IN THE SMALL CLAIMS COURT OF RIVERS STATE OF NIGERIA

IN THE PORT HARCOURT MAGISTERIAL DISTRICT

HOLDEN AT PORT HARCOURT

CLAIM NO: PMC/SCC/751/2025

BETWEEN

MRS. ATATA HELEN CHIOMA — **CLAIMANT**

AND

MRS. NDIDI GIFT OKOGBULEM — **DEFENDANT**

Parties- The Claimant is present.

Appearances- B.C. Igwe appears for the Claimant, with A.U Johnny and A.G. Ibekwe.

JUDGEMENT

The Claimant took out a claim on the 06/11/2025 and is praying the Court for:

1. The sum of N750,000 being the sum invested;
2. The sum of N2,000,000 as interest and damages; and
3. The sum of N400,000 as cost of litigation.

Upon proof of service filed the 16/12/2025, the Claimant's counsel, Tamunosiki Kalio, on behalf of the Defendant entered a plea of not liable and hearing commenced on the 19/01/2026 with the Claimant testifying solely, tendered five exhibits. The Claimant closed its case on the 06/02/2026.

The Defense was served a hearing notice and subsequently foreclosed, having been absent.

The Claimant filed its final address on the 25/02 and adopted same on the 13/03/2026.

THE CLAIM

In its written deposition filed 19/01/2026, the Claimant who testified solely stated that: the Defendant approached the Claimant with a business proposal and requested for an investment of N750,000 in her palm oil business; the Defendant promised the Claimant weekly returns of N30,000; following discussions, parties executed a written investment agreement; the Claimant invested the sum of N750,000 and the Defendant duly acknowledged; the Defendant made some payments of the weekly returns and stopped paying; the Claimant wrote a demand letter and the Defendant responded, denying same.

In her final written address, the Claimant's counsel Blessing Chikaike Igwe raised and argued a lone issue for determination. He argued that equity abhors unjust enrichment as it will be inequitable to allow Defendant retain Claimant's money while refusing to discharge its

obligation. Counsel further argued that the Claimant has led proof of its assertions and should be entitled to judgement.

EVALUATION OF EVIDENCE/DECISON

The Court from the facts and evidence before it, has distilled a lone issue for determination, thus: *Whether the Claimant is entitled to judgement of this Court.*

The Evidence Act places on the shoulders of the Claimant, the burden of proving all assertions made. This principle has been judicially blessed in a plethora of authorities. The principle was re-echoed in **NGADIUKWU v. MUOGHALU & ORS (2026) LPELR- 83075(SC)**, where the apex Court held thus:
"In all civil cases, the burden of proof lies on whoever desires the Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts to have existed. The burden of proof lies on the party who would fail if no evidence at all were given on either side. Sections 131 and 132 of the Evidence Act, 2011; Folarin v. Agusto (2023) LPELR-59945(SC)... ."
It is the case of the Claimant that parties had an agreement of investment which was reduced into writing as shown in exhibit C1a-d. This brought about a contract between parties on record.

A contract is a formal agreement between two or more parties who by so entering into such agreement, they resolve to create obligation or commitment between them to do or not to do a particular thing. By the nomenclature of exhibit C1, parties entered into a contract.

Exhibit C1a-d is evidence of the contract entered between parties which contract is to run from 1st July-31st November 2024.

Is the Claimant's oral evidence that she invested the sum of N750,000. That was corroborated by exhibit C1 which is the agreement and exhibit C3 a&b, which is the letter by the Defendant's solicitor.

As agreed by parties, the commission on the capital invested shall be N30,000 which shall be paid every Thursday.

In paragraph 6 of the written deposition of the CW1 who is also the Claimant, the Claimant states thus: *That the Defendant initially made a few payments but subsequently failed, refused, and neglected to continue paying the agreed weekly sum of N30,000 as stipulated in the investment agreement.*

Part of what is claimed before this Court, is recovery of the sum of N1,500 daily, from the date of default until full liquidation.

A juxtaposition of the evidence and reliefs claimed, reveals that the Claimant does not have a full grasp of the basis of her claim. The Claimant as has been reproduced above, told this Court

that the Defendant made few payments and subsequently stopped. What is the Claimant's definition of 'few payments'? When did the payment start and end? How much was paid in total? These and many more questions begged for answers but sadly, the Claimant didn't proffer any, before this Court. This Court cannot embark on an evidence fishing voyage as the Court is not a *Vasco Da Gama*. The Court can also not produce/manufacture evidence to fill in the gaps in the evidence of the Claimant. Reliefs are not granted just for the asking but based on credible evidence.

This Court finds that the Claimant has not led credible evidence in proof of her entitlement to the commission and default fee.

The Claimant caused to be issued on the Defendant, a letter of demand dated 25/09/2025, which is admitted as exhibit C2 a&b. A careful examination of that document shows that all the Claimant is demanding of the Defendant is refund of the sum of N750,000 invested.

It is imperative that I reiterate the position of the law that on the shoulders of the Claimant, rests the initial and general burden of proof. See **NSUDE & ORS v. NICHODEMUS & ORS (2024) LPELR-62986 (SC).**

The Claimant by the letter, discharged the initial burden placed on it and thus, the burden shifted to the Defendant.

In response to that letter, the Defendant caused to be issued, exhibit C3 a&b. I have painstakingly gone through the contents of that letter and it is germane that I point out the following:

1. The Defendant is not owing the Claimant for the commission which were fully paid;
2. Parties after going to the Police in January 2025, opted for settlement to be anchored by one Nnana;
3. Sequel to the settlement, parties agreed that the Defendant shall pay the sum of N100,000 monthly, to offset the capital of N750,000;
4. The Defendant paid the sum of N300,000 from February to April 2025;
5. The inability of the Defendant to fully offset the debt is as a result of low turnover in business.

Contrary to the assertion of the Defendant in the letter, the Claimant received the sum of N300,000 in the months of March, April and May 2025. This is evidenced in Exhibit C5a-c.

As has been pointed out above, the burden of proof is not static but oscillates. The Defendant by exhibit C3 a & b discharged the burden placed on it, to the extent that, she has paid the Claimant the sum of N300,000. This documentary evidence and assertion was corroborated by the Claimant in its statement of account admitted as exhibit C5 a -d.

By the letter written by the Defendant as tendered by the Claimant, the Defendant discharged the evidential burden placed on her as regards her level of indebtedness. The burden has then

returned to the Claimant who sadly, did not challenge, rebut nor contradict the contents of exhibit C3 a & b.

In law, this presupposes that the Claimant admitted exhibit C3 and facts admitted, need no further proof and the Court is enjoined to place reliance on it. I find and so hold.

The Defendant admitted having paid the sum of N300,000 in offsetting the sum of N750,000 and further stated that her inability to fully liquidate the sum was due to poor turnover. Notwithstanding how sympathetic that sounds, poor turnover in business is not one of the known and established defenses to breach of agreement, under the Nigerian law of Contract.

The Defendant has without any lawful justification/excuse, failed, neglected or refused to perform her obligations under the contract or incapacitates herself from performing same or in some way, backed down from carrying out a material term of the contract. That in itself, is a breach of contract. See **AUSTIN LAZ THERMOPLASTIC INDUSTRIES LTD & ANOR v. GTBANK (2025) LPELR-81398 (SC).**
Parties are bound by their agreement and having breached the contract, the law of equity holds that, *ubi jus, ibi remedium*. The Claimant is thus entitled to some of recompence in the form of damages.

The last relief claimed by the Claimant is cost of litigation.

In **FCMB v. ABDUL GAFARU & CO. LTD & ORS (2025) LPELR-82795(SC),** the Supreme Court stated that:
In law, the claim falls within the perimeter of special damages which must be pleaded and strictly proved. The posture of the law is that for a party to be entitled to and earn a claim for legal fees/expenses, he must specifically plead the necessary facts and solidify them with evidence, see UBN Plc v. Chimaeze (2014) 9 NWLR (Pt. 1411) 166. In essence, a claim for legal expenses is not self-executory. It does not enure to a party as a matter of routine/course. Pleading and evidence constitute the valid passport to fetch a claim for legal expenses from the Court.
I adopt wholly, the reasoning of the apex Court. In the instant suit, no scintilla of evidence was led in proof of this head of claim. This Court is not a *santa claus* and cannot grant an unproved relief. This relief fails and I so hold.

To the extent the Claimant has proved its case, judgement be and is entered for the Claimant. It is accordingly adjudged that:

1. The Defendant refunds to the Claimant, the sum of N450,000 which is the balance of the sum invested;
2. The Defendant pay to the Claimant, the sum of N700,000 as general damages.
3. These orders are to be complied with, not later than 21 days from the date of this judgement.

I make no order as to cost.

SIGNED

ANUGBUM, OBIARERI. N, ESQ

CHIEF MAGISTRATE I

SMALL CLAIMS COURT IV

23rd March, 2026