

IN THE SMALL CLAIMS COURT OF RIVERS STATE OF NIGERIA
IN THE PORT HARCOURT MAGISTERIAL DISTRICT
HOLDEN AT PORT HARCOURT
BEFORE HIS WORSHIP W. C. AKANI, ESQ.
SITTING AT SMALL CLAIMS COURT 5 ON MONDAY, 22ND JULY, 2024

CLAIM NO: PMC/SCC/137/2024

BETWEEN:

MRS. CAROLINE CHUKWUMA - CLAIMANT

AND

MRS. JOY MARTINS ORJI - DEFENDANT

Parties: Claimant absent
Defendant present

Appearances: E. Fynecountry with I. Nwokolo for the Claimant
No appearance for the Defendant

JUDGMENT

The Claimant commenced this suit against the Defendant vide Form RSSC2 on 23rd May 2024 following service of the mandatory Letter of Demand on the Defendant. By the summary of claim contained in the Summons - Form RSSC3, the Claimant's claim against the Defendant is for the sum of ₦538,500.00 being the debt sum owed.

The Defendant was served with the Claim and Summons and on 8th July 2024 when the matter was fixed for plea and hearing, the Defendant was not in court. Upon the application of Claimant's counsel, a plea of not liable was entered for the Defendant following which hearing commenced.

The Claimant gave evidence for herself as CW1 and tendered one document - Exhibit C1 while Defendant also gave evidence for herself as DW1 and tendered Exhibits D1 - D11.

The Claimant says she made some payments to the Defendant amounting to ₦538,500.00 as investments into a business for which she was to get some benefits and that after she made the payment, the Defendant stopped taking her calls. The Claimant also says that all efforts to get the Defendant to refund the said sum have failed which is why she instituted this action.

The Defendant on her part says that she is not owing the Claimant the sum of ₦538,500.00 as the total sum paid to her by the Claimant for investment in the Cocoa business is about ₦380,000.00. She says she and the Claimant have been involved in several other businesses together for which the Claimant paid registration fees and has been earning profits therefrom.

It is settled law that he who asserts must prove. See Section 131 of the Evidence Act. The Claimant herein has given evidence to the effect that she had been involved in various business transactions with the Defendant but she is in court in respect of the sum of ₦538,500.00 she paid to the Defendant for the supply of pure cocoa which the Defendant has failed to give her. In support of her claim, she tendered Exhibit C1 which is her Statement of Account from Union Bank covering the periods of 29th June 2020 to 7th July 2020, 21st May 2021 to 29th July 2021 and 29th July 2021 to 31st August 2021 showing the transactions complained of.

The Defendant on her part tendered Exhibit D11 – Statement of Account of the Defendant for the period of 1st January 2021 to 31st December 2021. I have gone through Exhibit D11. The Defendant received well over ₦1,800,000. However, she says she only received about ₦380,000 from the Claimant for the pure cocoa business and the products have been delivered to the Claimant. The Defendant also says she received monies from the Claimant for registration in other businesses. How much are these registration fees? We are not told. When were these registration fees paid? We also are not told. The Defendant also tendered Exhibits D2 - D10 which are documents in support of the Claimant's registration and involvement in other business transaction with the Defendant. However, these documents are not helpful in that save to buttress the fact that the Claimant and Defendant are involved in other businesses together, which the Claimant has affirmed, they do not provide any further information.

Exhibit D1 is the Defendant's ledger where records of the pure cocoa business are kept. I have gone through the document, particularly the asterisked entries. The entries are inconsistent and so in some instances it is difficult to ascertain what is a payment and which is a collection for items already paid for. The Defendant did not lead sufficient oral evidence on this document and it is not the duty of the court to begin to deduce the mind of the litigant. See **UNOKAN ENT. LTD V. OMUVWIE & ANOR (2005) 1 NWLR (PT. 907) 293**. Even if the court were to rely on this piece of evidence, I have painstakingly summed up the amounts on the entries asterisked and it came to ₦118,000. This does not account for the ₦538,500 which the Claimant says she paid or the ₦380,000 which the Defendant admits to having received from the Claimant for the pure cocoa.

Having had a calm review of the case, I find the account of the Defendant to be riddled with unexplained inconsistencies that are too manifest to be ignored. The Supreme Court has held that where unexplained inconsistencies exist on a material fact, the court cannot and shall not speculate on an imagined explanation for such contradictions and proceed to choose which of the evidence to believe. See **MALLAM ZAKARI AHMED V. STATE (1999) 5 SCNJ 223**. It is therefore not open to this court to decide which bit of the Defendant's account to accept.

The Claimant's account is more plausible. The Claimant was consistent in her testimony which she buttressed with documentary evidence. I am therefore fortified in my view that the Claimant has proven her case on the balance of probabilities and is thus entitled to the claims sought.

Accordingly, I enter judgment for the Claimant and make the following orders-

1. The Defendant shall forthwith pay to the Claimant the sum of ₦538,500.00 being the sum given to the Defendant for investment in pure cocoa.
2. ₦100,000.00 costs to the Claimant.



W.C. AKANI
Senior Magistrate Grade 1
22-07-2024

