

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/113/2024

BETWEEN

GODSPOWER NIFEPIRI
(Suing through his lawful Attorney
Frank N Harry)

AND

- 1. WIRELESS COMPUTERS ASSOCIATION LTD**
- 2. IKENNA RUFUS CHIEGE**

JUDGMENT

This suit was commenced via form RSSC 3 of this court on 29-07-24, wherein the Claimant claims against the Defendant is for:

- I. The sum of ₦135,000.00 (One Hundred and Thirty Five Thousand Naira) only being and representing purchase money for a HP 3 in 1 Printer.
- II. ₦3,000,000.00 (Three Million Naira) damages .
- III. ₦500,000.00 (Five Hundred Thousand Naira) as cost of this litigation.

The Defendant in reaction via form RSSC 5 of this court filed a Defence and a Counter-Claim against the claimant's claims on 07-05-24 disputing the claimant's claim in its entirety and also Counter-Claiming for ₦4,000,000.00 (Four Million Naira) damages.

In prove of its claim the Claimant called one witness and relied on Exhibits "A" to "C" being Power of Attorney, picture of HP 3 in 1 Printer, Opay transaction receipt and duplicate copy of sales invoice of the 1st Defendant respectively. While in Defence and in prove of his Counter-Claim, the Defendant/Counter-Claimant called a sole witness (DW1). All the witnesses were duly Cross-Examined after their respective Examinations-in-chief. On 22-07-24 the counsels argued and adopted their respective final written addresses.

The summery of the facts of this case from the Attorney for the claimants perspective is that sometime in December, 2023 he called the Claimant to look out for a fairly used HP 3 in 1 printer that uses toner, the Claimants Attorney trusted the claimant because the claimant was vast in the knowledge of computer accessories , the claimant got to the defendants shop and called that he has negotiated a printer for ₦135,000.00 (One Hundred and Thirty Five Thousand Naira), that the Attorney transferred the sum of ₦147,000.00 (One Hundred and Forty Seven Thousand Naira) to the claimant because he also bought toner and added the claimants transport fair. That when the claimant brought the printer to his house he powered the printer and he and the claimant saw that some of the lights on the dash board were not

showing. That upon observing it he immediately asked the claimant to return the printer to the defendants to change it and that the claimant left that night with the printer. That the claimant came back with the printer within a week latter, informed his Attorney that the 2nd Defendant informed him that it was a "chip" problem and he has changed the chip, that Claimant used the printer from December, 2023 to February 2024 and suddenly the same fault was observed. That the claimant was called again to come and carry the printer to the defendants and inform them that the printer has developed same fault it developed the 1st time, that the claimant took the printer back to the defendants that after some weeks the claimant went back to the defendants and the 2nd defendant informed the claimant that the printer has been fixed but that the 2nd defendant refused to test the printer for the claimant to . That because the 1st defendant refused test run the printer for the claimant, the claimant left the printer with the defendants and that the defendants are still with the printer.

While the summary of the facts of the Defendant Counter-Claimants case in defence and Counter - Claim of the claimants claim is that the claimant personally came to the defendants office and bought a fairly used HP 3 in 1 printer, which was in good condition before and upon purchase. That the printer was certified to be in good state and condition by the claimant when the claimant came to purchase the printer on the said date, that three months after the claimant was back at the defendants office with the printer stating that the printer has developed fault. That the defendants are not owing the claimant any refund money, that the action of the claimant and his cohort is a calculated attempt to tarnish the image of the defendants and as such defendants are entitled to damages.

On 22-7-24 the counsels argued and adopted their respective final written address dated 15-7-24 and 18-7-24 respectively.

In arriving at a decision in this case no consideration shall be given to the issue of the propriety or otherwise of the claimants Attorney to appear for the claimant in this suit, no law bars the claimant who at all material time was involved in the transaction subject matter of this suit to donate a Power of Attorney to any one of his choice, particularly the chosen Attorney herein who was also involved in the transaction, giving consideration to this argument in my opinion will be purely academic.

However, from the issues raised by counsels for both parties in their respective final written addresses I have raised two issues for determination to wit:

1. ***"Whether from the evidence before this Honourable Court the Claimant has been able to prove his case to be entitled to judgment as per his reliefs before this Court?"***
2. ***Whether the Defendant has proved his Counter-Claim before this court to be entitled to his counter claim.***

ISSUE 1.

"Whether from the evidence before this Honourable Court the Claimant has been able to prove his case to be entitled to judgment as per his reliefs before this Court?"

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**. In arriving at a decision in this judgment I shall rely strictly on the evidence of witnesses in my record as this court is bound by its records of proceedings on any matter and shall takes notice of their contents in arriving at a just decision. See: **AGBAREH V. MIMRA (2008) 2 NWLR (PT. 1071, 378) (SC)**.

This is a case of a simple oral contract(as there is no contractual document before this court) for purchase of a fairly used HP 3 in 1 printer and as such inference of the intention of the parties to the contract will be drawn from their conducts in the entire transaction as stated by the witnesses who testified in this case.

The Claimant Claims for a refund of the purchase money of the fairly used HP 3 in 1 printer which he bought from the Defendant on the ground that the said printer did develop same fault twice from December 2023 when it was bought from the defendants to February, 2024. the purchase receipt of the printer and pictures of the printer were relied on. On 14-5-24, the CW1 armed with the Power of Attorney donated to him by the claimant adopted his witness statement on Oath dated 14-05-24, where he testified to the facts earlier stated in this judgement. On this issue I have gone through the defendants final written address filed on 15-7-24 and I observed that the crux and indeed the entire gamut of the defendants counsel final written address is on the propriety or otherwise of the Attorney of the claimant representing the claimant in this suit. As I have stated earlier delving into such will only be academic and this court does not wish to expend judicious time on academic issues. The claimants counsel on the other hand in his final written address filed on 18-7-24 while arguing on this issue resorted to giving evidence in the matter and the law is that no matter how brilliantly or succinctly put a counsels address is it cannot take the place of evidence needed to prove a case.see : **ALIKHA & ANOR V. ELECHI & ORS (2017) LPELR-7823 (SC)**

As stated earlier in this judgement this is a simple oral contract for purchase of a fairly used Hp 3 in 1 printer, the purchase receipt was tendered as Exhibit C in this suit and same was through out this proceeding acknowledged as the only document that binds the parties in this transaction. All parties in this suit also agree that the said printer was tested on the day it was purchased before it was paid for and taken away by the claimant. The contention now is whether the printer having failed to function twice can be refunded to the defendants and the purchase money recovered. The Cw1 under cross examination on 23-5-24 stated that "I know that the printer was tested as the claimant communicated to me" the DW1 testified in his Evidence-in-chief on 27-6-24 that "we both tested the printer, it was in good working condition and he took the printer home." The facts of this case shows that it was the claimants Attorney herein that commissioned the claimant to go and purchase the printer and he did so because he trusted the claimants judgement on computers. During his Examination-in-chief particularly paragraph 3 of CW1's written statement on oath, the CW1 commenting about the Claimant said " I trust his judgement because he is vast with the knowledge of computer accessories" this statement shows that the printer was confirmed fit by the trusted expert that the claimants Attorney sent to purchase the printer and the printer was certified okay before the claimant paid, was issued receipt and he took the printer away.

The law is that if the conditions necessary for formation of contract are present and are fulfilled by the parties thereto they will be bound by it. See: **Union Bank of Nigeria v Prof Ozigi (1994) # NWLR (Pt 333) P 385.**

With respect to this contract, offer and acceptance have been exchanged and consideration duly furnished and as such parties shall be bound by their contract.

By the above conduct of parties the contract is said to have been discharged by performance. See **Ilozor v Ahmadu (2003) FWLR (Pt 163) 132 Ratio 6**

Furthermore, the receipt of this transaction Exhibit "C" speaks far more volume than was relied on in this proceedings as Exhibit "B" the unchallenged document which binds both parties in this suit clearly has on

its face written and circled "tested ok" and further down it says "goods received in good condition no refund of money after payment"

It is trite that documents speak for themselves and in interpretation of the contents of a document, where the document is clear the operative words in it should be given their simple and ordinary grammatical meaning. see **Union Bank of Nig. Ltd v Prof A O Ozigi (1994) 3 NWLR (Pt 333) 385 Ratio 4.** and the attitude of courts is that in the absence of fraud or mistake, a court does not write or rewrite an agreement for parties as parties are bound by their agreement. See **A G Rivers State v A G Akwa Ibom state (2011) 45 (pt 2) NSCQR 1041 at PP 1204 - 1205.**

My records show that the CW1 acknowledged that there is a receipt and the DW1 also relied on the same receipt.

Glaringly from the facts of this case and from Exhibit "C", the defendants have fully discharged the contract between them and the claimant and in the absence of any warranty or guarantee to the contrary the defendants cannot be held responsible for any subsequent damage to the printer and cannot be liable for refund of purchase money for the printer. This score is resolved against the claimant.

The principal claim of the claimant having failed, the ancillary claims for damages and cost of this litigation equally fails.

Accordingly the claim of the claimant fails and same is hereby dismissed with a cost of ₦50,000.00 (Fifty Thousand Naira) only in favour of the defendants.

COUNTER CLAIM

The claim of the claimant in this Counter-Claim is for the sum of ₦4,000,000.00 (Four Million Naira) as damages.

They relied on their particulars of defence in the claimants suit

The lone issue in this Counter-Claim is "*Whether the Defendants have proved their Counter-Claim before this court to be entitled to the counter claim?*"

From the records of this court no evidence was led in support of this claim. I agree with the argument of the counsel to Defendant in this counter claim that the claim for ₦4,000,000.00 (Four Million Naira) as damages by the Counter - Claimant have been abandoned and I so hold.

This Counter-Claim is accordingly dismissed.

I make no further orders.

Parties are reminded of their rights to appeal.

SAMUEL S. IBANICHUKA, ESQ.
(SENIOR MAGISTRATE)

Signed: SIGN: *[Signature]* DATE: 31-7-24

S. S. IBANICHUKA, ESQ.

31/07/2024.

