

IN THE MAGISTRATE COURT OF RIVER STATE OF NIGERIA
IN THE PORT HARCOURT MAGISTERIAL DISTRICT
HOLDEN AT PORT HARCOURT
BEFORE HIS WORSHIP S. S. IBANICHUKA, ESQ
HOLDEN AT SMALL CLAIM COURT 6 PORT HARCOURT

PMC/SCC/151/2024

- 1. PROF. E N ETEBU**
- 2. PROF. O M O ETEBU**
(Trading under the name and style of
MALIKUKU NIGERIA ENTERPRISES.)
(Suing through their Attorney Uzoma O
Benjamin.Esq)

VS.

- 1. JIDEOFOR DAVID EZE**
- 2. OBBINNA HENRY ONUH**

JUDGEMENT

This is a suit for recovery of arrears of rent instituted by the Claimant via forms RSSC 2 and RSSC3 of this court filed on the 31/05/24 wherein the claimant claims for the following:

- i. The sum of **₦450,000.00 (Four Hundred and Fifty Thousand Naira)** being and representing arrears of rent .
- ii. **₦300,000.00 (Three Hundred Thousand Naira)** only as damages
- iii. **₦260,000.00 (Two Hundred and Sixty Thousand Naira)** only as cost of litigation.

This action is taken out by the Lawful Attorney of the claimants and in proof of his case the claimant called only one witness the claimants Attorney, Uzoma O Benjamin of counsel who relied on one Exhibit, Exhibit "A" the Power of Attorney donated to CW1. CW1 further relied on an endorsement and return copy of a Letter of Demand (form RSSC1) of this court. The Defendants did not cross examine CW1, they did not defend this suit. despite proof of service in the courts file of the Originating processes in this suit and a hearing notice as well. The Claimant applied for and the Defendant was foreclosed from Cross examining the claimant and defending this suit, consequently the claimants counsel waived her right to address the court orally or in writing.

The summery of the facts of this case are that the claimants are the owners of a two (2) Bedroom Flat apartment with its appurtenances situate No 15 Bank Anthony Avenue. Canaan Estate, Trans Amadi, Port Harcourt. That the defendants are yearly Tenants and pay the sum of **₦450,000.00 (Four Hundred and Fifty Thousand Naira)** per annum

which rent expired in October 2023. that after the rent expired in 2023 the defendants have refused to pay their rents till 2024 despite several demands by the claimants Attorney to the defendants. Consequently a demand notice and summons of this court were served on the defendants by the bailiff of this court. That the defendant in cause of this matter spent over **₦260,000.00 (Two Hundred and Sixty Thousand Naira)** to institute this action.

The sole issue for determination as raised by this court in this judgment is *“Whether the Claimants have put enough materials before this court to enable the court to grant the reliefs of the claimants?”*

The law is trite that where the claimant leads evidence in prove of his case and the Defendant does not dispute the claims , the claimant shall be said to be entitled to judgment if he meets the standard of prove required by law. In a civil case such as this the standard of prove is on a preponderance of evidence. See: **Section 134 of the Evidence (Amendment) Act 2023 .**

However, the burden of this prove rests on the claimant.,See the cases of **IBANIPIO V. ONYIYANGO (2000) 6 NWLR (PT. 661) PAGE 497 at paragraph E.**

The claimants case is to succeed on its own strength and not on the weakness of the defendants case.

The claimants Attorney as CW1 adopted his written deposition on oath filed on the 8-07-24 on 09-07-24 as his evidence before this court. The defendants did not contradict any of averments of the claimants neither is there a defence against all the claims of the claimant before this court. The implication ordinarily is that the Defendants are considered to have admitted all the facts and claims as stated by the Claimants, the law is trite that facts admitted need no further proof, see **Section 123 Evidence (Amendment) Act, 2023** and the case of **CBN V. DINNEH (2010) 17 NWLR (PT. 1221) PAGE 125, 162 at paragraphs C-D.**

This is a claim for arrears of rents, arrears of rent is the rent due to the Landlord by the Tenant from the time the Tenants rent expires and he is still a Tenant but owing rent till the date the tenancy is legally determined by a statutory notice. see **Odunsi & Anor v Abeke (2002) LPELR 12167 (CA).**

In this case there is no evidence before this court to show or indicate that the tenancy of the defendants has been determined, the primary relief of the claimant before this court is clear to wit: “arrears of rent”. The CW1 did state in his written deposition before this court that the Defendants pay the sum of **₦450,000.00 (Four Hundred and Fifty Thousand Naira)** as rent per annum and the rent of the defendants expired in October

of 2023 and that since then the defendants have not paid their rent for 2023 to 2024 and claimants claim the sum of **₦450,000.00 (Four Hundred and Fifty Thousand Naira)**. by my calculation that is **₦37,500.00 (Thirty Seven Thousand Five Hundred Naira)**. relying on the uncontroverted evidence of CW1, the rent of the defendants expired in October 2023, meaning that the defendants are and can only be in arrears of rent from November of 2023 till date at the rate of same **₦37,500.00 (Thirty Seven Thousand Five Hundred Naira)**. from November 2023 to June 2024 (the month of July is still running) amounting to **₦300,000.00 (Three Hundred Thousand Naira)** only. I shall in the interest of justice so hold as I have painstakingly taken out time to calculate.

With respect to prayer two being a claim for the sum of **₦300,000.00 (Three Hundred Thousand Naira)** only as damages , this claim is deemed abandoned as there is nothing before this court supporting this claim.

On prayer three being the claim for the sum **₦260,000.00 (Two Hundred and Sixty Thousand Naira)** only as cost of litigation. The CW1 in his written statement on oath before this court did make specific reference to this exact sum as cost they spent on instituting this case, this claim stands uncontroverted and is deemed admitted by the defendants accordingly same succeeds.

In conclusion it hereby adjudged as follows:
That the claimant is entitled to:

1. The sum of **₦300,000.00 (Three Hundred Thousand Naira)** being and representing arrears of rent the defendants owes the claimants at the rate of **₦37,500.00 (Thirty Seven Thousand Five Hundred Naira)**. from October,2023 to June, 2024
- ii. **₦260,000.00 (Two Hundred and Sixty Thousand Naira)** only as cost of this litigation.

I make no further orders.


Signed,
S. S. IBANICHUKA , ESQ.
29/07/2024.

