

IN THE SMALL CLAIMS COURT OF RIVERS STATE OF NIGERIA
IN THE PORT HARCOURT MAGISTERIAL DISTRICT
HOLDEN AT PORT HARCOURT

ON MONDAY THE 19TH DAY OF FEBRUARY, 2024
BEFORE HIS WORSHIP WOBIA CRISTABEL AKANI, ESQ.
SENIOR MAGISTRATE GD.1

SUIT NO. PMC/SCC/272/2023

BETWEEN

MR. DANIEL OTU OGBONNAYA

V.

MR. AFEEZ AYOMIDE OMONIYI

Parties absent.

Charles C. Nwogu for the Defendant.

No appearance for the Claimant.

Matter is for Judgment

JUDGMENT

The Claimant herein commenced this suit against the Defendant vide Form RSSC2 on 19th December, 2023 after serving the Defendant with the mandatory Letter of Demand as required under Article 2(e) of the Rivers State Small Claims Court (Practice Direction) 2023. By the summary of claim contained in the Summons - Form RSSC3, the Claimant claims against the Defendant the sum of Two Million Five Hundred Thousand Naira (N2,500,000.00) only broken down as follows:-

Debt claimed	--	N2,000,000.00
Cost of litigation	--	N500,000.00

The Defendant was served with the Claim and Summons personally on 28th December 2023.

On 3rd January 2024, the Defendant filed Form RSSC5 which is the Form of Admission, Defence and Counter Claim where the Defendant stated that he has a defence.

A plea of not liable was entered for the Defendant on 10th January 2024. Hearing commenced on the 15th day of January 2024 and the Claimant who

testified for himself as CW1 tendered the following documents in evidence as Exhibits-

1. Certified True Copy of Motion of Notice in PHC/2499/FHR/2022-Exhibit C1.
2. First Bank Statement of Account of the Claimant for 1st January 2022 to 31st March 2022 - Exhibit C2.
3. Letter of Demand - Exhibit C3

The Defendant also testified for himself as DW1 and tendered two documents which were admitted as Exhibits C4 and C5 erroneously. These exhibits are now remarked as follows:-

1. UBA Statement of Account of the Defendant for 1st January 2020 to 31st July 2021 - Exhibit D1.
2. Access Bank Statement of Account of the Defendant for 19th October 2019 to 11th November 2022- Exhibit D2.

The Claimant says he advanced the sum of N2,000,000.00 to the Defendant who has been his business partner for the purchase of a 1999/2000 Toyota Sienna via transfers made on the 25th day of January 2022 and 2nd February 2022 which the defendant failed to deliver to the Claimant until June 2022 when the claimant reported the matter to the police who from their investigations confirmed that the Defendant received the said N2,000,000.00 for the purchase of a Sienna vehicle. He says that all efforts to recover the N2 Million from the Defendant have failed hence the filing of this action. He prayed the court to order the Defendant to refund the N2 Million and pay him N500,000 as cost of litigation.

The Defendant on his part counter claimed against the Claimant. He says that he has been doing business with the Claimant since 2020 and that prior to the Claimant requesting for a 1999/200 Model Toyota Sienna, the Defendant had supplied the Claimant with three vehicles - two Lexus 350 2007 Model vehicle at N3.9 Million each and a Toyota Corolla Sport 2004 model which was eventually changed to a 2010 model at N4,350,000.00

The Defendant says the Claimant paid for these vehicles in installments and that when the Claimant requested for the Sienna, he asked the Claimant for

his outstanding balance but the Claimant pleaded with him to deliver the Sienna as it would help him secure more vehicle supply jobs from where he would be able to pay all outstanding balances.

The Defendant says that when the Claimant began to use the police to harass him for the N2Million, he got his Statements of Account from his banks and realized that the total sum received from the Claimant is N10,936,000.00 whereas the total amount for the vehicles already supplied is N12,150,000.00 leaving an outstanding balance of N1,214,000.00 unpaid by the Claimant to the Defendant. The Defendant also says he had tried to reconcile accounts with the Claimant but the Claimant ignored him and so the Defendant filed an action in the High Court.

It is settled law that he who asserts must prove. See Section 131 of the Evidence Act 2011.

The Claimant herein has asserted that he gave the Defendant the sum of N2Million to purchase a 1999/2000 Model Sienna. The Defendant has not disputed this fact. The law is clear that admitted facts need no further proof. See Section 123 of the Evidence Act 2011.

I therefore find that the Claimant has proved his claim. However, the matter does not end here. The Defendant has counter claimed against the Claimant for the sum of N1,214,000 being outstanding sums owed by the Claimant to the Defendant arising from their previous transactions. The courts have held that a counter claim is an independent, separate, and distinct action which must be proved. See **OROJA & ORS. V. ADENIYI & ORS. (2017) JELR 38225(SC)**.

The Defendant tendered Exhibits D1 and D2 which are Statements of Account showing that the total sum of money received from the Claimant for the vehicles already supplied i.e two Lexus 350 vehicles and one Toyota Corolla vehicle is N10,936,000 instead of N12,150,000.00 which is the total value of the vehicles supplied. The Claimant has not controverted this fact save to say that the issue before the court is the unsupplied Sienna vehicle. I disagree with the Claimant as the Defendant made the entire business transaction between the parties in this suit an issue having counter claimed.

As stated already, the Claimant did not controvert the evidence of the Defendant that the Claimant owes him N1,214,000.00. I therefore have no hesitation in accepting the evidence of the Defendant. I find it untoward of the Claimant that he is still indebted to the defendant for the supply of vehicles previously delivered and rather than sit down to reconcile accounts upon the request of the Defendant, he resorted to the use of the police and the courts. The legal maxim that he who comes to equity must come with clean hands could not hold any truer than in this case where a Claimant who is indebted to the Defendant is seeking to recover a debt from the said Defendant.

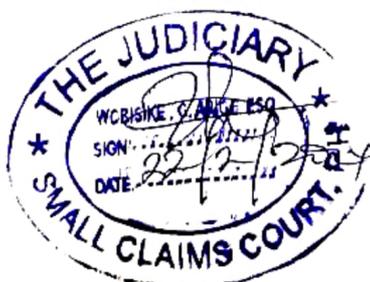
I hold that the Defendant is not indebted to the Claimant and is entitled to be paid for goods already supplied.

The Claimant has asked for cost of litigation in the sum of N500,000.00. The courts have held that cost of litigation is in the realm of special damages which must be specifically pleaded and proved. See **FORTIS MICROFINANCE BANK V. AMAEFULA & ORS. (2021) JELR 108777.**

There is nothing before this court in proof of the Claimant's claim for cost of litigation and so this head of claim is refused.

In the circumstances, I enter judgment for the Defendant/Counter Claimant and make the following orders:

1. The Claimant shall pay to the Defendant forthwith the sum of One Million, Two Hundred and Fourteen Thousand Naira (N1,214,000.00) only being outstanding balance owed by the Claimant to the Defendant for the supply of two Lexus 350 2007 Model cars and one Toyota Corolla 2010 Model.
2. The parties shall each bear their cost of litigation.
3. No order as to costs.




WOBIA CRISTABEL AKANI, ESQ.
Senior Magistrate Gd.1
19/02/2024