

**IN THE MAGISTRATE COURT OF RIVERS STATE OF NIGERIA
IN THE PORT HARCOURT MAGISTERIAL DIVISION
HOLDEN AT PORT HARCOURT
BEFORE HIS WORSHIP NNEKA E. EZE-OBUZOR
SITTING ON THE 16TH DAY OF APRIL 2024
AT THE SMALL CLAIMS COURT 4 PORT HARCOURT**

SUIT NO: PMC/SCC/176/2023

BETWEEN

**UWAOMA UKANDU
(SUING THROUGH JIDE TAIWO & CO** } **CLAIMANT**

AND

**IYKE OLUMATI
(DOING BUSINESS AS PENNY CORNER SUPERMARKET)** } **DEFENDANT**

PARTIES: Absent

APPEARANCES: G.S Ndaligwe Esq. for claimant

G.C Ariba Esq. for defendant

JUDGEMENT

By a claim dated 29/09/2023, the claimant's claim against the defendant are as follows:

1. N625, 250.00 (Six Hundred and Twenty five thousand, Two Hundred and fifty naira only being arrears of rent from 14th February 2022 to 20th July 2023.

PLEA

By the affidavit of service availed this court, the defendant was served the originating process in this suit by substituted means by pasting on the 24th of October 2023 at 3:31pm. On the 7th of November 2023, a plea of not liable was entered for and on behalf of the absent defendant.

SUMMARY OF EVIDENCE

The claimant in proof of his case called a lone witness and tendered two exhibits marked exhibit A and B.

The defendant rested his case on that of the claimant.

The relevant facts from the case of the claimant as presented by one Temple Ugwu from Jide Taiwo & Co. is that he knows the claimant and they were granted an instruction to manage the property at 15 Ada George Road, Port Harcourt on his behalf. That the claimant donated a power of attorney to them. That he also knows the defendant who was a tenant at the subject property. That the tenant was served with a 6 months' notice to quit and after some delays he eventually vacated the premises a few months after the expiration of the said tenancy and he was here to recover the mesne profit for the over stayed period. That on the day the defendant vacated the property, his representative was served with a

letter demanding mesne profit for the overstayed period and up till now they were yet to get a response. Both the letter of demand and power of attorney were admitted as Exhibits A and B respectively.

The defendant's counsel entered appearance after the defendant was foreclosed from cross examining the CW1 and upon his application, leave was granted to recall CW1 and cross examine the CW1. Upon application of defence counsel, leave was granted to parties to explore out of court settlement and when settlement failed, defence counsel filed a PO and rested their case on that of the claimant.

The claimant waived his right to address hence case was adjourned for judgement now being read.

RESOLVE

In determination of this suit, I will adopt a lone issue to wit.

Whether the claimant has proved his case to be entitled to judgement

As already stated, the defendant rested his case on that of the claimant and relied on his preliminary objection which has already been taken prior to reading this judgment. The court in the case of **ADMIN. & EXEC. OF THE ESTATE OF ABACHA V. EKE-SPIFF & ORS (2009) LPELR-3152(SC) (PP. 59-60 PARAS. D)** held that the implication where a defendant rests his case on the plaintiffs case, it may mean that: (a) that the defendant is stating that the plaintiff, has not made out any case for the defendant to respond to; or (b) that he admits the facts of the case as stated by the plaintiff or (c) that he has a complete defence in answer to the plaintiffs case. It is stated that a situation where a defendant failed/fails to lead evidence in defence, but rested his case on that of the plaintiff, it is regarded as a legal strategy and not a mistake. If he succeeds, then it enhances his case, but if he fails, that is the end of his case. From the instant case, the defendant via his preliminary objection had a complete defence to the case of the claimant which has obviously failed from the ruling of this court hence that is the end of the defendant's case.

The law is trite that a Court is at liberty to accept and act on unchallenged and uncontroverted evidence. See the case of **OFORLETE V. STATE (2000) 12 NWLR (PT. 681)415**. The court in the case of **ADELEKE V. IYANDA (2001) 13 NWLR**

PART 729 PAGE 1 AT 23-24 PARA H-A held that where the claimant has adduced admissible evidence which is satisfactory in the context of the case, and none available from the defendant, the case will be decided upon a minimum of proof as this makes the burden lighter.

From the case file, the claimant has complied with the provisions of **ARTICLE 2 AND 3 OF THE RIVERS STATE SMALL CLAIMS COURT PRACTICE DIRECTION 2023** for the fact that this is a liquidated money demand not exceeding Five million (N5M), the defendant was served with a demand letter, there is a complaint form, there is an affidavit of service of the summons of court on the defendant.

On the claim of the claimant, by way of evidence, the claimant has tendered the letter demanding payment of mesne profit to them. Same was received and there was nothing to the contrary or challenging the said letter. It is trite law that where a party fails to respond to a business letter which by the nature of its contents requires a response or a refutation of some sort, the party will be deemed to have admitted the contents of the letter - **GWANI V. EBULE (1990) 5 NWLR (PT. 149) 201.**

It is primary law that standard of proof in civil suit is on the balance of probabilities. It is my opinion that the claimant has proven his case to be entitled to judgment and I so hold.

In conclusion, judgement is entered for the claimant as follows:

1. The defendant is ordered to pay the claimant the sum of N625, 250.00 (Six Hundred and Twenty five thousand, Two Hundred and fifty naira only being arrears of rent from 14th February 2022 to 20th July 2023).