

**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 MONDAY THE 12TH DAY OF
FEBRUARY, 2024**

RMC/SCC/13/2023

BETWEEN

OKORIE WILSON OKE - **CLAIMANT**

VS.

CHIEF IBINABO - **DEFENDANT**

Matter for Judgment

Parties absent, O. K. Owhondah, Esq. for the claimant, SAB Opara, Esq. for the defendant.

JUDGMENT

The Claimant claims as follows:

He paid the cumulative sum of N605,000.00 (Six Hundred and Five Thousand Naira) only, as rent to the defendant for a two (2) bedroom flat, which the defendant failed and/or refused to deliver up to him. The defendant rented the apartment to another person without his consent and has refused to refund his money. He reported this matter to the Rumuodamaya Police, but the defendant refused to honour the invitation of the police. He also filed a demand notice, yet the defendant still refused to refund him his money.

Facts

This matter commenced on the 31st of August, 2023, the claimant's counsel, O. K. Owhonda Esq, entered a plea of not liable against the defendant, after the Court ascertained proof of service of the complaint form; RSSC 2, the summons; (Form RSSC 3) and affidavit of service; Form RSSC 6, served on the 19th July, 2023.

On the 18th September, 2023, the Court granted leave to both parties to settle out of Court amicably. The Court however was informed on the 6th October, 2023 by O. K. Owhonda Esq, the claimant's counsel, that settlement had broken down, he applied to the Court to vacate the leave for out of Court settlement. The Court granted same, hearing commenced afterwards.

Cw1, gave evidence, gave his name as Wilson Okorie, living at no. 159 Okporo road, Rumuodara, he said he knows the defendant, on the 16th November, 2022, he contacted his agent over an apartment for him, who introduced him to the defendant's wife. The wife introduced him to the defendant, they started conversing over the apartment via WhatsApp, the defendant told him to pay N395,000.00 for the three (3) bedroom flat, one year rent N350,000.00, agreement fee N35,000.00, drink money N10,000.00, he paid the next day, to his account, the defendant told him the house needs repairs, which he will finish in two days.

The next day, the defendant requested for another one-year payment based on the long list of repairs he had to carry out. The claimant paid another six months' rent of N175,000.00 total paid was N570,000.00.

He bought a fairly used chair and sent to the apartment through his younger brother, he asked someone to check the plumbing and electrical repairs, the quotation was sent to the defendant via Whatsapp. From the 16th of December to 20th of December, he kept on asking of the repairs but the defendant did not respond.

In January, the claimant went to the apartment and realized that a lot of work had not been done, the defendant promised to do same.

On the 30th January, 2023, he called a furniture guy to work on the chair, the claimant requested for the refund of his rent, he never slept in the apartment, no key was given to him, the defendant told him the rent was counting from the 14th December, 2022, when the chair was moved in. The defendant went behind him to rent the apartment to someone else; he did not refund the claimant's money.

The claimant complained at the Rumuokoro Police Station, the defendant was called severally but did not show up; he then decided to file this action.

The correspondence between the claimant and the defendant via whatsapp is before me as Exhibit A. The correspondence between the furniture guy and the claimant via whatsapp is before me as Exhibit B, dated 30th January, 2023.

He prayed the Court to order the defendant to pay him N466,000.00 without the agreement fee, drink money and also two months' rent for the period his chair was in the house.

Also prayed the Court for N150,000.00 to be paid to him for emotional and physical damages and rendering the claimant homeless for seven months.

Cw1 was cross-examined afterwards, the following were deduced;

The fairly used chair was moved in on the 14th December, 2022 just that alone, no other property.

The claimant paid for one year and six months' rent.

The total paid was N610,000.00 for rent, drinks money, agreement and money to paint the apartment.

He never moved into the property, the chair was moved out on the 30th January, 2023 for repairs.

The defendant rented out the apartment behind him while he was offshore.

The act of moving the chair never caused any damage to the apartment.

The defendant on the 27th November, 2023, gave evidence, gave his name as Chief Ibinabo, he said he knows the claimant, his former tenant, on the 17th November, 2022, he rented the apartment for N350,000.00 yearly.

The defendant paid for one year and six months, N525,000.00, repairs were done to the apartment. He took possession on the 17th November, 2022, he brought chairs and properties to the apartment until February, 2023. He told him he had a better place and wants to move out. The receipt for repair is admitted as Exhibit C.

The defendant told him he can get a tenant and subtract what he has paid, and he will pay for the damages, water heater, etc. The claimant refused, asked that the defendant pays him the total N525,000.00.

The claimant brought the Police to arrest him, the defendant filed an action at the High Court for breach of his fundamental human right, the police harassed and detained him, he prayed the Court to grant him a refund of all his expenses and repairs. The three months the claimant stayed in the apartment is N87,500.00.

He was detained for over three hours, the money should be deducted from the defendant's rent he paid. He lost a contract with Julius Berger on the day of his arrest, of N10,000,000.00, prayed for damages of N3,000,000.00 awarded against the claimant. From Exhibit C, N12,600 was for labour, items purchased N97,400.00.

Cross examination of Dw1; the following were deduced;

The apartment was in a tenantable condition where the claimant moved-in, a tenant had just packed out.

The claimant paid for the house on the 17th November, 2022.

Que. - Did the claimant pay the day he moved-in and all the repair work had to be done on the house?

Ans. - Yes, hence he paid, his brother came to negotiate for the house, collected the key to the apartment.

Dw1 reads the first line of the Exhibit A, "I was calling to know if everything was ok"? conversation from 20th December, 2022 after the payment was made by the claimant.

Que. - Does that mean the claimant had moved-in?

Ans. - I gave his brother the key so, he had moved-in.

Que. - How did you enter the apartment to make repairs?

Ans. - The claimant asked for the repairs, his brother opened the house for us to enter and look at the things he needs to change.

He denied Exhibit C being the receipts of things bought for the house to repair it.

He denied the claimant removed his chair on the 30th January, 2023.

He accepted the fact that the apartment has been rented out.

He did not inform the claimant about renting out the house.

Nothing before the Court to show the police arrest.

The defendant has oral counter claims.

On the 16th January, 2024, both counsels adopted their final written addresses.

The defence in his final written address contends;

The claimant paid the sum of N525,000.00 (Five Hundred and Twenty-Five Thousand Naira) only, to the defendant as rent for a two-bedroom flat apartment for one year and six months. Both parties agreed on renovation of the apartment and the defendant effected the renovation, handed the key of the apartment to the claimant's brother and the claimant took possession on the 17th November, 2022. The Dw1 told this Honourable Court on the 27th November, 2023 that the claimant took possession on the 17th November, 2022 after the defendant had renovated the flat by putting water heater, wardrobes, tiles, water closets and also painted the apartment. This evidence the claimant admitted when he said he brought in chairs and some other properties to the apartment and he spent three months at the two-bedroom flat apartment.

It will therefore be wrong for the claimant to deny that the defendant renovated the apartment after his brother had collected the key of the apartment on being satisfied with the level of renovation made by the defendant.

The law is that evidence admitted need no further proof, see the Court of Appeal in *Achichi vs. Ago* (2003) FWLR (Pt. 140) 17700 CA, see also the *Estate of Abacha vs. Eke Spiff* (2003) FWLR (pt. 144) 531 CA.

That throughout the proceeding, this evidence of the Dw1 was not challenged by the claimants and the law is that evidence not challenged is admissible, see the Supreme Court in *Okonkwo vs. Cooperative and Commerce Bank (Nig.) Plc.* (2003) (pt. 154) 457 SC.

The claimant throughout the proceedings did not prove that he is entitled to damages of N150,000.00 (One Hundred and Fifty Thousand Naira) only, and evidence not proved amounts to no issue and should be discountenanced. In *The Supreme Court in Adake vs. Akun (2003) FWLR (Pt. 176) 625 SC*, the Court held that a party who makes an assertion has the duty to prove the truth thereof. That the claimant did not even state it in his pleading even though mere averment in a pleading cannot be substituted for evidence.

Issue for determination

Whether the claimant is entitled to a refund of his money and whether the defendant is entitled to damages having being detained at Rumuokoro Police Station for three (3) hours on the complains and instigation of the claimant?

We submit that the claimant will only be entitled to the balance of money he paid as rent been the sum of N525,000.00 (Five Hundred and Twenty-Five Thousand Naira) only for a year and six months after the defendant has subtracted the sum of N87,500.00 (Eighty-Seven Thousand Naira) only representing the three months possession on a monthly term of N29,166.00 (Twenty-Nine Thousand, One Hundred and Sixty-Six Naira) only and the amount of repairs effected on the two-bedroom flat apartment after the claimant's possession when he voluntarily packed out of the apartment on the 27th February, 2023 amounting to the sum of N110,000.00 (One Hundred and Ten Thousand Naira) only, even though the workman's labour was not receipted on the documents tendered to the Court in prove of repairs. See Exhibit C.

That the claimant having amended his claim to the sum of N466,668.00 (Four Hundred and Sixty-Six Thousand, Six Hundred and Sixty-Eight Naira) only, meaning that the claimant will be entitled to the sum of N269,668.00 (Two Hundred and Sixty-Nine Thousand, Six Hundred and Sixty-Eight Naira) only, outside the defendant's claim for damages.

It is already in evidence that the claimant took possession for three (3) months, which he affirmed when he said he packed in chairs to the flat after accepting the key of the apartment from his brother. This three months possession has been calculated on a monthly fee of N29,166.00 and in three months, N87,500.00, hence the claimant has accepted possession, the defendant then relied on the case of *Estate of Abacha vs. Eke Spiff (2003) FWLR (pt. 144) 531 CA*, the Court said admissions are the best forms of proof, what is admitted requires no further proof, which he entered before this Honourable Court to the effect that he expended the sum of N110,000.00 to repair the apartment when the claimant parked out of the two bedroom flat.

On the issue of whether the defendant is entitled to damages.

My Worship, the answer is yes, on the ground that the claimant not only made a report against the defendant but he instigated the police who subsequently arrested and detained the defendant at the police station for three (3) hours, forcing the defendant to lose a contract job of N110,000,000.00 (One Hundred and Ten Million Naira) only of

which the defendant is asking this Court to award only the sum of N3,000,000.00 (Three Million Naira) only in his favour.

The claimant's written address;

Issue for determination; Whether the claimant is entitled to a refund of his money?

From the evidence led by cw1 who is the sole witness in this matter, he informed the Court that he first paid the defendant the sum of N350,000.00 (Three Hundred and Fifty Thousand Naira) only, as rent for one (1) year on the premise and assurances given to him by the defendant that the apartment would be repaired and put in a tenantable condition. That not long after he paid the said sum, the defendant demanded he pay another one (1) year rent claiming the money he paid had already been expended on the repairs; the claimant at that time only could afford to pay the sum of N175,000.00 being rent for six (6) months. Making a total of N525,000.00 (Five Hundred and Twenty-Five Thousand Naira) for one year and six months. But the apartment was not fixed and/or repaired by the defendant despite collecting all these monies. Evidence of these facts is enormously clear in Exhibit A.

The claimant did not personally reside in the apartment and could not have caused any structural alternations and damage to the property. Furthermore, the defendant admitted in cross examination that the items listed in Exhibit C tendered by him were the same as those listed out by him on the 19th of November, 2022 in Exhibit A as items needed to be repaired while also in the same vein claiming the items were damaged by the claimant leaving so much to be wondered. The defendant tendered nothing before this Honourable Court to show that the claimant personally resided in the apartment, or that the claimant instigated an arrest against him as claimed. There is no evidence before the Court to buttress any of the bogus claims of the defendant.

Your Worship, it is the statutory duty of a landlord to fix, repair and maintain the apartment whether or not it is expressly stated in a tenancy agreement.

The claimant informed the Court of the deplorable nature of the apartment when he paid for the flat and how the defendant convinced him to pay the rent and subsequently asked for another rent to fix the apartment. The claimant complied with every demand made by the defendant yet the defendant never complied to his own part of the obligation by fixing the apartment.

The claimant tendered Exhibit A, which is a detailed WhatsApp conversation between the claimant and the defendant. A comprehensive appraisal of Exhibit A shows that the claimant only agreed to pay rent based on the assurances given to him by the defendant to fix and return the apartment to tenantable state, which he never did.

The claimant has had to squat with friend for months while waiting for the defendant to fix the apartment; Your Worship, to make the matter worst for the claimant, the defendant rented the apartment to another person while also refusing to refund the claimant, the money he paid to enable him get an alternative accommodation. This has caused the claimant psychological trauma.

Negligence is the omission or failure to do something, which a reasonable man under similar circumstances can do, or the doing of something, which a reasonable or prudent man would not do. *Odinaka & Anor vs. Moghalu* (1992) LPELR, 2222. More often than not, negligence in civil matters occurs in form of a breach of duty to care. And in that sense, negligence is negligence and therefore does not require any epithet like gross, or such like expression to qualify it.

Damages for mental agony, nervous shock or psychological trauma may be claimed and awarded, in appropriate cases under personal injury cases, not in fatal accident claims – *Iyeye vs. Bendel Feed and Flour Mills Ltd.* (2008) 12 SCNJ 41222 Per Joseph Shagbaor Ikyegh, JCA (Pp. 53-54 Para G-A).

Duty of care is said to exist where there is sufficient relationship of proximity between the defendant and the plaintiff who suffered the damage such that a reasonable man can conclude that carelessness on the part of the defendant caused the damage.

Your Worship, the claimant during the pendency of this matter has shown that he paid the defendant rent for a two-bedroom apartment, which was never delivered to him.

The claimant has also shown that in evidence that he never personally moved into the apartment and could never have caused any damage to the property. The defendant was negligent in his duty of care, which led to the psychological trauma suffered by the claimant.

Issue for determination by the Court

Whether the claimant is entitled to his claim?

COURT

In every valid tenancy contract between a landlord and tenant, the payment of rent is one of the fundamental conditions. This must be paid at the commencement of the tenancy; this validates the tenancy and gives the tenant exclusive possession to the peaceful occupation of the demised premises.

See section 121 of the landlord and tenant law, cap 75. It is the duty of the landlord to ensure that the tenant's premises is in good tenantable condition before the commencement of his tenancy.

In this case, the defendant did not deny that the claimant was his tenant, he confirmed that the claimant was his tenant.

A statutory liability is placed on the landlord to ensure that the premise is maintained and repaired under the tenancy. The landlord owes the claimant that duty of care as opined by the claimant's counsel in his final written address after payment was made for the house by the claimant, the claimant should have taken possession immediately, though he contends that he was offshore. See *Chukwuma 7 Ors. Vs. Awoh* (2018)

LPELR 44830 (CA). the defendant also owed a duty of care to the property of the claimant in the premises in this case being the chair.

I also agree with the claimant's counsel where he posits that the defendant was negligent in ensuring that the claimant occupied the premises he had paid for. At the time the claimant made payment for the rent for one year and six months at N525,000.00, the keys to the apartment should have been handed over to him. From the evidence of the claimant, the claimant never really occupied the apartment, though he paid for it, due to the long time it took for the landlord to fix the apartment, he could no longer wait for all the renovations and had to request for a refund of his rent payment from the landlord.

The defendant claims the claimant caused or damaged his property, I find this hard to believe, the claimant never occupied the property, though left a piece of property (his chair) in the premises. Despite payment for one year and six months requested for by the defendant, the defendant failed and neglected to expedite action on the renovation works at the property so that the claimant could move in. The moment the claimant paid his rent, the premises should have been handed over to him by the defendant.

Exhibit A is the correspondence between the claimant and the defendant as follows;

On the 16th November, 2022, the defendant confirmed that some work needed to be done in the house.

He said he needs to paint the bed-room and fix some changes to the wardrobe, tiles also, he told the claimant that if he pays tomorrow morning being 17th November, 2022, the house will be ready in two days. He also said, everything will be ready by this week Saturday.

On the 17th November, 2022, the claimant sent a debit slip of N395,000.00 from First Bank to the defendant, who acknowledged receipt of same and promised to keep his word.

On the 18th November, 2022, the defendant sent the claimant pictures of work ongoing.

On the 19th November, 2022, he asked for one year's rent to enable the defendant complete his work, he listed out a long list of things to buy for the house including plumbing and electrical work, labour for carpentry, painter. The claimant sent N150,000.00 to the defendant on the 21st November, 2022. The defendant asked him to sign the tenancy agreement first before moving in, on the 24th November, 2022.

Other correspondence ensued between both parties, this is very clear proof of the fact that the claimant was the tenant of the defendant, he did not move into the premises, though they had a landlord/tenant contract.

Exhibit A also shows that, the claimant had informed the defendant that he was no longer interested in the apartment he paid for, on the ground that it was three months ago he paid for the apartment and he had not been able to move in; the landlord having

failed to fulfill his obligations. He asked for a refund of N57,000.00 of his money back within two weeks, to the apartment, even after spending N45,000.00 to paint the parlor again.

The defendant replied and said since the 14th December, 2022, he moved his property into the house, he had taken possession of the property. His rent had been counting since then, he said he could re-rent the apartment to cover the rent paid and the remaining part of his rent; at his own cost.

On February 5, 2023, the claimant responded to him, insisting that the repairs he promised including plumbing, electrical repairs and wardrobe doors have not been fixed.

Civil cases are decided on the preponderance of evidence, he who asserts must prove, see sections 131-134 of the Evidence Act 2011. The claimant from the correspondence as laid out in Exhibit A aforementioned, has strictly laid out sufficient evidence of the fact that he never moved in physically into the apartment, except for the chair he had in the apartment. The defendant never denied that the claimant had moved in physically, but said he had taken possession by leaving his property in the house. The defendant told the claimant that he could re-rent the apartment for the remaining part of his rent, "confirming that the claimant had paid for the apartment that he still had his rent running. Admitted facts need no further proof. Section 123 of the Evidence Act, 2011.

The defendant never denied the claimant's payment of rent, he rather confirmed receipt of same after the claimant posted the debit alert on the WhatsApp chat platform.

Documentary evidence is the hanger upon which oral evidence is proved, where there is any discrepancy between oral evidence and documentary evidence, documentary evidence will suffice in proof of that fact or claim. The Act of moving the single chair out of the apartment could not have caused any damage.

The defendant was clearly negligent on his part, he failed to perform his obligation to put the property in good tenable condition timeously for the claimant to occupy. He breached the contract entered into between both parties with regards to the time of entering the premises after collecting the claimant's rent for one year and six months. Parties cannot resile on the terms, they had agreed on in their contract. The defendant is at fault here, he acted in breach of the contract between the two parties.

Exhibit B – on the 30th January, 2023, the claimant reached out to his brother via WhatsApp to send the chair to his carpenter. The house not been completely renovated was also raised.

Exhibit C – the receipt for the cost of items bought for the house. The house is his, not the claimant, the claimant cannot be financially responsible for the repairs he had to make on the property. The defendant told the Court that someone had just moved out, why would the claimant be made to pay for the damages apparently caused by the former tenant?

There is no proof of the claimant occupying the premises as stated by the claimant's counsel, yes, I agree. The Court relies on evidence before it not just mere facts. Also, there is no evidence of the defendant's arrest by the claimant.

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*.

Once documentary evidence supports oral evidence, oral evidence becomes more credible as documentary evidence always serves as a hanger from which to assess oral testimony. *Kimdey vs. Military Governor of Gongola State* (1988) 5 SCNJ 28.

The claimant being the aggrieved party can sue the defendant for breach of contract, where a valid contract has been entered into by both parties, a legal right has to be established.

A document tendered in Court is the best proof of the contents of such documentary and no oral evidence will be allowed to discredit or contradict the contents thereof except in cases where fraud is pleaded, see *AG Bendel State vs. UBA* (1986) 4 NWLR (pt. 37) 547.

The Exhibits tendered are the best proof of the claimant's case. The claimant has made his case believable and credible by virtue of Exhibits A and B, showing proof of the correspondence between him and the defendant electronically.

Whereas in the instant case, a valid contract exists, and consideration (payment of rent) has been made, the party aggrieved can successfully sue the other party for breach of contract. The defendant has acted in clear breach of the tenancy agreement between the parties by failing to fulfil his obligation to put the house in a good tenable condition for the claimant after the claimant had paid for his rent, he still kept him out of the premises on the ground that he was renovating the house. He is legally obligated to fulfil his part of the contract by keeping the house in good tenable condition for the claimant.

See *Omega Bank Plc. vs. O.B. Ltd.* (2005) 1 HCR (pt. 189) 157.

The claimant claims N150,000.00 for damages; general damages need no specific pleading, it arises from inference of law, the essence of an award of damages is to give compensation to the claimant for the damages, loss, he has suffered by being out of a place to stay after paying for the apartment. I agree that the claimant suffered, emotional, physical and mental damages out of being kept out of his accommodation, with nowhere to stay.

See *Iyere vs. Bende Feed and Flour Mills Ltd.* (2008) 12 SCM (pt. 1) 66.
Yaleju-Amaye vs. AREC Ltd. (1990) 4 NWLR (pt. 145) 422.

The claimant has proved his entitlement to damages thereto and the Court will award same in his favour. The law is that before damages can be rewarded, there must be a wrong, it is the breach of duty by the defendant, see Savannah Bank of Nig. Plc vs. Opanubi (2004) AFWLR (pt. 222) 1587.

The defendant's complained of illegal police arrest by the claimant, I will advise that a separate suit be filed by the defendant for that, like he said at the High Court for enforcement of his fundamental human rights. The claim for N3,000,000.00 damages for the loss of contract caused by his unlawful detention is hereby dismissed, no sufficient proof of such loss of contract before me.

The defendant during cross examination, accepted that the apartment had been rented out. The claim for N87,500.00 (Exhibit C) will also not be granted.

Conclusively, the claimant has proved his case to entitle him to his claims of N466,668.00 for his rent and N150,000.00 damages, relying specially on Exhibits A and B before the Court.

The chair was in the property for two months from 14th December, 2022 to February, 2024, N525,000.00 rent paid by the claimant minus two months rent will be N466,668.00. The two months show that the claimant had taken possession of the premises.

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

1. That the defendant pays the claimant the sum of N467,000.00 (Four Hundred and Sixty-Seven Thousand Naira) only, being a refund of the claimant's rent paid for the use and occupation of the defendant's two-bedroom flat.
2. That the defendant pays the claimant, the sum of N150,000.00 (One Hundred and Fifty Thousand Naira) only, as general damages for the breach of contract.
3. That these payments be made forthwith

This is the judgment of the Court.

MRS BARIYAAH .H. ABE

Chief Magistrate

12th February, 2024.

