

made other payments to the tune of N350,000.00 which leaves an outstanding balance of N850, 000.00. According to defendant, the said N350,000.00 was the part payment of rent for the tenancy period of 2020 – 2021. So it is not correct that he is owing claimant the sum of N1, 133, 333.00 as claimed. He prayed the court for time to offset the debt.

At the conclusion of trial and in line with the Rivers State Small Claims Court Practice Direction 2023, both parties addressed the court orally on the 16/2/24. While the claimant is praying the court to grant his reliefs, the defendant is asking for more time to pay the debt.

DETERMINATION OF THE CASE.

I have given an anxious consideration to the issues raised by parties and I deem it necessary to state that the claimants case is for the recovery of debt owed to him by defendant. He must establish his entitlement to judgement before the court can proceed to make the award, for this is so, irrespective of whether or not there is defence. The onus of proof in civil cases is on claimant who must prove his claim or fail. In aid, see the case of **Borishade v N.B.N Ltd. (2007)1 NWLR [Pt. 1015,] 217.**

In the instant case, the available evidence on record that is undisputed is that, the defendant initial rent expired in October, 2020. He was in arrears of rent of N1, 133,330.00 from November, 2020 to August, 2023 (2years & 10months) before the suit was filed in September, 2023. He made part payment of N335,000.00 by virtue of his First City Monument Bank (FCMB) and Guaranty Trust Bank (GTB) statement of accounts (exhibits B to D) leaving a balance of N798,330.00.

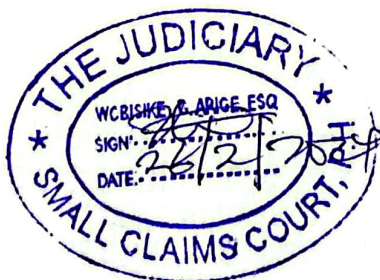
The above facts remained unchallenged by both parties. It is the law, that when evidence called by a witness is unchallenged, the court is at liberty to accept such evidence in proof of the issue in contest. See the Supreme Court cases of **Ihreriniovo v SCC Nig. Ltd. (2013) LPELR – 20336; and Oforlete v State (2000) LPELR – 2270.** Therefore, the above evidence which is crystal clear that the defendant is owing claimant to the tune of N798, 330.00 stands credible and this court will accept same as the true state of affairs. Accordingly, relief (1) succeeds.

With respect to the sum of N100,000.00 cost of litigation, I must say that the law requires the claimant to prove how he came to arrive at the amount as cost of litigation. See the Court of Appeal case of **DHL Intl Nig. Ltd. v Eze-Uzoamaka (2020) 16 NWLR (Pt. 1751) 445.** In the instant case, there was no evidence by way of lawyer's fee note, bill or payment of same or expenses placed before the court in regard to cost of litigation by the claimant. Thus, for the findings of want of proof of cost, it is not granted.

Having carefully examined the evidence of the parties in this case, I am very satisfied that from all indications and the cumulative summary of the facts, the conclusion cannot be other than, that the case has merit and it succeeds in part. Accordingly, judgement is hereby entered forthwith as follows;

- a. That the defendant is ordered to pay the claimant the sum of N798, 330.00 being the rent due and unpaid for 2years and 10months (November, 2020 to August, 2023).
- b. The sum of N100,000.00 cost of litigation is hereby not granted.

For the avoidance of any possible doubt, the claimant's relief (2) is hereby dismissed.




BETTY SUNNY- HART, ESQ.
Chief Magistrate
20/2/24