

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

SUIT NO: PMC/SCC/272/2024

BETWEEN

OGBONNA UNEKE

CLAIMANT

AND

CHIEF ANTHONY WUCHE

DEFENDANT

PARTIES: Parties all absent

APPEARANCES: Nil

JUDGMENT

The Claimant brought this action via an Ordinary Summons against the Defendant on the 2nd day of June, 2024, claiming the reliefs below:

Debt/Amount Claimed - N450,000.00
Fees - N300,000.00
Costs - N200,000.00
Total - N950,000.00

Upon the filing of the matter in court, an Ordinary Summons attached with the complaint form and claim was served via pasting by an Order of Court, on the Defendant's gate at No. 116 Aba Road, Port Harcourt, on the 14th of July, 2025, by an Order of Court. The Affidavit of Service is also before the Court. The Defendant was absent and not represented in court on the 28/07/2025 when the matter came up for plea and hearing and upon confirmation of service, a plea of not liable was entered for the absent Defendant and evidence of Claimant's witness one (CW1) taken.

The Claimant on record, Mr. Ogbonna Uneke, testified under oath on the said date as CW1. He adopted his Witness Deposition on Oath dated 11/11/2025 and filed on the 14/07/2025 and tendered Three (3) Exhibits admitted and marked as follows: The Memorandum of Understanding Between the Defendant Chief Anthony Wuche and the Claimant, Mr. Ogbonna Uneke made on the 14/05/2024 and signed by the parties as Exhibit A; the Rent Receipt in the sum of One Million Naira (N1,000,000.00), being payment for Store at No.116 Aba Road, Port Harcourt, Rivers State, as Exhibit B; The Legal Conquest Chambers Receipt of payment for professional fees, received from the Claimant, Mr. Ogbonna Uneke, in the sum of Two Hundred Thousand Naira (Two Hundred Thousand Naira), dated 04/07/2025 as Exhibit B1.

The brief unchallenged evidence of the Claimant (CW1) as stated in his Deposition is that sometime in the year 2024 whilst looking for a shop, he met the Defendant who told him that he had a shop at No.116 Aba Road which was then being occupied by another tenant. That the Defendant took him to the said shop and promised him that upon the expiration of the tenancy of the existing tenant in October, 2024, he would rent the one Lock-Up shop to him so he Claimant could use it for his business. That the Defendant agreed to rent the shop to him in advance if he could pay him part of the shop rent, to enable him the Defendant solve his pressing business need. That he negotiated the rent of the shop with the Defendant and they agreed on the sum of N950,000.00 (Nine Hundred and Fifty Thousand Naira and N50,000.00 (Fifty Thousand Naira) for One (1) year rent of the shop and Drink money respectively. That in order to assure him of his confidence in the transaction, he told the Defendant that he would like the transaction to be in writing and the Defendant said he should go ahead, which led him Claimant to consult his lawyer,

Julius O. John Esq, to prepare the Agreement titled 'Memorandum of Understanding ' for them, which was duly executed on the 14th day of May, 2024. That the Defendant demanded that some money be advanced to him and collected from him the sum of N400,000.00 (Four Hundred Thousand Naira) and N50,000.00 (Fifty Thousand Naira), being part-payment for one year rent and Drink money respectively, for the shop. The CW1 further stated that it was agreed that upon his taking over possession of the shop, he would pay the sum of N550,000.00 (Five Hundred and Fifty Thousand Naira) as balance for the full and complete payment for the one year rent of the shop, as contained in paragraph three of their agreement (Exhibit A).

Continuing, the CW1 stated that it was also agreed that the Defendant would take steps to eject the existing tenant, as at that time, not later than 7th of November, 2024, if the tenant refuses to vacate the shop upon the expiration of his rent, as captured in paragraph four (4) of their memorandum. That it was further agreed that the Defendant would handover the shop to him not later than the 8th of November, 2024 upon recovery of the shop from the tenant at that time. That it was also agreed that if the Defendant failed to comply with his obligations as contained in the Memorandum of Understanding by handing over the shop to him by 8th of November, 2024, that he can take any legal against him. That when it was time for the Defendant to handover the shop to him, he approached the Defendant severally with his lawyer but the Defendant kept promising that he was working towards it. That he later discovered that the Defendant was not the real owner of the shop which he presented as his own and took money for and that the shop belonged to one of the Defendant's brothers by name, Mr. Isreal Wuche. That upon that discovery, he approached the said Mr. Israel Wuche and indicated interest in renting the shop from him and he succeeded in renting the shop from the Isreal Wuche, paid one year rent and was issued the Tenancy Agreement. That he renovated and packed into the shop sometime in June, 2024 and has been in the shop without any disturbances from any one till date. That the Defendant pretended to be the owner of the shop and defrauded him of his money. That despite repeated demands to the Defendant to refund his money, he has refused to do so, which necessitated his engaging a lawyer to prosecute this matter in court for the recovery of his part-payment for the shop and paid the lawyer the sum of N200,000.00 (Two Hundred Thousand Naira) (Exhibit B). That was the evidence of the CW1 and matter adjourned for cross-examination.

The Defendant was absent and not represented in court when the matter came up for cross-examination 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 at least five working days before the next hearing date and matter adjourned for defence. The Defendant was still absent in court on the 07/10/2025 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 J. O. John, 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 his 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 the refund of the sum of N400,000.00 (Four Hundred Thousand Naira), and N50,000.00 (Fifty Thousand Naira), being and representing the money he paid to the Defendant as part-payment for the one Lock-Up shop, situated at No.116 Aba Road, Port Harcourt and the N50,000.00 (Fifty Thousand Naira) he paid as Drink Money respectively, which the Defendant has refused to pay back 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 RSSC 1, the Letter of Demand before the court, dated 26/05/2025, demanding for the immediate payment of the sum of Four Hundred and Fifty Thousand Naira (N450,000.00), showing that a formal demand for the payment was made and same served on the Defendant on the 14th day of July, 2025, thereby satisfying the condition precedent for the commencement of this suit. From the various Exhibits before the court especially Exhibit A, the Memorandum of Understanding signed by both parties, it is very clear and not in dispute that a total sum of N450,000.00 (Four Hundred and Fifty Thousand Naira) was given by the Claimant to the Defendant, representing part-payment of rent for the shop and the Drink money, as captured on page 2 of the said Exhibit A. However, despite such disbursement, the Defendant failed to perform his own side of the bargain by delivering to the Claimant the one Lock-Up shop as agreed and has equally refused to refund the Claimant the part-payment sum of N450,000.00 (Four Hundred and Fifty Thousand Naira) for the failed transaction.

The law is trite that where parties have entered into a contract or an agreement, they are bound by the provisions of the contract or agreement. This is because a party cannot ordinarily resile from a contract or agreement just because he later found that the conditions of the contract or agreement are not favourable to him. See *Arjay Ltd & Ors V. A.M.S Ltd (2003) LPELR-555 (SC)*,

The Defendant, having breached or vitiated the contract by unilaterally resiling from the contract through his act of non-performance, has a moral duty to refund or pay back to the Claimant the said sum of N450,000.00 (Four Hundred and Fifty Thousand Naira) Thousand Naira), being the money he fraudulently took from the Claimant under the guise that he was going to rent him a one Lock-Up shop, a representation which the Defendant knew was false. There is no evidence before the court showing or suggesting that the Defendant has paid the outstanding part-payment of rent he collected from the Claimant. 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.

The law is trite that Courts exist to do substantial justice to parties before it and works with credible evidence and 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. Premise on the above, the Claimant is therefore entitled to the outstanding part-payment of rent paid to the Defendant in the total sum of N450,000 (Four Hundred and Fifty 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 outstanding sum of N450,000.00 (Four Hundred and Fifty Thousand Naira) only, being and as representing the outstanding indebtedness of the Defendant to the Claimant.

That cost of N50,000.00 (Fifty Thousand Naira) is hereby awarded against the Defendant and in favour of the Claimant.

This is the Judgment of this court.



31st
Dated this ^{31st} day of , 2025

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

