

IN THE CHIEF MAGISTRATE COURT OF RIVERS STATE OF NIGERIA
IN THE RUMUODOMAYA MAGISTERIAL DISTRICT
HOLDEN AT RUMUODOMAYA

BEFORE HIS WORSHIP B.H. ABE (MRS) ESQ., SITTING AT THE CHIEF
MAGISTRATE COURT 1 RUMUODOMAYA ON FRIDAY THE 19TH DAY OF
APRIL, 2024

RMC/SCC/11/2024

BETWEEN

MONDAY MICHAEL ZORKPO - CLAIMANT
(*SUING THROUGH HIS LAWFUL
ATTORNEY, ORJI THANKGOD CONSULTING*)

VS.

MR. ISRAEL GIBSON - DEFENDANT

Matter for Judgment

Parties Absent, Lord Ikponwa Esq, for the claimant, no defence.

JUDGMENT

The Claimant claims as follows:

1. The sum of N83,330.00 (Eighty-Three Thousand, Three Hundred and Thirty Naira) only, being arrears of rent from the defendant.
2. The sum of N100,000.00 (One Hundred Thousand Naira) only, as cost of litigation against the defendant.

Facts

This matter commenced by the claimant filing Form RSSC 2, the complaint form, Form RSSC 3 was served on the defendant being the summons, served via substituted service after the form for affidavit of non-service; Form RSSC 4 was filed by the Court bailiff, Mr. Gospel .U. Utorue, dated 2nd February, 2024.

The Court on the 8th February, 2024, ordered that the defendant be served with all the processes in this suit to wit; by substituted service, by pasting same at the door post of the defendant's house at his address.

The affidavit of service dated 11th February, 2024 is before the Court deposed to by the Court bailiff, Gospel .U. Ntorue.

On the 21st February, 2024, the claimant's counsel entered a plea of not liable for the defendant; Agochi Amadi, Esq. appeared for the claimant.

On the 1st March, 2024, cw1 gave evidence led by Agochi Amadi Esq, the defendant was absent and not represented.

Cw1 gave his name as ThankGod Orji, the claimant's attorney, a real estate consultant, he informed the Court that the claimant owns the property, he donated an authorization letter to the attorney to manage his property before me as Exhibit A.

The defendant was their tenant, his rent expired on the 19th December, 2022, he moved out in May, 2023, leaving the house in a very bad shape, his owing N83,330.00 for rent, N60,000.00 for maintenance of the broken facilities, legal fees N100,000.00.

Letter to the defendant by the attorney's consulting firm before me as Exhibit B; terminating the defendant's tenancy dated 14th April, 2023, requesting that the defendant fix the damages done to the property.

Exhibit C – improvements done to the house.

Exhibit D – Legal fee receipt.

He prayed the Court in conclusion to grant all his claims.

He was foreclosed from cross-examination by the defendant due to his absence, a hearing notice was issued to be served on him.

Case adjourned for defence.

The defendant was foreclosed from defence due to his absence, the claimant's counsel waived his right to address the Court; on the 6th March, 2024.

Issue for determination

Whether the claimant is entitled to his claims?

COURT

The claimant in prove of his claims tendered;

Exhibit A – Power of Attorney

Exhibit B – Termination of tenancy letter by cw1

Exhibit C – N60,100.00 receipt for repairs to the house

Exhibit D – Legal fee receipt.

The affidavit of service of the Court process especially the summons deposed to by the bailiff of Court is before me dated 11th February, 2024, the bailiff of Court confirmed service on the defendant.

The defendant was also served with the hearing notice on the 5th of March, 2024 via WhatsApp, affidavit of service before the Court.

In the cases of Adekoya vs. Attah (2022) LPELR 57223 CA and Olatubosun vs. Anenih (2009) 15 NWLR (pt. 1165) 560, the Court buttressed the importance of a hearing notice as a legal means of compelling the defendant to attend Court to defend the suit against him.

In P.N. Emerah & Sons Nig. Ltd. vs. Dunu (1998) NWLR (pt. 564) pg. 96, it was held that where a party is not served with a hearing notice any judgment given, against him or her will be a nullity, given without jurisdiction and liable to be set aside upon Appeal. See Oguntade 97 para A.

“Where a party in a legal duel receives a hearing notice but decides to be absent, the obvious conclusion is that he does not intend to contest the case or he has chickened out or he has abandoned it”.

SEE: NEWSWATCH COMM. LTD V. ATTA (2006) 12 NWLR (PT. 993) 144 SC BANNA V. TELE POWER (NIG) LTD (2006) 15 NWLR (PT. 1001) 198 SC.

Furthermore, facts and or evidence neither denied nor challenged are deemed admitted and need no further proof.

In the instant case, the defendant was served with the originating processes and a hearing notice but failed and refused to appear before this Court to defend this suit against him.

The Supreme Court has held in a plethora of cases that once the defendant in a suit is served with the Court’s processes, that is the Ordinary summons and its particulars of claim, they both suffice as sufficient notice on the defendant of the case instituted against him.

The claimant in proof of his case, tendered Exhibits A-C respectively.

Documents tendered as Exhibits do not embark on falsehood like some mental beings, see *Olujinle Vs. Adeagbo* (1988)2 NWLR (Pt. 75) 238 and *BFI Group Corporation Vs. Bureau of Public Enterprises*.

A document tendered in Court is the best proof of the contents of such document, and no oral evidence will be allowed to discredit or contradict the contents thereof except in cases where fraud is pleaded. See *A-G., Bendel State Vs. U.B.A.* (1986)4 NWLR (Pt. 37) 547 referred to. Pp. 472, Para F. All the Exhibits are the best proof of the claimant's case.

The claimant has made his case credible on the preponderance of evidence before the Court, the Court relying on the exhibits before the Court.

Civil cases as we know are decided upon the preponderance of evidence and the balance of probability.

I will like to reiterate that the Defendant is expected to rebut, challenge or discredit the claims of the claimant by defending this suit filed against him, but he chose not to, by refusing to defend this suit by not entering an appearance and getting a defence counsel to defend him.

The Court has given the defendant sufficient and ample opportunity to defend this action, but he chose to neglect or rather waive his right. In the case of *Mil Gov., of Lagos State Vs. Adeyiga* (2012) 5 NWLR page SC 291 Pp. 338-339, paras. H – E, Ratio 4, the Supreme Court held:

“When a party has been given ample opportunity to ventilate his grievances in a Court of law but chooses not to utilize same, he cannot be heard to complain of breach of his right to fair hearing, as what the Court is expected to do by virtue of section 36 of the 1999 Constitution is to provide a conducive atmosphere for parties to exercise their right to fair hearing. Hence a party who refuses or fails to take advantage of the fair hearing process created by the Court cannot turn around to accuse the Court of denying him fair hearing, because equity aids the vigilant and not the indolent”.

The Court will grant damages to the claimant, despite the fact that the claimant did not ask of damages in his particular of claims.

In *SPDC Ltd. Vs. Nnabueze* (2014) AFWLR (pt. 724) pg. 117 at 138 paras. E-G, the Court held as follows;

“Damages arising from a breach in paying money due to a plaintiff at the time it was due, is the interest on the amount due. The reason is that such interest will place the plaintiff on the financial strength he would have been if he was paid as at when due in a situation arising from commercial matters, a party holding


on to the fund of another, for so long without justification ought to pay compensation for so doing. In the instant case where the defendant withheld the plaintiff's money for contract executed, the interest claimed thereon by the plaintiff was rightly awarded by the trial Court".

This principle has been applied by this Court in the instant case before the Court, awarding damages against the defendant for withholding the rent of the claimant for so long without paying same to the claimant.

Consequently, the Court enters judgment in favour of the claimant and hereby orders as follows;

1. That the sum of N83,330.00 (Eighty-Three Thousand, Three Hundred and Thirty Naira) only, rent outstanding, should be paid by the defendant to the claimant forthwith.
2. That it is also ordered, that N60,100.00 (Sixty Thousand, One Hundred Naira) only, cost of repairs at the property, be paid by the defendant to the claimant.
3. That it is further ordered, N100,000.00 (One Hundred Thousand Naira) only, legal fees be paid also by the defendant to the claimant.
4. That finally, N200,000.00 (Two Hundred Thousand Naira) only, for damages for keeping the claimant out of his property and causing damages therein, be paid by the defendant.

This is the judgment of the Court.


MRS BARIYAAH .H. ABE
Chief Magistrate
19th April, 2024.

