IN THE SUPERIOR COURTS OF JUDICATURE

IN TH SUPREME COURT OF GHANS

ACCRA- GHANA, A.D. 2015

CORAM: WOOD (MRS), C.J. (PRESIDING)

ANSAH, J.S.C

DOTSE, J.S.C

BONNIE, J.S.C

AKAMBA, J.S.C

CIVIL APPEAL

NO. J4/63/2013

29TH JULY 2015

CHARLES LAWRENCE QUIST --- PLAINTIFF/RESPONDENT

(SUBSTITUTED BY DIANA QUIST) /RESPONDENT

F727/2 15TH LANE, OSU RE ESTATE

VRS

AHMED DANAWI --- DEFENDANT/APPELLANT

AFRIDOM SUPERMARKET **/APPELLANT**

OSU RE, OSU ACCRA

JUDGMENT

BAFFOE-BONNIE JSC:-

On 17/1/77 the defendants/appellants, The Danawis, hereinafter defendants, entered into an agreement with the plaintiff/respondents, Emmanuel Charles Quist, hereinafter plaintiff in respect of a plot of land. They and a third person Fisal Danawi also entered into a lease agreement in respect of an adjoining land this time with one E.C. Quist-Therson. They developed the two plots into commercial premises from where they conducted their business.

Sometime later Nii Kwabena Bonnie, Osu Alata Mantse, brought an action against them in respect of the land granted by Quist Therson claiming that the land formed part of Osu Alata stool. The High Court, coram, Osei Hwere J (as he then was), declared title in respect of the other plot of land in the Osu Alata Mantse making Nii Kwabena Bonne the new landlord of the defendants in respect of the adjoining plot of land.

I wish here to reiterate that the original lessors in the original transactions were Charles Quist (the plaintiff herein) and QUIST THERSON in respect of the other plot of land.

On 21/April/1992, claiming that the defendants were in arrears of rent from 1982, the plaintiff wrote a letter to the defendants reminding them of the arrears of rent. But this letter was no ordinary reminder of non-payment of rent. The letter carried in its belly a speculation that the defendants' failure to pay rent was due to an opinion the defendants had formed that the plaintiff was no longer their landlord by virtue of the judgment of Osei Hwere J (as he then was), in respect of the other plot. He then continued

> *"if that is correct then you are in breach of a fundamental obligation on your part as lessees, namely, the obligation to respect and not to dispute, challenge or throw any doubt on your landlord's title to the property leased or let out to you. By so doing you have in law rendered the lease liable to forfeiture and my client hereby gives you formal notice that he has forfeited the lease....."*

So the letter that set out to remind the respondent of his rent arrears went on to speculate on a reason for the non-payment of rent and concluded that based on that reason the defendant had denied the landlord's title and thereby rendered her lease liable to forfeiture! The

letter that started with a reminder of nonpayment of rent ended as a notice to quit, not for arrears of rent but on the grounds of denial of title In reply the defendant counsel wrote on the 24th of April 1992 denying that there was an arrears of rent for that length of time saying the receipts, (which he enclosed) showed that rent had been paid up to December 1991 leaving arrears of rent of only about 4 months. He however concluded that based on the judgment of Osei Hwere J

> "you will agree with me that until the appeal is disposed of it will be unwise for my clients to pay rent to your client since the judgment of Osei Hwere J is to the effect that the land belongs to the Osu Alata Stool and not your client.'

Three days later, i.e. on 27/4/92 the counsel again wrote another letter repeating the fact of having paid rent up to 1991 and concluded as follows

> "Be that as it may, I enclose herewith cheque in the sum of ¢12,000 cedis being 10 years ground rent from 1992 to 2002 at ¢1,200 per annum as per the terms of the leasehold agreement. Please acknowledge receipt."

Ten months after this 2nd letter plaintiff's counsel again wrote a letter on the 02/02/93 emphasising that the defendant had by his action denied the landlords title and had made his lease liable for forfeiture. And that the cheque that had been put in to entice him to abandon his legal right to forfeit the lease, had been spurned by his refusal to cash the cheque which was being duly returned.

There is evidence that Mr. E.D Kom, counsel for the defendant at the time, subsequently pleaded with plaintiff's counsel that the first letter ostensibly denying the plaintiffs title to the property was his fault and not that of his client. The plaintiff refused to be swayed by Kom's intervention and he brought an action at the High Court claiming as follows:

> '...recovery of possession of or ejectment from all that the piece or parcel of land ... by reason of the fact that the said lease or demise has become forefeited by the denial or disclaimer of plaintiff's title to the said property'

At the end of pleadings the following issues were set down for trial;

1) Whether the defendant and his late brother have committed a breach of their fundamental obligation as tenants to respect their

landlord's title in respect of the property leased by them from the plaintiff.

2) Whether the second letter from the lawyer for the defendant and his late brother seeking to recant the contents of the earlier letter of that lawyer has any legal significance on the plaintiff's right to forfeit the lease
3) Whether equity grants relief to a tenant against forfeiture of this lease for denying his landlord's title
4) Any other issues raised by the pleadings

Before judgment could be given by the trial judge, he passed on. A new judge Bright Mensah J, adopted the proceedings and delivered judgment. He held that the defendant had indeed denied the title of his landlord and had accordingly made his lease liable for forfeiture.

The defendant appealed to the Court of Appeal on the merits of the case and also on the grounds that the new trial judge had not formally adopted the proceedings and therefore his decision was given without jurisdiction. The Court Of Appeal upheld the appeal on jurisdictional grounds and did not go into the merits of the case. Relying on the case of **Awudome (Tsito) stool v Peki Stool [2009] SCGLR 681,** the

court held that failure to formally adopt the proceedings taken before the earlier judge who had died, meant the new judge was not clothed with jurisdiction to continue with the suit, let alone deliver a judgment based upon the already taken proceedings.

On appeal to this court, this court unanimously ruled that the Awudome case had ceased to be good law since it was departed from in the case of **Adomako Anane v. Nana Owusu Aghemang (subst. by Nana Banahene) and 7ors (unreported) dated 26th Feb 2014, Civil Appeal No. J4/42/2013. Coram Wood CJ, Ansah , Anin—Yeboah, Baffoe-Bonnie and Akamba JJSC..**

This court then ruled that parties should address the court again on the merits of the appeal. So essentially, the appeal before us is from the decision of Bright Mensah J.

The grounds of appeal are as follows;

a) **The trial judge failed to consider the fact that at the time of the institution of the action, the plaintiff did not have any cause of action**
b) **The trial judge failed to adequately consider the legal position of denial of title of landlord by tenant**

c) The trial judge failed to adequately consider that the plaintiff himself acknowledged the fact that the then lawyer of the appellant had communicated that the letter he had written was a mistake which he (the lawyer) solely accepted responsibility for.

In the case of **Antie & Adjuwuah v Ogbo 2005-2006 SCGLR 49** this 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 that 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 challenge to the defendant's lawful claim to ownership, he has forfeited his right to remain in the premises."

The questions we asked ourselves were, in the case before us what was the act of denial and when did it take place?

The plaintiff insists, and it was found by the court, that the defendant denied the landlord's title per the letter of 24th April 1982. This is what the judge said;

> "**To begin with I do hold that from the available evidence, it is not difficult to find that the defendant and his late brother (during his lifetime) did deny the plaintiff's title to the land the subject matter of this action.**
>
> **I do not think that the defendant discharged that burden of presumed fact that it was he and his brother who gave instructions to Lawyer Kom to write those letters on their behalf and I so hold"**

So the trial judge found as a fact that the defendants' denial of their landlord's title was contained in their letter of 24th April and not earlier.

But was there a denial of the landlord's title?

Counsel for the defendants had argued before the high court and repeated before us that the actions of the defendants following their first letter to the plaintiff, that is, the second letter, and the payment of 10 years rent advance, and counsel's personal apology, cannot be separated from the effect of the initial letter. A denial of title must be unequivocal or unambiguous in its tone and form. It cannot be

conclusively construed that the act of denying title and recanting same 3 days later, especially where no action had been taken by the defendant in the interim, is being unequivocal. Further, counsel who wrote that letter had accepted personal responsibility for the mix up even though the body of the letter was preceded by the statement that the letter was being written on the instructions of the defendants.

These submissions didn't find favour with the high court and do not find favour with us. In the case of **Warner v Sampson 1959 QBD 297**, the court held that a party was bound by the pleading of his counsel. In that case plaintiff had issued his writ and in the statement of claim had made some averments as to his title which was a derivative one and specified the breaches. The 2nd defendant's statement of defence signed by defence counsel, made some admissions but specifically denied the breaches. Then in paragraph 3 of the statement he made a general traverse as follows;

> *"Save and except for the admission herein contained this defendant denies each and every allegation in the statement of claim as if the same were specifically set out and traversed seriatim."*

The landlord immediately delivered a reply alleging that by that defence the 2nd defendant had denied his tittle. The trial court held that the 1st defendant's statement of defence and an amended statement of defence, both of which were filed subsequent to the reply and in which the title of the plaintiff had been accepted, were incapable of curing the denial. Counsel's further submission that a general traverse in a statement of defence should be construed as technical and therefore an act of counsel, was also not accepted. Even though this decision was overturned on appeal, it was on different grounds and for different reasons and not that 2nd defendant had not denied plaintiffs title by his pleading.

In the case before us the letter of 21st was sent not to counsel, but the parties personally. So when counsel said *"your letter of such date has been referred to me with instructions to reply same,"* counsel could only be said to be doing the bidding of his client and the clients are bound by the contents. We also believe that the denial was unequivocal. The decision of the High Court on this issue is borne out by the evidence and we refuse to disturb same.

Defendant has submitted that granted that their letter amounted to denial of the landlord's title, the plaintiff waived his rights with the result that as at the time the suit was instituted, the cause of action no longer existed.

Did the plaintiff have a cause of action at the time of the institution of the action, as found by the trial judge?

Flowing from the trial judge's finding that the defendants had denied their landlord's title the plaintiff's counsel has submitted that'

> *"....The offence of denying the landlord's title had been committed and the lease forfeited simultaneously by operation of law"*

This is not the position of the law. Even though we have held that the letter indeed amounted to a denial, what it meant was that the defendants made themselves liable to forfeit their lease. The lease merely becomes liable to forfeiture until the landlord elects to enforce his right or waives it. The fact that the tenant has incurred a forfeiture does not necessarily mean an end to the lease. The landlord merely has the right to terminate the lease when a forfeiture has been incurred; but he is not obliged to exercise the right. If the landlord wishes to exercise the right, he must do so by some positive and unequivocal step to re-enter.

In Halsbury's Laws of England, Lexis Nexis, Butterworths, 4th Edition, 2006 Vol. 39 paragraph 596 headed "Extinction of Title", it was stated as follows,

> '**Forfeiture.** An estate in land may be forfeited for breach of condition and for denying the title of the lord under whom the land is held. An estate created upon condition can be defeated by re-entry for breach of the condition.

Denial of the lord's title might under the feudal system be a cause of forfeiture, and it may still be a ground of forfeiture as between landlord and tenant. In each of the previous cases the estate remains vested in the original owner until the right of entry is exercised, and the person entitled to the right of entry has an option whether or not to exercise it.'

In the case of Western Hardwood Enterprise Ltd and Another v West African Enterprise Ltd [1997-98] 1GLR 645, Amuah JSC quoted the learned author Kludze in his book Ghana Law of Landlord and Tenant, saying,

> ' ... Although the right of forfeiture may be automatic, forfeiture itself is not automatic and the landlord may elect not to enforce his right of forfeiture. Even though as a general statement it is

said that a breach of a condition terminates the lease, it is only true to the extent that the lease is liable to be forfeited. Therefore when a right of forfeiture accrues, whether as a result of a breach of condition or a covenant, the effect truly is that it renders the lease voidable at the instance of the landlord, the lease does not, thereby become automatically void...'

But what actions were taken by the plaintiff subsequent to this denial to invoke this forfeiture? Since the plaintiff claims, and the court so found, that it was defendants letter of 24th April, 1992 that carried the defendant's denial of his landlord's title, what it means is that any notice or action to terminate the tenancy on account of the denial should post date the 24th April 1992. This also means that plaintiff's letter of 21st April which actually speculated that defendant was denying his title, could not be notice to terminate the tenancy for denial of title. From the evidence on record the plaintiff did nothing, absolutely nothing!

The plaintiff's very first positive act after the 24th of April 1992, was to send a letter 10 months later, Feb 1993 in which said letter he claimed

he had stopped recognising the defendant as his tenant. Then 14 months later, on 20th April 1994, he issued his writ.

From the defendants' side however, after the apparent gaffe on the 24th of April, they wrote a letter impliedly recanting the alleged denial of the landlord's tenancy on 27/4/92. In that letter they had enclosed a cheque to cover rent for the next ten years. There is also evidence that the defendants' counsel had met the plaintiff's counsel and had personally apologized and taken responsibility for the mix-up. The plaintiff had accepted the cheque which defendant had sent to him through his counsel. He had kept the cheque for ten months but, unknown to the defendants, he said he had not cashed it because he had not intended to forfeit his right to terminate the agreement.

The plaintiff finally issued his writ on 20th of April 1994 just 4 days short of 2 years to the day when the alleged denial took place.

In his statement of claim filed on 20th April 1994, he had claimed in paragraphs 5 and 6 as follows'

> *5."By the written statement made through their lawyer that the Osu Alata Stool is the owner of the property leased to them by the plaintiff the defendant and his late brother did disclaim, deny or*

otherwise repudiate their landlord's title and automatically and instantly forfeited their lease and became liable to be ejected from the said property.

6. The plaintiff says that he has since then not waived the forfeiture as he had refused to accept overtures by the defendant and his late brother to appease him by tendering a cheque purporting to pay rent of 12,000 cedis from 1992 to the year 2002 in respect of their occupation of the property."

The paragraph 6 was put in ostensibly to preempt any claim by the defendants that plaintiff had waived his right to forfeit the lease. But the facts on the ground show clearly that by his action and inaction he had indeed waived any right that he might have had.

First, there is nothing on record to show as his reaction to the letter of 24th April 1992 which carried this so called denial of his title. Then he accepted a cheque for the payment of 10 years rent in advance. He kept this cheque for 9 months!

Per section 26 of the **Conveyancing Decree 1975,** the holding on to the cheque for that length of time is enough to impute acceptance to his

conduct. Thus the plaintiff is estopped from claiming that he did not accept the cheque. Section 26 reads;

> *"Except otherwise provided by law, including a rule of equity, when a party has by his own statement, act or omission, intentionally and deliberately caused or permitted another person to believe a thing to be true and to act upon such belief, the truth of that thing shall be conclusively presumed against that party or his successors in interest in any proceedings between that party or his successors in interest and such relying person or his successors in interest"*

The plaintiff had collected the cheque for future rent and kept same for 9 months. Keeping the instrument for such a length of time is sufficient to cause a presumption on the part of the defendants that the cheque has been duly accepted.

Finally, the plaintiff did not take any action until almost 2 years after the offending letter had been written.

These actions and inaction on the part of the plaintiff constituted a complete waiver of his right to forfeit the defendant's agreement.

Writing on the subject of waiver in their book **Ghana Land Law and Conveyancing 2nd ed page 73**, the learned authors said,

> "The right to forfeit a lease when it has terminated at common law is vested in the lessor alone. A lessor may decide to waive this right if he chooses. A waiver may be express or implied. A waiver will be implied where the lessor is aware of an act or omission of the lessee entitling the lessor to forfeit the lease, but he nonetheless does some unequivocal act which shows that he recognizes the continued existence of the lease: for example, where the lessor with full knowledge of the breach demands or sues for rent. Acceptance of money as rent is treated in law as conclusive evidence of waiver against a lessor and a lessor who accepts money as rent will not be allowed to deny that he has waived the right of forfeiture". Also see the English case of **Central Estates (Belgravia) Ltd v Woolgar [1972] 1 WLR 1048**.

It is this court's holding therefore that, even though the plaintiff's letter of 24th April 1992 constituted a denial of the plaintiff's title to the property, it only served to expose them to a liability of forfeiture.

However, the events thereafter show that the plaintiff waived his right to forfeit the lease, with the result that, when the plaintiff issued his writ in 1994, the cause of action no longer existed.

We uphold the defendants' appeal and set aside the judgment of the High court.

(SGD) **P. BAFFOE BONNIE**
JUSTICE OF THE SUPREME COURT

(SGD) **G. T. WOOD (MRS)**
CHIEF JUSTICE

(SGD) **J. ANSAH**
JUSTICE OF THE SUPREME COURT

(SGD) **V. J. M. DOTSE**
JUSTICE OF THE SUPREME COURT

(SGD) **J. B. AKAMBA**
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