

**IN THE MAGISTRATE COURT OF RIVERS STATE OF NIGERIA
IN THE PORT HARCOURT MAGISTERIAL DIVISION
HOLDEN AT PORT HARCOURT
BEFORE HIS WORSHIP NNEKA E. EZE-OBUZOR
SITTING ON THE 6TH DAY OF MAY 2024
AT THE SMALL CLAIMS COURT 4 PORT HARCOURT**

SUIT NO: PMC/SCC/232/CS/2023

BETWEEN

MR EMMANUEL ONYEDIRE ----- CLAIMANT

AND

MR CHIBUNDU O. NONSO ---- DEFENDANT

PARTIES: Parties Absent

APPEARANCES: V.U Uzochukwu Esq. for claimant

J.O. Chukwu Esq. for defendant

JUDGEMENT

By a claim dated 08/11/2023, the Claimant's claim against the Defendant are as follows:

1. N365 000.00 for repairs.
2. N200, 000.00 as cost.

The Defendant on the 11/03/2024 counter claims against the Claimant as follows:

1. N494, 000.00 for damaged properties

PLEA

By the affidavit of service availed this court, the Defendant was served the originating process in this suit by substituted means by sending to the whatsapp number of the Defendant on the 27th of November 2023 at 10:20am. On the 29th of November 2023, a plea of not liable was entered for and on behalf of the absent Defendant. Case was adjourned to the 13th of December 2023 for hearing.

SUMMARY OF EVIDENCE

The Claimant in proof of his case called one witness and tendered six exhibits marked exhibits A – E and K.

The Defendant for his defence called two witnesses and tendered five exhibits marked Exhibits F – J.

The relevant facts from the case of the Claimant as presented by the Claimant's attorney appearing as Claimant's witness one (CW1) is that he knows the Claimant and he donated a power of attorney to him to manage and represent him in any issues relating to his property at Road 10 off Pipeline Road, Rumuagholu, Port Harcourt. A copy of the power of attorney was admitted as Exhibit A. That he knows the Defendant who was a tenant at the said property and occupied a 2 bedroom apartment. That the tenancy was reduced into writing via a tenancy agreement. Copy of the tenancy agreement was admitted as Exhibit B. That the Defendant rented the apartment in a tenable state but the Defendant vacated the apartment and destroyed all amenities in the apartment like doors, kitchen cabinets and paints without replacing them against the agreement entered by parties. Pictures of the alleged damaged amenities were admitted as Exhibit C1 – C7. That the Claimant tried severally to reach the Defendant to come fix the damaged properties all to no avail so the Claimant had to get an engineer to inspect and ascertain the damages and cost and was given an invoice. The quotation invoice was admitted as Exhibit D1 and D2. That after the invoices were sent to the Defendant and he refused to respond, a letter of demand was sent to him and this suit filed. CW1 concluded by urging the court to grant his claims. Case was adjourned to the 20/12/2023 for cross examination of CW1.

The case of the Defendant for his defence was presented by the DW1 and DW2, the Defendant's wife and the Defendant. The Defendant's wife in her testimony stated that she knows the Claimant who was their landlord. That they lived in the apartment for a year and before they moved into the apartment, the landlord told them he was going to fix everything as someone just moved out. That they moved in and after three months they began calling the landlord to fix the damages but he asked them to use their money. That some things had spoilt before they moved and they painted the place before moving in and fixed some things before moving in. That the house had centipedes and millipedes coming out and upon several complains, the landlord did nothing about it. That they paid a caution fee of N50, 000.00 that was never refunded and they never signed any tenancy agreement. That before they moved in she snapped the state of the apartment. Said picture was admitted as Exhibit F. That the house was also soaking water and damaged some of their clothes, shoes and picture albums.

The Defendant in his testimony stated that before he moved into the apartment some things were bad like kitchen unit, protector, children's door, kitchen entrance door and the place was rough. That the landlord promised to fix the bad things but told him that he won't paint the apartment and he agreed. That he paid N450, 000.00 (N400, 000.00 for rent and N50, 000.00 for caution fee). That he couldn't sign the tenancy agreement as he was out for work. That the landlord did not give him tenancy agreement even after much persuasion and he left him. That he also informed him of the repairs and that water was coming from the ground and had damaged their shoes, albums, bags etc. but the landlord asked him to use his money for the repairs but he decided they won't stay there again and eventually moved out. The invoice for painting was admitted as Exhibit G. Photographic evidence showing damages was admitted as Exhibit H1-H7. Shoes receipt were admitted as Exhibit I, album invoice admitted as Exhibit J.

During cross examination of the DW2, the Claimant tendered a whatsapp conversation between the Claimant and Defendant and same was admitted as Exhibit K.

On the 17/04/2024, parties adopted their written address and case was adjourned for judgement now being read.

In the Defendant's written address settled by his counsel Jude Obodo Chukwu Esq. a lone issue was raised for determination to wit:

Whether the Claimant has put sufficient evidence before the Honourable court to be entitled to the reliefs sought in his claim.

Counsel answered the above in the negative submitting that by the facts and circumstances of this case, the state of the proceedings and documentary evidence before the court, the Claimant has not successfully proven his case on the balance of probabilities as required by law. That it is trite that the court cannot decide on a case on mere conjecture or speculation but rather on facts established before it and laws. Counsel cited the case of **AYO ADEGBITE V. THE STATE (2017) LPELR 42585 (SC)**. That the Claimant through his attorney gave evidence that the Defendant was a tenant occupying a two bedroom apartment at his property. That he testified that the house was painted and in a tenable state when the Defendant took possession of the apartment and that it was their agreement that upon yielding up vacant possession, the Defendant will fix up any damage. That CW1 told this court that the Defendant destroyed everything in the said apartment and all efforts to get the Defendant to fix it proved abortive. That on cross examination the CW1 was asked if he had any proof to show the apartment was in a tenable state before the Defendant took possession and he said he didn't have. That the CW1 was also asked if he was the one that rented the apartment to the Defendant in which he said No but all the information he got was from the Claimant himself. Counsel posited that this amounted to hearsay evidence and by **SECTION 38 OF THE EVIDENCE ACT 2011**, hearsay evidence is not admissible. That the Claimant also contracted two engineers to value the alleged damages yet failed to produce any of them to establish how they arrived at the said assessments and claim contained in the quotation.

That the Defendant counter claimed against the Claimant and tendered Exhibits H1 to H7, Exhibit I and Exhibit E in proof of same. That the Defendant has proven that he moved into an apartment that was in a bad condition and that led to the damage of his properties. In conclusion counsel urged the court to discountenance the claim of the Claimant and enter judgment for the Defendant per his counter claim.

In the Claimants address settled by his counsel Victor U. Uzochukwu Esq., two issues were raised for determination to wit:

- 1. Whether the Claimant is entitled to the reliefs sought***
- 2. Whether the Defendant has any counter claim capable of been determined by this court and whether the counter claim has been proved.***

On issue one, counsel answered in the affirmative stating that **SECTION 23 OF THE EVIDENCE ACT 2011** provides that facts not controverted or challenged are deemed admitted against the other party in law. Counsel submitted that the Defendant during his testimony agreed to the fact that the Defendant rented the Claimant's apartment and that at the moment the facilities in the apartment are damaged. That the Defendant also denied the existence of a tenancy agreement yet the whatsapp chat between him and the Claimant proves otherwise and that the Defendant signed Exhibit B. Counsel posited that Exhibits C1 to C7 are proof of the damages in the apartment while Exhibit D1 and D2 clearly shows the cost of the damages. Counsel also submitted that the Defendant lied when he denied Exhibits K1 and K2 hence his testimony should not be believed as he is not a witness of truth. Counsel in citing the case of **LASISI AREMU V ALHAJI LAWAL ADETORO (2007) LPELR-546 (SC)** submitted that the court should treat all other testimonies by the Defendant as unreliable.

On issue two counsel submitted that the Defendant is unreliable and has failed to provide any proof before the court to justify his claim that it was the Claimant's apartment that damaged his personal belongings or that he had the Claimant's consent to paint the apartment at any time. In conclusion, counsel prayed the court to grant their claims.

RESOLVE

In determination of this suit, I will raise two issues for determination to wit:

- 1. Whether the Claimant is entitled to his claims.***
- 2. Whether the Defendant is entitled to his counter-claim.***

On Issue one, it is trite law that the standard of proof in any civil suit is on the balance of probabilities. **SEE SECTION 134 OF THE EVIDENCE ACT 2011.** The proof on balance of probability implies that the case of both parties will be placed on an imaginary scale of justice and the side of the scale which is heavier and tilt down will be on top in the case. The balance of probability also implies the balance of truth. In the instant case, it is the case of the claimant that the defendant who was his tenant left his house in a bad shape. He also stated that the tenancy agreement between them states that the defendant will put the property in a tenable state upon vacation of the property. The defendant's story is that he met the property in a bad shape and the claimant promised to fix it and failed or neglected to do so and this led to him incurring damages to his personal belongings and eventually he moved out of said property. The law is simple that he who asserts must prove. When a person is bound to prove the existence of facts, it is said that the burden of proof lies on that person. **SEE SECTIONS 131 AND 132 OF THE EVIDENCE ACT 2011.**

In the instant case, it behoves on the claimant who has alleged that his property was damaged by the defendant to proof that

1. The said property was in a good condition when the defendant took possession
2. That the defendant damaged the said property

Parties have argued as regards the tenancy agreement but I do not see any need for that as the defendant has not denied being a tenant to the claimant. The defendant also did not deny the signature on the tenancy agreement. He simply said he did not sign any tenancy agreement. An assertion this court will not believe as he was asked first during cross examination if that was his number and whatsapp picture and he said yes only to turn around and say he doesn't where the chat emanated from when he was shown his chat admitting to signing the agreement. The claimant while proving his claim has failed to show the state of the apartment before the defendant took possession which is fatal to their case as the defendant has stated that the apartment was already in a bad shape.

However, the DW1 via Exhibit F displayed pictures of some parts of the apartment when they took possession. The claimant also stated that in their demand letter that the walls were heavily dented, doors and locks completely damaged, wardrobe doors damaged, kitchen cabins and bathroom shower caps etc. In proof of the above, the claimant tendered Exhibits C1-C7. The claimant also tendered the whatsapp conversation between the claimant and defendant which was admitted as Exhibit K2. The claimant also further tendered the quotation for fixing the alleged damages. Those were admitted as Exhibits D1 and D2.

I have looked at all the exhibits tendered. It is no saying that both parties have exaggerated the damages incurred by each of them. From the Whatsapp conversation admitted, I can see the pictures tendered here by the DW1 below on the claimant's media meaning there were conversations relating to those damaged part of the properties and the soaking wall. The question to be answered by the claimant now is 'if the property was really in a good shape, why was the defendant sending same damaged parts to the landlord via whatsapp. It only affirms the testimony of the claimant that the property was not totally in a good shape. I can also see that the WC and shower head were fixed by the claimant. Those are the only part of the property the claimant fixed from the chat with the defendant. If there were more I'm certain those would have been exhibited. It is the duty of an applicant to furnish the court with all necessary and vital documents for the due consideration of his application. An applicant who fails to furnish the court with all necessary vital documents for the due consideration of his application does so at his own peril as his application may likely be refused. See the case of **ALL PROGRESSIVE CONGRESS V. INDEPENDENT NATIONAL ELECTORAL COMMISSION (2015) 8 NWLR (1462) 531 AT 566 PARA G**. I have also seen the exhibits of the Defendant's personal properties he alleged were damaged and the receipts of those properties.

I have looked and compared the exhibits tendered by both parties on the state of the apartment before and after. I have placed this on a scale and unfortunately it does not tilt to any of the parties. From the exhibits before

me and the testimony of parties, it is my opinion that both parties incurred losses during this tenancy period and from the exhibits tendered of the monetary value of the losses incurred, it is my opinion also that all are exaggerated and not specific enough for the court to come to any conclusion as this court has not been given a clear picture of what the apartment looked like before the defendant took possession. The defendant himself has not given a clear picture of how his damaged properties were caused by the apartment. All the court has are speculations from both parties and we all know the court does not determine dispute on speculation. See **IKENTA BEST (NIG) LTD V. AG RIVERS STATE (2008) LPELR-1476 (SC)**

It is my submission that it will be most unfair to grant any of the claims, both of the claimant and the defendant as this case can be likened to two people fighting and getting injured. It is only fair for both parties to go home and treat themselves. Upon the inability of both parties to prove their claims, both claims fail and suit is accordingly dismissed.