

IN THE MAGISTRATES' COURT OF RIVERS STATE  
IN THE PORT HARCOURT MAGISTERIAL DISTRICT  
HOLDEN AT PORTHARCOURT BEFORE HIS WORSHIP. G.C. AMADI ESQ.  
SITTING AT SMALL CLAIMS COURT AT CHIEF MAGISTRATE COURT 14, ON THE 18<sup>TH</sup> OF  
SEPTEMBER 2023

SUIT NO. PMC /SCC/90/2023

ARC AKPOBARI LEGBO EEBEE

} CLAIMANT

AND

MR. ELIJAH LEDEE KANEE

} DEFENDANT

JUDGMENT

This is the final judgment in this suit wherein the claim before the court, dated and filed on the 7<sup>th</sup> June, 2023 is for:

1. An order of this Court compelling the defendants to pay the Claimant, the sum of N1,250,000,00 being rent for 5 years
2. N215,000 being cost of property damaged in the property
3. N120,752.53 being PHED unpaid bill owed by the defendant
4. N200,000 as general damages for the stress, mental trauma, time and energy
5. N150,000 as cost of litigation
6. 10 Percent interest on the total judgement sum from the date of judgment until when the judgment sum is liquidated

The defendant also filed a counter claim dated and filed on the 10<sup>th</sup> July, 2023 for the THE Return Of Rivers Ube Board Tables And Chairs Whiteboard And Stand.

The Claimant called three witnesses and the defendant also called one witness.

On the 11<sup>th</sup> day of July, 2023, the Claimant was present and the defendants were present. An application to enter plea of not liable for the defendant by the defendant Counsel was granted and the matter was set down for hearing.

On the 18<sup>th</sup> day of July, 2023, the CW1, who is also the Claimant on record testified that the defendant is his tenant for 8 years. That the defendant has being his tenant for 8 years from 2014 to 2022 and that for these 8 years, he has only paid rent for 3 years. That the





defendant vacated the property on the 7<sup>th</sup> day of January, 2022. That when the defendant was leaving, he asked him when he is going to pay the 5 years arrears and the defendant told him that he does not know and he told the defendant that he is giving him 6 months and the defendant told him that he will use his farm as a collateral for the 5 years rent. That the defendant later took his wife to the farmland and told him that he will give them half of the farm land and that he insisted that the defendant should give him all or pay him back his money and the defendant insisted on giving him half of the farmland and so he insisted that that the defendant should pay him back his money and two days later, the defendant took over the farmland and cultivated without paying him back his money.

That on the 9<sup>th</sup> of January, 2022, he invited the defendant for a joint inspection of the apartment where he stays. That records were taken of the damage done to the apartment for the 8 years he stayed there and the damage amounted to N215,000. That he insisted that he should make good of those damage done on the facility besides the 5 years arrears of rent which is 1 million , Two Hundred And Fifty Thousand Naira for the period of Five (5) years and also the damage of his Mercedes Benz for which includes the cost of N150,000. That he approached the defendant to pay up all these but he refused.

Testifying further, the CW1 stated that he reported the matter to one of his congregants because he is of Jehovah Witness. That they intervened but the defendant would not listen and he now reported the matter to his Uncle whom he lived with in his house before he moved into his own house. That the uncle invited one of his congregation members and they both intervened and the defendant still refused.

That he reported the matter to the police at Bori and the DPO invited him thrice but he refused to honour the invitation. That few days later, a lawyer called him that he has met with the DPO and the defendant and that the DPO instructed the defendant to reach out to him for amicable settlement. That the defendant never reached out to him so he contacted his lawyer who wrote a demand letter to the defendant and that for a period of one month, he didn't hear from the defendant so he filed this matter in Court.

In conclusion, the CW1 stated that he wants the defendant to pay him as per his claim before the Court.

The CW1 further identifies copies of receipts issued to the defendant and the Claimant seeks to tender same in evidence and the defendant Counsel is not objecting and the receipts are admitted in evidence as Exhibits A1.A2.A3, and A4, B,C,D. E, F & G.

PHCN electricity bills for September, October, December, 2016. January, February, March, April 2017, March 2019, April 2019, May 2019, August, 2019, September, 2019, January 2020, April 2020, May, June, July, August, October, November, December 2020. February 2021, April, June, July, September 2021. The sum of the NEPA bills for 2016 to 2022 are also tendered, not objected to and admitted and marked as Exhibits H1-H28





Finally, the Claimant states that the defendant's Counter claim is not true. That the UBA Chairs and tables are not in the apartment.

During the cross examination of CW1 on the same day, he stated that the receipt only the last time in 2021ie that of 14<sup>th</sup> of August 2021.That it is not true. That between 2014 to 2016, that the defendant pays rent before the 5<sup>th</sup> of January.

That the defendant came in 2014 and paid on the 30<sup>th</sup> December 2013 against 2014,So he was issued receipt on the 4<sup>th</sup> January 2014 when he parked in.That,he is aware that the defendant stopped receiving salary in February, 2016.That it is not true that the defendant paid in January, 2016.That it was in 2016 that the defendant started owing him rent between 2016 to 2020.That it is correct that the defendant is saying that he is owing him for 4 years while he is saying that he is oweing him for 5 years. That it is true that the defendant paid rent from the 3<sup>rd</sup> of January 2021 to 3<sup>rd</sup> of January, 2022.That he vacated mutually.

That upon the day, the defendant entered his property that the car has been immobile and the 4 tyres removed.That it is not true that the Carpenter advised that the defendant should only change the cylinder of the door and he insisted that he should change the entire lock,That it is not true,that his plumber did not detect any fault and that there is no plumbing material in the list that he submitted.That from September 2016 to 2020, the defendant was not paying his share of the NEPA bill.That they use to share the bill for the first 2 years but from 2016 to 2020, the defendant was not paying. That he was paying almost for 4 years but the defendant was not paying at all.

That he did not disconnect the defendant or report him to the police because of his magnamity .That he does not have any document before the Court to show that the defendant is oweing him PHED bills but he reported him to his congregation members.

That he cannot remember the date he reported the matter to the DPO

On the 10<sup>th</sup> day of August, 2023, the CW2, one Mrs Beatrice Eebee, the wife of the Claimant gave evidence and stated that the defendant was their tenant for 8 years and he paid hos rent for 3 years ,that he damaged things in the 2 bedroom apartment where he was occupying. That the defendant also damaged the Vboot that was parked outside the apartment.That from 2016 to 2021, he was no longer paying his NEPA bill and a mutual agreement was made with her husband to vacate the place was reached and the defendant moved out in January, 2022. That 2 days after the defendant showed her the farm land at Nwirgbor which he proposed to use as a collateral,he called her to tell her to stay away from the farmland.That she visited the farmland at Nwirgbor and he has cultivated the land.

During the cross-examination of CW2 on same date,she stated hat the defendant always dealt with her husband directly.That before the defendant entered the house and moved out that the VBoot have been parked bad,That she was not there when the carpentar came to inspect the property to know whether the defendant damaged the property.That it is not true that everything she told the Court is what her husband asked her to come and say.





On the 17<sup>th</sup> August, 2023, The CW3, one Israel Gbekgbe, a public servant said that the Claimant had sometime in 2022 came to him to help him to go and beg the defendant to pay him the 5 years arrears of rent and the damage he did to the car and to keep the house back to how it was when he entered, That he discussed with the defendant and he said he is only owing 4 years rent and not 5 years rent. At the end of the evidence in chief of the CW3, there was no cross-examination and the Claimant announced the closure of their case and the matter went on for defence.

On the same The DW1, who is also the defendant on record, gave evidence and stated that he entered the property in 2014 and he paid rent for 2014, 2015 and 2016 and by 2017, when he could not pay the rent again, he approached the Claimant and told him that the Rivers State Government has stopped his salary by February, 2016. So he permitted him to stay until 2021 and when in 2021, he started complaining about his non payment of rent, so he told his brother and he sent him some money and he added some part of his money and he sent N250,000 which is his annual rent of the property. That the previous payments there was no receipts but that when the Claimant said he is owing for 2006, when his brother sent him the money and he paid in 2021, he insisted that the CW1 issues him a receipt. The receipt was jotted in a paper. That he did not damage the defendant's house. That the Claimant brought plumbers, carpentars and electrician to the house and they checked and the only problem they faulted was that the Cylinder of the front door was bad and he promised to replace that and the defendant said that he should replace the entire lock

That there were some things in the house that was not good and when he entered the house and when he complained to the defendant, he promised that he will bring his electrician to replace them which he never did like some lightening points and when he was leaving and he asked him to replace the bad lightening points, he told him No that they have been bad from inception.

That concerning the rent, he had offered a collateral of his farmland to the Claimant for the rent but the Claimant insisted that he must have the entire two plots of land and he offered him only one plot because himself and his family needed to farm on the other one plot of land.

That concerning the V boot Car, the car had been parked since he entered and was still parked till the day he vacated without the 4tyres, That he did not damage any car.

That on the 12<sup>th</sup> November, 2022, the defendant came to his house and demanded for rent and he gave him N600,000 and promised to give him the balance at the end of January this year and on the 2<sup>nd</sup> of February 2023, he gave the defendant, the sum of N400,000 and he demanded for receipt and the defendant said he has not paid for the 5<sup>th</sup> year, so he is not going to give him receipt.

That in May, 2023, he saw a demand notice from the Claimant lawyer

That when he was in the property of the Claimant, that they pay the PHCN bills together. That sometimes the Claimant will give him money to go and pay and sometimes,





he will give the Claimant money to go and pay. That they were doing that until he left the property and that NEPA have never disconnected him because of non payment of electricity bill.

Testifying further, the DW1 stated that the Claimant seized his UBE Board Materials that he was using in his BEXDA materials. That when he was leaving his house, he seized it and took it to his house at the Village at Yeekum Village that because of that the UBE board refused to pay him.

In conclusion, the defendant states that he wants the Court to discountenance the Claimant's false claim and to grant his counter claim

On the 4<sup>th</sup> of September, 2023, the DW1 was cross-examined and testified that he lived in the property for 8 years and paid for 4 years while he was in the property and paid for the remaining 4 years when he left the property. That all the rent was paid in cash. That he was served a demand Notice, the said demand Notice is admitted in evidence and marked as Exhibit J. That it is not true that in going out one day, he bashed the defendant's car with his own car.

That the items he listed in his counter claim are not personal property. That they are Government property.

At the close of the evidence of the DW1, there was no re-examination and the defendant counsel closed the case of the defendants and the matter was adjourned for adoption of final addresses and then for judgment.

A total of eleven (11) exhibits were tendered in evidence in the course of the trial.

That said, I will proceed to consider the case of the parties in the light of the relevant laws. I have noted the essence of the claim and have also taken cognizance of the evidence before the court. I have read all the exhibits and I have couched a lone issue for determination and that is whether the Claimant has discharged the burden of proving his Claim before the Court.

principle of law is that he who assert must prove coined from the old maxim incumbit probation qui dicit non qui negat which means that the burden of proving as fact rest on the party who asserts the affirmative of the issue and not upon the party who denies it, for a negative is usually incapable of proof. See *Omisore v. Aregbesola* (2015) 15 NWLR (Pt. 1482) p. 217. See also section] 131 (1) of the evidence Act, 2011.

The burden of proof is the task of establishing before the court, the claim of a party. See section 1 of the evidence Act, 2011.

**On the Claim For Arrears of Rent to the sum of N1,250,000,00 being rent for 5 years:**

The CW1 had testified that from 2014 to 2022 and that for these 8 years, the defendant had only paid rent for 3 years. That the defendant vacated the property on the 7th day of





January, 2022 .To buttress this, the Claimant tenders copies of receipts issued to the defendant in evidence as Exhibits A1.A2.A3.

On the other hand, on the 4th of September, 2023,the DW1 was cross-examined and testified that he lived in the property for 8years and paid for 4 years while he was in the property and paid for the remaining 4 years when he left the property. That all the rent was paid in cash.

That the previous payments there was no receipts but that when the Claimant said he is oweing for 2006, when his brother sent him the money and he paid in 2021,he insisted that the CW1 issues him a receipt.The receipt was jotted in a paper

I have taken a close look at the Exhibits A1 to A3 before the Court which is the receipt tendered by the claimant to evidence payment of rent by the defendant for the 1<sup>st</sup> three years.The defendant had denied the existence of these receipts and have instead reiterated that it is only in 2021 that receipt was issued to him (Which was outside the period covered in Exhibit A1 to A3) A cursory look at Exhibits reveals that is only the signature of the that is on the alleged rent receipt,Why is the signature of the defendant not in any of the receipts?In the absence of the defendant's signature on Exhibits , how do we know that the said receipts were not unilaterally concocted by the Claimant as alleged by the defendant.It is now very trite that he who asserts must prove.

It is the thus, the conclusion of this Court, that the Claimant have failed to prove that the defendant is oweing him rent as claimed before the Court.

**On the Claim for PHCN electricity bills;** During the cross examination of CW1, he has stated that himself and the defendant usually shares the bill for the first 2 years but that from 2016 to 2020, the defendant was not paying.To buttress this fact, the CW1 tendered PHCN electricity bills for September, October, December, 2016. January, February, March, April 2017, March 2019, April 2019,May 2019,August, 2019, September, 2019, January 2020, April 2020, May, June, July, August,Ocober, November, December 2020.February 2021, April, June, July, September 2021.The sum of the NEPA bills for 2016 to 2022 a are also tendered, not objected to and admitted and marked as Exhibits H1-H28

On the other hand, The DW1 testified that when he was in the property of the Claimant, that they pay the PHCN bills together. That sometimes the Claimant will give him money to go and pay and sometimes, he will give the Claimant money to go and pay.That they were doing that until he left the property and that NEPA have never disconnected him because of non payment of electricity bill.

It is good that the Clamant have shown via Exhibits H1-H2 that he paid electricity bills for the defendant occupied by the defendant from 2016 to 2020.

However,the question on the mind of the Court is where are the PHCN bills for first 2 years of the rent wherein the CW1 has admitted that the electricity bills were shared, The importance of sighting the first two years of the bill payment will help the Court ascertain if the PHCN bills for those first two years will reflect or show in any way, that the defendant shared in the payment of bills for those years,This will also further settle the mind of the Court on the issue alleged by the defendant ,that it is customary between





himself and the defendant to share and interchange the payment of electricity bills throughout his stay on the property.

It is the position of this Court that the allegation of non-payment of electricity bills for the first two years and some months in the latter years of the defendant stay in the apartment have not been proven.

**On the Claim of N215,000 being cost of Property damaged:** The CW1 had testified that on the 9th of January, 2022, he invited the defendant for a joint inspection of the apartment where he stays. That records were taken of the damage done to the apartment for the 8 years he stayed there and the damage amounted to N215, 000. That he insisted that he should make good of those damage done on the facility besides the 5 years arrears of rent which is One million, Two Hundred And Fifty Thousand Naira for the period of Five (5) years and also the damage of his Mercedes Benz for which includes the cost of N150,000. That he approached the defendant to pay up all these but he refused. To buttress his point, the Claimant tenders Exhibits 'B-G'

On the hand, the defendant, the DW1 testified that he did not damage the Claimant's house. That the Claimant brought plumbers, carpentars and electrician to the house and they checked and the only problem they faulted was that the Cylinder of the front door was bad and he promised to replace that and the defendant said that he should replace the entire lock there were some things in the house that was not good and when he entered the house and when he complained to the defendant, he promised that he will bring his electrician to replace them which he never did like some lightening points and when he was leaving and he asked him to replace the bad lightening points, he told him No that they have been bad from inception. That he never also damaged the Claimant's VBoot, That the Vboot was stationed in one place throught the duration of his 8 years stay.

I have taken a good look at the Exhibits B-G

Exhibit B is to the effect that the Mercedes Benz went for panel beating and respraying and replacement of back bumper.

Why is it that during the evidence of the CW1 he did not state the kind of damage that was done to the Vboot. For instance, he never stated that the defendant damaged his back bumper or anything specified part of the VBoot car. Where are the pictures of the alleged damage?

Exhibit D is to show to that lightening accessories was purchased by the Claimant. On the lightening issues, the defendant have stated that some lightening points in the huse had issues from the inception and that when he was leaving and the Claimant asked him to replace the bad lightening points, he told him No that they have been bad from inception. So how does the Court decipher when the damage of the lightening part of the house occurred? Was it before or after the defendant moved into the property? The incurring of the damage as in the repairs the receiots as in Exhibits E, fand G have all been denied by the defendant. I wish the Court can see pictures or some other evidence to show that the purchases as in the exhibits were done in respect to the alleged damages on the apartment. Where are the pictures of the damaged wardrobe doors, metal doors? etc,





Again, he who asserts must prove, The claim for cost of property damaged is in the class of special damages and have failed the test of strict proof.

**On The Issue of General Damages, On the Claim for Cost Of Litigation and on the claim for Percent interest on the total judgement sum from the date of judgment until when the judgment sum is liquidated.** The Court is of the stance that the claim for arrears of rent and the other substantive claim having failed that there will be no basis for the award of these damages which are consequential in Nature. For instance, the claim for arrears of rent and property damage and electricity bill having failed, the Court cannot award general damages for inconvenience of cost of litigation or interest on total judgement sums. Consequently, the claim for N200,000 as general damages for the stress, mental trauma, time and energy, N150,000 as cost of litigation and 10 Percent interest on the total judgment sum from the date of judgment until when the judgment sum is liquidated hereby fails.


**ON THE COUNTERCLAIM FOR THE RETURN OF RIVERS UBE BOARD TABLES AND CHAIRS WHITEBOARD AND STAND .** The DW1 stated that the Claimant seized his UBE Board Materials that he was using in his BEXDA materials. That when he was leaving the Claimant's house, he seized it and took it to his house at the Village at Yeekum Village that because of that the UBE board refused to pay him. On the other hand, the Claimant have vehemently denied that he took or is in possession of these UBE materials. Again he who asserts must prove ;there is nothing before the Court to show that the said UBE materials were seized and is still in the possession of the Claimant.

On the basis of all of the foregoing, It is hereby ordered as follows:

That the Claimant claim fails and is struck out for lack of evidence in proof of the arrears of rent for 5 years, damages to the property ad outstanding electricity bills

It is also ordered that the Claimant's counterclaim be dismissed for lack of evidence showing that the said UBE materials were seized and is still in the possession of the Claimant

There is no award as to cost

  
**GIFT C. AMADI, ESQ.**  
**CHIEF MAGISTRATE**  
**G. CHINYERE AMADI, ESQ.**  
**CHIEF MAGISTRATE G.D.I**