

IN THE MAGISTRATE COURT OF RIVER STATE OF NIGERIA
IN THE PORT HARCOURT MAGISTERIAL DISTRICT
HOLDEN AT PORT HARCOURT
BEFORE HIS WORSHIP S. S. IBANICHUKA, ESQ
SITTING AT SENIOR MAGISTRATE COURT 6 PORT HARCOURT
SUIT NO: PMC/SCC/508/2025

BETWEEN
MR ABU SHITTU OYAKHAMO -----
AND

CLAIMANT

MR LOUIS AGBAKOBA ASOEGWU ---

DEFENDANT

JUDGEMENT

This suit was instituted via form RSSC 3 of this court filed on 18/08/25 wherein the Claimant's claims against the defendant are for:

- i. The sum of ₦1, 150,000.00 (One Million, One Hundred and Fifty Thousand Naira) only being and representing money paid to the defendant for sand lifting services which the defendant failed to render.
- ii. ₦1, 150,000.00 (One Million, One Hundred and Fifty Thousand Naira) only as court fees .
- iii. ₦200,000.00 (Two Hundred Thousand Naira) as cost.

The Defendant in reaction filed form RSSC 5 in his defence and counter claims as follows:

1. The sum of ₦1, 185,000.00 (One Million, One Hundred and Eighty Five Thousand Naira) only being and representing money owed to the Defendant/Counter claimant by the Defendant to the counter claim for sand lifting services rendered .
2. ₦1, 500,000.00 (One Million, Five Hundred Thousand Naira) only as court fees .
3. ₦500,000.00 (Five Hundred Thousand Naira) as cost.

The claimant did not file a defence to the defendants counter claim.

In prove of his case, the claimant called a sole witnesses (CW1) and tendered Exhibits A to E. The Defendant also called one witness (DW1) in defence and counter claim and tendered Exhibits G to J. The two witnesses were cross examined, parties closed their respective cases.

The parties filed, exchanged and adopted their respective final written addresses on 17/12/25 hence this judgement.

The summery of the facts of the Claimants case is that sometime in August 2024 the claimant had a haulage job to haul sand from Ikuru Town in Andoni Local Government Area of Rivers State to Trailer Park in Eleme Local Government Area of Rivers State and that the defendant informed him that he has trucks to hire to the claimant for the haulage job, that the claimant and the defendant entered an oral agreement for the defendant to be lifting sand for the claimant, however, that in cause of the transactions the defendant at various times took money for the jobs but did only part of the work and was supposed to return the balance for the un-executed trips, that the defendant after

failing to carry out either part or the whole of the transactions only returned part of the claimants money and as at today still held on to some part of the claimants money paid to him despite failing to complete the job. That as at today the total balance of indebtedness of the defendant to the claimant for job paid for but not executed stands at ₦1,255,000.00 (One Million, Two Hundred and Fifty-Five Thousand Naira). That despite several demands by the claimant to the defendant, the defendant has refused to refund the claimant the balance of money paid for job not done by the defendant hence this suit.

In his defence the defendant counter claimant denied the claim of the claimant and stated the facts to be that he has since completely refunded the claimant all and any money paid to him for jobs not completed. The defendant in fact has a counter claim against the claimant in the sum of ₦1, 090,000.00 (One Million and Ninety Thousand Naira) for work done which the claimant/defendant in the counter claim has refused to pay. The counsels adopted their final written addresses and raised a lone issues for determination each. However, this court have considered a lone issues for determination in the claim and a lone issue for determination in the counter claim.

“Whether given the facts a and circumstances of this case, this court can order as prayed by the claimant ?”

This is a case of oral contract entered into by the parties, for the defendant to provide trucks to haul sand for the claimant from one agreed point to another. The law is that parties are bound by the terms of their agreements, see the case of **Evbuomwan & 3 Ors v Eleme & 2 ors (1994) 7 -8 SCJN (pt II) 243.**

In Civil cases the standard of proof required of the Claimant is a proof on preponderance of evidence, see: **Section 134 of the Evidence (Amendment) Act, 2023.**

Before delving further into this judgement, it is pertinent that having considered the facts and circumstances of this case that this court at this time considers the issue of jurisdiction to wit: *“whether this court being a small claims court ought to have heard this case in the first place?”*

The law is that issue of jurisdiction can be raised at any stage of the proceedings . see **Dangtoe v C S C Platue State (2001) 9 NWLR (Pt 717) 132 (SC).**

Furthermore, either parties to the suit or the court itself acting *sou moto* and *ex proprio motu* can raise issue of the jurisdiction of the competence of the court, where there are sufficient facts on the record establishing a want of jurisdiction or competence in the court , it is the duty of the judge , if the parties fail to draw the attention of the court to it to so do

See the case of **Ajayi v Mil Admin of Ondo State (1997) 5 NWLR (Pt 504) 237 CA.**

This is a small claims court and by Article 2 (1) (c) of the Practice direction of the court 2024 it states that “An action may be commenced in the small claims court where : The Claim is for a simple liquidated money demand and/or related matter in the sum not exceeding ₦5,000,000.00. (Five Million Naira).

In the case of Capital Oil & Gas Ind v Oteri Holdings Ltd (2001) 1 NWLR (Pt 1758) 483 , the Court of Appeal defined liquidated sum to be a debt or other liquidated sum , it must be a specific sum or capable of being ascertained as a matter of arithmetic .

The claimants principal claim before this court as per his form RSSC 2 of this court is in the sum of ₦1, 185,000.00 (One Million, One Hundred and Eighty Five Thousand Naira), however in the cause of evidence before this court particularly in paragraph 36 of the CW1 written deposition on oath dated and filed on 27/10/25, where the CW1 in concluding his evidence in chief as to the indebtedness of the defendant to the claimant stated that from the foregoing calculations it shows that the defendant is owing the claimant the sum of ₦1. 090,000.00 (One Million and Ninety Thousand Naira), also from the cross examination of the CW1 on 28/10/25 and the Defence and counter claim of the Defendant counter claimant, the exact terms of the agreement between the parties was plunged into further ambiguity, requiring further and in-depth investigation into the exact sum in issue between the parties in this suit.

In the case of Micmerah Intl Agency Ltd v A - Z Pet. Products Ltd (2012) 2 NWLR (Pt 1285) 564 (CA) and the Supreme court case of Wema Sec & Fin.PLC v N A I C (2015) 16 NWLR (Pt 1484) 93 it was held that :

“The factors to determine a liquidated sum are that the sum must be arithmetically ascertainable without investigation , that if it is with reference to a contract, the parties to the contract must have mutually and unequivocally agreed on a fixed amount payable on breach of the contract. That the agreed and fixed amount must be known prior to the breach .

In this instant case it is clear that there is no mutual understanding between the parties as to the exact contract sum as not just the defendant but even the claimant quoted different sums at different times to be the sum the defendant owes the claimant .

In the circumstance, from the facts of this case and on the strength of the above cited judicial authorities I find that this court sitting as a Small Claims court lacks the jurisdiction to entertain this suit and same is accordingly dismissed.

I make no order as to cost.

COUNTER CLAIM

The defendant has a counter claim before this court as stated earlier. It is on record that the Defendant/Counter-Claimant claims as follows:

1. The sum of ₦1, 185,000.00 (One Million, One Hundred and Eighty Five Thousand Naira) only being and representing money owed to the Defendant/Counter claimant by the defendant to the counter claim for sand lifting services rendered .
2. ₦1, 500,000.00 (One Million, Five Hundred Thousand Naira) only as court fees .
3. ₦500,000.00 (Five Hundred Thousand Naira) as cost.

The facts of the counter claim are stated earlier in this judgement.

There is no defence to this counter claim.

The lone issue for determination in this counter claim is

Whether the Defendant Counter - Claimant has been able to prove his counter claim?

This is a counter claim and the nature of counter claim as stated by the court of Appeal in the case of **Aberuagba v Oyekan (2020) 2 NWLR (Pt 1707) 165 CA** , is that a counter claim is a distinct action by a defendant against a plaintiff, with its independent and separate life from the main claim, and with a distinct existence.

This is a small claims court and there are pre requisites for commencement of an action in the Small Claims Court, by Article 2(d) of the Practice Direction of this court, 2024 under commencement of action, it states that an action may be commenced in the small claims court where: **“ The claimant must have served on the Defendant (s) , a letter of demand as in form RSSC 1.”**

I have gone through the suit and all the processes filed by the counter claimant, I cannot find any where in the file or any proof that a demand letter or any demand was made on the defendant to this counter claim or was served on the defendant in this counter claim.

Case laws have long established the position of the law that failure to serve processes where service is required is failure which goes to the root of the jurisdiction of the court and any proceedings in such a case shall be a nullity. See; **Teno Eng. Ltd v Adisa (2005) 22 NSCQR 858 Ratio 2 & 3.**

In the circumstance this counter claim fails for want of service of letter of demand same being a condition precedent for institution of a small court suit.

Accordingly the counter claim is hereby struck out.

I make no orders as to cost.

Dated this 22nd day of January 2026

Signed:

S. S. IBANICHUKA, ESQ.

22/01/2026.

SAMUEL S. IBANICHUKA, ESQ.
(SENIOR MAGISTRATE)
SIGN:  DATE: 22/1/26

