# IN THE SUPERIOR COURT OF JUDICATURE

# IN THE SUPREME COURT

# ACCRA, A.D.2015

**CORAM: WOOD CJ(PRESIDING)**

**ADINYIRA (MRS),JSC**

**DOTSE JSC**

**BENIN JSC**

**AKAMBA JSC**

**CIVIL APPEAL**

**No.J4/18/2013**

**25TH MARCH 2015**

**MARIAN OBENG MINTAH - - PLAINTIFF/APPELLANT/APPELLANT**

**VRS.**

**FRANCIS AMPENYIN - - DEFENDANT/RESPONDENT/RESPONDENT**

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## JUDGMENT

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## **AKAMBA, JSC**:-

This is an appeal from the decision of the Court of Appeal that reversed the decision of the trial High Court dismissing the entire claims of the plaintiff, (herein after simply the appellant) and granting the counterclaim of the defendant (hereinafter simply the respondent) in the matter herein.

This case epitomizes a love relationship that begun on a very high note only to become sour shortly thereafter fizzling out all hopes of a blissful ever after. As recounted by the Court of Appeal it all begun in October 2000 when the parties in this appeal fell in love. There were promises apparently by the respondent to marry the appellant, for so believed the appellant, which however did not materialize. Barely two years thereafter, the relationship hit the rocks. The appellant who felt shortchanged mounted an action in the High Court seeking damages for a breach of promise to marry; damages for inconveniences and loss of time wasted on the respondent; and payment of various sums specified in the statement of claim. The respondent did not only deny the plaintiff's claims but set up a counter claim for recovery of possession of the house on plot No. 26 West Fijai Layout Block F, Ntankoful, Sekondi; return of a pumping machine, louvre frames, standing fan, gas cylinders and photographic camera. The trial court found no merit in the appellant's claims and so dismissed all of them and rather granted the respondent's counterclaim.

On appeal, the Court of Appeal found for the appellant that the respondent had made a promise to marry her but later reneged on it. The Court also granted the appellant the sum of six thousand Ghana Cedis (GH¢6000) as general damages to ameliorate her injured feelings while it dismissed the rest of the grounds of appeal.

**GROUNDS OF APPEAL**

Still not satisfied with the Court of Appeal decision the appellant filed two main grounds for the determination of this court. These are:

(i) The Court erred in its evaluation of the evidence on record on the contribution of the Plaintiff/Appellant on the house and thereby came to a wrong decision that the Plaintiff/Appellant made no substantial contribution.

(ii) The decision that the Plaintiff/Appellant was in the property as a licensee was wrong in law and not supported by the evidence on record particularly when it was a fact that the parties were in concubinage relationship upon which the Appellant joined the Respondent in the house and did business together for the improvement of the house besides the Appellant's personal contribution.

**ANALYSIS**

I commence my consideration of the above stated grounds in reverse order. My simple reason is that this ground of appeal that impugns the appellate court's finding on the capacity in which the appellant was or lived in the premises would affect any consideration that would be made concerning whatever contribution she made hence it is preferable that the capacity be given the first option of treatment. In what capacity did the appellant make a 'contribution' and what was the purported contribution? What justifications did the appellate court have for concluding that she was a licensee? To begin with, the ground of appeal as it is presently couched admits of the relationship being one of concubinage. Yet by this same ground of appeal it is sought to attack the 1st appellate court's evaluation of the evidence on record and its application of the law to the facts. By the rules of this court we are placed in the same position as the courts below to re-hear the matter on the record by independently and critically evaluating the record placed before us and to draw our own conclusions. This position has been succinctly stated by this court in numerous cases including **Tuakwa v Bosom 2001-2002 SCGLR 61** in which we stated that, "an appeal is by way of rehearing, particularly where the appellant alleges in his notice of appeal that the decision of the trial Court is against the weight of evidence. In such a case, it is incumbent upon an appellate court, in a civil case, to analyse the entire record of appeal, take into account the testimonies and all documentary evidence adduced at the trial

before arriving at its decision, so as to satisfy itself that on a balance of probabilities, the conclusions of the trial Judge are reasonably or amply supported by the evidence".

I have read the record of appeal with regard to the evidence led in support of the contending positions and no where does the appellant deny that the house in issue was in an uncompleted state before she came into the relationship with the respondent. The record also supports the conclusion that it was the respondent who invited the appellant to occupy his uncompleted house which at that stage was roofed but lacked any ceiling, window and door frames. The floor had also not been screeded. Also not yet undertaken, was the electrical wiring hence there was no electricity. The respondent moved the appellant into the uncompleted house when their courtship was in its early and cordial days. There is no evidence of the appellant providing any consideration for her occupancy of the respondent's premises. Significantly the appellant and the respondent lived in concubinage throughout the period in issue because the promised marriage, as found by 1st appellate court, did not materialize. Concubinage relationship is defined in **Black's Law Dictionary** as *"a relationship of a man and woman who cohabit without the benefit of a marriage. The woman in the relationship, the concubine, cohabits as a wife without title. Although a concubine was expected to serve all the functions of a legitimate wife, she has no authority in the family or household, and was denied certain legal protections.*" Were it the case that the relationship had materialized into a marriage, different consideration would arise. In the light of the evidence on the record, the Court of Appeal correctly concluded that the appellant was a licensee of a sort since she occupied the building upon the invitation of the owner thereof, the respondent herein. The common law recognized three categories of licenses notably, bare or gratuitous licenses; license coupled with a grant or interest and contractual licences. As to what category of license was granted the appellant, the facts on record support the view that the appellant's permission was a bare or gratuitous permission. A bare or gratuitous licence is a mere permission for the licensee to enter upon the licensor's land. This permission may be withdrawn at any time by the

licensor. (See **Modern Law of Real Property 16th Edition by E.H.Burn, page 640**.) **Black's Law Dictionary** also defines licensee as: "*1. One to whom a license is granted. 2. One who has permission to enter or use another's premises but only for one's own purposes and not for the occupier's benefit"* The appellant was a gratuitous licensee or tenant given the fact that she was invited to occupy the uncompleted building without consideration and in circumstances that do not otherwise impose a duty hence she can have her tenancy withdrawn at any time by the licensor. The concept of a gratuitous tenant has received considerable treatment by Ghanaian writers in Land Law and Property. In his **Ewe Law of Property, (1973) by Prof A.K.P. Kludze and edited by Anthony Allott**, at page 245 the learned author highlighted on the concept thus: "*A gratuitous tenancy may be determined if the tenant tries to set up an adverse title to the land. As its basis is usually blood relationship or friendship, it may also be determined for ingratitude, disobedience or bad behavior towards the grantor or for committing waste. The right and grounds for determining a gratuitous tenancy extend to the successors of the grantor and grantee. Hence a gratuitous tenancy granted several generations ago may be determined today if a bad relationship develops between those who have succeeded the original parties."*

The overwhelming evidence from the record of appeal supports the conclusion that the appellant and the respondent lived in a concubinage relationship. In the light of the above conclusion we hereby affirm the Court of Appeal's finding on this issue.

The next question is did the appellant contribute to the development of the respondent's house. If she did, does it make the appellant a part owner of the premises or is she entitled to claim her contribution?

The record of appeal amply demonstrates that the parties operated a joint wood supply business when their amorous relationship was cordial. Payment for their supplies were made by cheque in the name of the appellant and eventually paid into the respondent's personal bank account. The Court of Appeal inferred from these activities, correctly in my view, that the monies so deposited were jointly

owned by the parties. According to the appellant, she contributed to the construction of the property in issue from profits made from their joint business transactions. It is trite to state that since the appellant was claiming that monies for the continuation of works on the respondent's building were withdrawals from the joint monies in the respondent's account, she had the burden of producing sufficient evidence on the claim to avoid a ruling against her on the issue. (See s 11 (1) and (4) of NRCD 323, the Evidence Act, 1975).

The unchallenged evidence on record is that almost all ATM withdrawals from the account in question were made by the appellant. There is however no corresponding evidence that the joint proceeds were utilized for the continuation or completion of the respondent's building works particularly in the light of the respondent's denials. The few receipts that were tendered by the appellant such as **Exhibits K, O, Q, R, and S** were cheque payments made into the respondent's account. The **exhibit T series** are all bank statements of the respondent's accounts. The only receipt evidencing any purchase is **exhibit L** but it bears the name of the respondent and not the appellant. The appellant also tendered **exhibit A** which is a Ledger account of her transactions with Metrostar Woodprocessing Company. Also tendered was **Exhibit G** evidencing a quantity of Ceiba Plywood supplied to the appellant. Unfortunately however **exhibit G** is only a way-bill which does not indicate or bear the cost of the materials. It also does not state the ultimate destination of the material. The appellant failed to link any of the exhibits to any undertaking on the respondent's building. Against these lapses in the evidence tendered by the appellant and her own admission to the effect that the room she occupied had no louvers, it is difficult to come to any other conclusion than that arrived by the Court of Appeal that the appellant failed to show that she had made any contribution to the improvement in the respondent's building. This is the more compelling given the fact that all the works she claimed to have undertaken in contribution to the building, such as plastering of the outer building and the floors, ceiling works, electrical wiring and provision of electricity, provision of water into the premises are all work items capable of proof either by receipts of specific purchases or by corroborative testimony of artisans who carried out the works and what charges or payments

were made. Of course if the appellant, as a bare or gratuitous licensee was able to prove that she made contributions to the construction or works in the respondent's building, she would be entitled to her equitable remedy for a reimbursement. But she failed woefully in the discharge of the burden on her.

The invitation by appellant counsel to bring this case under the spectrum of **Mensah v Mensah (1998-1990) SCGLR 350** and **Boafo v Boafo (2005-2006) SCGLR 705** is to say the least most ambitious. I will add to counsel's list of the above cases the most recent case of **Mensah v Mensah (2012) 1 SCGLR 391** on the same subject matter and to state that the principle of **equality is equity** that runs through those lines of cases applies in an environment of spousal relationship which creates a status that goes with certain rights and duties which are fixed by law and custom, but the same cannot be said of concubinage relationship. That a concubinage relationship does not constitute or equate a valid customary marriage was rightly distinguished by Osei-Hwere J (as he then was) in the case of **Badu v Boakye (1975) 1 GLR 283 H.C** wherein he said:

"*Where a man lives with a woman not as a real wife but only as a concubine with the consent of the woman's parents, that association cannot be translated into a valid customary marriage because the man and the woman are reputed to live as man and wife. Even though the defendant freely described the plaintiff as his wife and also described their association as 'marriage', this was no more than another euphemism for 'concubine' and 'concubinage' respectively."*

The appellant having failed to prove a marriage relationship as well as any contribution to the completion of work in the house, the whole issue about the applicability of the principle becomes otiose. Counsel also seeks a preposterous alternative relief to the effect that this court should make an order that a valuation be made to determine the appellant's share of contribution to the house and same paid to her. To this, we state that it is not the duty of a court when a party has failed to prove a claim to turn round and order that a valuation be made to determine who made what contribution the very issue that they had the burden to undertake but failed to do.

This appeal lacks any merit and is accordingly dismissed.

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

**JUSTICE OF THE SUPREME COURT**

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

**CHIEF JUSTICE**

**(SGD) S. O. A. ADINYIRA (MRS)**

**JUSTICE OF THE SUPREME COURT**

**(SGD) V. J. M. DOTSE**

**JUSTICE OF THE SUPREME COURT**

**(SGD) A. A. BENIN**

**JUSTICE OF THE SUPREME COURT**

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