

**CORAM: IN THE DISTRICT COURT, ACHIMOTA – ACCRA HELD BEFORE HIS  
WORSHIP PRINCE OSEI OWUSU SITTING AS DISTRICT MAGISTRATE ON THE  
10<sup>TH</sup> AUGUST 2023**

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**SUIT NUMBER: A9/50/22**

**EFUA OSEI TUTU**

**- PLAINTIFFS**

**GIFTY TSE**

**HOUSE NO. NIL, DOME PILLAR 2**

**ACCRA**

**VS**

**KWADWO ADJEI**

**- DEFENDANT**

**HOUSE NO. NIL, DOME PILLAR 2**

**ACCRA**

.....  
**TIME: 12:52PM**

**2<sup>ND</sup> PLAINTIFF PRESENT REPRESENTING 1<sup>ST</sup> PLAINTIFF**

**DEFENDANT PRESENT**

**NO LEGAL REPRESENTATION**

.....  
**JUDGMENT**

The Plaintiff instituted the action seeking for the following reliefs;

- (a) Eject Respondent from the property forthwith for complainant's personal use.
- (b) Cause Respondent to settle GH¢ 900.00 being rent of June 2022 to complainant with immediate effect
- (c) Cause Respondent to settle GH¢ 138.00 being water bill from January 2022 to June 2022 and repair the broken glass door.

(d) Make such order(s) as to cost or in connection with proceedings.

According to the 2<sup>nd</sup> Plaintiff, who is the caretaker of the house number ST GE 325-1338, Dome pillar two (2). She rented a two-bedroom apartment to the Defendant for a period of six months. She averred that she gave the keys to the Defendant on 29<sup>th</sup> July 2021 as the Defendant moved into the apartment in October 2021.

2<sup>nd</sup> Plaintiff further stated that after the expiration of the six months, the Landlord who is the 1<sup>st</sup> Plaintiff decided not to renew the tenancy with the Defendant and notice to quit was served on the Defendant. 2<sup>nd</sup> Plaintiff stated that the Defendant never paid water bill since he took possession and has also tampered with the ECG meters which made the ECG personnel sent a caution message to her. According to the Plaintiffs, they sent the Defendant to Rent Office but he failed to appear before the Rent Officer.

The Defendant filed statement of Defence and counter claim on 10/8/2022 for the following reliefs;

- (a) A declaration that the quit notice of 2<sup>nd</sup> Plaintiff dated 31/01/21 was in breach of agreement made by both parties
- (b) A declaration that the basis of serving the quit notice on Defendant was not in accordance with the agreement
- (c) A declaration that the failure/refusal of 2<sup>nd</sup> Plaintiff to reimburse the cost of renovation works as promised to Defendant is a breach of contract
- (d) An order compelling 2<sup>nd</sup> Plaintiff to reimburse the cost of renovation and at a current interest rate.
- (e) Damages for breach of contract
- (f) Costs for intimation, pain, anxiety and inconvenience
- (g) Such for and other reliefs the Court may deem fit

The Plaintiffs filed their reply to statement of defence and defence to counter claim of Defendant on 16/8/22. The Court ordered the parties to file their witness statement. The case management conference was conducted on the 17/10/22 2022. The trial commence 30/11/22.

The Plaintiff first witness gave his evidence in chief on 30th day of November 2022 and further cross examined by the Defendant on 1/12/2022. Though the hearing was slated for two days, the Defendant used all the two days to cross examine only one witness. The Defendant failed to appear in Court again despite being served with hearing notices.

### **Issue**

**The main issue for determination is whether or not the Plaintiffs are entitled to an order of ejectment/ recovery of possession against the Defendant**

It is trite that in civil cases the general rule is that the party who in his/her pleading or writ raised issues essentials to the success of his or her case assumes the onus of proof. The one who alledges being a Plaintiff or Defendant assumes the initial burden of producing evidence. It is only when he has succeeded in producing evidence that the other party will be required to lead a rebuttal, if need be, proof lies upon him who affirms or alleges, not upon him who denies since, by the nature of things he who denies a fact cannot produce any proof see the following:

***SC II (1) & (2), 12 (2) AND 14 OF THE EVIDENCE ACT 1975 NRCD 323 AS WELL AS THE CASE OF TAKORADI FLOUR MILLS V SAMIR FARIS [ 2005 – 2006] SCGLR at 900. GIHOC REFEGERATION & HOUSEHOLD v JEAN HANNA ASSI [2005 – 2006] SCGLR 458, TAGOE v ACCRA BREWERY [2016]93 GMJ 103, SC DELIMAM OIL v HFC BANK [2016] 92 GMJ 1 CA.***

The Plaintiffs had the onus of discharging the burden of producing sufficient evidence in respect of their claim on a balance of probabilities.

The Plaintiff testified through the agent who facilitated the renting of the apartments to the Defendant. The first witness for Plaintiff testified that the Defendant rented the 1<sup>st</sup> Plaintiffs apartment for 6months period at a rate of GH¢900.00 per month. The Defendant never opened his defence as he failed to appear in Court, subsequently to continue the suit.

The position of the law is that parties to an action ought to be afforded the chance of being heard of telling their side of the story, of being free to present evidence and arguments to support their case, but it is also a settled law and dictates of common sense, require also that once these opportunities have been given and the party chooses not to avail himself or herself within the period of trial, he would on judicial consideration be allowed to come later and plead for re-activating the very opportunities he failed to embrace.

See the cases of **Mence Mensah vs. E.A Asiama (2011) 38 GMJ 174 SC** and **Poku vs Poku (2007 – 2008) SCGLR 996**.

From the evidence led by 2<sup>nd</sup> Plaintiff, the Court found as a fact that the property being occupied by the Defendant was rented to the Defendant for six (6) months period. The Defendant neither cross examined the 2<sup>nd</sup> Plaintiff or defending the suit in it's effect admits claim of the Plaintiffs.

See the case of **Samuel Adrah vs. ECG (2018) GMJ 143 @ 184 CA per Dzamefe, J.A.**

The Defendant have failed to provide any compelling reasons why he should not be ordered to vacate the premises. Per the facts of the case, the Defendant's behavior is now becoming a thorn in the flesh of the Plaintiff, and Defendant having been given a notice to quit as far back as January 2022, the Court holds no hesitation in granting the Plaintiff's their reliefs sought. I find as a fact that Defendant has been notified of the need for the premises.

I find out that the Plaintiff's have led credible and unshaken evidence to warrant a grant of the reliefs from this Court and it's only just that the Defendant gives vacant possession of the premises.

The Court having considered the Plaintiff's uncontested evidence that the Plaintiffs have been able to discharge the burden of proof on them, and the Court therefore grants them the reliefs sought.

The Defendant is hereby ordered to yield to the Plaintiff a vacant possession of the apartment on or before 30<sup>th</sup> September 2023.

Cost of GH¢ 2,000.00 is awarded against the Defendant in favour of the Plaintiffs.

**SGD**

**HIS WORSHIP PRINCE OSEI OWUSU**

**DISTRICT MAGISTRATE**