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

RESUMED ON MONDAY THE 1st DAY OF MARCH, 2024
BEFORE HIS WORSHIP, BETTY SUNNY-HART, ESQ. CHIEF MAGISTRATE
SITTING AT SMALL CLAIMS COURT, ABULOMA PORT HARCOURT

SUIT NO. PMC/SCC/182//2023

BETWEEN:

ELSIE P. PRAH -- -- CLAIMANT.

AND

MR. GOERGE JONATHAN -- -- DEFENDANT.

PARTIES
Parties are present.

APPEARANCES:
A. G Ukot holding the brief of G.E. Usifo, Esq. for the Claimant.
R. O. Uchegbu. Esq. for the defendant.

JUDGEMENT.

On the 4/10/23, the claimant as per the summons claimed against the defendant thus:

1. The sum of N420,000.00 as the principal sum owed by defendant.
2. Damages of N200, 000.00
3. The sum of N100,000.00 as cost of litigation.

Defendant took plea before this court on the 11/10/23. This court proceeded on vacation from 20/10/23 to 1/12/23, and was thereafter transferred to Chief Magistrate Court Abuloma, Port Harcourt.

On receipt of the said summons, defendant did not file his defence or counter-claim in compliance with the provisions of Article 6 of the Rivers State Small Claims Court Practice Direction 2023. However, defendant was on the 2/2/24, granted leave by this court upon a motion on notice moved by his counsel, R. O. Uchegbu, Esq. to file his defence and counter-claim out of time. This court also deemed the defendant's statement of defence and counter-claim filed on 22/2/24 as properly filed and served.

In the said counter-claim, defendant claim against the claimant is for:

> The sum of N1,500,000.00 as cost of defendant's properties (furnitures and other items) damaged by the claimant.

A total of six witnesses (CW1 – CW4 and DW1 –DW2) testified in this case and five exhibits (exhibits A – E) tendered. Hearing of this case commenced with the evidence of CW1 on the 30/1/24.

FACTS BRIEFLY STATED.

The background facts to this action are that, the claimant (CW1) rented the two shops situated at No. 140 NTA Road Mgbuoba, in Obio/Akpor Local Government Area of Rivers State said to be owned by her to the defendant for the sum of N180,000.00 per shop in 2012. Defendant had been the tenant of the claimant from 2012 to April, 2021 when he vacated the premises. The claimant contended that, as at the time of vacation or thereafter, no damage was done to defendant's properties as alleged, and defendant did not renew his tenancy for the tenancy period of February, 2020 - February 2021. That she demanded her rent from defendant through Mr Ajunwa Nnadi Ralph (CW1) , Mr. Ihunwo Chigioke (CW2) and Mr. Henry Chukwu (CW3), including writing a letter of demand (exhibit A) dated 13/9/23 to defendant for the payment of his rent but he refused to pay. This led to the suit before this court seeking for the above reliefs.

For the defendant (DW1), his story is that, he was a tenant in claimant's shops for 9years and does not owe her any rent. For all payments made by him to the claimant, he was issued with receipts and exhibit E is the proof of payment for the said tenancy period. Defendant said he vacated the shops in April 2023 and did not go with all his properties because the claimant instructed her nephew, Mr. Ken not to allow him carry his properties. According to defendant, he did not return to the shops again for over 1year and 6months. However, when claimant wanted to rent out the shops to a tenant, he was called by a lady from the premises to come and remove his properties and by the time he got there, all the furniture he left worth N1,500,000.00 had damaged. The four damaged chairs are N1,000,000.00 at N250,000.00 each. Based on that, he filed his counter-claim praying the court for the said relief.

Counsel for the parties adopted their final written addresses on the 23/2/24.

ARGUMENT OF PARTIES

Learned Counsel for the defendant,R. O. Uchegbu. Esq submitted one issue for determination thus:

1. "Whether the claimant or the defendant has proved their claim or counter-claim based on the pieces of relevant evidence adduced by parties before the honourable court....."

On his part, learned counsel for the claimant, G.E. Usifo, Esq. formulated two issues for determination. They are:

1. Whether from the totality of the evidence and exhibits before the court, it is not established that claimant is entitled to her claims in this suit.
2. Whether from the totality of the evidence and exhibits before the court, it is established that claimant damaged defendant properties worth N1,500,000.00.

After considering the issues formulated by both parties, I am of the view that the issue formulated by the defendant best addressed the grievances of the parties. The issue shall be considered.

Learned Counsel for defendant observed that from the totality of the evidence led before the court, the claimant did not prove her case, but the defendant proved his counter-claim. He urged this court to resolve the issue in favour of the defendant.

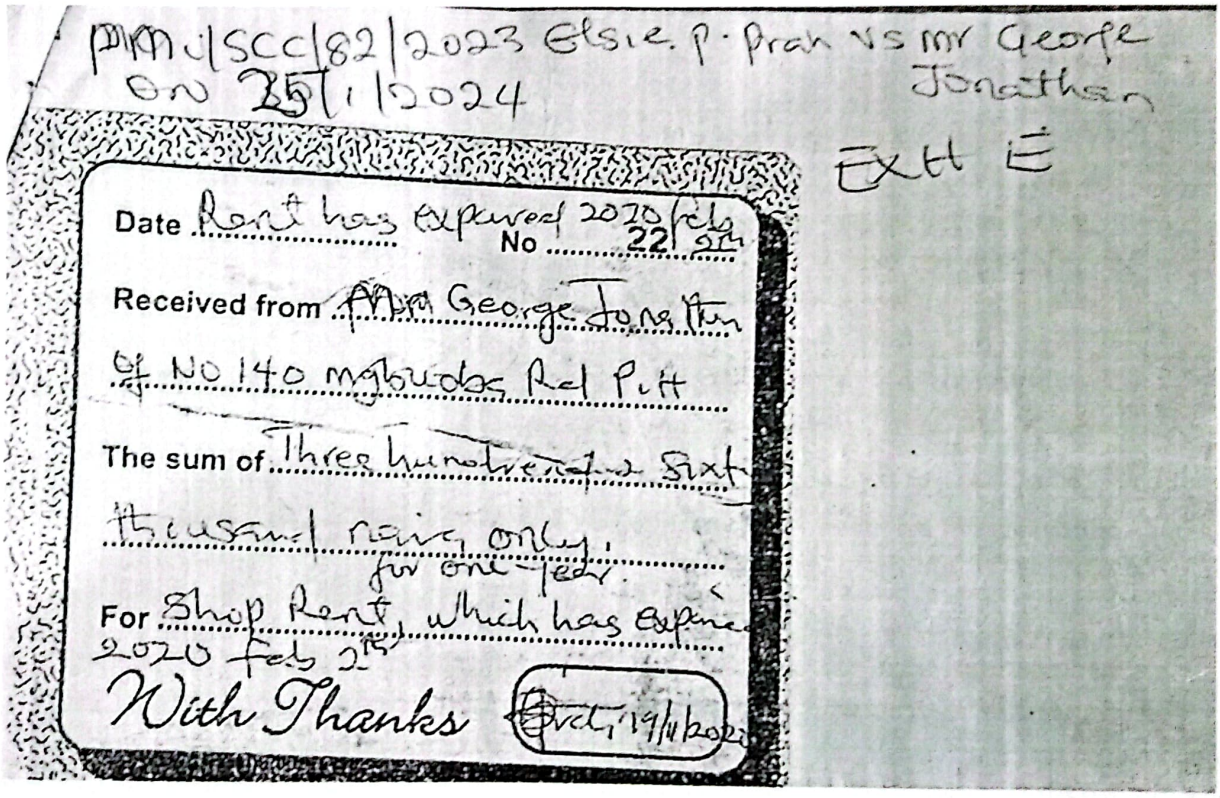
The claimant counsel on the other hand, submitted that it was fully established by the evidence and exhibits before the court that claimant is entitled to her reliefs. The court was urged to enter judgement for claimant and dismiss the defendant's counter-claim.

RESOLUTION OF THE CASE.

The claimant's claim against the defendant is for recovery of debt owed her by defendant. To succeed therefore, the claimant has the burden, in line with sections 131 and 132 of the Evidence Act, 2011 to prove her claim. So she has the burden to plead facts and lead credible evidence to prove that indeed defendant owed her the amount claimed.

At the trial, the claimant called three additional witnesses to prove her case that she sent them to demand the debt from defendant but he kept on promising that he will pay but never paid. The defendant maintained that he does not owe claimant by virtue of exhibit E.

For clarity, the said exhibit E is hereunder reproduced thus;


PMJ/SCC/82/2023 Elsie P. Prah vs Mr George Jonathan
ON 25/1/2024

EXH E

Date Rent has expired 2020/feb No 22 24

Received from Mrs George Jonathan

of No 140 Mgbuoba Rd Port

The sum of Three hundred and Sixty

thousand naira only.

for one year

For Shop Rent, which has expire

2020 feb 24

With Thanks

In the contents of exhibit E, it is clearly stated that defendant paid the sum of N360,000.00 as shop rent for one year which expired February, 2020. This evidence was corroborated by DW2, Mrs Deborah George when she stated in her evidence on the 13/2/24 that: "Exhibit E is the receipt for 2019 to 2020…"

The DW1's evidence that he does not owe claimant from February, 2020 to February, 2021 in view of exhibit E, cannot be true. It is the law that, documentary evidence is the best kind of evidence and in proof of its contents; hence no oral evidence will be allowed to discredit or contradict the contents thereof except fraud is alleged. I lay credence to the cases of **Agbakoba v INEC (2008) LPELR – 232; and Bon v Akintoye (1999) 12 NWLR [Pt. 631] 392.** On the facts and documentary evidence tendered, the CW1 proved that DW1 is yet to pay his rent from 2020 – 2021. **Relief (1)** therefore succeeds.

With respect to **Reliefs (2) and (3),** the sum of N200,000.00 and N100,000.00 for damages and the cost of litigation respectively, I must say that there is no evidence on record in support of these claims. Accordingly, they fail.

Regarding the defendant counter – claim of N1,500,000.00 as cost of his damaged properties, it must be observed that he told this court that his shop was locked for 1year and 6months. That it was in December, 2020 that claimant instructed her brother, Ken to lock the shop. He was later called by a lady to come and carry his properties, and when he got to the shop, the properties were damaged. However, the DW2's evidence on the 13/2/24 stated that:

> ".....defendant went to the place and saw another lock on the door.....I called claimant to ask and she said it's because we are owing her. However, she opened it the next day but the back side was still locked. ....."

Under cross examination, DW2 has this to say:

> "...in the shop premises..... defendant has a place where he burns wasted materials or items....."

Flowing from above, the DW1contradicted himself when he told this court that the claimant locked the shop in Dec. 2020 and at the same time, it was locked for a year and six months, when he actually gave up possession in April, 2021 which was about 4months. I must make haste to bring to light that from the evidence of DW1, It is also not possible for upholstery chairs locked in a shop to get spoilt within 4months. There is nothing before this court to show that the shop or premises was ever locked by claimant. Defendant ought to have shown photograph of the locked shop for proper determination of his counter-claim. Having failed to prove same, his chances of succeeding here is baseless. Thus, the counter-claim fails.

In the circumstance and without any further ado on this case, l hold that the lone issue formulated by defendant is resolved for and against him. This case has merit and it succeeds in part. Accordingly, judgement is entered forthwith as follows;

a. That the defendant is ordered and shall pay to the claimant the sum of N420,000.00 representing rent for the tenancy period of February, 2020 – April, 2021 when he vacated the property.
b. That the claimant's claim of N200,000.00 and N100,000.00 for damages and cost of litigation are not granted.
c. That the defendant counter-claim of N1,500,000.00 is also refused.

For the avoidance of any possible doubt, the claimant's reliefs (2) and (3) as well as the defendant's counter-claim are all hereby dismissed.

BETTY SUNNY-HART, ESQ.
Chief magistrate
1/3/24

THE JUDICIARY
WCBISIKE. B. BRIGE ESQ
SIGN'.....
DATE. 4/3/2024
SMALL CLAIMS COURT,