



3. An order of perpetual injunction restraining the Defendant, his servants and or agents from continuing further acts of detinue on the properties.
4. The sum of Two Million and Thirty-four thousand and two hundred naira as special damages and One Million Naira as general damages.ö

When the extant Rules of Court came into force, the Claimant frontloaded his List of Witnesses and Documents to be Relied upon at Trial on the 9<sup>th</sup> day of November, 2012. The Defendant filed his Statement of Defence/Counter Claim, Statement on Oath, List of Documents and issues for determination on the 2<sup>nd</sup> day of August, 2013.

The Counter Claim of the Defendant is as follows:-

öCOUNTER CLAIM

The Defendant/Counter Claimant by way of Counter Claim adopts paragraphs 1 to 29 of the Statement of Defence and claims further against the Claimant in the following manner:

1. Possession of the 3 bedroom flat let to him in a good and tenantable condition.
2. The sum of N10, 000.00 monthly from the month of September 2010 - August 2011 (total N110, 000.00) as arrears of rent.

3. The sum of N20, 000.00 monthly (being the current rental value of the apartment) as mense (sic) profit from September 2011 till the Claimant finally give up possession.
4. The sum of N292, 000.00 as special damages

PARTICULARS OF SPECIAL DAMAGES

|                           |                  |                  |
|---------------------------|------------------|------------------|
| (a) 8 Doors               | at N14, 000 each | =N112, 000       |
| (b) 2 W. C. Toilet        | at N6, 000 each  | =N12, 000        |
| (c) Toilet Cover 2        | at N1, 500 each  | =N3, 000         |
| (d) Mosquito Net          |                  | =N30,000         |
| (e) Wall Sockets          |                  | =N5, 000         |
| (f) Satelite Wire         |                  | =N5, 000         |
| (g) Kitchen Sink          |                  | =N6, 000         |
| (h) Tap Head              |                  | =N1, 000         |
| (i) Protector (Back Gate) |                  | =N6, 000         |
| (j) Painting              |                  | =N100,000        |
| (k) Cement                |                  | =N2, 000         |
| (l) LABOUR                |                  | <u>=N10,000</u>  |
|                           |                  | <u>=N292,000</u> |

5. The sum of N2, 000,000.00 as general damages.ö

Issues having been fully joined, the Claimant on Monday, the 12<sup>th</sup> day of May, 2014 opened and closed his case by calling two witnesses, including himself, who were accordingly cross examined by the learned counsel to the Defendant.

The evidence of the Claimant who testified as C.W.1 is as follows:

õI, Patrick Odia, male, Christian, Nigerian, businessman residing at No. 3, Victory Street, Off Okhokhobi Village, Benin City, do hereby make oath and state as follows:-

1. That I am the Claimant in this action by virtue of which I am familiar with the facts deposed to herein.
2. That I am a native of Ishan in Edo State and a businessman.
3. That the Defendant is a native of Benin and a businessman whose residence is at No. 4, Ize-Iyamu Street, Evboriaria, Benin City.
4. That the subject matter of this action is the claimants property at No. 4, Ize-Iyamu Street, Evboriaria, Benin City.
5. That he was a tenant in house No.4, Ize-Iyamu Street, at Evboriaria, Benin City from the 2008 to 2010 when he vacated the one flat apartment in the said house.
6. That he was a tenant for the said period in which he paid his rent regularly until he vacated the house on the 30<sup>th</sup> of September, 2010.
7. That sometime about 29<sup>th</sup> of September, 2010 he told the Defendant that he was packing to his house and the Defendant told the claimant that he should ensure that his apartment was repaired before packing away.
8. That towards the end of September 2010, claimant's wife came to collect her properties and that of the children in the house at No. 4, Ize-Iyamu Street and pleaded with the Defendant to help the claimant's wife to pack the things and the Defendant sent a message

that on no account should claimant pack his property without effecting the repairs of the net and louvers.

9. That on the 29<sup>th</sup> of September, 2010, I went to fix the net and the louvers with a carpenter which the plaintiff hired for the repairs and finished late in the day.
10. That on the 30<sup>th</sup> of September, 2010, I took ill and before I went to the hospital for treatment sent my daughter with a vehicle to go and collect my own property.
11. That when my daughter and the vehicle came to the Defendant's house the Defendant's wife did not allow the vehicle to enter the premises until the arrival of the Defendant, Blessing and the driver had to take the smaller gate into the premises.
12. That my daughter Blessing and the driver brought out the properties with a view of packing them into the vehicle.
13. That it was the Defendant's wife who phoned the Defendant that claimant's property were being packed away.
14. That Defendant came and instructed that my daughter should not pack the properties away.
15. That my daughter tried to reach me on phone and it was not possible as I was on admission and I was given some sedatives and slept off.

16. That when I eventually woke up at about 6pm in the day, I contacted my daughter whether she had packed my properties away, Blessing told me that the Defendant had refused bluntly to allow them pack away my properties.
17. That the properties were left outside and in the night of 30<sup>th</sup> September, 2010 and it rained heavily and the properties were destroyed. The list of the property so destroyed is attached as Exhibit ~~A~~
18. That I reported the matter to Etete police station and the matter was charged to court and the Defendant was tried, discharged and acquitted.
19. That I have made frantic efforts to retrieve the property damaged from the Defendant and the Defendant has refused to release the property and has since detained same.
20. WHEREOF the claimant claims as follows:
  1. A declaration that I am entitled to possession of the said properties which are itemized herein.
  2. An order to the Defendant to release the properties in his possession to me.

3. An order of perpetual injunction restraining the Defendant, his servants and or agents from continuing further acts of detinue on the properties.
4. The sum of Two Million and Thirty-four thousand and two hundred naira as special damages and One Million Naira as general damages.
21. That I deposed to this affidavit in good faith believing the contents to be true and correct and in accordance with the oaths Laws.

The C.W.2 was the daughter of the Claimant who testified on oath as follows:

I, Blessing Odia, female, Christian, Nigerian, student, residing at No. 3, Victory Street, Okhokhobi Benin City, do hereby make oath and state as follows:-

1. That the claimant is my father and we all lived in an apartment at No. 4, Ize-Iyamu Street, Evboriaria, Benin City.
2. That I know the Defendant who is the owner of the said house at No. 4, Ize-Iyamu Street, Evboriaria, Benin City.
3. That on the 30/9/2010 my father the Claimant told me to accompany a carpenter to No.4, Ize-Iyamu Street, to effect repairs in the flat we were staying.

4. That the carpenter and I went to the flat and effected the repairs.
5. That when we got there we saw the Defendant.
6. That after the repairs I started packing the property and brought them out in readiness to carry them away.
7. That I then went for a van with two boys to help in loading the vehicle at Ekae.
8. That as soon as I came, I saw the wife who did not allow us to enter through the main gate and we had to enter through the pedestrian gate.
9. That when I entered, the wife said that the property should not be carried away until the Defendant had come.
10. That the Defendant came in at 6.pm
11. That I told him that my father was sick that he should allow us to pack the property away and he refused.
12. That when it was threatening to rain, I appealed to the Defendant to allow me pack back the property into the flat. The Defendant bluntly refused.
13. That I had to leave the properties and the rain fell and destroyed the properties.
14. That the list of the property destroyed and the cost attached and marked Exhibit :-Aø

15. That when my father recovered he went to the Defendant to collect his property and the Defendant refused and my father reported the matter to the police.
16. That the Defendant was charged to court and he was tried, discharged and acquitted.
17. That I gave evidence in Magistrate court during the trial.
18. That I depose to this affidavit in good faith believing the contents to be correct and in accordance with the Oaths Laws.ö

On Tuesday, the 25<sup>th</sup> day of March, 2016, the Defendant/Counter-Claimant opened and closed his defence by testifying for himself as D.W.1. He was accordingly cross-examined by the learned counsel to the Claimant. His evidence on oath is as follows:-

öI, MR. OSUNBOR IZE-IYAMU, male, Christian, businessman, Citizen of the Federal republic of Nigeria residing at No. 1, Ize-Iyamu Street, Evbuoriararia Quarters, Benin City do hereby make Oath and states as follows:

1. That I am the Defendant/Counter Claimant in this action and by virtue of which I am conversant with the facts of this case.

2. That the Claimant is a monthly tenant in my residence at No. 1, Ize-Iyamu Street, Evbuoriararia Quarters, Benin City occupying 3 bedroom flat at the rate of N10, 000.00 per month.
3. That I never detained and or destroyed the Claimant's property or any property at all.
4. That the Claimant absconded from the said apartment since on the 28<sup>th</sup> September, 2010 and has not returned till date.
5. That the Claimant is still in possession of the 3 bedroom flat let to him in my residence and has not paid rent since September, 2010 till date.
6. That the Claimant approached me sometimes around September, 2010 that he was relocating from my house to a new location.
7. That I told the Claimant to repair the damaged doors, toilet facilities, window nets, electrical fittings, kitchen sink, taps, protector (back gate) and paint the apartment before leaving.
8. That the Claimant agreed and accepted to effect the repairs to the facility before giving up possession.
9. That to my greatest surprise, instead of the Claimant to repair the apartment as agreed, the Claimant's wife came to the apartment with a bus on the 26<sup>th</sup> of September, 2010 and pack almost all the properties in the flat except those that were too big for the bus to carry.

10. That the bus came to the apartment 3 times on the faithful day to pack the properties and that my wife even assisted the Claimant's wife in the packing process.
11. That on the 28<sup>th</sup> day of September 2010, the Claimant brought a carpenter to the apartment along with his daughter under the pretence of repairing the damage flat and instructed the carpenter to start dismantling the window net and that he was going to buy the materials needed for the repair work.
12. That the carpenter started his work but that the Claimant abandoned the carpenter and when the carpenter could no longer wait, he left around 5.30pm ó 6pm and the Claimant's daughter (Blessing) packed the books and other items and left leaving behind an old sitting room chairs and one old wooden wardrobe that could not enter the motor as a result of their size.
13. That the Claimant never showed up throughout that day.
14. That on the 30<sup>th</sup> day of September 2010, I was not around, the Claimant sent his daughter, (Blessing) along with a driver and 2 boys to pack the old sitting room chairs and the wooden wardrobe in my absence and without effecting the repairs to the damage done to my apartment.

15. That it was my wife that eventually called me on phone that the Claimant has sent his daughter to pack the remaining things in my absence.
16. That I drove home and saw Blessing and requested to see her father to have a word with him.
17. That Blessing left with the 2 boys with the intention of going to call her father and never came back.
18. That the next day, the Claimant went to Abbey Police Station to report falsely a case of abduction/kidnapping against me.
19. That when the police investigated the matter, the police discovered that I never abducted nor kidnapped the Claimant's daughter and the police then advised the Claimant to go and settle with me and repair the damaged property but the Claimant refused and insisted that the matter be charged to court.
20. That the IPO then advised him to carry the sitting room chairs and the wooden wardrobe to the station but the Claimant refused, saying he does not have money to pay for the transportation.
21. That the Claimant eventually charged me to court and I was discharged and acquitted.

22. That the Claimant was also charged to court for damaging my property at the Magistrate Court, Sapele Road, Benin City and was also discharged by the court.
23. That I issued the Claimant notice to quit my premises dated the 5<sup>th</sup> day of July, 2011 and which notice expired on the 31<sup>st</sup> day of August 2011 and despite the quit notice, the Claimant has not given up possession of the apartment till date.
24. That the Claimant has not paid rent since September 2010 till date for the accommodation despite the notice to quit I served on him.
25. That the Claimant has not repaired the damage done to the flat and has not given up possession to me till date.
26. That the claim of the Claimant from this Honourable Court are imagined, presumptive, misconceived and totally in bad faith as this suit lacks reasonable cause of action and merit and should be dismissed with substantial cost.
27. Whereof I claim from the Claimant by way of Counter Claim as follows:-
  - a. Possession of the 3 bedroom flat let to him in a good and tenable condition.

- b. The sum of N10, 000.00 monthly from the month of September 2010 ó August 2011 (total N110, 000.00) as arrears of rent.
  - c. The sum of N20, 000.00 monthly (being the current rental value of the apartment) as mense profit from September 2011 till the Claimant finally give up possession.
  - d. The sum of N292, 000.00 as special damages (The particulars of special damages are itemized herein:)
  - e. The sum of N2, 000,000.00 as general damages.
28. That I depose to this affidavit in good faith believing the contents to be true and correct and in accordance with the oaths laws.ö

In the course of the hearing of the case, two Exhibits were admitted in evidence as follows:

- 1. Exhibit öAö - Undated öList of property Destroyed/Detained by the Defendant and the cost thereinö prepared and signed by the Claimant.
- 2. Exhibit öBö - öNotice to Quitö issued by M.I. Oriazowalan, Esq. on behalf of the Defendant to the Claimant dated the 5<sup>th</sup> day of July, 2011.

Both learned counsel to the adverse parties adopted their Final Written Address they filed on the 4<sup>th</sup> day of April, 2016 on behalf of their respective clients.

It should be noted that on the 6<sup>th</sup> day of February, 2014, this Court adopted the three issues formulated by the learned counsel to the Defendant/Counter Claimant at page 42 of the case file as the issues for determination in this suit.

The learned counsel to the Defendant/Counter Claimant, Moses .I. Oriazowalan of P.E. Ewah & Co. argued the three issues jointly in his Final Written Address, cited authorities and urged this Honourable Court to dismiss the claims of the Claimant and enter judgment for the Defendant/Counter Claimant as per his Counter-Claim.

The learned counsel to the Claimant, Ayodeji J. Alufohai, Esq., also argued the three issues jointly in his Final Written Address, cited authorities and urged this Honourable Court to dismiss the Counter-Claim of the Defendant with substantial cost and grant the claim of the Claimant as prayed.

COURT:

The three issues which this Court adopted as the issues for determination in this case are as follows:-

- õ1. Whether from the facts and circumstances of this case, the claim of the Claimant falls under the tort of detinue.

2. Whether the Claimant is entitled to the reliefs sought from this Honourable Court.
3. Whether the Defendant/Counter Claimant has proved its counter claim before this Honourable Court to be entitled to judgment from this Honourable Court.ö

### ISSUE ONE

This issue is on whether from the facts and circumstances of this case, the claims of the Claimant falls under the tort of detinue.

The Supreme Court in the case of CIVIL DESIGN CONSTRUCTION NIG. LTD. V. SCOA NIGERIA LIMITED (2007) NSCQR VOL. 29 PAGE 1298 held on an action for detinue, per I.F. Ogbuagu, JSC at page 1267 as follows:

öAn action in detinue differs from an action in conversion in that it is said to be primarily not for damages, but for the return of the goods. In the English case of *General and Finance Facilities v. Cooks Cars (Ramfond) Ltd (1963) 1 WLR 644, 650 – 651, C.A., Diplock, L.J.*, pointed out that öan action in detinue, may result in a judgment in one of three different forms:

- (1) for the value of the chattel as assessed [sic] and damages for its detention; or
- (2) for the return of the chattel or recovery of its value as assessed and damages for its detention; or

(3) for the return of the chattel and damages for its detention.ö

In the recent Supreme Court case of AMINU ISHOLA INVESTMENT LIMITED V. AFRIBANK NIG. PLC. (2013) VOL. 223 LRCN (PT. 1) PAGE 211, the Court held per Alagoa, JSC at pages 233 ZJJ & 234A thus:

öWhat is the nature of an action in *detinue*?

In *Kosile v. Folarin* (1989) NWLR (PT. 107) 1; (1989) 4 SC (PT. 150) the Supreme Court per Nnaemeka Agu, JSC held as follows:

*“It must be clearly stated that in an action for detinue the gist of the action is the unlawful diversion of the Plaintiff’s chattel which he has an immediate right to possess after the Plaintiff has demanded its return.”*

The two central issues to be established in an action for *detinue* is a formal demand from the Claimant and a refusal by the Defendant. This is a trite principle of law. See NZE BERNARD V. TONIMAS NIGERIA LIMITED & ANOR (2006) NSCQR VOL. 26, PAGE 1 where Niki Tobi, JSC held at pages 22 ó 23 thus:

öBefore an action on *detinue* can be filed, two acts must be present; one from the Plaintiff and the other from the Defendant. The Plaintiff must make a formal demand for the return of the goods or chattel.

The Defendant must refuse to return the goods or chattel. And so an action in detinue cannot be founded only on the demand by the Plaintiff without a corresponding refusal.ö

The semblance of what the Claimant pleaded and evidence led in an attempt to establish the two ingredients above was when the Claimant testified in his paragraph 19 of his Statement on Oath as follows:

ö19. That I have made frantic efforts to retrieve the property damaged from the Defendant and the Defendant has refused to release the property and has since detained same.ö

The above piece of evidence was destroyed during cross examination when the Claimant was asked if he made any formal demand for the return of the property. He answered:

öI did not make a formal demand.ö

From the facts in this case and the circumstances, and flowing from my reasoning above, it cannot be legally correct to hold that the claim of the Claimant falls under the tort of *detinue*. I therefore answer Issue One in the negative against the Claimant.

#### ISSUE TWO:

This issue is as to whether the Claimant is entitled to the reliefs sought from this Honourable Court. The Claims of the Claimant is founded principally on a tort

of *detinue*. On Issue One, I have held that the action of the Claimant, from the facts and circumstances, does not fall under *detinue*. That issue having been held against the Claimant, the reliefs founded on same must accordingly fail as you cannot put something on nothing and expect it to stand. This is trite. See MACFOY V. UAC LTD. (1962) AC 152. This Issue Two is therefore resolved by me against the Claimant as I hold that the Claimant is not entitled to the reliefs sought from this Honourable Court.

### ISSUE THREE:

This issue is whether the Defendant has proved its Counter Claim to be entitled to judgment from this Honourable Court.

For the avoidance of doubt the Counter Claim of the Defendant are as follows:-

### öCOUNTER CLAIM

The Defendant/Counter Claimant by way of Counter Claim adopts paragraphs 1 to 29 of the Statement of Defence and claims further against the Claimant in the following manner:

1. Possession of the 3 bedroom flat let to him in a good and tenantable condition.
2. The sum of N10, 000.00 monthly from the month of September 2010 - August 2011 (total N110, 000.00) as arrears of rent.

3. The sum of N20, 000.00 monthly (being the current rental value of the apartment) as mense (sic) profit from September 2011 till the Claimant finally give up possession.
4. The sum of N292, 000.00 as special damages

PARTICULARS OF SPECIAL DAMAGES

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| (a) 8 Doors               | at N14, 000 each | =N112, 000       |
| (b) 2 W. C. Toilet        | at N6, 000 each  | =N12, 000        |
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| (f) Satelite Wire         |                  | =N5, 000         |
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| (i) Protector (Back Gate) |                  | =N6, 000         |
| (j) Painting              |                  | =N100,000        |
| (k) Cement                |                  | =N2, 000         |
| (l) LABOUR                |                  | <u>=N10,000</u>  |
|                           |                  | <u>=N292,000</u> |

5. The sum of N2, 000,000.00 as general damages.ö

The law is trite that a Counter Claim is like the claim of the Claimant in which the Defendant must join issues with the Claimant. Failure to do so is fatal to the case of the Claimant where the Claimant fails in his claims. See MAOBISON INTER-LINK ASSOCIATED LTD V. U.T.C. (NIGERIA) PLC. (2013) NSCQR VOL. 54.2 PAGE 681 where Olukayode Ariwoola, JSC held at pages 1353-1354 thus:

öOn the necessity or otherwise of a reply to Counter Claim,

it is true that it is necessary for a Plaintiff to file and serve defence to a Counter Claim to join issues with the Counter Claimant. If the Plaintiff fails to file a defence to properly traverse the material averment in the Counter Claim, then there will be no issues joined between the parties on the subject matter of the Counter Claim and the allegation contained in the Counter Claim will be regarded as admitted. Ordinarily, failure of a Plaintiff to file a defence to a Counter Claim may not be damaging or disastrous if he succeeds in his Claim. The success may after all render useless the Counter Claim, depending on the nature of the Counter Claim. But Where he fails in his Claim and he had led no defence to the Counter Claim, the Defendant's Counter Claim will be taken as uncontroverted.

In the instant case, the claims of the Claimant have failed. He did not file a defence to the Counter Claim. The Counter Claim is therefore deemed uncontroverted. Should this Court then go ahead and hold that the Defendant has proved his Counter Claim? Answering this poser in the affirmative without much ado would not meet the requirement of the law. This is because the Defendant must prove the Counter Claim on the strength of his case.

The uncontroverted evidence of the Defendant is that the Claimant absconded from the said apartment which he was paying N10, 000.00 per month since the 28<sup>th</sup> day of September, 2010 and has not returned till date; that the Claimant is still in possession of the 3 bedroom flat since September, 2010 without paying rent. See paragraphs 2, 3, 4 and 5 of the D.W.1's evidence on oath to the above which are again reproduced for emphasis:

2. That the Claimant is a monthly tenant in my residence at No. 1, Ize-Iyamu Street, Evbuoriararia Quarters, Benin City occupying 3 bedroom flat at the rate of N10, 000.00 per month.
3. That I never detained and or destroyed the Claimant's property or any property at all.
4. That the Claimant absconded from the said apartment since on the 28<sup>th</sup> September, 2010 and has not returned till date.
5. That the Claimant is still in possession of the 3 bedroom flat let to him in my residence and has not paid rent since September, 2010 till date.

Prayer One of the Counter claim is possession of the 3 bedroom flat let to the Claimant by the Defendant in a good and tenantable condition. In attempting to prove that the case of the Claimant and Defendant/Counter Claimant herein is that of Landlord/Tenant relationship, the Defendant tendered Exhibit 6B which was a Notice to Quit. Paragraph 2 of the Exhibit says:

“We have our client’s instruction to give you one (1) Clear Month Notice to quit and deliver up possession of the 3 bedroom flat apartment and its appurtenances thereof which you hold of him as a monthly tenant. Your Landlord wants to make personal use of the said apartment.” (Underline supplied by me for emphasis).

Exhibit “B” was dated 5<sup>th</sup> July, 2011. And paragraph three of Exhibit “B” says:

“For the avoidance of doubt, this notice expires  
on 31<sup>st</sup> day of August, 2011.”

By computation of date, does from the 5<sup>th</sup> day of July, 2011 to the 31<sup>st</sup> day of August, 2011 meet the mandatory one month notice to quit? Without any iota of doubt, it does.

The above Notice to Quit cannot sustain the claim of the Counter Claimant as it is on record that the Claimant vacated the property in question on the 30<sup>th</sup> day of September, 2010. This was subsequent upon the information passed to the Counter Claimant on the 29<sup>th</sup> day of September, 2010 by the Claimant that he was relocating to his house. What is more? It was after the 30<sup>th</sup> September, 2010 when the Claimant left the house of the Defendant/Counter Claimant that the latter issued Exhibit “B”. Evidence on cross examination by the Defendant, testifying as DW1, justified the above when he said:

øI did not seize the property he left behind because he failed to repair my house. I told him to repair the flat. He brought a carpenter whom he abandoned. I had reported the matter to police before I issued Exhibit øBö. (Underling supplied by me for emphasis).

What is logically deducible from my foregoing reasoning is that the Claimant vacated the Defendantø's house on the 30<sup>th</sup> day of September, 2010. I so hold. Prayer one of the counter claim is therefore unmeritorious and accordingly dismissed by me.

Claim one of the Counter claim having been dismissed by me principally on the ground that the Claimant vacated the Defendantø's house on the 30<sup>th</sup> day of September, 2010, other prayers on the Counter claim founded on prayer one are therefore incompetent. Considering them would amount to academic exercise which this Court is not wont to embark on. Prayers 2, 3, 4 and 5 of the Counter Claim are also accordingly dismissed by me.

What is deductible from the evidence of both parties is that the Claimant vacated the property of Defendant without putting it in tenantable condition while the Defendant took the law into his own hands by not allowing the Claimant take some of his property out of the premises until the repair of the apartment was done by him. This was the genesis of their problem.

Both of them were therefore being clever by half in the presentation of their respective cases before this Court. Neither of them is entitled to justice having come to court with unclean hands. See MADAM MEMINOTU IBRAHIM V. DR. LASISI OSUNDE & 2 ORS. (2009) NSCQR VOL. 37 PAGE 196 where P.O. Aderemi, JSC held at P.222 thus:

“Let me say that no polluted hand shall be allowed  
to touch the pure fountain of justice.”

On the whole, I hold that both the claims of the Claimant and the Counter Claim of the Defendant are unmeritorious. Both are accordingly dismissed by me as I answer Issues One and Two against the Claimant and Issue Three against the Defendant/Counter Claimant.

HON. JUSTICE V.O. EBOREIME  
JUDGE  
Tuesday, 7<sup>th</sup> June, 2016

Counsel:

B.O. Sideso, Esq. for the Claimant.

M.I. Oriazowalan, Esq. for the Defendant.

