

IN THE SMALL CLAIMS COURT OF RIVERS STATE OF NIGERIA
IN THE PORT HARCOURT MAGISTERIAL DISTRICT
HOLDEN AT PORT HARCOURT

SUIT NO: PMC/SCC/327/2025

BETWEEN

CHIEF CELESTINE OFORHA UGWONALI
Suing through his Attorney, Uzoma O. Benjamin Esq

CLAIMANT

AND

OGOMUEGBUNAM NWAOBODO

DEFENDANT

PARTIES: All absent

APPEARANCES: Nil

JUDGMENT

The Claimant brought this action via an Ordinary Summons against the Defendant on the 24th day of June, 2025, claiming the reliefs below:

Debt/Amount Claimed - N150,000.00
Fees - None
Costs - N50,000.00
Total - N200,000.00

Upon the filing of the matter in court, an Ordinary Summons attached with the Complaint Form and Claim was served on the Defendant electronically via his WhatsApp Number 08037070649 on the 16th day of July, 2025. The Affidavit of Service is also before the Court. The Defendant was absent and not represented in court on the 11/09/2025 when the matter came up for plea and hearing and upon confirmation of service, a plea of not liable was entered for the absent Defendants and evidence of Claimant's witness one (CW1) taken.

The Claimant's attorney, Uzoma O. Benjamin Esq, testified under oath on the said date of 11/09/2025 as CW1 and tendered Two (2) Exhibits which was admitted and marked as follows: The Power of Attorney made the 22nd day of March, 2024 as Exhibit A and the Letter of Demand (FORM RSSC1) as Exhibit A1.

The brief unchallenged evidence of the Claimant CW1 as stated in his Deposition dated the 21st day of July, 2025 is that he has a Power of Attorney donated to him by the Claimant on record to institute this action in court against the Defendant. That the Defendant was a tenant of the Claimant, whose tenancy expired in April, 2024 and upon the expiration of the Defendant's tenancy, he packed out of the premises in the middle of July, 2024 without paying his arrears of rent for the months of May to July, 2024, at the rate of N25,000.00 (Twenty Five Thousand Naira) per month, which he says amounted to the total sum of N150,000.00 (One Hundred and Fifty Thousand Naira). That a Demand letter (Exhibit A1) was served on the Defendant for the payment of same and till date, the

Defendant has refused to pay, hence the payment of the sum of Fifty Thousand Naira to his lawyer for the institution of this matter in court for the recovery of same. That was his evidence and matter adjourned for cross-examination.

The Defendant was absent and not represented in court when the matter came up for cross-examination on 22/09/2025 and he was foreclosed from cross-examining the CW1 and the CW1 was discharged. Hearing notice was ordered to be filed and served on the Defendant and matter adjourned for defence. The Defendant was still absent in court on the 21/10/2025 when the matter came up for defence, despite being served with the Summons and the hearing notice as ordered and he was foreclosed from defending the suit. The Claimant's Counsel C. C. Ohanene therefore applied to waive his right to filing of final written address since the matter was undefended and urged the court to grant the Claimant's relief on the strength of the evidence already led and same was granted and judgment reserved.

From the above, the only issue that calls for determination is whether the Claimant has been able to prove its case on the preponderance of evidence and on the balance of probabilities to be entitled to the relief sought.

Now, in civil cases, the burden of first proving existence or non-existence of a fact lies on the party against whom the judgment of the court would be given if no evidence were produced on either side, regard been had to any presumption that may arise on the pleadings. See Section 133 (1) and (2) of the Evidence Act, 2011 (as amended). See also *Mrs. Funmilayo Mubo Adeniran & ORS V. Mr. Sikiru Adio & Anor* (2024) 16 NWLR (Pt. 1964) pg. 351, (SC). As stated above, the only claim of the Claimant is for payment in the sum of N150,000.00 (One Hundred and Fifty Thousand Naira), being and representing the outstanding indebtedness of the Defendant to the Claimant, together with cost of N50,000.00 (Fifty Thousand Naira), which the Defendant has refused to pay till date, despite repeated demands. The law is now settled that a cause of action in a suit for recovery of debt accrues when a debtor fails to pay his debt after a demand to pay has been made. See *Akinsola & Anor. V Eyinnaya* (2022) LPELR-57284 (CA). See also **Article 2 (1) (d) of the Rivers State Small Claims Court Practice Direction, 2024**, which makes the service or issuance of demand letter a condition precedent to the commencement of an action against the Defendant.

In the instant case, there is Form RSSC1 (Exhibit A1), the letter of demand, dated 09/08/2024 and which was served on the Defendant, showing that a formal demand for the total sum of N200,000.00 (Two Hundred Thousand Naira) was made and same served on the Defendant, thereby satisfying the condition precedent for the commencement of this suit. However, from the evidence before the court and as stated by the CW1 in his Deposition on Oath, the Claimant is claiming for the arrears of rent owed the Claimant by the Defendant for the months of May to July, 2025, which is three months, at the rate of N25,000.00 (Twenty Five Thousand Naira) per month. A careful mathematical calculation of the above shows that if you multiply the three months (3) owed by the twenty Five Thousand Naira the Defendant was paying per month, it gives you the sum of Seventy Five Thousand Naira and not One Hundred and Fifty Thousand the CW1 is claiming before the court. Even when you add the Fifty Thousand Naira cost of litigation being claimed to it, it sums up to One Hundred and Twenty Five Thousand Naira and not the sum of Two Hundred Thousand Naira being claimed on Exhibit A1 before the court.

The issue of arrears of rent, being a liquidated money demand is ascertainable and therefore can be claimed by a landlord during the subsistence of a tenancy and the

Defendant, having stayed in the property from April, 2025 when the rent expired till July, 2025 when he packed out, has not only a moral duty but the legal duty to pay the arrears of rent for the time he lived in the premises to the Claimant. I have gone through the evidence before the court and there is nothing that shows or suggest that the Defendant has paid the outstanding. The Defendant therefore, having not denied or challenged the above evidence of the CW1 with any credible evidence, is deemed to have admitted same and the law is trite that facts not challenged or controverted are deemed admitted and the court can act on same. See **NACEN V. BAP (2011) 11 NWLR (Pt. 1257) pg 193**. Consequently and in the absence of any credible evidence to the contrary, this court is therefore left with no option than to rely on the uncontroverted evidence of the Claimant. Flowing from the above, it is the court's view therefore that the Claimant has been able to prove his case with credible evidence and on the preponderance of evidence to be entitled to the relief sought. The Claimant is therefore entitled to the outstanding sum of N75,000.00 (Seventy Five Thousand Naira) together with cost of N50,000.00 (Fifty Thousand Naira) only and I so hold.

Accordingly, it is hereby ordered that;

The Defendant shall pay to the Claimant the total sum of N125,000.00 (One Hundred and Twenty Five Thousand Naira) only, being and as representing the outstanding indebtedness of the Defendant to the Claimant.

This is the Judgment of this court. I make no further Orders.

Dated this 31st day of October, 2025



**LEZIGA C. MITEE (MRS)
CHIEF MAGISTRATE I, MAGISTRATE COURT 12**

