

IN THE MAGISTRATES' COURT OF RIVERS STATE
IN THE PORT HARCOURT MAGISTERIAL DISTRICT
HOLDEN AT PORTHARCOURT BEFORE HIS WORSHIP. G.C.AMADI ESQ.
SITTING AT SMALL CLAIMS COURT AT CHIEF MAGISTRATE COURT 8, ON THE 28th
MARCH, 2024.

SUIT NO. PMC /SCC/54/2024

ENGNR.VICTOR CHIKWENDU

} CLAIMANT

AND

1.DIVINSONANOLABA NIG LTD
2.MR. NDUBUISI ANOLABA
3.MRS NDUBUISI OZIOMA

} DEFENDANTS

JUDGMENT

This is the final judgment in this suit wherein the small claim before the court, dated and filed on the 3rd of February 2024 is for:

- a. An order directing the Defendants to immediately refund the Claimant, the sum of N2Million Naira, the said sum was given to the defendant by the Claimant for the procurement of land which they failed to procure till date.
- b. Interest on the above stated sum of N2Million at the rate of 20% per annum from May 2019 when the Defendants failed to procure the land till date of judgment and thereafter at the rate of 25% per annum until liquidation of the entire judgment sum
- c. Cost of litigation and bringing this action through a legal practitioner in the sum of N500,000

In proof of their case, the Claimant called one witness and the defendants never appeared in this matter.

On the 12th January, 2024, an application to enter plea of not liable for the Claimant was granted and the matter was set down for hearing.

On the 26th of March, 2024, the Claimant testified as CW1 and stated that he is the Claimant. He applies to adopt his witnesses deposition on oath filed on the 22nd of March, 2024. In the said deposition on oath the CW1 stated that sometime around April, 2019, he needed a parcel of land at Igbo Etche area of Rivers State where he can establish a private office and was introduced to the 1st, 2nd and 3rd defendants as persons engaged in real estate agency and the services of procurement of land. That he met the 2nd defendant that same April 2019 who confirmed to him that he and the 3rd defendant are the directors of the 1st defendant's company and that it is through the said company that they render their services of procurement and sales of parcels of land to any persons desiring to acquire land.

That he told the 2nd defendant that he needed a half plot of land that is situate directly along the Igbo Etche Road in Etche Local Government Area of Rivers State for his private office within the range of the sum of N1,500,000 and that the 2nd defendant agreed that he will be able to procure for him such land at that price but that I should make a deposit of 1 million Naira which he paid to the 2nd defendant that same April 2019.

That after a week, the 2nd defendant came back to him to say that the land he found for him along Igbo Etche, is for the sum of N3,500,000 and he needed additional deposit of another 1 million Naira before he will show me the land. That to avoid disagreement, he agreed to go with the land for N3.5Million , even if same was against their earlier agreement and so he made an additional deposit of the sum of N1Million Naira making it a total of N2 Million paid to the defendants for the procurement of the said land. That the 2nd defendant also issued him receipts acknowledging the said payments

Testifying further, the CW1 stated that after the payment of N2 Million Naira made to enable the defendants procure the land, the defendants never showed him or offered to show him any such parcel of land. That he contacted the 3rd defendant to speak with the 2nd defendant and she said that I should be patient that she has been discussing with the 2nd defendant to deliver on their promise to procure me a land.

That after waiting endlessly, he started making demand for the land or in the alternative for the refund of his money , that all was in futility. So he hired the services of a lawyer to make a final demand from the defendants and the lawyer issued the defendants with a demand notice dated 6th February, 2024. That the defendants neither responded nor replied to the demand notice

That the defendants have deprived him from the opportunity to open an office and to run his business and that due to inflation, the sum of N2 million paid to the defendants is no longer same value.

The CW1 identifies the receipt for N2 million from the 1st defendant and the demand notice and also the domestic air way bill. They were tendered in evidence and marked as Exhibits 'A' 'B' and 'C' respectively.

In conclusion, the CW1 stated that he wants the Court to grant their claim as on their claim before the court and the written deposition on oath.

At the end of the evidence of CW1, in the light of the affidavit of service before the Court dated the 15th day of March and 22nd day of March 2024, the defendants were foreclosed from cross examining the CW1 and from defence and the matter was adjourned for judgment.

That said, I will proceed to consider the case of the parties in the light of the relevant laws. I have noted the essence of the claim have also taken cognizance of the evidence before the court. I have couched a lone issue for determination and that is:

Whether The Claimant Have Discharged The Burden of Proving His Claim Before The Court.

Suffice is to say that before the court adjourned the matter for hearing and heard the matter, the court always satisfied itself that:

1. The processes have been duly served on the defendant
2. That the time before the date of service and the date of hearing was sufficient for the defendant to have appeared had he intended to do so.

It is also important to note at this point that none of the facts stated by the Claimant's witness above was controverted in evidence or denied by the defendant and so will be deemed by this court as admitted. The law is that facts admitted need not be proved by evidence. Please refer to the case of Ayoke V. Bello (1992)10 NWLR (Pt 218) pg 380 Ratio 2; O.A.A Cooperative Society Vs. NACP Ltd (1999) 2NWLR (Pt 590) Pg 234, Ratio 4 to the effect that what is not denied is deemed admitted and what is admitted need not be proved.

On the undisputed and clear evidence before the court, the court will hold that the claimant has discharged the burden of proving that he is entitled to his Claims before the Court.

IT IS THUS ADJUDGED that the Defendants to pay the Claimant the refund sum of N2 million Naira which they failed to procure till date.

IT IS THUS ALSO ADJUDGED that the Defendants to pay the Claimant, the interest on the above stated sum of N2 million Naira at the rate of 20% per annum from May 2019 till date that is to the sum of **N1, 933,333.33 (One Million, Nine Hundred and Thirty Three Thousand, Three Hundred and Thirty Three Naira, Thirty Three Kobo)** thereafter at the rate of 25% per annum until liquidation of the entire judgment sum

IT IS FURTHER ADJUDGED that the defendants do pay to the Claimant, the sum of **N200,000** as cost of litigation

AND IT IS ORDERED that the defendants to pay the Claimant, the aforesaid sum of **N1, 933,333.33 (One Million, Nine Hundred and Thirty Three Thousand, Three Hundred and Thirty Three Naira, Thirty Three Kobo)** and **N200,000** representing the refund of the money given to procure land , the yielded interest and the cost of litigation respectively.

AND IT IS FURTHER ORDERED that the defendants do pay to the Registrar of this court, the total sum of **N4,133, 333.33 (Four Million, One Hundred and Thirty Three Thousand, Three Hundred and Thirty Three Naira, Thirty Three Kobo Only)** representing the total sum on refund of the money given to procure land , the yielded interest and the cost of litigation respectively.

TAKE NOTICE –That if payment is not made as above ordered, a warrant or warrants may issue requiring an officer of the court to levy the sum above mentioned, to the Claimant together with further costs.



G.CHINYERE AMADI. ESQ.
CHIEF MAGISTRATE G.D.I