

IN THE MAGISTRATE COURT OF RIVER STATE OF NIGERIA
IN THE PORT HARCOURT MAGISTERIAL DISTRICT
HOLDEN AT PORT HARCOURT
BEFORE HIS WORSHIP S. S. IBANICHUKA, ESQ
HOLDEN AT SMALL CLAIM COURT 6 PORT HARCOURT

PMC/SCC/251/2024

DONATUS UCHECHUKWU DURU **CLAIMANT**
(SUING THROUGH HIS ATTORNEY
C.N. NJIGWUM ESQ)

AND

JOAN ONITA **DEFENDANT**

JUDGEMENT

The Claimant instituted this action against the Defendant via forms RSSC 2 and RSSC 3 of this court filed on the 09-10-24 claiming for the following:

- i. The sum of **₦540,000.00 (Five Hundred and Forty thousand Naira)** only being unpaid arrears of rent by the defendant for a period of two years and three months from 2021 to August 2023.
- ii. **₦100,000 (One Hundred Thousand Naira)** only representing legal fees
- iii. **₦100,000.00 (One Hundred Thousand Naira)** only as cost of this litigation.

In proof of his case the claimant called a sole witness CW1 (The Claimants Attorney C.N. Njigwum Esq of counsel) and tendered Exhibits A and A1 - being print out of whats app chats and Exhibit B a certificate in compliance to section 84 of the Evidence Act. The Defendant did not cross examine CW1 and did not defend this suit. However, the defendant filed a notice of Preliminary objection dated the 29-11-2024 and filed on 2-12-24, same was fixed for hearing on 12-12-24 on that date the Defendant/Application was not in court neither was she represented by counsel. the said motion was struck out for being abandoned. On same date the defendant was foreclosed from cross examining the CW1. The case was adjourned to 18-12-24 for defence, on 18-12-24 the defendant through his lawyer wrote a letter for adjournment in one breath and in another breath was in court through another counsel holding the brief of the Defendants counsel on record. The counsel holding brief informed the court that he has a preliminary objection, it is worthy of note that this preliminary objection is exactly the same with the one struck out on 12-12-24.

Defendants counsel moved his refiled preliminary objection now dated 13-12-24 and filed on same date, brought pursuant to Section 6 (6) of the Constitution of the Federal Republic of Nigeria 1999 and under the Rivers State Small Claims Court Practice Direction 2023 and under the inherent jurisdiction of this Honourable court., seeking for an order of this court striking out this suit for want of jurisdiction, the grounds of the application are stated on the face of the motion paper. The motion is supported by a 4-paragraph affidavit and three exhibits attached, namely

Exhibits A, B and C, inline with the Rules of this court the applicants counsel also filed and adopted his written address as his argument in support of the application. The crux of this application is that the claimants claim before this court borders on recovery of rent and that the Rivers State Small Claims Handbook prohibits same. Counsel urged the court to strike out the suit. The Claimant/Respondents counsel on his part sought leave of court to reply orally on points of law, the application was granted and respondents counsel gave an oral reply on points of law. The crux of the respondents counsel oral reply on points of law is that the law which the applicants counsel relies on in bringing this application being the Rivers State Small Claims Court Practice Direction 2023 is obsolete because there is a new law of 2024 and that the 2024 law made express mention of and forbids the claim for rent and recovery of premises and that what the claimant is claiming for is not rent or to recover premises but a claim for arrears of rent being a liquidated money demand and that this is inline with the provisions of the Rivers State Small Claims Practice Direction of 2024. he relied on judicial authorities which are in the records of the court but for want of time and space I will not reproduce same in this ruling, the authorities are to the effect that since rent and recovery of premises were expressly mentioned, arrears of rent was expressly omitted and same cannot be contemplated into the law. He urged the court to dismiss the applicants application with substantial cost of ₦100,000.00 (One Hundred Thousand Naira) only.

The applicants counsel did not respond to the respondents counsel reply on points of law.

I have considered the Defendants/Applicants application and also listened to the claimant/ respondents counsel oral reply on points of law. While agreeing with the respondents counsels submission that the Rivers State Small Claims handbook of 2023 is obsolete I also take cognizance of the contents of the 2024 version of the said practice direction and Exhibits B and C attached to the applicants application which is form RSSC 2 of this Court.

though the applicants counsel may have come under the old law, the content of the new practice direction of 2024 remains same with that of 2023. the applicants counsel argues that the claimants claim is not one contemplated by the Rivers State Small Claims Practice Direction, that the claimants claim as shown on the face of form RSSC 2 and 3 of this court states clearly that same borders on rent and arrears of rent owed by the defendant for a period of two years and three months from 2021 to August 2023. There is no where on the face of the Exhibits relied upon by the applicant where it was stated that the claimant claims for rent. The claimant also stated in evidence before this court through CW1 on 27-11-24 that the Defendant is no longer a tenant of the claimant that the defendant has left the premises since 2023 and that the claimants claim is for arrears of rent. Such claim is a claim for liquidated debt as contemplated by the Rivers State Small Claims Practice Direction 2024. see also the case of **KABO AIR LTD & ANOR VS. MIMI BUREAU DE CHANGE LTD & ANOR (2020) 4 NWLR (PT.1715) 488 at Page 502, Paras B-F** which define liquidated debt to be among other things a specific sum of money usually due and payable.

The claimant claims is for a specific sum of money representing arrears of rent and this court has the jurisdiction to entertain same, accordingly the application of the applicant fails and same is dismissed. The respondents counsel asked for cost of N100,000.00 in the event the application fails. Award of Cost is at the discretion of this court and same shall be considered in cause of this judgement.

JUDGEMENT

The summary of the facts of this case as put forward by the Claimant are that the Claimant is represented in this case by his attorney, that the defendant rented an office apartment from the claimant for ₦240,000 (Two Hundred and Forty Thousand Naira) per year, that the defendant did not renew her rent for 2021,2022 and part of 2023, as at the time the defendant left she was owing rent for two years and six months, that the defendant is currently indebted to the claimant to the tune of ₦540,000 (Five Hundred and Forty Thousand Naira) being arrears of rent, that from the whats app chat between the defendant and the claimant, the defendant did not deny owing the claimant.

The sole issue for determination as raised by this court in this judgment is "*Whether the claimant has proved his claim before this court. ?*"

The defendant was foreclosed from defending this suit on 17-12-24 due to the defendants lack of readiness to defend the suit, the only defence of the defendant being the defendants counsels preliminary objection to this suit having being dismissed, there is no defence to this suit.

In the face of the claimants evidence in prove of his case and the want of evidence by the defendant in rebuttal, the claimant is entitled to judgment on the merits of the case if he meets the standard of prove required by law. In a civil case such as this the standard of prove is on a preponderance of evidence. See: **Section 134 of the Evidence (Amendment) Act 2023 .**

The claimant as CW1 relied on Exhibits A, B and C in proof of his case and led evidence, the evidence led by the CW1 are uncontroverted before this court, the implication is that the Defendant is deemed to have admitted all the facts and claims as stated by the Claimant, the law is trite that facts admitted need no further proof, see **Section 123 Evidence (Amendment) Act, 2023** and the case of **CBN V. DINNEH (2010) 17 NWLR (PT. 1221) PAGE 125, 162 at paragraphs C-D.**


I have carefully considered the evidence adduced by the claimant in this case and all the prayers as sought by the claimant and which for the sake of emphasis I must repeat are unchallenged by the Defendant. I therefore find no difficulty in arriving at the conclusion that the claimant has proved his case on the standard required by law and that this is indeed a deserving circumstance for the court to order as prayed by the claimant, except for prayer 2 being cost representing legal fees which the claimant led no evidence in support of, same is deemed abandoned and accordingly refused.

In the circumstance it is adjudged that the claimant is entitled against the defendant as follows:

- i. The sum of **₦540,000.00 (Five Hundred and Forty thousand Naira)** only being unpaid arrears of rent the defendant owes the claimant for a period of two years and three months from 2021 to August 2023.
- ii. **₦150,000.00 (One Hundred Fifty Thousand Naira)** only as cost.

I make no further orders.

Dated this 19th day of December 2024


Signed:
S. S. IBANICHUKA , ESQ.
19/12/2024.

