

**IN THE DISTRICT COURT HELD AT TESHIE-NUNGUA ON TUESDAY THE 31ST
DAY OF JANUARY, 2023 BEFORE HER WORSHIP PRISCILLA SOPHIA YEBOAH
AS MAGISTRATE**

CASE NO: GTNDC/A8/1/21

1. IKE JOE NII M. LIVINGSTON - PLAINTIFFS

2. REGINALD ABBAM KWEI

VRS

KWASHIE AMARTEY ANANG - DEFENDANT

PARTIES PRESENT

COUNSEL FOR PLAINTIFF ABSENT

DEFENDANT IS SELF –REPRESENTING

JUDGEMENT

By a writ of summons issued in this court on the 9th of October, 2020 the Plaintiffs claimed against the defendant the following reliefs:

1. An Order restraining the Defendant from dealing with the family property as Defendant's personal property.

2. An Order restraining the Defendant from interfering with the Tenants peaceful occupation of the family property rented to Tenants.
3. An Order ejecting the Defendant from the family property.
4. An Order restraining the Defendant from holding himself as the owner of the said family property.
5. General damages.
6. Cost including legal cost.

By the summary of subject matter of claim, the Plaintiffs deposed that, they are the Administrators of the Estate of one Victoria Obeng (who happened to be the maternal sibling and niece of the administrators) and the owner of properties including H/N 504/6 Teshie, the subject matter of this suit.

That Defendant is also the maternal nephew of the deceased intestate and occupies a room in the said property which he took occupancy some few months before the demise of the deceased intestate.

According to the plaintiffs even though no room has been vested in the defendant except being a licensee he lays claim and Portray himself to the tenants as the land lord and owner of the property in issue usurping the powers of the administrators. According to the Plaintiffs the Defendant's continuous stay in the property is not in the best interest of the family nor the tenants in the house as he keeps harassing the tenants by issuing eviction notices and also locking up the toilet facility in the house.

Case for the Plaintiff

Adducing evidence in support of the Plaintiffs' case, the 1st plaintiff testified by himself and also for the 2nd Plaintiff. In addition, the plaintiffs called two other witness. The evidence of the Plaintiff is that they have the capacity as Administrators to deal with the property in question and in support of that tendered in evidence the Letters of Administration (Exhibit A) granted them by a Court of competent jurisdiction. In their capacity as administrators they seek to eject the defendant on account of misconduct and by the fact that upon the administrators obtaining the Letters of Administration they have duly executed their duties and the satisfaction of the family by allocation about 12 rooms in question to the maternal siblings and nephews of the deceased intestate for which two of the defendant's siblings have been given their mother's share which they currently occupy.

The plaintiffs contend that the defendant was permitted to stay in the house in question for some few days after he had a blush with his father. That the defendant was allowed to stay in the house subject to good behaviour. However, defendant has resorted to bullying the tenants in the house, harassed and abused them to the extent that some of the tenants have to quit even before their tenancy expired. In addition, defendant some time ago issued eviction notices to some tenants without authorization from the administrators. On account of the numerous misconduct exhibited by the defendant the administrators served ejection notice on the defendant to enable him relocate to his biological father's house where defendant has a room but since defendant would not budge the only remedy available to the plaintiffs is to seek an ejection order against the defendant.

Plaintiffs filed witness statement for three persons to corroborate their testimony. Unfortunately, only two persons attended trial. The witness statement of the intended PW2 who failed to attend gearing is deemed hearsay because on account of section -----
----- of NRCD323

Plaintiffs further tendered the following Exhibits to strengthened their case as follows:

- Exhibit "A" representing letters of administration granted to 1st Plaintiff a co-administrator
- Exhibit 'B' Notice of the sharing of the late Victoria Mensah Odai by the administrators
- Exhibit 'C' representing an Arbitration report
- Exhibit 'D' –Eviction notice to all tenants by the defendant
- Exhibit 'F'-Representing the revocation of eviction notice by defendant as ordered by the family head.

Defendant's Case

The Defendant's case is that he is a legitimate family member since he is a nephew of the deceased whose Estate is the subject matter of this suit. According to him, he is therefore entitled to the room he is occupying. He denied any wrong doing and harassment to the tenants of the house. He however counterclaimed for the following:

1. An Order of the court to appoint the Court Registrar to hand over the room he is occupying in H/N No 504/6.
2. An Order to give him one tenth (1/10) of revenues accrued from rent of H/N 504/6 which is in the region of GH16,000.00 from April, 2015 to February, 2020 and interest at the prevailing bank rate.
3. An Order ejecting the Tenants in order for renovation, retouch, retool and maintenance work to be done on H/N 504/6 Teshie, and the allocation of rooms to the other beneficiaries who deserve it.
4. General damages for psychological and emotional trauma he has endured from the Plaintiffs since the death of his deceased aunt.

5. Cost.

In support of his case the defendant also tendered the following Exhibits:

1. Notice of reallocation of rooms written by defendant's late uncle and late co-Administrator.
2. Judgment of the District Court Accra Central, suit number A9/121/2014 which represent litigation between the late uncle of the defendant and defendant which suit sought to eject the defendant.
3. The writ issued by the late Stephen Mensah against the defendant herein.
4. The grant of Letters of administration to defendant's uncles.
5. Evidence of distribution of properties by the administrators.
6. Quit order notice by the head of family (Nathan Laryea Okasa Ahsong) to evict the defendant.
7. Withdrawal of suit number A9/127/15 against defendant by his late uncle and Administrator (Stephen Mensah).
 - Defendant also contends that the plaintiffs are estopped from instituting the instant action by virtue of the Court judgment in suit number A9/121/2014 by the Accra Central Court which granted the defendant authority to remain in the property in issue.
 - Defendant further contends that he is equally a beneficial of his late Aunt's estate just as his younger brothers and he cannot be left out of the distribution.
 - That as a beneficiary he is entitled to some percentage of rents collected by the plaintiffs in the region of ghc16,000 from April, 2013 to February, 2020,

ISSUES

The issues discernable from the processes filed thus far in the matter are:

1. **Whether or not the plaintiffs are estopped from bringing the present suit since the?**
2. **Whether or not the defendant is a nuisance to the tenants of the house under consideration?**
3. **Whether or not the Defendant can be ejected from occupying a room in House number 504/6, Teshie, the subject matter of the suit?**
4. **Whether or not the Defendant should be restrained from holding himself and or dealing with the family property as his own?**
5. **Whether the defendant is entitled to rent and rent arrears from his auntie's property?**

ISSUE 1:

1. **Whether or not the Plaintiffs are estopped from litigating with the Defendant over the room in question**

The general principle regarding Estoppels is that a final adjudication of a legal dispute is conclusive between the parties to the litigation and their privies as to the matters necessarily determined, and the conclusions cannot be challenged in subsequent litigation between them.

The rationale underlying estoppel by record is the maxim 'interest rei **publicae ut sit finis litium**', which means that it is for the common good that there should be an end to litigation. Estoppel brought about by previous judicial decisions may also be described

as “res judicata” or estoppel “per rem judicata”. The grounds upon which a party may raise res judicata have been stated in a plethora of cases and more recently in the Supreme Court case of **Adwoa Bokor vrs Madam Agbo Oddoye (substituted by Philip Odoi)**¹ where her ladyship Torkornoo JSC stated as follows: “ The authorities from this court, from **Peniana and others v Affram 1966 GLR 220, In re Sekyedumase Stool; Nyame v Kese alias Konto 1998 – 1999**

SCGLR 476, Darhabieh v SA Turki & Bros 2001 – 2002 SCGLR 498, are very clear that for a judgment to operate as estoppel, the decision of the

earlier court must be clear and unambiguous regarding the issue determined, the parties to the two suits must stand in the same capacity, and should determine finally the issues between the parties, such that it binds the privies of the parties. If the doctrine of estoppel per rem judicatam is to be used to resolve a dispute between the parties, then all the critical aspects of resolution of a dispute subject to the doctrine should be present. The burden in such a situation for the court is to determine who the parties were in the earlier proceedings, what issues arose between them and the final decision arrived at concerning the parties and the issue as seen in **Kariyavoulas v Osei**². The learned Justice then stated the basic principle that where a party intends to rely- on a plea of res judicata it must be expressly pleaded. However, where the justice of the case demands, failure to plea may not be fatal. The Supreme Court in **Adwoa Bokor case**³ stated:“**In Attorney -General v Sweater & Socks Factory Ltd, 2013-2014 2 SCGLR 946,** this court reiterated that the well- established principle was that a party-who intended to rely on the plea of estoppel per rem judicatam must do so-expressly, and make full disclosure of all the material facts on which it was-anchored on page 964 of the law report. The primary object of this sound-and high public policy-driven rule, was that it was in the interest of justice-and the public at large that finality should attach to binding judgments and-decisions of courts and tribunals of competent jurisdiction. Also, parties-should not be vexed twice or more over the same matters in litigation.-However,

it went on to set a proviso, albeit per incuriam, that failure of a party to specifically plead the defence of estoppel per rem judicatam should not be fatal to the party's case because whenever legally justifiable and appropriate, the need for substantial justice must not be sacrificed on the altar of technicality based on rules of procedure. Circumstances under which a court would be bound to consider the plea even when not specifically pleaded by a party includes 'where the defendant's statement of case points unequivocally or substantially to the plea'. It was the opinion of this court that in such a situation, it can hardly be argued that an opponent has been taken by surprise or prejudiced."

FACTS IN ISSUE:

The following facts are indisputable

- That the plaintiffs are the administrators of the property in issue
- The defendant occupies a room in the house in question as a family member and therefore pays no rent
- Defendant is a nephew to the deceased intestate as well as the administrators.
- The property in issue was distributed to the siblings and nephews of the deceased intestate excluding defendant.
- Civil Appeal No J4/38/2021 dated 8 the December 2021 (unreported)
- 2 (1982-1983) GLR 658 at page 664
- *supra*

The defendant in his defence and counterclaim stated that the Plaintiffs are estopped from litigating on this matter based on a judgement he obtained in 2013 which is exhibit 1

He tendered in evidence the judgement from an Accra Central District Court '3' dated 21st April 2014 with Suit No. A9/121/2014. Though the judgement was entered for the

defendant, to remain in the family house because he is a family member, the fact is that it was not a conclusive judgement or a judgement based on its merits.

Going by the **Kariyavoulas case supra** One striking principle upon which a judgement can operate as estoppel is

- when the judgement given was based on its merits. But the judgement referred to supra was to the effect that the plaintiff therein lacked the capacity to institute the action since
- the subject matter of the property was family property and could only be brought by the head of family of which the plaintiff therein was not.

I therefore reject the argument by defendant that the plaintiffs are estopped from bringing the instant action as the previous 2013 Cases was not determined on the merit of the case, I conclude on this issue that the Plaintiffs are not estopped from litigating the matter especially now that they are clothed with capacity.

ISSUE2

2. The second issue is whether or not the case of harassment has been made against the Defendant?

Among the reasons attributed by the plaintiffs for seeking ejection order against the defendant is that defendant had harassed and prevented the tenants in the disputed property from quiet enjoyment of their occupancy. The alleged harassment is linked to the locking of the tenants' place of convenience, issuance of ejection notice, assault of a tenant and defendant's late uncle. These assertions were backed by the above listed exhibits tendered by the plaintiff. On this issue the Plaintiff testified and called one family member and a tenant to adduce evidence in support. The family member, PW1 testified that, on issue of the Defendant locking up the toilet facilities in the house the issue was reported to him by one of the tenants and he intervened by going to open up the place for them. Though the Defendant denied in his evidence haven harassed the

tenants in the H/N 504/6 Teshie, the evidence abounds. Apart from the evidence of PW1 this same court while the matter was pending had to invite some of the tenants of the house to come to the court upon a complaint of the Defendant locking up the toilet. Four of the tenants were present in court and one of them gave a statement to the court confirming the allegation.

The Court therefore finds as a fact that the Defendant has been locking up the toilet facility in the house to prevent the tenants from accessing same. Probably unlashng his anger for the Administrators on the poor tenants. Besides defendant being a mere licensed family member has no capacity to act in that manner. I find the defendant's conduct very offensive and injurious to the quite enjoyment of the tenants.

Judgement is therefore entered on this issue for the plaintiffs by restraining the defendant from issuing orders and disturbing the tenants from having their peaceful and quite existence in the house as such decisions are left for the administrator to decide.

ISSUE 3:

1. Whether or not the Defendant can be ejected from occupying a room in House number 504/6, Teshie, the subject matter of the suit?

On this issue the Plaintiffs adduced evidence to the fact that they are the Administrators of the Estate of a deceased family member, one Victoria Mensah Odai and that the property the subject matter of this suit forms part of the deceased Estate. Whiles plaintiffs assert capacity to eject the defendant based on the facts aforementioned the defendant claims right to remain in the family house as a beneficiary and also on account of the 2013 judgment given in his favour.

Clearly, the house in question has assumed the character of family house. The Plaintiffs being administrators are cloth with capacity to deal with the estate of the deceased intestate. On account of the powers conferred on them as administrators, they have the

right to eject any family member who fails to show good conduct. The plaintiffs however, have gone ahead and shared the property which had devolved on the family as custom demanded. In their evidence they tendered in evidence a document (Exhibit 'B') of how the estate of late Victoria Obeng was distributed.

The Defendant adduced evidence to the fact that they shared the property to two of his younger brothers (step-brothers) whilst he was refused same. In cross examination at pages 24 and 25, the Defendant adduced evidence to show that PW1 and another younger brother of defendant who was much younger than him was allotted one room whilst he was given nothing. Below are excerpts from the cross-examination:

“Q: You are my step brother isn't it?

Ans: Yes it is so.

Q: You and I who is the Eldest?

Ans: You are.

Q: Where do you live?

Ans: At Adogonor.

Q: Where do I actually live?

Ans: Behind Ayorkor Nyonor bakery, Tsuibloo.

Q: Both houses at Adogorno and Tsuibloo belonged to our late Auntie not so?

Ans: Yes it is.

Q: In the Distribution of our late Aunt's property you were given a portion at Adogornor is that so?

Ans: Yes.

Q: To your knowledge have I been given a portion of my Aunt's property?

Ans: That one it is for the Administrator of the estate to answer.

Counsel for the Plaintiffs stated in his address that the Defendants mother who was entitled to a share was given her portion of the estate and that share (page 5 of Address) was given to the said beneficiary's children who had no accommodation at that time.

The question is why was the Defendant left out as a nephew while his younger two siblings were given their share. Even though the plaintiffs explained that the defendant was denied a share of the estate because defendant has a room in his father's house for which reason he is not entitled to a room in his late auntie's house. I find the position taken by the plaintiffs against the defendant as discriminatory and unjustifiable. In the opinion of the Court there is a gap in that evidence. Explanation was not given as to how the distribution was made, who are the qualified nephews, etc. Since the Defendant is the most senior of his mother's children the normal occurrence is to leave it to the children to decide how they shall share their mother's share of the property and not to interfere.

At Common Law equity imposes a duty on a person who comes to Equity to do equity. Here the Administrators have failed to abide by the Oath they gave as Administrators to distribute the property fairly. How can people whom the Defendant is older than be entitled to a deceased aunt's estate when the most senior in that line is denied. This clearly shows the plaintiffs ulterior motive they have against defendants. The Plaintiffs not having acted in good faith on equitable grounds are restrained from ejecting the defendant.

On this issue the Court is of the opinion that the Defendant is entitled to the room he is occupying only in his capacity as a family member and a licensee. Being a licensee the stay in the house is subject to good behaviour. Further, defendant is entitled to hold the

family property for life and cannot dispose of the same nor “Will” it to anybody. Again as a licensee, defendant is not entitled to evict, harass or lock up toilets in the said house as any such conduct from defendant shall trigger his own eviction from the house.

ISSUE 4

The Plaintiffs in their statement of claim are asking the court to restrain the Defendant from dealing with the family property as his own.

The Plaintiffs adduced evidence and tendered an Arbitration Committee’s report dated 15th August, 2020 (Exhibit ‘C’) between the Defendant and the family. In this report the Defendant was ordered to withdraw certain letters he wrote to the tenants to vacate the house. Both letters asking the tenants to quit and the one the Defendant wrote revoking the earlier letter are Exhibit ‘D’ dated 8th May, 2020 and Exhibit dated 13th June, 2020 and evidence of the defendants conduct of locking up toilet facility in the house. Ones letters of administration has been issued to the plaintiffs, the plaintiffs are the only persons clothed with power to administer the estate of in question and not defendant. I hold that defendant has no locus in the management of the estate in question neither is he entitled to a share of rent or any proceeds from rent. I therefore reject the defendant’s argument by defendant that he is entitled to a share. The conduct of the defendant amount to usurpation of power and the claim shall fail.

J U D G E M E N T

The Court enters judgement as follows:

1. The Administrators are ordered to vest the room being occupied by the Defendant in him with life interest.

2. The Defendant is ordered to stop locking up the facilities in the house or risk forfeiting his stay in the house.
3. Defendant is restrained from asserting himself as an administrator or landlord and cannot make or take any decision regarding the estate.
4. The plaintiffs have a cause of action and so cost of GHc2,000 is awarded against Defendant.

(SGD)

H/W PRISCILLA SOPHAI YEBOAH

DISTRICT MAGISTRAT

31/01/2023