

**IN THE CHIEF MAGISTRATE COURT OF RIVERS STATE OF NIGERIA  
IN THE RUMUODOMAYA MAGISTERIAL DISTRICT  
HOLDEN AT RUMUODOMAYA**

**BEFORE HIS WORSHIP B.H. ABE (MRS) ESQ., SITTING AT THE CHIEF  
MAGISTRATE COURT 1 RUMUODOMAYA ON WEDNESDAY THE 17TH DAY OF  
JANUARY, 2024**

**RMC/SCC/15/2023**

***BETWEEN***

**THWID INTEGRATED SERVICES CONCEPT  
(*SUING THROUGH THEIR LAWFUL  
ATTORNEY, THANKGOD ORJI*)**

}

**CLAIMANT**

**VS.**

**EUCHARIA OLUCHI ILOH**

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**DEFENDANT**

Matter for Judgment

Parties;

No appearance for the defendant.

**JUDGMENT**

The Claimant claims as follows:

1. The claimant claims against the defendant the sum of N233,000.00 (Two Hundred and Thirty-Three Thousand Naira) only, for arrears of rent for four months, the defendant has since vacated the premises, issued a cheque from FCMB, which was not credited to the defendant.

**Facts**

The claimant via Form RSSC 2 and RSSC 3 commenced this suit against the defendant. The defendant was served with the originating processes via an order for substituted service issued by this Court on the 18<sup>th</sup> of September, 2023, after three failed attempts at personal service by the Court bailiff as deposed in Form RSSC 4 and Form RSSC 6 before me, being the affidavit of service, dated 30<sup>th</sup> September, 2023.

The claimant's counsel Agochi Amadi made the application for substituted service on the 18<sup>th</sup> September, 2023.

The claimant's counsel, A. Amadi, Esq. entered a plea of not liable for the defendant due to her absence after the Court confirmed proof of service.

The Court ordered a hearing notice to be served on the defendant.

The claimants opened their case on the 11<sup>th</sup> October 2023, cw1, the claimant's attorney gave evidence, gave his name as ThankGod Orji, a real estate consultant, he informed the Court that the defendant was his tenant at No. 17 Peace close near Aparara Road,, Rumuigbo occupying a two bedroom flat, her rent has expired, she paid the rent from January – April 2021, pleaded for more time, she has vacated the premises,, she issued a cheque of N233,000.00 (Two Hundred and Thirty-Three Thousand Naira) before me as Exhibit A, the cheque could not be cashed because it was from a savings account, she refused to pay for the premises.

The letter of demand written to the defendant is before the Court as Exhibit B.

He prayed the Court to grant his claim of N233,000.00 (Two Hundred and Thirty-Three Thousand Naira), being rent owed by the defendant to the claimant, also for the legal expenses incurred by him to be paid to the claimant.

At the end thereof, the claimant's counsel dismissed the plea for the cost of legal fees.

The Court foreclosed the defendant from cross-examination of cw1 due to her absence.

The claimant's counsel closed his case and the Court adjourned for defence.

The Court ordered a second hearing notice to be served on the defendant.

The defence was foreclosed from defending this suit on the 12<sup>th</sup> October, 2023 due to her consistent negligent absence.

The Court granted leave to the claimant's counsel to amend the name of the claimant on the 27<sup>th</sup> October, 2023 and ordered that a hearing notice be served on the defendant with the name change.

The name of the claimant was amended to Thwid Integrated Services Concept.

On the 5<sup>th</sup> December, 2023, cw1 was recalled by the claimant's counsel, A. Amadi, the Power of Attorney donated to cw1 by the claimant was tendered through him before the Court as Exhibit C.

He was also foreclosed from cross-examination by the defendant due to her absence.

### **Issue for determination**

Whether the claimant is entitlement to his claim from the preponderance of evidence before the Court?

## COURT

Exhibits tendered include;

1. Exhibit A – the cheque of N233,000.00 (Two Hundred and Thirty-Three Thousand Naira), which the claimant did not cash given by the defendant.
2. Exhibit B - Letter of demand dated 9<sup>th</sup> August, 2019.
3. Exhibit C – The Power of Attorney donated by the claimant, his Attorney, cw1, dated 15<sup>th</sup> January, 2018.

The claimant in this case gave evidence in support of his claim via cw1, the claimant's attorney, ThankGod Orji, he informed the Court that despite several repeated demands to get the defendant to pay her outstanding rent to the landlord, she has failed and refused to so do.

A letter of demand, Exhibit B before me was written to her, dated 9<sup>th</sup> August, 2019, but she refused to pay her rent, she vacated the premises leaving an outstanding bill of N233,000.00 (Two Hundred and Thirty-Three Thousand Naira) for rent.

The defendant gave the claimant a cheque of N233,000.00 (Two Hundred and Thirty-Three Thousand Naira), which could not be cashed, she was told the cheque could not be cashed but still refused to pay her outstanding rent.

The Court issued hearing notices to be served on her, which were duly served on the defendant, Proof Of Service is before the Court, served by the bailiff of Court on the 6<sup>th</sup>, 10<sup>th</sup>, 12<sup>th</sup> and 23<sup>rd</sup> of October, respectively. Endorsement and Return copies before me. These Hearing notices were served on her but she did never appeared before this Court.

The Court has held in plethora of cases that a hearing notice is one of the legal ways of informing the defendant of the case instituted against him or her.

The defendant has by her conduct waived her right to defend this suit and by so doing, admitting to the evidence of the claimant, as the law is trite that facts admitted need no further proof." See 123 of the Evidence Act 2011.

See John Andy Sons and Co. Limited Vs. Mfon (2006) 12 NWLR (pt. 995) 461 @ 478 para. N; "Where a party in a legal duel receives a hearing notice but decides to be absent, the obvious conclusion is that he does not intend to contest the case or he has chickened out or he has abandoned it".

See also, Newswatch Comm. Ltd. Vs. Atta (2006) 12 NWLR (pt. 993) 144 SC Banna Vs. Tele Power (Nig.) Ltd. (2006) 15 NWLR (Pt. 1001) 198 SC.

The claimant's counsel rightly further submitted therein and I agree that facts and or evidence neither denied nor challenged are deemed admitted and need no further proof.

See Section 123 Evidence Act, 2011 and Ogolo Vs. Fubara (2003) 11 NWLR (pt. 831).

See also for hearing notices and the importance thereof, Adekoya Vs. Attah (2002) LPELR 57223 CA, and Banigo Vs. Governor of Adamawa State (2012) All FWLR (pt. 633) 1908.

The claims against her were neither controverted, discredited nor challenged by her personally, or through a counsel.

The claimant's counsel cw1, appeared on behalf of the claimant as his Attorney, to whom the claimant donated a Power of Attorney to manage his properties amongst others. The said POA is before me as Exhibit C.

It is trite law that where the defendant does not debunk the evidence against him, he does not challenge or controvert the evidence against him, the Court is bound to accept such evidence as being true and act on it accordingly. The evidence given by cw1 and cw2 were not challenged or discredited by the defence.

See the Supreme Court in: Gov. Zamfara state Vs. Gyalange (2013) ALL FWLR (Pt. 658) 830 Ratio 5 where it stated that:

*“Evidence that is neither attacked nor successfully challenged is deemed to have been admitted and the Court can safely rely on same in the just determination of the case”.*

See Ighreiniovo Vs. SSC Nig. Ltd. (2013) 3-4 MJSC (Pt. 1) Pg. 190 Ratio 2.

Evidence led on any matter not pleaded goes to no issue and ought to be disregarded when giving judgment. See Oke-Bola Vs. Molake (1975) 5 S.C. 235; Emegokwue Vs. Okadigbo (1973) 4 S.C. 113 referred to. P. 289, para H.

Where an adversary or a witness called by him testifies on a material fact in controversy in a case, the other party should, if he does not accept the witness's testimony as true, cross examine him on that fact, or at least show that he does not accept the evidence as true. Where, as in this case, he fails to do either, a Court can take his silence as an acceptance that the party does not dispute the fact. See Amadi Vs. Nwosu supra, p. 284, paras G-H.

The standard of proof required when evidence is unchallenged in a civil case is stated in the case of Abubaker Bello Vs. Mallam Isa Pategi (2000)8 NWLR (pt. 667) 21 on page 33 para H, thus:

*“Where evidence is unchallenged, a minimum or no further proof is required in fact no corroboration of the evidence is required whatsoever.”*

It is not the duty of the Court to force the defendant to defend this suit. See the cases of Nwarata Vs. Egboka (2006) ALL FWLR (Pt. 338) Ratio 6. The Supreme Court has noted most recently that:

*“It is the law that unchallenged evidence which is credible stands and should be accepted and acted upon by the Court”.*

In the case of Obimiami Brick & Stone (Nig.) Ltd. Vs. ACB Ltd. (1992)3 NWLR (Pt. 229) page 260, the Supreme Court of Nigeria held:

*“No Court has a right to force a party to give evidence, after both parties to a dispute had been duly notified of the hearing date and a party for no justifiable reason decided to, so to say, opt out of the proceedings, the case presented by the other party, once it’s not discredited in any legal way should be the case to be considered on its merit. The intention of the other party why he refused to take part is not the business of Court”.*

The Court is duly satisfied that the claimant has proved his entitlement to his claim from the preponderance of evidence before the Court. See Exhibits A and B, though minimal, which however suffices to entitle him to his claim.

The defendant had ample opportunities to defend this case but chose not to, despite the repeated hearing notices served on her by the Court bailiff, she failed to appear before this Court.

The Court accordingly enters judgment in favour of the claimant and orders as follows;

1. That the defendant pays the claimant the sum of N233,000.00 (Two Hundred and Thirty-Three Thousand Naira) only, being the rent owed by the defendant to the claimant outstanding, which the defendant has failed and refused to pay, having vacated the premises of the claimant.
2. That the defendant pays the rent forthwith.

This is the judgment of the Court.



**MRS BARIYAAH .H. ABE**  
**Chief Magistrate**  
**17th January, 2024.**

