

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

RESUMED ON MONDAY THE 8<sup>TH</sup> DAY OF APRIL, 2024  
BEFORE HIS WORSHIP S. S. IBANICHUKA, ESQ. SENIOR MAG. GD. I  
SITTING AT SENIOR MAGISTRATE COURT 19, PORT HARCOURT

SUIT NO: PMC/SCC/39/2024

**PRINCE EBIKEBENA DAKEPREBOR**

**VS.**

**OPIAN TONY MARIA**

The parties are absent, S. N. Nule appears with C. O. Ajie for the Claimant, C. J. Enyie appears for the defendant, the matter is for defence. The Defendant counsel informs the court that the witness is not in court. He applied that he adopts in particulars of defence before the court as their evidence in this suit. The Claimant Counsel objected on the ground that the procedure is not known to law, the claimant's counsel applied that the defendant be foreclosed from defending the suit and that the court should enter judgment as per the evidence by the claimant is this matter.

**COURT:**

I have listened to the application of the Defendants counsel to adopt his particular's of Defence as filed before this court as the evidence of the defendant before the court. The Claimants counsels is opposed this application and urged the court to enter judgment in the matter for the claimant, after foreclosing the Defendant from defending this suit. The application of the defendants counsel is unfounded in our laws and the rules and procedures of this court , the particulars of defence of the Defendant filed before this court cannot take the place of evidence in defence of the claimant before this court, Furthermore, the address of counsel on this score no matter how succinctly couched cannot take the place of oral or documentary evidence of the defendant before this court. Accordingly on this score the application of the Defendants counsel to adopt the Defendants particulars of defence before this court as the Defendants evidence in this suit hereby fails and same is refused. The counsels have in their respective submissions before this court urged this Court to enter judgement in this proceedings . Today the matter is for defence and the defendant has not called any witnesses but his counsel has applied that judgment be entered based on the particulars of defence while the claimants counsel has applied that the defendant be foreclosed from defending this suit . pursuant to my earlier ruling that the defendants counsel cannot use the particulars of defence to take the place of evidence in this suit I hereby hold on this score that that the defendant be and is hereby foreclosed from defending this suit.

As said earlier the counsels in their respective addresses have urged the court to enter judgement to proceed to judgement albeit on different grounds. This case being a small claim suit and in line with the application of counsels this court shall in the circumstances proceed to deliver judgement in this case.

### JUDGMENT

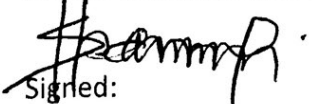
This case was instituted by the claimant in this suit via forms RSSC2 and 3 of this court filed on 23-02-24, the defendant via form RSSC 5, the forms for admission and defence in this suit filed on 13-03-24 admitted being indebted to the Claimant to the sum of ₦310,000 and is willing to refund the claimant the sum of ₦310,000.00 in three installments, he denied owing the claimant the sum of ₦810,000.00. The Claimant called CW1 in proof of his case and the defendant's counsel on 21-03-24 cross examined CW1.

The brief facts of this case is that the claimant claim that he paid the defendant the sum of ₦310,000 sometime in July 2022 for renting of one Self Contain Apartment and that defendant did not put him into possession and the defendant has refused to refund him his money despite repeated demands hence this suit. The defendant did not defend this suit by way of calling witness but relied on his particulars of defence before this court. the defendants failure to call witnesses to breath life to the said particulars of defence is a clear sign of abandonment of his defence to this suit. The defendant has also not been able to discredit the claims of the claimant by way of cross examination. The law is trite that facts admitted need no further proof. See the case of **CBN V. DINNEA (2010) 17 NWLR (PT. 1221) Pg. 125, 162 at C-D**. Furthermore I am convinced on the strength of the claimant's evidence as adduced by the CW1 that the claimant has proved his case by the standard required by law to wit by a proof on a preponderance of evidence. See Section 134 of the Evidence Amendment) Act 2023 accordingly it is hereby adjudged as follows:-

1. That the Claimant is entitled to the sum of ₦310,000 (Three Hundred and Ten Thousand Naira) being and representation the admitted sum owed by the defendant to the Claimant.
2. Cost of ₦300,000 is awarded in favour of the Claimant and against the defendant.

I make no further orders

Parties are remember of their rights to appeal.

  
Signed:  
S. S. IBANICHUKA, ESQ  
08/04/2024

