

IN THE DISTRICT COURT HELD AT WEIJA, ACCRA ON THURSDAY THE 4TH
DAY OF MAY, 2023 BEFORE HER WORSHIP RUBY NTIRI OPOKU (MRS),
DISTRICT MAGISTRATE

SUIT NO. G/WJ/DG/A9/81/2022

LINDA KONEY

PLAINTIFF

VRS

MAUREEN

DEFENDANT

PLAINTIFF IS SELF REPRESENTED AND PRESENT

DEFENDANT IS ABSENT

JUDGMENT

On 10th August 2022, the Plaintiff caused a writ of summons to issue against the Defendant for the following reliefs;

1. An immediate ejectment order against the defendant.
2. Recovery of GHC 2,000.00.00 being rent arrears and balance that defendant has failed to pay.
3. Costs and any further order the honourable court may deem fit.

The defendant pleaded not liable to the claims of the plaintiff and as a result parties were referred to the Court Connected ADR on 24th August 2022 however parties were unable to settle the dispute and as a result were referred back to the court for hearing to commence.

When the case was called for hearing on 5th April 2023, even though there was proof of service of a hearing notice dated 23rd March 2023 indicating that the defendant had been served with a hearing notice on 10th March 2023 to attend court on 5th April 2023, for unexplained reasons, she failed to attend court.

The court therefore proceeded without her pursuant to order 25 r 1(2) (a) of the District Court Rules, 2009, C.I.59.

THE CASE OF THE PLAINTIFF

Plaintiff's case is that she rented out her premises to the Defendant in May 2021 for a period of one year at a rent of GH400.00 per month. Defendant was to pay a total rent of GHC4, 800.00 however, she paid the sum of GHC3, 800.00 leaving a balance of GHC1, 000.00 unpaid.

It is the further case of the Plaintiff that the Defendant pleaded for more time to pay the balance however when plaintiff made a demand for the balance, she informed her that she had suffered some damages due to the spillage from the dam and would therefore use the balance outstanding to offset the costs she had incurred.

Plaintiff added that she did not agree to the proposal of the defendant because there were no repair works to be done on the property the subject matter of this dispute. Upon persistent demands on the defendant for the outstanding balances which proved futile, she decided not to make further demands on the defendant.

According to the plaintiff, after the expiration of defendant's tenancy, she gave notice to the defendant that the tenancy would not be renewed due to several complaints of nuisance being caused by her in the property.

In response, defendant informed her that she had incurred a total cost of GHC30,000.00 due to the spillage of the Weija dam and as a result, she was going to live in the property rent free for 5 years to defray the total costs incurred. Plaintiff stated that the comment of the defendant generated into a misunderstanding following which a complaint was lodged at the Tetegu Police Station where parties were advised to go to the Rent Control Office for a resolution of the dispute.

At the Rent Control Office, defendant was adamant and as a result parties were referred to Court hence the present action. She prayed the court to order defendant to pay the sum of GHC2,000.00 being rent arrears of GHC1,000.00 and GHC1,000.00 being outstanding balance defendant has failed or refused to pay to her.

Plaintiff called her brother Godfred Koney as her witness.

Plaintiff's witness corroborated the story of the plaintiff and stated that even though defendant's tenancy had expired, she has refused to yield up vacant possession of the premises with the reason that last year May, water entered her room due to the heavy rainstorm and as a result she had incurred some costs and was going to bill the plaintiff with the said cost or in the alternative, she was going to live in the premises until the costs she incurred has been defrayed.

According to him, plaintiff lodged a complaint against the defendant at the Rent Control Office where she was advised to sue defendant in court.

At the end of the trial, the following issues were set down for determination by the court;

1. Whether or not the Plaintiff is entitled to recover possession of the premises the subject matter of the dispute from defendant.
2. Whether or not the Plaintiff is entitled to recover rent arrears of GHC2,000.00 from the defendant

It is trite that the burden of proof will generally lie on the party asserting the affirmative of an issue, the absence of the defendant notwithstanding.

Section 11 of the Evidence Act, 1975 NRCD 323 provides;

(i)For the purposes of this decree, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling against him on the issue."

Section 14 of NRCD 323 also provides that in a trial, the burden of proof may shift but unless 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.

This principle of law is reiterated in the case of **RE: ASHALLEY BOTWE LANDS; ADJETEY AGBOSU & OTHERS V KOTEY & OTHERS [2003-2004] SCGLR 420** where Woode JSC (as she then was) at page 444 stated;

It is trite learning that by the statutory provisions of the Evidence Decree 1975,(NRCD 323) the burden of producing evidence in any given case is not fixed, but shifts from a party to party at various stages of the trial depending on the issues asserted and or denied.

The law is that when a party makes an averment and same is not denied by the adversary, no issue is joined and the party does not have to lead any evidence to prove same. Again when a party gives evidence of a material fact and same was not cross examined upon, the court is bound to accept the evidence.

This position of the law was given judicial blessing in the case of in Re Presidential Election Petition; Akuffo-Addo, Bawumia & Obetsebi-Lampitey (No 4) vrs. Mahama, Electoral Commission & National Democratic Congress (No 4) [2013] SCGLR (Special Edition) 73 when at page 425, Anin Yeboah JSC (as he then was) held;

“I accept the proposition of law that when evidence led against a party is left unchallenged under cross examination, the court is bound to accept that evidence:”

On the totality of the evidence, I have no reason to doubt the testimony of the plaintiff and her witness regarding the defendant’s failure or refusal to pay outstanding rent arrears.

I therefore hold that the claims of the plaintiff succeeds under section 17(1) (a) of the Rent Act 1963, Act 220 and as a result she is entitled to recover possession of the property the subject matter of this dispute from the defendant.

The defendant has been occupying the premises rent free since the expiration of her tenancy in May 2022. Accordingly she has been served reasonable notice to vacate from the premises.

Defendant is ordered to vacate from the premises the subject matter of this dispute on or before 31st May 2023 and yield up vacant possession to the plaintiff.

With regard to the issue of the payment of rent, plaintiff is entitled to recover rent outstanding from the defendant.

Accordingly, the defendant is ordered to pay rent from June 2022 to May 2023 at the rate of GHC400.00 per month to the plaintiff. In addition, defendant is ordered to pay the outstanding balance of GHC1, 000.00 being rent arrears to the plaintiff. Defendant is again ordered to pay to the Plaintiff outstanding utility bills if any before vacating from the premises.

I award costs of GHC1, 000.00 in favour of the plaintiff against the defendant.

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

