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

CLAIM NO: PMC/SCC/195/2025

BETWEEN

HENX ENGINEERING & CONSTRUCTION NIG. LTD - CLAIMANT

AND

MR. EVERISTUS AMADI
(Trading under the name & style of CANIVERS ENTERPRISES NIG) - DEFENDANT

Parties are absent.
Appearances- N.A. Ibiloye appears for the Claimant.

JUDGEMENT

The Claimant took out a complaint on the 16/07/2025 and is seeking the following:

1. The sum of N1,168,000 as balance; and
2. The sum of N2,000,000 as cost.

As per the affidavit of service, the Defendant was served on the 05/05/2025 and its counsel entered a plea of not liable on the 21/05/2025.

Upon failure of settlement, hearing commenced on the 13/06/2025 with the Claimant opening its case and testified solely, tendered and the Court admitted two exhibits and closed its case on the 18/07/2025.

The Defendant commenced on the 01/08/2025 and fielded three witnesses. The defense closed its case on the 29/10/2025.

Parties adopted their final written address on the 05/11/2025.

THE CLAIM

Iwuh Henry Chinedu the Managing Director of the Claimant testified solely that; The Claimant is into importation of Plaster of Paris also known as POP materials and accessories; on 23/05/2025, Claimant supplied two containers of POP materials to the Defendant at his warehouse; CW1 and his staff, Defendant, his workers/loaders were present then; the Defendant called his people who counted and verified the items; since 2021 when parties began doing business together, their people were always on ground to verify quality and quantity and the details always communicated via WhatsApp; three months later, Defendant made payment and the narration was 'final payment'; the parties got into an argument and after reconciling records, Defendant agreed to pay the balance of N1,226,100 , which was what he paid in October 2023; before the Defendant paid the sum, he insisted that the Claimant gives him 10 bags for free and the Claimant did; in course of conversations in January 2024, CW1 informed the Defendant of the incoming goods and its quantity; on the 11/01/2024, CW1 called the

Defendant who said he was yet to receive the items; on the 12/01/2024, Claimant's agent when called, said the Defendant received the items the previous date and the 2nd container was in Defendant's warehouse; the agent informed the CW1 that the Defendant complained of shortage of 59 bags; CW1 asked the agent to stop the Defendant from offloading the 2nd container and he said the Defendant had already began offloading; CW1 called his staff to stop the offloading of the 2nd container; they got there; the Defendant did not allow the Claimant's staff to recount as they maintained that the 2nd container was short of 101 bags; a demand letter was written to the Defendant but he refused to pay for the items.

In her final written address, N.A. Ibiloye on behalf of the Claimant raised and argued a lone issue for determination. Counsel argued that the evidence of the Defendant was full of contradictions. Counsel further argued that the instant case has no business with the Carriers Law of Rivers State and thus the law is inapplicable. They urged the Court to enter judgement for the Claimant.

THE DEFENSE

The Defendant vide its witnesses testified that he is a dealer of building materials and a company representative. In 2023 parties had a business dealing and after offloading, they found that there was an excess and when contacted, Claimant said he deliberately did that to reduce cost. He threatened and Defendant paid him off. In January 2024, parties reached another agreement for the supply of POP cement and agreed for N7,300 per bag. On the 11/01/2024, CW1 delivered one container and in course of counting, they found a shortage of 59 bags. On 13/01/2024, the 2nd container was delivered and when counted, there was a shortage of 101 bags. The Defendant states that he does not owe the Claimant any money.

In its final written address, the defense counsel B.U. Ekwugha raised and argued a lone issue. Counsel contended that the proper parties are not before the Court which in turn, has robbed the Court of its jurisdiction. Counsel further argued that the instant suit involves carriage of goods by land, regulated by the Carriage Law, CAP 21 Laws of Rivers state.

EVALUATION OF EVIDENCE/DECISION

In arriving at my decision in this case, I have carefully considered the Claimant's claim in this matter, the evidence adduced by parties and the written addresses filed by the learned counsels herein to which I may refer to in the course of this judgment.

By the inherent powers of this Court, I shall adopt the issue raised by the Defense counsel to wit:

Whether the Claimant has proved his case on the preponderance of evidence to be entitled to the relief sought.

Before I proceed with the substantive suit, I must note that the Defence Counsel in its final address argued that the instant suit borders on carriage of goods by land, regulated by the Carriage Law, CAP 21 Laws of Rivers state, 1999, that the Claimant's case ought to be against

the common carrier (transporter) and not against the Defendant who raised alarm at the earliest opportunity. The Claimant's counsel in response argued that: the business which necessitated the institution of this matter does not have anything to do with the Carriers law of Rivers State; that the Carriers law of Rivers State regulates the relationship of the Carriers and the person entrusting to them certain parcel and packages for conveyance; that the containers having been delivered, inspected and accepted by the Defendant, that the Carriers liability has ceased once the Defendant received the goods. They relied on Section 7(c) of the *Carriers law of Rivers* State and argued that from the admissions of the DW1 that the lock of the container is destroyed at the point of delivery, the Carrier has no liability. He urged the Court to discountenance the argument posited by the Defendant's Counsel.

From the evidence presented by the Claimant particularly the undisputed Exhibit D1, I endorse the submissions of the Claimant's Counsel. I find that from the facts of the case before me that the action has been commenced against the proper party. The Argument of jurisdiction raised by the Defense Counsel fails and I so hold.

Now on the substantive suit, it is the case of the Claimant that he supplied goods to the Defendant and the Defendant owes him an outstanding balance of N1,168,000.00. The Claimant also claims a cost of N2,000,000.00 against the Defendant. The Claimant via its sole witness stated that in January 2024, he informed the Defendant of the incoming goods and its quantity; on the 11/01/2024, CW1 called the Defendant who said he was yet to receive the items; on the 12/01/2024, Claimant's agent when called, said the Defendant received the items the previous date and the 2nd container was in Defendant's warehouse; the agent informed the CW1 that the Defendant complained of shortage of 59 bags; CW1 stated that he asked the agent to stop the Defendant from offloading the 2nd container but the agent said the Defendant had already began offloading; CW1 stated he called his staff to go and stop the offloading of the 2nd container; two of his staff got there, the Defendant did not allow the Claimant's staff to recount as they maintained that the 2nd container was short of 101 bags.

It is a settled principle of law that in a civil case, the burden of proof lies on the person who desires the Court to give judgment as to any legal right or liability which depends on facts which he asserts to prove that those facts exist. It is also settled that the burden of proof in a particular proceeding lies on the person who would fail if no further evidence is given on either side- Sections 131 and 132 of the Evidence Act, 2011.

The crux of the entire Claimant's case is that he supplied goods to the Defendant, the Defendant received same and is owing the Claimant the sum of N1,168,000.00 as claimed. The Defendant denied the said claim and maintained that there was shortage from the containers delivered to him, same was acknowledged on Exhibit D1. During the cross-examination of the CW1, the following ensued:

Q- You have Drivers/managers that held your goods from the wharf to the point of delivery?

A-We have transporters at the sea port that take cargoes for importers.

Q- It is the duty of the transporter/Driver to confirm what they deliver

A-Not correct.

Q-Do you attach your staff to the Drivers to make sure the goods are accurately delivered.

A-That is not a regular practice

Q-As at the time the goods were moved from the wharf, you had your staff, that ensured the quantity and quality of goods been transported to the customer?

A-The Staff does not count the goods at the wharf

Q-When you sent the container to the Defendant, was it subject to confirmation or you gave him a manifest.

A-We agreed that my people and his people must be on ground to confirm.

Q-The day you dispatched your driver to deliver the goods, you did not send your staff along with the driver.

A-My staff never goes with the driver. When the cargo gets there, Defendant will notify us and we will send our staff to the particular shop.

Q- The arrangement is not in writing?

A-It is not

From the forgoing extract of the CW1's evidence, it can be deduced that the Claimant attach a staff to the Drivers to make sure the goods are accurately delivered but not a regular practice and that the parties had an oral agreement or arrangement that people from the Claimants and the Defendant's people must be on ground to confirm the goods. The Defendant in his defence, denied that there was no such agreement with the Claimant that the Staff must be on ground before offloading. The question at this point is whether there is evidence to establish that parties had this agreement/arrangement? I have carefully combed the evidence of the Claimant to find whether from a correspondence or conduct or action or previous performances of parties such oral agreement nor arrangement can be seen, but I find none.

I have also considered the Claimant's evidence, there is no evidence to show that the parties agreed that the Claimant's people and the Defendant's people must be on ground to confirm, there is no evidence to ascertain that the said good were delivered and the Defendant is refusing to pay for them. Under cross-examination, the following question was put to the CW1:

Q-how many staff went there on the day of offloading?

A-Two of them.

Q-All the scenario you mentioned at the Defendant's warehouse are what your staff told you?

A-Amadi also confirmed it.

Q-You are aware the Defendant reported the shortage to Mr Donald?

A-He did after the fact and after Donald called him. I was worried as I was told that the container was not there. It was when Donald called that he told me.

It is pertinent to note that neither of the two staff the Claimant stated that he sent to the Defendant's warehouse but was refused from recounting were called before this Court. The evidence of the CW1 in that regard is hearsay evidence and the *Evidence Act 2011 generally* holds hearsay evidence as inadmissible. The Donald whom the Claimant admitted is his clearing agent and manages his transport and whom the Claimant also admitted told him the that the Defendant called to inform him about the shortage was not called to testify.

The Claimant's counsel in his final address argued that the Defendant has not discharged the evidential burden of proving the shortage of the goods supplied to him on the 11th and 13th of January, 2024.

The spirited submissions of N. A Ibiloye Esq, failed to persuade me. The burden of first proving the existence or non-existence of a particular fact lies on the 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.

Where a party adduces sufficient evidence to satisfy the Court that the fact sought to be proved is established, the burden shifts to the person against whom judgment would be given if no further evidence were adduced.' – Per **MOHAMMED BABA IDRIS, J.S.C. in NDAMZI DICKSON v. EMMANUEL OLA IJALAYE (2025-02) Legalpedia 14358 (CA)**.

The Claimant herein is clothed with the burden of first simply proving that he supplied goods to the Defendant, the Defendant received good and is owing the Claimant the sum of N1,168,000.00 and claiming shortage of goods supplied. Furthermore, the law is that a Claimant succeeds on the strength of his own case and not on the weakness of that of the Defendant. It is incumbent on the Claimant to prove its own case or fail as a result of its weakness.

The onus of proof does not shift to the defence until it has been satisfied by the Claimant with reliable and credible evidence. See **ONYIA V. ONYIA (2002) ALL FWLR (Pt. 616) 573 @ 585 Paras C-D.**

In the instant case, from my painstaking overview of the claim and evidence of the parties, I find that the Claimant failed to prove its entitlement to the 1st relief sought and I so hold.

I therefore without hesitation resolve the sole issue raised against the Claimant and I so hold.

The other reliefs for N2,000,000.00 as cost is an ancillary relief and given that the substantive principal relief has failed, determining the ancillary reliefs will amount to an academic exercise and I shall refrain from engaging in it. The entirety of the Claimant's claim in the instant suit fails and is dismissed with no order as to cost. This is my Order.

SIGNED
ANUGBUM, OBIARERI. N, ESQ.
CHIEF MAGISTRATE I
SMALL CLAIMS COURT IV
22nd December, 2025