

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
19TH DAY OF JULY, 2023.

SUIT NO. :PMC/SCC/56/2023.

BETWEEN:

S. EJIROGHENE EPINI (ESQ.)

CLAIMANT

AND

1. MR. COLLINS DIKE

2. MAGISTRATE S. ANDREW JAJA (RTD)

}

DEFENDANTS

Case called.

Parties present except the 2nd Defendant.

JUDGMENT

The Claimant commenced this case against the Defendants on the 24th May 2023 for the recovery of the sum of ₦3,000,000.00 paid to him by a Defendant in another case which has been withheld by the Defendants. Wherefore the Claimant claims against the Defendants as per his claim attached to the summons as follows:-

1. Amount paid by a defendant to the Defendants -	₦3,000,000.00
2. Cost of litigation	- ₦450,000.00
Total	= ₦3,450,000.00

The 1st Defendant was served with the claim and summons personally on the 26th May 2023 while the 2nd Defendant was served by substituted means on the 5th June 2023. The 1st Defendant filed FORM RSSC 5 on the 1st June 2023 and denied being indebted to the Claimant nor having any personal dealing with him. The 2nd Defendant on his part did not file any defence or admission form.

Plea of not liable was entered for the Defendants and the case proceeded to pre-trial and trial subsequently. The Claimant testified as CW1 and sole witness on the 21st June 2023 stating that in November 2019 one Arnold Bassey Okon issued him a dud cheque of ₦3,000,000.00. According to the CW1, he reported the case to the Police and the said Arnold Bassey Okon was arrested whereupon the suspect in course of settlement at the Police Station deposited the sum of ₦1.8million only. The case was

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

later charged to Court before the 2nd Defendant then sitting at Magistrate Court 7, Port Harcourt. The 2nd Defendant according to the CW1 insisted that the Police submit the ₦1.8million to court upon charging the suspect (Arnold Bassey Okon); which the Police complied with and handed over the ₦1.8million to the Court through the 1st Defendant who served as the Court Registrar at the time. The CW1 testified that while the case was pending before the 2nd Defendant, the said Arnold Bassey Okon paid the balance of ₦1.2million to the Court making up a total of ₦3,000,000.00 now claimed. The CW1 testified that he approached the Defendants severally to release the money to him but they kept dribbling him until the 2nd Defendant was transferred to Bori and later retired from service. CW1 testified that every effort made to recover the money including petitions to the Chief Judge and Complaint at the Rivers State Multidoor Courthouse proved futile as the 2nd Defendant failed to come. The CW1 therefore prayed the Court to order the Defendants to pay him. Under cross examination, the CW1 admitted that the ₦3,000,000.00 is an exhibit in court.

On his part, the 1st Defendant testified as DW1 on the 5th July 2023 that he knew the Claimant as counsel holding watching brief in Charge No. PMC/1221c/2019, Commissioner of Police vs Arnold Okon Bassey. DW1 testified that the then Magistrate declined jurisdiction in the case and sent the case file to the DPP for legal advise which eventually resulted to an information ee filed at the High Court. The DW1 testified that before the legal advise came out, the Police brought the sum of ₦1,250,000.00 to the Court while the defence counsel brought the sum of ₦1,750,000.00 making up a total of ₦3,000,000.00. The DW1 testified that on the 23/6/2021, the counsel who brought the money to the Court one Morrison Opue Esq. wrote a letter to the Chief Registrar demanding for the money and the letter was treated administratively. The DW1 testified that this is all he knows about the ₦3,000,000.00. The DW1 was cross examined. The 2nd Defendant did not give evidence.

At the close of trial, counsel for the parties filed and exchanged final written addresses. The 1st Defendant's final written address is dated the 12th July 2023 but filed on the 13th July 2023, while the 2nd Defendant's final written address is dated the 6th July 2023 but filed on the 7th July 2023. The Claimant's final written address is dated the 11th July 2023 but filed on the 13th July 2023. Counsel for the parties adopted their respective written addresses on the 13th July 2023 and the case adjourned for Judgment.

After a careful review of this case, the evidence of the witnesses, exhibits and the final written addresses of counsel for the parties; the sole issue for determination is thus:

Whether the Claimant is entitled to the reliefs sought?

By the clear provision of Article 2 (1) (d) of the Rivers State Small Claims Practice Direction 2023, the Court entertains claims for simple liquidated money demand not exceeding ₦5,000,000.00 including costs. A liquidated money demand is a debt or other specific sum of money usually due and payable and its amount must be already ascertained or capable of being ascertained as a mere matter of arithmetic without any

other or further investigation. See the case of *Maja v Samouris* [2002] LPELR-1822(SC).

Evidence before the Court shows that the ₦3,000,000.00 sought to be recovered by the Claimant is an Exhibit in the case pending before the High Court. An Exhibit before the Court does not belong to any of the parties in the case unless and until the Court orders the release of the exhibit to a party. The Claimant have not shown any evidence that there was an order of the Magistrate Court or the High Court directing the release of the Exhibit Money to him at any time during the pendency of the case at the Magistrate Court or now at the High Court. Rather than come to the Small Claims Court, I think the best option for the Claimant who claims to be the Complainant in the dud cheque matter is to apply to the High Court where the Criminal Information is pending for the discontinuance of the case and release of the exhibit money to him. I read in paragraph 6 of Exhibit H dated 23rd June 2021 which is the letter to the Chief Registrar by one John Walter, Esq. regarding the said ₦3,000,000.00, that the 2nd Defendant upon been informed that the case was pending at the High Court ordered for the transfer of the exhibits in the case including the ₦3,000,000.00 to the High Court. That been the case, I do not think that the money and subject matter of this suit can properly be described as liquidated money. The money is suppose to be an exhibit in the High court case since no order was made for its release to either the nominal complainant (Claimant herein) or the Defendant (i.e Defendant at the High Court) who deposited the money in Court. The sole issue is resolved against the Claimant.

In the final analysis, I hold that this suit lacks merit and is hereby dismissed.



C. G. All Esq.
Chief Magistrate Grade 1
19/07/2023

LEGAL REPRESENTATION

1. S. Ejiroghene Epini Esq. appeared in person.
2. Others not represented.

