

IN THE MAGISTRATES' COURT OF RIVERS STATE OF NIGERIA
IN THE PORT HARCOURT MAGISTERIAL DISTRICT
HOLDEN AT SMALL CLAIMS COURT 3, PORT HARCOURT
BEFORE HIS WORSHIP COLLINS G. ALI ESQ.,¹ TODAY WEDNESDAY, THE
31ST DAY OF MAY, 2023.

SUIT NO.: PMC/SCC/47/2023.

BETWEEN:

ETUKESSIEN JOY IME

CLAIMANT

AND

MR. KENNETH AWUSE

DEFENDANT

Case called.

Claimant present.

Defendant absent.

JUDGMENT

The Claimant commenced this case against the Defendant on the 17th May 2023 after serving the Defendant with the mandatory demand notice on the 28th April 2023 as required under Art. 2 (e) RSSCC (Practice Direction) 2023. By the summary of claim contained in the summons, the Claimant claims against the Defendant as follows:-

1. Debt / Amount Claimed - ₦150,000.00
 2. Damages - ₦100,000.00
 3. Cost of Litigation - ₦100,000.00
- Total = ₦350,000.00

The Defendant was served with the claim and summons personally on the 20th May 2023 as shown in the affidavit of service deposed by Chinah Chamberline a Bailiff of Court attached to the Small Claims Court, Port Harcourt. When the case came up on the 26th May 2023, the Defendant failed to appear in Court despite been served with summons and claim on the 20th May 2023. Following the non-appearance of the

¹ LL B, LL M, BL, A. IDRI, Chief Magistrate Grade II, and the Presiding Magistrate, Small Claims Court 03, Port Harcourt, Rivers State.

Defendant, the Claimant proceeded to prove her case on the directive of the Court pursuant to Art. 8 (2) RSSCC (Practice Direction) 2023.

The Claimant testified as Cw1 and tendered the following documents in evidence as Exhibits:

1. Demand Notice - Exhibit A
2. First Bank Statement of Account for 1st to 31st January 2023- Exhibit B
3. Guaranty Trust Bank Statement of Account dated 28th April 2023 - Exhibit C
4. Legal Fee Receipt dated 25th May 2023 - Exhibit D
5. Transfer Alert Print-out dated 25th May 2023 - Exhibit D1.

The Claimant as an apprentice in a fashion house in Rumuodomanya, Port Harcourt who is currently squatting with a Church member at Adventist Comprehensive High School, Elele in Ikwerre Local Govt. Area of Rivers State; sometimes on the 26th and 27th January 2023 paid the Defendant the sum of ₦150,000.00 as rent for a Self-Contained apartment at Rumukwachi in C'bio/Akpor LGA, Rivers State property of the Defendant. The Claimant also paid ₦15,000.00 for agent fee, ₦10,000.00 as drink charge, and ₦8,000.00 for repainting of the apartment and travelled to get her house property to move into the apartment after seen it. The Claimant returned but noticed that the Defendant had rented the apartment to another person. The Defendant promises to put the Claimant into another apartment failed and all effort to get the Defendant to refund the Claimant have proved abortive. The Claimant has therefore prayed the Court to Order the Defendant to refund the monies paid and award damages in her favour.

The law is that where the evidence given by the Claimant is unchallenged and uncontroverted, and particularly where the opposite party or side had the opportunity to do so, it is always open to the trial Court seised of the matter to accept and act on such unchallenged or uncontroverted evidence before it. See *Owners of M/V Gongola Hope & Anor. v Smurfit Cases (Nig) Ltd & Anor. [2007] LPELR-2849 (SC)*. I accept the unchallenged evidence of the Claimant as truth. There is a clear case of breach of contract by the Defendant who received a total sum of ₦183,000.00 from the Claimant as rent and sundry expenses but went ahead to rent the same apartment to a third party.

The Claimant has a right in law to request that the Defendant refund the monies received without letting the Self-Contained apartment to her as agreed. The law is that where there is a right, there is a remedy as captured in the Latin Maxim "ubi jus ibi remedium". The Claimant has incurred further expenses by engaging a lawyer and instituting this case in Court against the Defendant for failing to give her the apartment paid for nor refund the money paid. I hold that the Claimant has proved her case and is entitled to the reliefs sought.

Judgment is hereby entered for the Claimant and against the Defendant as follows:

1. The Defendant is hereby ordered to pay the sum of ₦150,000.00 (One Hundred and Fifty Thousand Naira) only to the Claimant forthwith.
2. The Defendant is ordered to pay the sum of ₦100,000.00 (One Hundred Thousand Naira) only as general damages to the Claimant forthwith.
3. The Defendant is ordered to pay the sum of ₦100,000.00 (One Hundred Thousand Naira) only as legal fees to the Claimant forthwith.



C. G. Ali Esq.
Chief Magistrate Grade II
31/05/2023

LEGAL REPRESENTATION:

1. Claimant counsel absent.
2. Defendant not represented.

