

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. A9/82/22

1. PHILIP AHWIRENG

KASOA

::

PLAINTIFFS

2. VERONICA MAWUTOR

TESHIE BUSH ROAD

VRS.

1. EMMANUEL AHWIRENG

::

DEFENDANTS

2. STEPHEN AHWIRENG

3. EVELYN AHWIRENG

ALL OF ASYLUM DOWN, ACCRA

JUDGMENT

Introduction

The Plaintiffs instituted this action against the Defendants on 12th October, 2021 praying for the following reliefs:

- a. A Declaration that the ejection of 2nd Plaintiff from the property located at Asylum Down, House No. C159/3 is unlawful.
- b. General damages for the destruction and loss of 2nd Defendant's [sic] belongings and items in her room at House No. C159/3, Asylum Down.

- c. An order for the ejectment of all occupants in 1st Plaintiff's room.
- d. An order that Defendants account to 1st Plaintiff for the collection of rents from February, 2021 to date.
- e. Cost.

The Plaintiffs' case is that 1st Plaintiff and 1st Defendant are siblings and beneficiaries of their late father's property at Asylum Down, Accra whereas the 2nd and 3rd Defendant are children of 1st Defendant. According to them, 2nd Plaintiff was in an amorous relationship with 1st Plaintiff's nephew, Stevenson Ampaw which relationship produced a child.

They averred that when the said relationship broke down, 2nd Plaintiff bore all the responsibility of catering for the child until the 1st Plaintiff and other family members intervened to assist her and 1st Plaintiff thus offered her a portion of his share in his late father's property to occupy with the child. Plaintiffs further stated that 2nd Plaintiff has since been in peaceful occupation of same until sometime in 2020 when Defendants started making her stay in the house unbearable.

Plaintiffs further asserted that Defendants physically abused 2nd Plaintiff on countless occasions, a matter which was prosecuted in Court leading to Defendants being found guilty by the Court. According to Plaintiffs, 2nd Plaintiff was forced to moved out of the house temporarily to prepare for her exams. Upon her return, she found the locks to her room changed, her household items destroyed and her room rented out to another person by the Defendants. Plaintiffs averred that 2nd Plaintiff has since been rendered homeless.

In their defence, the Defendants asserted that the 1st Plaintiff is not the biological son of 1st Defendant's late father, Philip Kwame Ahwireng, and he therefore could not be a beneficiary of the deceased's estate to even enable him give a portion of the property to the 2nd Plaintiff. They further stated that the 1st Plaintiff is known as Kwame Broni and

that he has deliberately assumed the name of Philip Kwame Ahwireng to deceive the Court.

According to them, the 2nd Plaintiff was a squatter in the house, the subject matter of this action. Defendants further averred that it is not true that 2nd Plaintiff suffered physical abuse in their hands and that they were misdirected at the Court connected ADR to settle the matter. They added that the 2nd Plaintiff was ejected by the Rent Control officer who used lawful means to effect the 2nd Plaintiff's ejection.

This they asserted was done after an inventory of her items left in the room were taken and same moved from the room for safe keeping. Defendants therefore counterclaimed against the 2nd Plaintiff for a refund of the amount of Gh¢4,500.00 which 2nd Plaintiff received through deceit at the court connected ADR together with interest at the commercial bank rate till the date of last payment.

In response to Defendants' Statement of Defence, Plaintiffs filed a Reply and Defence to Defendants' counterclaim on 15th July, 2022 wherein the Plaintiffs joined issue with the Defendants. According to Plaintiffs, Defendants cannot relitigate the matters dealt with at the Court connected ADR. They stated further that the arbitral award was obtained regularly.

Issues

The main issues for determination by this Court are:

1. Whether or not the 1st Plaintiff is a beneficiary of the estate of the late Philip Kwame Ahwireng and therefore entitled to a share of the property, the subject matter of this suit.

2. Whether or not the 1st Plaintiff is entitled to recover possession of a portion of House No. C159/3, Asylum down, Accra, the subject matter of the suit.
3. Whether or not the Defendants have destroyed and lost 2nd Plaintiff's belongings to enable her recover damages.
4. Whether or not the 1st Defendant is entitled to a refund of the GH¢4,500.00 paid to the 2nd Plaintiff.

Issues 1. and 2. would be discussed together.

Legal Analysis/Evaluation of Evidence

The burden of persuasion in a civil matter requires that a party proves by a preponderance of the probabilities and 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 such a person asserts. (**Sections 12 and 14 of the Evidence Act, 1975 (NRCD 323)**). The burden of producing evidence of a particular fact is also on the party against whom a finding on that fact would be required in the absence of further proof. It is originally on the party with the burden of persuasion as to that fact. (**Section 17 of NRCD 323**).

Put differently, the person who alleges, whether a plaintiff or a defendant, assumes the initial burden of producing evidence and it is only when such a party has succeeded in producing evidence that the other party will be required to lead rebuttal evidence, if it becomes necessary.

The Supreme Court in the case of **Takoradi Flour Mills vs. Samir Faris [2005-2006] SCGLR 882 at 900** rendered itself thus on the burden of proof in civil suits as follows:

“Our understanding of the rules in Evidence Decree, 1975 on the burden of proof is that in assessing the balance of probabilities, all the evidence, be it that of the Plaintiff or the defendant, must be considered and the party in whose favour the balance tilts is the person whose case is more probable of the rival versions and is deserving of a favorable verdict.”

The Court further held in the case of **GIHOC Refrigeration & Household vs. Jean Hanna Assi (2005-2006) SCGLR 458** that:

“since the enactment therefore, except otherwise specified by statute, the standard of proof (the burden of persuasion) in all civil matters is by a preponderance of the probabilities based on a determination of whether or not the party with the burden of producing evidence on the issue has, on all the evidence, satisfied the judge of the probable existence of the fact in issue... Hence, by virtue of the provisions of NRCD 323, in all civil cases, judgement might be given in favour of a party on the preponderance of the probabilities...”

The parties therefore had the onus of discharging the burden of producing sufficient evidence in respect of the claims put forth by them on a balance of probabilities.

The Plaintiffs in proving their case relied on a Witness Statement filed by 2nd Plaintiff on the 6th May, 2022 and same was adopted by the Court as their evidence in chief. The crux of their case was that the 1st Plaintiff and 1st Defendant are siblings born of the same father but of different mothers. According to 2nd Plaintiff, the late Opanyin Philip Kwame Ahwireng, during his life time built a single-storey house and another two-storey house on the same compound at Asylum Down, Accra and after his death, the family distributed his estate in accordance with customary law to all his surviving wives and children.

2nd Plaintiff testified that each of the surviving wives and children was given a room in the single-storey house whereas the two-storey house was rented and the proceeds used

to maintain the entire household. She explained that the eldest sister among the children, Akua Agyapomaa, was entrusted with the significant responsibility of managing the household on behalf of all her siblings. Despite this arrangement, it was emphasized, that each surviving wife and child retained control over their respective rooms, allowing them personal space and agency within the shared family environment.

The 2nd Plaintiff testified that the 1st Defendant initially began managing the property in a limited capacity when Akua Agyapomaa became unwell but following her passing, he assumed complete control over the property. She mentioned that the 1st Plaintiff was by then not living in Accra and as such, he gave his room to his nephew, Stevenson Ampah, to reside in. She explained that she was in a romantic relationship with the said Stevenson and got pregnant for him but their relationship hit the rocks. Upon the relocation of Stevenson from Accra therefore, she said she was permitted by 1st Plaintiff to reside in that room with the child. This context highlights the complexities of the relationships and circumstances surrounding the management of the property following Akua Agyapomaa's death.

According to the 2nd Plaintiff she lived in the property peaceably until Defendants started picking unwarranted quarrels with her leading to her being assaulted by the Defendants. It was her testimony that the matter was reported to the police which led to the arrest and prosecution of 1st Defendant. During proceedings at the Court connected ADR, the parties were able to settle the matter amicably and the 1st Defendant was ordered to pay an amount of GH¢4,500.00. To prove her claims, she tendered in evidence the terms of agreement as Exhibit 'A'.

The 2nd Plaintiff testified that the harassments from Defendants compelled her to relocate to a hostel to prepare for her examinations however upon her return, the Defendants had changed the locks to her room, removed her belongings, dumping them in a storeroom,

and rented the room out without her consent. When she went to the Rent Control Department to lodge a complaint, it came to her knowledge that the 1st Defendant had in January 2021 lodged a complaint against her and Stevenson that she was given the room on humanitarian grounds and that she had absconded for over a year, taking the keys along and she could not be traced.

She stated that 1st Defendant based on the false allegations he made at the Rent Control office was able to secure an order from the Rent Magistrate to put him in occupation of 2nd Plaintiff's room. 2nd Plaintiff further testified that she lost a number of items including: a blender, a big towel, ceiling fan, a pillow, silver saucepans, floor carpets, four dresses, a pair of shoes, two pairs of sandals, her birth certificate, personal ID cards, a framed picture and her local medication. She added that her wardrobe is in the room now occupied by another tenant and her standing fan and door clock have been damaged.

According to the 2nd Plaintiff, Defendants' conduct has caused her great loss and damage which she estimated at Gh¢5,805.00. She tendered in evidence Exhibits 'H' and 'J' to further prove their assertions. Plaintiffs therefore prayed for this Court to intervene seeking for the reliefs endorsed on their writ of summons.

The 2nd Defendant testified for himself and on behalf of the other Defendants by relying on his Witness Statement filed on 18th July 2022. He testified that the 1st Defendant is the only surviving Administrator of the estate of the late Philip Kwame Ahwireng and that the 1st Plaintiff is not a biological son of the deceased and cannot be a beneficiary of the deceased's estate. He tendered in evidence a copy of the Letters of Administration as Exhibit '1'. It was his testimony that 1st Plaintiff is known as Kwame Broni but has deliberately assumed the name Philip Kwame Ahwireng to deceive the Court.

2nd Defendant testified that 2nd Plaintiff was not a tenant to anyone but a squatter in the house, the subject matter of the suit. He stated that none of the Defendants physically abused the 2nd Plaintiff and further denied 1st Defendant's guilt in the case titled Republic v Emmanuel Ahwireng (Suit No. B4/2/22). He said the 1st Defendant was misdirected to settle and as such the GH¢4,500.00 he was made to pay to 2nd Plaintiff was ill gotten and had to be refunded. He further testified that the Rent Control Officer lawfully ejected the 2nd Plaintiff from the property after an inventory of her belongings was taken.

Issues 1 and 2

From the evidence adduced before this Court, central issue in this case revolves around the familial ties between the 1st Plaintiff and the 2nd Defendant, who are said to be siblings sharing the same father but having different mothers. The Plaintiffs assert that the late Opanyin Philip Kwame Ahwireng during his lifetime constructed two properties on the same compound located in Asylum Down, Accra. Following his death, the family undertook the task of distributing his estate in accordance with customary law, ensuring that all surviving wives and children received their rightful shares of his assets. Plaintiffs further testified indicating that each of the surviving wives and children was allocated their own room within the single-storey house, which served as their primary residence.

According to Plaintiffs, 1st Plaintiff allowed his nephew, Stevenson Ampah, to stay in his allocated portion of the property. However, when the said nephew's relationship with 2nd Plaintiff ended, 1st Plaintiff permitted 2nd Plaintiff to occupy his portion of the property after his nephew moved out.

Defendants on the other hand contended that 1st Plaintiff is not the biological son of the late Philip Kwame Ahwireng and he therefore cannot be a beneficiary of his estate as 1st Plaintiff wants this Court to believe and could not have possibly given the said property

to the 2nd Plaintiff. When the 2nd Defendant was under cross examination, he maintained that none of those who had the right to permit the 2nd Plaintiff to stay in the house had given her permission to stay in the room:

Q: I put it to you that the room was given to me by my in-laws and I have witnesses to that.

A: The room was given by my father to Stephen Ampah because Stephen was working in Accra. It was then that he started bringing Veronica there as his girlfriend. Legally, no one has given 2nd Plaintiff a room there to live in.

Q: I put it to you that you are being untruthful because the property is a family property and everyone has the share.

A: I am not being untruthful. I can attest to the fact that none of my father's siblings who has a share in the house rents it out without my father's consent as Administrator. None of the uncles has given a property to her and the uncle she is referring to, I have not seen that person in the house before.

In the midst of this stiff contention, it became incumbent on the 1st Plaintiff to adduce sufficient evidence on the balance of probability to show that he is a beneficiary of the room at the core of the suit. The issue of his identity is critical and he had advance notice of this contest right from the onset of the suit. He bore the duty of proving his ties with the deceased.

Indeed, the Letters of Administration tendered in evidence by 2nd Defendant clearly indicates that 1st Defendant holds the position of Administrator of the estate of the late Philip Kwame Ahwireng and this was corroborated by Plaintiffs. This role however does not confer ownership of the property on him. It is important to understand that being the Administrator entails the responsibility of managing the estate on behalf of the

beneficiaries and ensuring that the assets are properly distributed and vested in the beneficiaries.

From the evidence from both sides, the property has already been distributed to the wives and children of the late Opanyin Philip Kwame Ahwireng. This is what the 2nd Defendant and 2nd Plaintiff said respectively under cross examination:

Cross examination of 2nd Defendant

Q: The houses/rooms which were distributed to my father's nine wives, Emmanuel Kweku Ahwireng was in his mother's room. Why has your father taken over the rooms of the other wives of his father?

A: All my father's siblings have a share in the property and they live in or have rented their portion out.

Cross examination of 2nd Plaintiff

Q: I believe you are aware that 1st Defendant is the Administrator of the estate of the late Opanyin Kwame Ahwireng.

A: I have seen the Letters of Administration (L/A) but it does not mean the one who holds LA owns the property but he has to administer the estate. The Letters of Administration (L/A) was granted in 2012 and at the time the property had been distributed.

Q: As the Administrator of the property, he is the only one who could allocate a room to you, do you agree?

A: I disagree because I was in the room with my husband before the LA was granted and the property had already been distributed. I was told that the room in which I

am in is for my husband and the mother so I can stay in it. 1st Defendant has not shared any property/rooms in the house.

It is very interesting that the 2nd Plaintiff who had earlier maintained that the room she was in is for 1st Plaintiff, now under cross examination said that the room belongs to her husband and the mother and as such she can stay in it. The Plaintiffs could not surmount the evidential burden on them of proving that the 1st Plaintiff is a son of the deceased and a beneficiary of his estate. 1st Plaintiff could not even call a single family member to corroborate his story or produce any document in proof of same such as a funeral poster or brochure showing his name as a son of the deceased, or the Letters of Administration application showing the names of the children, etc.

The Plaintiffs have therefore failed to satisfy the Court that the 1st Plaintiff is a beneficiary of the estate of the late Opanyin Philip Kwame Ahwireng and therefore entitled to a share in his estate. He has not been able to prove on the preponderance of probabilities that the room he gave to the 2nd Plaintiff in House No. C159/3, Asylum Down, Accra is his to enable him recover possession of same.

Issue 3

It is 2nd Plaintiff's testimony before this Court that she has been unlawfully ejected from her room by the Defendants and that their conduct has resulted in loss of some belongings of hers and damage to other items. She estimated her loss at Gh¢5,805.00, tendering in evidence a list of the lost and damaged items as Exhibit 'H' and an invoice from Melcom Limited dated 24th October 2021 with prices of Binatone blender (GH¢ 259), towel (GH¢ 59), luxury pillow (GH¢85), optima ceiling fan (GH¢149), akai ceiling fan (GH¢175), wardrobe (GH¢ 1590), pot set (GH¢ 369), 10 pieces of linoleum pvc foam (GH¢ 149) totalling GH¢ 2,835.00 as Exhibit 'J'.

Defendants on the other hand challenged Plaintiffs' claim. According to them, the Rent Control Officer lawfully ejected 2nd Plaintiff and took inventory of her belongings and same were kept safe in one of the rooms in the house.

From the evidence adduced, the 2nd Plaintiff got to know herself from the Rent Control Department that the Rent Control Department had secured a Court order from the Rent Magistrate based upon which they had the authority to force open the door to the room in dispute. Exhibit 'F' is Form 10 which is the order from the Rent Magistrate gave the Rent Officer authorization to open the door and take inventory of the things in the room.

This exercise of forcing door open and inventory taking was done on 16th February 2021 as evidenced by Exhibit 'G'. The items listed as having been found in the room by the officer are a plastic bowl, plastic stool, plastic buckets (green, brown and white, blue/white), gas stove, wardrobe with assorted books, old dresses, assorted slippers, handouts, textbooks, old umbrella, small cooking pot, small plastic basket, cooking utensils, old chair, old blender, rubber mat, old suits, assorted cloths, pair of canvas & slippers, old jacket, dressing bag, standing fan, ceiling fan, old towel, ladies wig, old iron, short curtain bars and an unserviceable wrist watch.

The 2nd Plaintiff under cross examination stated that it was the 2nd Defendant who brought out her belongings from the room. She claimed that it was someone known as Bismark Appiah Kubi who informed her. The following as happened under cross examination of 2nd Plaintiff is worth reproducing:

Q: Who brought your things out of your room?

A: 2nd Defendant.

Q: Did you see him doing that?

A: No. I was called.

Q: *Who called you?*

A: *Bismark Appiah Kubi.*

Q: *Look at your own Exhibit G and tell the Court who brought your things out per the document.*

A: *From the document it was Rent Control but I have an explanation. Stephen Ahwireng went for the things from my room and went to put them in a store room which was filled with cobwebs. He went to tell Rent Control that I had come to rent their room on humanitarian grounds and my husband and I had left the house for 1 year, taking the keys away, without knowing our whereabouts so Rent Control should help them. If you look in the document, they have stated that Form 8 was pasted at metal gate of the office. My place has no metal gate.*

Q: *In Exhibit G, the inventory taken by the Rent Officer did not include the items you have mentioned in paragraph 31 of your witness statement.*

A: *That is why I am saying they are lost because it is not in the Rent Control inventory. When Rent Control went there, the things were already missing so they wrote the items left.*

Q: *It means you did not see Defendants taking these items.*

A: *Yes, but I was called on phone and my in-law asked if I was the one who asked them to come for my items.*

Q: *Who are you referring to as 'them'?*

A: *2nd and 3rd Defendants.*

Q: *The said Bismark Appiah Kubi lied to you because it was the Rent Officer and his people who came for the items.*

A: *Not true.*

Q: *You are aware that Bismark Appiah Kubi is the one who has been fighting the 1st Defendant in respect of the house.*

A: *Not so. Some of Defendant's things, were even missed with my things and I have them.*

Q: *The Rent Control Officer was ordered by a Judge of a competent Court to move your things out of the room, you agree?*

A: *I disagree. The Judge did not know the truth so it was based on the untruth peddled that the order was made.*

Q: *What lie was told the Court and who told that lie.*

A: *The lies were told by 1st Defendant. He told Rent Control that he gave the property to me on humanitarian grounds and he has not seen me and my husband for a year and does not know my relatives or where I am so he wants the Rent Control to recover possession for him. They were to paste a process on my door. They knew my number and it was not true he had not seen me for a year.*

Q: *You were not staying in the house when your items were moved out, you agree?*

A: *I was staying there but I went to write exams. Due to the disturbances in the house, I left for a hostel to study there.*

The 2nd Plaintiff did not find it necessary to call the said Bismark who allegedly saw the 2nd Defendant packing out her things to testify in support of her case especially when she herself did not see any of the Defendants packing out her belongings. From all indications, the items belonging to the 2nd Plaintiff were packed out by the Rent Control Department officials and an inventory was accordingly taken of the items. I am very mindful of the fact that as it stands, the Rent Control Department acted on a Court order which order has not been set aside or disturbed in any way legally and this suit is not one

for that purpose. I do not find that any of the Defendants removed the 2nd Plaintiff's belongings from the room and I do not find them liable to causing any damage or loss.

Issue 4 : Whether or not the 1st Defendant is entitled to a refund of the GH¢4,500.00 paid to the 2nd Plaintiff

It is abundantly clear from the evidence before the Court that the 1st Defendant was put before the District Court, Kaneshie in suit titled *Republic v Emmanuel Ahwireng (Suit No. B4/2/22)* on an assault charge. The Complainant and the Accused Person therein (2nd Plaintiff and 1st Defendant herein) were able to amicably settle their differences through Court-connected mediation and Consent Judgment was entered by the Court as evidenced by Exhibit 'A' and Exhibit '2'. Based on the agreement reached in that case which Terms bear the signature of both parties, the 1st Defendant paid an amount of GH¢4,500.00 to the 2nd Plaintiff.

The 2nd Defendant's testimony was that none of the Defendants physically abused the 2nd Plaintiff and they further denied 1st Defendant's guilt in the criminal case stating that the 1st Defendant was misdirected to settle and as such the GH¢4,500.00 he was made to pay to 2nd Plaintiff was ill gotten and has to be refunded.

According to **Section 82 of the Alternative Dispute Resolute Act, 2010 (Act 795)** on the status and effect of settlement agreement, a mediation settlement agreement has the same effect as if it is an arbitral award under Section 52. The said Section 52 provides as follows:

Effect of award

52. Subject to the right of a party to set aside an award under section 58 of this Act, an arbitration award is final and binding as between the parties and any person claiming through or under them.

According to **Section 58 of Act 795**, the forum for challenging an award is the High Court and an applicant to the application to set aside the award must make the application within three months from the date of the award, satisfying the Court that any of the conditions stated in the said section exists.

As it stands, the award has not been set aside and subsists. The 1st Defendant is not entitled to the refund of the money he paid pursuant to the agreement reached between him and the 2nd Plaintiff at ADR.

Conclusion

Having regard to the totality of the evidence adduced by the parties, it is the determination of this Court that the Plaintiffs have been able to prove their claim. The Defendants have also failed to discharge the burden of proof on them in respect of their Counterclaim. The Plaintiffs' claim and Defendants' counterclaim are accordingly dismissed.

Parties are to bear their respective costs.

SGD.

AMA ADOMAKO-KWAKYE (MS.)

MAGISTRATE

Legal Representation

No legal representation for Plaintiffs.

Ben Sevor, Esq. for Defendants.