendants is corroborative, sufficient and credible.

From the above reasons, the Plaintiff will not be entitled to his reliefs per his Writ of Summons. As a result, the case of the Plaintiff is accordingly dismissed in its entirety.

H/W EMELIA K. ABRUQUAH (MRS)
(MAGISTRATE)

