

IN THE MAGISTRATES' COURT OF RIVERS STATE
IN THE PORT HARCURT MAGISTERIAL DISTRICT
HOLDEN AT SMALL CLAIMS COIRT
BEFORE HIS WORSHIP G. C. AMADI ESQ.
SITTING AT SMALL CLAIMS COURT,1 PORT HARCOURT
ON WEDNESDAY THE 23RD OCTOBER, 2024.

SUIT NO. PMC/SCC/235/2024

MR. BRAIDE ISRAEL DAKORU

}

CLAIMANT

AND

**NIGERIAN NATIONAL PETROLEUM COOPERATION-
EASTERN ZONE RETIRED STAFF
COOPERATIVE SOCIETY LTD OF NIGERIA**

}

DEFENDANT

JUDGMENT

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

- A. An order directing the defendant to refund the Claimant, the sum of ₦2,151,000 which represents the savings of the Claimants while he was with the Defendant.
- B. An award of ₦2,000,000 representing damages for breach of contract.
- C. An award of ₦500,000 representing cost of the suit.

The defendant also filed a counterclaim in Form RSSC 5 asking for:

- A. An award of ₦500,000 representing cost of the suit.
- B. An order directing the defendant to continue with the payment on installment already commenced and to conclude in the month of December, 2024.
- C. An order dismissing the suit for lacking in merit being an action based on desperation charade.

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 23rd day of September, 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 27th September, 2024, the CW1, the Claimant on record commenced his evidence in Chief and stated that he was once a staff of Nigerian National Petroleum Corporation (NNPC) which is the Defendant in this suit until his compulsory retirement after several years of meritorious service. That upon his retirement as a member of NNPC, he joined the Eastern Zone Retired Staff Co-operative. Society Ltd. (EZRSCSL). of the Nigeria National Petroleum Corporation. That as a member of the Retired Staff Co-operative Society Ltd. of the Nigeria National Petroleum Corporation, he made financial savings just like other members who saved with the above-named body. That he saved the total amount of ₦2,151,000.00 (Two Million, One Hundred and Fifty-One Thousand Naira) only. That he can identify a photocopy of the statement of his savings with the Defendant if shown to him. That the Defendant has the original copy of evidence/ statement of his savings and they should produce it at trial.



That on the 7th of March, 2024, via a letter, his withdrawal as a member of the Eastern Zone Retired Staff Co-operative Society Ltd. of the Nigeria National Petroleum Corporation in accordance with the Bye laws of the defendant. The Defendant acknowledge the letter. That he can identify a Photocopy of the letter if shown to me as the original is with the Defendants. That sequel to his withdrawal as a member of the defendant, he is entitled to receive his total savings of the sum of ₦2,151,000.00 (Two Million, One Hundred and Fifty-One Thousand Naira) only, being savings, he made with the Defendant while a member, but the Defendant refused to pay me despite oral and written demand from me.

Testifying further, the Claimant stated that he is not in any way indebted to the Defendant whatsoever as the loan of ₦1,800,000.00 (One Million, Eight Hundred Thousand Naira) only he obtained in year 2023 was liquidated at the end of February, 2024. That despite receiving his letter of withdrawal, as a member of the Defendant, Defendant refused to give him the Confirmation of withdrawal from the Defendant. That since the Defendant refuse to pay him the savings, he requested for despite the harsh economic situation, he requested his lawyer of J. A. Umweni and Co, Legal Practitioners and Notary Public to write a letter of Demand to the Defendant, which his lawyer did on the 30th day July 2024 and sent same to the Defendant via a, registered courier service company. That notwithstanding the letter from his lawyer, the Defendant still refused to pay him, the savings of ₦2,151,000.00 (Two Million, One Hundred and Fifty-One Thousand Naira) only.

That he made several trips to the Defendant, spent money on transportation and at times, he had to spend huge sums of money on medication to take for his health base on the stress, the Defendant put him through. That he is over 80 years old. That he has suffered great hardship from the Defendant who has refused to pay his money.

That after much stressful repeated demand from his lawyer and himself and visits to the Defendant, Defendant on the 3rd of September, 2024 paid him a paltry sum of N300,000.00 (Three Hundred Thousand Naira) only and refused to pay him the balance of ₦1,851,000 (One Million, Eight Hundred and Fifty-One Thousand Naira) only till date. That his lawyer for his service charged him the sum of N500, 000.00 (Five Hundred Thousand Naira) only and issued a receipt for same.

The CW1 identifies the receipt from A Umweni & Co, Pre Action /demand notice, letter of plea for complete payment Tranex Domestic Airway Bill and letter of withdrawal were all sought to be tendered in evidence and in the absence of any objection was admitted and marked as Exhibits A, B, C, D and E respectively.

In conclusion, the Claimant stated that he wants the court to grant him, the reliefs in his complaint form, being the principal claim, damages and cost.

During the cross-examination of the CW1 on the same date, he stated that it is true that he has been paid the first installment of N300,000. That he did not reject the N300,000 because it was paid into his account. That he is aware that one of the incomes of the Defendant is monthly contribution of her members.

On the 2nd day of October,2024, the CW1's cross-examination continued and he stated that as a retiree of NNPC, he is entitled to free medicals. That he is in court because he wants to get his money in bulk. That it is not only money contributed that the defendant expends, That he does not know if the defendant is under liquidation.

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

On the 30th 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 adopted in Evidence wherein he is the treasurer (TR) of the Defendant on record and he make this statement for himself and on behalf of the Defendant. That he has the consent of his other management members to depose to this witness statement on oath on its behalf. That the Defendant admits that the Claimant has given notice of withdrawal of his membership from the Defendant and same has been accepted by the Defendant, after due process dated 7th March, 2024.

That the total savings accruable to the Claimant at the time of withdrawal from the Defendant was N2,131,492.40 and not otherwise. That the Claimant was also entitled to the sum of N50,000.00 only, being investment levy; which sum up a total of N2,181,492.40.

That the Defendant have commenced and paid to the Claimant; the 1st monthly installment of N300,000.00 which the Claimant have admitted to receiving there was administrative fee due the Defendant at 5% of the total sum. The current balance due to the Claimant is 1,831,491.40 only.

That the Claimant monthly contribution was just N20,000.00 only. So also, are other members, but are entitled to 100% loan of total of their savings thereby putting pressure on the finances/cash at hand with the Defendant. That due to finance/cash crunch the Defendant's management Committee adopted payment by installment to enable it meet the very huge monthly financial obligation such as loan, withdrawals, salaries of staff and other running costs. That presently, the decision to pay withdrawals and limit loan amounts are done in good faith.

That there is always very huge demand for loans, withdrawals and other running costs on the Defendant. The Defendant must not be forced into liquidation.

That the defendant have not failed on his part on the monthly payment by installment and this is based on availability of funds. That the only source of income to the defendant is by contribution from members which comes monthly after payment of pension of the retired staff/members. That the defendant is not party to any contract.

Testifying further the defendant states that the second monthly payment/installment is due to on the 2nd week of October, 2024 and the Claimant have no locus standi to file this action against the defendant and that the Defendant has not failed on its part on the monthly payment by installment. That the Defendant is committed to keep to its side of the monthly payment by installment; made in good faith based on availability of fund.

The Defendant is not a party to any contract entered into by the Claimant and therefore not liable to the Claimant nor any other party to the said contract. The Defendant is not even aware of such purported contract entered into by the Claimant. The Claimant is in Court in this suite out of desperation. This suit is a charade of the Claimant filed this suit to frustrate the existing repayment plan already commenced. That the Defendant have commenced monthly payment by installment of the Claimant's money: The Defendant have not failed. The Defendant is committed to the' completing the Claimant's payment/money in the next three (3) months, being the month of December, 2024.

The DW1 identifies leaflets from the Claimants savings and in the absence of any objection, they were admitted in evidence and marked as Exhibits F1, F1, F2, and F3 respectively. The DW1 also identifies cheque schedules dated 9/10/2024 and 3/9/2024 were admitted in evidence as Exhibits G and G1 respectively.

During the Cross-examination of the defendant, the DW1 on same date, he stated that Exhibits F-F3 is signed by the financial secretary but the name of the financial secretary is not stated. That the Claimant in this matter is no longer a member of the defendant, he has withdrawn his investment and is entitled to get his investment. That the Claimant has been paid his investment. That he has been paid N800,000. That he has document to show for this, which is

Exhibits G and G1 to show that the Claimant have been paid. That the defendant have been paid N300,000, that since it is a monthly payment, while the matter is in court, they made a payment of N500,000 yesterday. That the defendants have not completed the payments. That the defendant is governed by rules and regulations and they have an amended Bye Laws that govern the defendant on how funds are received and disbursed.

That the bye laws of the defendant have been amended. That it is the financial regulation that determines how much the defendant pays. That the defendants receive a check up and use their administrative discretion to ration the funds amongst those waiting. At the point, the Claimant Counsel applies to tender the amended Bye Laws in Court and same is admitted in evidence and is marked as Exhibit H.

That the financial regulation is not an Act. That it is the Company policy that enables them disburse funds available amongst members.

That he does not agree that the defendant has no right to deduct 5% service charge because it is governed by Exhibit That the money that the defendant is asking for, is in the custody of the defendant. That the reason that they said that they dint want to pay in one lump sum is because the defendant does not have sufficient funds. That he agrees that the defendant gives out loans to members and they pay interest of 10% pegged and agreed and that it is a source of income for the defendant. That the defendant also has a petrol station that is no longer in operation, That the defendant is not in liquidity.

At the close of the evidence of the DW1, the matter was adjourned for final address.

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 the defence and have also taken cognizance of the evidence of the claimant and the defendant and their witnesses before the court.

ISSUE FOR DETERMINATION:

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

An order directing the defendant to refund the Claimant, the sum of N2,151,000 which represents the savings of the Claimants while he was with the defendant

An award of N2,000,000 representing damages for breach of contract

An award of N500,000 representing cost of the suit

It is important to note that the following facts are not in contention

That the sum of N800,000 have been paid to the Claimant out of the total investment of N2,181,492.42(Principal sum plus N50,000 investment fee)

However, the following is in contention: The Defendant is asserting that out of the aforesaid total investment, of N2,181,492.42, they are entitled to 5% service/administration charge from the above stated total amount. Also, that there is already an existing payment plan on installment and the defendant places relaimnce on a document they called Financial regulation. It is important to note that that the said financial regulation was never tendered in court. The Clamant is of the position that there is no administrative charge and that they entitled to a lump payment and the Claimant tendered Exhibit H, the bye laws to back up their position.

The defendant have also stated during cross-examination that the Exhibit H, have been amended, but the defendant did not make reference or tender the updated bye law of the defendant

So, in the absence of the update copy of the Exhibit H or any other regulation of the defendant, the court will rely on the bye laws of the defendant as in Exhibit H before the Court.

I have taken a close look at the said Exhibit H, Article 10 of the Exhibit H states that the Exhibit H is supreme and supersedes every other rule, resolution or decision of the defendant. There is

nothing on the face of the Exhibit H that shows that the cooperative charges a 5% service /administration charge. There is also nothing on the Exhibit H, that the monies should be paid as a lump sum or on a monthly basis. In the absence of any specific provision to this effect, the Court is constrained to look at circumstantial evidence and the past conduct of parties to determine the mode of payment

In the written deposition on oath of the DW1, he stated that Claimant has given notice of withdrawal of his membership from the Defendant and same has been accepted by the Defendant, after due process dated 7th March, 2024.

That the total savings accruable to the Claimant at the time of withdrawal from the Defendant was N2,131,492.40 and not otherwise. That the Claimant was also entitled to the sum of N50,000.00 only, being investment levy; which sum up a total of N2,181,492.40.

So from the above deposition on oath of the DW1, the sum of N2,181,492,40 was already due to be paid to the Claimant as Claimant has given notice of withdrawal of his membership from the Defendant and same has been accepted by the Defendant, after due process dated 7th March, 2024. It is the evidence of the Claimant in the paragraph 6 of his written deposition on oath that he made several demands but no payment was made until about 4 months later, after he served a pre action notice/demand notice via Exhibit B on the 30th July, 2024

As can be seen from the proof of payment in Exhibits G and G1, the defendant paid the Claimant, the sum of N300,000 on the 3rd of September, 2024 and another N500,000 on the 9th of October, 2024.

It is obvious that the monthly payment as in Exhibit G and G1 were done in anticipation of proceedings as envisioned in Exhibit B. The Exhibit G, the first monthly payment was made on 3rd September, 2024 and Exhibit B, the pre-action notice is dated 30/7/2024. It is obvious that the payments in Exhibits G were done in anticipation of proceedings and in accordance with section 83(3) of the Evidence Act, LFN 2011 cannot be relied upon to prove that payment to the Claimant is on monthly installment basis.

Furthermore, in paragraph 10 of the written deposition on oath of the DW1, the defendant stated that due to finance/cash crunch the Defendant's management Committee adopted payment by installment to enable it meet the very huge monthly financial obligation such as loan, withdrawals, salaries of staff and other running costs. From the above Paragraph 10, this Court can safely conclude as admitted therein by the defendant that originally, the defendant originally paid lump sums to her members but due to cash crunch, they admitted as changed their lump sums to monthly payment. Now the question on the mind is, when was the resolution on the monthly payment reached by the committee, was it during or after the Claimant withdrew from the defendant? Where is a copy of the said committee decision /resolution? Was the Claimant communicated of this development? Is the claimant aware of this change in payment occasioned by the cash crunch?

On the basis of the foregoing and on the balance of probability, before the court, the Court is satisfied that the Claimant have proven that he is entitled to the lump payment of 2,151,000,00 being the Principal sum claimed before the Court.

On the Claim for General Damages

It is obvious that the defendant for whatever reasons prolonged the payment of the Claimant investment sum and caused him great discomfort which made him file this suit and the said payment was done only after the pre-action notice demand was made

It is certainly undisputed from evidence before the Court that the Claimant's claim for general damages arose directly from the careless conduct of the defendant who held up the Claimant's



money for no justifiable reason which naturally occasioned inconveniences and emotional hurt to the Claimant. The Claimant testifying as CW1 had stated in his evidence on oath and which was never denied or controverted by the defendant that he made several trips to the Defendant, spent money on transportation and at times, he had to spend huge sums of money on medication to take for his health base on the stress, the Defendant put him through. That he is over 80 years old. And a retiree and have suffered great hardship from the Defendant who has refused to pay his money.

The correct assessment for general damages remains an award that compensates the injured party and restores it to the position it would have been had the breach or injury not occurred. As a result, the assessment of damages is based purely on damages flowing naturally from the breach. **STEPHEN OKONGWU V NNPC (1989) 4 NWLR (PT 115) 296 @ 306H-307A; GFK INVESTMENT LTD V NIGERIA TELECOMMUNICATIONS PLC (2009) 15 NWLR (PT 1164) 344; @ 384D-E.**

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 claim for general damages before the Court.

Consequently, the Court orders the defendant to pay to the Claimant, the sum of N500,000 (Five Hundred Thousand Naira) as general damages.

On the Claim for Cost Of Litigation

On the cost of litigation, the Appellate Courts have reiterated times without number, that cost of litigation is in the class of special damages that must be strictly proven. Please refer to the case of **LONESTAR DRILLING NIG. LTD V. NEW GENESIS EXECUTIVE SECURITY LTD [2011] LPELR – 4437 CA; INTERNATIONAL OFFSHORE CONSTRUCTION LTD & 3 ORS. V SHORELINE LIFEBOATS NIG. LTD [2003] 16 NWLR [PT. 845] P. 157**

The Claimant in this case have testified and this was neither denied or controverted in evidence that That his lawyer for his service charged him the sum of N500, 000.00 (Five hundred thousand naira) only and issued a receipt for same as in Exhibit A, which is the official receipt from the law firm of the Claimant's counsel. On the strength of the evidence of CW1 and Exhibit A, the claim for cost of litigation succeeds.

On the Defendant's Counter claim, it is deemed that the defendant have abandoned their counter claim having failed to lead evidence or even mention same on their witnesses deposition on oath. Moreover, on the success of the Claimants claim, the Defendant's counterclaim in Form RSSC 5 asking for an award of N500, 000 representing cost of the suit, an order directing the defendant to continue with the payment on installment already commenced and to conclude in the month of December, 2024 and an order dismissing the suit for lacking in merit being an action based on desperation charade automatically fails.

IT IS THUS ADJUDGED that the defendant to pay to the Claimant, the outstanding sum of 2,151,000.00 less the N800,000 paid in anticipation and during the pendency of this suit which is to the sum of N1,351,000 which represents the savings of the Claimants while he was with the defendant

AND, IT IS ALSO ADJUDGED that the defendant to pay the Claimant, the sum of N500, 000 (Five Hundred Thousand Naira) for general damages

AND IT IS ALSO ADJUDGED that the defendant to pay to the Claimant, the sum of N500,000(Five Hundred Thousand Naira) representing cost of the suit.

AND IT IS ORDERED that the defendants to pay the Claimant, the cumulative sum of N2,351,000 (Two Million, Three Hundred and Fifty-One Thousand Naira) only, broken down as follows:

- a) N1,351,000 which represents the savings of the Claimants
- b) N500, 000 (Five Hundred Thousand Naira) for general damages
- c) N500,000 representing cost of the suit.

AND IT IS FURTHER ORDERED that the Defendant do pay to the Registrar of this court the total sum of **N2,351,000 (Two Million, Three Hundred and Fifty-One Thousand Naira)** above mentioned with immediate effect.

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.

GIFT C. AMADI, ESQ
CHIEF MAGISTRATE
G.D.I
SIGN.....DATE.....

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

