

IN THE MAGISTRATES' COURT OF RIVERS STATE
IN THE PORT HARCOURT MAGISTERIAL DISTRICT
HOLDEN AT PORTHARCOURT BEFORE HIS WORSHIP. G.C. AMADI ESQ.
SITTING AT SMALL CLAIMS COURT AT CHIEF MAGISTRATE COURT 8, ON THE 19TH OF
FEBRUARY 2024.

SUIT NO. PMC /SCC/207/2023

MR. SHAGUOLO AWUSA

}

CLAIMANT

AND

MR CHIMA OSIMIRI

}

DEFENDANT

JUDGMENT

This is the final judgment in this suit wherein the claim before the court, dated and filed on the 19th September , 2023 is for:

1. An order of this Court compelling the defendant to pay the Claimant, the sum of One Million and One Hundred Thousand Naira (N1,100,000.00) only representing the rent for two years , from 1st March 2022 to 28th February 2024 as rent owed in arrears.
2. The sum of Two Hundred Thousand Naira (200,000.00) only as cost of litigation and solicitors fee.

In proof of his case, the Claimant called three witness and the defendant did not call any witness

On the 7th day of November, 2023, the Claimant was present and the defendant was absent. An application to enter plea of not liable for the defendant by the Claimant Counsel was granted and the matter was set down for hearing.

On the 12th January, 2024, the CW1, who is also the Claimant on record testified and adopts his written statement on oath dated and filed the 8th day November, 2023 wherein her testified that he is a businessman of No. 70 Ada George Road, Port Harcourt, Rivers State. That he is the owner of the 3 bedroom flat apartment with the appurtenances situate at No. 70 Ada George Road, Port Harcourt, Rivers State. That the defendant is a fixed yearly tenant which commences from the 1st day of March each renewed year. That the defendant rent is a N450,000,00 for the year 2021-2022, 2022-2023 and N650,000 for the year 2023 -2024.

That the defendant rent expired on the 28th day of February, 2022 and that despite repeated verbal and written demands, the Defendant has failed or neglected to pay his rent for two years in arrears. The CW1 identifies the demand letter served on the defendant and the Claimant's counsel seeks to tender same in evidence. Same is admitted and is marked as Exhibit 'A'.

In conclusion, the CW1, prays for an order of this Court compelling the defendant to pay the Claimant, the sum of One Million and One Hundred Thousand Naira (N1, 100,000.00) only representing the rent for two years, from 1st March 2022 to 28th February 2024 as rent owed in arrears and also the sum of Two Hundred Thousand Naira (200,000.00) only as cost of litigation and solicitors fee.

At the close of the evidence in chief of the CW1, after sighting the Affidavit of service dated 6th of November 2023 and another dated 14th November, 2023 and the Hearing Notice dated 10th of November 2023, the Court was convinced that the defendant had been given sufficient notice of the Hearing of the matter and the defendant was consequently foreclosed from cross-examining the CW1 and the matter was adjourned to the 15th of January 2024 for the evidence of CW2.

On the 15th of January, 2024, when the matter came up for the evidence of CW2. The defendant appeared in Court and makes an application to rescind the foreclosure order against the defendant to cross-examine the CW1 on the basis of Fair hearing. The Claimant counsel vehemently opposes the application on the grounds that the Small Claims court is a special court and time is of the essence.

In rescinding the order, despite the fact that the matter has exceeded the 60 days' time allotted for the conclusion of matter, the Court bent over and rescinded the order and awarded 5,000 cost against the defendant and the matter was adjourned to the 16th January, 2024 for the cross-examination of CW1 and the evidence of CW2

On the 16th January 2024, The CW1 was cross examined by the defendant and he testified that he brought the defendant to Court because he is owing him rent, that his name is also Mr. Shagholu Felix Awusa that Mr. N.I Aninwezi is his managing agent and that he is not bound by all the decisions he makes, That the authority given to the said Managing director is to write to tenants and to meet with them, That the defendant have paid him rent when he took possession through his Managing director and he does not know if Aninwezi issued him receipt then or has ever issued him receipt since he took possession. That it is not true that there are times, when rent was paid directly to him. That throughout the tenure of Aninwezi nobody has paid anything to him. That he cannot remember the date or the year that the defendant paid, that keeping the records is the work of the managing director. That after the proceeding in court he did not call the defendant or send him text messages to pay him, That he does not know any John Emmanuel and he does not have the defendant's phone number. That the defendant paid N450,000 when he entered the property, That he cannot calculate per month. That later the rent was increased to N650,000 per annum. That his phone number is 0901739057, That he does not know any 0701 number. That he has never had any correspondence with the defendant or his agent.

That the defendant paid money for 2021 and is owing 2022 and 2023. That he is in Court to collect his rent from the defendant who is his tenant and have never asked him to pay money to anybody.

At the close of the cross-examination of CW1, the matter was adjourned for the evidence of CW2 on the 17th of January, 2024

On the 17th January, 2024, CW2, one Mr. M.I Aninwezi, the property manager of the subject matter before the Court testified and adopts his written evidence on oath and gave evidence that the defendant is a yearly tenant which commences from the 1st day of March each renewed year and that the defendant renews his tenancy by the payment of his annual rent in advance and that the defendant rent expired on the 28th day of February, 2022, That despite repeated verbal and written demands, the defendant has failed or neglected to pay his rent for two years in arrears. That all the rent in the property was paid to him and not directly to the landlord, the CW1. That the defendant has not paid his rent till date to him.

At the close of the evidence in Chief, matter was stood down for the defendant counsel to show up in Court.

When the defendant finally showed up, The CW2 was cross examined and he stated that the tenancy commenced 1st March, 2017 and has been paying rent to his office, that sometimes he issues him receipt and other times, he does not issues receipt. That he has not tendered receipt for rent because there is no demand of the receipt that he gave to the defendant. That his principal has only one phone, That he ceased being the manager of the property sometime in November, 2023. That he knows one Sir Barrister I.O Nwodo, that he is not aware that he manages the property. That he is aware that he issued statutory notices on the defendant to quit the property. That after he stopped managing the property, he does not know anything about the tenant including the defendant's payment of rent. That the defendant paid agency fee but refused to pay other fees like legal fees and caution fees. That he gave the defendant, tenancy agreement and took him to Court and got judgment which he did not execute because of friendship. That when the tenancy commenced, the defendant refused to sign the tenancy agreement. That he did not tender the tenancy agreement that the defendant refused to sign. That he did not also tender any notice of demand before the court. That it is true that as at the time, he stopped managing the property, that the defendant is still owing him and that when his management was terminated, the defendant and the other tenants were informed. That he does not know if the defendant paid after the termination of his management.

That it is true that one of the days when the Claimant came to the property, he saw the defendant who came out to greet him. That the Claimant knows the defendant as his tenant. That the defendant told him that he does not know the Claimant until the day, the landlord and the defendant saw him and greeted him. That the defendant is not one of his good tenants and from the reports he handed over to his former principal, the defendant was owing rent. That the prevailing practice is that if you are increasing rent, you have to notify the tenant of the increment. That the rent was increased during the pendency of his management and it was terminated in September, 2023.

At the end of the evidence of CW2, the matter was adjourned to the 26th January, 2024 for evidence of CW3.

On the 25th January, 2024, Matter was not heard and adjourned at the instance of both parties to the 26th January 2024.

On the 26th January, 2024, Matter was not heard and was adjourned at the instance of both parties to the 30th January 2024.

On the 30th of January, 2024, CW3, one Mr. Obodo Chinemere, a bailiff attached to Chief Bailiff office, gave evidence and states that he was assigned to serve a demand notice on the defendant which he did serve on the 20th of September, 2023.

During the cross-examination of the CW3, on same date, he stated that he did not serve the summons, he only served the demand letter and he made efforts to serve the defendant but it not possible so he served the defendant personally through his daughter. That because it is a letter of demand, it can be served on the daughter and that it is good service. At the close of the evidence of CW3, the matter was adjourned for defence to the 8th and 12th February, 2024.

On the 8th February, 2024, parties were present the defendant counsel informs the court that they won't be able to commence their defence because their DW1 is sick and applied for a adjournment. In granting the application for adjournment, he Court without sighting a medical document adjourned the matter again for defence on the 12th day of February, 2024.

On the 12th day of February, 2024, the defendant counsel, B.B. Kitigi Esq informs the Court that she cannot conduct the defence and applies for a stand down for her principal in Chamber to finish in another Court, so he can conduct the defence. The Court granted the application and the matter was stood down for 30 minutes. After over 30 minutes, the counsel for the Claimant, F.F. Sada, who is a senior member of the bar, called the matter because the time granted for the matter to be stood down has expired and he also had other matters to attend to in another Court.

When the matter was called up again, the defendant counsel stated that though she has the files but she cannot go on with the defence and insisted that the Court should wait for the principal. The Claimant's counsel is vehemently opposed to this application.

The court in her ruling noted that the small Claims court is a special Court and the matter ought to have been concluded in 60 days and as today, the matter has exceeded about 130 days since filing and no reasonable reason has been adduced why the defence counsel who is in Court and has the file cannot conduct the case even after the matter was stood down for over 30 minutes at their instance, In accordance with the Article 8, Rule 2 of the Small Claim Practice Direction 2023, the Court foreclosed the defendant from defence and the matter was adjourned to the 16th of February, 2024 for judgment.

A total of one (1) exhibit was tendered in evidence in the course of the trial.

That said, I will proceed to consider the case of the parties in the light of the relevant laws. I have noted the essence of the claim and have also taken cognizance of the evidence before the court. I have read the exhibit and I have couched a lone issue for determination

, and that is whether the Claimant has discharged the burden of proving his Claim before the Court.

The general principle of law is that he who asserts must prove, coined from the old maxim *incumbit probatio qui dicit non qui negat* which means that the burden of proving as fact rest on the party who asserts the affirmative of the issue and not upon the party who denies it, for a negative is usually incapable of proof. See *Omisore v. Aregbesola* (2015) 15 NWLR (Pt. 1482) p. 217. See also, Section 131 and (2) Evidence act 2011, and *Agwaramgbo v. I Dumogu* (2008) 5 NWLR (Pt. 1081) p. 564 at 572.

The CW1 have stated that the defendant rent is a N450,000,00 for the year 2021-2022, 2022-2023 and N650,000 for the year 2023 -2024.

That the defendant's rent expired on the 28th day of February, 2022 and that despite repeated verbal and written demands, the Defendant has failed or neglected to pay his rent for two years in arrears. The CW1 identifies the demand letter served on the defendant and the Claimant's counsel sought to tender same in evidence. Same is admitted and is marked as Exhibit 'A' and the CW1, prays for an order of this Court compelling the defendant's to pay the Claimant, the sum of One Million and One Hundred Thousand Naira (N1, 100,000.00) only representing the rent for two years, from 1st March 2022 to 28th February 2024.

The CW2, the property manager of the subject matter before the Court testified and gave evidence that the defendant is a yearly tenant which commenced from the 1st day of March each renewed year and that the defendant renews his tenancy by the payment of his annual rent in advance and that the defendant rent expired on the 28th day of February, 2022, That despite repeated verbal and written demands , the defendant has failed or neglected to pay his rent for two years in arrears. During cross-examination, he ceased being the manager of the property sometime in November, 2023(Way after the matter has been filed in this Court)

Suffice is to note at this point that none of the facts stated by the CW1 was controverted in evidence or denied by the defendant and so will be deemed by this court as admitted.

The defendant neglected to file a statement of defence and did not utilise the opportunity that was given to him to defend.

The law is that facts admitted need not be proved by evidence. Please refer to the case of *Ayoke V. Bello* (1992)10 NWLR (Pt 218) pg 380 Ratio 2; *O.A.A Cooperative Society Vs. NACP Ltd* (1999) 2nwlr (Pt 590) Pg 234, Ratio 4.to the effect that what is not denied is deemed admitted and what is admitted need not be proved.

On the undisputed and clear evidence before the court, the court will hold that the claimant has discharged the burden of proving that he is entitled an order of this Court compelling the defendant to pay the Claimant, the sum of One Million and One Hundred Thousand Naira (N1,100,000.00) only representing the rent for two years, from 1st March 2022 to 28th February 2024 as rent owed in arrears.

On The Claim For Cost Of Litigation

On the cost of litigation, the Appellate Courts have reiterated times without number that cost of litigation is in the class of special damages that must be strictly proven.

Please refer to the case of Lonestar Drilling Nig. Ltd v. New Genesis Executive Security Ltd [2011] LPELR – 4437 CA; International Offshore Construction Ltd & 3 Ors. v Shoreline Lifeboats Nig. Ltd [2003] 16 NWLR [Pt. 845] p. 157

The Claimant in this case have failed to attach documentary evidence in the form of an invoice or a statement of account etc.

In the absence of a documentary evidence to back up the claim for cost of litigation, the claim for cost of litigation fails.

IT IS THUS ADJUDGED that the Defendant is to pay the Claimant the sum of One Million and One Hundred Thousand Naira (N1, 100,000.00) only representing the rent for two years , from 1st March 2022 to 28th February 2024 as rent owed in arrears by the defendant to the Claimant.

AND IT IS ORDERED that the defendant is to pay the Claimant, the sum of One Million and One Hundred Thousand Naira (N1,100,000.00) only representing the rent for two years , from 1st March 2022 to 28th February 2024 as rent owed in arrears before the 8th day of March, 2024

TAKE NOTICE –That if payment is not made as above ordered, a warrant or warrants may issue requiring an officer of the court to levy the sum above mentioned, to the Claimant together with further costs.

GIFT C. AMADI ESQ
CHIEF MAGISTRATE
G.D.I.
SIGN.....DATE.....

**G. CHINYERE AMADI. ESQ.
CHIEF MAGISTRATE G.D.I**