

IN THE MAGISTRATES' COURT OF RIVERS STATE OF NIGERIA

IN THE PORT HARCOURT MAGISTERIAL DISTRICT

HOLDEN AT SMALL CLAIMS COURT 2, PORT HARCOURT

BEFORE HIS WORSHIP COLLINS G. ALI, ESQ.,<sup>1</sup> TODAY WEDNESDAY, THE 23<sup>RD</sup>  
DAY OF AUGUST, 2023.

SUIT NO.:PMC/SCC/84/2023.

BETWEEN:

MRS. NGOZI PEACE IKENYIRI ----- CLAIMANT

AND

MRS. IFEANYINWA CYNTHIA NNANNA ----- DEFENDANT

Case called.

Parties absent.

JUDGMENT

The Claimant commenced this case against the Defendant on the 26<sup>th</sup> June 2023 after serving demand letter and claimed as per her claim attached to the summons as follows:-

1. Amount Owed the Claimant (for 75 bags of 50kg rice) - ~~₦~~3,375,000.00
2. Cost of litigation - ~~₦~~1,000,000.00
3. 20% interest from August 2021 till judgment

Total = ~~₦~~4,375,000.00

The Defendant was served with the summons and claim by substituted means on the 27<sup>th</sup> July 2023 in compliance with the Order of this Honourable Court made on the 12<sup>th</sup> day of July 2023. Following the confirmation of service on the Defendant and her non appearance in Court, plea of not liable was entered for the Defendant and the case adjourned to the 9<sup>th</sup> August 2023 for trial and determination.

The Claimant, Mrs. Ngozi Peace Ikenyiri pursuant to Article 8 (2) of the Small Claims Practice Direction 2023 proceeded to prove her claims and testified as CW1. The Claimant tendered Diva World Trading Services Invoice No. 000133 dated 01/09/2021 as Exhibit A, Claimant's UBA Plc Statement of account for 09/08/2021 to 18/08/2021

<sup>1</sup> LL B, LL M, BL, A. IDRI, Chief Magistrate Grade I, and the Presiding Magistrate, Small Claims Court 02, Port Harcourt, Rivers State.

and 01/12/2021 to 06/12/2021 as Exhibits B and B1, Demand Letter dated 02/11/2022 as Exhibit C and Legal Fees Payment Receipt dated 20/06/2023 as Exhibit D. The Claimant was not cross examine by the Defendant who refused to appear in Court and the implication is that the evidence of the Claimant is unchallenged and by extension deemed as admitted. See *Gaji v Paye [2003] LPELR-1300 (SC)*.

The oral testimony of the Claimant a lecturer and businesswoman resident and doing business at Ogba/Egbema/Ndoni Local Government Area of Rivers State as CW1 on the 9<sup>th</sup> August 2023, is that she contacted the Defendant online through her business page named Diva World Trading Services and subsequently chatted her via phone and they agreed on the supply of 50 bags of 50kg rice to her by the Defendant at the rate of ₦20,000.00 per bag totaling ₦1,000,000.00 and ₦50,000.00 cost of delivery at the Claimant's shop at Rev. Ohia Shopping Plaza, Obirikom, ONELGA, Rivers State. Based on that agreement, the Claimant paid the Defendant via bank transfer the sum of ₦1,050,000.00 on the 10<sup>th</sup> August 2021 but the Defendant supplied only 45 bags of the 50kg rice through a delivery truck at the Claimant's shop on the 1<sup>st</sup> September 2021. The CW1 testified that shortly after the 45 bags of 50kg rice were supplied, her sales girl who is in charge of the shop called her attention large number weevils flying around the shop and upon search to know what was responsible, she discovered that some bags of the rice supplied were full of dust which meant that the rice is substandard. CW1 testified that she contacted the Defendant who apologised and promised to replace the rice in line with her return policy after confirming that she received a similar complaint from another customer in Bayelsa State. The CW1 testified that despite several promises, the Defendant failed to replace the rice as promised till December 2021 when she paid ₦705,000.00 for additional 35 bags of rice which the Defendant promised to deliver together with the replacement stock but also failed. The CW1 testified that when the Defendant could not still supply the rice as promised she went to the Defendant's Rice Mill at Mgbidi, Imo State where upon plea by the Defendant's father she was able to carry only five (5) bags of the 50kg rice; and that the Defendant have since not supplied the remaining bags of the rice.



A careful examination of the testimony of the Claimant as CW1 will suggest that only 45 bags of 50kg rice were supplied on the 1<sup>st</sup> September 2021 out of the 50 bags paid for thereby leaving a balance of 5 bags of the 50kg rice in the hands of the Defendant. The Claimant paid for another 35 bags of 50kg rice on the 1<sup>st</sup> December 2021 making up to 40 bags of the 50kg rice in the hands of the Defendant not supplied. By the testimony of the Claimant, she took delivery of 5 bags of this 40 bags on the date she went to the Defendant's rice mill at Mgbidi, Imo State thereby leaving a balance of 35 bags of the rice not supplied in the hands of the Defendant and another 45 bags of the rice earlier supplied; awaiting replacement in the Claimant's shop. It follows therefore that the Defendant ought to refund the Claimant for a total of 80 bags of 50kg rice. The 45 bags of the 50kg rice is awaiting evacuation at the Claimant's shop while 35 bags of the 50kg rice was never supplied by the Defendant. The said 80 bags of 50kg rice at the rate of ₦20,000.00 per bag sums up to ₦1,600,000.00 whereas the Claimant is Claiming a total sum of ₦3,375,000.00 for 75 bags of 50kg rice with 20% interest from August 2021 till judgment. I do not know how the Claimant arrived at that figure. Could it be 20% monthly interest on the cost of 75 bags of 50kg rice from August 2021 till date or 20% annual interest on the cost of 75 bags of 50kg rice from August 2021 till date? Which ever formular the Claimant applied whether 20% monthly or annual interest will not give ₦3,375,000.00 for the capital and interest for two years (August 2021 to August 2023).

Whilst I concede that the law allows parties to claim pre judgment interest in commercial transaction like this one which the Claimant and the Defendant ventured into, the general principle guiding award of pre judgment interest as decided by the Courts in long list of cases is that it is allowed either by statute, by merchantile custom and practice, by equity, or by agreement. See *Maigwandu v Maradun & Anor. [2018] LPELR-43982 (CA)*. However, a claim for pre judgment interest in appropriate circumstances should be ascertainable.

The Claimant obviously is entitled to the supply of the bags of rice she paid the Defendant to supply or the refund of the money paid with damages but the amount of money claimed as main claim and cost of litigation are outrageously high. The evidence

before the Court shows that the Defendant is owing the Claimant for 80 bags of 50kg rice part of which 45 bags earlier supplied is awaiting evacuation and replacement at the Claimant's shop while 35 bags were not supplied by the Defendant at all despite repeated demands. Going by the purchase price of ₦20,000.00 per 50kg bag which the Claimant said she paid for the rice in August and December 2021, the exact cost should be ₦1,600,000.00 for 80 bags of 50kg rice or ₦1,500,000.00 for 75 bags of 50kg rice whichever is applicable. I agree with the Claimant that the value of the business money tied down by the Defendant by her failure to supply and replace the spoilt 45 bags of 50kg rice together with the extra 35 bags of 50kg rice for two (2) years have increased. Therefore, the business been of commercial nature and on grounds of equity, I hold that the Claimant is entitled to the refund of the money with interest and cost of litigation. Judgment is hereby entered for the Claimant as follows:

1. The Defendant is Ordered to pay the sum of ₦1,600,000.00 (One Million, Six Hundred Naira) only as outstanding debt to the Claimant forthwith.
2. The Defendant is Ordered to pay the sum of ₦300,000.00 (Three Hundred Thousand Naira) only as cost of litigation to the Claimant forthwith.
3. The Defendant is also Ordered to pay 20% pre judgment interest per annum on the principal debt from August 2021 till judgment is given.



C. G. Ali, Esq.  
Chief Magistrate Grade 1  
23/08/2023

**LEGAL REPRESENTATIONS:**

1. O. E. Ugoji, Esq. for the Claimant.
2. Defendant not represented.

