

IN THE CHIEF MAGISTRATE COURT V KOGI STATE OF NIGERIA
IN THE KOGI STATE MAGISTERIAL DISTRICT
HOLDEN AT SMALL CLAIMS COURT, LOKOJA
THIS TUESDAY 25TH JUNE, 2024

SUIT NO:- CMCL/CV/11/2024

BEFORE: HON. U. ODIBA - SMALL CLAIMS JUDGE

BETWEEN:

MR. SUNDAY ABRAHAM NWEKE - PLAINTIFF

AND

MR. ROLAND EBA - DEFENDANT

CAUSE OF ACTION: WHEREOF THE PLAINTIFF CLAIM AGAINST THE
DEFENDANT AS FOLLOWS:

1. POSSESSION OF TWO BEDROOM APARTMENT WITH ITS APPURTENANCES SITUATE BEHIND 4 SEASON, FELELE, LOKOJA.
2. PAYMENT OF ARREARS OF RENT N40,000.00 (FORTY THOUSAND NAIRA) ONLY BEING BALANCE FOR 30TH NOVEMBER 2022 - 29TH NOVEMBER 2023 RENT.
3. MESNE PROFIT AT THE RATE OF N11,666.66 FROM NOVEMBER 2023 UNTIL POSSESSION IS DELIVERED.
4. PAYMENT OF ALL OUTSTANDING ELECTRICITY BILL UNTIL POSSESSION IS GIVEN UP.
5. THE COST OF FILING THIS SUIT.

JUDGMENT

By the plaintiff's plaint dated the 30th January, 2024 and filed on the same date, the plaintiff claims against the defendant as follows:

1. Possession of two bedroom apartment with its appurtenances situate Behind 4 Season, Felele, Lokoja.



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2. Payment of arrears of rent ₦40,000.00 (Forty Thousand Naira) only being balance for 30th November 2022 - 29th November 2023 rent.
3. Mesne profit at the rate of ₦11,666.66 from November 2023 until possession is delivered.
4. Payment of all outstanding electricity bill until possession is given up.
5. The cost of filing this suit.

The defendant who is Mr. Roland Eba was served with the plaint and Court Summons via substituted service in accordance with the provisions of Order 5 Rules 2 (e) of the Kogi State Magistrates Courts Rules, 2021 after efforts to serve him personally proved abortive. Same service is deemed as proper but it is trite to note that despite the above service and other services of hearing notices on the defendant, he did not appear in Court.

The plaintiff, as represented by Mr. O.B. Ogbeja gave evidence in court and facts shall be referred to in the course of this ruling where they appear relevant. The plaintiff also tendered 3 Exhibits which are:

Exhibit A - Duplicate copy of receipt for 2021/2022 rent

Exhibit B - Duplicate copy of receipt for 2022/2023 rent

Exhibit C - Form D - Notice to tenant of owner's intention to apply to court to recover possession dated 04/12/2023.

The plaintiff finally filed a written address with a legal argument to buttress his sole issue for determination which is "whether the plaintiff has proved his case against the defendant so as to entitle him to the grant of his claim".

The Court, after hearing the evidence of the plaintiff has also formulated the following issues for determination:

1. Whether this Court has jurisdiction to try the matter before it.
2. Whether the absence of the defendant is in any way deliberate and whether he can lay claim to not being heard.

3. Whether the plaintiff has proved his case against the defendant and whether he has complied with the rules/steps required in recovery of possession cases.

On whether this Court has jurisdiction to try a matter of recovery of premises, it is trite to note that this Court is a Magistrate/District Court and it is vested with an unlimited jurisdiction to try all actions between landlords and tenants for recovery of rent or possession of premises claimed under an agreement. See Section 9 (2) of the Kogi State Magistrates Courts Law, 2020, Section 4 of the Kogi State Rent Control and Recovery of Residential Premises Law; 2007.

Moreover, the premises in question before this Court is situate within the Lokoja territorial jurisdiction which is at behind 4 Season, Felele, Lokoja, Kogi State.

This Court therefore holds that it has jurisdiction to entertain the case before it.

On whether the absence of the defendant is deliberate and whether he can claim lack of fair hearing, it is important to note from the evidence of the plaintiff that he served the defendant with Form D which is the Notice to Tenant of Owner's Intention to Apply to Court to Recover Possession. This was tendered before this Court and admitted as Exhibit C. he was thereafter served with Form E which is the plaint and Form F which is the Court summons to appear in Court. The records of the Court also have it that several hearing notices were served on the defendant, Mr. Roland Eba, though by way of constructive notice but he did not appear in Court for this proceeding even for a day.

Order 17 Rule 5 of the Kogi State Magistrate Courts Rules, 2021 is to the effect that where a defendant does not appear in Court after summons, Court may grant the claims of the plaintiff.

Order 14 Rule 4 (1) of the District Courts Rules, Northern Nigeria Law also states as follows:

"If on the day of hearing or at any continuation or adjournment of the Court or cause, the plaintiff appears and the defendant does not appear or sufficiently



excuse his absence or neglects to answer when called in Court, the District Judge may, on proof of service of summons and upon his being satisfied that the time between the date of service and the date of hearing was sufficient for the defendant to have appeared had he wished to do so, proceed to the hearing and determination of the cause on the part of the plaintiff only, and judgment thereon shall be as valid as if both parties had appeared".

The Court Per George Will (JCA) in the case of *J.O.E. Ltd V. Skye Bank Plc* (2009) 6 NWLR (Pt. 1138) 518 held that where a defendant fails to avail himself of the opportunity to defend himself, the Court is empowered to hear the plaintiff and enter judgment in his favour and that in no wise is a denial of the defendant's right to fair hearing.

The plaintiff is right in his argument during final address that the defendant who voluntarily stayed away from Court cannot be covered by Section 36 (1) of the Constitution of the Federal Republic of Nigeria 1999, as amended and cannot claim a breach of his right to fair hearing.

See also the cases of:

Ezechukwu V. Onwuka (2016) 5 NWLR (Pt. 1506) 529, 554 A-D.

Mutual Benefit Assurance Plc V. Access Bank Plc.

This Court establishes that the absence of the defendant in this case, who is Mr. Roland Eba is deliberate and rules that he is estopped to claim a breach of his right to fair hearing under the law because he unintentionally did not appear in Court to defend the suit against him. He shall be bound by the outcome of the judgment in this case.

On whether the plaintiff has proved his case against the defendant and whether he has complied with the steps required in recovery of possession suit, the Court examines as follows:

In proof of the plaintiff's claims as enumerated above, the plaintiff has through his Counsel given evidence. See Section 16 of the Kogi State Rent Control and Recovery of premises Law 2007 which is to the effect that a landlord or tenant

may be represented either by himself or by a legal representative or any person of his choice.

See also *Ikeme V. Anekwe* (2003) 10 NWLR (Pt. 829) 572.

The plaint before the Court and the sworn evidence of the plaintiff, the defendant started living in the house since 2021 and paid for the first year. Evidence of the payment in full is in Exhibit A and it is to the tune of ₦140,000.00 (One Hundred and Forty Thousand Naira) only.

The second payment as evidenced by Exhibit B is a part payment of ₦100,000.00 (One Hundred Thousand Naira) remaining ₦40,000.00 (Forty Thousand Naira) and it is for the 2022/2023 rent. Remaining sum is still unpaid and part of the plaintiff's claims.

The plaintiff claims also the mesne profit for unauthorized occupation of the premises by the defendant from November, 2023 until possession is delivered and he claims also outstanding electricity bills, cost of filing alongside the main possession of the two bedroom apartment in question.

The Court has taken note of the fact that the plaintiff proved the issue of an outstanding sum of ₦40,000.00 (Forty Thousand Naira) only from the 2022/2023 rent but there is no proof or whatsoever that the defendant is in default of any electricity bill, moreover, that there is no sum specified in that instance.

The cost of filing is also not specified.

The Court, although, bound to act on unchallenged evidence of a party before, is not to grant claims that are not satisfactorily proved by a party.

To this end, this Court shall only grant the claims of the plaintiff that the well proved and unrebutted before it.

See *Section 133 of the Evidence (Amendment Act) 2023*.

Mohammed V. Abubakar (2020) LCN/14166 (CA)

Ayeni V. China Engineering & Construction Coy Nig. Ltd (2022) LCN/16325 (CA)



Izuogu V. Ibe & Anor (2018) LPELR - 44347 (CA)

Aiyetoro Comm. Trading Co. Ltd V. NACB Ltd (2003) 12 NWLR (Pt. 834) 346.

The Court is however satisfied that the necessary statutory notices which are Forms D, E and F have been served the defendant and that all necessary steps in the absence of the defendant have been taken to avoid any miscarriage of justice.

In accordance with Section 131 of the Evidence Act, 2023 (as amended), the plaintiff who asserted that the defendant is owing him part of rent and mesne profits alongside other claims have proved them accordingly. To this Court, he has proved his case on the balance of probabilities and is entitled to some reliefs sought against the defendant.

See Monson V. Diamond Bank (2018) LPELR - 46005) (CA).

The Court, on its part, has the duty to grant the claims of a party they are succinct proofs to substantiate them.

I believe the testimony of the plaintiff and I hold that the plaintiff's claims succeeds as follows:

- The Court orders that the defendant, Mr. Roland Eba delivers possession of the 2 bedroom apartment and its appurtenances situate at Behind 4 Season Felele, Lokoja, Kogi State to the plaintiff with immediate effect.
- The defendant, Mr. Roland Eba should also pay the outstanding sum of ₦40,000.00 (Forty Thousand Naira) only to the plaintiff. Sum being a remainder sum for rent in 2022/2023 which expired in November, 2023.
- The Court orders the monthly payment ₦11,700.00 (Eleven Thousand, Seven Hundred Naira) being mesne profit for occupation of the premises from November 2023 until possession is delivered to the plaintiff formally.



- The electricity bills and legal fees are refused because they are not specified.

I so hold.

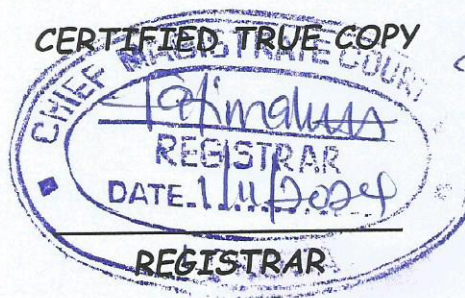
This judgment is dated the 25th day of June, 2024.

SIGNED
U. ODIBA
SMALL CLAIMS JUDGE
25/06/2024

RIGHT OF APPEAL

In line with Section 69 (1) of the Kogi State Magistrates Courts Law and Section 38 of the Rent Control Law of Kogi State, 2007, any aggrieved party may appeal against this judgment within 30 days from today.

SIGNED
U. ODIBA
SMALL CLAIMS JUDGE
25/06/2024



Abdul Salam Farina Umar.

