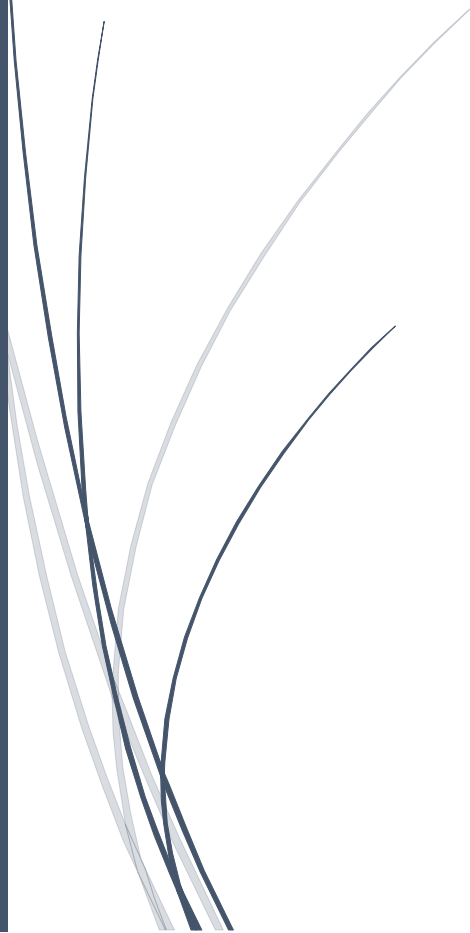




1/26/2023

ERIC AGBOZA VS  
BENJAMIN QUARSHIE  
JUDGEMENT



HER WORSHIP SIRAN MAHAMA  
MAGISTRATE  
TEMA DISTRICT COURT '2'

IN THE DISTRICT COURT 2, TEMA, SITTING ON THE 26<sup>TH</sup> DAY  
OF JANUARY, 2023 BEFORE HER WORSHIP SIRAN MAHAMA,  
THE DISTRICT MAGISTRATE.

SUIT NO: A9/30/2023

ERIC AGBODZA

VS

BENJAMIN QUARSHIE

JUDGEMENT

Per the statement of claim filed by the Plaintiff herein; the brief facts of this matter are as follows.

The Defendant is the tenant of the Plaintiff and occupies a single room in the Plaintiff's property with a monthly rent of GHS 110.00. The Defendant's tenancy ended in July 2021. However, since August 2021, the Defendant has failed or neglected to pay the rent due and owes the Plaintiff an amount of GHS 1,540.00 as at the end of September 2022. Subsequently, the Defendant has now locked up the room and his whereabouts is still unknown to the Plaintiff. All attempts made by the Plaintiff to get the Defendant to give him vacant possession have been futile. The Plaintiff currently needs the said room for family use. Hence, the Plaintiff filed this action praying this honourable court for the following reliefs:

1. Recovery of possession and order to force door open.
2. Recovery of GHS 1,540.00 being rent arrears as at 30<sup>th</sup> September, 2022 and any further rent that may be due.

Per the brief facts stated above, the issues that this court must determine are as follows:

- Whether or not the Plaintiff herein is entitled to an order for recovery of possession and to force open the door of the room in question.
- Whether or not the Plaintiff herein is entitled to the unpaid rent arrears till date.

Since this action was instituted, attempts made to serve Defendant in person failed. Due to that, this court granted an order for substituted service for all processes in this action to be served on the Defendant herein on the 1<sup>st</sup> of November 2022 pursuant to Order 4 rule 5 of the District Court Procedure Rules, 2009 (C.I. 59). Subsequently, Defendant has still failed to appear or file any affidavit in his defence. Therefore, the Defendant herein is deemed to have been duly served by this court with all processes filed in this action; and this court shall proceed to enter judgement in this matter accordingly.

Per Section 17 (a) and (g) of the Rent Act, 1963 (Act 220)

1) Subject to subsection (2) of section 25 and to section 28, an order against a tenant for the recovery of the possession of, or for the ejection from, any premises shall not be made or given by the Rent Magistrate, or any other judge of a court of competent jurisdiction in accordance with any other enactment except;

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

(g) where the premises are reasonably required by the landlord for personal occupation as a dwelling house by the landlord, a member of the family of the landlord or a person in the whole-time employment of the landlord, the premises being constructed to be used as a dwelling house, but

(i) the circumstance that the premises are reasonably required by the landlord for personal occupation by someone in the employment of the landlord shall not be a sufficient circumstance if the Magistrate or judge is not satisfied that the landlord usually provides premises for occupation by an employee of the class to which that employee belongs, and

(ii) an order shall not be made if the Rent Magistrate or judge is satisfied having regard to the circumstances of the case, including an alternative accommodation available for the person for whose occupation the premises are required or for the tenant, that greater hardship would be caused by granting the order than by refusing it.

As established in the case of *Bassil v Sfarjilani* (1967) CC20, the mere fact that a tenancy agreement has expired is not a ground for recovery of possession unless there is a valid basis under Act 220 to do so. According to Common Law, tenancy should be ended before steps are taken by the landlord to eject the tenant.

This is espoused in the case of *Sfarijilani v Bassil* [1973] 2 GLR 260, CA.

Per Section 62(1) of the Evidence Act, 1975 (NRCD 323); it is stated that “a witness can testify only if he is subject to the examination by all parties to the action, if they choose to attend and examine.” However, an exception to this rule as provided under Section 62(2) of NRCD 323 is where the court exercises its discretion, for reasons to be expressly stated in the record of proceedings, to allow the unexamined evidence to stand. As stated earlier, the Defendant herein failed to appear or file an affidavit in his defence in this matter; despite being duly served. In view of this, this court shall exercise its discretion by ruling that the unexamined witness statement of the Plaintiff herein shall stand. It is the position of this court that the Defendant herein neglected every opportunity to respond to the claims raised against him in this action; and the Plaintiff should not be made to suffer for it. Per the testimony of the Plaintiff, the Defendant remained in possession of the Plaintiff’s property since the expiration of his rent advance in July 2021; and has failed to pay the rent arrears or voluntarily grant vacant possession to the Plaintiff. Pursuant to Section 17 ( a) and (g) of the Rent Act, 1963 (Act 220), this court may grant an order against a tenant for recovery of possession where rent lawfully due from the tenant has not been paid or tendered within one month after the date on which it became lawfully due; and where the tenancy has expired and the landlord requires the property for use by one of his family members. In the instant case, both conditions are true in the instant case as previously stated in the facts. Also, the Plaintiff avers in his witness statement that the Defendant’s tenancy ended in July 2021. Subsequently, Plaintiff stated that he verbally notified the Defendant of same. Since then, Plaintiff states that Defendant has locked up the room and does not come

to the house. Therefore, on claim one(1) of this action, this court holds in favour of the Plaintiff and hereby grants an order for the recovery of possession of the said room and permission to force open the locked door with immediate effect.

Following from the holding above, this court further holds in favour of Plaintiff on claim two(2) of this action and orders that the Defendant shall be liable to pay an amount of GHS 1980 to the Plaintiff, being rent arrears owed from July 2021 to January 2023, with immediate effect.

Judgement is hereby entered in favour of Plaintiff on claims one (1) and two (2) of this action.

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H/W SIRAN MAHAMA  
MAGISTRATE  
26/01/2023