

IN THE MAGISTRATES' COURT OF RIVERS STATE
IN THE PORT HARCOURT MAGISTERIAL DISTRICT
HOLDEN AT PORTHARCOURT BEFORE HIS WORSHIP. G.C. AMADI ESQ.
SITTING AT SMALL CLAIMS COURT AT CHIEF MAGISTRATE COURT 8, ON THE 2nd OF
FEBRUARY 2024

SUIT NO. PMC /193/2023

MR. JERRY AZUBUIKE

}

CLAIMANT

AND

MR I.K EDEBIRI

}

DEFENDANT

JUDGMENT

This is the final judgment in this suit wherein the claim before the court, dated and filed on the 11th October, 2023 is for:

1. An order of this Court compelling the defendants to pay the Claimant, the sum of Seven Hundred And Fifty One Thousand, Four Hundred Naira(N751,400) only as balance for electrical materials supplied to him by the Claimant
2. The sum of Two Million Naira(2,000,000)only as damages which is made up of
 - I. Two Hundred And Fifty Thousand Naira(N250,000) as cost of litigation.
 - II. Eight Hundred Thousand Naira(N800,000) paid as interest on loan collected.
 - III. Five Hundred Thousand Naira(500,000) as cost of action in suit No: PMC/634/2020 and
 - IV. Four Hundred And Fifty Thousand Naira (N450,000)only as emotional and psychological trauma caused by the defendant.
3. An order of this court compelling the defendants to pay the Claimant the sum of N450,000 as damages.

In proof of his case, the Claimant called one witness and the defendant called also called one witness.

On the 6th day of November, 2023, the Claimant was present and the defendants were absent. An application to enter plea of not liable for the defendant by the defendant Counsel was granted and the matter was set down for hearing.

On the 23rd day of November, 2024, the CW1, who is also the Claimant on record testified and adopts his written statement on oath dated and filed the 8th day November, 2023 wherein he testified that he is a businessman and the MD of JERTO INTERNATIONAL CO. at No. 37 Okija Street, Mile 1, Diobu Port Harcourt and deals on the sales and supply of electrical materials.

That sometime around September, 2017, the defendant approached him and said he would want him to supply him with electrical materials for use in his new building and that he would pay him after the supply. That he accepted and they discussed on the items to supply him and their prices. He also promised to introduce /connect him to some of his other friends.

That he supplied to him, the entire electrical materials required in his building situate at House 4, (left wing), Oluokpobiri Street, off Sani Abacha Road, G.R.A, Port Harcourt., off Sani Abacha Road, G.R.A, Port Harcourt. That he supplied him goods totaling the sum of One Million, Five Hundred and Fifty One Thousand, Four Hundred Naira (N1,551,400) only. That he issued him with a proforma invoice evidencing the items he supplied and the cost of the materials.

That of the total amount of good supplied to the defendant, he has only paid the sum of Eight Hundred Thousand Naira (N800,000) only, leaving a balance of Seven Hundred And Fifty One Thousand Four Hundred Naira. (N751,400) only.

That all efforts made for the defendant to pay him is to no avail, as the defendant have failed and refused to pay.

That as a result of the defendants refusal to pay him, he had to take a loan of Two Million Naira (N2,000,000) only from one Mr, Charles Obi of Chachris International Co Ltd, to pay off the creditors and he collected some of the materials which he supplied to the defendant and he paid an interest of Eight Hundred Thousand Naira (800,000)

That in the present suit, he paid his lawyer the sum of N250, 000 and he was issued a receipt.

That sometime in June, 2019, he instructed his lawyer to write a demand letter to the defendant to pay but upon his refusal to pay him, he caused his lawyer in 2020 to file a suit against the defendant in Suit No. PMC/634/2020 and paid his lawyer the sum of N500, 000 out of the N800,000 he was charged

.The CW1 identifies the Receipt from his lawyer, M.O Akunesiobike and another receipt from G.O. Tamuno & Co, Agreement for loan, termination of loan, 3 quotation from Jerto International Co. (First dated 15th of November 2017 and another quotation dated the 15th of December, 2017, another quotation dated 25th October, 2017) were tendered in evidence by the Claimant's counsel, were not objected to by the defendant's counsel and was admitted in evidence as Exhibit A, B, C, D and E1-E3 respectively.

In conclusion, the CW1 states that he is claiming for the following:

1. An order of this Court compelling the defendants to pay the Claimant, the sum of N751,000 as balance for electrical materials supplied to him by the Claimant
2. The sum of Two Million Naira(2,000,000)only as damages which is made up of
 - I. Two Hundred And Fifty Thousand Naira(N250,000) as cost of litigation.
 - II. Eight Hundred Thousand Naira(N800,000) paid as interest on loan collected.
 - III. Five Hundred Thousand Naira(500,000) as cost of action in suit No: PMC/634/2020 and
 - IV. Four Hundred And Fifty Thousand Naira (N450,000)only as emotional and psychological trauma caused by the defendant.

At the close of the evidence in chief of the CW1, the CW1 was cross examined on same date and testifies Exhibit E1-E3 represents the record of transaction between himself and the defendant in this matter. That out of the total amount owed, the defendant has paid the sum of N800,000. That the total sum on Exhibits E1-E3 is was N1,541,400 and not N1218,400, That all the goods on Exhibits E1-E3 were all supplied and paid for. The CW1 takes a look at Exhibit at Exhibit E2 and E3 and states that the first item was marked with asterisk and cancelled from beginning to end. That himself and the defendant cancelled them meaning that the particular item was removed and did not affect the total of N1,5 something million

On Item No. 6. There was asterisks and also cancelled and N33,000 was also removed. That item 19,21,22 were cancelled and removed and their values were not added as part of the total on those invoices.

That it is not true that the defendant is only owing him N418,000. That what the defendant is owing him is N751,400

That it is not true that the matter is in Court because he refused to reconcile records with the defendant. That though the defendant never signed the loan agreement but the agreement was done with the knowledge of the defendant and by his consent.

On the 26th of January, 2024, the defence opened his case and the DW1 who is also the defendant on record testifies and adopts his written statement on oath dated and filed on the 23rd January, 2024. The DW1 testifies thus: That sometime in October, 2017, the Claimant came into his building site at No.5 Lokpobiri Street, Off Sani Abacha Road, G.R.A Phase 111, Port Harcourt, Rivers State and introduced himself as a dealer on electrical materials and requested that I should award him the contract of supplying some of the electrical parts required in the building project. That after much negotiations with the claimant, they both agreed that he would supply some of the materials on the condition that any material supplied by him, shall be verified by both parties and payment made after some time.

That in the course of the said transaction, the defendant supplied some of the electrical items but not all the goods as contained in the proforma invoice as claimed by him were good as some were rejected by him as a substandard product and were duly marked with asterisk

That contrary to the Claimant's claim, the total values of goods supplied to him by the Claimant and duly accepted by him is N1,218,400 and not N1, 554,00

That the records of goods supplied to him by the Claimant is contained in the proforma invoice Nos-0247, 0248,0162 dated 21/10/2017, 21/10/2017 and 15/12/2019. That not all the goods supplied in the proforma invoice was supplied to him by the Claimant.

That he has paid the sum of N800,000 out of the N1,218,400 being the total value of goods supplied to him by the Claimant leaving a balance of N418,400(Four Hundred And Eighteen Thousand Naira)only

That the Claimant fraudulently added the value of goods which he did not supply to him as part of the debt he is owing him

That he is not a party in the loan transaction as in Exhibit C. That he is not indebted to the Claimant to the tune of N751,400.00 but only to the sum of N418,400.

That he is not liable to the Claimant's claim for damages and /or cost.

During the cross-examination of DW1, he stated that the total sum supplied in N1, 342,400 out of which he has paid N800,000. That he has invoices to show this and the invoices are with his lawyer. The DW1 identifies Exhibit E and states that it is correct that the items that were cancelled were not supplied.

The DW2 looks at Exhibit at No 2 and states that he has not given the Claimant his balance because when he looked at the invoice, there were so many discrepancies. That he looked for the Claimant everywhere but he was nowhere to be found and he hasn't seen him since 2017 for reconciliation but that he had other dealings with him in 2019 but it was not physical. That he is ready to pay the balance of N280,000 but not today.

Finally, the DW1 stated that he has never rejected the CW1's supplies.

At the close of the evidence of the DW1, there was no re-examination and the defendant counsel closed the case of the defendants and the matter was adjourned for judgment.

A total of eight (8) exhibits were tendered in evidence in the course of the trial.

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 have also taken cognizance of the evidence before the court. I have read all the exhibits and I have couched a lone issue for determination and that is whether the Claimant has discharged the burden of proving his Claim before the Court.

The general principle of law is that he who asserts must prove, coined from the old maxim incumbit probation qui dicit non qui negat which means that the burden of proving as fact rest on the party who asserts the affirmative of the issue and not upon the party who denies it, for a negative is usually incapable of proof. See *Omisore v. Aregbesola* (2015) 15 NWLR (Pt. 1482) p. 217. See also, Section 131 and (2) Evidence act 2011, and *Agwarambo v. I Dumogu* (2008) 5 NWLR (Pt. 1081) p. 564 at 572.

Issues are joined on the fact that goods were supplied by the Claimant to the defendant as on Exhibits E.

Issues are also joined on the fact that in liquidating the total sum, the defendant paid the Claimant, the sum of N800,000

Issues are also joined on the fact that the goods that were cancelled on the face of the said exhibits were not supplied.

In the light of the above, in order to determine actual sum of debt owed by the defendant, this Court will focus on the total sum of the cancelled items on the Exhibits E-G to check if the cancelled items were correctly deducted from the total on each invoice E1-E3 or not.

Starting from Exhibit E1 before the Court, There is no cancelled item on Exhibit E1 and the total sum is **N87,000(Eighty Seven Thousand Naira)Only**

On Exhibit E2, there are two cancelled items (Nos 2 and 4) total of N93, 000(Ninety Three Thousand Naira) Only. A summation of the NON- CANCELLED items gives a total of **N317,000(Three Hundred and Seventeen Thousand Naira) Only**

On Exhibit E3, No.1,6,18,19, 20, 21 and 22 is cancelled. The total sum on the Exhibit G for the NON CANCELLED items is **N911, 900 (Nine Hundred And Eleven Thousand Naira) Only**

So total sum on Exhibits **E1,E2, and E3** is: **N87,000** plus **N317,000** plus **N911,900** which is the to the grand total of **N1,315,000**

Since both the defendant and the Claimant are in agreement that the defendant paid the sum of N800,000. The aforesaid paid sum of N800,000 will be deducted from the total of Exhibit E1,E2, and E3 as explained above.

Which is N1298,900 minus the mutually admitted paid sum of N800,000 (Eight Hundred Thousand Naira) which is to the sum of **N515,000**; Which is the outstanding yet to be paid by the defendant .

i. **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 attached documentary evidence in the form of 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.

- ii. **On The Claim For Eight Hundred Thousand Naira(N800,000) paid as interest on loan collected.**The Defendant have denied the knowledge of the existence of a loan agreement,It is trite, that the defendant cannot be bound by transactions that he was not privy to nor incur liabilities therefrom.The claim for interest on loan fails.
- iii. **On the prayer for general damages for Four Hundred And Fifty Thousand Naira (N450,000)only as emotional and psychological trauma caused by the defendant.**

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.

The award is quantified by what in the opinion of a reasonable person is considered adequate loss or inconvenience which flows naturally, as generally presumed by law, from the act or conduct of the Defendant. It does not depend upon calculation made and figure arrived at from specific items. See Odulaja v Haddad (1973) 11 SC 357; (1973) 11 S.C.

(Reprint) 216; Lar v Stirling Astaldi Limited (1977) 11-12 SC 53; (1977) 11-12 SC (Reprint) 106 and Osuji v Isiocha

(1989) 6 S.C. (Part II) 158; (1989) 3 NWLR (Part 111) 623

The CW1 testified in chief that That the defendant said he will not pay him because he said he has more connections than him and he has suffered emotional and financial hurt because of this.The defendant have admitted that he is owing the defendant the sum of 418,000 since 2017and not N751,000.That admission of tying the Claimant's money since 2017 without any just cause is an admission of liability in damages.The defendant had stated that he was looking for the Claimant so that they can reconcile the accounts and that is the reason for the delay. The Claimant have vehemently denied this and stated that he was never told to come for any reconciliation with the defendant.It is trite that he who asserts must prove. The defendant had asserted the reason for tying down the Claimant's money since 2017 is because of lack of reconciliation of the accounts , this the Claimant has denied and the Defendant failed to prove this assertion by any documentary evidence or otherwise.

It would have been a great show of good faith if the defendant had gone ahead to pay the Claimant, the outstanding which the defendant believed is the right outstanding instead of sitting on the Claimant's balance since the year 2017 waiting for reconciliation.It is obvious that defendant occasioned inconveniences, psychological and emotional hurt to the Claimant.

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.

IT IS THUS ADJUDGED that the Defendant is to pay the Claimant the sum of N515,000.00 as balance for electrical materials supplied by the Claimant to the defendant.

IT IS FURTHER ADJUDGED that the Defendant to pay to the Claimant, the sum of N250,000 as cost of litigation.

IT IS ALSO ADJUDGED that the defendant pay to the claimant ,the sum of N300,000 as general damages for the emotional and psychological trauma caused by the defendant

AND IT IS ORDERED that the defendant is to pay the Claimant, the aforesaid sum of N1,065,000.00 (One Million, Sixty Five Thousand Naira), N250,000(Two Hundred And Fifty Thousand) and N300,000(Three Hundred Thousand) representing the balance for electrical materials supplied , the cost of litigating this claim and general damages respectively which is to the total sum of N1,065,000.00 (One Million, Sixty Five Thousand Naira) with immediate effect.

AND IT IS FURTHER ORDERED that the defendant do pay to the Registrar of this court the total sum of N1,065,000.00 (One Million, Sixty Five Thousand Naira) above mentioned.

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

