

IN THE SUPERIOR COURT OF JUDICATURE
IN THE HIGH COURT OF JUSTICE LAND DIVISION
HELD IN ACCRA ON WEDNESDAY, THE 25TH DAY OF JANUARY,
2023
BEFORE HIS LORDSHIP ALEX OWUSU-OFORI (JA) JUSTICE OF THE
APPEAL COURT SITTING AS AN ADDITIONAL HIGH COURT
JUDGE

SUIT NO.: LD/0179/2017

EVA AWADZI

PLAINTIFF

VRS

1. SOCIAL SECURITY & NATIONAL INSURANCE - DEFENDANTS
TRUST (SSNIT)

2. DANIEL AZA-BANINGE

PARTIES: PLAINTIFF PRESENT

1ST DEFENDANT ABSENT

2ND DEFENDANT REP BY BERNARD KAMENYA
PRESENT

JUDGMENT

1.0 The Plaintiff, on the 17th day of February 2017 caused a Writ of summons and an accompanying Statement of Claim to be issued against the Defendant asking for the following reliefs:

- a) A declaration that the purported sale by the 1st Defendant to the 2nd Defendant of the subject property was fraudulent.
- b) A declaration that the purported sale of the property to the 2nd Defendant is void by reason of the fraud.
- c) An order for rescission of any purported sale to the 2nd Defendant.
- d) An order that Plaintiff be restored to the status quo in respect of the property before 2011 when 2nd Defendant entered the property.
- e) An order of ejectment against the 2nd Defendant.
- f) An order for specific performance against 1st Defendant.
- g) An order for recovery of possession of the subject property.
- h) An order for payment of mesne profit against 2nd Defendant.
- i) An order for recovery of rent amounts from 2nd Defendant at interest which Plaintiff paid from the period when 2nd Defendant ought to have handed over vacant possession.
- j) General damages.

k) Punitive damages against the 1st Defendant and 2nd Defendant respectively.

l) Cost incidental to the suit.

m) Any other relief the court deems fair in the circumstances.

2.0 When trial of the suit commenced the Plaintiff called one witness to testify on her behalf and the 1st Defendant on its part called one witness to testify on its behalf.

THE PLAINTIFF'S CASE

3.0 The Plaintiff's case is that she was an employee of the National Council on Women and Development later came to be known as the Department of Gender which is now the Ministry of Gender and Children Affairs.

4.0 That her employer applied to the 1st Defendant to allocate to it five (5) residential accommodation flats to be given to its staff.

5.0 The 1st Defendant however allocated only two (2) out of the five (5) residential accommodation requested to the Plaintiff's employer.

6.0 It is the Plaintiff's case that her Department in turn allocated one of the two flats to her specifically flat no. BLK 71 B2, thus she became a tenant in the property through her Department.

- 7.0 It is Plaintiff's case that she moved to occupy the flat in May 1995 and lived there until 2008 when she relocated to Osu to join her twin sister who was seriously ill in order to assist her.
- 8.0 Plaintiff aver that between her Department and the 1st Defendant and herself it was agreed that she (Plaintiff) was the tenant and she attorned tenancy to the 1st Defendant.
- 9.0 According to the Plaintiff the hospital management of the disease contracted by her twin sister was so expensive and being the one taking care of her she had to give out the flat to the 2nd Defendant at a rent of Two Hundred Ghana Cedis (GH¢200.00) per month for two (2) years to raise money to alleviate the financial pressure on her.
- 10.0 It is Plaintiff's case that the agreement between herself and the 2nd Defendant was that the latter was to yield vacant possession of the flat to Plaintiff in June 2013, the time the Plaintiff was expected to return to the flat.
- 11.0 That the agreement between herself and the 2nd Defendant was that the 2nd Defendant would yield vacant possession to the Plaintiff in June 2013.
- 12.0 However the tenancy was renewed from the end of June 2013 to October 2013 for a consideration of Eight Hundred Ghana Cedis (GH¢800.00)

- 13.0 Plaintiff says that prior to letting the 2nd Defendant into the property, 1st Defendant had made an offer to sell the property to the sitting institutional tenants.
- 14.0 That the offer letter indicated that sitting tenants to whom offer to sell was made were to pay for the houses by 31st December 2013.
- 15.0 Plaintiff further avers that the offer to sell the subject property was made by the 1st Defendant to her Department and to her (the Plaintiff).
- 16.0 And that the offer was accepted by the Plaintiff through her Department Head by a letter dated 17th May 2011 signed by the Departmental Head.
- 17.0 In paragraph 25 of the Statement of Claim the Plaintiff says that on the 18th day of December 2013, 1st Defendant sent a notice of final reminder to all institutional/sitting tenants to take up the offer by the due date of 31st December 2013 and that if the institutional tenants did not take up the offer, 1st Defendant reserve the right to sell same to any interested person including the sitting tenant.
- 18.0 This Plaintiff states that because the 2nd Defendant was still in occupation of the house by virtue of the extension of the tenancy, the final reminder from the 1st Defendant was received by the 2nd Defendant with the intention of transmitting same to Plaintiff.
- 19.0 According to Plaintiff, 2nd Defendant without the permission of the Plaintiff opened the letter and read the contents. Plaintiff added that

the 2nd Defendant notified Plaintiff that 1st Defendant had sent a letter to the flat, for her and that he (2nd Defendant) could make same available or Plaintiff could pick it up.

20.0 The Plaintiff further avers that 2nd Defendant with a clear intention to over-reach Plaintiff's right to pay and own the property and to deny the Plaintiff the benefit of the final reminder kept the letter and made one excuse after another anytime Plaintiff requested to come for the letter.

30.0 That the 2nd Defendant finally delivered the letter to Plaintiff's in-law at Osu on the 31st day of December 2013 at about 4:30pm at which time work hours was over.

31.0 In paragraph 33 of her Statement of Claim Plaintiff avers that by the time that 2nd Defendant delivered the letter to Plaintiff, Plaintiff believes that 2nd Defendant had gone to SSNIT to commence and conclude a purported sale to 2nd Defendant of the property with collusion with the officer in charge who refused or failed to inquire the circumstances of his approach to them.

32.0 Plaintiff further contends that the letter written by the 1st Defendant on the 17th day of February 2014 terminating the tenancy was an attempt to cover up for the collusion and fraud on the part of 1st and 2nd Defendants.

PARTICULARS OF FRAUD

33.0 In paragraph 35 of the Statement of Claim the following particulars of fraud were pleaded:-

- i) 1st Defendant knew that 1st Defendant made the offer first to an institutional tenant
- ii) 1st Defendant knew that Plaintiff an Institutional Tenant had accepted the offer and had paid rent as tenant
- iii) 1st Defendant knew that at no point did Plaintiff become disinterested in the property
- iv) 1st Defendant knew that there was no longer an offer to be accepted in respect of the subject property.
- v) 1st Defendant knew that the 2nd Defendant was not a party to the institutional housing arrangement but did not query his bid to purchase the subject property.
- vi) The 1st Defendant knew that 2nd Defendant was not an institutional tenant and could not have been a sitting tenant but went ahead into a purported sale.
- vii) 1st Defendant went ahead without inquiring 2nd Defendant's presence in the transaction and how come the Plaintiff was not the one making the approach to pay.
- viii) 1st Defendant knew that at the time it commenced and transacted with 2nd Defendant in respect of the property, the 31st day of December 2013 deadline had not elapsed.

34.0 The Plaintiff claim against the 2nd Defendant for fraud was also enumerated as follows:-

- i) 2nd Defendant was not aware of the offer of May 2011 which had been accepted by the Plaintiff.
- ii) 2nd Defendant was aware upon reading the content of the 18th day of December letter that a previous letter had been written and the 18th December letter was only a reminder to the Plaintiff to pay for the property by the 31st December 2013.
- iii) 2nd Defendant knew the final reminder was intended for the Plaintiff.
- iv) But the 2nd Defendant opened the sealed letter and read the content.
- v) 2nd Defendant purposively held onto the final reminder which would have caused Plaintiff to put her acts together.
- vi) 2nd Defendant knew that 31st December, 2013 and 4:30pm will be late and the deadline would have passed and so held on to the letter.
- vii) 2nd Defendant knew the content of the letter but refused to disclose same to the Plaintiff when she requested the 2nd Defendant to do so over the phone and over-reached Plaintiff as a result.

viii) 2nd Defendant knew that he (2nd Defendant) was not the intended institutional tenant yet commenced the process to own the property even before the 31st December, 2013.

34.0 According to Plaintiff she went to 1st Defendant's office in Accra within the first week of January 2014 with the view to starting the process to pay but a certain desk officer called George remarked as follows *"I thought they said you had travelled"* and *"I thought they said you did not have money"*.

36.0 Plaintiff contend that due to the conduct of the 2nd Defendant, she felt stabbed in the back and therefore confronted 2nd Defendant which degenerated into exchanges thereby bringing in the police.

37.0 Plaintiff avers that letters written by her lawyers under her instructions to get the 1st Defendant to revoke the sale failed to get her the house back. Plaintiff claims since 2nd Defendant had no right either in law or in equity to purchase the property and 1st Defendant had no business dealings, if at all with the 2nd Defendant, Plaintiff will contend that the entire purported sale was void.

38.0 That as a result of the situation she is living in a rented property and paying rent.

THE 1ST DEFENDANT'S CASE

- 39.0 The case of the 1st Defendant is that the apartment in issue the subject matter of the instant suit was allotted to the Plaintiff's employer who in turn allotted it to the Plaintiff.
- 40.0 1st Defendant says it is not privy to the personal sufferings or predicaments of the Plaintiff as stated in paragraphs 12, 13, 14, 15, 16, 17, 18, 19 and 20 of Plaintiff's Statement of Claim.
- 41.0 And that granted that they were even true which it rebuts, that did not give Plaintiff the right to sublet the said flat without the consent of the 1st Defendant.
- 42.0 According to the 1st Defendant, Plaintiff's testimony that she sublet the flat to the 2nd Defendant without the consent and approval of the 1st Defendant is an admission of her violation of the Tenancy Agreement and that, that singular act alone was enough ground for the 1st Defendant to eject the Plaintiff from the flat.
- 43.0 1st Defendant says that whichever opportunity that was given to the Plaintiff to buy the said flat as a first option, if any could not be fulfilled by the deadline given her.
- 44.0 1st Defendant says in 2007, it obtained an eviction order against the Plaintiff for non-payment of rent, and that as at the date of the suit the Plaintiff was still in rent arrears.
- 45.0 It is 1st Defendant's case that it had the right to terminate the said Tenancy Agreement upon the subletting by the Plaintiff in breach of the Tenancy Agreement.

- 46.0 According to the 1st Defendant it had every right to deal with the 2nd Defendant upon terminating the agreement with the Plaintiff due to the Plaintiff subletting without 1st Defendant's consent.
- 47.0 That it followed due process in its dealing with the 2nd Defendant therefore as far as it is concerned 2nd Defendant acquired the flat in issue lawfully.
- 48.0 1st Defendant contends that Plaintiff has fabricated a story of fraud which is false and should be put to the strictest proof, called for the dismissal of Plaintiff's claim as frivolous, vexatious and without merit.

THE CASE OF THE 2ND DEFENDANT

- 49.0 The 2nd Defendant contends that he has no knowledge of the allegation contained in paragraphs 6, 7, 8, 10, 11, 12, 13 and 14 of the Statement of Claim of the Plaintiff.
- 50.0 The 2nd Defendant's case is that he got to know about the property, the subject matter in dispute through announcements made by one Michael Apedo at St. John the Evangelist Catholic Church, Adenta where Plaintiff worshiped at the time.
- 51.0 That through the announcement the 2nd Defendant was led to meet the Plaintiff who represented to him that she (Plaintiff) was the owner of the property in dispute that is Block 71 B2 Adenta Housing flats.

- 52.0 The 2nd Defendant avers that between Plaintiff and the 2nd Defendant, Plaintiff agreed to let and 2nd Defendant agreed to take the subject property for a period of two (2) years at Two Hundred Ghana Cedis (GH¢200.00) per month from 1st July 2011 to 30th June 2013. 2nd Defendant then paid the rent for the two years cash in advance.
- 53.0 It is the case of the 2nd Defendant that prior to the end of the first term of the tenancy, Plaintiff asked for a further sum of Eight Hundred Ghana Cedis (GH¢800.00) as part payment for another term of the tenancy which amount 2nd Defendant paid to Plaintiff through her sister's husband with whom Plaintiff lives.
- 54.0 The 2nd Defendant denies paragraph 19 of the Plaintiff's Statement of Claim and further says that it was rather the Plaintiff who called him and requested that he should pay her a further GH¢800.00 as part payment for another term of the tenancy as she was in financial difficulties.
- 55.0 The 2nd Defendant says he was not privy as to how the Plaintiff got into the 1st Defendant's property but avers that he got to know to his utter dismay that the representation made to him by the Plaintiff, that she was the owner of the property was false only when he saw the 1st Defendant's letter to the Plaintiff dated 18th December 2013.
- 56.0 Plaintiff avers that the said letter was delivered to the flat, the subject matter of dispute, unsealed at a time he was in his home town in the Upper West Region.

- 57.0 That the 1st Defendant's letter to the Plaintiff was not sealed and was not stapled thus anybody who took delivery of it could read the contents.
- 58.0 2nd Defendant avers that upon arriving from his hometown on the 19th December 2013, he personally delivered the letter to the Plaintiff and that it is therefore not true that the letter was delivered to the Plaintiff on the 31st day of December 2013 as Plaintiff claims.
- 59.0 It is the case of the 2nd Defendant that Plaintiff had adequate notice of the final notice dated 18th day of December 2013 since he personally delivered it to Plaintiff a day after it was delivered to the apartment by the 1st Defendant.
- 60.0 In paragraph 16 of the statement of defence 2nd Defendant narrates the discussion that took place between him and the Plaintiff on the 19th December 2013. Plaintiff had told him that she could not afford to buy the apartment because her brother who resides in the USA who had offered to assist her financially to purchase the property had been involved in an accident and so could no longer help her buy same.
- 61.0 According to the 2nd Defendant upon hearing the story of the Plaintiff he offered to buy the property from Plaintiff which she agreed but said she had to consult her son about the purchase price and revert to the 2nd Defendant however she never did so as promised.

62.0 That after waiting for some days and not hearing from the Plaintiff and Plaintiff also not picking his calls, fearing he could be ejected after the 31st December deadline, proceeded to the offices of the 1st Defendant for advise as to what to do under the circumstances.

63.0 It is his case that he was advised that he had an equal right to apply for the purchase of the apartment which he subsequently did.

64.0 Plaintiff avers that it was not until 27th February 2014 that 1st Defendant made an offer to him, which after he accepted on the 5th day of March 2014.

65.0 2nd Defendant contends that the averments of Plaintiff in paragraph 34 of her Statement of Claim are without merit as they are unfounded.

66.0 He therefore contends that he never perpetrated any fraud whatsoever against the Plaintiff consequently the Plaintiff is not entitled to any of the reliefs claimed.

67.0 These briefly is the case of the parties as contained in the proceedings.

68.0 After the close of pleadings the following issues were set down for trial by the Court.

69.0 ISSUES FOR TRIAL

- i) Whether or not 1st Defendant could lawfully make an offer in respect of the subject property when an earlier offer in respect of same had already been accepted by the Plaintiff.
- ii) Whether or not Plaintiff's acceptance of the offer to purchase the subject property as a sitting tenant resulted in a conclusive agreement.
- iii) Whether or not the offer by 1st Defendant to sell the subject property which was accepted by the Plaintiff, constituted a contract under law which unless terminated in accordance with prior agreement was binding on the Plaintiff and the 1st Defendant.
- iv) Whether or not 1st Defendant was in breach of a legally enforceable agreement between the Plaintiff and the 1st Defendant.
- v) Whether or not 1st Defendant, his agents, privies, assigns, or workmen colluded with 2nd Defendant and acted fraudulently as a result of its conduct.
- vi) Whether or not 2nd Defendant acted with fraudulent intent to over-reach Plaintiff's subsisting right to pay for and purchase the property after same offer in respect of it (the subject property) had been accepted by Plaintiff.
- vii) Whether 2nd Defendant acted fraudulently in the entire circumstance of the facts contained in the pleadings.

- viii) Whether or not the purported sale of the property by the 1st Defendant to the 2nd Defendant is null and void.
- ix) Whether or not 2nd Defendant can acquire any title in the subject property which purported sale is void by reason of fraud that tainted the purported sale and purchase?
- x) Whether or not the subject property is recoverable from 2nd Defendant.
- xi) Any other issue arising fairly, justly and reasonably from the evidence and pleadings.

THE APPLICABLE LAW

70.0 The principle relating to the burden of producing evidence was applied in the decided case of **FAIBI VRS STATE HOTELS CORPORATION (1968) GLR 471**. The Court held that:

“Onus in law lay upon the party who would lose if no evidence was led in the case and where prime evidence had been led it lay on a party who would lose if no further evidence was led. In the instant case since the Plaintiff’s contention was that his dismissal was wrongful whilst that of the Defendant was that the dismissal was not wrongful, the party who would lose if no further evidence was led would be the Plaintiff.

The onus was therefore on the Plaintiff to prove that he was wrongfully dismissed. The Plaintiff must prove that he did not contravene the orders

of his employers, or if he did, that orders were unlawful and unreasonable and on the evidence he failed to do so”

71.0 In **ACKAH VS PERGAH TRANSPORT & OTHERS (2010) SCGLR 728 AT 738** Sophia Adinyira JSC delivered herself as follows:

“It is the basic principle of law on evidence that a party who bears the burden of proof is to produce the required evidence of fact in issue that has the quality of credibility short of which his claim may fail... It is trite law that matters that are capable of proof must be proved by producing sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of the fact is more reasonable than its non-existence.”

72.0 By Section 14 of the Evidence Act 1975 (NRCD 323) it states the grounds as to who bears the burden of proof at any given time in any dispute it states:

“Except as otherwise provided by law, 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 he is asserting”.

73.0 In the decided case of **ZABRAMA V SEGBEDZI (1991) 2 GLR at Pg. 246** it was held as follows:

“A person who makes an averment or assertion which is denied by his opponent has the burden to establish that his averment or assertion is true. And he does not discharge this burden unless he leads admissible and credible evidence from which the fact or facts he asserts can properly and

safely be inferred. The nature of each averment or assertion determines the degree and nature of that burden”

74.0 This statutory provision has also been re-inforced and approved in a lot of judicial decision prominent among them worth mentioning is the Supreme Court case of **MEMUNA MOUDY AND ORS VS ANTWI (2003-2004) 2 SCGLR at 974-975** where Georgina Wood JSC (as she then was) delivered herself thus:

*“A cardinal principle of law on proof as enunciated in the age old case of **Majolagbe v Larbi (1959) GLR 190** and reiterated in a number of cases including **ZABRAMA V SEGBEDZI (1991) 2 GLR at 246** is that a person who makes an averment or assertion which is denied by his opponent, has the burden to establish that his averment is true. And he does not discharge this burden unless he leads admissible and credible evidence from which the facts he asserts can be properly inferred...”*

75.0 I need not belabor this known cardinal principle of law on the burden of proof but it is refreshing to state unequivocally that gleaned from Sections 10, 11 and 12 of the Evidence Act 1975 (NRCD 323) a party who bears the burden of proof is to produce the required evidence of the fact in issue that has the quality of credibility short of which his claim may fail.

76.0 It is trite law that matters that are capable of proof must be proved by producing sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of the fact is more probable than its non-existence.

See also the cases of :-

A) ACKAH V PERGAH TRANSPORT (SUPRA)

B) YORKWA V DUAH (1992-1993) GBR 276

C) GIHOC VS JEAN HANNA ASSI (2005-2006) SCGLR 198

D) TAKORADI FLOUR MILLS V SAMIRA FARIS (2005-2006)
SCGLR 882.

77.0 The Plaintiff being the one who commenced the instant action against the Defendant herein seeking a declaration that the purported sale of the subject property by 1st Defendant to 2nd Defendant was fraudulent and for that matter void and an order of recovery of possession assumes the burden to prove her title to the property

78.0 It is provided in Section 11 (1) of the Evidence Act 1975 (NRCD 323) that *“For the purpose of this Act, the burden of producing evidence the obligation of a party to introduce sufficient evidence to avoid a ruling on the issue against that party”*

Brobbey JA (as he then was) in the case of **DUAH V YORKWA (1993-94) 1 GLR 217 at 224** delivered himself thus: *“In our jurisprudence if two parties go to Court to seek redress to a dispute, it is the Plaintiff who initiates the litigation and literally drags the Defendant into Court. If both parties decides to lead no evidence, the order which will be given will necessarily go against the Plaintiff. Therefore it is the Plaintiff who will lose first, who has a duty or obligation to lead evidence in order to forestall a*

ruling being made against him.” This is clearly amplified in Section 11 (1) of NRCD 323 which provides that “For the purposes of this Decree, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling against him on the issue”

79.0 The parties at the close of pleading set down plethora of issues for the Court’s determination.

80.0 It must be stated that this Court will spend its precious time and energy to resolve those germane to the matter placed before it and in doing so will evaluate the evidence placed before it and lump together some of the issues which are identical and has a common thread running through them.

81.0 On issue (i) whether or not 1st Defendant could lawfully make an offer in respect of the subject property when an earlier offer in respect of same has already been accepted by the Plaintiff.

ii) Whether or not Plaintiff’s acceptance of the offer to purchase the subject property as sitting tenant resulted in a conclusive agreement.

iii) Whether or not the offer by 1st Defendant to sell the subject property which was accepted by the Plaintiff constituted a contract under law which unless terminated in accordance with prior agreement was binding on the Plaintiff and the 1st Defendant.

iv) Whether or not 1st Defendant was in breach of a legally enforceable agreement between the Plaintiff and the 1st Defendant.

82.0 All these four issues set down can conveniently be narrowed for the Court to ask itself and answer same whether or not there was a contract of sale entered between the Plaintiff and 1st Defendant for the sale of the flat in issue which said contract is binding on the parties.

83.0 It is trite learning that the elements, which make a contract binding under our law are offer and acceptance, consideration and intention to create legal relations.

84.0 The eminent writer and distinguished lawyer Christine Dowuona Hammond in her book "THE LAW OF CONTRACT IN GHANA" in analyzing the elements which are traditional tools on the creation of a valid and enforceable contract at page 34 had this to say briefly.

1) OFFER AND ACCEPTANCE

"Contracts are bargains and the usual way to make a bargain is for one part to propose the Terms or Conditions on which he is prepared to transact with the other party and for the other party to accept, modify or reject them. The determination of the existence of agreement is therefore usually made within the context of "offer and acceptance". This in determining whether or not a contract has been made, the court usually begin by looking out for a promise by one party, which usually takes the form of an "offer" and a corresponding "acceptance" of the offer by the other party. This exchange of promise for promise or promise for an act is what constitutes the bargain or agreement"

The second element which must be established for the creation of an enforceable contract is an intention to create legal obligations and it must also be established that the parties have capacity or power in law to create contractual relations between them.

The last element to establish is that there had been consideration. The learned author said “lastly the promise that is to be enforced must be supported by “consideration” unless the agreement is in the form of a deed, that is if it is in writing signed and attested. The element of consideration is crucial in the determination of whether or not a valid contract has been made. The element of consideration in a sense provides the Court with a reason to enforce the contract. Thus the Court will enforce a promise made in favour of a party only if such a party can show that he/she has given something of value in exchange for the promise made to him/her i.e. consideration. Consideration may be in the form of a return promise or the actual performance of a stipulated act.

85.0 The Supreme Court speaking through Date-Bah JSC in **NTHC V ANTWI (2009) SCGLR 117, 125** stated *“an offer was defined as an indication in words or by conduct by an offeror that he or she is prepared to be bound by a contract in terms expressed in the offer, if the offeree communicates to the offeror his acceptance of those terms”*

86.0 His Lordships further observed that *“An offer must be made with an intention that it will become binding once it is accepted by the other party. In other words, the making of a contractual offer carries with it some sense*

of frailty, in that it solicits a definite acceptance leading to a contract. In this regard, a contractual offer is distinguished from an "invitation to treat" which in essence constitute an attempt to initiate a bargaining process by soliciting or attracting offers from the party to whom it is addressed. As explained in Chitty on contracts "a communication by which a party is invited to make an offer is commonly called invitation to treat. It is distinguished from an offer primarily on the ground that it is not made with the intention that it is to become binding as soon as the person to whom it is addressed simply communicate his assent to its terms"

- 87.0 In the instant case it is evident that the 1st Defendant's letter (Exhibit EA5 i) left significant terms open for further negotiations. This is amply demonstrated in Exhibit "EA7" tendered in evidence.
- 88.0 The last paragraph of the said exhibit enjoins all interested institutional and siting tenants to contract 1st Defendant's Property Managers and Regional Managers to be issued with formal offer letters and spell out the terms and modalities of the sale.
- 89.0 Thus such terms like the specification of the particular property, the offer price and terms of payment and default provision which are all essential to the bargain contemplated were all not contained in Exhibit EA5i and EA7.
- 90.0 Counsel for the 2nd Defendant in his written address filed in the Court at page 22 submitted that "In the NTHC case (supra) the Supreme Court explained that where a proposal lack the essential characteristics of an offer, it is referred to as an invitation to treat. For

the instant letter to qualify as an offer letter it has to be definite and final and must not leave significant terms open for further negotiations. Their Lordships explained *"significant terms" to mean terms that are essential to the bargain contemplated...*" Their lordships stated *"...it is important to emphasize the proposition that the mere acceptance of an offer is sufficient to turn an offer into a contract, if there is consideration for it, together with an intention to create a legal relation. It is this need for finality and definiteness which leads to the analytical need for the concept of invitation to treat. If a communication during negotiations is not the final expression of an alleged offeror's willingness to be bound, it may be interpreted as an invitation to the other party to use it as a basis for formulating a proposal emanating from him or her that is definite enough to qualify as an offer..."*

91.0 The question this Court need to ask is whether the later constitute a definite and final offer to the Plaintiff for the purchase of the property in contention.

92.0 When the witness for 1st Defendant was being cross examined by counsel for the Plaintiff this is an extract of what transpired in the (Court proceedings date the 20th day of April 2021)

"Q: On the 17th of May 2011 Plaintiff's employer then Department of Women wrote a letter (Exhibit EA5 (1) with the subject "RE OFFER OF SSNIT FLATS FOR SALE" in which it was categorically stated that Plaintiff had accepted the offer to purchase flat no. 71 B2.

A: *Yes it was a letter emanating from Department of Women, Plaintiff's employer that Mrs. Eva Awadzi (Plaintiff) has accepted to purchase flat no. 71 B2.*

Q: *In the same letter emanating from Department of Women, Plaintiff's employer it has also been indicated that Plaintiff hopes to finish payment in three years by December 2013 as stated in 1st Defendant's offer letter; do you agree with that?*

A: *Yes my lord.*

Q: *You will agree with me that at this point between Plaintiff and 1st Defendant the agreement to purchase the subject property had been sealed?*

A: *No my lord. The proper procedure is that once an institutional tenant passes an offer to the sitting tenant the sitting tenant is supposed to apply by itself to SSNIT after which the sitting tenant is given a form designed by SSNIT specifying the terms of sale. After this letter the plaintiff never applied to SSNIT.*

Q: *I am suggesting to you that on the strength of Exhibit EA5 (i) which is the 1st Defendant's offer letter and Plaintiff's employers letter dated 17th May 2011 which is Exhibit EA5 (ii) Flat no. 71 B2 Adenta was out of the market?*

A: *No my lord. Till an initial deposit is made for a flat the occupant continues to pay rent to SSNIT and again per the exhibit EA5(i) which is only page 1, I am sure if the full letter had been exhibited there would have been a dead line stated in the letter.*

Q: *You are saying therefore, that a sitting tenant who has accepted to purchase a subject property would be in breach of contract if he or she does not pay the initial deposit you have just talked about.*

A: *Yes my Lord. The offer is valid for a period and if you don't pay within that specified period the offer expires.*

Q: *From your evidence plaintiff was in breach because plaintiff did not pay the initial deposit.*

A: *There was no offer to the plaintiff in the first place for her to breach it. The offer was not made to her but the institution.*

Q: *You are aware that plaintiff's employer wrote to 1st defendant and accepted the offer on behalf of plaintiff?*

A: *No my Lord. The letter to SSNIT was telling SSNIT that the institution was not interested in buying the flat so they are giving the option to the sitting tenant. So it cannot be an acceptance on behalf on the plaintiff.*

Q: *And you are also aware that after Plaintiff's employer accepted this offer on Plaintiff's behalf, went ahead to rent out the property in July 2011. Is that correct?*

A: *Yes my lord but Plaintiff had no right to have sub-let the flat. The letter from the employer to SSNIT was not an acceptance of the offer on behalf of the Plaintiff."*

93.0 Assuming there was an offer and acceptance for the sale of the flat in contention, did the sitting tenant being the Plaintiff in this case

provide any consideration for the contract to bind the parties' i.e. Plaintiff and the 1st Defendant.

94.0 Before 1st Defendant (SSNIT) sold the property to the 2nd Defendant there was the final reminder for the sale of the SSNIT flats to its institutional/ sitting (tenant) which the Court finds it very necessary to reproduce verbatim. It states:

"Our Ref: PD/016/17 Your Ref: Date 18/12/2013

The Institutional Tenant/Sitting Tenant(s)

Flat No. AD/BLK 071/N/RB2

Dear Valued Tenant,

SALE OF SSNIT FLATS (FINAL REMINDER)

"This comes to inform you that the grace period accorded you to purchase the flat which you have been renting ends definitively on the 31st December 2013 having given several opportunities to all tenants to purchase their flats over the years.

It would be recalled that the sale of the flats started in the year 2003 when tenants were given the opportunity to buy or hire purchase system for a period of five (5) years to be completed in 2008.

In the year 2010, the final offer was given to those who failed to take advantage of the earlier hire purchase system and the tenants were given the opportunity to buy the flats for a payment term of three (3) years ending 31st December 2013.

By this notice all institutional tenants of the flats are advised to take up the offer by the due date failure of which SSNIT shall reserve the right to sell to any interested party including the sitting tenant.

All institutional or sitting tenants who are interested in the sale are to contact the Properties Manager on the 6th floor of the Ridge Tower Accra or SSNIT Area/Branch Managers in all regions for the issuance of formal offer letter which spells out the terms and modalities of the sale.

You may also call 0302680395, 0305662710 and 0289522903-4 for further enquiries and clarification.

Thank you.

Yours faithfully,

*For SOCIAL SECURITY AND NATIONAL INSURANCE TRUST
KWABENA AMPONSAH DAPAAH
(PROPERTIES MANAGER SOUTHERN SECTOR)”*

95.0 This amply shows or demonstrates that the Plaintiff was amply given a grace period even if there was no offer for her to accept but woefully failed to take advantage of same.

96.0 The opening paragraph of the letter was specific and gave a timeline upon which the purchase of the flat has to be concluded.

It states “This comes to inform you that the grace period accorded you to purchase the flat which you have been renting ends definitively on the 31st

December 2013 having given several opportunities to all tenants to purchase their flats over the years”

97.0 Any interpretation placed on this paragraph simply means that flat No. AD/BLK 071/N/RB2 has not been sold or purchased and whoever it has been allocated to remain a tenant and has been given opportunity to purchase the flat by 31st December 2013 and that despite the several openings given to all tenants including the tenant in BLK 071/N/RB2 to purchase the flats they occupy; the tenants are yet to do so.

98.0 I will end the discussion on this issue of offer and acceptance by making reference to the case of **FOFIE V ZANYO (1992) 2 GLR pg. 475** where his Lordship Osei-Hwere JSC stated:

“In their treatment of the law on acceptance in Cheshire and Fifoot, the Law of Contract (8th Ed.) at pg. 30 the learned authors emphasized that: “The phrase “offer and acceptance” though hallowed by a century and a half of judicial usage, is not to be applied as talisman, revealing, by species of esoteric art, the presence of a contract”

99.0 His Lordship further stated that *“These rules which the judges have elaborated from the premise of offer and acceptance are neither the rigid deductions of logic the inspiration of natural justice. They are only presumptions, drawn from experience, to be applied in so far as they serve the ultimate object of establishing (The phenomena of agreement ... (These phenomena) may be collected from the words or documents that have passed between the parties or may be inferred from their conduct”* Thus it was

stated in the headnote of **BROGDEN V METROPOLITAN RAILWAY COMPANY (1877) APP CAS 666, HL** *that circumstances in the conduct of two parties may establish a binding contract between them though (as happened in that case) the agreement reduced into writing as a draft had not been formally executed by either. Accordingly it is not always safe, in construing a contract between two parties for the Court simply to look for the precise moment when an offer for instance, was accepted to determine the existence of the contract"*

- 100.0 A critical examination of Exhibits "EA5(i) and EA5 (ii) as well as the conduct of the parties clearly reveals that there was no contract in existence of which the Court can enforce as consideration which is one of the salient ingredients of a binding contract was not even present.
- 101.0 The Court therefore can conveniently conclude that the 1st Defendant was not in breach of any legally enforceable agreement for which the Court can hold it (SSNIT) liable.
- 101.0 The issues raised in V, VI, VII, VIII which bothers on collusion between the 1st Defendant and its agents, workmen and privies and the 2nd Defendant on the other hand and fraudulent conduct of the 2nd Defendant leading to the purchase of the property in contention can be dealt with together.
- 102.0 The Plaintiff's case against the 2nd Defendant is that she failed to pay the purchase price of the flat in contention because when the 1st

Defendant delivered the letter (Exhibit EA6) to the 2nd Defendant, he opened it even though it was sealed and read the content.

103.0 That he held to the letter, created the impression in the minds of the 1st Defendant's officers that Plaintiff had been given the letter but neglected to act on same.

104.0 Plaintiffs further alleged that 2nd Defendant visited 1st Defendant's office before the 31st December 2013, which is the deadline to have paid for the flat to collude with staff of 1st Defendant to overreach her from paying for the flat.

105.0 The case of the 2nd Defendant was that the Plaintiff had adequate notice of the final notice dated 18th December 2013, since he personally delivered the letter to the Plaintiff a day after it was delivered to the apartment by the 1st Defendant.

106.0 That the Plaintiff had discussion with him on the 19th December 2013 that he could not afford to buy the apartment because her brother who resides in USA who had offered to assist her financially to purchase the property had been involved in an accident and could not do so.

107.0 Upon hearing the story of the Plaintiff he offered to buy the property from the Plaintiff which she agreed but said she had to consult the son about the purchase price but never returned to him for any further discussion.

108.0 After waiting for some days without hearing from her (Plaintiff) and fearing that she could be ejected after the 31st December deadline

proceeded to the offices of the 1st Defendant for advice as to what to do under the circumstances.

109.0 According to the 2nd Defendant he was advised that he had an equal right to apply for the purchase of the apartment which he subsequently did and it was not until 27th February 2014 that 1st Defendant made an offer to him, which offer he accepted on the 5th March 2014.

110.0 It is therefore not true that in his dealings with the Plaintiff or the 1st Defendant he had been fraudulent or colluded with officers of the 1st Defendant by purchasing the flat in contention.

111.0 Thus from the evidence adduced before the Court by the parties, the question which need to be asked is whether the 2nd Defendant acted fraudulently.

112.0 On the authority cited by the 2nd Defendant in his written address filed, the Supreme Court case of **NANA ASUMADU II (Dec'd) (substituted by ABUSUAPANIN AMO MENSAH) V AGYA AMEYAW (J4/01/2018) [2019] GHASC 22** (15 May 2019), where Appau JSC held *"in law fraud is a deliberate deception to secure unfair or unlawful gain, or to deprive a victim of a legal right. It is both a civil wrong and a criminal wrong. Fraud, be it civil or criminal, has one connotation. It connotes the intentional misrepresentation or concealment of an important fact upon which the victim is meant to rely and in fact does not rely to harm the victim. It is therefore criminal in nature even where it is clothed in civil garbs"*

113.0 In an earlier case cited by counsel for the 2nd Defendant in their written address filed. **DAVID OPOKU AMOAH V OBIRI LOTTERIES** Civil Appeal No H1/26/2014 29th October 2014 the Court of Appeal speaking through C.J Honyenuga JA (as he then was) stated thus:

“... fraud in the contemplation of a Civil Court of justice, may be said to include properly all acts, omissions, and concealments which involve a breach of legal or equitable duty, trust or confidence, justly reposed, and are injurious to another or by which an undue or unconscious advantage is taken of another. All surprise, trick, cunning, dissembling and other unfair way that is used to cheat anyone is considered fraud”

114.0 Under Section 13(1) of the Evidence Act, 1975 (NRCD 323) it states.

(1) *“In a civil or criminal action the burden of persuasion as to the commission by a party of a crime which is directly in issue requires proof beyond a reasonable doubt”*

What this meant is that in a civil case where crime is pleaded or alleged, the standard of proof changes the civil one of proof on the balance of probabilities to that of proof beyond reasonable doubt. The one asserting fraud in this case the Plaintiff is required by law to lead cogent evidence to establish her case.

115.0 This Court hold the view that at all material times 2nd Defendant was swimming under the misconception that the flat he was occupying belongs to the Plaintiff. It was upon this that he paid a rent advance of GH¢800.00 upon demand from the Plaintiff.

116.0 It was not until 18th December 2013 when a letter was addressed to the Plaintiff's employer to the effect that institutional and sitting tenants interested in the flats should contact its offices to be issued with formal letters for acceptance and payment before 31st December 2013 failing which the flat would be sold without recourse to them that he realized that the Plaintiff had not been truthful to her during the negotiation of the renting of the flat to him as she had misrepresented that she is the owner.

117.0 The 2nd Defendant submitted that even the claim of the Plaintiff and the representation made to him that she is the owner of the property, when in fact she is not, she forfeit her interest in the subject matter of dispute to be making any claim for it.

118.0 Reference made to the case of **ANTIE & ADJUWUAH V OGBO (2005-2006) SCGLR 49** where the Supreme Court per Georgina Wood JSC (as she then was) said as follows:-

"The common Law rule as to forfeiture by a licensee or tenant who challenges the title of his licensor or landlord has received statutory recognition under sections 27 and 28 of the Evidence Decree 1975 (NRCD 323). The law is that a licensee or tenant who denies the title of his licensor or landlord, either by claiming title to the subject matter is vested in himself or herself or someone else forfeits his or her interest. In view of the Plaintiff's direct challenges to the Defendants lawful claim to ownership he has forfeited his right to remain in the premises"

What fraudulent conduct on the part of the 2nd Defendant is Plaintiff crying for?

119.0 Is it the fact that he went to the offices of the 1st Defendant to make enquiries about the ownership of the flat after the letter of the final reminder was delivered by the 1st Defendant?

120.0 In my humble view this bare assertion without more does not suffice or pass to be a fraudulent act. After seeing the letter and perhaps noting its content he saw a looming danger of he being thrown out of the apartment and which reasonable tenant will not wake up and do the necessary enquiries which the 2nd Defendant did.

I do not see or smell any fraudulent conduct here.

121.0 The decision also by the 1st Defendant to sell the flat in contention to the 2nd Defendant the Plaintiff term as “collusion” of the 2nd Defendant with the officers of the 1st Defendant to overreach her in the purchase of the flat.

Is that the case?

122.0 The evidence available before the Court when critically analyzed the Plaintiff was given every opportunity under the sun to purchase the property but could not take advantage of it.

123.0 On this issue of the 2nd Defendant colluding with 1st Defendant officers to purchase the flat by overreaching the Plaintiff on the proceedings dated 3rd February 2022 the Court asked this question

when 2nd Defendant was being cross examined by counsel for the Plaintiff.

“ By Court: And what did you go there to do a day before the deadline?

A: From the information the Plaintiff gave me and the deadline, and knowing that she was looking for money she did not have the money and wanted to sell the flat to someone and I expressed interest and she was not getting back to me, I only went to the 2nd Defendant to tell them I am not the one owning the place but I am only a tenant was not getting anyone, I only went to the 1st Defendant to tell them I am not the one owning the place but a tenant and my landlady made me aware that the flat is for her but you have indicated that by 31st if she did not pay so I am here to plead with you to give us some time to look for accommodation and that my wife had given birth. They told me they do not really care about it, they are only dealing with the Plaintiff and she had not given any written concern that she had subletted the place to me so they have nothing to do with me.”

124.0 I will emphatically state without mincing words that from the evidence placed before the Court I do not see any collusion or fraudulent conduct on the part of the 2nd Defendant in his negotiations with the 1st Defendant when it became apparent that the Plaintiff his land lord had no means of purchasing the property when a timeline has been given for the family to be thrown out and the flat sold out to someone else.

125.0 I hold that in an action in which particulars of the fraud are given the allegation made must be established by strict proof and fraud being

an issue of fact to be determined by the Court. It is expected that Plaintiff ought to have adduced cogent evidence in support of the allegation and this she woefully failed to do.

126.0 I now proceed to the last lap of the issues raised whether or not 2nd Defendant can acquire any title in the subject property which purported sale is void by reason of fraud that tainted the purported sale and purchase and whether or not the property is recoverable from the 2nd Defendant.

127.0 This Court will not stretch itself into any prolong argument except to say that once the Court had made a finding that the allegations of fraud made against the 2nd Defendant were bare allegations without any scintilla of evidence to support such claim, if after the expiration of 31st December 2013 being the deadline given the Plaintiff had not succeeded in purchasing the flat in contention and the 1st Defendant being the owner decided to sell it to the 2nd Defendant, the sale cannot be said to be void because it is tainted with fraud.

128.0 There is evidence on record that the 2nd Defendant passed through normal procedure before acquiring or purchasing the property from the 1st Defendant.

129.0 He acquired title of flat No. BLK 71 B2 by purchase from the 1st Defendant who owned it as at 1st January 2014 after the expiration of the deadline given to the Plaintiff to purchase same and therefore by the sale of the property to the 2nd Defendant the Plaintiff cannot recover it.

ORDERS

130.0 The reliefs sought for by the Plaintiff against the Defendants for

- a) A declaration that the purported sale by the 1st Defendant to the 2nd Defendant of the subject property was fraudulent.
- b) A declaration that the purported sale of the property to the 2nd Defendant is void by reason of fraud.
- c) An order for rescission of any purported sale to the 2nd Defendant.
- d) An order that Plaintiff be restored to the status quo in respect of the property before 2011 when 2nd Defendant entered the property
- e) An order of ejectment against the 2nd Defendant
- f) An order for specific performance against 1st Defendant.
- g) An order of recovery of possession of the subject property.
- h) An order for payment of mesne profit against the 2nd Defendant.
- i) An order for recovery of rent amounts from 2nd Defendant at interest which paid from the period 2nd Defendant ought to have handed over vacant possession.
- j) General damages.
- k) Punitive damages against the 1st and 2nd Defendants respectively.
- l) Cost incidental to the suit.
- m) Any other relief the court deem fair in the circumstances.

131.0 All these reliefs the Plaintiff asked for on the reason given in this judgment are dismissed in its entirety as same remain unproven.

132.0 Cost of GH¢20,000 awarded against the Plaintiff in favour of the 1st Defendant and the 2nd Defendant to be shared equally.

(SGD)

ALEX OWUSU-OFORI (JA)

COUNSEL:

ALBERT QUASHIGAH PLAINTIFF ABSENT

**HENRY ORRACA-TETTEH FOR THE 1ST DEFENDANT
PRESENT**

**ROY ANABA ATAFO HOLDING THE BRIEF OF SIMON
ALANGDE FOR THE 2ND DEFENDANT PRESENT**