

**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 MONDAY THE 22ND DAY OF
JANUARY, 2024**

RMC/SCC/16/2023

BETWEEN

MR. UGO KENNEDY EGBUJIE - CLAIMANT

VS.

MR. WISDOM EDI BUDU - DEFENDANT

Matter for Judgment

Parties; Absent

Agochi Amadi, Esq. with L.C.D. Wodike for the claimant, S.O. Aburu for the defendant.

JUDGMENT

The Claimant claims as follows:

The defendant owes the claimant N600,000.00 (Six Hundred Thousand Naira) for two drawings from Ministry of Urban Development, Rivers State.

Facts

This matter commenced via a complaint form RSSC2 where the complaint of the claimant is summarized, a summons Form RSSC 3 was filled to be served on the defendant dated 25th August, 2023. Affidavit of nonservice Form SCC 4 is before the Court, he was served via substituted service with the leave of Court on the 21st September, 2023, the endorsement and return Copy before me.

The defendant filed a form of admission, counter claim/defence via Form RSSC 5 dated 18th October, 2023. Affidavit of service Form RSSC 6 is before me dated 25th September, 2023.

On the 6th October, 2023, the claimant's counsel, Agochi Amadi entered a plea of not liable against the defendant. Cw1 was called to give evidence, he gave his name as Kennedy Ugo Egbujie, an architect and builder living at No. 10A Ilen George Avenue

Elimgbu, he said he knows the defendant, his wife sells blocks and cement, he is a staff of the Ministry of Urban and Development, Rivers State.

He gave him four drawings for his client amounting to N1,200,000.00 (One Million, Two Hundred Naira), each is N300,000.00 (Three Hundred Thousand Naira), he processed only two drawings, he did not process the other two, his lawyer wrote to him, his lawyer responded that he will pay back over time, for over six months he did not see him.

The letters by the claimant's counsel and defence counsel are admitted in evidence as Exhibits A and B; original with the defendant.

He prayed the Court to order the defendant to pay him the balance of N600,000.00 (Six Hundred Thousand Naira). The Court foreclosed the defendant from cross-examination of cw1 due to his absence and ordered that the defendant be served with a hearing notice. The hearing notice was served on the defendant on the 10th October, 2023, the endorsement and return before the Court.

The defendant on the 11th October, 2021 was foreclosed from defending this suit due to his absence. The claimant's counsel waived his right to address the Court, the Court thus adjourned for judgment.

Issue for determination

Whether the claimant has proven his entitlement to his claim?

COURT

The claimant in proof of his case tendered two Exhibits, Exhibits A and B respectively. Exhibit A: being the letter written by the claimant's counsel dated 3rd May, 2023 to the defendant, demanding for the refund of N600,000.00 from the defendant.

Exhibit B: response to the letter from the claimant's counsel by the defence counsel dated 10th May, 2023, wherein the defendant's counsel stated therein that his client, the defendant agrees that sometime in 2022, the claimant approached the defendant to facilitate the approval of four of his building drawings at the Ministry of Urban Development, Rivers State. He also stated that the defendant agreed that he received some amount of money paid in instalments by the claimant for approval of the four building drawings.

The defendant filed Form RSSC 5, being the form of admission, defence and counter claim dated 18th October, 2023 but never showed up before this Court to defend this suit against him.

The bailiff of Court served him with the Court's processes via substituted service with the leave of Court, he was also served a hearing notice on the 6th October 2023 but the defendant failed to appear before this Court. Facts admitted need no further proof as seen in section 123 Evidence Act 2011.

The defendant admitted via Exhibit B that he owed the claimant money for the approval of four of his building drawings. This could be the reason perhaps why he did not show up to defend this suit against him.

In *Adekoya Vs. Attah* (2022) LPELR 57223 CA and *Olatubosun Vs. Anenih* (2001) 15 NWLR (pt. 1165) 560, the Court clearly held and buttressed the importance of a hearing notice as a legal means of getting the defendant to attend the Court and defend the suit filed against him. The Court's summons also informed the defendant of the case against him, which was duly served on him by the Court bailiff. See Form RSSC 6, affidavit of service deposed to by the Court bailiff, Gospel Utor-ue.

The defendant was foreclosed from cross-examination of cw1 and defending this suit due to his absence consistently.

UNDEFENDED EVIDENCE

It is trite law that the uncontroverted, unchallenged, undiscredited evidence of the claimant ought to be accepted as the truth, only minimal evidence is required for the Court to rely on in proof of the claimant's case where the case is undefended.

The reason is that, where evidence called by the plaintiff in a civil case is neither challenged nor contradicted, his onus of proof is discharged on a minimal of proof. *Kosile Vs. Folarin* (1999)3 NWLR (Pt. 107)1, (1989)4 SC (Pt. 1) 150.

The defendant was never in Court from the day plea was taken till the day the claimant adopted his final written address, nor was he represented.

The Court is entitled to act on the unchallenged and uncontradicted evidence of the claimant. Where evidence given by a party to a proceeding was not challenged by the opposite party who had the opportunity to do so, the Court is at liberty to accept and act on the unchallenged evidence before it, see the case of *Odulaja Vs. Haddad* (1973) 1 SC 35, *Nigerian Maritime Services Ltd. Vs. Alh. Bello Afolabi* (1978) 2 SC 19.

It is trite law that were a party fails to call evidence in support of his case or in rebuttal of the case of the opposite party, the trial Court is entitled to resolve the case against him. See the case of *CHIEF CHRISTOPHER I. MONKOM AND 2 ORS. Vs. AUGUSTINE ODILI* (2010) ALL FWLR (PT 536) 542, the Court of Appeal held "Where only one party calls evidence, minimum proof is required of him in order for his claim to succeed".

In the absence of any rebuttal on the part of the defendant, only minimum proof is required for the claimant's claims against the defendant to succeed.

He was served with the originating processes but still failed to appear before this Court and a hearing notice was also served on him by the Court Bailiff but he still refused to appear before this Court. See the case of *Darma Vs. Ecobank Nig. Ltd.* (2017) All FWLR (Pt. 887) page 130, it was clearly stated that a hearing notice is the only legal means of getting a party to appear in Court.

Consequently, the claimant has proved his case against the defendant, which will warrant this Court to enter judgment in his favour as seen in O11 rule 16(1) and O15 rule 1 and 3, rules of this Court, 2007.

See also UBN Vs. Chima Eze (2014) All FWLR (pt. 734), 56-57.

In conclusion, this case being undefended and from the admission made by the defendant's counsel in his letter to the claimant as aforementioned, seen in Exhibit B; admitted facts its trite, need no further proof, section 123 of the Evidence Act, 2022, the Court hereby enters judgment in favour of the claimant and orders as follows;

1. That the defendant pays the claimant the sum of N600,000.00 (Six Hundred Thousand Naira) only, owed the claimant by the defendant, for the approval of two of his building drawings.
2. That this payment be made immediately to the claimant.

This is the judgment of the Court.



MRS BARIYAAH .H. ABE
Chief Magistrate
22nd January, 2024.

