

IN THE SUPERIOR COURT OF JUDICATURE

IN THE HIGH COURT OF JUSTICE SITTING AT MANKESSIM ON THURSDAY,
THE 10TH DAY OF NOVEMBER, 2022 BEFORE HER LADYSHIP, MRS. JUSTICE
CECILIA N.S. DAVIS.

SUIT NO. C12/37/2014

EBENEZER BARNES

PLAINTIFF

V.

ALFRED AMOOH

DEFENDANT

JUDGMENT

The Plaintiff filed an amended writ of summons on 7th November, 2014, claiming the following reliefs against the Defendant:

- a. A declaration that the Plaintiff is the bona fide owner of the house numbered SGC3/70/10, Ohwerefafa, Mankessim and described more appropriately at paragraph (a) of the said amended writ of summons
- b. An order to compel the Defendant to pay rent of GHC400.00 a month from 1st September, 2012 to the date of final ejection of the Defendant
- c. General damages for breach of contract

- d. General damages for trespass
- e. Costs, including legal cost for prosecuting the suit
- f. Perpetual injunction restraining the Defendant, his agents, assigns, personal representatives, etc., from having anything to do with the building and land in dispute
- g. An order of the Court ejecting the tenant from the disputed house.

Per his statement of claim filed on 29th January, 2014, the Plaintiff explained that he acquired a parcel of land and built the seven bedroom self-contained house with toilets and bathrooms and rented same to tenants, including the Defendant herein in 1999. He said the Defendant was made to pay GHC25.00 a month because he was occupying the master bedroom and he appointed Philip Sam, PW1, as caretaker because he lived and worked in Kumasi at the time.

According to the Plaintiff, in 2009, he decided to sell the property and therefore, at the expiration of the required notice, all the tenants vacated the property except the Defendant who expressed interest to purchase the property. He claimed that in July 2010, he and the Defendant went into negotiations and agreed on the price of the house at GHC56,000.00 to be paid in full by the Defendant within two weeks.

The Plaintiff further stated that all this while, the Defendant was living in the house without paying any rent but after persistent demands, he made an initial payment of GHC5,000.00 in August 2010 towards the purchase of the property. He said that the Defendant also issued a post-dated cheque for GHC40,000.00 to him but on the due date when he went to cash the cheque, it was dishonoured by the bank but afterwards, the Defendant paid a further GHC5,000.00, bringing the total amount paid by the Defendant to GHC10,000.00.

The Plaintiff again stated that after a while when the Defendant was not making any further payments towards the purchase of the house, he, together with his wife and caretaker, approached him and told him that since he had not been able to make full payment for the purchase of the house, he (Plaintiff) was going to convert the GHC10,000.00 to rent at GHC400.00 per month from January 2010 because the Defendant was occupying the entire house. He said that at the rate of GHC400.00, the Defendant's rent expired in September 2010; that after September 2010, he served the Defendant with notices to quit the house but he has refused to leave and continues to live in the house.

The Plaintiff contended that the Defendant has breached his contractual obligations to him and has now become a trespasser who must be evicted from the house in issue.

The Defendant disagreed. In his amended statement of defence, filed on 27th May, 2021, the Defendant admitted paying GHC25.00 for his room and that he paid a rent advance of GHC600.00 to the Plaintiff for a period of two years. He also stated that during the negotiations for the purchase of the property, the Plaintiff agreed to his proposal to pay the agreed price of the house by instalments and so he subsequently paid a total of GHC20,000.00 by four instalments.

According to the Defendant, when he met the Plaintiff, together with the Plaintiff's wife and caretaker, the understanding between him and the Plaintiff was that he had purchased the house from the Plaintiff and further to this understanding, he took over the house in his capacity as the new bona fide owner and saw to the payment of all property rates up to date. He stated further that he also made structural repairs and renovations on the property at his own expense. As a result, the Plaintiff is estopped by his conduct from averring anything to the contrary.

He contended that the Plaintiff has no legal right to unilaterally change the sale agreement to a tenancy agreement and convert payments he made towards the purchase of the house to rent payment and that having made substantial payments towards the purchase of the said property, he is entitled to same. He added that he is ready to pay the outstanding purchase price but that had it not been for the conduct of the Plaintiff, he would have completed payment a long time ago.

He also contended that the Plaintiff has no cause of action against him by way of repudiation of the contract and that his only cause of action is for the recovery of the balance of the purchase price of the property.

The Defendant further stated that whilst complying with the terms of the contract, he requested from the Plaintiff, through his agent, for a copy of the title deeds on the house to enable him make the necessary search to assure himself that there was no encumbrance on the house. However, he failed to give him the said documents and this resulted in the delays by him to make further instalment payments in respect of the contract of sale. He said that when he resumed payments of the purchase price, the Plaintiff's agent refused to accept the money stating that he had instructions from the Plaintiff not to accept any further payments from him.

In his amended reply, dated 16th July, 2021, the Plaintiff joined issue with the Defendant on his defence.

He denied that there was an agreement between him and the Defendant for him to pay the purchase price of the property by instalments, either orally or written and that the total amount so far paid by the Defendant is GHC10,000.00 made in two instalments. He also denied that he made any legal transfer of the property to the Plaintiff and that all documents relating to the property are still in his name. He added that the property was in a tenantable state and occupied by the tenants before the aborted transaction. He

pointed out that the total amount of GHC10,000.00 paid by the Defendant out of the agreed purchase price of GHC56,000.00 does not constitute substantial payment by the Defendant.

At the close of the pleadings, the following issues set out in the Plaintiff's application for directions, filed on 15th May, 2014 but which he did not amend after the amendment of the pleadings, were adopted by the Court for trial:

- a. Whether or not the Plaintiff is entitled to his claim
- b. Whether or not the Plaintiff completed his building project in 1999 and rented rooms to tenants, including the Defendant, with each tenant paying GHC20.00 a month, with the Defendant paying GHC25.00 a month
- c. Whether or not in July, 2010, the Defendant approached the Plaintiff to negotiate for the sale of the property and which the parties agreed on GHC56,000.00 with the Defendant promising to pay the amount within two weeks
- d. Whether or not the Defendant has paid GHC10,000.00 or GHC20,000.00 to the Plaintiff as part payment for the purchase of the property
- e. Whether or not the Defendant issued a post-dated cheque of GHC40,000.00 to be cashed on 3rd November, 2010 but which was dishonoured upon presentation by the Plaintiff
- f. Whether or not the Defendant is in serious breach of his contractual obligations towards the Plaintiff
- g. Any other issues that may arise out of the pleadings

The Defendant did not file any additional issue.

The parties filed their respective witness statements as directed by the Court, in accordance with the High Court (Civil Procedure)(Amendment) Rules, 2008 (C.I. 87).

The Plaintiff testified through his witness statement, filed on 9th March, 2021 and supplementary witness statement, filed on 11th November, 2021, repeating all the averments as contained in his pleadings, as recounted above. He was cross examined by Counsel for the Defendant. In support of his case, he tendered the following exhibits, which were all admitted in evidence – a copy of a deed of indenture as exhibit A, copy of a cheque dated 3rd November, 2010 as exhibit B and a number of letters demanding the Defendant to quit the property as the exhibit C series.

The Plaintiff called two witnesses – Philip Sam, PW1 and Comfort Barnes, PW2 who testified in support of the Plaintiff's claim and were duly cross examined by Counsel for the Defendant.

According to PW1, Philip Sam, per his witness statement, in 2009, he became the caretaker of the property for the Plaintiff, at a time when the Defendant was a tenant. He stated that when the Plaintiff decided to sell the property, all the tenants vacated the property, except the Defendant who offered to buy same and that the Plaintiff provided the plan of the property which was used to value the property by a Valuer brought in by the Defendant. He said that subsequently, upon negotiations between both parties herein in his presence, the price of the property was fixed at GHC56,000.00 which was accepted by the Defendant and he promised to pay the full amount within two weeks.

According to PW1, the Defendant subsequently paid a total of GHC10,000.00 in two instalments of GHC5,000.00 each and that at a later date, the Defendant paid another GHC10,000.00 to him but the Plaintiff warned him not to accept the payments from the Defendant in pieces and when he informed the Defendant, the Defendant told him to keep the money for him to come and add the balance of the purchase price. PW1 further stated that the Defendant thereafter issued a post-dated cheque to the Plaintiff to be cashed in November 2010, however on the day on which the cheque was to be cashed,

the Defendant called the Plaintiff to inform him not to present the cheque to the bank because there was no money in his account.

He again stated that the Plaintiff gave the Defendant a further three months within which to pay the balance, failing which the Defendant was to vacate the property and the Plaintiff served the Defendant several notices to quit the property. He added that in August 2012, he accompanied the Plaintiff and his wife, PW1 to meet the Defendant and the Plaintiff informed the Defendant that because he could not pay the full amount to purchase the property, he would convert the amount he had already paid into rent to cover the period January 2010 to September 2012.

In her witness statement, PW2, Comfort Barnes, stated that she is the wife of the Plaintiff, the owner of the property in dispute and that when the Plaintiff decided to sell the property, the Defendant, who was a tenant in the property, offered to buy same. She stated further that the parties herein agreed the price of the property in 2010 as GHC56,000.00 and that the Defendant subsequently paid a total of GHC10,000.00, sometime in 2010, in two instalments of GHC5,000.00 each.

PW2 added that sometime in 2012, she accompanied the Plaintiff and the caretaker of the property to meet the Defendant and the Plaintiff told the Defendant that since he could not pay the full cost of the property, he was going to convert the GHC10,000.00 he had already paid into rent.

The Defendant also testified through his witness statement, filed on 7th April, 2021, repeating all the averments in his statement of defence as recounted above and was duly cross examined by Counsel for the Plaintiff through video conferencing because he was outside the jurisdiction. In support of his case, he tendered a copy of a letter dated 12th April, 2013 as exhibit 1.

He called one witness, Mrs. Mary Amooh who testified and was cross examined by Counsel for the Plaintiff.

According to the witness, per her witness statement, she is the wife of the Defendant and that they were tenants of the Plaintiff between 2008 and 2010. She stated that when the Plaintiff decided to sell the property, her husband offered to buy it at GHC56,000.00, at a time when the property was in a deplorable state; that the Plaintiff agreed for the Defendant to pay the purchase price by instalments and that subsequently, she and the Defendant took possession of the property and occupied all the rooms in the property.

The witness added that the Defendant paid four instalments of GHC5,000.00 each to the Plaintiff through his agent, PW1, Philip Sam and that when the Defendant decided to make further payments after he failed to procure the title deeds to the property from the Plaintiff after several demands, the Plaintiff, through his agent, failed to accept the money.

She pointed out that she and the Defendant spent a lot of money to do a lot of renovation work on the property and that the Plaintiff never informed them that the monies they paid towards the purchase of the property, totaling GHC20,000.00, would be converted into rent.

In support of her testimony, she tendered the following documents which were all admitted in evidence – copies of photographs she claimed shows the deplorable nature of the property as the exhibit 2 series and also copies of receipts for property rates as the exhibit 3 series.

Per the rules of evidence, the standard of proof of allegations or claims in any civil case is by the preponderance of probabilities and the Plaintiff bears the burden of proof to provide sufficient evidence in proof of his claims or allegations, in accordance with

sections 11(4) and 12 of the Evidence Act, 1975 (NRCD 323). In **Sarkodie v. FKA Company Ltd. (2009) SCGLR 65**, the Supreme Court held that:

“....., the burden of producing evidence requires a party to produce sufficient evidence which on the totality of the evidence, leads a reasonable mind to conclude that the existence of the fact was more probable than its non-existence.”

Therefore, the burden of proving any particular averment is on the one who made the averment. It is when the claimant has established an assertion on the preponderance of probabilities that the burden shifts onto the other party to explain the matter, failing which an unfavourable ruling would be made against him.

In **Ababio v. Akwasi III (1995-96) GBR 774**, the Court noted that:

“a party whose pleadings raised an issue essential to the success of his case assumed the burden of proving such issue. The burden only shifted to the defendant when the plaintiff has adduced evidence to establish his claim.”

From the totality of the evidence before me, there is no dispute about the fact that the Plaintiff is the owner of the property in dispute. The Defendant admitted that much per his witness statement in which he stated that the Plaintiff was his former landlord and that when the Plaintiff decided to sell the property, he negotiated with him to buy same. He also admitted during cross examination by Counsel for the Plaintiff that when the Plaintiff decided to sell the property, he did not doubt that the Plaintiff is the owner and that was why he negotiated with him to buy the property.

There is also no dispute about the fact that the Defendant is or was a tenant in the Plaintiff's property and paying rent until he negotiated with the Plaintiff to buy the said property.

From the evidence before me, the transaction for the sale of the property took place in July 2010, at a time when the sale of land, which includes landed property, such as a house, was regulated by the Conveyancing Act, 1973 (Act 175).

Section 2 of the Act provides that before a deed of conveyance is executed between a vendor and a purchaser, there shall be a contract of sale, in writing, specifying such information as the names of the parties, the description of the property, the purchase price or consideration, terms of payment, e.g. whether the purchaser is to pay by instalments, one-time payment in full, date by which payment is to be made in full, etc.

It is my considered view that the provisions of the Act applies to any vendor and purchaser, no matter what the relationship is between them, be it a landlord/tenant relationship at the time or otherwise. They were to comply with the provisions of the Act.

However, in this instant case, from the totality of the evidence before me, there was no such written contract of sale between the parties. None of the parties tendered any such document neither did they testify that there was such a written contract.

From the totality of the evidence before me, it is my considered opinion that the transaction between the parties herein is a parole contract for the sale of the property in dispute and therefore the transaction is governed by the provisions of the Conveyancing Act. Per sections 1 and 2 of the Act, a contract for sale of land or interest in land shall be in writing. However, the same Act provides that absence of writing is not necessarily fatal to a claim by any of the parties to the transaction. An oral grant may be enforced, if it is for valuable consideration and there is evidence of a sufficient act of part performance to support a claim for specific performance. This position is supported by section 3(2) of the Act which provides that sections 1 and 2 of the Act

shall be subject to the rules of equity, including the rules relating to unconscionability, fraud, duress and part performance.

In **Kotey v. Kolete (2005-2006) SCGLR 368**, the Supreme Court determined the circumstances under which section 3(2) of the Conveyancing Act could be invoked to enforce part-performance under four grounds:

- a. That the contract is not in writing and therefore a parole contract
- b. There should be evidence of part-performance and referable to the contract in dispute and not any other land or title
- c. The fraud perpetrated by the vendor for not reducing the contract into writing would be to his advantage and to the detriment of the purchaser who had partly performed his part of the contract and
- d. The contract as it is should be enforced by the court.

Applying these principles to this instant case, the contract for the sale of the property in dispute between the parties herein is not in writing. However, there was enough evidence showing that there was a parole agreement between the parties for the purchase of the property in dispute by the Defendant at the cost of GHC56,000.00. Both the Plaintiff and the Defendant quoted the same amount as the purchase price in their respective witness statements. From the evidence, what is also not in dispute is the description of the property to be purchased.

However, what is in dispute is the total amount paid so far by the Defendant and the terms upon which of the purchase price of the property was to be paid by the Defendant.

It is my view that from the evidence, the Defendant was to pay the full purchase price of GHC56,000.00 by instalments but within a specified period of two weeks. This is the

claim of the Plaintiff and which was corroborated by the Plaintiff's caretaker, PW1, Philip Sam, who claimed that he was personally present during the negotiations between the parties for the purchase of the property in dispute by the Defendant. The Defendant admitted, during cross examination by Counsel for the Plaintiff, that PW1 had even already discussed the sale of the property with him before he met the Plaintiff in the house of PW1 for the negotiations. This corroborates the testimony of PW1.

Besides, even though the Defendant claimed that the Plaintiff agreed with him to pay the purchase price of the property in dispute by instalments, he did not specify the period within which he was to complete full payment.

It is my considered opinion that it was fraudulent or dishonest on the part of the Defendant to insist that he was to pay the purchase price of the property by instalments and that there was no date within which he had to complete the payments.

I therefore find and hold that from the evidence, the parties herein agreed for the Defendant to pay the purchase price of the property, amounting to GHC56,000.00, by instalments, to be completed within a period of two weeks from the date of the negotiations.

On the issue of how much the Defendant has paid so far, the Plaintiff claimed that the Defendant paid a total of GHC10,000.00 in two instalments of GHC5,000.00 each whilst the Defendant claimed that he paid a total of GHC20,000.00 by four instalments of GHC5,000.00 each through the Plaintiff's caretaker, PW1.

From the evidence before me, it is my considered opinion that the Defendant paid a total of GHC20,000.00 by instalments to the Plaintiff through his caretaker, PW1. This is supported by the Defendant's exhibit 1, a copy of a letter from the Solicitors, upon the instructions of PW1. The contents of exhibit 1 indicates that as at 12th April, 2013, when

it was written, the Defendant had paid a total of GHC20,000.00. PW1 confirmed in his witness statement that:

“After one month, Alfred Amoo brought GHC5,000.00 as part payment of the house and later another GHC5,000.00, making a total of GHC10,000.00. Later, Alfred Amoo approached me with another GHC10,000.00 but I was warned by the Plaintiff not to take any amount in pieces and I made this known to Alfred Amoo who then told me I should keep the money and he would come to add the rest. Since then, the Defendant had not come to me with any amount again.”

PW1 also confirmed the total amount of GHC20,000.00 paid by the Defendant during cross examination by Counsel for the Defendant and stated that he still has a portion of the amount paid by the Defendant in his possession because the Plaintiff refused to accept it.

Again, the Plaintiff, during cross examination by Counsel for the Defendant, admitted that PW1 told him, in the presence of his Counsel, that he had collected GHC20,000.00 from the Defendant but was keeping GHC10,000.00 out of it because the Defendant told him to do so until he came to pay more money.

I therefore find and hold that out of the purchase price of GHC56,000.00, the Defendant paid a total of GHC20,000.00 to PW1 on behalf of the Plaintiff, who had authorised him to collect the amounts from the Defendant on his behalf.

If the Plaintiff did not receive the other GHC10,000.00 from PW1, it cannot be the fault of the Defendant. Once the Defendant paid the total amount of GHC20,000.00 to PW1, upon the instructions of the Plaintiff, he, Plaintiff is deemed to have received the money. The Plaintiff should demand that extra GHC10,000.00 from PW1.

But does the payment by the Defendant of GHC20,000.00 out of the GHC56,000.00 required of him constitute enough or substantial part payment amounting to part performance to qualify him for specific performance under the principles?

According to the Defendant, after the conclusion of the agreement for him to purchase the property, he took possession of the property and occupied all the rooms in it with his wife and children; that it was the Plaintiff who refused to collect the balance of the purchase price when he instructed his caretaker, PW1, not to do so and that the only remedy for the Plaintiff was to allow him to pay the outstanding amount.

In her book titled, "The Law of Contract in Ghana", the learned Author, Christine Dowuona-Hammond, explained that the doctrine of substantial performance was developed to mitigate the impact of the principle of exact and precise performance of entire contracts.

In **Hoenigs v. Isaacs (1952) All E.R. 176**, the principle of substantial performance was stated thus:

"If the performance tendered falls short of the required performance only in some relatively trivial respect, the party not at fault is not completely discharged from performance."

My own understanding of this doctrine is this - that where A and B have contracted that the performance of a defined act by A shall be a condition of the liability of B but A partly performs the act but fails to complete it, if the part of the act which was not completed by A is smaller than the act he had completed, then B would also be obligated by law to perform his part of the contract, taking into consideration the part of the act not performed by B.

In a contract for the sale of land, the key performance by the purchaser is the payment in full of the price of the property after which the vendor of the property is required to transfer the property and his interest in the property to the purchaser.

In this instant case, it is my considered view that the GHC20,000.00 paid by the Defendant out of the purchase price of GHC56,000.00 cannot be considered as substantial or sufficient enough. From my elementary arithmetic calculations, the GHC20,000.00 paid by the Defendant constitutes only about 35.7% of the total price of GHC56,000.00. It is obvious that the Defendant has not paid even 50% of the purchase price to enable the Court consider whether or not to compel the Plaintiff to accept the remainder of the purchase price and transfer his interest in the property to him.

Again, from the evidence before me, time was of the essence because the Defendant was given a period of two weeks within which to complete payment of the full cost of the property. It is my considered view that in this instant case, time for the payment of the full cost of the property within the two weeks period was of the essence because the Defendant was already a tenant in the property and had not been paying rent and it was the intention of the Plaintiff that if the Defendant was able to pay for the property within the two weeks, he would forego the rent that he had not paid. But what did the Defendant do?

According to the Defendant, per his witness statement, he was occupying only one room (the master bedroom) as a tenant. However, immediately he concluded negotiations with the Plaintiff, he stopped paying the rent and took possession of the whole property and occupied all the rooms with his wife and children, at a time he had not paid a pesewa of the purchase price.

From the evidence, the negotiations for the purchase of the house took place in July 2010. Both parties and PW1 stated the same date in their respective witness statements.

I have already found from the evidence that the Defendant was given two weeks to pay for the property. This means that the two weeks period would have ended not later than the middle of August 2010. From the evidence, as shown in exhibit B, the Defendant attempted to make the first payment for the purchase of the house on 3rd November, 2010, more than three months after the expiration of the period within which he was expected to pay. When the cheque failed, he then paid a total of GHC20,000.00 in four instalments. The Defendant confirmed this during cross examination by Counsel for the Plaintiff as follows:

Q: You remember that before you gave the cheque, you had given the Plaintiff an amount of GHC5,000.00. Is that correct?

A: It is not true.

Q: So you want us to believe that the face value of the cheque, if it had been cleared, would have been the first payment.

A: It is true.

Q: So when the cheque was stopped by your instruction as you claim, you have failed to honour your part of the bargain. Is that not so?

A: It is not true.

Q: So after you stopped the cheque, you decided to pay the first GHC5,000.00. Is that not the case?

A: Yes. It is true in order for them to bring the receipt and documents.

Clearly, the Defendant making the first payment for the purchase of the property, months after the expiration of the two weeks period within which he was to pay, was unreasonable and a clear breach of their parole contract, especially when he had also

stopped paying the rent to the Plaintiff, at least, from the date of the negotiations in July 2010.

The Defendant pleaded that it was the Plaintiff who refused further payments from him when he instructed PW1 not to accept any more monies from him. This was corroborated by PW1.

From the evidence, the Defendant was paying the purchase price of GHC56,000.00 in lots of GHS5,000.00 per instalment. By my elementary arithmetic calculations, it would have taken the Defendant at least eleven instalment payments to complete full payment for the property and since he had decided when to make any instalment payment, then it was going to take forever and it was unfair for the Plaintiff to wait for the Defendant to take his time to complete payment for the property when he had already stopped paying rent.

From the evidence, the Defendant had not paid any rent even before July 2010, Besides, he had also not made any payments for the purchase of the property since at least January 2011 to date as indicated in exhibit C1, the letter from the Plaintiff to the Defendant, dated 20th January, 2011, asking the Defendant to vacate the property because he could not pay for it. Yet he continues to remain in the property up to today.

Now, between 2011 and 2022, one can only imagine the extent to which the Ghana Cedi had depreciated. In my view, the value of our currency had been on a sharp steady decline in the face of a national and even world-wide economic inflation. It is therefore of great significance to note that time for the payment of money in Ghana in any circumstance whatsoever, is extremely material in our society and most especially, in the circumstances of this instant case. It is common knowledge that inflation is even worse now when the value of the Cedi is at its lowest ebb. Given the fact that the sale of the property meant that the Defendant was not going to pay rent and the Plaintiff's

need for the money, the time agreed for the payment of the purchase price was of the essence in the oral agreement between the parties.

It is my considered opinion that where time is of the essence to the contract, such as in this case, where the Defendant is enjoying the property without paying rent and the purchase price of the property is not paid on time, the Court will not decree specific performance on behalf of the purchaser because delay defeats equity and also the person seeking equity must do equity. See **Adu v. Atta & Another (1984-86) 1 GLR 545**.

From the evidence, as shown in exhibit C1, the Plaintiff wrote to the Defendant abrogating the agreement to sell the property to him and for him to vacate the property when he decided to pay the purchase price on his own terms indefinitely.

It is the principle of the law of contract that an innocent party to a contract can unilaterally abrogate the contract when there is an anticipatory breach of the contract by repudiation by the other party. Repudiation occurs when a party by his words or conduct demonstrates that he does not intend to perform his obligations under the contract. It is an absolute refusal to perform, communicated either by words or by conduct.

In the case of **Theresa Haligah v. Duke Banson (Civil Appeal No. J4/37/2016, delivered on 31st January, 2018)**, the Supreme Court held that there was no miscarriage of justice against the Plaintiff when the Defendant wrote to the Plaintiff to abrogate the contract because the Plaintiff could not pay the purchase price of the property she agreed to purchase. In that case, the Plaintiff was a tenant in the property she wanted to purchase and the Court granted the order for her to be ejected from the property.

In this instant case, the Defendant repudiated the agreement to purchase the Plaintiff's property when he failed to pay the full price within the agreed period of two weeks,

staggered the payments in such a way that it was impossible to complete the payment within a reasonable period even after the period for his payment had long lapsed and he had evinced an intention of staggering the payments as and when he liked, even if he intended to pay at all because he had claimed the Plaintiff had told him that he could pay by instalments anytime.

It is my considered view that it is rather the Defendant, the purchaser, who had perpetrated fraud upon the Plaintiff, the vendor, by making sure that he paid the purchase price of the property on his own terms, even if he had intentions to pay at all and this would be to his advantage and to the detriment of the Plaintiff, if the Court were to declare the Defendant's payments as substantial part payment and part performance because the performance of the Plaintiff's obligations under the agreement was conditional upon the payment of the full purchase price by the Defendant.

I therefore find and hold that the Plaintiff was right in abrogating the agreement with the Defendant and refusing to accept further payments from him since he was not able to pay the full amount of the purchase price within the two weeks period, thus breaching and repudiating his side of the agreement.

The Defendant also pleaded that he delayed payment of the purchase price because he was waiting for the Plaintiff to give him copies of the title deeds on the property to enable him conduct a search on the property. This is what he said in his witness statement and during cross examination by Counsel for the Plaintiff. The Defendant's witness, Mary Amoo, corroborated the claim of the Defendant in her witness statement. However, during cross examination by Counsel for the Plaintiff, she admitted that everything she knows about the transaction between the Plaintiff and the Defendant is what the Defendant had told her.

It is my considered view that the Defendant's witness' testimony before this Court is hearsay evidence and per the principles of the Law of Evidence, hearsay evidence is not admissible before any Court of competent jurisdiction. See **section 117 of the Evidence Act, 1975 (NRCD 323)** and **Edward Nasser & Co. Ltd. v. Mcvroom & Another (1996-1997) SCGLR 468**. Again, per section 8 of the same Evidence Act, the Court is required to exclude evidence which was inadmissible per se. See also **Frimpong & Another v. Rome (2013) 58 GMJ 131**.

It is my considered view that the Defendant's claim that he stopped paying for the property because he was waiting for the title deeds was an afterthought and not supported by the evidence. In his witness statement, at paragraphs 8, 9, 10 and 11, the Defendant stated that when he issued the cheque to the Plaintiff, he was expecting some monies payable by students in his school into the account and when that failed, he spoke to the Plaintiff and they agreed that he would make cash payments instead.

Therefore, it is my view that the Defendant's claim to demand the title documents of the property from the Plaintiff had nothing to do with his obligation to make timely payments for the purchase of the property. If he failed to make the timely payments, from the evidence, it was certainly not because the Plaintiff failed to give him the title deeds to the property but because he decided to stagger the payments on his own terms as in the case of the four instalment payments he made so far, totaling GHC20,000.00.

I therefore find and hold that the Defendant failed or intentionally refused to make timely payments towards the purchase of the property to his advantage and to the detriment of the Plaintiff, thus breaching the condition of time within which he was to complete payments for the property. The Plaintiff was therefore right in abrogating the agreement and declining further payments from the Defendant.

I also find and hold that the GHC20,000.00 paid by the Defendant, out of the total purchase price of GHC56,000.00 was not adequate or substantial enough for the Court to decree specific performance in his favour and to allow him to remain in the property and pay the outstanding amount to the Plaintiff in 2022.

Now, there was no evidence as to how the parties herein decided to treat the payment of rent by the Defendant during the negotiations for the purchase of the property. However, as I have analysed above, from the evidence, the Defendant failed or refused to pay the rent even before the time of the negotiations but he took possession of the property and continued to remain in it with his family. Again, as I have analysed above, from the evidence, per exhibit C1, the Plaintiff abrogated the agreement to sell the property to the Defendant and stopped accepting further payments when the Defendant decided to make the payments as and when he liked to his advantage and to the detriment of the Plaintiff.

According to the Plaintiff, he together with his two witnesses, approached the Defendant and informed him that since he was not able to complete payment of the house, he was going to compute the amount he had already paid towards the purchase of the house as rent at GHC400.00 per month from January 2010 and the rent expired in September 2012 and since then all efforts to eject the Defendant from the property have proven futile.

Even though the Defendant denied the Plaintiff's claim, it was corroborated by the Plaintiff's two witnesses who stated that they accompanied the Plaintiff to see the Defendant and were personally present when the Plaintiff told the Defendant about the conversion of his purchase money into rent. According to PW1, it was in August 2012 when they met and the Plaintiff told the Defendant about the conversion.

It is my considered opinion that once the agreement for the purchase of the property was abrogated by the Plaintiff as indicated in exhibit C1, the relationship between the parties continued as landlord and tenant and that relationship was regulated by the provisions of the Rent Act, 1963 (Act 220), which is still in force.

It is my considered view that a landlord-tenant relationship is grounded on the payment of rent. The Rent Act only regulates the relationship between a landlord and tenant where the consideration of the tenancy (or lease) is rent. See **Khatey v. Kasa Distilleries Ltd. ((1991) 2 GLR 73.**

At common law, in a landlord-tenant relationship, there are express and implied covenants, conditions or obligations which the parties must observe. For the landlord, some of these are the obligation to convey, quiet enjoyment of the property by the tenant, freedom from encumbrances, covenant to pay rates and taxes on the property, fitness for habitation, etc. On the part of the tenant, the obligations and covenants include payment of agreed rent, not to sublet without the express consent of the landlord, covenant to repair, covenant against alterations and additions, obligation not to commit waste, option to renew the tenancy, etc.

The parties, as contracting parties, are entitled to enforce the covenants under the tenancy. Among the reliefs available to the landlord upon breach by the tenant of any of his obligations and covenants are damages for breach of a covenant, action for rent and the right of forfeiture or re-entry for breach. On the other hand, the tenant has the right to ensure compliance of these obligations and covenants by the landlord.

From the evidence before me, the parties did not have a written tenancy agreement. They did not tender any such agreement. However, both parties testified that the Defendant was paying GHC25.00 per month as rent to the Plaintiff. The Defendant

stated that he paid GHC600.00 to the Plaintiff as rent advance for a period of two years. This was denied by the Plaintiff in his reply.

However, from the totality of the evidence, it is my considered view that the Defendant paid the GHC600.00 to the Plaintiff as rent advance which covered the year 2008 when the Defendant claimed he came into the property and 2009 when the rent advance got exhausted and that is why the Plaintiff claimed that the Defendant had not paid rent from the beginning of 2010 and used the money the Defendant paid to cover his unpaid rent from that time to September 2012 at GHC400.00 per month because at the time, he was occupying the entire property. From my elementary arithmetic calculations, $GHC25.00 \times 24 \text{ months} = GHC600.00$.

It is also my considered view that from the evidence, the tenancy relationship between the parties at the beginning, which according to the Defendant started in 2008, was a periodic monthly tenancy where the tenancy continued from month to month upon the tenant paying the monthly rents. Periodic tenancies are terminated upon giving a reasonable notice to the other side. See **Vanderpuye v. Pioneer Shoe Factory (1981) GLR 181**.

According to the Plaintiff, the Defendant and the other tenants were not paying the rent regularly as required and that was one of the reasons why he decided to sell the property. With particular reference to the Defendant, the Plaintiff stated that he was not paying his rent and that in August 2010, he paid an amount of GHC5,000.00 towards the purchase of the property. Therefore when he abrogated the agreement with the Defendant for the purchase of the property, he informed the Defendant and converted the GHC10,000.00 (believing that was all the Defendant paid) into rent from January 2010 at the rate of GHC400.00 per month and this rent ended in September 2012, after which he wrote letters to the Defendant to vacate his property.

From the testimony of PW1, the information by the Plaintiff to the Defendant about the conversion of the moneys he had paid into rent took place in August 2012 when all efforts to get the Defendant to pay the balance of the purchase price of the property had failed. This means that the information about the conversion of his money got to the Defendant after the said money had already been exhausted as rent.

Even though the Defendant and his witness denied that the Plaintiff informed him of the conversion, it is my considered opinion, from the evidence, that he knew about the conversion. In the first place, the evidence shows that all the dealings between the parties were by oral communication. Second, the Plaintiff's claim of informing the Defendant about the conversion was corroborated by his two witnesses who claimed that they were personally present. Third, from the evidence, when the Defendant received exhibit C, a copy of the letter, dated 10th September, 2012, informing him that his rent advance had expired and that he had been given three months' notice to vacate the property, he did not respond to the letter, neither did he take any action whatsoever. He did nothing at all about exhibit C but continued to remain in the property without paying the required rent. From his averments in his amended statement of defence and witness statement, the Defendant did not deny that he received exhibit C and the other notices requesting him to vacate the property. He just continued to stay in the property without paying rent.

It is my considered opinion that by keeping quiet about the conversion of his purchase money, the Defendant, by his conduct, accepted that his GHC10,000.00 had been used by the Plaintiff to clear his arrears of rent from 2010.

It is the principle of the law of contract and case law that an offer may be accepted by conduct where the conduct evidences, on an objective analysis, a clear and unequivocal intention to accept the terms of the offer and also that subsequent conduct of a party is

admissible to prove the existence of a contract and its terms by conduct. See **John Tenmottey Affuah v. General Development Company Limited (Civil Appeal No. J4/28/2015 dated 29th November, 2017 SC and Brogden v. Metropolitan Railway Company (1877) A.C. 666 HL.**

I therefore find and hold that by his conduct of doing nothing about exhibit C, which informed him that his purchase money of GHC10,000.00 had been converted into rent from January (or is it July) 2010 to September 2012 by the Plaintiff, he accepted that his GHC10,000.00 had been used to clear his arrears of rent from July 2010 as stated in exhibit C to September 2012.

Now, it is my considered opinion that after September 2012, the Defendant became a statutory tenant of the Plaintiff under the Rent Act. Under section 36 of the Act, a statutory tenant is defined to mean “a tenant who remains in possession of premises after the determination by any means of his tenancy and cannot by reason of the Act be deprived of such possession by his landlord.

In **Union Trading Co. Ltd. v. Karim (1975) 1 GLR 212**, the Court held that:

“Having held over the premises after the expiration of the sub-lease the first defendant became a statutory tenant within the meaning of section 36 of Act 220 despite the written notices to quit and he was protected in his possession of the premises so long as he complied with the provisions of the Act and also observed (under section 29 (1) (a) the terms and conditions of the original tenancy which were consistent with the provisions of the Act. Such a statutory tenant could not be evicted by a landlord except by an order of the court and only when any of the circumstances specified in section 17 of the Act had been established to the satisfaction of the court. On the facts of the instant case, the plaintiffs were entitled to recover possession of the premises under section 17 (1) (b) and (h) of the Act.”

See also **Boateng v. Dwinfuor (1979) GLR 360.**

In this instant case, from the evidence, after September 2012 when the Defendant's money for the purchase of the property was converted by the Plaintiff to rent to cover July 2010 to September 2012, the Defendant failed or refused to pay any more rent. He was served with notices to vacate the property as evidenced by exhibits C and C2 respectively but he continued to live in the property without paying any rent.

It is my considered view that having held over the property after the expiration of his tenancy in September 2012 because he failed or refused to pay any more rent, the Defendant became a statutory tenant within the meaning of section 36 of the Rent Act despite the written notices for him to vacate the property and he was protected in his possession of the property so long as he complied with the provisions of the Act and also observe, under section 29(1)(a), the terms and conditions of the original tenancy which are consistent with the provisions of the Act. The Defendant could therefore not be evicted by the Plaintiff but by an order of the Court and only when any of the circumstances specified in section 17 of the Act had been established against him to the satisfaction of the Court.

Section 29(1)(a) of the Rent Act provides as follows:

"Obligations of Statutory Tenants

"(1) A statutory tenant shall, so long as he retains possession, hold the premises of the landlord upon the following terms and conditions, namely—

- (a) he shall hold as a tenant from month to month, and, subject thereto, shall observe and be entitled to the benefit of all the terms and conditions of his original tenancy, as the case may be, so far as the same are consistent with the provisions of this Act, so, however, that, in the case of a tenant who has become a statutory*

tenant by reason of the provisions of paragraph (c) of the definition of "statutory tenant" in section 36, he shall in addition hold the premises subject to any restrictive covenants contained in the terms and conditions of the lease between the landlord and the principal tenant."

Section 17(1)(a) of the Act also provides as follows:

Recovery of Possession and Ejectment

"(1) Subject to the provisions of subsection (2) of section 25 and of section 28, no order against a tenant for the recovery of the possession of, or for the ejectment from, any premises shall be made or given by the appropriate Rent Magistrate, or any other Judge of a court of competent jurisdiction in accordance with the provisions of any other enactment for the time being in force, except in any of the following circumstances:—

(a) where any rent lawfully due from the tenant has not been paid or tendered within one month after the date on which it became lawfully due."

On the facts of this instant case, the cardinal obligation under the terms and conditions of the Defendant's tenancy was for him to pay rent on monthly basis to the Plaintiff. However, from the evidence, he failed or refused to pay any rent to the Plaintiff from October 2012 up to the date when the Plaintiff initiated this action against him in 2014 and even up today, he is still living in the property without paying any rent to the Plaintiff.

Therefore, the Defendant cannot be protected by this Court in his possession of the property because he failed to observe the terms and conditions of his tenancy and so I find and hold that the Plaintiff is entitled to recover possession of the property from the Defendant under section 17(1)(a) of the Rent Act.

The Defendant also claimed that when they took possession of the property after the negotiation with the Plaintiff to purchase the property, they had to do renovation works on the property and therefore they are entitled to remain in same. He supported his claim with the exhibit 2 series which are photocopies of photographs of various parts of a house, attached to the witness statement of the Defendant's witness.

From the record before me, the Defendant did not lead any evidence to prove that he had spent money to do any renovation works on the property. From my view, there is nothing in the exhibit 2 series to show any such renovation works.

In conclusion, I find, hold and declare as follows: that the Defendant was already a tenant of the Plaintiff in the disputed property before they agreed for the Defendant to purchase the said property in July 2010; that the agreement between the parties for the Defendant to purchase the property was an oral one – a parole contract, enforceable under section 3(2) of the Conveyancing Act; that under the agreement, the Defendant was to pay the purchase price of the property by instalments within two weeks, which from the evidence, ended by the middle of August 2010; that considering the fact that the Defendant had stopped paying his rent even before the negotiations for him to purchase the property, time was of the essence, even if it was not expressly indicated in the agreement; that the Defendant paid a total of GHC20,000.00 in four instalments long after the two weeks period had ended and it was his intention to pay the full purchase price by instalments at his own pace and on his own terms indefinitely to his advantage and to the detriment of the Plaintiff; that the total amount of GHC20,000.00 paid by the Defendant out of the purchase price of GHC56,000.00 is woefully inadequate to be considered as substantial part payment and part performance for this Court to decree specific performance in his favour which will enable him to keep the property and pay the difference in the purchase price; that failure of the Defendant to pay the full purchase price of the property within the two weeks period and intending to pay in bits

as and when he liked amounted to a repudiation and a breach of the agreement which enabled the Plaintiff to abrogate the agreement and to stop accepting further payments from the Defendant; that once the agreement was abrogated by the Plaintiff, the landlord-tenant relationship between the parties continued, regulated by the Rents Act, 1963 (Act 220); that the Defendant became a statutory tenant when he failed to pay his just rents from October 2012 to date and he was given notices to quit by the Plaintiff; that as a statutory tenant, the Defendant could not enjoy the protection of this Court because he failed or refused to observe the terms and conditions of his tenancy to pay rents to the Plaintiff and that the Plaintiff is entitled to recover possession of the property from the Defendant.

Accordingly, I make the following orders:

1. That the Plaintiff is entitled to recover possession of the property from the Defendant forthwith under section 17(1) of the Rent Act, 1963 (Act 220).
2. That the Defendant shall vacate the property on or before the 31st December, 2022. After this date, the Plaintiff shall use all legal means to eject the Defendant from the property.
3. That after 31st December, 2022, the Defendant, his agents, assigns, personal and legal representatives, privies, servants, etc., are hereby restrained from entering the property, including the land thereon for whatever purpose or having anything to do with same.
4. That the Plaintiff is entitled to the rent due and owing by the Defendant from October 2012 when his rent expired to the date the Plaintiff issued the original writ in 2014. However, from the evidence, the Plaintiff and PW1 for that matter, are still keeping an amount of GHC10,000.00 paid by the Defendant to PW1 in 2010 for the purchase of the property. If I were to order a refund of the amount to the Defendant, the Plaintiff would have to pay interest on the amount at the

current bank rate. From 2010 to 2022, interest rates have become astronomically high. In the circumstances of the case in which, on the balance of the probabilities, it is the Plaintiff who had suffered both financially and emotionally, I would rather and hereby set off the amount of GHC10,000.00 plus interest the Plaintiff would have to pay to the Defendant against the rent due and owing by the Defendant I would have ordered him to pay to the Plaintiff.

5. That the Plaintiff would have been entitled to mesne profits from the date the writ was issued in 2014 by the Plaintiff to the date of final judgment for the failure of the Defendant to pay rent during that period but for the reasons I have stated in paragraph 4 above
6. That the Plaintiff is entitled to general damages for breach of the agreement between him and the Defendant I would not order payment of same by the Defendant for the same reason as I have stated in paragraph 4 above.
7. That under the circumstances of the case as a landlord-tenant relationship, the award of general damages for trespass does not apply. This is because as analysed above, until this judgment, the Defendant is a statutory tenant and can only be evicted from the property by the order of the Court.
8. That I would not declare title in the property to the Plaintiff as his ownership was not in dispute in this suit. From the evidence, the Defendant did not dispute or challenge the Plaintiff's ownership of the property.

In the circumstances of the case, I award cost of GHC20,000.00 against the Defendant in favour of the Plaintiff.

SGD.

CECILIA DAVIS J.

JUSTICE OF THE HIGH COURT

LAWYERS:

ISHMAEL KOFI TURKSON FOR THE PLAINTIFF

PHILIP M. YOUNG FOR THE DEFENDANT