

IN THE MAGISTRATES' COURT OF RIVERS STATE OF NIGERIA
IN THE PORT HARCOURT MAGISTERIAL DISTRICT
HOLDEN AT SMALL CLAIMS COURT 2, PORT HARCOURT
BEFORE HIS WORSHIP COLLINS G. ALI ESQ.,¹ TODAY FRIDAY, THE 28TH
DAY OF JULY, 2023.

SUIT NO.:PMC/SCC/66/2023.

BETWEEN:

MR. OYEYEMI AWOTUNDE

CLAIMANT

AND

CHIEF DOCTOR BRIGHT ALABI

DEFENDANT

Case called.

Parties absent.

JUDGMENT

The Claimant commenced this case against the Defendant on the 7th June 2023 and claimed as per the claim attached to the summons as follows:-

1. Amount Owed the Claimant - ₦3,250,000.00
 2. Cost of litigation - ₦500,000.00
- Total = ₦3,750,000.00

The Defendant was served with the claim and summons personally on the 8th June 2023 and he filed FORM RSSC 5 on the 20th June 2023 wherein he denied the claim on the ground that the lease was not renewed and counterclaimed against the Claimant thus:-

1. Rent refund - ₦1,300,000.00
 2. Development of premises - ₦7,800,000.00
- Total = ₦9,100,000.00

Plea of not liable was entered for the Defendant on the 15th June 2023 and the case proceeded to trial. The Claimant called the Property Manager one Prince Adesanmi Odumoranyo who testified as CW1. The Claimant tendered demand letter to the Defendant dated 15th May 2023 as Exhibit A. The Defendant testified as DW1 and tendered Lease Agreement signed on 15th October 2019 (Exhibit B), Letter of offer dated 16th June 2020 (Exhibit C), Letter of Acceptance of offer for sale dated 30th

¹ LL B, LL M, BL, A. IDRI, Chief Magistrate Grade I, and the Presiding Magistrate, Small Claims Court 02, Port Harcourt, Rivers State.

June 2020 (Exhibit D), and Nine (9) digital photographs (Exhibits E, E1-E8). The CW1 and DW1 were cross examined by counsel on both sides. A careful look at Exhibit D shows that it could not have been made on 30th June 2020 and was not received by the Claimant I will therefore not attach any probative value to same.

At the close of trial, the learned defence counsel E. O. Kalu Esq., filed final written address on the 17th July 2023. The Claimant counsel L. D. Opara Esq. filed unsigned final written address on behalf of the Claimant on the 19th July 2023 while the defence counsel E. O. Kalu Esq., filed reply on points of law on the 21st July 2023. The Defendant's final written address was adopted on the 21st July 2023 while the Claimant's unsigned final written address was struck out. Also, the Defendant's reply on points of law which purports to be a response to the Claimant's non-existent final written address is hereby discountenanced.

The learned Defence counsel raised three issues for determination in the Defendant's final written address thus:

1. Whether the Defendant is indebted to pay rent after expiration of the lease when the Claimant did not put Defendant to effective possession of the property.
2. Whether the Defendant has proved the counterclaim having not been put to effective possession and led by Claimant to expend money to renovate the property.
3. Whether this Court has jurisdiction to entertain the suit in the absence of a personal service of the summons on the Defendant as provided by rules of Court.

On the issue 1, the evidence before the Court is that the Defendant leased Plot 235 Along East/West Road, Port Harcourt (as shown in Exhibit B) from the Claimant for one (1) year from 15th October 2019 to 30th September 2020 for an annual rent of ₦1,300,000.00 only. The CW1 testified that six (6) months after the one year rent expired and demands were made for the payment of further rent, the Defendant came up with the idea of purchasing the property which was communicated to the Claimant who directed his lawyer to recover the outstanding rent. On his part, the DW1 admitted the one year lease but testified that he was offered to buy the property for ₦40million vide Exhibit C by the CW1 and he offered to pay ₦20million vide Exhibit D. There is evidence that after the one year rent expired on the 30th September 2020, the Defendant remained in possession of the property for 2^{1/2} years without paying the accrued arrears of ₦3,250,000.00. It is incorrect to argue as the defence did, that the Defendant was not put in possession of the property wherein he claimed to have made improvements and later offered to purchase. Exhibit D, a purported acceptance letter is not real and seems to me an afterthought which never got to the Claimant or his agent. Issue 1 is resolved against the Defendant.

On the second issue, the learned defence counsel argued that the Defendant has proved his entitlement to counterclaim. The contention of the Defendant that he was not put in effective possession of the land is contradictory in the light of his claims for

improvement on the property. If I may ask, if the Defendant was not put in effective possession, how come he was able to move into the property, mounted his caravan and renovated it together with the two he purchased on the property? Again, the Defendant did not prove that his acclaimed improvements on the land were authorised by the Claimant; and that there was any agreement to refund him for those improvements. The lease agreement was for empty plot of land and the Defendant is bound to pay the arrears of rent for as long as he remains in possession. Issue 2 is resolved against the Defendant.

The third issue bothers on the Defendant not been served personally. The learned defence counsel relied on the evidence of the Defendant to argue that the Defendant was not served personally. The cases of *Otu v A.C.B International [2008] 3 NWLR (Pt.1073) 179* and *Union Beverages Ltd v Adanite Co. Ltd [1990] 7 NWLR (Pt.62) 348* cited by the defence counsel are inapplicable in this case. It is the evidence of the Bailiff that the Court should rely on to decide whether a service of Court process is personal or by substituted means and not the evidence of the DW1. The affidavit of service deposed by the Bailiff of Court one Obodo Chinonyerem Eze dated 8th June 2023 states that the Defendant was served personally. The law is trite that the best proof of service of court process is the unconditional appearance, presence and representation of the party served. However, where there is dispute as to service, the affidavit of service is a prima facie evidence that the service was carried out. See *Umar & Anor. v Okeke [2016] LPELR-40258 (CA)*. The Defendant appeared in Court and was duly represented by counsel from beginning to the end. The third issue is also resolved against the Defendant.

The Claimant asked for cost of ₦500,000.00. The law is that a successful litigant is entitled to cost. But award of cost is at the discretion of the Court regardless of whether it was pleaded and/or proved. See the case of *Mekwunye v Emirate Airline [2019] LPELR-46553 (SC)*. I hold that the Claimant has proved his case and is entitled to judgment.

Judgment is hereby entered for the Claimant as follows:-

1. The Defendant is hereby ordered to pay the sum of ₦3,250,000.00 (Three Million, Two Hundred and Fifty-Thousand Naira) only to the Claimant forthwith.
2. The Defendant is also ordered to pay the sum of ₦200,000.00 (Two Hundred Thousand Naira) only as cost to the Claimant forthwith.



C. G. Ali Esq.
Chief Magistrate Grade 1
28/07/2023

LEGAL REPRESENTATIONS:

1. U. C. Eze, Esq. for the Claimant.
2. Emmanuel Kalu, Esq. for the Defendant.

