

IN THE SMALL CLAIMS COURT OF RIVERS STATE OF NIGERIA
IN THE PORT HARCOURT MAGISTERIAL DISTRICT
HOLDEN AT PORT HARCOURT

SUIT NO: PMC/SCC/57/2025

BETWEEN

MR. CHIDIEBERE OKEREAFOR

CLAIMANT

**Carrying on business under the name and
style of UDO-Dera Food Mart Enterprise**

AND

**VALENCY AGRO NIG. LTD
MR. DEEPAK LAMBA**

DEFENDANTS

PARTIES: All Absent

APPEARANCES: G.U Omereji for the Claimant. K. O. Etékan for the Defendant.

JUDGMENT

The Claimant brought this action via an Ordinary Summons against the Defendant on the 13th day of February, 2025, claiming the reliefs below:

DEBT/AMOUNT CLAIMED: N3,781,924.00
Court Fees- Nil
Costs - N1,000,000.00 as cost of action
Total - N4,781,924.00

Upon the filing of the matter in court, an Ordinary Summons attached with the Complaint Form and Claim was served on the Defendants via pasting at the Defendants' last known address, being at MDS Building, Forces Avenue, behind Spar Supermarket, off Azikiwe Road, Port Harcourt and via WhatsApp Number 09070060301, on the 14th day of March, 2025. The Affidavit of Service is before the court. Upon confirmation of service, a plea of not liable was entered for the absent Defendants on the 27/03/2025 and matter adjourned for either some form of settlement or hearing.

The Claimant on record, Mr. Chidiebere Okereafor testified under oath on the of 14/03/2025 as CW1. He adopted his Written Deposition on oath dated 14/03/2025 and thereafter tendered a total of ten (10) Exhibits which were marked as follows: The Demand letter dated 18/11/2024 as Exhibit A; Another Demand letter dated 18/11/2024 with the Caption: Demand for the payment of the sum of N3,580,624.00 (Three Million Five Hundred and Eighty Thousand Six Hundred and Twenty Four Naira Zero Kobo) as Exhibit B; The Distributorship Application Form with the date of 24/09/2024, as Exhibit C; The Notice of Appointment of Supra Brand 2 Global Distribution Ltd letter with the date of 23/10/2024 as Exhibit C1; The WhatsApp printout that has the date of December 19, 2024 as Exhibit D; The Certificate of Compliance as Exhibit D1; Exhibit E, the photograph of the caked cartons of the caked three-in-one chocolate tea taken by the Defendant's counsel with his phone camera with the leave of court during visit to locus on the 23/05/2025, was tendered through the CW1 whilst under cross-examination. Mr. Joseph Daramola, the accountant to the 1st Defendant testified under oath on the 17/09/2025 as DW1 and tendered four (4) Exhibits admitted and marked as follows: The Invoice with the date of 04/04/2024 as Exhibit F; The price list with the date of 16/02/2024 as Exhibit F1; The price list with the date of 17/04/2024 as Exhibit F2; The Four page Customer statement of account with the date of 13/09/2025 as Exhibit F3. Exhibits G, the Access Bank transaction Receipt dated 11/04/2024 in the sum of Seven Million Naira; Exhibit H, another Access Bank transaction receipt dated 12/04/2024 in the sum of Four Million One Hundred and

Fifty Thousand Naira; Exhibit I; the 13 page Access and GTBanks Transaction receipts and Exhibit J, the Certificate of compliance, were tendered through the DW1 whilst under cross-examination.

SUMMARY OF EVIDENCE OF THE WITNESSES

The evidence of the Claimant (CW1) as stated in his deposition is that he is the Managing Director of UDO-Dera Food Mart Enterprise and was a former premium distributor for the 1st and 2nd Defendants' champions products such as Chocolate Powder, milk powder, three-in-one chocolate tea, banana custard flavour etc. That the 1st and 2nd Defendants unilaterally without just reason, took away their distribution channels and management to another company called SuperBrandz Global Distribution Limited, who are equally her partner. That sometime in April, 2024, the 1st and 2nd Defendants, under their champions products, supplied Four Hundred (400) cartons of three-in-one chocolate tea, at the rate of Eighteen Thousand Seven Hundred Naira (N18,700.00) only per carton. That he later discovered that Eighty Three (83) out of the Four Hundred (400) cartons of the aforesaid three-in-one chocolate tea supplied to him by the 1st and 2nd Defendants were all caked and spoilt. That he made repeated demands to the 1st and 2nd Defendants to refund/pay him the money equivalent of the said caked and spoilt three-in-one chocolate tea from the Defendants, which is about N1,552,100,000.00 (One Million Five Hundred and Fifty Two Thousand One Hundred Naira) at the rate of N18,700.00 (Eighteen Thousand Seven Hundred Naira). That he wrote and demanded the refund for the aforesaid Eighty Three (83) caked and spoilt three-in-one chocolate tea and other sundry demands but the Defendants, despite acknowledging same, refused to replace the product or refund the money equivalent. That as he was waiting for a response to his demand letters, another Fifteen (15) cartons of the three-in-one chocolate tea got spoilt and caked again, which is about N280,500.00 (Two Hundred and Eighty Thousand Five Hundred Naira). which now brings the money or debts the Defendants are owing him to be N1,882,600.00 (One Million, Eight Hundred and Eighty Two Thousand Six Hundred Naira).

Continuing, the CW1 further stated that the Defendants on several occasions when he was the premium distributor of their products, sent some of their staffs, namely: Miss Chidinma Rapheal, Miss Vivian Godspower, Mr. Sunday Okombo and Mr. Chibuike Ugorji to lift some products from him worth N3,058,624.00 (Three Million Fifty Eight Thousand Six Hundred and Twenty Four Naira). That he equally made a demand letter to the Defendants for the payments of the aforesaid sum of N3,058,624.00 (Three Million Fifty Eight Thousand Six Hundred and Twenty Four Naira) through his solicitors but the Defendants have failed or neglected to do so till date. That by mathematical calculations, the Defendants are owing him a total sum of N4,941,224.00 (Four Million Nine Hundred and Forty One Thousand Two Hundred and Twenty Four Naira Zero Kobo), out of which the sum of N1,159,300.00 (One Million One Hundred and Fifty Nine Thousand Three Hundred Naira Zero kobo) only has so far been paid leaving a balance of N3,781,924.00 (Three Million Seven Hundred and Eighty One Thousand Nine Hundred and Twenty Four Naira Zero Kobo) still unpaid till date. That his business has suffered losses and the Defendants can not dispute owing him the sums stated above.

Whilst at the locus, the CW1 further told court that when the Defendants received the demand letter from his lawyer, they called him for settlement and told him that they will send their staffs to come and carry the caked products and he told them to come with the replacement of the caked products. That when the Defendants' staffs came, they did not come with any replacement and he told them he will not release the caked products to them until he sees their replacement or the cash equivalent. That the Defendants offered to give him 58 cartons as replacement or exchange for the 98 caked cartons and he refused because it was less than the number of the caked cartons and he also felt that maybe the Defendants were using tricks to take the caked cartons of the three-in-one chocolate tea from him so that he will not have anything to present. That some of the Defendants' staffs that came to lift the caked products from him were also owing him and from the time this court process started, the Defendants, through their Human Resources Manager, One Mr Abel Temitope Olurin, started paying him in piecemeal the monies that their staffs were owing him. That despite the service of the demand letter on the Defendants, they have refused or failed to pay the aforementioned sum till date, hence the institution of this suit against the Defendants for the payment of same.

Under cross-examination, the CW1 stated that it is correct he paid the Defendants N18,700.00 (Eighteen Thousand Seven Hundred Naira) per carton for the Four Hundred Cartons of the three-in-one chocolate tea before he later found out the company price was N14,700.00 (Fourteen Thousand Seven Hundred Naira) because he paid through the representative that brought the business to him. That no invoice was given to him and what the Defendants gave him was waybill and the waybill states the items that were brought and the quantity. That a copy of the waybill and the mode of his payment are not before the court because he misplaced the waybill. That it is correct his relationship with the Defendants is guided by the Terms and Conditions attached to the Distributorship Application Form which he signed and which is before the court. That as he was selling the products, he was discovering more caked ones and that even on the very first day they supplied the products to him, they saw some caked ones and he immediately reported and they told him not to worry and to be keeping them, that they will change the caked ones for him. (3/6/25) That when he did the first count of the caked products which he communicated to the Defendants, he got about 83 (Eighty Three) cartons but as he was selling, he discovered more of the caked ones. That he does not have anything before the court to show that he complained on the day the products were delivered to him because the way the business is done is that nothing is documented but that the Defendants have representatives that witnessed everything and even visited the warehouse and saw everything and promised to change the caked ones.

Whilst under further cross-examination on the 18/6/25 and 9/7/25 the CW1 stated that even though the 400 cartons that were supplied to him in the month of April, 2024 and has an expiry date on them, he was not looking at the expiry date since the company asked him to be selecting and keeping the caked ones aside so that they can come and carry them and he was selling only the good ones. That it is correct that on the day the products were delivered, they discovered the caked ones and the company said he should be keeping the caked ones and that was why the claim he made before the court is lower than the cartons that were caked as seen on the day we visited locus, the warehouse. That it is correct that as they were offloading the products in his shop, they saw the caked ones and he also called the Defendants and their representatives came and saw it and there was no argument and the company did not deny it but accepted that it was a mistake from their factory. That they told him to be keeping it and that was why he relaxed about getting any written evidence from them because he has been doing business with the company for a long time as a distributor and a retailer. That it is correct he still has some other goods or products supplied to him that are good and unsold but that he does not have any more cartons of the products that we are here in court for that is still good. That of the products we are in court for, the ones remaining with him are the caked ones that were calculated on the day of delivery and the ones that were not calculated or added that day on the day of delivery. That it is not correct that the products were caked because his warehouse does not have proper ventilation because the warehouse has two doors. That even though some of the cartons were torn, some were not and the contents were all intact. That the caked products were identified on the day of delivery of the products and the company confirmed it. That even though he does not have any document before the court showing that the persons he mentioned in paragraph 11 of his written statement are staffs of the Defendants, the company introduced them to him as their staffs. That when the caked products issue happened, the Defendants and the staffs stopped coming around and that was why he started writing to them. That he did not breach any of the terms and conditions of the business and it is correct that the company through their Human Resources Manager (HRM), Abel Tomitope Olurin, started paying for the goods the sales representative lifted from him but since he brought the matter to court, he stopped paying. That it is not correct that the caked products were as a result of his negligence due to lack of ventilation because the company offered to give him 54 cartons out of the total caked products and he refused and this happened while he was already in court. That if the Defendants had offered him the 54 cartons before he instituted this matter in court, maybe he would have accepted and forgave them but right now, it is already late. That was the evidence of the CW1 and he was discharged and matter adjourned for Defence.

One Mr. Joseph Daramola testified under oath on the 17/09/2025 as Defendant's witness one (DW1). The summary of his evidence as stated in his witness deposition on oath dated 31st of July, 2025, is that he is the accountant in the employment of the 1st Defendant responsible for monitoring and reconciling the accounts of Distributors engaged with the company. That the Claimant is a Distributor with the company and has at various times purchased goods from the 1st Defendant including a specific purchase of 400 cartons of the Three-in-One Chocolate beverage at the Unit price of N14,700.00 (Fourteen Thousand Seven Hundred Naira) per carton. That as a

prerequisite to becoming a Distributor, the Claimant executed a Distributorship Application Form, outlining the terms and conditions governing the business relationship between the parties, with a clause that forbids the Distributor from releasing goods or handing over cash to any person purporting to act on behalf of the 1st Defendant. That the Three-in-One Chocolate product, due to its composition and sensitivity to heat and humidity, is clearly labelled with the storage instruction "STORE IN A COOL DRY PLACE". That the Defendants supplied the goods in good and merchantable condition and the alleged caking or deterioration of the product is most likely as a result of improper storage in breach of the storage requirements stated on the product label. That the 1st Defendant denies authorising any of its employees or agents to collect goods worth N3,058,624.00 (Three Million Fifty Eight Thousand Six Hundred and Twenty Four Naira Zero Kobo) or any amount whatsoever from the Claimant. That the 1st Defendant's internal records and employee register do not contain any information linking the individuals the Claimant alleged collected goods from him as their employee or that they were authorised representatives of the company. That the Claimant's actions of giving out goods to unauthorised third parties, were in clear violation of the agreed terms of the Distributorship relationship, as capture in the terms and conditions and any resulting loss is solely attributable to the Claimant's negligence and breach of duty. That the 1st Defendant denies the allegation that it is indebted to the Claimant in the sum of N4,941,224.00 (Four Million Nine Hundred and Forty One Thousand Two Hundred and Twenty Four Naira Zero Kobo) and that the 1st Defendant has already paid the sum of N1,159,300.00 (One Million One Hundred and Fifty Nine Thousand Three Hundred Naira Zero Kobo) out of same. That all financial dealings between the Claimant and the 1st Defendant are properly documented and verifiable through the company's records, none of which supports the Claimant's assertions of debt or repayment.

Under cross-examination, the DW1 stated that even though he is in charge of the Fast Moving Consumer Goods (FMCG), he does not know who the Regional Branch Manager of his company in the South South is. That they have warehouses in each of the Regional branches of the company where they keep their goods and that all their products are produced in Lagos and transported to the Regions based on demands. That he used the word most likely in paragraph 7 of his written statement because he was referring to the storage by the Claimant which is not in consonant with the agreement that he signed with the Defendants. That it is correct he has not visited the Claimant in his shop and does not know if it is only the Claimant on record that is affected by the caked items because this is the first time they are seeing a distributor claiming that 93 cartons are caked. That he was not there on the day the 400 cartons of the three-in-one chocolate tea was delivered to the Claimant and did not witness what happened on that day when the goods were offloaded to the Claimant's shop. That he knows the 2nd Defendant on record as the Production manager stationed at the headquarter in Lagos. That although there is no acknowledgement on Exhibit F (the Commercial Invoice) by the Claimant that he received the 400 cartons of the three-in-one caked product in good working condition, goods are supplied to the distributors in good working condition. That he is not denying that Distributors must acknowledge receiving invoices but that he could not get the signed one for this particular invoice because the branch was closed and that is why he printed a copy from the system as proof. That it is correct he knows everything that is happening in the production department because he is the one that prepares all the necessary documents like the sales invoice and delivery note. That it is correct he is not there when they are mixing the products but he visits there regularly and there is no single caked item in their production.

Continuing, the DW1 stated that he does not have the 1st Defendant's employee list or register before the court as stated in paragraph 10 of his deposition on oath. That because he does not also have the company's employee list or register with him, he will not be able to tell if the persons he mentioned in paragraph 11 of his deposition are staff of the 1st Defendant or not but that the names are strange. That they have checked on their system and could not see their names because they are not on their payroll and so not their staffs. That in respect to the caked product, he is not aware if the Regional Sales Manager in charge of South South especially here in Port Harcourt and the 2nd Defendant, reached out to the Claimant for settlement to refund or replace the 54 cartons of the caked product but he knows that the 2nd Defendant told him that he called the Claimant to tell him that the caked product can never be their responsibility. That he is not aware if the 2nd Defendant reached out to SuperBrandz Global Distribution Ltd, who is now their main distributor, to address the Claimant's issue and not also aware if staffs of SuperBrandz came to the Claimant's shop to resolve this issue. That he is not aware if the Regional Sales Manager in

charge of South South whilst in their employ, conducted this transaction with the Claimant at the rate of N18,700 (Eighteen Thousand Seven Hundred Naira). That it is correct some distributors are given sales representatives from their Lagos headquarters with a letter authorising the sales representatives to take goods and those sales representatives are on their payroll. That he does not know if some of the sales representatives were attached to the Claimant because he does not deal with the branches. That he now says that although he deals with the headquarters in Lagos, he knows that no sales representatives were attached to the Claimant by the Sales Manager in charge of South South. That he does not know any of the sales representatives mentioned by the Claimant in paragraph 11 of his written deposition on oath because the Regional Sales Managers and the distributors do not have power to give goods to employees or cash to a third party on behalf of the company. That he will be surprised to see a document showing that the Regional Sales Manager started deducting money from the salaries of the persons mentioned in paragraph 11 of the Claimant's written statement because if there was anything like that, he would have been the person to be deducting the money from their salaries. That was the evidence of the DW1 and he was discharged.

Final written addresses were ordered to be filed and served on the parties in line with the Rules of Court and both Counsel adopted their respective addresses after time was extended to the parties to file and serve their respective processes and judgment reserved.

The Defendants' counsel, in his address dated the 28th day of October, 2025 and filed same date, raised three (3) issues for determination to wit: (a) Whether from the facts before the Court, the 400 cartons of the Chocolate 3-in-1 Tea were supplied at the cost of N14,700.00 (Fourteen Thousand Seven Hundred Naira); (b) Whether from the evidence before the Court, the Claimant was able to connect or link the alleged sales representatives to the Defendants; and (c) Whether from the evidence before the Court, the Defendants were able to prove this case on the balance of probabilities that the 400 cartons of product were supplied in good condition.

The Claimant's Counsel on his part, raised a sole issue for determination in his address dated 10th day of October, 2025 and filed on the 13th day of October, 2025 to wit: Whether the Claimant is not entitled to the Claim sought in this matter"

The issues raised for determination by both counsel are not dissimilar and the court hereby adopts and modifies the issues raised to read thus:

"Whether the Claimant has been able to prove his case on the preponderance of evidence and on the balance of probabilities to be entitled to the reliefs sought by him".

Arguing the first issue raised, the Defendant's counsel submits that the Claimant as CW1 stated while under cross-examination that he paid the Defendants the sum of N18,700 Naira per carton but later found out the company price was N14,700 Naira as stated on Exhibit F. Counsel urged the court to hold that the products were supplied at the price of N14,700 (Fourteen Thousand Seven Hundred Naira) and not N18,700 as alleged. On his issue two, counsel submits that the Claimant has not placed any document connecting or linking the alleged sales representatives to the Defendants. That mere allegation of lifting the products without pay by the alleged sales representatives without proof, goes to no issue and referred the court to Exhibit C, paragraph 5 on the terms and conditions. As regards issue three, the Defendants' counsel submits that the Defendants are not liable for the spoilt and caked products because the storage conditions of the products are not in line with the storage instructions as stated on Exhibit C, particularly paragraph 12 of the Terms and Conditions. Counsel therefore urged the court to hold that the Claimant has failed to prove his claim against the Defendants and dismiss the suit with substantial cost.

The Claimant on his part and in arguing his first issue raised, contends that the DW1 testified that the 1st Defendant does not have any policy or regulation that a distributor or customer of their products of their products must receive or sign or acknowledge their payment/commercial invoice but proved wrong by virtue of paragraph 9 of Exhibit C which shows that a signature or stamp is required. That the DW1 does not know and can not tell the name of his company's Human Resource Manager and does not also know the name of the Sales Manager South South region. That the DW1 admitted he never visited the Claimant's shop any day and that his evidence before the court is based on what he was told and therefore hearsay evidence. That the DW1 never

tendered any bank statement from the Defendants to show that the amount stated in the purported Invoice of the 1st Defendant was actually paid by the Claimant into the company's account. That the DW1 did not also tender any document to show that it supplied the goods to the Claimant in good and merchantable condition. That the use of the word "mostly likely" by the DW1 in his statement on oath implies that he does not know the cause of the caking of the three-in-one chocolate tea. That the DW1 equally did not tender any internal records of his company or any any documents to show the full list of all the employees of the 1st Defendant both in Lagos and at the Regional headquarters. That the DW1's inconsistent evidence above shows that his evidence is unreliable and same be rejected in evidence. Counsel further contends that the Defendants offered the Claimant money for 54 cartons of the three-in-one chocolate tea in lieu of the 98 cartons and same was rejected by the Claimant, which is clear indication that the Defendants have admitted liability and the law is trite that facts admitted need no further proof.

Continuing, counsel further argues that the DW1 admitted that each distributor is attached with sales agents or representatives, which invariably confirms that the Claimant, as one of the Distributors of the Defendants, was attached with some sales representative or agents who lifts products from the Claimant on the instruction of the Defendants in the persons of Miss Chidinma Raphael, Miss Vivian GodsPower, Mr. Sunday Okomba and Mr. Chubuike Ogorji. The Defendants counsel argues further that the import of the Defendants not reacting or replying to the two (2) letters of demand that were served on him is taken as admission of its contents. That Exhibit F lacks credibility as same was not signed or endorsed by the Claimant. Counsel finally submits that from the visit to the locus in quo and the evidence led by the CW1 in court, it is clear that the Claimant has proved his case with clarity and without contradictions and thereafter entitled to the judgment of this court in his favour.

By way of a reply on Point of Law, the Defendant's counsel posits that the cases of *Osadim vs. Taiwo* (2010) 6 NWLR (Pt. 1189) 155 &162; *Capital Oil & Gas Ind. Ltd Otari Hildings Ltd* (2021) 1 NWLR (Pt. 1758) @ 488 and *Mekwuiye vs. Imoukhued* (2019) 13 NWLR (Pt. 1690) 437 @ 438 paragraphs D-9 (SC), are inapplicable in this case and urged the court to discountenanced same.

Now, in civil cases, the burden of first proving the existence or non-existence of a fact lies on the party against whom the judgment of the court would be given if no evidence were produced on either side, regard been had to any presumption that may arise on the pleadings. See Section 133 (1) and (2) of the Evidence Act, 2011 (as amended). See also **Mrs. Funmilayo Mubo Adeniran & Ors V. Mr. Sikiru Adlo & Anor** (2024) 16 NWLR (Pt. 1964) pg. 351, (SC). As highlighted, the claim of the Claimant before the court is for the following: (a) the sum of N1,832,600.00 (One Million Eight Hundred and Thirty Two Thousand Six Hundred Naira), being the money paid by the Claimant to the Defendants for the 98 cartons of the spoilt and caked three-in-one chocolate tea at the rate of N18,700.00, which he says the Defendants promised to refund him but never did; and (b) the sum of N1,949,324.00 (One Million Nine Hundred and Forty Nine Thousand Three Hundred and Twenty Four Naira Zero Kobo), being the balance of the money for the goods the Defendants' representatives collected from him, bringing it to a grand total sum of N3,781,924.00 (Three Million Seven Hundred and Eighty One Thousand Nine Hundred and Twenty Four Naira Zero Kobo), owed him by the Defendants, which he says has remained unpaid till date, despite repeated demands. The Defendants through the DW1 strenuously denies the above assertion and insists that they are not owing the Claimant and that the alleged representatives who collected goods from the Claimant, are not their staff.

The law is now settled that a cause of action in a suit for recovery of debt accrues when a debtor fails to pay his debt after a demand to pay has been made. See **Akinsola & Anor. V Eyinnaya** (2022) LPELR-57284 (CA). See also Article 2 (1) (d) of the **Rivers State Small Claims Court Practice Direction, 2024**, which makes the issuance and service of a demand letter or notice a condition precedent to the commencement of an action in the Small Claims Court.

In the case at hand, there are two demand letters, (Exhibits A and B), both dated 18th of November, 2025, showing that a formal demand notice was served on the Defendants, thereby satisfying the condition precedent for the commencement of this suit. On the claim as regards the 98 cartons of the caked three-in-one chocolate tea, the CW1 told court that the Defendants supplied him 400 cartons of the 3-in-1 chocolate tea at the rate of N18,700.00 (Eighteen Thousand Seven Hundred Naira) per carton. That he discovered that 83 cartons, (which has a monetary

value of N1,552,100.00 (One Million Five Hundred and Fifty Two Thousand One Hundred Naira) of the said 400 cartons delivered to him, were caked and spoilt. That he wrote to the Defendants and whilst waiting for a response to his demand letter (Exhibit A), another Fifteen (15) cartons with a monetary value of N280,500.00 (Two Hundred and Eighty Thousand Five Hundred Naira) also got caked, bringing the total monetary value of the 3-in-1 caked chocolate tea owed him by the Defendants to N1,882,600 (One Million Eight Hundred and Eighty Two Thousand Six Hundred Naira). Whilst under cross-examination, the CW1 maintained that he paid the Defendants N18,700.00 (Eighteen Thousand Seven Hundred Naira) per carton for the Four Hundred Cartons of the three-in-one chocolate tea and later found that the company price was N14,700.00 (Fourteen Thousand Seven Hundred Naira). That some of the caked and spoilt 3-in-in chocolate tea were discovered the same day the products were delivered to him and this happened in the presence of the Defendants' representatives who also visited his warehouse and saw everything. That he also quickly reported same to the Defendants who told him not to worry and to be keeping them, with a promise that the caked products will be changed.

On the claim of the N18,700 (Eighteen Thousand Naira) purchase sum by the Claimant per carton, the DW1 denies same and told this Court that company prices are fixed and determined from their headquarters in Lagos and no one can change product prices and tendered Exhibit F (the Commercial Invoice) in proof of his assertions. Perhaps it is pertinent to point out that from the evidence before the court, both parties are in agreement that as a prerequisite to becoming a Distributor, the Claimant executed a Distributorship Application Form, outlining the terms and conditions governing the business relationship between the parties (Exhibit C, the Distributorship Application Form). Paragraph (9) of the said Exhibit C states as follows: **"All invoice issued by Valency Agro Nigeria Limited must be signed and stamped by the receiving customer's representative and duplicate copy returned to the store manager of the company"**. A closer look at the said Exhibit F, the Commercial Invoice tendered by the DW1 shows no signature or stamp of the Claimant on it as required by Exhibit C, the binding document between the parties, to buttress the DW1's contention that the Claimant (CW1) indeed bought the Four Hundred Thousand (400) cartons of the 3-in1 chocolate tea at the rate of N14,700 (Fourteen Thousand Seven hundred Naira) per carton and not N18,700 (Eighteen Thousand Seven Hundred Naira) per carton, as claimed by the Claimant. In fact, the DW1 even admitted under cross-examination that it is correct that Invoices are signed by Distributors but that their office was closed and he could not get the duplicate signed copy and that is why he printed Exhibit F, the Commercial Invoice from the system to show the rate at which the company sells the product. He equally told court whilst under cross-examination that he is not aware if the Regional Sales Manager in charge of South South whilst still in their employ, conducted this transaction with the Claimant at the rate of N18,700 (Eighteen Thousand Seven Hundred Naira) or not. In the absence of any cogent and credible proof in the form of a signed Invoice receipt that has the signature or stamp of the Claimant, showing how much he paid per carton, the DW1 can not validly be said to have disproved this claim of the Claimant that he paid the sum of N18,700 (Eighteen Thousand Seven Hundred Naira) per carton of the 3-in-1 chocolate tea and same is deemed proved and admitted. The law is trite that admitted facts need no further proof. See Section 123 of the Evidence Act, 2011 (as amended). I therefore agree with the Claimant's counsel that Exhibit C lacks credibility and same can not be relied upon by this court, same having not been signed and or endorsed by the Claimant as required by paragraph 9 of Exhibit C, the binding document between the parties. The law is trite that parties are bound by their agreements willingly entered into by them and court will not rewrite same for them but to enforce what has already been agreed. I therefore resolve this in favour of the Claimant and against the Defendants.

As regards the spoilt and caked product, the CW1's evidence is that some of the caked products were discovered on the day of delivery of the products and witnessed by the company's representatives. That he called the company and they came and saw the caked products too and they visited his warehouse and saw everything. That he was told to be selecting and be keeping the caked ones aside so that they can come and pick them up. That they eventually came and saw the caked ones and there was no argument and the company accepted that it was a mistake from their factory. That because they told him to be keeping it aside, he relaxed because he has been doing business with the company for a long time as a Distributor and a Retailer. That it is not correct that the products were caked because his warehouse does not have proper ventilation because the warehouse has two doors. That the company even offered to give him 54 cartons out of the total caked products whilst the matter was already in court and he refused. That if the

Defendants had offered him the 54 cartons before he instituted this matter in court, maybe he would have accepted and forgave them but right now, it is already late. I see the above evidence of the CW1 on this score to be very emphatic and direct and in law, it is the best form of evidence. The DW1, apart from the bare assertions that their products are delivered in good and merchantable conditions, did not provide the court with any credible evidence to warrant or persuade this court jettisoning the direct oral evidence of the CW1 wherein he testified that both himself and the Defendants' representatives saw the caked and spoilt products on the day of delivery of the products. The Defendants never called any of their Sales Representatives or the Regional Sales Manager in charge of South South to give a witness account of what transpired on the day of delivery of the goods, to counter any of the above claims of the Claimant and that he was approached for settlement.

The Defendants' counsel equally argued in his address that the Defendants are not liable for the spoilt and caked products because the storage conditions of the products are not in line with the storage instructions stated in Exhibit C. Counsel also hinged his argument on the condition of the store or warehouse the day we visited the locus in quo and the pictures (Exhibit E) he took with his phone with the leave of Court at the said locus. Firstly, I have gone through the said Exhibit C which outlines the terms and conditions of the contract and can not see the storage instructions referred to by the Defendants' counsel in his address. The evidence of the CW1 is that representatives of the Defendants were present during the offloading, which is a requirement by virtue of paragraph 10 of Exhibit C and all saw the caked products and the company did not deny it but accepted and said that it was a mistake from their factory and that they will change them. That because of his several years of business dealings with the Defendants as their Distributor and Retailer, he relaxed, hoping they would perform their own side of the bargain but they never did. Secondly, the shop or warehouse we saw the day we visited locus has two doors and does not strike this court as the reason for the caked and spoilt 3-in-one chocolate tea. This belief is further rooted in the fact that on the day of the visit, I saw other products in the store that were in cartons that were not caked or spoilt. Besides, the DW1, apart from the bare statement that goods are supplied in good and merchantable condition and that the alleged caking or deterioration of the product is most likely due to the poor condition of storage, never countered the CW1's direct evidence above with any credible evidence that he was approached for settlement by the Defendants and in the absence of any credible evidence to the contrary, same is deemed admitted. Worthy of note too is the use of the word "most likely" by the DW1 in paragraph 7 of his Written statement which denotes lack of precision and shows suspicion, which has no place in our law. As earlier stated, the burden of first proving the existence or non-existence of a fact lies on the party against whom the judgment of the court would be given if no evidence were produced on either side, regard been had to any presumption that may arise on the pleadings. **See Section 133 (1) and (2) of the Evidence Act, 2011 (as amended).** Consequently and in line with the evidence led above by the parties, it is the court's firm view that the 3-in-1 caked and spoilt chocolate tea were not caked due to the poor storage facility of the Claimant or negligence on his part as alleged by the defence but as a result of damage associated with the production and or packaging, which by virtue of paragraph 11 of Exhibit C, the Defendants are liable for. I therefore resolve this issue also in favour of the Claimant and against the Defendants.

As regards the goods collected by the sales representatives, the CW1 told court that on several occasions when he was the premium distributor, the Defendants sent some of their staffs, namely: Miss Chidinma Rapheal, Miss Vivian Godspower, Mr. Sunday Okombo and Mr. Chibuike Ugorji to lift products from him worth N3,058,624.00 (Three Million Fifty Eight Thousand Six Hundred and Twenty Four Naira), for which he made demands for payment of same as shown on Exhibit B. The CW1 equally told Court that the Defendants, through their Human Resources Manager, Mr. Abel Tomitope Olurin, was already paying for the goods the Sales Representatives lifted from him and that since the institution of this matter in court, he stopped further payments. That by mathematical calculations, the Defendants are owing him a total sum of N4,941,224.00 (Four Million Nine Hundred and Forty One Thousand Two Hundred and Twenty Four Naira Zero Kobo), out of which the sum of N1,159,300.00 (One Million One Hundred and Fifty Nine Thousand Three Hundred Naira) only has so far been paid, leaving a balance of N3,781,924.00 (Three Million Seven Hundred and Eighty One Thousand Nine Hundred and Twenty Four Naira Zero Kobo) still unpaid till date.

Perhaps it is important at this juncture to first highlight some of the contradictions in the evidence of the DW1 on this score. On this issue of goods collected, the DW1 had in one breath, told the Court that it is correct some distributors are given Sales Representatives from their Lagos headquarters with a letter authorising the Sales Representatives to take goods and those sales representatives are on their payroll. That he does not know if some of the sales representatives were attached to the Claimant because he does not deal with the branches. In another breath, the DW1 stated that although he deals with the headquarters in Lagos, he knows that no Sales Representatives were attached to the Claimant by the Regional Sales Manager in charge of South South. When asked whilst under cross-examination if he knew the name of the Regional Sales Manager in charge of South South, the DW1 answered in the negative. The DW1 also stated that he does not know any of the Sales Representatives mentioned by the Claimant in paragraph 11 of his written deposition on oath because they are not the 1st Defendant's staffs and not on their payroll. The DW1 also told Court that the 1st Defendant's internal records and employee register do not contain any information linking the individuals the Claimant alleged collected goods from him. However when asked if he has the 1st Defendant's internal records and employee register before the court in proof of his assertion that the Sales Representatives mentioned are not their Defendants staffs, he answered in the negative. The DW1, apart from the various bare denials that the Defendants never authorised any of its employees or agents to collect goods worth N3,058,624.00 (Three Million Fifty Eight Thousand Six Hundred and Twenty Four Naira Zero Kobo) from the Claimant, never gave any credible evidence, be it oral or documentary, to disprove the above evidence of the CW1 and the law is loud on the fact that Courts exist to do substantial justice to parties before it and works with credible evidence. **Section 131 Evidence Act (EA), 2011** is very apt on this point wherein it provides thus: ***"Whoever desires any court to give judgment as to any legal right or liability on the existence of facts which he asserts must prove that those facts exist"***

Whilst it is not the law that any particular number of witnesses be called to prove any case, it is however the court's view that evidence of any of the Sales Representatives mentioned by the CW1 above or evidence of the Regional Sales Manager, South South on this score, would have been key to proving or disproving the claim by the CW1 that goods were lifted from him by the Defendants' Representatives. The DW1 told Court that the Claimant's actions of giving out goods to unauthorised third parties, were in clear violation of the agreed terms of the Distributorship relationship, as captured in the terms and conditions and that any resulting loss is solely attributable to the Claimant's negligence and breach of duty. I have gone through Exhibit C, the Distributorship Application Form outlining the Terms and conditions of the contract between the parties and I am unable to see where it is stated that a sales representatives can not lift goods from a Distributor. Paragraph 5 of Exhibit C only talks about the company not being liable for sales from distributors to other customers and that Sales Representative attached to a distributor is not authorised to collect money on behalf of distributor and not that they are not allowed to lift goods from a distributor. The DW1 even admitted under cross-examination that some Sales Representatives are allowed to lift goods from distributors. On the whole, the evidence of the DW1 is hollow and unfurnished with material facts and fraught with inconsistencies and not credible. It is therefore weightless on the imaginary scale before the court.

The CW1 on the other hand, has been able to prove by virtue of Exhibit I his claim that some goods were collected from him by the Sales Representatives of the Defendants and that the Defendants, through their Human Resources Manager, Mr. Abel Tomitope Olurin, was already paying for the goods collected by the said Sales Representatives. I have carefully scanned through the said Exhibit I and I can see the various sums paid by the Defendants' HRM, Mr. Tomitope on behalf of the Sales Representatives to the Claimant for the goods collected from the Claimant. In the case of **HON. (JUSTICE) THERESA UZOAMAKA UZOKWE V. DR. AFAM UZOKWE (2016) LPELR-40945 (CA)**, it was held that: ***"...it is the law, that where there are conflicting pieces of evidence on a matter, the party whose evidence is supported by documentary evidence, would be accorded more credibility. Eya v. Olapade (2011) 11 NWLR (Pt.1259) 505; (2011) 5 SCNJ 98."*** I equally resolve this issue in favour of the Claimant and against the Defendants

Flowing from the above position of the law and after due consideration of the entire facts narrated above, I therefore hold the firm view that the Claimant has been able to prove the Defendant's indebtedness to him with credible evidence and he is therefore entitled to his claim for the balance sum of N3,781,924.00 (Three Million Seven Hundred and Eighty One Thousand Nine Hundred and Twenty Four Naira) and I so hold.

Accordingly, it is hereby ordered;

That the Defendants shall pay to the Claimant the outstanding balance sum of N3,781,924.00 (Three Million Seven Hundred and Eighty One Thousand Nine Hundred and Twenty Four Naira), only, being and as representing the outstanding indebtedness of the Defendants, to the Claimant.

That cost of N500,000.00 (Five Hundred Thousand Naira) is hereby awarded in favour of the Claimant and against the Defendants.

This is the Judgment of this court. I make no further Orders.

Dated this 28th day of November, 2025



LEZIGA C. MITEE (MRS)
CHIEF MAGISTRATE I, MAGISTRATE COURT 12.

