

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE ASMAU AKANBI- YUSUF

DELIVERED ON THE 27<sup>TH</sup> APRIL, 2023

SUIT NO. CV/1889/21

BETWEEN

NKECHI J NWAOGU..... CLAIMANT

AND

KRYXTALZ CHAMPAGNE LOUNGE LTD & 1 OR.....DEFENDANTS

JUDGMENT

The Claimant commenced this suit vide a writ of summons filed on the 6<sup>th</sup> August, 2021. The Claimant claims against the defendants as follows:

- a. An Order of this Court commanding the 1<sup>st</sup> Defendant to pay over to the Claimant forthwith the sum of Three Million Naira (~~N~~3,000,000.00) being the unpaid balance on the total lease sum of Twenty-Two Million, Five Hundred Thousand Naira only.
- b. An Order of this Court commanding the 1<sup>st</sup> Defendant to pay over to the Claimant forthwith the sum of Three Million, Seven Hundred and Fifty Thousand Naira (~~N~~3,750,000.00) only being the arrears of rent for the six-month period the Defendant stayed on the property after expiration of its lease from 1<sup>st</sup> June, 2020 to 31<sup>st</sup> December, 2020.

- c. An Order of this Court commanding the 1<sup>st</sup> Defendant to pay over to the Claimant forthwith the sum of Three Million Naira (~~₦~~3,000,000.00) being the cost incurred by the Claimant in restoring the property Plot 615, 1<sup>st</sup> Wing, 1<sup>st</sup> Avenue, Gwarinpa, 3<sup>rd</sup> Avenue Gwarinpa Abuja, FCT to its pre-lease condition owing to the damages caused by the Defendant
- d. An Order of this Court commanding the 2<sup>nd</sup> Defendant to reconnect forthwith the electricity supply to the property Plot 615, 1<sup>st</sup> Wing, 1<sup>st</sup> Avenue, Gwarinpa, 3<sup>rd</sup> Avenue Gwarinpa Abuja, FCT which it disconnected and refused to restore despite several entreaties.
- e. ₦1,000,000.00 only as the cost of this suit.

In support of the writs of summons is a 17 paragraphs witness statement on oath deposed to by one Chief Stanley Wokocha, attached are three unmarked Exhibits.

The case of the Claimant is that the 1<sup>st</sup> Defendant was a tenant on the claimant's property, he was engaged in hospitality business while 2<sup>nd</sup> Defendant is an Electricity/power distribution company, the 2<sup>nd</sup> defendant is mandated to supply electricity to the Claimant, but have refuse to do so alleging that the 1<sup>st</sup> defendant who was a former tenant on the Claimant's property is owing the 2<sup>nd</sup> Defendant. The Claimant avers that he was never aware of the contract between the 1<sup>st</sup> and 2<sup>nd</sup> Defendant for electricity, that the contract was not entered in the Claimant's name, that as a result of the 1<sup>st</sup> defendant's indebtedness to the 2<sup>nd</sup> defendant, that the 2<sup>nd</sup> defendant disconnected electricity supply to the Claimant's property and has refuse to reconnect the claimant in her name, that the claimant must recover the indebtedness of the 1<sup>st</sup> defendant if the claimant want to be reconnected to power. That he has been left in darkness , instead of reconnecting the claimant, the 2<sup>nd</sup> defendant sent a consumer transaction report to the claimant to

pay off the alleged indebtedness of the 1<sup>st</sup> defendant, that the 1<sup>st</sup> defendant open account in the name of MEGA POINT LOUNGE, the name the 1<sup>st</sup> defendant used to run its business on the claimant's property, that sometimes in May, 2017 the 1<sup>st</sup> Defendant approached the claimant through the claimant's son by name prince and offered to take the property on lease, which they both agreed on three years lease of the property from June, 1<sup>st</sup> 2017 to May, 31<sup>st</sup> 2020 in the sum of twenty two million, five hundred thousand naira only, that the 1<sup>st</sup> defendant on 15<sup>th</sup> June 2017 made a deposit of Thirteen million naira vide union bank and sterling bank cheques, the 1<sup>st</sup> defendant on the 15<sup>th</sup> July, 2017 paid a further sum of six million, five hundred thousand naira vide union bank cheque, that the 1<sup>st</sup> defendant had an outstanding of Three million, five hundred thousand naira only, the Claimant further states that the lease term granted to the 1<sup>st</sup> defendant elapse on the 31<sup>st</sup> May, 2020, till date the 1<sup>st</sup> defendant have refuse to pay the balance of the Three million naira, that after the expiration of the lease term granted the 1<sup>st</sup> defendant, he continued on the property for 6 months, that the rent accumulated in total is Three million, seven hundred and fifty thousand naira only, the claimant's states further that the 1<sup>st</sup> defendant during the course of his stay on the property used and incurred electricity bills with the 2<sup>nd</sup> defendant; that the defendant paid some of the bills it incurred leaving unpaid balance of Three million naira, as a result of which, the 2<sup>nd</sup> defendant disconnected electricity supply to the property; that it was the full responsibility of the 1<sup>st</sup> defendant to pay electricity bills to the 2<sup>nd</sup> defendant as agreed, that the claimant got to know all the facts contained in paragraph 8 of the statement of claim, on her visit to the property and she discovered that electricity supply has been disconnected, that the claimant made further inquiries and she was, told that the 1<sup>st</sup> defendant is owing, that the claimant made several attempt to be reconnected in her account and install a prepaid

mater, that the 1<sup>st</sup> defendant left the property unrepaired, that the claimant reported to the Nigerian police at Gwarimpa division, the police arrested the 1<sup>st</sup> defendant security man who also made statement to that effect to the police, that the claimant use the sum of Three Million Naira only in restoring the property.

Equally, the counsel for the claimant on behalf of the claimant, filed a motion on notice dated and filed 26/9/2022, praying the court to enter final judgment in favour of the Claimant, the defendants having failed to file their pleadings to this suit.

In support of the motion on notice is 12 paragraphed affidavit deposed to by one Joyce Okata; attached is a written address settled by Genevieve I. Anthony Esq, wherein she raised a sole issue for determination, that is;

*“Whether the prayers sought in this application by the Claimant/applicant ought to be granted by the Honourable Court in the light of the circumstances of this case and the Rules of this Honourable Court”*

It is the submission of counsel for the claimant, that the granting of this application is at the discretion of the court; that the defendants have failed to file any defence to the suit.

He argued that Order 21 Rules 1 & 9 HCR 2018 gives the court the power to enter judgment in favour of the claimant for the amount claimed and in terms of the claimant's statement of claim where the defendant fails to file any defence. He urged the court to grant this application in the interest of justice. He referred the court to the case of *Iwueke V Imo broadcasting corporation (2005)17 NWLR (PT.955) 447*

The law is trite that he who asserts must prove. Section 131 (1) of the Evidence Act, 2011 (As Amended) provides: "131 (1) Whoever desires

any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist. Section 131(2) states that When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side. Section 133(1) In civil case, the burden of first proving existence or non-compliance of a fact lies on a party against whom the judgment of the court would be given if no evidence were produced on either side, regard being had to any presumption that may arise on the pleadings. Section 134 reads: The burden of proof shall be discharged on the balance of probabilities in any civil proceedings.

Rule 1: If the claim is only for a debt liquidated demand, and the defendant does not within the time allowed for the purpose, file a defence, the claimant may, at the expiration of such time, apply for final judgment for the amount claimed with costs.

Rule 9: In all actions other than those in the preceding rules of this Order, if the defendant makes default in filing a defence, the claimant may apply to the court for judgment, and such judgment shall be given upon the statement of claim as the court shall consider the claimant to be entitled to.

I have had a careful consideration of the pleadings of the claimant vis a vis the depositions, particularly paragraph 5 of the statement of claim, where it is stated thus:

“The claimant avers that this has left her in darkness despite various entreaties to the 2<sup>nd</sup> defendant. Instead of reconnecting the claimant, the 2<sup>nd</sup> defendant sent a consumer transaction report to the claimant to pay off the alleged indebtedness of the 1<sup>st</sup> defendant to it. The claimant hereby pleads the consumer

transaction report the 2<sup>nd</sup> defendant sent to her dated 29/06/2021 made between the 2<sup>nd</sup> defendant and the 1<sup>st</sup> defendant which according to the 2<sup>nd</sup> defendant the 1<sup>st</sup> defendant opened the account in the name of MEGA POINT LOUNGE, purportedly the name the 1<sup>st</sup> defendant used to run its business on the claimant's property"

Going by the above, it can be gleaned that the Abuja electricity distribution company (AEDC) customer transaction report is between the 2<sup>nd</sup> defendant and one MEGA POINT LOUNGE. The parties in this suit as can be gleaned from the writ of summons before this Honourable court are Nkechi J. Nwaogu, the claimant and Kryxtalz Champagne Lounge Limited and Abuja Electricity distribution company (AEDC), the defendants.

Therefore, I do not hesitate to hold that the claimant failed to establish the link between the 1<sup>st</sup> defendant and the said MEGA POINT LOUNGE. There is no documentary evidence placed before the court to establish the assertion stated in paragraph 5. A party who asserts in his pleadings the existence of a particular fact has the onus of proving such fact by adducing credible evidence. If he fails to do so, his case fails. A claimant is required to succeed on the strength of his own case and not on the weakness of the defence. On the other hand, if he succeeds in adducing evidence to prove pleaded facts, he is said to have discharged the burden of proof that rests on him. The burden then shifts to his adversary to prove that the fact established by the evidence adduced would not, on the preponderance of evidence, result in the court giving judgment in favour of the party. Until the plaintiff or petitioner has discharged the onus cast on him by law, the onus does not shift. See the case of *Buhari v. Obasanjo* (2005) 2 NWLR (pt.910) pg.241, *Igwe v. A.C.B. Plc* (1999) 6 NWLR (pt.605) pg.1, *Ajadi v. Ajibola* (2004) 10 NWLR (pt.898) pg.91 and *Haruna v. Modibbo* (2004) 16 NWLR (pt.900) pg. 487.

Given the state of pleadings and evidence placed before the court by the claimant, I am of the firm view that the claimant failed to prove the case as required in law. Accordingly, the case of the claimant is dismissed.

ASMAU AKANBI-YUSUF

HON JUDGE

APPEARNCES:

Parties Absent and not Represented.