

**IN THE DISTRICT COURT OF GHANA HELD AT HARBOR AREA, TAKORADI,  
WESTERN REGION ON THURSDAY THE 21<sup>ST</sup> DAY OF JULY, 2023 BEFORE HIS  
WORSHIP BERNARD D. BINEY, ESQ. - DISTRICT MAGISTRATE**

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**SUIT NO. A9/59/2023**

**OMAR FAWAZ**

**PLAINTIF**

H/NO. M43, Race Course

Takoradi

**VRS**

**VESTOR ARVOH**

**DEFENDANT**

H/ NO. M 43 Race Course

Takoradi

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**J U D G M E N T**

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By the endorsement on the amended writ of summons issued from the registry of this court on 26<sup>th</sup> June, 2023, the plaintiff seeks the following claims against the defendant;

1. An order directed at the defendant to settle rent arrears and damages of GH¢1,200.00 and GH¢1,470.00 respectively as found by the Principal Rent Officer.
2. An order directed at the defendant to settle rent arrears from April 2023 until date of final judgment.
3. An order directed at the tenant to vacate the premises forthwith.
4. Costs.

From the records, the defendant failed and/or refused to participate in the court proceedings for whatever reason best known to him despite the service of hearing notices on him requesting him to appear before the court to defend the suit. The court therefore had no option than to proceed with the trial to its conclusion resulting in the instant judgment.

It is trite learning that a party to a case may refuse to participate in the proceedings altogether or fail to lead evidence. The rule therefore is that when a party is given opportunity to participate in the court proceedings and/or lead evidence in support of his stand or in defence of allegations against him but deliberately declines to avail himself of that opportunity, the court will be entitled to proceed with the trial to conclusion and make deductions or findings on the basis of the evidence adduced at the trial.

See: In re West Coast Dyeing Industry Ltd; Adams v. Tandoh [1984-86] 2 GLR 561, CA and also Watalah v. Ghana Primewood Products Ltd. [1973] 2 GLR 126.

Moreover, in the case of In Re Ashalley Botwe Lands; Adjetey Agbosu & Ors v. Kotey & Ors [2003-2004] SCGLR 420 at 465, it was held thus:

**“A litigant who is a defendant in a civil case does not need to prove anything; the plaintiff who took the defendant to court has to prove what he claims he is entitled to from the defendant. At the same time, if the court has to make a determination of a fact or of an issue, and that determination depends on evaluation of facts and evidence, the defendant must realize that the determination cannot be made on nothing. If the defendant desires the determination to be made in his favour, then he has the duty to help his own cause or case by adducing before the court such facts or evidence that will induce the determination to be made in his favour. The logical sequel to this is that if he leads no such facts or evidence, the court will be left with no choice but to evaluate the entire case on the basis of the evidence before the court, which may turn out to be only the evidence of the plaintiff. If the**

**court chooses to believe the only evidence on record, the plaintiff may win and the defendant may lose. Such loss may be brought about by default on the part of the defendant."**

It is in the light of the afore-stated authoritative decisions that I proceed to decide the instant suit. But the plaintiff must understand that the default of the defendant herein does not imply an automatic victory for him. His case must first of all be believed by the court and must be legally tenable before he can have victory. After all, "success in litigation is not achieved by chivalry or bravado but by the outlay of credible and reliable evidence." See: **Alec Grant Sam & Others v. Unilever Ghana Ltd & Others** (Civil Appeal No. J4/48/2014 dated 6<sup>th</sup> June 2016), per Akamba, JSC.

In the case of **Dr R.S.D Tei & Anor v. Messr Ceiba Intercontinental** [2018] DLSC 3301, PwamangJSC had the following to say:

**"It must be remembered that the fact that a defendant does not appear to contest a case does not mean that the plaintiff would be granted all that he asks for by the court. The rule in civil cases is that he who alleges must prove on the balance of probabilities and the burden is not lightened by the absence of the defendant at the trial. The absence of the defendant will aid the plaintiff only where he introduces sufficient evidence to establish a prima facie case of entitlement to his claim."**

The evidence on record depicts the following facts as recounted by the plaintiff on 18<sup>th</sup> July, 2023. Plaintiff is the landlord of property known as H/No. M43, Race Course and the defendant is tenant who occupies a single room self-contained in the afore mentioned house at a monthly rent of GHC 400.00.the Defendant's tenancy expired in December, 2022 after four years of her being in occupancy of the said premises. In March, 2022, nine (9) months prior to the expiration of the said tenancy, the plaintiff notified the Defendant that he wished to recover possession of the room she occupies for her personal use. At the time, Plaintiff's daughter was at the final year at the University and required the space to enable her live with

the father at home whilst enjoying her privacy. The defendant refused to vacate the premises upon the expiration of the period so in March 2022 Plaintiff lodged a complaint at Rent Office where both parties were invited and they appeared on 31/03/23. The Principal Rent officer adjourned the case to 3/04/23 for the rent arrears and the damages cost to be paid before determination but the defendant failed to settle same so the Principal Rent officer referred the matter to the Rent Magistrate recommending that an effective order is issued vide Section 17(1)(a) of the Rent Act 1963(220) to

1. Order the tenant to settle the rent arrears and damages cost of GHC 1200.00 and GHC 1470.00 respectively
2. Order the tenant to vacate the premises forthwith.

I therefore pray that defendant is directed to comply with the orders of the Principal Rent officer by paying the rent arrears, cost of damages and to vacate the premises forthwith..

I recall that the plaintiff tendered in evidence the recommendation by the Rent OFFICER which was admitted and marked as Exhibit A The said document is hereby marked as Exhibit "A". The operative part of Exhibit "A" states as follows:

"I forward herewith, a statement of facts found by me in regard to the above complaint together with copies of the relevant documents for your opinion.

The Rent Magistrate is respectfully requested to;

- (i) Order the tenant to settle the rent arrears and damages of Ghc1,200.00 and Ghc 1470.00 respectively.
- (ii) Order the tenant to vacate the premises forthwith.

I will evaluate Exhibit "A" in the course of this delivery.

But in the meanwhile, it is my considered view that on the basis of this plaint highlighted

supra, the plaintiff has a cause of action to pursue against the defendant. As to whether or not his cause of action ought to be upheld and/or endorsed by this court notwithstanding the absence of the defendant at the trial is another issue altogether.

**Section 6 (2) of Act 220** on the functions of Rent Magistrate provides that:

**“[w]ithout prejudice to subsection (1), the Rent Magistrate shall decide a matter which is required by this Act to be determined by the Rent Magistrate or if the matter is referred by the Minister or the Rent Officer by or under this Act”**

According to His Lordship Justice S. A. Brobbey in his book, *Practice and Procedure in the Trial Courts and Tribunals of Ghana*, 2<sup>nd</sup> Edition, on the procedure of rent proceedings from the Rent Tribunal to the District Court stated at paragraph 1105 as follows:

**“...when the action reaches the Court either of this manner, ( i.e. when the case progress to the District Court either by reference from the rent office or on appeal by an aggrieved party) there is no need to file a fresh writ of summons since the record of proceedings will sufficiently disclose the cause of action”**

Now, in the rent proceedings referred by the Rent Tribunal to the District Court, the law enjoins the Rent Magistrate to either rehear (de novo) or adopt proceedings of the Rent Office (reference made) as may be appropriate and reasons so given for either choice.

In **Bhagwan (Ghana) Ltd v Thome [1970] CC31**, the Court held that there is no need for any independent inquiry into complaint and the Rent Magistrate may proceed to make his order from the record of proceedings at the Rent Tribunal.

Alternatively, in the case in **R v Rent Magistrate; Ex parte Kessie [1968] GLR 207**, It was held that where a reference is made from Rent tribunal, the Magistrate should act judicially and must determine the complaint after considering the proceedings before the Rent Officer and giving the opportunity to the parties to be heard on the findings of facts made by the Rent Officer.

Further in **Asamoah v Zwenness [1980] GLR 867**, it was held that the Rent Magistrate is not precluded from conducting an independent enquiry of his own.

In the instant case, the record of proceedings of the Rent Tribunal which was tendered into evidence as Exhibit "A" indicated that the tenant appeared at the rent office and confirmed that he owed rent arrears together with some cost of damages of items in the premises to the GH¢ 1470.00 and pleaded for sometime to enable her settle same and vacate the premises.

The evidence as gathered on record in this case, has established that the Defendant in this case has clearly defaulted in payment of rent from January, 2023 till date and she is presently in arrears of six months accumulated rent GH¢ 400.00 monthly together with cost of damaged items worth GH¢ 1,470.00.

**Section 17 (1) (a) of Rent act 1963 (Act 220)**

**"(a) where any rent lawfully due from the tenant has not been paid or tendered within one month after the date on which it became lawfully due;"**

Whereas the law as quoted above, provides grounds for recovery of possession or ejectment from premises, to be non-payment of rent within one month after the date on which it became due, in the instant case, the Defendant has not paid the recoverable rent in respect of the leased premises for the past six (6) months, though on the evidence, she has been notified of this breach or default in payment of the recoverable rent.

On the basis of the above, and the findings made in this enquiry, I enter judgment in favor of the Plaintiff to enforce the recommendations made by the Principal Rent Officer and hereby order as follows:

- (i) Order the tenant to settle the rent arrears and damages of Ghc 2,400.00 and Ghc 1470.00 respectively.**
- (ii) Order the tenant to vacate the premises forthwith.**

I think that the justice of this case warrants that the plaintiff be given some costs to offset the expenseshe incurred in initiating the instant suit.

Consequently, I will, and hereby award cost of GH¢1,000.00 against the defendant and in favor of the plaintiff.

SGD

H/W BERNARD DEBRAH BINEY  
(DISTRICT MAGISTRATE)

## COUNSEL

Keziah Amponsah Jackson for Owusu Techie for the Plaintiff- Present

## REFERENCES;

1. In re West Coast Dyeing Industry Ltd; Adams v. Tandoh [1984-86] 2 GLR 561, CA
2. Watalah v. Ghana Primewood Products Ltd. [1973] 2 GLR 126.
3. In Re Ashalley Botwe Lands; Adjetey Agbosu & Ors v. Kotey & Ors [2003-2004] SCGLR420 at 465
4. Alec Grant Sam & Others v. Unilever Ghana Ltd & Others (Civil Appeal No. J4/48/2014dated 6<sup>th</sup> June 2016),
5. . Dr R.S.D Tei & Anor v. Messr Ceiba Intercontinental [2018] DLSC 3301.
6. Section 6 (2) of the Rent Act of 1963 (Act 220).
7. Section 17 (1) (a) of the Rent Act 1963 (Act 220).
8. Practice and Procedure in the Trial Courts and Tribunals of Ghana, 2<sup>nd</sup> Edition, by S ABrobbey
9. Bhagwan (Ghana) Ltd v Thome [1970] CC31.
10. R v Rent Magistrate; Exparte Kessie [1968] GLR 207.
11. Asamoah v Zwenness [1980] GLR 867