

IN THE DISTRICT MAGISTRATE COURT HELD AT NSAWAM N.A.M.A. ON 8TH NOVEMBER, 2022 BEFORE HER WORSHIP SARAH NYARKOA NKANSAH

SUIT NO. A2/11/23

**HENRY ABBY
OF H/NO. QRS 72 A
NSAWAM**

PLAINTIFF

VRS

**KOFI ANSAH
OF NSAWAM**

DEFENDANT

PARTIES PRESENT.

NO LEGAL REPRESENTATION.

JUDGEMENT

The Plaintiff claims against the Defendant is as follows:

- a. GH¢400.00 being rent arrears owed by Defendant to Plaintiff but has refused to pay despite several demands.
- b. An order to eject Defendant from a chamber and hall rooms Defendant is occupying in Plaintiff's house No. QRS72A Nsawam.
- c. Cost

Despite having notice of the pending suit, the Defendant who had been duly served chose to absent himself without any valid excuse to the Court. In view of same, the Court therefore proceeded under Order 25 of the District Court Rules, 2009(C.I 59), to hear the matter in the absence of Defendant.

Order 25 r 1(2) (a) provides;

“Where an action is called for trial and a party fails to attend, the trial magistrate may where the Plaintiff attends and the Defendant fails to attend, dismiss the counterclaim if any and allow the Plaintiff to prove the claim”

PLAINTIFF’S CASE

The Plaintiff told the Court that, the Defendant owed him four (4) months’ rent amounting to GH¢800.00 and that he wanted the Defendant to pay him the rent owed. Plaintiff continued that, he needs vacant possession of the room and so wants the Court to eject the Defendant. According to the Plaintiff, it cost him GH¢300.00 in Court processes. The Plaintiff thereafter closed his case without calling any witness.

In the circumstance, the issues that fall for determination are;

- a. Whether or not the Plaintiff is entitled to recover the rent arrears of GH¢800.00 from the Defendant.*
- b. Whether or not Plaintiff is entitled to an order of ejection against the Defendant.*

In the case of Nartey v. Mechanical Lloyd Assembly Press Ltd [1987-1988] 2GLR pg 314 Adade JSC stated that:

‘A person who comes to Court, no matter what the claim is, must be able to make a good case for the Court to consider, otherwise he must fail.’

Sections 11(4) and 12 of the Evidence Act, 1975 (NRCD 323) provides that, the burden of proof on a party in a civil suit should be on a balance of probabilities.

In the case of Adwubeng v. Domfeh [1996-97] SCGLR 660, the Supreme Court held that in all civil actions, the standard of proof is proof by the preponderance of probabilities, and there is no exception to that rule.

The Plaintiff has adduced per his evidence that the Defendant owes him GH¢800.00 in rent arrears. The Plaintiff has indicated to the Court that, he also wants the Defendant to be ejected.

As noted supra, the Plaintiff was discharged without being cross-examined by the Defendant. The Court proceeded thus because the Defendant elected to be absent although he had notice of the pending suit.

The position of the law is that, the Court ought to accept the evidence led by a party, where his opponent fails to lead contrary evidence or challenge same under cross-examination by deeming the evidence as having been admitted by his opponent.

In Takoradi Flour Mills vrs Samir Faris [2005-06] SCGLR 882, the Supreme Court held that; *“where the evidence led by a party is not challenged by his opponent in cross-examination and the opponent does not tender evidence to the contrary, the facts deposed to in that evidence are deemed to have been admitted by the opponent and must be accepted by the trial Court.”*

Considering that the Plaintiff was not cross-examined on his evidence to the Court, I accordingly conclude that, the Court has accepted the whole of the evidence of the Plaintiff on record.

The position of the law is settled under **Section 17(1)(a) of the Rent Act, 1963 Act 220** as follows,

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 ejectment 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.

The plaintiff in the present case has established by his evidence that, the Defendant's rent has been due and owing for four (4) months. This clearly meets and exceeds the requirement stipulated by statute as reproduced supra.

In view of the foregoing, the Court resolves the issues and holds that; the Plaintiff is entitled to recover the rent arrears of GH¢800.00 from the Defendant. In addition to this, the Plaintiff is entitled to an order of ejectment against the Defendant.

In Ankumah v City Investment Co Ltd [2007-2008] 2 SCGLR 1064, Baffoe Bonnie JSC held at page 1076 as follows;

“A Court is entitled to give judgment in default as in the instant case, if the party fails to appear after notice of the proceedings has been given to him. For then, it would be justifiable to assume that he does not wish to be heard.”

On a totality of the evidence adduced before the Court, I find that, the Plaintiff has been able to prove his case on a preponderance of probabilities. I accordingly enter judgment in favour of the Plaintiff against the Defendant as follows:

- a) Recovery of the sum of GH¢800.00 from the Defendant.
- b) Interest on the sum of GH¢800.00 at the commercial bank rate from 22nd April, 2022 to date of final payment.
- c) The Defendant is ordered to vacate the house within 14 days and where Defendant fails to comply with the order of the Court, the Police is directed to assist Plaintiff to remove the Defendant from the house.
- d) Cost of GH¢300.00 awarded against the Defendant.

(SGD)
H/W SARAH NYARKOA NKANSAH
MAGISTRATE
08/11/ 2022