

**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 27TH DAY OF MARCH 2025
AT THE SMALL CLAIMS COURT 4 PORT HARCOURT**

SUIT NO: PMC/SCC/324/2024

BETWEEN

FAHBARI MENEGBO ----- CLAIMANT

AND

AKHIGBE OMOANKHALENE JOSEPH----- DEFENDANT

PARTIES:

APPEARANCES:

JUDGEMENT

By a summons dated 28/11/2024, the claimant's claim against the defendant are as follows:

1. N618, 757.00 being amount owed the claimant
2. N100, 000.00 as legal fees
3. N300, 000.00 as cost

The defendant counter claims as follows

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 defendants whatsapp on the 12th of December 2024 at 12:08pm. On the 23rd of January 2025, a plea of not liable was entered for and on behalf of the absent defendant. Case was adjourned to the 3/2/2025 for Report of Settlement/hearing

SUMMARY OF EVIDENCE

The claimant in proof of his case called a lone witness, the claimant's attorney and tendered twenty-three exhibits marked Exhibit A, B, C (1 and 2), D, E (1,2,3,4,5,6,7), F (1,2,3), G (1,2,3), H - K.

The defendant for his defence called a lone witness, the defendant himself and didn't tender any exhibit.

The relevant facts from the case of the claimant as presented by the claimant's attorney appearing as CW1 through her witness deposition on oath dated 10/2/2025 is that the claimant is the landlord of the property known as 24 Revival street, chosen Estate off East West Road, Port Harcourt. That she is the lawful attorney of the claimant and the defendant was an annual tenant of the claimant occupying a 3 bedroom flat with his running from 1st October 2023 to 30th September 2024. That upon possession, the defendant bought some properties from the defendant's wife who was in occupation of the said apartment and credited her with the sum of N1, 800,000.00 which included the sum of N1, 200,000.00 for the rent, 30,000.00 as estate security fee, N50, 000.00 as caution fee and N520, 000.00 for household items bought. That towards the end of the defendants tenancy, he was informed of his rent review from N1,200,000.00 to N1,600,000.00 but got no response and upon further reminder, the defendant pleaded to stay for 3 months at the new rate, that it was accepted on the ground that the payment must be made within 7 days from the date the letter was written to the defendant and upon the failure of the defendant to follow through, he was served with 7 days' notice of owners intention to recover possession. That the defendant eventually paid some money and she was later informed by the estate securities that the defendant's wife was moving out and when she arrived,

she handed over the house key to her while the defendant kept the bunch. That while passing in front of the house, she noticed there was no light. That the defendants' wife informed her of a disconnection notice from PHED for electricity theft/bypass. That she forwarded that message containing the disconnection notice to the defendant. That she was told that the house doors and gate were open and she informed the defendant who did not respond so she locked the gate and later two men came that they had the instruction of the defendant to pick his belongings. That she received a video of the apartment which was in a bad shape and sent same to the defendant who promised to pay for the cleaning. That the apartment was in a bad shape and she had to do repairs, clear the fine for the electricity bypass, cleaning of the apartment. She also noticed the defendant had removed a ceiling fan and a bookshelf and the defendant refused to pay for all these. The power of attorney was admitted as Exhibit A. tenancy agreement between the claimant and defendant was tendered and admitted as Exhibit B. receipts of works done in the property were admitted as Exhibits C1 and C". receipt for cleaning was admitted as exhibit E1, payment to artisan was admitted as Exhibit E2, PHED receipt was admitted as Exhibit E3, PHED disconnection order was admitted as Exhibit E4, payment to artisan as Exhibit E5, invoice of items bought by the defendant was admitted as Exhibit 6 and E7, whatsapp conversations were admitted as Exhibits F1, F2 and F3. Letter of rent review was admitted as Exhibit G1, response to that letter was admitted as Exhibit G2. Letter on assessment of damage done to the apartment was admitted as Exhibit G3 and pictorial evidence admitted as Exhibit H. case was adjourned for cross examination of CW1.

The defendant for his defence in his written deposition dated 5/3/2025 stated that he does not know the claimant as the aforesaid apartment was let to him by one Mrs Esther Fahbari and he never had any form of communication with the claimant. That the said Mrs Esther sold some household items to him which included generator and bookshelf. That the claimant's attorney only introduced herself as the lawyer to prepare the tenancy agreement. That the claimant and his attorney arbitrarily increased his rent against the promise made to him by Mrs Esther. That he had an understanding with the CW1 to pay monthly for three months as he was a salary earner which she obliged but immediately the CW1 received the October rent, she illegally took possession of the apartment and rented it to another. That he is not liable to any claims of the claimant and that he

was not served any disconnection notice by PHED and did not commit any electricity theft. That he is not owing any security levy and as regards cleaning, he will not take responsibility as his caution fee has taken care of it. That he did not damage the facilities and was not given the opportunity to assess the apartment. That he paid for the bookshelf and did not remove any fan and still entitled to a balance of his caution fee which is N85, 000.00 after removing N15, 000.00 for cleaning.

On the 20/3/2025 parties adopted their final addresses and case was adjourned for judgement now being read.

In the defendants address settled by his law

RESOLVE

In determination of this suit, I will adopt a lone issue to wit.

Whether the claimant has proved his case to be entitled to judgement

It is trite law that the standard of proof in any civil case is on the balance of probabilities and that burden lies on the person who will fail if no evidence at all were given on either side. **SEE SECTION 131 AND 134 OF THE EVIDENCE ACT 2011.** From the above, the burden of proof is obviously on the claimant to prove his claim but this burden is not static as it fluctuates as the case goes on. The claimant in the instant case claims the defendant carried a bookshelf he did not pay and in proof tendered the receipt sent to the defendants of items paid (Exhibit E6 and E7). The claimant also mentioned the state of the property and exhibited pictures of same and some damages made to the facilities therein (Exhibit H). The claimant also alleged that the defendant did a by-pass and because of that, PHED sent a disconnection notice (Exhibit E4) and also exhibited a receipt showing the fines and levies against the property (Exhibit E3). In response to the above, the defendant denies leaving the apartment in a bad state, he also denies the bypass allegation and also mentioned that he wasn't informed of it. The defendant also insisted that he paid for the bookshelf yet had nothing before the court to prove same. It is the argument of defence counsel in his address that the claimant is not able to prove that No 15 as contained in the PHED disconnection notice is not the same as No 24 which is the address of the party. It is my opinion that the answer given by the CW1 during cross examination

suffices. The defendant denied seeing any disconnection notice but Exhibit K which is the response letter to the claimant's letter of demand, shows that the defendant was aware of that disconnection as it is stated there that PHED officials complained that the former occupants caused the wire from the metre to pass through the ceiling of the building. Exhibit F2 which is the whatsapp correspondence between the CW1 and the claimants wife proves that the defendant was aware of the disconnection and bypass and also provides evidence that the defendant took the fan as alleged by the claimant which the defendant denies taking. The defendant also denied being served the full tenancy agreement and that testimony has been manifestly discredited by Exhibit J. In fact everything the defendant has told this court has just been stories without any proof. He is also not a witness of truth as his entire evidence has been grossly challenged and rebutted during cross examination that no reasonable court will act on it. The court in the case of **OGUNTAYO V ADEBUTU (1997) 12 NWLR (531) 81 AT 94 PARA A-B** held that a witness who sets out deliberately to mislead the court either by denying facts known to him or misrepresenting facts upon which he is questioned until forced to retract or contradict himself cannot be relied upon because he has by his performance destroyed any rational basis for accepting his evidence in part or total based on credibility. The defendant informed the court he paid N100, 000.00 for caution fee but in his letter of response to the CW1, he mentioned N200, 000.00. In the case of **KAYILI V. YILBUK (2015) 7 NWLR PART 1457 page 26 AT 77 PARA C** it was held that where there are material contradictions or inconsistencies in the evidence adduced by a party, the court is enjoined to reject the entire evidence as it cannot pick and choose which to believe. The entire evidence must be rejected.

It is my opinion that the claimant has been consistent and exhibited enough materials to entitle him to his claim while the defendant only came to the court with stories without any documentary evidence to support same. Unfortunately even those stories cannot be believed as it is marred with too much inconsistencies and accordingly rejected. The claimant however, has been consistent. The testimony of the CW1 has been consistent and has remained firm and unwavering even during cross examination. This court has no option than to believe same and act on it. In conclusion the claim of the claimant succeeds in its entirety minus the caution fee of N100, 000.00 paid leaving a total of N518, 757.00.

On the claim for cost of N400, 000.00. Cost follows event and a successful party in a suit is entitled to cost for his out of pocket expenses in litigation. Cost however is at the discretion of the court. Accordingly cost of N300, 000.00 is awarded in favour of the claimant.

In conclusion, judgement is entered for the claimant as follows:

1. Defendant is ordered to pay the sum of N518, 757.00 as cost of repairs and other items
2. Cost of N300,000.00 is awarded in favour of the claimant.