

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.,¹ TODAY WEDNESDAY, THE
1ST DAY OF NOVEMBER, 2023.

SUIT NO.: PMC/SCC/107/2023.

BETWEEN:

1. CHRISTOPHER OKPOKO
2. MAGARET'S BAKERY

}

CLAIMANTS

AND

1. MR. JOHN DIMNWABI
2. JOEXPORA NIG. LTD
3. EVERYDAY SUPERMARKET

}

DEFENDANTS

Case called.

Parties absent

JUDGMENT

The Claimants in this case are the director and a bakery company which is into baking of bread and other sundry snacks for commercial purposes with office at No. 16 Trans-Amadi Road, Port Harcourt, while the 1st Defendant is the Director of the 2nd Defendant company which operates the Everyday Supermarket franchise located at NTA Road, Onne Road GRA and Peter Odili Road, all in Port Harcourt, Rivers State. The Claimants commenced this case against the Defendants on the 20th July, 2023 after serving demand letter and claims as per their claim attached to the summons as follows:

1. Debt / Amount Claimed	- ₦1,509,260.00
2. Fees being 10% interest for one year	- ₦1,800,000.00
3. Cost of litigation	- ₦500,000.00
TOTAL	- <u>₦4,709,260.00</u>



Following the filing of the claim, an ordinary summons was issued for service on the Defendants alongside the claim. The 1st and 2nd Defendants were served by substituted means on the 28th day of August, 2023 while the 3rd Defendant was served personally on the 21st day of July, 2023. Plea of not liable was entered for the Defendants on the 30th day of August, 2023 and the case adjourned for trial.

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

The 1st Claimant Mr. Christopher Onome Okpoko testified for the Claimants as CW1 and tendered a total of twelve (12) documents which were received in evidence as Exhibit and marked Exhibits A-A1, B-B1, C, D-D1, E-E1, F-F18, G, and H respectively. On their part, the 1st and 2nd Defendants testified through one Mr. Benneth Onyema Ebirim the accountant of the 2nd Defendant company who gave evidence as DW1. The 1st and 2nd Defendants tendered seven (7) documents in evidence which were received in evidence and marked Exhibits J, J1-J2, K, L, L1, L2-L3 and M respectively. The 3rd Defendant was served with the originating processes but was not represented in Court by a lawyer during the trial. The CW1 and DW1 were fully cross examined by counsel on both sides. After the close of trial on the 18th day of October, 2023, the learned counsel for the parties were ordered to file and exchange final written addresses in accordance with the Small Claims Court Practice Direction, 2023. The 1st and 2nd Defendants' final written address is dated and filed on the 25th day of October, 2023, while the Claimants' final written address is dated the 24th day of October, 2023 and filed on the 25th day of October, 2023. The learned counsel for the Claimants F. O. Osagie, Esq. adopted the Claimants' final written address on the 25th day of October, 2023, while the 1st and 2nd Defendants' final written address dated and filed on the 25th day of October 2023 was deemed as adopted by the Court in the absence of their counsel.

The learned counsel for the 1st and 2nd Defendants raised a lone issue for determination in their final written address dated and filed on the 25th day of October, 2023 thus:

Whether the Claimants have by credible evidence proved specifically that the Defendants are indebted to them to the sum of ₦1,509,260.00 (One Million Five Hundred and Nine Thousand, Two Hundred and Sixty Naira) only?

On his part, the learned counsel for the Claimants also distilled a lone issue for determination in the Claimants' final written address thus:

Whether the Claimants have proved their case against the Defendants to warrant the grant of the reliefs sought?

The issues for determination raised by learned counsel on both sides in their respective final written addresses are similar though couched differently. However,



the lone issue for determination raised by the Claimants' counsel appears more precise and encapsulating. I will therefore simply adopt the lone issue in the Claimants' final written address thus:

Whether the Claimants have proved their case against the Defendants to warrant the grant of the reliefs sought?

The law is that he who asserts must prove his assertion to be entitled to his claim. See section 131 (1) of the Evidence Act, 2011. See the case of *F.B.N Plc v Yegwa [2023] 4 NWLR () 323, 338 para. E*. The burden of proof is first on the party who seeks favourable judgment from the Court before the burden now shifts to the party who asserts otherwise. See section 133 (1) of the Evidence Act, 2011. See the case of *Akanbi & Anor. v Kasandubu [1997] LPELR-5901 (CA)*. The Claimants through the CW1 gave evidence to the effect that the 2nd Defendant company is the operator of the 3rd Defendant (Everyday Supermarket) at the GRA, NTA Road and Peter Odili Road branches where the 2nd Claimant supplied bread between 2018 and 2021 on monthly basis. The CW1 testified that the Defendants are indebted to the 2nd Claimant to the tune of about ₦1,509,340.00 which the Defendants have failed to pay despite repeated demands. The CW1 testified that their supplies to all the three (3) branches of the Defendants had waybills and delivery notes signed and confirmed by the parties and that it was the waybills and delivery notes they used to generate the bills at the end of each month for the Defendants. The 1st and 2nd Defendants gave evidence through the accountant Mr. Benneth Onyema Ebirim (DW1) who acknowledged that the 2nd Claimant was their vendor who supplied bread to one of their outlets. The DW1 testified that they are not owing the 2nd Claimant the sum of ₦1,500,000.00 but indebted to the 2nd Claimant to the tune of ₦871,496.00 only. The DW1 testified that the sum of ₦871,496.00 was arrived at after a reconciliation of the account with one Mr. Kelechi Onyemeke the 2nd Claimant's accountant.

Whilst the learned Claimant counsel maintained that the Claimants have proved their claims and entitled to the reliefs sought, the learned counsel for the 1st and 2nd Defendants contended that the 1st and 2nd Defendants are only liable to pay the sum of ₦871,496.00 admitted by them, because the Claimants failed to



specifically prove the whole claim and also dumped documents on the Court without prove.

Evidence before the Court contrary to the contention of the learned 1st and 2nd Defendants counsel, is that the Claimants tendered Exhibits A, A1, B, and B1 which contains details of the various bread supplies with cost price to the 3rd Defendant supermarkets operated by the 1st and 2nd Defendants at NTA Road, Odili Road and GRA in Port Harcourt between May, 2021 to January, 2022 which amounted to ₦1,509,260.00. The documents are signed and duly stamped and were forwarded to the Defendants. The Defendants unknowingly admitted that the Claimants sent them part of the bill now claimed by tendering Exhibit M which is a letter from the 2nd Claimant showing that the outstanding debt as at 31st December, 2021 was ₦1,502,940.00. The 1st and 2nd defence counsel cannot pretend as he appears to have done, that the 3rd Defendant being a business franchise was operated by the 1st and 2nd Defendants as admitted by the DW1. I hold that the Claimants have substantially proved their case and are therefore entitled to reliefs 1 and 3 only. The second relief is refused for want of evidence. The lone issue is resolved in favour of the Claimants. Judgment is hereby entered for the Claimants as follows:

1. The Defendants are ordered to pay the sum of ₦1,509,260.00 (One Million, Five Hundred and Nine Thousand, Two Hundred and Sixty Naira) only as outstanding debt to the Claimants forthwith.
2. The Defendants are also ordered to pay the sum of ₦300,000.00 (Three Hundred Thousand Naira) only as cost of litigation to the Claimants forthwith.



C. G. Ali, Esq.
Chief Magistrate Grade 1
01/11/2023

LEGAL REPRESENTATIONS:

1. F. O. Osagie, Esq. for the Claimants.
2. O. E. Okpala, Esq. for 1st and 2nd Defendants.
3. 3rd Defendant not represented.

