

**IN THE CHIEF MAGISTRATE COURT OF RIVERS STATE OF NIGERIA
IN THE RUMUODOMAYA MAGISTERIAL DISTRICT
HOLDEN AT RUMUODOMAYA**

**BEFORE HIS WORSHIP B.H. ABE (MRS) ESQ., SITTING AT THE CHIEF
MAGISTRATE COURT 1 RUMUODOMAYA ON MONDAY THE 26TH DAY OF
FEBRUARY, 2024**

RMC/SCC/22/2023

BETWEEN

UGWONNOH PRINCEWILL - **CLAIMANT**

VS.

MR. GODWIN CHINDO FIDELIS - **DEFENDANT**

Matter for Judgment

Parties Absent, Agochi Amadi for the claimant, no appearance for the defendant.

JUDGMENT

The Claimant claims as follows:

1. A refund of the sum of N587,000.00 (Five Hundred and Eighty-Seven Thousand Naira) only, from the defendant, being the amount paid to the defendant to supply a Ford Engine for his vehicle, the defendant supplied a substandard engine, which the claimant rejected.
2. N200,000.00 (Two Hundred Thousand Naira) only, as cost of this suit.

Facts

This matter commenced on the 5th December, 2023, the claimant's counsel, Agochi Amadi Esq, applied for an order of substituted service to serve all of the Court's processes especially the ordinary summons and particulars of claim on the defendant via his WhatsApp number. The Court granted his application and ordered that the defendant be served via substituted service and electronic service, sent to his WhatsApp number; 08060174573.

On the 23rd January, 2024, after the Court had confirmed Proof of service, the claimant's counsel entered a plea of not liable against the defendant, Agochi Amadi Esq, appeared for the claimant, the defendant was not in Court and was not represented. The Court ordered the defendant to be served with a hearing notice.

The claimant gave evidence on the 31st January, 2024, led by Agochi Amadi, Esq. who appeared with LCD Wodike, Esq.

The claimant informed the Court that he is a business man living at Rukpokwu, he knows the defendant, who deals on Ford Motor parts and engines, vehicles also. In September, 2023, he met him at Ikokwu, Port Harcourt, he paid him N587,000.00 via transfer to his account, for a Ford Car engine, he sent the engine, which his mechanic confirmed was bad, the engine was sent back to him, he demanded for a good one, after one week, the defendant did not send him the engine and did not return his money to him, he asked his lawyer to write to him. The defendant did not respond, he stopped picking his calls, he did not find him, he traced him to his shop.

The defendant was served via WhatsApp and he acknowledged.

The transfer receipt from his Opay Account was printed out via his Samsung phone, the printer was in good condition. The receipt is before me as Exhibit A, Exhibit B, the demand letter dated 20th November, 2023, the defendant's reply, Exhibit C, are also before me, the certificate of compliance in line with section 84 of the Evidence Act not before the Court, orally done by the claimant. He prayed the Court to grant his claims. He was foreclosed from cross-examination afterwards, the Court ordered for a hearing notice to be served on the defendant.

The defendant was foreclosed from defending this suit on the 9th February, 2024 due to his absence, the claimant's counsel on the 19th February, 2024 adopted his final written address dated 12th February, 2024, filed 14th February, 2024.

The sole issue raised for determination by the claimant's counsel, was whether from the unchallenged evidence of the claimant, the claimant has proved his case and is entitled to his claims against the defendant?

The claimant's counsel relied on the Exhibits tendered by the claimant, Exhibits A-C, in submitting that the claimant has proved his case against the defendant.

Further submitted that, the totality of the unchallenged evidence of the claimant shows that indeed the defendant is indebted to the claimant in the sum claimed; N587,000.00. he cited the cases of consolidated Reforms Ltd. vs. Abofer Ventures (Nig.) Ltd. (2007) 6 NWLR (pt. 1030) 221 and also Oladipo vs. Moba LGA (2010) 5 NWLR (pt. 1186) 177 to posit that unchallenged evidence is deemed admitted and the Court is bound to act on it.

Issue for determination

Whether the claimant has proved his entitlement to his claims from the preponderance of evidence before the Court?

COURT

The claimant in proof of his claim against the defendant tendered three Exhibits;

1. Exhibit A – the transfer to the defendant for the payment of a Ford Engine.

2. The demand letter from his lawyer to the defendant demanding the repayment of the sum of N587,000.00 to the claimant – Exhibit B, dated 20th November, 2023.
3. The acknowledgement by the defendant via WhatsApp. That is his reply; Exhibit C.

The affidavit of service of the Court process especially the summons deposed to by the bailiff of Court is before me dated 22nd January, 2024, the bailiff of Court confirmed service on the defendant via WhatsApp.

The defendant was also served with the hearing notice on the 8th February, 2024 via WhatsApp, affidavit of service before the Court.

In the case of Bankole & Anor vs. Oladitan (2022) LPELR 56502 CA, the Court held in that case that, “A writ of summons served on a tenant constitutes adequate notice of a landlord’s intention to recover possession of his property”. The service of the originating processes on the defendant, that is the claim, Form RSSC 2; the compliant Form, the summons RSSC 3 suffice as sufficient notice of the suit against the defendant. He was also served with a hearing notice but still refused and neglected to show up before this Court to defend this suit against him.

This could be because he had no defence to the suit filed against him by the claimant.

In the cases of Adekoya vs. Attah (2022) LPELR 57223 CA and Olatubosun vs. Anenih (2009) 15 NWLR (pt. 1165) 560, the Court buttressed the importance of a hearing notice as a legal means of compelling the defendant to attend Court to defend the suit against him.

In P.N. Emerah & Sons Nig. Ltd. vs. Dunu (1998) NWLR (pt. 564) pg. 96, it was held that where a party is not served with a hearing notice any judgment given, against him or her will be a nullity, given without jurisdiction and liable to be set aside upon Appeal. See Oguntade 97 para A.

The importance of serving a hearing notice cannot be over emphasized, it must be served for the Court to even have jurisdiction to entertain the suit.

SEE: JOHN ANDY SONS & CO. LTD V. MFON (2006) 12 NWLR (PT.995) 461 AT 478 PARA N

“Where a party in a legal duel receives a hearing notice but decides to be absent, the obvious conclusion is that he does not intend to contest the case or he has chickened out or he has abandoned it”.

SEE: NEWSWATCH COMM. LTD V. ATTA (2006) 12 NWLR (PT. 993) 144 SC BANNA V. TELE POWER (NIG) LTD (2006) 15 NWLR (PT. 1001) 198 SC.

Furthermore, facts and or evidence neither denied nor challenged are deemed admitted and need no further proof.

I have considered the facts of the case as presented by Cw1 and also the fact that the defendant failed, neglected and refused to appear before this Court to defend the suit against him, especially after the bailiff of Court, Gospel Utorue had served him with the summons for small claims Court on the 22/1/2024.

The Supreme Court has held in a plethora of cases that once the defendant in a suit is served with the Court's processes, that is the Ordinary summons and its particulars of claim, they both suffice as sufficient notice on the defendant of the case instituted against him.

The defendant was also served with a Hearing Notice as ordered by this Court.

The claimant in proof of his case, tendered Exhibits A-C respectively.

Documents tendered as Exhibits do not embark on falsehood like some mental beings, see *Olujinle Vs. Adeagbo* (1988)2 NWLR (Pt. 75) 238 and *BFI Group Corporation Vs. Bureau of Public Enterprises*.

Once documentary evidence supports oral evidence, oral evidence becomes more credible, as documentary evidence always serves as a hanger from which to assess oral testimony. See *Kimdey Vs. Military Governor of Gongola State* (1988) 5 SCNJ 28.

An aggrieved party to a contract has the right to seek for redress before a Court for the restitution of his legal right in a contract.

The aggrieved party can sue the defaulting party for breach of contract, where a valid contract has been entered into by both parties; a legal right has to be established.

In this case, the claimant has established his legal right and indeed is entitled to the refund of his money from the defendant.

A document tendered in Court is the best proof of the contents of such document, and no oral evidence will be allowed to discredit or contradict the contents thereof except in cases where fraud is pleaded. See *A-G., Bendel State Vs. U.B.A.* (1986)4 NWLR (Pt. 37) 547 referred to. Pp. 472, Para F. All the Exhibits are the best proof of the claimant's case. The claimant has made his case credible on the preponderance of evidence before the Court.

It is trite that a valid contract exists where offer (being certain) from an offeror is accepted by the offerree. Moreso, where there is a consideration from a party to a valid contract, such a party can successful sue the party in breach. Furthermore, a contract is an agreement between two or more parties which creates reciprocal legal obligation or obligations to do or not to do a particular thing. See *Omega Bank Plc. Vs. O.B. Ltd.* (2005) 1KLR (Pt. 189) 157.

In *Ogundalu Vs. Macjob* (2015) 3 S.C.N.J. page 98, the Court held that:

“A person seeking to enforce his right under a contractual agreement must show that he has fulfilled all the conditions precedent and that he has performed all those terms which ought to have been performed by him”. The claimants have indeed fulfilled all the conditions precedent for recovery of their money from the failed contract entered into with the defendants by proof of documentary evidence. See Exhibits A-E.

The claimant paid the defendant to supply him with a ford engine, the defendant failed to supply a new engine to the claimant, rather he supplied a substandard engine which he returned to the defendant, the claimant paid the consideration, parties successfully entered into the contract, the claimant is within his right to sue the defendant for breach of contract, having fulfilled the condition precedent to the supply of the ford engine.

The burden of proof rests on the claimant in this case.

Further, in respect of particular fact, this burden rests on the party against whom judgment will be given if no evidence were produced in respect of those facts. Once the party produces the evidence that will satisfy the Court, then the burden shifts on the party against whom judgment will be given if no more evidence were adduced. *Tewogbade Vs. Akande* (1968) NMLR 404; *Oyovbiare Vs. Omamurhomu* (1999) 10 NWLR (Pt. 621) 23 referred to, P. 427, paras. A-D.

A contract is an agreement between two or more parties, which creates reciprocal legal obligation or obligations to do or not to do a particular thing. For a valid contract to be formed there must be mutuality of purpose and intention. The two or more minds must meet at the same point, event or incident. Where or when they say different things at different times, they are not *ad idem* and, therefore, no valid contract is formed. The meetings of minds of the contracting parties are the most crucial and overriding factor or determinant in the law of contract.

The refusal on the part of the defendant to refund the money of the claimant is indeed a breach of contract. A breach of contract occurs when one of the parties in breach has acted contrary to the terms of the contract. See *F. B. N. Plc. Vs. Immason & Sons (Nig.) Ltd.*, (2014) All FNLR (Pt. 724) P. 344.

The Court is always expected to arise at the correct decision or findings based on the evidence before it, See *FBN Plc. Vs. Imasuen & Sons Nig. Ltd.* (2004) All FWLR (Pt. 125) pg. 342.

The Defendant has breached the contract entered into by both the Defendant and the claimant by defaulting in the repayment of the money given to him graciously by the claimant.

The claimant in proof of his claim against the Defendants tendered Exhibits A-C, as listed above and in compliance with S. 133/134 of the Evidence Act 2011.

Civil cases as we know are decided upon the preponderance of evidence and the balance of probability.

The Defendant is expected to rebut, challenge or discredit the claims of the claimant by defending this suit filed against him, but he chose not to, by refusing to defend this suit by not entering an appearance and getting a defence counsel to defend him.

The defendant was never in Court to challenge, controvert or discredit the evidence of the claimant, neither was he in Court to enter a defence. He was foreclosed from cross examination of the claimant and from defending this suit.

The Court has given the defendant sufficient and ample opportunity to defend this action, but he chose to neglect or rather waive his right. In the case of *Mil Gov., of Lagos State Vs. Adeyiga* (2012) 5 NWLR page SC 291 Pp. 338-339, paras. H – E, Ratio 4, the Supreme Court held:

“When a party has been given ample opportunity to ventilate his grievances in a Court of law but chooses not to utilize same, he cannot be heard to complain of breach of his right to fair hearing, as what the Court is expected to do by virtue of section 36 of the 1999 Constitution is to provide a conducive atmosphere for parties to exercise their right to fair hearing. Hence a party who refuses or fails to take advantage of the fair hearing process created by the Court cannot turn around to accuse the Court of denying him fair hearing, because equity aids the vigilant and not the indolent”.

In civil cases, the burden of proof is discharged on the balance of probabilities. See 134 of the Evidence Act 2011 and *Omotoye Vs. ABC (Transport Co.) Ltd.* All FWLR (Pt. 531) 1540 at 1560.

This Honourable Court is clothed with the powers to in addition to the judgment sum award such damages as the justice of this case may require or make an order which it considers necessary for doing justice; whether such an order has been expressly asked for by the party entitled to the benefit of the order or not. It has also been held that damages arising from breach in paying money due to a claimant as at when due, is the interest on the amount due. This was held by the Court of Appeal (Port Harcourt Division) in *SPDC Ltd. Vs. Nnabueze* (2014) AFWLR (pt. 724) pg. 117 at 138 paras. E-G when it sated as follows:

“Damages arising from a breach in paying money due to a plaintiff at the time it was due, is the interest on the amount due. The reason is that such interest will place the plaintiff on the financial strength he would have been if he was paid as at when due in a situation arising from commercial matters, party holding on to the fund of another, for so long without justification ought to pay compensation for so doing. In the instant case where the defendant withheld the plaintiff’s money for contract executed, the interest claimed thereon by the plaintiff was rightly awarded by the trial Court”.

As regards that which involves post judgment 10% interest, against the defendant by the claimant, it is trite that monetary judgment attracts appropriate interest even when none is claimed or proved. The Supreme Court in the case of *NPA Vs. Aminu Ibrahim & Co.* (2018) 12 NWLR (pt. 1632) 62 at 87-88 held as follows:

“However, a Court can still grant pre judgment interest on a monetary or liquidated sum awarded to a successful party, even in a situation where such a party did not plead or adduce evidence in proof of such claim. Such interest naturally accrues from the use of and/or enjoyment of the sum involved which is the fruit of judgment. In this case, the respondents had for quite a long time, submitted their report to the appellant but the latter refused or neglected to pay them their entitlement as agreed upon”.

In line with the Supreme Court decision, the Court of Appeal per Tobi JCA in the case of Dana Airlines Ltd. Vs. Aikhomu (2020) AFWLR (pt. 1043) pg. 503 paras. B-C made it very clear when it held as follows:

“The purpose of pre-judgment or post-judgment interest is to make parties in a case to be responsive or alive to their responsibility. If a party looks beyond legality and do the right thing according to conscience, some cases would not need to be decided by Court taking all the time and resources. Failure to be alive to civil responsibility and to punish people for oppressive act, a party is allowed in law, to apply pre-judgment and post-judgment interest”.

Consequently, the Court enters judgment in favour of the claimant and hereby orders as follows;

1. That the defendant is liable to the claimant in the sum of N587,000.00 (Five Hundred and Eighty-Seven Thousand Naira) only, being the sum paid by the claimant to the defendant for the purchase of a new Ford Engine for his vehicle.
2. That the defendant shall pay the sum of N200,000.00 (Two Hundred Thousand Naira) only, assessed as the cost of instituting this suit.
3. That it is finally ordered, 10% post judgment sum, per annum be paid by the defendant, from the date of judgment till the judgment sum is fully liquidated by the defendant, as general damages.

This is the judgment of the Court.

MRS BARIYAAH .H. ABE
Chief Magistrate
26th February, 2024.

