

**IN THE MAGISTRATES' COURT OF RIVERS STATE**  
**IN THE PORTHARCOURT MAGISTERIAL DISTRICT**  
**HOLDEN AT SMALL CLAIMS COURT BEFORE HIS WORSHIP, G.C. AMADI ESQ.**  
**SITTING AT CHIEF MAGISTRATE COURT, 8, PORT HARCOURT ON THURSDAY, THE 15<sup>th</sup>**  
**MAY, 2024.**

<b>MR. EREGBUO MIRACLE IFEANYI</b>	}	<b><u>SUIT NO. PMC/79/2024</u></b>
<b>AND</b>	}	<b>CLAIMANT</b>
<b>ELDER IKEZAM CHARLES EMENIKE</b>	}	<b>DEFENDANT</b>

**JUDGMENT**

This is the final judgment in this suit wherein the small claim before the court, dated and filed on the 27<sup>th</sup> March, 2024 is for:

- A. An order directing the defendant to refund the Claimant, the sum of N4,000,000 representing payment for the land situate at Ozu-OHIA OWUNWO FARMLAND ALAKAHIA in Obio/Akpor, 100. One Hundred Thousand Naira (N100,000) representing bush entry and signing fee of Two Hundred And Fifty Thousand Naira (N250,000) representing fees paid for survey and legal works
- B. An award of N500,000 representing damages for breach of contract

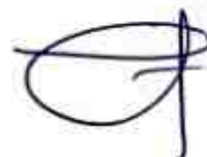
In proof of their case, the claimant called one witness and the defendant also called one witnesses and a total of nine (9) exhibits were tendered in evidence.

On the 8th day of April, 2024, the defendant counsel applies for plea of not liable to be entered on behalf of the defendant and the matter was set down for hearing.

On the 12<sup>th</sup> April, 2024, the CW1, the Claimant on record commenced his evidence in Chief and stated that he has written statement on oath dated 12<sup>th</sup> April, 2024 wherein he stated that he approached the defendant to help him get an unencumbered land and that the defendant told him that he just bought a land and he will resell same to him, that the land is genuine and that he had already fenced the land but that part of the fence was pulled down by some youths from Choba community but that he will meet with them and resolve the issues and that he will rebuild the fallen fence.

That the defendant took him to the land and he paid him N4 Million Naira and also paid bush entry for N50,000 and agreement fee for N50,000 and N200,000 for survey work and N50,000 for signing fees.

That after the signing and the payments, he became the owner of the land and when he went to the land, he noticed that the defendant have not fixed the fence and he waited after two weeks, the fence was still not fixed and he called the defendant and told him that if he need support that



he could still support and the defendant said yes and he bought a trip of sand and took to the site. That after waiting for 3 weeks, he went with the site with cement and some mason men to fix the broken fence. That while they were doing that, some youths from Choba came and stopped the work. That they beat them up and demanded to know what they were doing there. That he called the defendant and told him what was happening. That instead of asserting his ownership over the land and resolving the issues, he started rebuking me why I went to the land. He threatened not do anything to help with the situation

Testifying further, the defendant stated he was disturbed at the defendant's non challant attitude and he was convinced that the defendant had defrauded him and so he summoned the defendant to the Defendant's community Chief and Elders of Alakahia Community. That after hearing from both of them, the Elders and the Chiefs blamed him seriously for selling a land that is encumbered and advised us to resolve the issues so that I can have possession. That the Claimant pleaded with him there, that he will resolve the issues before 3 days.

That after the arbitration, the defendant still did nothing and that he has suffered much in the hands of the defendant

The CW1 identifies the deed of conveyances and the transfer printout to the surveyor and a certificate of compliance and a demand letter, EPS delivery sheet, and EPS Airway bill and the documents were all sought to be tendered in evidence and is tendered and marked as Exhibit **A,B,C,D,E, and F**

Finally the CW1 said he wants the Court to award his prayers as on the face of his claim before the Court.

During the cross-examination of the CW1 on the 15<sup>th</sup> April, 2024, he stated that apart from Exhibit A, he did not enter into any other agreement with the defendant. That this is not a case of youths asking for fine, that it is a case of bad title. That a family in Choba Community owns the land, that the Choba youths that beat him up showed him the document showing their ownership of the land,

After the evidence of CW1, the matter was adjourned for defence.

On the 30<sup>th</sup> day of April, 2024, the DW1, who is also the defendant on record commenced his evidence and stated that he is adopting his written statement on oath as his evidence before the Court and same is admitted in Evidence wherein he states that he bought the land in issue from Mr Asika Longinus in 2022 for 3.8 Million Naira

The DW1 tendered the deed of conveyance and same was admitted in evidence s Exhibit G That the said Asika Longinus was a longtime owner of the Land who constructed a block wall perimeter fence and mounted a gate on the land before selling and conveying to him. That the land is not in dispute and has never been in dispute, that the Claimant is being apprehensive for nothing. That his finding is that no one claimed contrary title or interest to the land only that some youths in Choba Community who are mostly alligned to the native owner of the land are making some unfounded community demands on the land as the land lies in the boundary area between Choba and Alakahia Communities.

That it is not true that there is a judgment over the land in issue which was shown by the choba youths to the Claimant

That he was temporarily out of Alakahia and implored the defendant to patiently wait for him to oversee the reconstruction of part of the fence but the defendant did not listen. That it is





common knowledge that youths of many communities usually storm building sites demanding for one fee or the other and as a native of Alakahia and an elder in the community, he was ready to engage the youths in such a way as to allow the refixing work to be done without any payment of any fees or charges but the Claimant was so desperate and he had on his own entered into the site with workers and the youths came and stopped the work

That the Claimant never reported him to the community Chief or elder, rather he reported him to Elder Joseph Amadi who enjoined him to be calm as he is aware that he is the owner of the land and requested that they should come back after 3 days

That in line with the directive of Elder Amadi that the Claimant and himself returned to the Elder's house only to meet his absence and that the Claimant became so infuriated and sued him to court and summoned to police and juju shrine. That there is no portion of their said agreement that entitles the Claimant to ask for refund of the deposit in the event of disturbance by third parties but the agreement made a provision that the Claimant can be indemnified as to cost and damages in the event of a superior third party claim over the land in dispute and that there's no such superior third party claim in the instant case

That the claim is found outside the precincts of their agreement

During the Cross-examination of the defendant, the DW1 on same date, he stated that there are no issues surrounding the land he sold to the Claimant and that he does not know whether the Claimant is peacefully living on the land. That the youths are disturbing on the land but that the land is not in dispute

At the close of the evidence of the DW1, 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 and have also taken cognizance of the evidence of the claimant and the defendant and her witness before the court. I have read all the exhibits and the written address of the parties and also the authorities cited therein.

**ISSUE FOR DETERMINATION:**

**Whether The Claimant Has Proved His Case To entitle him To The Following orders:**

- A. An order directing the defendant to refund the Claimant, the sum of N4,000,000 representing payment for the land situate at Ozu-OHIA OWUNWO FARMLAND ALAKAHIA in Obio/Akpor, 100,000 One Hundred Thousand Naira (N100,000) representing bush entry and signing fee of Two Hundred And Fifty Thousand Naira (N250,000) representing fees paid for survey and legal works
- B. An award of N500,000 representing damages for breach of contract

The claimant has stated during his evidence, that because he has not been able to peacefully enter land he bought from the defendant and that also because he was disturbed at the defendant's non-challant attitude at the disturbances by some Choba Youths on the land that the Claimant sold to him and because and so he was convinced that the defendant had defrauded him, and he is asking for a refund of the purchase money on the land.

On the other hand, it is the defendant's position that he has not defrauded the Claimant because according to Exhibits A, B and G, the land which he sold to the defendant belongs to him and that the Claimant was only having issues of youths asking for development levies and that he was ready to engage the youths in such a way as to allow the refixing work to be done without





any payment of any fees or charges but the Claimant was so desperate and he had on his own entered into the site with workers and the youths came and stopped the work

The question to be addressed is: is there is breach of contract as under the deed in Exhibit A before the Court and is the defendant is entitled to a refund.

It is a fact as admitted by both the defendant and the Claimant, that the Claimant have not been able to enter the land or be in peaceful possession because of disturbances by both parties. It is now trite that parties are bound by their contract, in this case Exhibit B before the Court. I have taken a careful look at Exhibit A and the indemnity clause therein only provides for indemnity against the successful claim of adverse parties or bad root of title.

So, the question on the mind of the Court :Is there an adverse claim of title to this property? Is there a defective roots of title of the defendant?

A combined look at Exhibits A , B and G before the Court traces the roots of the defendant's title from the One Mr. Sunny Obiamana to Mr Asika Longinus, who now sold to the defendant. The Claimant have not in the least hinted that the defendant has a bad root of title. Infact the Claimant testifying as CW1 had tendered Exhibit B which document reinforces the history of the title of the defendant.

Further, there is also nowhere that the Claimant showed that there is an adverse claim on the land. The Clamant had asserted that the land belongs to a family in Choba and that the Choba youths showed him a document over the land granting title on the land to another party. However, and unfortunately, that lone document that could have established a successful claim by a 3rd party and entitling the Claimant to indemnity, according to the contract was never produced in Court. Obviously, the Claimant have failed to prove that there is breach of contract and that he is entitled to his claim before the Court

On the basis of the foregoing and on the balance of probability , before the court ,This Court hereby holds that the Claimant have failed to prove that there was a breach of Exhibit B, the deed of conveyance(the contract) and hence have failed to prove their claim of N4,000,000 representing payment for the land ,bush entry, signing fee and for survey and legal works and an award of N500,000 representing damages for breach of contract.

There is no award as to Cost.



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

