

IN THE MAGISTRATES' COURT OF RIVERS STATE
IN THE PORTHARCOURT MAGISTERIAL DISTRICT
HOLDEN AT SMALL CLAIMS COURT BEFORE HIS WORSHIP. G.C.AMADI ESQ.
SITTING AT SMALL CLAIMS COURT 1, PORT HARCOURT ON WEDNESDAY, THE 30TH
OCTOBER, 2024.

SUIT NO. PMC/SCC/190/2024

AGBOOLA AKINSOLA

}

CLAIMANT

AND

SOMADINA OKEKE

}

DEFENDANT

JUDGMENT

This is the final judgment in this suit wherein the Small Claim before the court, dated and filed on the 16th July, 2024 is for:

- A. An order directing the defendants to refund the Claimant, the sum of N150,000 representing for the purchase of spare parts and repair of his car
- B. General Damages to the sum of N3,000,000.00
- C. Cost of litigation to the sum of N150,000

In proof of their case, the claimant called two witnesses and the defendant called no witness and a total of five (5) exhibits were tendered in evidence.

On the 18th September, 2024. the defendant counsel applies for plea of not liable to be entered on behalf of the defendant and the matter was set down for hearing.

On the 22nd October, 2024, the CW1, the Claimant on record commenced his evidence in Chief and stated that he adopts his written statement on oath dated and filed on the 16th of October, 2024, wherein he states that he is a business man and resides at No. 1B Amado Close Oriorwe Elimgbu Port Harcourt, within the jurisdiction of this Honorable Court. That he is into transport business, specifically bolt driving which is his major source of income.

That the Defendant is a trader who sells motor parts at Aba, Abia State whose address is at FH 38 First Gate Aladji Mkt Aba, Abia State. Though the Defendant resides in Aba, the cause of action arose in Port Harcourt within the jurisdiction of this court. That his car (Dodge Caliber Reg. No: RUM 512 AH) developed a gear and issue and after explaining to his mechanic Mr. Ikenna, he referred him to Mr. Somadina Okeke the Defendant.

That on the 9th day of December 2023, he made deposit to the Defendant through the CW2 in the sum of N150,000 (One Hundred and Fifty Thousand Naira) as part payment towards the purchase of gear box for his Dodge Caliber car, which purchase price was agreed by the parties to be N280,000 (Two Hundred and Eighty Thousand Naira).

That the balance of N130,000 (One Hundred And Thirty Thousand Naira) to be paid to the Defendant after the gear Box have been successfully fixed.

That through Mr Odiaua Kenneth Alex, the CW2, agreed with the Defendant that he (Defendant) will send his own Mechanic from Aba to Port Harcourt for the fixing of the gear box so as to avoid any mistakes. All expenses of the said Mechanic was covered by the Claimant through the CW2 and he sent a total of N40,000 (Forty Thousand Naira) to the mechanic for workmanship through the CW2.

That an advance of N20,000 (Twenty thousand Naira) was paid via Opay bank transfer on the 29/12/2023 while the balance of N20,000 was paid in cash. That also, during the repair, the mechanic asked for the purchase of synthetic oil for the sun of 40,000 (forty Thousand Naira), which I did by paying and an initial N20,000.00 (twenty Thousand Naira) via Opay bank transfer on 12/12/2023 and the balance of N20,000.000 (Twenty Thousand Naira) was paid in cash.

Testifying further, the CW1 stated that the mechanic sent by the Defendant came from Aba with the gear to fixed the said car (Dodge Caliber Reg. No: RUM 512 AH).

That After mounting the gear, the gear did not work at all and the mechanic confirmed that the gear is a bad gear. That when he informed the Defendant, he refused to do anything, rather he kept making empty promises for about four months, he kept taking me back and forth, not answering his cell phone keeping to his promise. This took four months. He even went to Aba personally to meet with him, in other to settle but he did not pay attention to me.

So, he engaged the services of my lawyer O. F Ogboanugo of A. N Odebe & Company, who wrote a letter of demand to the Defendant to enable him recover money owed, but it was all to no avail. That as a result of the letter I served on the Defendant, he then requested that he should bring the vehicle from Port Harcourt to Aba claiming that he will hand the car to a more experienced mechanic in Aba, Abia State. That he spent N40,000 (Forty Thousand Naira) to tow the car from Port Harcourt to Aba, where the Defendant handed the car to the mechanic, he described as more experienced and that he also paid for fan belt N10,000 (Ten Thousand Naira). The invoice evidencing the total sum of N50,000 (Fifty Thousand Naira) for towing of the car and purchase of Fan belt. That the said more experienced mechanic also tried to mount the gear supplied by the Defendant and discovered that the gear is a bad gear. The Defendant then promised to look for another gear for him.

That after he waited for some time and the Defendant referred him to a gear seller, who agreed to fix the car. Consequently, he called the Defendant to transfer his money, the part payment he made back to him for onward transfer to the new seller, but the Defendant refused to do that till date.

That he also spent N35,000 (Thirty-Five Thousand Naira) on transport expenses to and from Aba to engage the Defendant on the need to repair his car when the Defendant was evading all efforts made to reach him on phone. That because of the failure of the Defendant to perform his obligation in the contract they had, I have incurred additional expenses of N158, 0000 (One Hundred and Fifty-Eight Thousand Naira)

That as a result of the delay caused by the Defendant and the Defendants failure to repair his vehicle. That he has lost revenue for over (10) ten months which is from the period of December 2023 till date. That he makes about N70,000 (Seventy Thousand Naira) on weekly basis from his bolt ride, especially on weekends. That he also made a lot of expenses as a result of this same matter because the Defendant breached the contract between them by refusal to comply

with Mr Kenneth Odiaua, Mr. Ikenna and the mechanics which the Defendant himself provided for the repair of the gear. The Defendant's failure to repair his car (Dodge Caliber Reg. No: RUM 512 AH) has led him to become a debtor and I have incurred debts as a result of Defendants incompetence.

Testifying further, the CW1 stated that he has suffered in several ways as a result of Defendants incompetence in doing business and caused harm to him financially
I have been unable to fulfill my duty as a husband, father and child to my parents. This have also cause me mental, physical and emotional damages as I have been unable to fulfill my financial obligations. That it will be in the interest of justice to grant the reliefs sought against the Defendant

The CW1 identifies the credit alert for N150,000, the receipt for 208,000 from Somchy Business ventures, Opay Transaction receipt dated 29th December, 2024, Another OPAY transaction receipt for N20,000 Certificate of authentication and invoice from quick logistics were all admitted in evidence as Exhibit A,B,C,D, and E respectively.

During the cross-examination of the CW1 on the same date, he testified that it is not true that the defendant sells fairly used s[are [arts because he knows that the defendant sells direct Belgium parts

That yes, he paid N40,000 for synthetic oil. That the money was paid on the instruction of the seller of the oil.

That the defendant agreed to give him a mechanic to install the device and upon payment for the item, he volunteered to send a mechanic. That he would not know if mechanic work is part of the defendant's business, That the defendant agreed and volunteered to fix the car. That the gear box was under 8 days warranty subject to the condition of when the item is paid for. That it took the defendant beyond the 8 days to deliver the item. That the warranty period began at the date of delivery. That there was no understanding between him and the defendant as to when the guarantee period will count. That the N150,000 was paid at the time of the purchase as a down payment. That the balance was to paid if the item worked and the item never worked and this was communicated to the defendant. That the said gearbox is now in the possession of the defendant upon his request. That there is nothing to show that the gear box is in the possession of the defendant but that the 2nd mechanic which the defendant instructed to give the items is in the possession of the 2nd mechanic as instructed by the defendant. That he is not in the possession of the gear box. That the 2nd mechanic confirmed that the gearbox is bad upon receipt. That the gear box that was sold to him is a new one because the defendant gave warranty, it was direct Belgium and that is why the defendant got two mechanics involved.

That no other mechanic worked on the gear box while in his custody.

That his claims are not malicious because upon payment for the gear box, the defendant sent his personal mechanic and also requested that the said gear box and vehicle be brought to Aba to ensure that the said gearbox worked.

After the evidence of CW1, the matter was adjourned to the 25th October,2024 for the evidence of CW2 .He adopts his written deposition on oath wherein he states that he acted .on behalf of Mr Agboola Akinsola (Claimant) and entered a verbal contract on behalf of the Claimant with the said Defendant concerning the car gear (Dodge Caliber Reg. No. RUM 512 AH) being the issue in controversy. That he agreed with the Defendant that part payment would be made in the sum of Two Hundred and Eighty Thousand Naira Only; but the first payment would be 55% which came to the sum of One Hundred and Fifty Thousand Naira (N150,000.00).The agreement was

that once the gear has been fixed and working that the balance of One Hundred and Thirty Thousand Naira (130,000) would be paid as balance.

That he paid the sum of N20,000 (Twenty thousand Naira) to bring the gear from Aba, Abia State to Port Harcourt.

That he further agreed with the Defendant to bring his own Mechanic for the fixing of the gear so as to avoid any complications and to get firsthand information of the condition of the vehicle from his Mechanic (Defendant) and that he (Claimant) would be responsible for the payment of workmanship of the mechanic. That the Defendant's Mechanic confirmed to him that the gear box did not work because the gear is bad and that a new one should be gotten for that purpose.

That an advance payment of N20,000.00 (twenty Thousand Naira) was paid via Opay bank transfer on the 29/12/2023 while the balance of N20,000.00 (Twenty Thousand Naira) was paid in cash. The receipt of the said payment is hereby pleaded and will be rely upon during trial.

Also, during the repair, the mechanic asked that I purchase synthetic oil for the sum of 40,000 (Forty Thousand Naira), which he did by paying and an initial N20,000.00 (twenty Thousand Naira) via Opay bank transfer on 12/12/2023 and the balance of N20,000.000 (Twenty Thousand Naira) was paid in cash.

That I informed the Defendant on several occasion about the bad gear and the need to replace it to fix in the Claimant's Vehicle but the Defendant documents kept making the empty conversations promises and failed fulfilling the promises and that he said audio recording of their conversations

Testifying further, the CW2 stated when he could no longer handle the matter because it became unbearable, he gave the Defendant's contact to the Claimant who continued to deal with him while keeping in contact with the him and Mr. Ikenna, the other Mechanic in Port Harcourt who introduced the Claimant to the Defendant.

That he is aware that a letter of demand was written to the Defendant after four (4) Months with the option to repair or refund the Claimants money. After the Letter of Demand was sent to the Defendant, the Defendant to bring the car to Aba, agreeing it would be better for the car to be with him at Aba, so he can supervise the repair and that he would pay part of the towing fee. However, the defendant did not fulfill this part of commitment and nothing was done to the effect of fixing the Vehicle, the situation remained the same.

That himself and the Claimant called the Defendant and gave him the option to calculate and refund the Claimants money plus all the expenses made during the period of repair, to this end the Defendant refused. That the Defendant continuously breached the contract between the parties. That the fraudulent style of the Defendant way of doing business is what has led to bringing an .action against him in this Honourable Court.

At the close of the examination in Chief of the CW2, the defendant was unable to cross-examine the CW2 and the matter was adjourned to the 30th of October, 2024. On the said adjourned date, the defendant was absent and no explanation for his absence and having been served all the processes in this suit ,in tandem with the provisions of the Article 9 of the Small Claims Practice Direction, 2024, the defendant was foreclosed from cross-examining the CW2 and from defence and the matter was adjourned for judgment on the 7th of November, 2024.

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 of the claimant and his 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 defendants to refund the Claimant, the sum of N150,000 representing for the purchase of spare parts and repair of his car

B. General Damages to the sum of N3,000,000.00

C. Cost of litigation to the sum of N150,000

The CW1 and CW2 have led evidence to show that the Claimant is entitled to his claim before the Court and tendered Exhibits A-E before, Please note that none of the exhibits was controverted in evidence

It is also important to note that the defendant failed to cross-examine the CW2 and also failed to enter defence. The implication is that the defendant by their nonappearance have admitted the assertions of the Claimants witnesses

The law is that facts admitted need not be proved by evidence. Please refer to the case of Ayoke V. Bello (1992)10 NWLR (Pt 218) pg 380 Ratio 2; O.A.A Cooperative Society Vs. NACP Ltd (1999) 2NWLR (Pt 590) Pg 234, Ratio 4 to the effect that what is not denied is deemed admitted and what is admitted need not be proved.

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 before the Court as against the defendant.

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 defendants who supplied a nonfunctional car spare part to the Claimant and made him incur expenses for repairs through his mechanics that were unable to fix the car because of the 'dead on arrival gear box" supplied by the defendant.

The CW1 testified on oath that because of the failure of the Defendant to perform his obligation in the contract they had, he incurred additional expenses of N158, 0000 (One Hundred and Fifty Eight Thousand Naira) and as a result of the delay caused by the Defendant and the Defendants failure to repair his vehicle; that he has lost revenue for over (10) ten months which is from the period of December 2023 till date.

That he makes about N70,000 (Seventy Thousand Naira) on weekly basis from his bolt ride, especially on weekends which he can no longer make because his car is no longer working. That he also made a lot of expenses as a result of this same matter because the Defendant breached the contract between them by refusal to comply with Mr Kenneth Odiaua, Mr. Ikenna and the mechanics which the Defendant himself provided for the repair of the gear. The Defendant's failure to repair his car (Dodge Caliber Reg. No: RUM 512 AH) has led him to become a debtor and he has incurred debts as a result of Defendant's incompetence. The CW1 stated that he has suffered in several ways as a result of Defendants incompetence in doing business and caused harm to him financially

That he has been unable to fulfill his duty as a husband, father and child to his parents. This have also cause him mental, physical and emotional damages as he has been unable to fulfill his financial obligations. That it will be in the interest of justice to grant the reliefs sought against 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, to assessment of damages is based purely on damages flowing naturally from a breach. *Stepin 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 to undisputed and clear evidence before the court, the court will hold that the claimant has discharged to burden of proving that he is entitled to his claim for general damages before the Court. Consequently, to Court orders the defendants to pay to the Claimant, the sum of N2,000,000 (Two Million 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 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

To Claimant in this case have testified that he agreed with his lawyers the sum of N150,00 but failed to show proof of the payment of N150,000, It is the stance of this court that the claim for cost of litigation being in a class of special damages have not been proven by this Court.

IT IS THUS ADJUDGED that the defendant to refund the Claimant, N150,000 representing the purchase of spare parts and repairs

IT IS FURTHER ADJUDGED that the defendant to refund the Claimant, the sum of Two Million Naira (N2,000,000) as general damages for all the inconveniences and loss of earnings and the attendant emotional and social hurt that accompanied same.

AND IT IS ORDERED that the defendant to pay the Claimant, the aforesaid sum of N2,150,000,00(Two Million, One Hundred And Fifty Thousand Naira) representing refund of the money spent on the purchase of the gear box and general damages

AND IT IS FURTHER ORDERED that the defendant do pay to the Claimant the total sum of N2,150,000,00 (Two Million, One Hundred And Fifty Thousand 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.



G. CHINYERE AMADI, ESQ.
CHIEF MAGISTRATE G.D.I

