

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE (LAND DIVISION) ACCRA HELD ON TUESDAY THE 21ST DAY OF OCTOBER, 2022 BEFORE HER LADYSHIP JUSTICE JENNIFER MYERS AHMED (MRS), JUSTICE OF THE HIGH COURT.

SUIT NO: LD/00882018

VICTORIA BUCKMAN : PLAINTIFF

VRS

1. Y. KUMEY INTERNATIONAL GROUP LTD : DEFENDANTS
 2. MR. GODFREY AMOO
 3. GAHCHIFA CO. LTD
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J U D G M E N T

The plaintiff by her amended writ of summons issued on theclaimed the following reliefs from the defendants:

- a. Order for recovery of possession of House no. 30 Blohum Street, Dzorwulu, Accra from defendants forthwith.
- b. Order of ejection or eviction of defendants, their agents, representatives, assigns, sublease, etc or any person deriving interest or authority from them from house no. 30 Blohum Street, Dzorwulu, Accra, forthwith or as the Court shall deem reasonably fit.

- c. Recovery from defendants the sum of \$19,200.00 as unpaid rent for occupation of the plaintiff's property.
- d. Interest thereon from May 2017 to date of judgment.
- e. Recovery of all outstanding rents and/or debts for the occupation of house no. 30 Blohum Street, Dzorwulu, Accra.
- f. Order directed at defendants to pay and/or liquidate all the due utility bills on the property forthwith.

The 1st defendant entered appearance on the and by its amended statement of defendant filed on the 25th of June 2020 counterclaimed for the following reliefs:

- a. Special Damages for loss of income and business opportunities.
- b. The recovery of the amount of US\$100,000.00.
- c. Damages for breach of contract.
- d. Cost including solicitor's fees.

The issues that were set down for determination were as follows:

- a. Whether the 1st defendant is in breach of the tenancy agreement entered into with the Plaintiff in June 2013 for lease of the Plaintiff's property.
- b. Whether the defendants are liable to the Plaintiff upon the plaintiff's claim.
- c. Whether 2nd defendant is personally liable to Plaintiff upon reliefs endorsed by plaintiff.
- d. Whether 3rd defendant has trespassed on the plaintiff's property.
- e. Whether defendants incurred outstanding debts on utilities during their period of stay in the plaintiff's property.
- f. Whether 1st defendant is entitled to its counterclaim at all.

The Plaintiff's Case

The original plaintiff who passed on to eternity on 2nd March 2021 was known as Victoria Christiana Buckman and she was the one who entered into a tenancy agreement with the 1st defendant company. The case presented by the present plaintiff, the daughter of the original plaintiff and an administratrix of her estate was that she was the one who had dealt primarily with the 1st defendant company on behalf of her late mother. The 1st defendant's representative Yaw Kumey was introduced to them by one Martin Offei as someone desirous of renting the late plaintiff's property located at house no. 30, Blohum Street, Dzorwulu, Accra. The late plaintiff on the 1st of June 2013 executed a tenancy agreement with the 1st defendant which tenancy was to run for a period of 10 years. The tenancy agreement was tendered into evidence by the plaintiff as exhibit A. Per the terms of the agreement, the sum of \$36,000.00 being rent advance for a year and a half was to be paid by the 1st defendant in advance with the outstanding 6 months rent to be paid within 6 months. Per the terms of the agreement the rent was to be reviewed upwards by 10% after the first 2 years and periodically after every two years and was to be paid in advance. Tendered into evidence as exhibit A1 series were receipts issued on the 8th of August 2015, 9th of September 2015 and the 3rd of November 2015 for the sums of Gh¢30,000.00, Gh¢20,000.00 and Gh¢20,000.00 being part payment of rent by Yaw Kumey and signed by Rachel Buckman. An acknowledgment of receipt of the sum of \$12,000.00 was part of the exhibit A1 series dated the 2nd of October 2013 and signed by the late Victoria Buckman and Yaw Kumey.

Despite the agreement however, it is the plaintiff's case that the 1st defendant had failed numerous times to honor its obligations under the tenancy agreement and had failed to pay the rent of \$2400.00 per month from May 2017 when it became due. In further breach of their agreement the 1st defendant had also failed to pay the electric and water bills and had left the property filthy, dirty, unkempt, weedy and untenable. Exhibit B tendered by the plaintiff were pictures of the premises in the state left by the 1st defendant. Exhibit C was a letter dated the 26th of May 2017 to the

managing director of the 1st defendant giving them notice to quit on the main ground that not only had he sublet the property to other persons in breach of clause 6(c) of the tenancy agreement but he had broken into the sauna of the landlady which was not part of the agreement and had failed to maintain the premises.

In response, the 1st defendant lodged a complaint with the Rent Control Department and notice was given to the late plaintiff to appear before that outfit. These notices were tendered as exhibit D and indicate that the late plaintiff was given a first notice dated the 23rd of August 2017 to appear before the Rent Control on the 11th of September 2017. A second notice dated the 6th of December 2017 was for her to appear there on the 15th of January 2018. The complaint lodged by the 1st defendant was also tendered as exhibit D1.

The plaintiff also tendered as exhibit E the outstanding electric bill left by the 1st defendant as well as a statement of account of the outstanding water bill as exhibit F which showed that payments totaling Gh¢1000.00 were made on the 3rd of May 2016 and the 10th of June 2016 when the 1st defendant was still in occupation of the premises. The amount owing was Gh¢3,043.68 though the account name was described as The Italian Restaurant. Exhibit H also tendered by the plaintiff was a tenancy agreement between the deceased plaintiff and on Ivernizzi Mario, who it appears was the tenant prior to the 1st defendant renting the property and had operated the Italian Restaurant.

Under cross-examination the plaintiff stated that the 1st defendant had failed to pay rent from 1st June 2017 until the 31st of May 2019 and denied the assertion that her late mother and the 1st defendant had agreed that he pay the rent in instalments. She denied the assertion that the 1st defendant carried out major renovations on the property upon execution of the tenancy agreement and stated that he was only allowed to change locks and certain fittings in the premises. The work he did which were the laying of pavement blocks and the changing of the gate were deducted from the rent and amounted to Gh¢35,000.00. This was after the 1st defendant's managing director had indicated that the total amount expended was Gh¢65,000.00 which he

had agreed to split with the late plaintiff. This was in 2015. She had no receipt evidencing the deduction of this Gh¢35,000.00 but stated that the 1st defendant had had an outstanding bill of \$52,800.00 to pay to her late mother and he had spread the deduction of the Gh¢35,000.00 over the period. She admitted that at the time the construction works were carried out by the 1st defendant it did not owe any rent arrears to the late plaintiff.

Her late mother had painted the premises when the 1st defendant made the initial payment of rent but she did not exactly answer the question of whether her mother had carried out any maintenance work on the structural and external part of the property. The pictures tendered by her were taken sometime in 2017 when she accompanied her mother there to demand for the rent and they had found the place '*weedy*'. Yaw Kumey threw them out that day and decided to lock up the premises, denying them access from that date till her testimony in court. The next day they had visited the premises to find it locked up and she had taken pictures of that as well. She denied that the pictures were taken well after the defendant had taken the plaintiff to rent control for forcing the 1st defendant out of the premises. She admitted that she and her mother had shown up to the property unannounced and without giving the 1st defendant three days notice because its representative Yaw Kumey had refused to answer phone calls made to him. She admitted that per the tenancy agreement telephone calls were not a mode of notice and explained that the 1st defendant had refused to answer a letter written to him by her late mother's previous counsel to pay the rent and the only alternative left had been to go to the premises. She acknowledged, when confronted with the letter written on her late mother's behalf to the 1st defendant by her previous counsel that the letter had outlined breaches by the 1st defendant which did not include failure to pay outstanding rent.

The agent Martin Offei had been notified by her, at the behest of her mother of the 1st defendant's complaint to the rent control. She however denied that he had been instructed by her late mother to place a for sale sign on the property and said that he

had indeed done so without her mother's consent and her late mother had had him remove the sign when she found out. The rent which the 1st defendant had failed to pay had become due in June 2017.

The plaintiff as part of her case produced the aforementioned Martin Offei as her witness and it was he who had introduced the managing director of the 1st defendant to the plaintiff and her late mother. He had been present during negotiations between the late plaintiff and this managing director in the person of Yaw Kumey on the issue of the quantum of rent. Yaw Kumey later informed him that an agreement had been executed between he and the late plaintiff which agreement did not extend to the boys quarters which a two bedroom was building containing machines belonging to the plaintiff.

After the first two years, the plaintiff '*complained bitterly*' to him about the conduct of the 1st defendant in relation to the payment of rent. He had accompanied the late plaintiff to Rent Control after Yaw Kumey lodged a complaint there but after Yaw Kumey was subjected to cross-examination there he stopped attending proceedings and abandoned the matter. When he later confronted Yaw Kumey, he was informed by Yaw Kumey that he intended subletting out the premises in order to raise money to pay off the plaintiff. Even though he advised the plaintiff to discuss the issue with the plaintiff, he later realized that Yaw Kumey had already given the place out for use by some organizations without the consent of the plaintiff. He also realized that church services were being held in the premises after residents in the area had complained to him about it. He later spoke with the leaders of the church and managed to get them to move to a new place.

Under cross-examination he stated he had personally accompanied the plaintiff several times to the property but the offices of the 1st defendant had been locked up. He had interacted with Yaw Kumey after the rent control issue and asked him why he complained about harassment by the plaintiff and Yaw Kumey had responded by telling him that he had no money as he had '*entered into politics*' and that was when he

had revealed that he intended to sublet the property. PW1 also admitted that though he never personally witnessed any church service at the property, he did visit the premises to find some belongings of the tenants there and had held a conversation with them regarding complaints of noise by a neighbor. These persons had pleaded with him to assist them in finding a new place as Yaw Kumey had decided not to let them use the premises again and so he had helped them to locate a new place. However he could not remember the name of the church.

The tenancy agreement between the plaintiff and the 1st defendant excluded two stores on the property but was inclusive of the boys quarters. He denied visiting the property between 2015 and 2017 to show it to prospective buyers and denied putting a 'for sale' sign in the frontage of the property on the instructions of the plaintiff. I must say that this was contrary to the plaintiff's answer during cross-examination that he had indeed done so on the blind side of her mother who had instructed him to remove the sign when she found out. In answer to a question posed by the plaintiff's counsel he admitted that in 2018 when he went to pick up the plaintiff's rent for the period spanning 2015 to 2017 the property was in good condition. He denied the assertion that at the time the property was being rented out to the 1st defendant the floors were terrazzo floors or that the windows were louvre frames or that the ceiling was made of plywood though this runs contrary to the tenancy agreement and his own admission in later cross-examination that the 1st defendant did tile the compound.

The 1st Defendant's Case

As gleaned from the pleadings filed and the evidence of the 1st defendant's representative in the person of Yaw Kummey as contained in his witness statement and supplementary witness statement, the 1st defendant sometime in June 2013 entered into a tenancy agreement for the rental of the property situate at no. 30 Blohum Street, Dzorwulu, Accra for a period of 10 years commencing from the 1st of

June 2013. The tenancy was per its terms and conditions to end on the 30th of May 2013. He tendered the agreement into evidence as exhibit 1 and also tendered exhibit 2 which was an acknowledgment of \$12,000.00 paid on the 2nd of October 2013 by the 1st defendant to the deceased plaintiff.

When the rent became due in May 2015 he had discussions with the late plaintiff and they agreed that the 1st defendant pay the rent in monthly instalments as it was having financial challenges and the payments were duly made. However despite agreeing to his suggestion, the plaintiff consistently interfered with the 1st defendant's use of the property and on several occasions locked up the premises and prevented the 1st defendant's officers from coming onto the property to carry out their duties. She also had a for sale sign placed on the property in early 2017 and had agents coming with potential buyers to inspect the property during working hours. Due to the persistent harassment and threats which affected his business leading to the loss of several clients the 1st defendant was forced to lock up the property and lodge a complaint with the rent control department to help resolve issues with the late plaintiff. Exhibit 5 was a copy of the complaint made to the rent control. He stated that he only withdrew the complaint at the rent control after being contacted by the plaintiff's agent asking for an amicable settlement. The matter had been pending at rent control for six months and the plaintiff had refused to appear before there to have the issues dealt with.

According to him he renovated the premises to the tune of \$100,000.00 thereby adding value to it and kept the property in a good and tenantable condition. His company had suffered a decline due to the harassment by the plaintiff and he tendered copies of the company's financial records into evidence as exhibit 6. The company had also suffered a loss of income as it lost the use of the building and lost money because it made several renovations to the property including the installation of floor tiles on the compound of the property.

He also denied leaving any utility bill unpaid, insisting that it was the previous tenant who rather left utility bills unpaid and that the ECG disconnected the electricity supply to the property until the 1st defendant paid the outstanding utility bills left by the previous tenant of the plaintiff. The 1st defendant informed the plaintiff that it would not pay the water bill on the property which was outstanding before it took possession but it ensured that water bills delivered to the property during the period the 1st defendant used the property were paid.

He tendered exhibit 3 series which were pictures of the premises locked up by the plaintiff as well as exhibit 4 which was an extract from the station diary of the Dzorwulu police station dated the 10th of June 2019 which indicated that he had lodged a complaint there that day against a young man who had broken into his office and when confronted had threatened to kill him. The plaintiff's harassment had intensified because two years after the tenancy agreement insisted that the tenancy agreement did not cover the boys quarters or outhouse and that she wanted access to it. He resisted this and as a result the late plaintiff and her agent continued to harass his officers during working hours.

Under cross-examination, Yaw Kumey denied renting out the property to any other person but stated that he had offered up the place to the 3rd defendant which is the Ghanaian Chinese community of business men, an NGO of which he is a member as part of his contribution to the group. He had only given out an office measuring 15 by 10 feet for use by this Ghachifa and did not deem it necessary to seek the permission of the landlady beforehand as it formed part of his group of companies.

According to him, he had paid rent from June 2015 until 2017. He also stated that even though the tenancy agreement covered the entire property, the plaintiff and her twin sister informed him that a small building on the land was not covered by the agreement and that if he wanted they could rent that part to him for a different sum of money. After signing the tenancy agreement he had been subjected to harassment by the deceased plaintiff and her children as well as their agent. Even though he

asserted that he had paid rent to the plaintiff up to the year 2018, he had no proof of this assertion. He described the letter written to him by the plaintiff's counsel as forged as it had not been endorsed by him or a member of his staff as having been received by the company. He thereafter in later cross-examination stated that if he indeed he had owed rent why had the plaintiff failed to mention this at rent control. However when it was pointed out to him that his complaint at rent control was over alleged harassment by his landlady he stated that it was because of the issue of rent he had lodged the complaint at rent control.

DW1 admitted that there were outstanding utility bills which had accrued by the 1st defendant and for which the court had entered summary judgment on the 2nd of April 2019. This issue is thus not in contention and will not form part of this judgment as same has earlier been dealt with by the court differently constituted.

The standard of proof required in a civil trial of this nature is by a preponderance of the probabilities and a party on whom the standard of proof rests has the burden of producing evidence on the issue to satisfy the court that of the probable existence of the facts in issue, as per sections 10(1), 11, 12 and 14 of the Evidence Act 1975, NRCD 323. A party does not satisfy the burden of producing evidence if he or she enters the witness box and merely repeats on oath the allegations as contained in his or her pleadings. A party proves his or her case by producing other evidence of facts and circumstances from which the court can be satisfied that what he or she says is the truth. Reference to **Klah v Phoenix Insurance Co.Ltd**[2012] SCCCLR 1139

Both parties having made claims, they both assumed the burden of proof in establishing their respective claims. In **Jass Co. Ltd & Another v Appau & Another**[2009] SCCLR 265 @ 271, it was held that while the burden of proof is always put on the plaintiff to satisfy the court on a balance of probabilities in an action, whenever the a defendant also files a counterclaim, then the same standard or burden

of proof would be used in evaluating and assessing the case of the defendant just as it was used to evaluate and assess the case of the plaintiff against the defendant.

The parties are in agreement that a tenancy agreement was executed between them on the 1st of June 2013 for a period of 10 years and the rent agreed on was at a monthly rent of \$2000.00 to be reviewed upwards periodically. They are also in agreement that the rent for the first two years was paid within the period agreed on. According to the plaintiff the 1st defendant thereafter failed to abide by the terms of the tenancy agreement and failed to pay rent after May 2017. Per clause 6 of the agreement the 1st defendant was not to sublet the premises without the consent of the plaintiff. Even though it has been the case of the plaintiff that the 1st defendant contravened this clause, there was no credible evidence adduced in proof of this claim. The plaintiff's witness who claimed that the 1st defendant had given the place out for use by a church was unable to substantiate this allegation especially so when he could not remember the name of the church he claimed to have helped relocate to another place. According to the 1st defendant's witness, the 1st defendant company had tentacles in several businesses with the 3rd defendant being an NGO which was an offshoot of the business he was engaged in for which reason he had an office in the building serving as the office of the 3rd defendant. There is no evidence to the contrary that this Ghachifa was a sub lessee of the 1st defendant.

The tenant in this case the 1st defendant per the tenancy agreement, covenanted under clause 6(e) not to permit or allow to be done on the premises anything which *'may be or may become a nuisance danger inconvenience or annoyance to the landlord or to the occupiers or users of any adjoining premises'*. In his evidence PW1 alleged that the 1st defendant had permitted the use of the premises by a church and that neighbours including Alhaji Sidiku Buari had complained to him about it. However he could not substantiate this allegation and neither could the plaintiff.

The plaintiff bore the onus of proving that the 1st defendant had indeed flouted the tenancy agreement by subletting out the premises without her consent and permitting

the premises to be used in a manner which was a nuisance or inconvenience to her or to other occupiers of adjoining premises but she was unable to discharge this burden to the required standard of proof. Thus on the issues of whether 2nd defendant is personally liable to Plaintiff upon reliefs endorsed by plaintiff and whether 3rd defendant has trespassed on the plaintiff's property the evidence on record does not lead to any such conclusion.

Per the terms of the agreement the 1st defendant was to construct a glass façade on the frontage of the building and to cover the terrazzo façade with loco bond and this was confirmed by PW1 during cross-examination when he described the work carried on in the premises as; the removal of a metal gate and replacement with a wooden one, the reduction of the wall by the 1st defendant, the tiling of the compound, the fixing of sliding glass at the entrance of the main house and the painting of the house from white to green. All these works were carried out by the 1st defendant before it took possession of the house. The plaintiff has insisted that the 1st defendant did not carry out any major renovation in the property and per the terms of the tenancy agreement and from the evidence on record, the 1st defendant did not carry out any other renovation works in the house apart from what was stipulated in the tenancy agreement. And indeed if DW1 as the managing director did so, the onus was on him to establish same.

Clauses 5 and 6(g) provided that the landlord would grant the tenant a two month rent free period to assist the tenant in undertaking works on the property. The 1st defendant's representative has claimed that the 1st defendant expended the sum of \$100,000.00 in renovating the premises but offered no breakdown of the expenses he incurred and exactly what renovation works he carried out apart from what was listed in the tenancy agreement. The construction of the glass façade and the covering of the terrazzo were executed by him for which reason he was not only given a two month rent free moratorium but he admitted under cross-examination that at the initial stages he estimated for an amount of Gh¢60,000.00 to cover the work done. This does

not differ much from the plaintiff's evidence under cross-examination that they were informed by the 1st defendant that an amount of Gh¢65,000.00 was spent in the works carried out by it on the property which it chose to split with the plaintiff and which was deducted from the rent owed. By the plaintiff's own admission, the 1st defendant was not in arrears of rent when the renovation works were carried out. By parity of reasoning, it can be deduced that if the 1st defendant carried out the renovation works at a time when it did not owe for rent, then it means that the amount expended was deducted by it from the rent that was paid to cover the period between 2015 and 2017.

As stated above, DW1 bore the onus of proof in establishing his claim that an amount of \$100,000.00 was expended by him on behalf of the 1st defendant in renovating the premises but apart from merely repeating this statement under oath he did not provide any evidence such as receipts for fittings purchase, labour expended, witnesses, photographs showing the property before and after he completed the alleged major renovation works to establish what he claimed. He alleged during cross-examination that during the two month moratorium given to him by the plaintiff to effect the repair works as contained in the tenancy agreement, there was a fire outbreak in the house which affected the roofing ceiling and the entire house for which reason the repair works took six months, he was unable to substantiate this claim. What was glaring about this claim of his was the fact that he neither pleaded it in his pleadings nor deposed to it in his witness statement. In **Ablakwa v Attorney-General** [2012] 50 GMJ 1, Brobbey JSC held that:

The established rule is that where a person makes an allegation which is capable of proof of documentary evidence, he will not succeed in proving it by mere oral assertions or allegations. This was enunciated in the celebrated case of Majolagbe v Larbi [1959] GLR 190 which has been applied by the courts in several cases.'

The 1st defendant's witness failed woefully in this endeavor and thus his claims of having expended \$100,000.00 remain mere allegations, unsupported by any evidence whatsoever. Similarly, his claims that his business failed as a result of the alleged

harassment by the plaintiff could not be substantiated. His exhibit 6, a statement of account in the name of the 1st defendant with the United Bank for Africa (UBA) from 1st January 2012 till the 28th of August 2015 did not indicate in what way the plaintiff impacted negatively on his business forcing it to fail. Furthermore, this statement of account was mainly for a period when he was in good standing with the late plaintiff and did not owe her any rent so the court cannot fathom in what way the bank account reflected the alleged harassment by the deceased plaintiff. The name of the late plaintiff is not even reflected in the statement of account of the 1st defendant if for instance she had been paid via cheque. There was no evidence apart from his mere statements that the deceased plaintiff drove out clients of his and prevented him from carrying out his regular business activities or interfered with the operations of his company. He ought to have substantiated these averments but he again failed in this endeavor. I must state that the tenancy agreement made provision in clause 6(k) to permit the landlord or her duly authorized agent to show the property to prospective tenants during the last two months of the tenancy and did not preclude the landlord from selling the property to a prospective purchaser. On the whole the court found DW1 not to be a credible witness as he was making wild unsubstantiated allegations in his testimony some of which had to be expunged.

Even though the parties ended up before the rent control department where the complaint by DW1 was for *'breach of agreement'*, neither one of them produced the proceedings there for, while the plaintiff alleged that DW1 failed to appear there again after he was subjected to cross-examination, he claimed that the late plaintiff failed or refused to avail herself there despite having been given notice to do so. From the plaintiff's exhibit D series, Yaw Kumey's complaint to rent control was that the plaintiff had been harassing him and his workers amidst threats. One wonders why he did not file a criminal complaint against her. The only complaint made was against an unknown young man as per his own exhibit 4. If indeed he had been subjected to such intense harassment which negatively impacted his business, he would have not

only had the late plaintiff and her accomplices charged for that but he would have been able to produce witnesses to establish that indeed the conduct of the deceased plaintiff had a negative impact on his business.

The evidence on record though establishes that the premises at the time the 1st defendant left it was not in a good state. Per exhibit B series, the picture of the premises which the plaintiff stated were taken in 2017, the property was overgrown with weed and algae. Exhibit C, the letter dated the 26th of May 2017 written by the plaintiff's then counsel to the 1st defendant indicated that the premises as at that date had not been maintained. By DW1's own admission, even though he claimed to have been forced to lock up the property due to the alleged harassment of the plaintiff, he, on the 10th of June 2019 made a report to the police at Dzorwulu that someone had broken into the property claiming it had been rented to him by the plaintiff. To the court, this admission shows that he continued to have access to the premises even after the suit had commenced in court even though he owed the plaintiff rent despite his claims that he been forced out by the harassment carried out by the late plaintiff, her agent and her children. And his failure to maintain the property was contrary to clause 6(d) of the tenancy agreement.

From the forgoing and after weighing the respective claims of the parties, the court finds that the scales tilt more in favour of the plaintiff who has adduced sufficient evidence to establish that the 1st defendant has contravened the terms of the tenancy agreement by failing to pay rent and by failing to maintain the property. I thus grant judgment in favour of the plaintiff for all the reliefs endorsed on the writ of summons. The 1st defendant's counterclaim fails.

Cost of Gh¢15,000.00 is awarded in the plaintiff's favour.

LEGAL REPRESENTATIVES

MR. EKOW DADSON WITH PAUL AKWAKA FOR PLAINTIFF –PRESENT

MR. KWAKU DARKO ASIEDU- ABSENT

SGD

JENNIFER ANNE MYERS AHMED (MRS)

JUSTICE OF THE HIGH COURT

21/10/2022