

IN THE MAGISTRATES' COURT OF RIVERS STATE OF NIGERIA
IN THE PORT HARCOURT MAGISTERIAL DISTRICT
HOLDEN AT SMALL CLAIMS COURT, PORT HARCOURT
BEFORE HIS WORSHIP COLLINS G. ALI, ESQ.,¹ TODAY TUESDAY, THE 26TH
DAY OF NOVEMBER, 2024.

SUIT NO.: PMC/SCC/175/2024.

BETWEEN:

1. MR. VICTOR IME
2. HALLIDAY GLOBAL SERVICES LTD } CLAIMANTS
AND
MR. HENRY OKWARA ----- DEFENDANT
Case called, parties absent.

JUDGMENT

The Claimants commenced this suit against the Defendant on the 26th day of June, 2024 and claims as per the complaint form and claim attached to the ordinary summons as follows -

Debt/Amount Claimed - ₦5,000,000.00
TOTAL = ₦5,000,000.00

Upon the filing of the claim at the Small Claims Registry, an ordinary summons was issued for service on the Defendant personally, and same was served on the Defendant by substituted on the 9th day of July, 2024. The Defendant in response filed FORM RSCC 5 wherein he denied owing ₦5,000,000.00 but admitted owing the Claimants the sum of ₦3,600,000.00 only without interest.

The case was originally before His Worship W. C. Akani, Senior Magistrate who declined jurisdiction in the matter on grounds lack of monetary jurisdiction before the case was reassigned to this Honourable Court on the 17th day of July, 2024. Fresh hearing notice was served on the Defendant, he appeared and pleaded not liable to the claim on the 31st day of July, 2024.

The case proceeded to trial with the 1st Claimant, Mr. Victor Ime testifying as CW1 and the sole witness. The CW1 tendered a memorandum of agreement between the 2nd Claimant and the Defendant as Exhibit A, GT Bank Cheque No. 60493640 dated

¹ LL. B, LL. M, BL, A. IDRI, Chief Magistrate Grade 1, and the Presiding Magistrate, Small Claims Court 1, Port Harcourt, sitting at Chief Magistrate Court 7, Port Harcourt, Rivers State.

26/07/024 and issued to the 1st Defendant as Exhibit B, and a blank Zenith Bank Cheque No. 0102293201 as Exhibit B1. The CW1 was full, cross examined by the learned defence counsel H. N. Akano, Esq. The Defendant neither testified nor called any witness in defence of the claim which can safely be said to be undefended.

After the close of trial, the parties filed and exchanged final written addresses in compliance with the order of this Honourable Court made on the 5th day of November, 2024. The Claimants' final written address is dated the 6th day of November, 2024 but filed on the 7th day of November, 2024; while the Defendant's final written address is not dated but was filed on the 20th day of November, 2024. The learned counsel for the parties adopted their respective final written addresses on the 22nd day of November, 2024 and the case was adjourned to today for judgment.

The learned Claimants counsel O. O. Osadola, Esq. distilled a lone issue for determination in the Claimants' final written address thus:

Whether from the totality of evidence adduced and surrounding circumstances of the case, the Claimants are entitled to (the) reliefs sought before this Honourable Court?

On his part the learned defence counsel Cordellia O. Ibemere, Esq. equally raised a lone issue for determination in the Defendant's final written address thus:

Whether from the evidence before the Court the Claimants have proved their case to be entitled to the claim?

After a careful examination of the case of the Claimants against the Defendant as captured in the claim and evidence before the Court, I will simply adopt and hereby adopt the sole issue for determination raised by the learned defence counsel in the final determination of this case thus:

Whether from the evidence before the Court the Claimants have proved their case to be entitled to their claim?

Before I proceed, I wish to state that the Practice Direction of the Small Claims Court provides that the entire period of proceedings from filing till judgment shall not exceed sixty (60) working days. See Article 14 (3) Rivers State Small Claims Court

Practice Direction 2024. However, failure to conclude a matter within the sixty (60) working days timeline shall not invalidate a judgment. See Article 14 (4) of the Rivers State Small Claims Court Practice Direction 2024. This background is necessary because the peculiar circumstance of this case has made it impracticable for the case to be concluded within the stipulated sixty (60) working days timeline. The first setback was an administrative transfer of the case by the first Court after one (1) month of commencement of the case. Secondly, this Honourable Court went on annual leave shortly after the case commenced *de novo* in August, 2024.

Let me now turn to the merit of the case. The learned counsel for the Claimants submitted that the Claimants have established that their claim is a monetary or liquidated money demand and that the Defendant refused to comply with the terms of the demand letter issued by the Court. The learned defence on the contrary argued that the Claimants failed to comply with the condition precedent to the commencement of this case by not serving Demand Letter first before filing the case. Counsel argued that the demand letter in this case is dated the same 26th June, 2024 when the case was filed. The learned defence argued that this Court lacks jurisdiction to entertain the case and urged the Honourable Court to dismiss the suit.

I have looked at the endorsement and return copy of the Demand Letter which is not dated. The remarks of the bailiff one Mr. Chinnah Chamberline states that the demand letter was served on the Defendant on 6th June, 2024 through the gateman on the instruction of the Defendant; and also via WhatsApp to the Defendant's mobile phone number: 08032366429. I hold that the Claimants have complied with Article 2 (1) (d) of the Small Claims P. D. 2024.

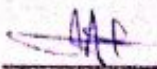
The Defendant filed FORM RSSC 5 wherein he clearly admitted owing the Claimants the sum of ₦3,600,000.00 only as against the ₦5,000,000.00 claimed by the Claimants. The CW1's evidence shows that the Defendant was given a working capital loan of ₦5,000,000.00 on the agreement that the money would be repaid with 20% interest, making up a total of ₦6,000,000.00. The Defendant defaulted in the repayment as he managed to pay ₦1,400,000.00 as testified and admitted by the CW1 during cross examination. The Defendant did not give evidence but rested his case on the evidence of

the Claimants. The legal implication of a Defendant resting his case on the Claimants' case is that the Defendant sinks or floats with the Claimants' case. It is now settled that the implication where a defendant rests his case on the plaintiffs case, it may mean that: (a) that the defendant is stating that the plaintiff, has not made out any case for the defendant to respond to; or (b) that he admits the facts of the case as stated by the plaintiff or (c) that he has a complete defence in answer to the plaintiffs case. Where a defendant failed/fails to lead evidence in defence, but rested his case on that of the plaintiff, it is regarded as a legal strategy and not a mistake. If he succeeds, then it enhances his case, but if he fails, that is the end of his case. *The Admin. & Executors of the Estate of Abacha v Eke-Spiff & Ors [2009] LPELR-3152 (SC) (Pp. 59-60 paras. D)*. The law is that parties are bound by the terms of their agreement and this is captured in the Latin maxim *pacta sunt servanda* (meaning agreements must be kept).

The Claimants' case accordingly succeeds in part as there is evidence that the Defendant repaid the sum of of ₦1,400,000.00 out of the agreed ₦6,000,000.00 repayable as principal and interest on the working capital loan of ₦5,000,000.00 given by the Claimants to the Defendant. The lone issue is largely resolved in favour of the Claimants and against the Defendant.

Judgment is hereby entered for the Claimants as follows:

1. The Defendant shall pay to the Claimants the sum of ₦4,600,000.00 (Four Million, Six Hundred Thousand Naira) only being balance of the debt owed the Claimants.
2. **IT IS ORDERED** that the Defendant do pay the sum of ₦4,600,000.00 (Four Million, Six Hundred Thousand Naira) only to the Claimants forthwith.


C. G. Ali, Esq.
(Chief Magistrate)
26/11/2024

LEGAL REPRESENTATION:

1. Claimants' counsel absent.
2. H. N. Akano, Esq. for Defendant.

