

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/712/2025

BETWEEN

ADENIJI ADETAYO OYETUNDE -----

CLAIMANT

AND

ETONG EFEFFIONG

JUDGEMENT

DEFENDANT

This suit was instituted via forms RSSC 2 and 3 filed on 30/10/25 wherein the Claimant's claims against the defendant is for:

- i. The sum of ₦1,361,770 (One Million Three Hundred and Sixty One Thousand Seven Hundred and Seventy Naira) only being and representing money payable to the claimant by the defendant for goods the defendant collected from the claimant but failed to make returns.
- ii. The sum of ₦1,561,770 (One Million Five Hundred and Sixty One Thousand Seven Hundred and Seventy Naira) as court fees
- iii. ₦500,000.00 (Five Hundred Thousand Naira) only as damages.
- iv. ₦200,000.00 (Two Hundred Thousand Naira) as cost of litigation

The Defendant defended this suit by calling DW1.

In prove of his case, the claimant called a sole witnesses (CW1) and tendered one Exhibit, Exhibit A. The Defendant also called one witness (DW1) but did not tender any Exhibits. The two witnesses were cross examined, parties closed their respective cases. The parties filed, exchanged and adopted their respective final written addresses on 05/02/26 hence this judgement.

The summery of the facts of the Claimants case is that he is a business man who deals in sales of goods within and around Port Harcourt, Rivers State, that the defendant is the sales representative of the claimant business entrusted with goods for the purpose of sales and subsequent remittance of proceeds of the sale to the claimant. That there is a written agreement binding parties to that effect, that pursuant to that agreement the defendant did collect goods from the claimant from time to time and failed to make returns, that the defendant now stands indebted to the claimant in the sum of ₦1,361,770 (One Million Three Hundred and Sixty-One Thousand Seven Hundred and Seventy Naira) only. That despite several demands the defendant has refused to pay the claimant the money for the goods, hence this suit.

The facts of this case as presented by the defendant in a condensed form is that he is the sales representative of the claimant and has so been since January, 2024, that he has always kept to the memorandum of agreement between him and the claimant, that the claimant gave him a truck for purposes of moving goods from place to place in Rivers

State. That by the agreement between the parties it was agreed that the defendant should be the one buying fuel and to service the truck from the first day of the month to the last day of the month, and at the end of the month the defendant and the claimant will remove expenses and from the capital and profit left, the claimant will pay the defendant 2.5% of the profit.

That defendant continuously bought fuel and fixed the car and closed business with the claimant in 2024 without any indebtedness to the claimant.

That the claimant never paid the defendant the agreed 2.5% from January to December. The defendant denied being indebted to the claimant.

The claimant counsel in his final written address raised two issues for determination in while the defendants counsel raised a lone issues for determination. However, this court has considered one issues for determination to wit :

“Whether the claimant has proved his case on the standard required by law in a civil case ?”

This is a case of written contract for the defendant to convey goods for the claimant and make remittance to the claimant.

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.**

I have duly considered the document that parties relied on in this case , being the document captioned Memorandum of agreement and Exhibit A in this case.

I have also considered the argument of counsels in their final written addresses.

The claimants principal claim before this court is that the defendant owes him the sum of ₦1,361,770 (One Million Three Hundred and Sixty One Thousand Seven Hundred and Seventy Naira) only representing goods sold by the defendant that the defendant failed to make remittance for.

The law is that he who alleges the existence of any fact must prove same. see **AMADI V. AMADI (2017) 7 NWLR (PART 1563) S.C**

I have carefully gone through the very brainy arguments in the final written address of claimant counsel, however, address of counsel no matter how succinctly and brilliantly coached cannot take the place of evidence needed to prove a case. See **Alikha & Anor V. Elechi & Ors (2017) LPELR-7823 (SC)** and **Access Bank PLC V. K. C. International Ltd (2018) LPELR – 43668 (AC).**

The records of this court shows that the claimant as CW1 while under the fire of cross examination answered as follows: “I have records of my transactions in cause of my business with the defendant” “ I have documents, screen shots of whats app chats to show that the defendant is owing me the money I claim” “I cannot state the the exact goods the defendant took from me” “I do not have anything here in court to show that I gave the defendant money for fuel”

It is settled law that evidence elicited under cross examination is as as valid as evidence elicited under examination - in - chief . see the case of **Daggash v Bulama (2004) 14 NWLR (Pt 892) 144 Ratio 41 and section 223 of the Evidence Act 2011.**

I have further considered the exhibit before this court in this case and I cannot find the documents the claimant referred to as the only document before this court in this case is Exhibit A, the memorandum of Agreement between the parties, the documents Exhibit A, shows the obligation of the parties to the said contract. The said Exhibit A is not proof that the defendant is indebted to the claimant in the sum of ₦1,361,770 (One Million Three Hundred and Sixty One Thousand Seven Hundred and Seventy Naira) or any other sum.

I agree with the argument of the learned defendant counsel in paragraph 2.06 of defendant's counsel's final written address in this case that in civil cases the party must prove his case on the preponderance of evidence.

preponderance of evidence means that the evidence adduced by the claimant is put on one side of the imaginary scale of justice while the evidence of the defendant is put on the other side of the same scale to see which one weighs more than the other. See the case of **Ezemba v Ibeneme & Anor (2014) LPELR - 1205 (SC)**.

I have weighed the evidence adduced by the claimant both in his examination in chief and cross examination and the evidence adduced by the defendant which summarily is that he denies being indebted to the claimant. I find that the evidence adduced by the claimant lacks weight, as the claimant's evidence that he has documents to prove the indebtedness of the defendant to him without placing those documents before the court amounts to placing something on nothing and expecting it to stand.

In conclusion it is also settled law that equity follows the law, without establishing a legal right or supporting such legal right with evidence, equity cannot be called in aid in this circumstance. See the case of **Abba v Abba Aji & others (2022) LPELR - 56592 (SC)**. In the circumstance the lone issue raised for determination in this judgement is resolved against the claimant as the claimant has failed to prove his claim before this court on the standard required by law. I therefore find that the claimant's principal claim for the sum of ₦1,361,770 (One Million Three Hundred and Sixty-One Thousand Seven Hundred and Seventy Naira) fails and same is accordingly dismissed.

The principal claim of the claimant having failed all the ancillary claims of the claimant also fails and are accordingly dismissed.

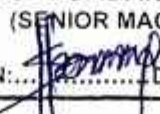
cost of ₦30,000.00 (Thirty Thousand Naira) is awarded in favour of the Defendant.

Dated 25th day of February 2026

Signed:

S. S. IBANICHUKA, ESQ.

25/02/2026.

SAMUEL S. IBANICHUKA, ESQ.
(SENIOR MAGISTRATE)
SIGN:  DATE: 25/2/26

