

IN THE DISTRICT COURT SITTING HELD AT ASAMANKESE ON THE 18<sup>TH</sup>  
DAY OF JULY, 2023. BEFORE HIS WORSHIP GEORGE DAVIS KWASI  
OFORI (MR) – DISTRICT MAGISTRATE

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SUIT No: A11/18/23

ELSIE SARFOWAH

.....

PLAINTIFF

VRS.

ROBERT FORSON

.....

DEFENDANT

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### J U D G M E N T

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#### CLAIM:

- a) Recovery of cash, the sum of Gh¢6,360.00 being rent for eight different rooms which the defendant rented out for one year without authorization.
- b) An order for perpetual injunction restraining the defendant from holding himself as Land lord of H/No: 126, Asikafoamantem – Asamankese.
- c) An order upon the defendant to remove persons he rented out the from space of the said house to and which space they have used to erect containers.
- d) Costs.

#### SUMMARY OF PLAINTIFF’S EVIDENCE

It is her case that the house which is the subject of this dispute was built by late her grandmother Ama Nyame and that after her demise she was succeeded by Kate Asante, also deceased, who also succeeded the disputed house.

That after the death of Kate Asante, she was made the customary successor and succeeded the house as well. That during the successorship of Kate Asante, she

(plaintiff) was made the caretaker of the house because Kate Asante was domiciled in the U.K.

That she together with her mother Kate Asante rented out rooms in the house to tenants but evicted them in 2007 for renovation work to be carried out on the house.

That in 2020, Kate Asante came to Asamankese and realized that the septic tank in the house was full as it was then that she met the defendant who recommended somebody to her to empty the tank.

That in May, 2022, Kate Asante died and she was appointed her successor. That she came to Asamankese and realized that the rooms to the house which was still under renovation had been rented out to tenants who told her that it was the defendant who rented out the rooms to them. That she informed her mother Theresa Yankson and PW3 herein who asked the defendant where the rent was and he said it was at the bank.

That at the time she saw that the defendant had rented out the rooms to tenants, she called her mother Kate Asante who was then alive to enquire whether or not she authorized the defendant to rent out rooms in the house to tenants, but she denied doing so.

That in addition to renting out rooms in the house to tenants without authorization and consent of the owners, the defendant was also rearing pigs in the house and made the place unkempt. That he also sacked the electrician who was put in the house to re-wire it.

That the total rent taken from the illegal tenants by the defendant amounted to Gh¢6,360.00 which the defendant has failed to released to her or account for, and that at one time, he said he had given it to Kate Asante, and another time, he said it was at the bank.

That is why the plaintiff took this action seeking for the reliefs endorsed on he writ of summons. The plaintiff called three witness and tendered in pictures of the house and piggery to support her case.

#### SUMMARY OF DEFENDANT'S EVIDENCE:

It is his case that the landlady he knew to the house, the subject of this dispute is Kate Asante, who was like a mother to him when he was a young boy and did house chores for her. That even though Kate Asante travelled outside Ghana, he still continued to have a good relationship with her.

That in 2021, she called to tell him to join one young man in the house, who also left when he joined him in the house. That he stayed in the house and managed it as instructed by Kate Asante.

That later, Kate Asante instructed him to rent out some rooms in the house to pay electricity bills which were in arrears and also pay property rates and other bills, which he did and accounted for every penny to her.

That Kate Asante came to Ghana and was satisfied with his management of the house before she travelled back but died afterwards.

That it was Kate Asante who authorized him to stay in the house and rent out the rooms to tenants, and so it is not true that he did so without authorization. That while he was in the house, he reared pigs there but the plaintiff caused a destruction to the piggery. That the Court should dismiss the plaintiff's action as baseless.

The defendant did not call any witness and did not tender any receipts of any property rates or bills he paid with respect to the house.

#### ISSUES FOR DETERMINATION:

From all the evidence before me, the issues that came up for determination are;

- a) Whether or not the defendant rented out rooms in the house without authorization or the consent of the landlady Kate Asante;
- b) Whether or not the defendant was made caretaker of the house by Kate Asante,
- c) Whether or not the rent taken by the defendant was Gh¢6.300.00 and whether he accounted for same to Kate Asante or appropriated it; and
- d) Whether or not the defendant used the rent to settle electricity bills, pay property rates and other bills.

To succeed, the onus lies on the plaintiff to lead sufficient evidence to convince the Court that on a balance of probabilities, her evidence on all material issues and facts carries more weight and more reasonably probable than the defendant's. She ought to prove that the existence of a fact is more probable than its non existence,

which onus may shift on the defendant. See Sections 10, 11(4) and 12 of the Evidence Act 1975 (NRCD 323), *Adwubeng vrs Domfeh* [1996-1997] SCGLR 660; *Jass Co. Ltd Vrs. Appau* [2009] SCGLR 265.

With regards to the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> issues, it is uncontroverted that the house, the subject of this dispute is the property of the plaintiff and or her family. It is also not controverted that the defendant rented out some rooms in the house to tenants without authorization and appropriated the rent to the detriment of the owners of the house.

According to the plaintiff, the defendant without any authority from the customary successor Kate Asante rented out rooms in the house and appropriated the rent which totaled Gh¢6,360.00 and also reared pigs in the house, making the house untidy and unkempt. The evidence was corroborated by the evidence of PW1 and PW2 as well as the photographs she tendered in evidence, exhibit C-series.

When the onus shifted on him, the defendant denied renting out rooms in the house without authorization. According to him, it was the landlady Kate Asante who asked him to be a caretaker of the house, and rent out rooms out to tenants; to use to rent to pay electricity bills which was arrears and to pay property rates and other bills. It is trite learning that he who asserts must prove. The defendant failed to tender in evidence any receipts to show or tender receipt of any such payments.

Again on the issue of caretaker ship I found the defendant's evidence that Kate Asante made him caretaker of the house untenable, unreasonable and unacceptable. Kate Asante belongs to a family and in my opinion would not give out caretaker -

ship of her house to a stranger without the knowledge of any member of a her family, especially the Head of family.

In my opinion, the defendant took advantage of his alleged cordial relationship with Kate Asante to occupy the house, took possession and was treating it as his own. Who would allow a caretaker of his house to rear pigs therein, piggeries being smelly environments? This is only a rhetorical question.

In my opinion, The defendant only took advantage of the absence of Kate Asante to occupy the house when he was asked to assist in getting the septic tank in the house emptied, and that was how he gained access into the house.

With respect to the 3<sup>rd</sup> issue, it has been held in the case of *Moses and another vrs. Anane* [1989-90] 2 GLR 649 that “ a claim against a deceased estate must be scrutinized with the utmost suspicion. Proof must be strict and utterly convincing as one of the protagonists was dead and would not assert his claim”. To put it in another way, claims involving the estate of deceased persons must be scrutinized properly because, “dead men do not talk”, to quote a line in the novel “Robbin Hood and His Merry Men”.

According to the plaintiff, whose evidence was corroborated by the evidence of PW1 (Lelatu Awal) and PW3 (Theresa Yankson), the defendant admitted that the rent taken by the defendant was Gh¢6,360.00 which the defendant claimed before the Sanaahene that was kept at the bank by him.

On his part, the defendant asserted that he gave the money to Kate Asante when she came to Ghana after which she passed on. This is what transpired when the defendant cross examined PW3:

Q: I put it to you that Kate Asante came to Ghana in 2022, and that was the time I went into accounts with her and paid the rent to her.

A: I disagree with you.

The defendant asked this question after stating at paragraphs 8 and 9 of his witness statement which he signed that he was instructed to rent out some rooms in the house and use the rent to pay electricity bills, property rates and other bills which he did.

If indeed the defendant paid those bills (which I have already found to be untrue), which money did he give to Kate Asante? Or is it because she is dead and cannot come to deny this assertion that the defendant is making up this story? Dead men do not talk indeed.

In any case, I find the defendant's evidence at paragraphs 8 and 9 of his witness statement and his question to PW3 on the whereabouts of the rent as inconsistent, which inconsistency negatively affects his credibility.

Again. When the defendant was cross-examining PW1, this was what transpired.

Q: I never said that. At Sanaahene's house that I used some of the money to rear pigs.

A: No correct. You said so.

Q: I admit that I promised before the Sanaahene that I would return the rest of the money rent because that time, the family were seriously on my neck?

A: That was what I said.

It is important to state that the defendant asked these questions after saying that he had given the rent to Kate Asante. If indeed he had given the rent to Kate Asante, then which money was he returning to the plaintiff and family.

One thing is clear, and that is the defendant rented out the rooms in the house and appropriated same; thinking that Kate Asante who was in the U.K would not find out. He was enriching himself at the expense of the plaintiff and her family. Equity abhors unjust enrichment.

From all the evidence before me and my analysis of same, I find as a fact that the house, the subject of this dispute is the property of the plaintiff and her family, which she inherited by way of customary succession. I also find as a fact that the defendant rented out rooms in the house and failed to account to the plaintiff which brought about this action.

Again, it is a fact that the defendant rented out the rooms without the knowledge and consent of the family of Kate Asante, and even reared pigs therein.

From all the evidence before me and my evaluation of same, I am convinced that the plaintiff was able to lead sufficient evidence to prove all the facts that she alleged and that on a balance of probabilities, her evidence carries more weight or is more reasonably probable than the defendant. For this, and the other reasons already advanced, I enter judgment for the plaintiff.



Consequently, I order the defendant to pay Gh¢6,360.00 to the plaintiff being rent he received from tenants, including PW1 when he unlawfully rented out the plaintiff's house to them at current bank rate.

Again, the defendant is ordered to remove the persons and the containers he permitted to be erected in the frontage of the house. Alternatively, the plaintiff should apply for the necessary processes to recover possession of the frontage of the house from all illegal occupiers.

Again, the defendant is perpetually enjoined from holding himself as landlord of house No. 126, Asikafoamtem – Asamankese.

Costs in the matter assessed at Gh¢4,000.00 against the defendant. This judgment takes immediate effect.

(SGD)

H/W GEORGE DAVIS KWASI OFORI (MR)

(MAGISTRATE)

18/7/23