

**IN THE DISTRICT COURT HELD AT WEIJA, ACCRA ON WEDNESDAY THE 31ST
DAY OF MAY, 2023 BEFORE HER WORSHIP RUBY NTIRI OPOKU (MRS),
DISTRICT MAGISTRATE**

SUIT NO. G/WJ/DG/A9/42/23

PROF. FRANCIS MARTINSON

PLAINTIFF

VRS

ISAAC ACQUAH

DEFENDANT

PLAINTIFF IS PRESENT AND SELF REPRESENTED

DEFENDANT IS ABSENT

JUDGMENT

The Plaintiff filed a Form 9 (Reference to a Magistrate) at the registry of this court on 13th February, 2023 with the following recommendations:

- a. Order respondent to pay the sum of GHC9,550.00 rent arrears as at December 2022.
- b. Order respondent to pay water arrears and cost of damages
- c. Make such order as to costs or in connection with the proceedings.

When the case was called for hearing, even though the defendant was served with the form 9 and a hearing notice by substituted service pursuant to the order of the court dated 15th March 2023 to attend court as evidenced by the affidavit of posting on the court's docket, for unexplained reasons, defendant failed or refused to attend court.

The court proceeded without him pursuant to Order 25 r 1(2) (a) of the District Court Rules 2009, C.I 59 which provides as follows;

“Where an action is called for trial and a party fails to attend, the trial magistrate may where the Plaintiff attends and the Defendant fails to attend, dismiss the counterclaim if any and allow the Plaintiff to prove the claim”

In *Ankumah v City Investment Co Ltd* [2007-2008] 2 SCGLR 1064, Baffoe Bonnie JSC held at page 1076 as follows;

“A court is entitled to give judgment in default as in the instant case, if the party fails to appear after notice of the proceedings has been given to him. For then, it would be justifiable to assume that he does not wish to be heard.”

THE CASE OF THE PLAINTIFF

Plaintiff informed the court that defendant has been his tenant for a long time. It is the case of the plaintiff that he travelled outside the jurisdiction and returned in 2017 and renewed the defendant's tenancy at a rent of GHC1,150.00 per month. Shortly thereafter it came to his notice that defendant was not paying his bills. This was because he was sent a water bill from the Ghana Water Company totalling GHC7,563.00. He added that he called him and offered to pay a third of the bill but defendant refused his offer. He stayed in the house till somewhere in December 2022 when it came to his attention that defendant had packed out of the property the subject matter of this dispute without paying his accumulated rent arrears .

According to him, he reported the matter to the Rent Control Office where defendant paid the sum of GHC5,000.00 to him somewhere in October 2022 leaving an outstanding balance of GHC9,550.00

He added that defendant was ordered to pay the outstanding water bills which he failed to do. Plaintiff says he has spent the sum of GHC18,387.75 being cost of repairs of the

damages he left behind at the property. He tendered invoices evidencing cost of repair works done. Same was admitted and marked as Exhibit A.

He tendered statement of billing from the Ghana Water Company totalling GHC7,562,25

Same was admitted and marked as Exhibit B.

BURDEN OF PROOF

A party who asserts assumes the burden of proof. The requirements in sections 11,12 and 13 of the Evidence Act, 1975 (NRCD 323) on the burden to adduce evidence and burden of persuasion which together constitute the burden of proof was explained in *Yorkwa v Duah* [1992-93] GBR 272 as follows;

“I am of the view that the expression burden of persuasion should be interpreted to mean the quality, quantum, amount, degree or extent of evidence the litigant is obliged to adduce in order to satisfy the requirement of proving a situation or fact. The burden of persuasion differs from the burden of producing evidence...the burden of producing evidence means the duty or obligation lying on a litigant to lead evidence. In other words, these latter sections cover which of the litigating parties should be the first to lead evidence before the other’s evidence is led.

Therefore it is the plaintiff who will lose first who has the duty or obligation to lead evidence in order to forestall a ruling being made against him.”

SHIFTING OF THE BURDEN OF PROOF

The burden of proof may shift from the party who bore the primary duty to the other.

Section 14 of the Evidence Act, 1975 (NRCD 323) provides as follows;

Except as otherwise provided, 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.

In the case of *Re Ashalley Botwe Lands; Adjetey Agbosu v Kotey* [2003-2004] SCGLR 420, it was held as follows;

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

From the evidence, the defendant was not in court to cross examine the plaintiff on his assertions.

In ***Quagraine v. Adams*** [1981] GLR 599 it was held that in a situation where a witness testifies and his opponent fails to cross-examine him, the court may consider the witness’s testimony as admitted by his opponent

I therefore find and hold that the plaintiff has been able to prove his claim against the defendant on a balance of probabilities.

Accordingly, I do hereby grant the recommendations of the Rent Manager and enter judgment in favour of the plaintiff against the defendant as follows;

1. Defendant is ordered to pay the sum of GHC9, 550.00 being outstanding rent owed to the plaintiff from August 2021 to July 2022 and from August 2022 to December 2022 at the rent of GHC1, 150.00 per month.
2. Defendant is ordered to pay the sum of GHC7,563.00 being accumulated water bills incurred

3. Defendant is ordered to pay the sum of GHC18,389.75 being cost of repair works of damages defendant left behind
4. Costs of GHC2, 000.00 is awarded in favour of the plaintiff against the defendant.

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H/W RUBY NTIRI OPOKU (MRS.)

(DISTRICT MAGISTRATE)