

IN THE CHIEF MAGISTRATE'S COURT OF CROSS RIVER STATE OF NIGERIA  
IN THE CALABAR MAGISTERIAL DISTRICT  
HOLDEN AT CALABAR

SUIT NO: MC/SCC/05/2023

BETWEEN:

MR. STEPHEN PETER STEPHEN	-	CLAIMANT
AND		
MADAM JOY ESUABANA	}	- DEFENDANTS
MRS. GLORY ESUABANA		

Claimant absent

Defendants present

Appearances: Peace Eyam Esq for the Claimant,  
E.E. Bassey, Esq for the Defendants.

**JUDGMENT**

The claimant filed an amended particulars of claim supported by a statement on oath on the 15<sup>th</sup> day of December, 2023 wherein it is stated that the claimant is a businessman and a former tenant of the 2<sup>nd</sup> defendant at No. 68 Nelson Mandela Street, Calabar South Local Government Area, Cross River State.

That he paid the 1<sup>st</sup> defendant the sum of N100,000.00 who acted on behalf of the 2<sup>nd</sup> defendant who is the owner of the property which he rented.

He stated that before he was let into the property that he and the 1<sup>st</sup> defendant had an oral agreement for him to fix and put the property in order and same will be converted to rent.

Summarily put he said he worked on the property with many challenges, spent money but yet the property was not in a good tenable condition. That he called the 2<sup>nd</sup> defendant to refund his money as he could not continue his stay in the property. That due to the unhealthy and untenable condition of the house, he had to move out of the property with the knowledge of the 1<sup>st</sup> defendant as he could not stand the stench in the house.

That he is an apprentice and does not have money to rent another apartment as he used his money to repair the 2<sup>nd</sup> defendant's property.

His claims against the defendants are as follows:

1. The N100,000.00 (One Hundred Thousand Naira) only he paid being rent from 1<sup>st</sup> August, 2023 to July, 2024.
2. The repairs and maintenance of the self contained at the rate of N52,000.00 (Fifty Two Thousand Naira) only
3. Special damages of N300,000 (Three Hundred Thousand Naira) only.
4. General damages of N100,000 (One Hundred Thousand) only being cost of litigation.

In response to the claims of the claimant the defendants filed a statement of defence and counter claim against the claimant dated the 5<sup>th</sup> day of January, 2024 thus:

The defendants herein states that the claimant is still a tenant in the property of the 2<sup>nd</sup> defendant and his rent is still running.

The defendants herein avers that the claimant was let into the property of Mrs. Gloria Esuabana through an agent.

The defendant posit that before the claimant was let into the apartment, a total sum of fifty thousand naira (N50,000) only was deducted from the rent and same used in fixing two (2) doors, replacement of roofing zinc and workmanship.

The defendant posit that at all material times that the claimant was let into possession, the defendant's property was tenantable and that is why the claimant moved into the property.

The defendant states that painting of the interior of the apartment to the colour of the claimant is at the discretion of the claimant as the house was already painted and so the 2<sup>nd</sup> defendant never contracted anybody to paint a house that was already painted.

The 2<sup>nd</sup> defendant states that there is no way that the 1<sup>st</sup> defendant would have assumed the status of landlady to a point of giving directives when the claimant knew the landlady to the property and didn't discuss such repairs.

The 2<sup>nd</sup> defendants paid the money required to be paid for external repairs of the property. That the figures paraded by the claimant was manufactured for this proceeding. That all the alluded facts only exist in the imagination of the claimant. The claimant shall be put to strictest proof thereof at trial. The 2<sup>nd</sup> defendant's property has been in tenantable condition before the claimant was let into possession. Etc.

By way of counter claim the defendant counter claimed against the claimant as follows:

- 1) An Order of this Honourable Court directing the claimant to fix the blocked water cistern (WC) toilet caused by him and his family.
- 2) An order directing the claimant to return the defendant's property to the tenantable condition he met.
- 3) N200,000 cost of litigation.

This counter claim is supported by 18 paragraphs statement on oath deposed to by Mrs Gloria Esuabana and 16 paragraphs statement on oath deposed to by Mr. Emmanuel Okon Etim who was the agent that connected the claimant to the property of the 2<sup>nd</sup> defendant and averred that the property was in a tenantable condition.

The matter came up and the claimant through his counsel failed to file a reply to the counter claim of the defendant. After some argument wherein the claimant's counsel informed the court that the claimant is not in court to proof his case and that it is as a result of the fact that the claimant is now financially handicapped and cannot proceed with the matter to get justice.

The defence counsel maintained that in the circumstance of this matter, it seems that claimant is not serious with the claims and prayed the court to dismiss the claims of the claimant or strike it out as the claimant has abandoned same but that the defendants counter claim be considered as the defendants are ready to do their case.

He also asked for cost as the defendant's time and resources have been expended due to the action of the claimant.

In reaction the claimant's counsel agreed that the claims of the claimant be struck out but without cost as both parties have spent money in this proceedings.

In proving the counter claim, the 2<sup>nd</sup> defendant on oath tendered one (1) exhibit which the court admitted as the counsel to the claimant did not object to it and the claimant also did not file any reaction to it.

From the foregoing of this matter the court considers that it is observed that the claimant is not quite forth coming in this matter as recorded in the case file. The total number of times the defendants appeared in respect of this case outweighs the record of the claimant who ought to diligently prosecute his claims.

I agree with the position of the defence counsel to the extent that the defendant cannot be dragged to the court when the claimant is not ready thereby causing the defendants to spend time and

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resources. The explanation of the learned counsel for the claimant here does not absolve the claimant from the responsibility of diligently doing his matter or proving his claims.

Therefore I hereby strike out the claims of the claimant and considers the counter claim of the defendants as follows:

The defendants have not proven that the claimant spoilt the water cistern but I am satisfied that they have spent money to pay for the litigation of this matter. Also here is nothing before me to show for the damages. I hereby award cost against the claimant to the tune of N20,000.00 (Twenty Thousand Naira) only to be paid to the defendants on or before the 17<sup>th</sup> day of January, 2023.

Failure of the claimant to pay the cost, the property of the claimant wherever found worth the judgment sum shall be attached and the bailiff of this court in the company of a court duty police shall cause the property of the claimant to be moved to the court, auctioned to recover the judgment sum.

This is the Order of the court.

SIGNED:

OKOHO BASSEY OTU  
CHIEF MAGISTRATE GD II  
SMALL CLAIMS COURT II

*Okoho Bassey Otu*  
*Chief Magistrate*



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