

**IN THE DISTRICT COURT HELD AT OSINO ON FRIDAY THE 27<sup>th</sup>  
OCTOBER 2023 BEFORE HIS WORSHIP AYAGIBA SALIFU  
BUGRI, DISTRICT MAGISTRATE**

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**CASE NO... A9/03/23**

**EBENEZER KUMAH** ..... **PLAINTIFF**  
**OF NSUAPEMSO**

**VS**

**1. AMA CYNTHIA**  
**2. SISTER AKOS** ..... **DEFENDANTS**  
**ALL OF NSUAPEMSO**

## **JUDGEMENT**

### *Reliefs Sought:*

- 1. Recovery of GHC2,200 from defendant being expansion of work plaintiff did at 2<sup>nd</sup> defendants house*
- 2. Interest on the GHC2,200*
- 3. Costs*

### **Brief Facts**

Both parties are residents of Nsuapemso. Plaintiff is a tenant, whilst defendants are daughter and landlord respectively. Somewhere in 2021, plaintiff paid the sum of GHC720 as rent advance for a single room apartment at GHC30 per month for two years. Since the apartment needed renovation, plaintiff avers that he used his own money to repair the ceiling, plastered the floor, electric wiring, kitchen. The cost of the extra works cost GHC2,200. Plaintiff says he told D1 about it and she agreed that the cost incurred will be deducted from the subsequent rent. When his rent expired in 2023 she informed D1 about it and she said she will invite her uncle over to discuss a partial payment. However, D2 asked plaintiff to leave the house and take along all the renovations he had done to the apartment but, D2 pleaded for patience to settle the misunderstanding amicably.

Plaintiffs says even though he pays his light bills to defendants, payments are not made or prepaid not bought promptly causing them to be in darkness some of the

times. Moreover, D2 takes her bath in front of his apartment causing nuisance to him. A rubbish container placed beside his room emits foul smell as a result of the garbage and human excreta that are dumped into it. Complaints of the situation rather results in unpleasant exchanges. As a result of petty quarrels between plaintiff's wife and D2 the couple are unable to stay in their apartment and currently lodging with a good Samaritan which gesture will elapse in a week.

Opening her defense, Defendant admitted that plaintiff is her tenant and the fact that he rented the apartment in 2021. However, the agreed rent per month was GHC80 for 2years and not GHC30 as plaintiff wants the court to believe. Therefore, the total sum for the two years rent was GHC1,200 and not GHC720. Defendant says plaintiff was informed about the defects to the apartment and he agreed to resolve them gradually as things were difficult for him at the time. As far as defendant is concerned plaintiff paid GHC720 by installments of GHC400 and, GHC320. Thus per their agreement plaintiff is owed GHC1200 and not GHC2,200. Defendant says in the course of the renovation, plaintiff constructed a porch to the apartment which was not part of their agreement nor with her consent.

Subsequently misunderstandings ensued between PW1 and D2 who is D1's mother. Notwithstanding several complains and call on plaintiff to control PW1, it was to no avail. D1 says she regrets renting the apartment to plaintiff, and so she suggested to plaintiff to discuss the outstanding rent balance in order that he vacates the apartment. Upon calculation, D1 said she is liable to refund GHC1000 and pleaded with plaintiff to exercise patience as she mobilizes the money. D1 refutes that she owes plaintiff GHC2,200 as plaintiff wants the court to believe. D1 says D2 is incapacitated and frail and could not have threatened plaintiff and PW1 not to sleep in their rented apartment.

## **ISSUES FOR DETERMINATION**

- 1. Whether or not the absence of a written tenancy agreement is injurious to plaintiff's claims**
- 2. Whether or not D1 is liable to pay GHC2,200 or GHC1000**

Just like all contracts, a tenancy agreement is a contract between a landlord and a tenant. It sets out everything that a landlord and tenant have agreed to about the tenancy. It is imperative that tenancy agreements must be in writing and equally important that the landlord gives the tenant a copy before the tenancy starts.

An unwritten contract is a contract whose terms are not reduced into writing. It is ordinarily referred to as a gentleman's agreement. Similarly, a verbal tenancy exists where the landlord and tenant agree verbally to the terms of the tenancy, for example how much rent and when it is payable, whether the rent includes utilities, whether there are any restrictions on other people living in the accommodation with you etc.

The issue with a verbal tenancy agreement is that it is difficult to prove what was agreed because it is not in writing. There is often no proof of what was agreed, or a particular problem may arise which the agreement may not cover.

In the instant case, it is evident per the evidences adduced that a tenancy agreement existed between plaintiff and defendants. The evidence further suggests that the tenancy agreement was verbal. The duration of the tenancy is two years beginning in 2021 and ending 2023. It is evident that the first two years of the tenancy had elapsed, but a cost incurred by plaintiff to renovate the apartment, intended to cover subsequent rents had to be recovered due to plaintiff's intension not to renew the tenancy.

Plaintiff's decision bounded on misunderstandings between plaintiff's wife and D2. Moreover, plaintiff has alleged nuisance that is not inuring to his comfort and peaceful enjoyment of the tenancy.

The contention between the parties is the amount of money recoverable by plaintiff, since he did additional works to the apartment before moving in with his wife. Whereas plaintiff claims he spent in excess of GHC2,200, defendant says she owes plaintiff only GHC1,200. Whereas plaintiff says the monthly rent was GHC30, D1 refuted that to say it is GHC80 monthly.

It is trite law that he who alleges must prove so by leading enough evidence to convince the court or arbiter hearing the matter that his evidence is more credible than his opponent.

In the instant case plaintiff initiated the instant suit and the burden of proof is on him. Plaintiff did not produce any documentary evidence to prove or substantiate his allegation, primarily because the agreement was verbal. Plaintiff did not adduce evidence of any mode of payment either through a financial institution, or mobile money to wit momo, to assist the court to make an informed determination of the matter. That notwithstanding, the production of a witness who witnessed the agreement and subsequent payment would suffice if the witness corroborates his evidence to the satisfaction of the court.

In the instant case plaintiffs witness PW1 was his wife/spouse. PW1's testimony bothered largely on the misunderstanding with D2, with very scanty details of the agreement and subsequent payment. PW1 did not witness any of the transactions except what plaintiff told her. In the opinion of this court, that is not proof enough that plaintiff paid GHC30 and not GHC80 to D1 as rent.

D1 admits that plaintiff did extra work on the apartment before moving into it. Even though she added that plaintiff did not seek her consent to extend the porch, she did not question plaintiff about it. By her conduct, it is implied that D1 consented to plaintiff's extension of the porch. However, by that conduct it is not conclusive that she had agreed to absorb the cost incurred by plaintiff for that extension. In the absence of express evidence that plaintiff sought the express permission or consent of D1 or D2, it could well be that he did it for his own convenience and comfort. To the extent that it adds value to the apartment I tend to understand why D1 and D2 failed to challenge plaintiff in that respect. After all, it inures to their benefit in future tenancies.

D1 admitted to accepting GHC720 from plaintiff by two installments of GHC300 and GHC420. It was subsequent to that, that plaintiff renovated the apartment at his own cost for deduction from subsequent rents, impliedly when plaintiff renews his tenancy. It is also in her evidence that D1 informed plaintiff about the renovation that he needed to do on the apartment and plaintiff accepted that condition during negotiation for the rent payable.

From the above, I have no doubt and can infer that the GHC720 that D1 obtained from plaintiff was in full payment for 2years rent at GHC30 per month. Hence, the agreement by both parties to charge the cost of the extra work on future rent. If

D1's testimony that the monthly rent agreed with plaintiff was GHC80, she would have added in her testimony that after plaintiff paid GHC720 she expected an outstanding balance of GHC1200. I doubt that a landlord will agree for a substantial part of rent due to be used by a tenant to renovate an apartment, even though it is her own property. In my opinion, the reverse is more probable. It is highly unlikely that D1 will agree for GHC1200 of rent due to be used by plaintiff to renovate the apartment in question, leaving GHC720. Consequently, I do not believe that D1's testimony is credible in that respect. I have also inferred that it was due to the condition of the apartment that D1 agreed to rent to plaintiff at GHC30.

On the other hand, even though I have no reason to doubt DW1 as the person who directed plaintiff to his sister (D1) to rent the apartment, I doubt the credibility of his testimony that he was present when plaintiff and D1 agreed to the rent. In one instance he says in his testimony that, after introducing plaintiff to D1 he left them and has no idea how they concluded.

As far as the reasons espoused for plaintiff and his spouse leaving D1 and D2's apartment is concerned, the instant court has no reason per the evidences adduced to doubt their veracity. Indeed D1 has admitted that such misunderstanding and nuisances occurred, except that D1 saw a different dimension to the circumstances that lead to those unfortunate altercations and nuisances complained about. Plaintiff and his spouse are under no obligation or compulsion to continue living in D1 and D2's apartment if they are not comfortable and at peace with their landlord. However, they must claim whatever is due them.

As earlier said, a written tenancy agreement would have sufficed as conclusive evidence of what the tenancy agreement is since it would have spelt out all the terms. To the extent that plaintiff has not adduced enough evidence to prove his case, the instant court will determine based on the preponderance of the balance of probabilities of the evidences adduced in accordance with section 12(1)(2) of the evidence Act, Act 323.

**Section 47—Prior Payment of Rent.**

The payment of earlier rent or installments is presumed from receipt for later rent or installments.

**Section 49—Partners, Landlord and Tenant, Principal and Agent.**

Persons acting as partners, landlord and tenant, or principal and agent are presumed to stand in that relationship to one another.

**Section 60—Personal Knowledge Required.**

(1) A witness may not testify to a matter unless sufficient evidence is introduced to support a finding that he has personal knowledge of the matter.

(2) Evidence to prove personal knowledge may, but need not, consist of the testimony of the witness himself.

(3) A witness may testify to a matter without proof of personal knowledge if no objection is raised by any party.

Upon evaluating and analyzing the evidences adduced, I have made the following findings of fact:

That plaintiff and D1 agreed on GHC30 rent per month to be paid in advance of two years.

That plaintiff paid GHC720 to D1 and also did renovation works on the apartment

That plaintiff made an extension to wit, a porch or verandah for his convenience

In the absence of evidence of any agreement and consent of D1 and D2 to the extension and cost thereof, this court cannot grant plaintiff's relief to recover GHC2,200.

The court grants GHC1,000 that D1 has admitted in her evidence and ordered to pay same to plaintiff. Costs of GHC300 awarded to plaintiff.

-SGD-  
**HIS WORSHIP**  
**AYAGIBA SALIFU BUGRI,**  
**MAGISTRATE**