

**IN THE MAGISTRATES' COURT OF RIVERS STATE**  
**IN THE PORTHARCURT MAGISTERIAL DISTRICT**  
**HOLDEN AT SMALL CLAIMS COURT BEFORE HIS WORSHIP. G.C.AMADI ESQ.**  
**SITTING AT SMALL CLAIMS COURT,1, PORT HARCURT ON MONDAY, THE 4<sup>th</sup>**  
**NOVEMBER, 2024.**

**SUIT NO. PMC/SCC/242/2024**

1. MR.UZOCHI EKENDA

AND

MR WACHUKWU OSILEM

} CLAIMANT

} DEFENDANT

**JUDGMENT**

This is the final judgment in this suit wherein the Small claim before the court, dated and filed on the 18<sup>th</sup> September, 2024 is for:

- A. An order directing the defendant to refund the Claimant, the sum of N3,000,000 which is the current price of land that he originally purchased for N1,700,000.
- B. An order directing the defendant to refund the Claimant, the sum of N1,000,000 for general damages
- C. An order directing the defendant to pay the Claimant, the sum of N800 as legal fees

In proof of their case, the Claimant called one witness and the defendant also called one witnesses and a total of five (5) exhibits were tendered in evidence.

On the 21<sup>st</sup> day of October, 2024, the defendant counsel applies for plea of not liable to be entered on behalf of the defendant and same was granted and the matter was set down for hearing.

On the 24<sup>th</sup> October, 2024, the CW1, the Claimant on record commenced his evidence in Chief and stated that I also knew the Defendant in this suit as the vendor purchase a parcel of land from the Defendant. That sometime in the month of March 2024 , he was approached by an agent that the defendant has a parcel of land situate at Uzo-Ama Farmland Omuikume Omagwa in Ikwerre Local Government Area of Rivers State Nigeria for sale.

That he indicated interest on the said parcel of land by payment of bush entry of N50,000 (Fifty Thousand Naira) only, surveyed the said land at the rate of N170,000 (One Hundred and seventy Thousand) only and finally paid 5% agency fee at the rate of N85,000.00 (Eight Five Thousand Naira) only. That they executed a deed of conveyance evidencing the transaction between himself and the defendant and he departed the defendant premises.



That at the month of April 2024, he immediately procured the services of an architect, paid N270,000.00 (Two Hundred and Seventy Thousand Naira) only for the building plan, cleared the parcel of land at the rate of N50,000 (Fifty Thousand Naira) only, mobilized worker to site at the rate of N45,000.00 (Forty Five Thousand Naira) only and purchased sand at the rate of N100,000.00 (One Hundred Thousand Naira) only

Testifying further, the CW1 stated that on getting to the land, he discovered that someone else has erected a structure on the said land up to DPC level and he immediately contacted the defendant who promised to get back to him, after several days without hearing from the defendant, he called back the defendant who promised that he will get back his land and that the matter has been reported to council of chiefs and is awaiting verdict.

That the defendant pleaded with him to exercise little patience and that everything is being done to ensure he get back his land which he obliged the defendant for several months. That after several months of waiting for his land, so he could commence his project and on discovering that Omagwa Council of chief verdict is not in favour of the defendant, he immediately approached the defendant to relocate him to another land

That the defendant is duty bind as provided on deed of conveyance to indemnify him all expenses incurred, if his title to the parcel of land is defective, that he personally engaged the services of another surveyor to produce another plan for the new land showed to me by the defendant and paid the sum of N170,000 (One Hundred and Seventy Thousand Naira) only as survey fee, that he also procured the services of a lawyer who follow him all throughout the discussion and survey of the second parcel of land showed to him by defendant for which he paid the sum of N100,000 (One Hundred Thousand Naira) only as legal fee.

That the defendant took him, his agent, his lawyer and the surveyor to the new land where the defendant showed him and he surveyed said land and new pillars planted on said land by the surveyor

That he engaged the services of some labourers to dig same parcel of land round and paid the sum of N50,000.00 (Fifty Thousand Naira) only, but to his greatest surprise, some group of men appeared on the land with a black Lexus jeep and chased everyone out of the said parcel of land, informing him and every other person with me that the land does not belong to the defendant and that the land has been sold to someone else since five (5) years ago.

That he immediately communicated to the defendant on the recent development and the defendant asked him to wait in his family house, He waited the defendant till 6pm in the evening but the defendant refused showing up until him and his wife left the premises after reporting the defendant to his wife and children.

That the defendant later called him in the night threatening to deal with him for reporting the defendant to the wife and children. That he expanded the sum of N100,000.00 (One Hundred Thousand Naira) only as miscellaneous expenses on the first and second failed land transaction by way of transportation. That he instructed his lawyers to write a demand letter to the defendant, demanding for the refund of the land sum and all expenses incurred on the failed first and second land transactions but the defendant refused acknowledging the receipt of the demand letter on several occasions the delivery company went to the defendant house market value of land within the area and all other expenses incurred as a result of failed first and second land transactions.

The CW1 identifies the demand letter, the survey plan, the payment receipt and deed of conveyance and in the absence of any objection, the documents were admitted in evidence and marked as Exhibits A,B,C &D respectively.



In conclusion, the Claimant stated that he wants the court to grant him, the reliefs in his complaint form.

During the cross-examination of the CW1 on the same date, he stated that he before he made payment, made a diligent search on the property. That he does not know whether the judgment as to the owner of the land before the Omagwa chiefs have been decided. That he does not know about the outcome of the judgment. That apart from the price of the land, he made expenses and he paid to the defendant. That the agency fee was made to the defendant's agent and that the defendant was not there when he made payment to his lawyer for cost of litigation. The architect money, the survey money, the agent money and the lawyer's money were not paid to the defendant.

That the current price of the land is N3million Naira. That he confirmed from professional surveyors.

After the evidence of CW1, the matter was adjourned for defence.

On the 28<sup>th</sup> October, 2024, the DW1, who is also the defendant on record commenced his evidence and stated that he is adopting his written statement on oath as his evidence before the Court and same is adopted in Evidence wherein he states that he knows the claimant in the suit as someone he sold a parcel of land out of the 10 plots of land he inherited from his family and it is situated at Uzo-Ama Farmland Omuikume Omagwa in Ikwerre Local Government Area of Rivers State Nigeria

That by a verdict given by the palace of OHNA WEKHE Of WONKWUKWU (NYENWE-ALI-OMUIKUME) on the 6<sup>th</sup> day March 2017, the said land he sold to the claimant was pronounced as his. That after said judgment, he has equally sold part of the said land to Mr. Paul, Mr Paul Progress, Mr. Paul Bright and Paul Isaiah in 2019 and they are enjoying quiet possession till date. The DW1 identifies the verdict of the OHNA WEKHE Of WONKWUKWU (NYENWE-ALI-OMUIKUME) and the deed of conveyance to the aforementioned four persons. The Claimant's counsel objects to the admissibility of the verdict on the ground that the land mentioned in the deed of conveyance is not same as the land, the subject matter of this suit.

In upholding the objection, the Court held that the land referred to in the verdict at Paragraph 1 of the heading: Family Response as Izo Ahiaoma Land and not Izor Ama as referred to on Exhibit D before the Court and at Paragraph 3 of the Claimant's witness on oath.

That he executed a deed of conveyance with the claimant after the payment of bush entry, and (#1,700,000.00) 1million Seven Hundred Thousand Naira as the land rate as in Exhibit D before the Court.

That he was informed by the claimant that there was a trespasser in the land and that he was surprised to be informed by the Omagwa Council of Chiefs that he was summoned by his family for selling the land

That immediately, he informed the claimant for the refund of his money, vehemently opposed the refund that he really liked the land that he will wait till judgment is given and that never showed the claimant any other land. That he never threatened the claimant or his wife. That he has been attending meetings of the Council of Chiefs and he should wait patiently for verdict to be given on the land

Testifying further, the DW1 stated that the claimant is fully aware on the 1<sup>st</sup> day of April 2024, that he was summoned on that land and he is aware judgment has not been given by Omagwa Council of Chiefs. That the claimant did not make any expenses on the land as he was informed earlier of the trespassers to the land.

That all he is asking for the claimant to exercise some patience till judgment is given or give him 4 months to repay him back the money. That all the claim made by the claimant outside the consideration paid for the land and bush entry are bogusly exaggerated and mostly calculate lies aimed at deceiving this honorable court and must therefore be dismissed

During the Cross-examination of the defendant on same date, he stated that he never asked the defendant to come any parcel of land outside the one he gave to him. That he never showed the defendant any 2<sup>nd</sup> parcel of land in the presence of his wife, the surveyor and the agent.

That apart from the purchase price and the bush entry, he does not know about any other expenses made by the Claimant. That it is not true that the property has appreciated since March 2024 because no estate valuer gave such report. That it is not true that since April 2024, till date, that the defendant met someone on the piece of land and the person have built up to PVC level because he is the one that informed the Claimant and reported the matter to the chiefs and that the Chiefs instructed that no one should enter the land until the final determination of the matter. That in reference to Paragraph 7 of his statement of defence, he still maintains that he was the one that noticed the structure and informed the Claimant.

At the close of the evidence of the DW1, the matter was adjourned for adjournment.

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 the defence and have also taken cognizance of the evidence of the claimant and the defendant and their witness before the court.

**ISSUE FOR DETERMINATION:**

**Whether The Claimant Has Proved His Case To entitle him To The Following orders:**

- A. An order directing the defendant to refund the Claimant, the sum of N3,000,000 which is the current price of land that he originally purchased for N1,700,000.
- B. An order directing the defendant to refund the Claimant, the sum of N1,000,000 for general damages
- C. An order directing the defendant to pay the Claimant, the sum of N800 as legal fees

It is important to note that the defendant have admitted owing the Claimant, the sum of N1700,000 . in the sense that he sold land to him and the land is currently encumbered and he is trying to reclaim possession by traditional means of settlement and that he has offered to refund the Claimant, the purchase of price of N1,700,000 but the defendant refused to accept the refund because the defendant said he will wait for the outcome of the traditional arbitration. The defendant have further testified that he is asking for the claimant to exercise some patience till judgment from the traditional judgment is given or give him 4 month to repay him back the money for the purchase price.

On the other hand, the Claimant testifies that he has expended money on survey plan and agency fees and lawyers' fees and that apart from the refund of the money, according to the indemnity clause of the agreement of the parties as in Exhibit D, that he is entitled to be indemnified by way of general damages.

On the claim of N3Million by the Claimant as the current price of the land ,The defendant have contested and faulted the paging of N3 million Naira as the current value of land. It is the stance of this Court is that there nothing before the Court to show that N3 million Naira is the current



value of the aforesaid land, In the absence of any evidence in proof of same, the court will simply order for the refund of the original purchase price to the sum of 1,700,000.00  
On the basis of the foregoing and on the balance of probability, before the court, the Court hereby holds that the Claimant have failed to prove that the current value of the land is now N3million Naira.

Furthermore, I have taken a close look at the deed of conveyance which is the agreement of parties as in Exhibit D before the Court, paragraph B on the 2<sup>nd</sup> page which states that the vendor shall indemnify the purchaser, in full of claims and damages for all expenses incurred in the present Claimant to be incurred in legal perfection in the event that the purchaser fails to enter and continue to possess the aforesaid piece of land and to assert his title thereto due to any defect in the vendors title or failure to observe any legal or customary obligation or any encumbrance howsoever arising.

During his cross-examination, the defendant have agreed that for 7 months, there is another structure erected on the price of land by someone with whom he is contesting the land at the Palace of the Omagwa Chiefs and that he has even offered to refund the Claimant, the purchase price.

It is obvious that the Claimant, the purchaser cannot to enter and continue to possess the aforesaid piece of land and to assert his title thereto because of the encumbrance of a 3<sup>rd</sup> party and so in enforcing the letters and spirit of Paragraph B of the Exhibit D at the 2<sup>nd</sup> page, the Court hereby find that the Claimant is entitled to be indemnified as specified in the above indemnity provisions as in paragraph B of the Exhibit D at the 2<sup>nd</sup> page of Exhibit D, the deed executed by the parties.

#### **On The Claim For General Damages**

It is certainly undisputed from evidence before the Court that the Claimant's claim for general damages arose directly from the conduct of the defendant who sold ta land to the Claimant and made him incur expenses on the land and cannot peaceably enjoy The Claimant testifying as CW1 had stated in his evidence on oath all the inconveniences he suffered and which was never denied or controverted by the defendant d great hardship from the Defendant who has refused to pay his money.

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. 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. Consequently, the Court orders the defendant to pay to the Claimant, the sum of N500,000 (Five Hundred Thousand Naira) as general damages.

#### **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 testified and this was neither denied or controverted in evidence that That his lawyer for his service charged him the sum of N800, 000.00 (Eight hundred thousand naira) only and issued a receipt for same as in 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.

**IT IS THUS ADJUDGED** that the defendant to pay to the Claimant, the sum of 1,700,000(One Million, Seven Hundred Thousand Naira) only as the refund for the original purchase price of the land.

**AND, IT IS ALSO ADJUDGED** that the defendant to pay the Claimant, the sum of N500,000 (Five Hundred Thousand Naira) as the general damages

**AND IT IS ALSO ADJUDGED** that the defendant to pay to the Claimant, the sum of N800,000(Eight Hundred Thousand Naira) as cost of litigation.

**AND IT IS ORDERED** that the defendant to pay the Claimant, the cumulative sum of N3,000,000

- a) The sum of N1,700,000 which represents the refund of the original purchase price.
- b) The sum of N500,000 (Five Hundred Thousand Naira) as general damages
- c) The sum of N800,000 (Eight Hundred Thousand Naira) for cost of litigation

**AND IT IS FURTHER ORDERED** that the defendant do pay to the Claimant, the total sum of N3,000,000 (Three Million Naira) above mentioned with immediate effect.

**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**

