

**IN THE DISTRICT COURT, KENYASI HELD ON FRIDAY THE 25TH DAY
OF JULY, 2024 BEFORE HIS WORSHIP CLEMENT KWASI ASOMAH AS
MAGISTRATE**

BR/KS/A11/43/2024

MAAME AFIA MISAAH PER HER LAWFUL ATTORNEY
(KWAKUACHEAMPONG) OF H/NO. P11 ACHERENSUA

VS.

KWAME BONSU A.K.A OSOFO OF ACHERENSUA

JUDGMENT

Plaintiff on the 03/06/2024 was issued a writ of civil summons claiming the following reliefs:

- a) An order of the court permitting the plaintiff to unlock a store room in house number P11 A.
- b) Any order the court deems fit.

It is worthy of note that a bylaw a party is to lead credible and admissible evidence to prove any positive assertion made by the party to avoid a ruling against him on the issue. See section 11 (1) of NRCD 323 1975 which enacts 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.

It is also pertinent to note that in all civil actions such as the instant one the standard of proof is by preponderance of probabilities see section 12 (2) of the evidence degree NRCD 323 1975 see also the case of ADWUBENG VS. DOMFEH SCGLR

660 where the Supreme Court was emphatic that in all avail case a party has to prove by preponderance of probabilities and that no exceptions were made.

THE EVIDENCE OF PLAINTIFF

Besides himself, the plaintiff called one witness. According to plaintiff's attorney the house in issue was originally acquired by plaintiff's mother and currently plaintiff is the one in charge of the house. Plaintiff's attorney stated that about 7 years ago plaintiff permitted the defendant to operate a drug store in the room in question but he has abandoned same and kept it under lock but his whereabouts is not known. That the plaintiff who is an old lady needs the store for rent to live on.

Plaintiff therefore claims per her writ of summons PW1 Mensah Nicholas corroborated the evidence of the plaintiff in all material respects and added that the defendant has even called in his presence that he does not want to litigate with plaintiff so she should take her room. Plaintiff closed his case after the evidence of PW1.

THE DEFENDANT'S CASE

The court records shows that all efforts to serve the defendant personally proved futile so upon application by the plaintiff the court granted substituted service. That notwithstanding the defendant failed to come to court so I closed his case for him after the plaintiff and his witness have testified and adjourned the case for judgment because I was of the view that the defendant's refusal to come to court was deliberate.

The question is did the court do the right thing in closing the defendant's case after the plaintiff has close the case.

Order 25 rule 1 2(a) of CI59 enacts: where an action is called for trial and a party fails to attend the trial magistrate may where the plaintiff attends but the defendant

fails to attend, dismiss the counter claim. If any and call the plaintiff to prove the claim.

In the instant case evidence abounds that the defendant was served by substituted service which deemed service in law. The defendant can therefore not raise irregularity thereafter. I am therefore of the view that my decision to close the case of the defendant after plaintiff's evidence is supported by law.

I now come to consider whether in the absence of the defendant's evidence the plaintiff has been able to prove his claim. Evidence abounds that the plaintiff is now the owner of the house in dispute by succession. There is ample evidence on record to show that the room in dispute was granted to the defendant without any rent. There is also evidence on record to show that some years now the defendant has abandoned this room I am therefore satisfied on the preponderance of probabilities that the plaintiff has been able to prove his claim. I therefore have no option but to grant him judgment.

Judgment is accordingly entered for plaintiff on his claim. It is hereby ordered that the door to the store be opened under the supervision of the registrar of this court to take inventory of the contents of the store for plaintiff to keep them till the defendant takes delivery of same. Cost of GH¢1000.00 awarded against the defendant.

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H/W CLEMENT KWASI ASOMAH
(25/07/2024)

