

CORAM: HER WORSHIP AMA ADOMAKO-KWAKYE (MS.), MAGISTRATE,
SITTING AT THE DISTRICT COURT '2', KOTOBABI NEAR THE KOTOBABI
CLUSTER OF SCHOOLS, ACCRA ON 19TH DECEMBER, 2024.

SUIT NO. A2/317/22

JUDITH OHUEYO TERNOR

ACCRA ACADEMY, KANESHIE

::

PLAINTIFF

VRS.

VICTORIA NIKOI OLAI

NORTH KANESHIE

::

DEFENDANT

JUDGMENT

INTRODUCTION

The Plaintiff caused the issuance of a Writ of Summons on 21st June, 2022 praying this Court for an order to recover from the Defendant an amount of GH¢10,000.00 being money paid to the Defendant under the pretext of providing two-bedroom self-contained apartment for the Plaintiff's use. She also prayed for interest on the amount from April, 2021 to date of final payment, damages for breach of promise and punitive cost. On 18th August 2022, judgment was entered for Plaintiff against Defendant for the sum of GH¢3,845.00 as amount admitted by Defendant and the difference between the amount claim and the admitted amount had to be proved.

WRITTEN STATEMENTS (PLEADINGS)

The Plaintiff's case is that she was in need of accommodation in or around April 2021 and got to know Defendant through a man known as Mr. Edward Pedu Nelson. She averred that

she expressed interest in renting Defendant's two-bedroom self-contained apartment at North Kaneshie and although the property was not in a tenable condition, she was assured by the Defendant that she would quickly carry out renovation works once she paid GH¢10,000.00 out of the total rent of GH¢12,000.00. Plaintiff further averred that the Defendant reneged on her promise and has rented out the premises to another person without refunding her money to her.

In her Amended Statement of Defence filed on 28th December, 2022 the Defendant contended that the subject matter property has always been in a tenable state and that her portion of the property consisted of a large hall, store room, kitchen, main corridor and semi-corridor. Defendant asserted that Plaintiff herself informed her that she would pay GH¢10,000.00 out of the total rent of GH¢12,000.00 and pay the outstanding amount subsequently.

According to Defendant, after the inspection of the rooms by the Plaintiff and Nelson in March 2021, Plaintiff complained about the partitioning and therefore requested that she converts the large hall into a two-bedroom self-contained, storeroom turned into a washroom with an extra door leading to the bedroom and the wall dividing the main and semi-corridor be broken and converted into a hall with a window, which she did all. Defendant averred that Plaintiff sometime in April, 2021 gave her an initial deposit of GH¢6,500.00 for the first renovation contrary to the agreed amount of GH¢10,000.00 and she used GH¢6,515.00 for building materials and labourers and the remaining GH¢345.00 for transportation.

The Defendant stated that the Plaintiff after inspection in May 2021 complained about the renovation and later proceeded to change the initial instructions she had given in respect of how she wanted the renovation to be carried out. Plaintiff subsequently in August 2021 sent an amount of GH¢3,500.00 for Defendant to carry out renovations for the second time. According to Defendant, after the second renovation, Plaintiff was again dissatisfied with

the outcome. It was during this period that Defendant informed Plaintiff of an increment in the rent from the initial GH¢500.00 to GH¢800.00 which Plaintiff disagreed.

It is Defendant's case that she rather incurred additional expenses in renovating the premises for Plaintiff's use. In order to mitigate her losses, she took steps to get a prospective tenant. However, her venture proved futile as the prospective tenant demanded that the rooms be renovated back to its original state. Defendant counterclaimed for damages for breach of contract, cost including legal fees and any other reliefs deemed fit by the Court.

In her reply filed on 19th August, 2022, Plaintiff asserted that she needed the two-bedroom self-contained for her aged and ailing mother, herself and her three children. She stated further that Defendant assured her that she would carry out the renovation in no time. Relying on Defendant's assurance, she secured a loan of GH¢6,500.00 and gave same to Defendant for her to begin the renovation. She averred that throughout the process, Defendant constantly reminded her that she would carry out the renovation to suit her (Defendant's) taste, should she decide to stay there in future.

The Plaintiff averred that after paying the amount of GH¢10,000.00 to Defendant, Defendant reneged on her promise to renovate the premises for her use. Plaintiff further averred that Defendant informed her that she had increased the rent from GH¢500.00 to GH¢800.00. However, since she could not afford Defendant's new terms, she asked for a refund of the monies paid to Defendant. It was her case that the Defendant is not entitled to her claim.

ISSUES

From the pleadings and in order to determine whether the parties are entitled to their respective claims, the issues for determination by this Court are;

- i. Whether or not the Defendant is indebted to the Plaintiff.

- ii. Whether or not any of the parties has breached any contract existing between them.

RESOLUTION OF ISSUE

It is trite that in civil cases, the general rule is that the party who in his/her pleadings or writ raises issues essential to the success of his/her case assumes the onus of proof. See **Sections 11(1) & (2), 12(2) and 14 of the Evidence Act, 1975 (NRCD 323)** as well as the cases of **Takoradi Flour Mills vs. Samir Faris [2005-2006] SCGLR 882 @ 900; GIHOC Refrigeration & Household vs. Jean Hanna Assi (2005-2006) SCGLR 458; T. Chandiram v. Tetteh [2018] 120 GMJ 112 @ 147 C.A per Agnes M. A. Dordzie, J.A; and Air Namibia v. Micon Travel [2015] 91 GMJ 173 @ 191 C.A per Kanyoke, J.A.**

In cases where a Statement of Defence and Counterclaim is filed by the Defendant, the Defendant assumes the role of a Plaintiff in respect of the Counterclaim filed. In the case of **Jaas Co. Limited & Another v. Apau & Another [2009] SCGLR 269**, it was held that a defendant who files a counterclaim is subject to the same standard of proof as a Plaintiff on his Counterclaim. See also the cases of **City Investment Company Ltd v. Mrs. Juliana Adade and Others (2017) JELR 66131 (HC)** and **Nortey v. African Institute of Journalism & Communication [201] 77 GMJ 1 at 40.**

PLAINTIFF'S CASE

The Plaintiff testified by relying on her witness statement filed on 19th August, 2022 which was adopted by the Court as her evidence-in-chief. Plaintiff's testimony was that in March 2021, she needed a two bedroom self-contain house for herself, her aged and ailing mother as well as her three children. She further stated that she met the Defendant through one Mr Edward Pedu Nelson who offered to rent her property to her. Plaintiff added that upon

inspection of the premises, she realized that the apartment did not have a washroom, a bathroom and window for the hall.

The crux of her testimony was that Defendant requested for an amount of GH¢10,000.00 out of the total amount of rent of GH¢12,000.00 to renovate the premises for her to move into same. Relying on the assurance given to her by Defendant, Plaintiff testified that she secured a loan of GH¢6,500.00 and gave same to Defendant to begin the renovation of the premises. Plaintiff further stated that she subsequently gave Defendant an amount of GH¢3,500.00 to complete the renovation for her to move into the premises with her family. Plaintiff tendered in evidence Exhibit 'B', a receipt given to her by Defendant.

Plaintiff further testified that when she went to inspect the progress of the renovation, she found out to her surprise that Defendant had failed to carry out the renovation as she assured. It was during this period that the Defendant informed her of an increment in the rent from the initial GH¢500.00 to GH¢800.00. According to Plaintiff, she asked for a refund of her money since she could not afford the new terms put forward by Defendant.

It was the testimony of the Plaintiff that Defendant's conduct has not only caused her great financial stress but caused her to borrow from her colleagues. She added that she was unable to take proper care of her ailing mother as a result of Defendant's conduct which subsequently led to her death. According to her, as a single parent, Defendant's conduct has caused her to suffer financially.

To further establish her claims, Plaintiff called Edward Pedu Nelson as her witness to testify in respect of the matters before the Court. PW1 testified by relying on his witness statement filed on 19th August, 2022 and same adopted by the Court as his evidence-in-chief. According to him, Defendant informed him to assist her to get a tenant for her place. PW1 therefore introduced Plaintiff who was in search of an apartment to the Defendant.

According to PW1, Defendant offered to rent her two-bedroom self-contained apartment to the Plaintiff at a rate of GH¢500.00 for two years. However, Defendant requested for the payment of GH¢10,000.00 to carry out renovations in the premises for the Plaintiff. He added that the Plaintiff accepted the offer by paying an initial amount of GH¢6,500.00 and a subsequent amount of GH¢3,500.00 to the Defendant. Despite taking the amount of GH¢10,000.00 from the Plaintiff, Defendant reneged on her promise to renovate the premises for the Plaintiff. According to PW1, he had to pay six months' rent for the Plaintiff since Plaintiff was being ejected from the room she occupied.

The Defendant despite being aware of the dates which had been fixed for continuation of trial, being 11th, 12th and 13th March, 2024, absented herself on all three dates without any justification. The matter therefore proceeded in her absence. Where a party deliberately fails to attend Court to defend a claim that has been brought against her, she cannot later assert that she was not given a hearing or that the audi alteram partem rule has been breached. This position of the law is well settled in cases such as:

Republic v Fast Track High Court, Accra; Ex parte State Housing Co. Ltd. (No. 2) (Koranten-Amoako – Interested party) [2009] SCGLR 185

Mesdames Faustina Patience Cudjoe & 2 others v Harry Agyekum [2011] DLCA 7912

Gertrude Agbewole v Christopher Agbodogbey (2012) 44 GMJ 124 @ 146

Republic v High Court (Human Rights Division) Accra, Ex parte Akita (Mancell-Egala & Attorney General Interested parties) [2010] SCGLR 374 @ 383

Under **Order 25 Rule 1(2)(a) of the District Court (Civil Procedure) Rules, 2009 (C.I. 59)**, where an action is called for trial and a party fails to attend, the other party would be allowed to prove his claim. The Defendant had the opportunity to come to Court to prove her counterclaim but she elected not to be present by her conduct of not appearing in Court. The

Defendant can therefore not raise at any point that the door of justice was shut to her. As a matter of fact, no application was even filed by Defendant to recall the Plaintiff and her witness for further cross examination and cross examination respectively and/or for her to be permitted to open her defence.

It has been held by the court that: *“It is a salubrious principle of our jurisdiction that a litigant should have the opportunity of being heard, of telling his side of the story, of being free to present evidence and argument to buttress his case; but it is also settled law and dictates of common sense require also that once these opportunities have been extended to the litigant but the litigant decides not to avail himself of them within the period of the trial, he would not, on judicial considerations, be permitted to come later and plead for the reactivating of the very opportunities he declined to embrace.”*

See: **Mence Mensah v E. Asiamah [2011] 38 GMJ 174 SC** and **Poku v Poku [2007-2008] SCGLR 996**. The Court on the strength of these authorities therefore proceeded with the case.

Though the Defendant did not appear before the court to challenge the suit, the Plaintiff is not entitled to automatic grant of her claims just because the Defendant did not attend court. Plaintiff has to satisfy the burden of proof on her before the court will grant the reliefs she seeks. It is important to point out that the Defendant by her failure to appear before court to testify has no evidence before the Court and it is deemed that she has abandoned her claim. I agree with Counsel for Plaintiff that the Defendant’s counterclaim ought to be dismissed and accordingly same is dismissed for want of prosecution.

Both Counsel for the Plaintiff and the Defendant filed their written addresses on 28th November, 2024 and 29th November, 2024 respectively.

Issue 1: Whether or not the Defendant is indebted to the Plaintiff

From the evidence, the Plaintiff was in need of accommodation around March 2021 and went in for a loan as evidenced by **Exhibit 'A'** which is the loan application form of Plaintiff dated 25th March 2021 applying for loan of GH¢12,000.00. Based on the evidence presented, it is evident that the Plaintiff and the Defendant entered into a verbal agreement concerning the rental of the Defendant's apartment. During her testimony, the Plaintiff recounted that she gave the Defendant a sum of GH¢10,000.00, which was intended to cover renovation of the apartment.

Exhibit 'B' is a receipt dated 19th August 2021 acknowledging the payment by Plaintiff of an amount of GH¢3,500 having earlier paid GH¢6,500, with an outstanding GH¢2,000 to be paid by ending of September. The receipt has been signed by PW1 and the Defendant. This goes to confirm that the Defendant received a total amount of GH¢10,000.00 from the Plaintiff.

This payment was made with the understanding that the apartment would be delivered to the Plaintiff in the agreed-upon state, suitable for her to move in with her family. However, the Defendant did not fulfill this obligation, resulting in the Plaintiff's inability to occupy the premises as initially planned. Notably, the Defendant did not dispute the fact that the apartment was not delivered in the expected condition, nor did she contest the claim of having received the sum of GH¢10,000.00 from the Plaintiff for the renovations. This lack of denial suggests an acknowledgement of both the financial transaction and the failure to provide the apartment in the agreed state, ultimately leading to the Plaintiff's frustration.

At the Rent Control Department, in respect of the summons to the Defendant issued on 11th February 2022 on a complaint in respect of refund of rent advance, Defendant was given up until 30th March 2022 to refund to the Plaintiff through the Chief Rent Manager the amount of GH¢10,000.00 but she failed to adhere to same, resulting in the institution of this suit.

This Court finds established that the Defendant is financially liable to reimburse the Plaintiff for the funds she has received in connection with their transaction. It is trite that any party who accrues benefits at the expense of another, without honouring their contractual commitments, holds a liability to return the amount received. In light of these facts, the Plaintiff has a rightful claim to recover the total amount of GH¢10,000.00 paid to the Defendant as she failed to provide the apartment.

Issue 2: Whether or not any of the parties has breached any contract existing between them.

From the evidence on record, the parties entered into an oral agreement which required the Defendant to rent out her apartment to the Plaintiff after she had paid an amount of GH¢10,000.00 to the Defendant as consideration. Both parties were consequently obligated to adhere to the terms agreed upon in their oral agreement. The evidence however reveals that the Defendant failed to perform her contractual obligations by not delivering the premises as agreed upon.

As a result of Defendant's breach, the Plaintiff, as the innocent party, is entitled to damages accruing from the breach. When a party does not uphold her end of an agreement, the other party is justifiably compensated to address the losses incurred due to the breach. The Plaintiff therefore has a legitimate claim to reparation for the inconvenience and financial loss stemming from the Defendant's failure to perform as agreed.

It is an elementary principle of law that every breach of contract entitles the injured party to recover damages for the loss he or she has suffered. The general objective of the courts in awarding damages is to place the injured party, as far as money can do it, in the position she

would have been in if the breach had not occurred; that is, if the contract had been performed. See **Royal Dutch Airlines (KLM) and Anor. v. Farmex Ltd [1989-90] 2 G.L.R. 623 S.C.**

Based on the evidence presented in Court, the Plaintiff was compelled to seek a loan in order to finance the rental of the apartment in question. This is evident from Exhibit 'A' and 'F'. Plaintiff has endured considerable hardship, being responsible for not only the payment of the principal loan amount but also the accrued interest and various additional charges associated with the loan. The consequences of Defendant's breach were grave; the financial strain placed on the Plaintiff was overwhelming that it hindered her ability to care for her ailing mother.

Tragically, this situation culminated in the death of her mother, which the Plaintiff attributes to the compounded stress of being in debt and unable to provide necessary support for her family. The Court after reviewing the circumstances surrounding the Plaintiff's claims, recognizes the validity of her request for damages. It is evident that the Plaintiff has suffered greatly due to the Defendant's breach and compensation for these damages is warranted given the considerable financial toll inflicted upon her. I therefore award damages of GH¢5,000.00 in favour of Plaintiff against Defendant for what she has been made to suffer.

In view of the evidence adduced and the fact that Defendant's breach has deprived the Plaintiff what she is lawfully entitled to, coupled with the fact that the amount if paid by Defendant could have been put to other use which would not have the same value now, the Plaintiff is entitled to be awarded interest on the total amount owed.

CONCLUSION

Having considered the evidence adduced by the Plaintiff, I find that the Plaintiff has been able to discharge the burden of proof on her in respect of the total amount of GH¢10,000.00 owed her by the Defendant and judgment is accordingly entered for her against the

Defendant. As earlier stated in this judgment, judgment was entered for Plaintiff against the Defendant on 18th August 2022 for an admitted amount of GH¢3,845.00 with interest thereon and the difference of GH¢6,155.00 had to be proved which has been successfully done by Plaintiff. Plaintiff is therefore to recover in addition to the judgment of 18th August 2022 as follows:

- a. The Defendant is to refund to the Plaintiff the sum of GH¢6,155.00 being the disputed portion of the money paid to Defendant by Plaintiff as rent.
- b. The Defendant is to pay interest on the sum of GH¢6,155.00 at the prevailing commercial bank rate from August 2021 to date of final payment.
- c. General damages of GH¢5,000.00 is awarded to the Plaintiff against the Defendant for breach of contract.
- d. Cost of GH¢5,000.00 is awarded for the Plaintiff against the Defendant.

SGD.

AMA ADOMAKO-KWAKYE (MS.)

MAGISTRATE

Counsel

Emmanuel Opare, Esq. for Plaintiff.

Ishmael Classpeter-Williams, Esq. for Defendant.