IN THE MAGISTRATE COURT OF RIVERS STATE OF NIGERIA

IN THE PORT HARCOURT MAGISTERIAL DIVISION

HOLDEN AT PORT HARCOURT

BEFORE HIS WORSHIP NNEKA E. EZE-OBUZOR

SITTING ON THE 13TH DAY OF FEBRUARY 2024

AT THE SMALL CLAIMS COURT 5 PORT HARCOURT

SUIT NO: PMC/SCC/212/2023

BETWEEN

MR NWAKA ANTHONY CHIBUZO------ CLAIMANT

AND

1. **MR HANDSOME OWHONDA**
2. **EZE OTUNU LTD** — **DEFENDANTS**
3. **OMINIBIZ AFRICA**

PARTIES: Claimant present. Defendant absent

APPEARANCES: Amarachi Owhoeli Esq. for claimant.

No representation for defendant.

JUDGEMENT

By a claim dated 24/10/2023, the claimant's claim against the defendants are as follows:

1. N800, 000.00 being outstanding money owed the claimant.
2. N500, 000.00 cost of litigation.
3. N2, 500,000.00 damages

PLEA

By the affidavit of service availed this court, the defendants were served the originating process in this suit by delivering same personally to the defendants on the 31/10/2023 at 1:38pm. On the 7/11/2023, a plea of not liable was entered for and on behalf of the absent defendants.

SUMMARY OF EVIDENCE

The claimant in proof of his case called a lone witness, the claimant himself and tendered seven exhibits marked exhibits A-G.

The defendant at the end of the claimant's case, rested their case on that of the claimant.

The relevant facts from the case of the claimant as presented by the claimant himself is that he is the owner of an indigenous servicing company. That he also knows the 1st and 2nd defendants. That the 1st defendant is the owner of the 2nd defendant who approached him indicating interest to hire his SUV, a Toyota forerunner vehicle to be used for his business. That the 3rd defendant are the company in possession of his vehicle which they seized from the 1st and 2nd defendants. In proof, the claimant tendered the vehicle particulars. Same was admitted as Exhibit A. CW1 stated that he hired his vehicle to the 1st and 2nd defendants and they agreed on an amount and a contract was issued to him. The agreement was tendered and admitted as Exhibit B. That after the agreement, they paid the first, second and third month agreement of N80, 000.00 and they stopped paying. That he was paid for September, October and November. That since November 2022 till now he's not been paid any other money and they have also not released his car. That the 3rd defendant seized his car because the 1st and 2nd defendant was owing them money. That he contacted his lawyer who wrote to the defendants to release his car and pay him. Said correspondence was admitted as Exhibit C1, C2 and C3. The waybill transfers were admitted as Exhibits D1, D2, D3, E1, E2 and E3. That when the parties refused to pay him or release his

vehicle, he came to court after making fees for representation in the tune of N500, 000.00. Receipt to that effect was admitted as Exhibit G. Case was adjourned for cross examination of CW1.

The defendant after the claimant presented his case, relied on the evidence of the claimant and case was adjourned for address.

The claimant and defendants on the 24/1/2024 adopted their written address and this case was adjourned for judgement now being read.

The claimant in his written address submitted by his counsel Dr. K. Allen-Nwokamma Esq. raised a lone issue for determination to wit:

Whether the claimant is entitled to his claims against the Defendants?

The claimant answered the above in the affirmative stating that the claimant testified showing the relationship between the 1st and 2nd defendants with respect to the agreement. That the law is that where there is a monetary claim against the defendant and he fails to lead evidence to the court showing how he has liquidated the debt, it will be as an admission of debt. Counsel cited the case of **EZEKIEL V. WESTMINISTER DREDGING (NIG) LTD (2001) FWLR (PT60) 1564.** That where parties reach an agreement and it has been reduced into writing and executed, the agreement is binding on the parties. That the defence counsel is trying to exonerate the 1st defendant from the actions of the 2nd defendant who he refers to as a limited liability company but an examination of the surrounding circumstances of the transaction points to the fact that the defendant is a portfolio company operated solely by the 1st Defendant as a tool to con innocent people and urged the court to lift the fail and hold the 1st defendant jointly liable for the debt incurred by the 2nd defendant as Exhibit B was signed by the 1st defendant and the seal of the 2nd defendant was not placed. He urged the court to grant their claims.

The defendant in his reply stated that on admissions in civil cases it is trite law that in civil cases, admissions by a party are evidence of facts asserted against but not in favour of such party although they are not estoppels or conclusive against the party against whom they are tendered. That when evidence either oral or deposition is incredible and bereft of substance or immaterial to the application the other party need not file a counter or defence. That the car lease via Exhibit B

was between the claimant and the 2nd defendant who is a limited liability company and joining the 1st and 3rd defendant is bad law. That a close look at the commencement and term proviso of Exhibit B shows that the agreement shall be in force for 4 months upon the conscientious of parties. That there was no renewal after the 1st four months. That the claimant did not raise the issue of lifting the veil during trial stage and cannot raise it now. Counsel urged the court to refuse the prayers and dismiss the suit for lacking merit.

RESOLVE

In determination of this suit, I will adopt the lone issue raised by claimant's counsel:

Whether the claimant is entitled to his claims against the Defendants?

Before I proceed, I will deal with the issue raised by defence counsel that joining the 1st and 3rd defendant is a bad case. I will simply adopt **ORDER 3 RULES 5 OF THE RIVERS STATE MAGISTRATE COURT (CIVIL PROCEDURE RULES) 2007** that says the court may at any stage strike out the names of parties wrongfully joined and they shall not be bound by the proceedings in action. The 2nd defendant being a legal person and who entered the contract is the proper party before me. The 3rd defendant even though in possession of the said vehicle is not a proper party as this is a small claims court and can only deal with liquidated money demand. Hence 1st and 3rd defendants are struck out from this suit.

The defendant did not adduce any evidence but rested their case on that of the claimant. The court in the case of **ADELEKE V. IYANDA (2001) 13 NWLR PART 729 PAGE 1 AT 23-24 PARA H-A** held that where the claimant has adduced admissible evidence which is satisfactory in the context of the case, and none available from the defendant, the case will be decided upon a minimum of proof as this makes the burden lighter. It is worthy to point out that the claimant will not be entitled to judgement merely because the defendant abandoned its defence by failing to lead evidence in support therefore. The court would not accept a piece of evidence which is not material and of no probative value merely because the only evidence before the court is that of the claimant. See the case of **AREWA TEXTILES PLC V. FINETEX LTD (2003) 7 NWLR PART 819**

PAGE 322 AT 341 PARA D-G. In essence, the evidence of the claimant must be enough to sustain the claim.

From the case file, the claimant has complied with the provisions of **ARTICLE 2 AND 3 OF THE RIVERS STATE SMALL CLAIMS COURT PRACTICE DIRECTION 2023** for the fact that this is a liquidated money demand not exceeding Five million (N5M), the defendant was served with a demand letter, there is a complaint form, there is an affidavit of service of the summons of court on the defendants.

On the first claim of the claimant, by way of evidence, the claimant has tendered the contract agreement entered into with the defendant. There is a long line of cases to the effect that where parties contract among themselves to carry out an obligation, such terms of their agreement is binding on them and the Court must give effect to it. See the case of **SACOIL 281 (NIG) LTD & ANOR V. TRANSNATIONAL CORPORATION OF (NIG) PLC (2020) LPELR-49761(CA) (PP. 43-45 PARAS. E)**

In **BABATUNDE & ANOR VS. BANK OF THE NORTH LTD & ORS (2011) LPELR-8249 (SC)** the Supreme Court per Adekeye, JSC stated this principle thus: "The law is that written contract agreement freely entered into by the parties is binding on them. A Court of law is equally bound by the terms of any written contract entered into by the parties. Where the intention of the parties to a contract is clearly expressed in a document, a contract agreement; the Court cannot go outside that document to give effect to the intention of the parties. The general principle is that where the parties have embodied the terms of their contract in a written document, extrinsic evidence is not admissible to add to, vary, subtract from or contradict the terms of the written instrument. In the instant case, the claimant and defendant agreed to the payment of N80, 000.00 for a period of 4 months in the first instance then the contract will be renegotiated. It becomes common sense that after 4 months and the said contract is not renegotiated, the said contract has expired. However, it was also agreed that the lessee being the defendant ‘shall deliver the bus in good condition at the expiration of the contract’. From the evidence of CW1 which was not

contradicted, the said bus that was given to the lessee is still in occupation of the lessee. The defence argues that the claimant should be asking for 4 months payment as the contract was not renegotiated. The law is that where there is a contract that is both valid and enforceable and one of the parties thereto defaults in the performance of the contract, the other party has one of two options opened to him and these are (i) to regard the contract as still subsisting and sue for specific performance of the contract or for an injunction where the obligation is a negative one; or (ii) to regard the contract at an end and sue for damages for the breach of it. See the case of **MALIK V. KADUNA FURNITURE & CARPETS CO. LTD (2016) LPELR-41308(CA) (PP. 26-27 PARAS. F).** Flowing from the above, the defendant having defaulted in his performance of the said contract, said contract is deemed as subsisting. Hence claim 1 succeeds in favour of the claimant against the defendant.

On the second claim which is cost of litigation of N500, 000.00. The Supreme Court has held that placing the burden of the payment of a person's legal fee on the other party is unheard of in our legal system. However where evidence is proven as regards the amount expended in the litigation of a suit cost ought to be awarded to indemnify the winning party. Costs are not awarded to penalize a party who is ordered to pay them, nor are costs awarded as windfall to a successful party. Costs are meant to indemnify the winning party for his out of pocket expenses representing the actual and true/fair expenses incurred by the litigation. Upon Exhibit G, cost of N500, 000.00 is awarded.

In the third claim which is the sum of N2, 500, 000.00. The principles guiding the award of damages in tort are different from those guiding the award of damages in contract. The object of tort damages is to put the plaintiff in that position he would have been in if the tort has not been committed whereas, the object of contract damages is to put the plaintiff in the position he would have been in if the contract had been satisfactorily performed. See **AGBANELO V. UNION BANK OF NIGERIA LTD (2000) 4 SC (PT. 1) 233 AT 245.** From the first claim of the claimant already granted, the claimant has been put in the position he would have been if the contract has been satisfactorily performed. However, from the evidence before the court, the claimant's vehicle is still with a third party at the

instance of the defendant. In **MEKWUNYE VS. EMIRATES AIRLINES (2019) 9 NWLR (PT. 1677) 191 AT 225,** the Supreme Court held that once a breach of contract is established by the plaintiff, then damages follow, and the general damages to be awarded, are the losses that flow naturally. It is not pleaded or proved but generally assumed. Accordingly, the sum of N500, 000.00 is awarded as damages in favour of the claimant.

In conclusion, judgement is entered for the claimant as follows:

1. The defendant is ordered to pay to the claimant the sum of N800, 000.00 being money owed the claimant for the contract.
2. The defendant is ordered to pay the sum of N500, 000.00 as cost to the claimant.
3. The defendant is ordered to pay the sum of N500, 000.00 as damages to the claimant.