

IN THE SMALL CLAIMS COURT OF RIVERS STATE OF NIGERIA
IN THE PORT HARCOURT MAGISTERIAL DISTRICT
HOLDEN AT PORT HARCOURT

RESUMED ON MONDAY THE 20TH DAY OF FEBRUARY, 2024
BEFORE HIS WORSHIP, BETTY SUNNY-HART, ESQ. CHIEF MAGISTRATE
SITTING AT SMALL CLAIMS COURT, ABULOMA PORT HARCOURT

SUIT NO. PMC/SCC/178/2023

BETWEEN:

DANIEL EKE EMIRI -- -- **CLAIMANT**

AND

STANLEY IBISO GABRIEL WHYTE -- -- **DEFENDANT.**

PARTIES

Claimant is present but defendant is absent.

APPEARANCES:

Sophia I. Ugwuorah, Esq. for the claimant.

No counsel for the defendant.

JUDGEMENT

On the 29/9/23, the claimant commenced an action against the defendant claiming as follows:

1. *The liquidated sum of N1, 133,330.00 representing 2years and 10months (November 2020 – August 2023) rent on claimant's premises demised unto the defendant.*
2. *The sum of N100,000.00 as cost of litigation.*

A plea of not liable was entered for and on behalf of the defendant by this court on the 19/10/23. Thereafter, this court proceeded on vacation from 20\10\23 to 1\12\23 before her transfer to Chief Magistrate Court Abuloma, Port Harcourt, Rivers State. Hearing of this case commenced on the 2\2\24

In proof of his case, claimant testified for himself and tendered one exhibit (exhibit A), while the defendant gave evidence on his own behalf and tendered four exhibits, (exhibits B – E).

SUMMARY OF FACTS

The facts of claimant's case are that, the defendant is a tenant in his property located at No. 24B Jerry lane, Woji Town, Port Harcourt, Rivers State, occupying a 2bedroom flat, which the rent per annum was agreed at the rate of N400,000.00 only. The defendant paid the sum of N400,000.00 for the tenancy period of November, 2019 – August, 2020. Since the expiration, despite claimant's several passionate appeals to him for the payment of the rent on the property, he has refused/failed to pay till date. The defendant has stayed in the property for a period of 2years and 10months, beginning from November 2020 – August 2023 before this suit was filed, amounting to a total rent of N1, 133,330.00. A letter of demiaand dated 11\9\23 (exhibit A) from ATLAW Solicitors was sent to defendant for the payment of the money but he neglected to pay. The total liquidated some owed to claimant is the sum of N1, 133, 333.00 and his wilful refusal to pay, prompted claimant to institute this suit seeking for the above reliefs.

On his part, the defendant stated that he actually did pay the yearly rent agreed when he moved into the property and same was acknowledged by the claimant. That he has also

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