

**IN THE MAGISTRATE COURT OF RIVERS STATE OF NIGERIA
IN THE PORT HARCOURT MAGISTERIAL DIVISION
HOLDEN AT PORT HARCOURT
BEFORE HIS WORSHIP NNEKA E. EZE-OBUZOR
SITTING ON THE 17TH DAY OF APRIL 2024
AT THE SMALL CLAIMS COURT 4 PORT HARCOURT**

SUIT NO: PMC/SCC/247/2023

BETWEEN

FIELD TECHNOLOGY DEVELOPMENT PARTNERS NIG LTD ----- CLAIMANT

AND

**1. KINGIYALLA HEALTHCARE PHARMACY & STORE LTD }
2. NDUKA SAMUEL } DEFENDANTS**

PARTIES: Claimant present

APPEARANCES: D.P Ojule Esq. for Claimant.

JUDGEMENT

By a claim dated 13/11/2023, the Claimant's claim against the Defendants are as follows:

1. N465, 487.00 as debt owed

2. N300, 000.00 as cost of litigation.
3. N300, 000.00 as general damages.

PLEA

By the affidavit of service availed this court, the Defendant was served the originating process in this suit by delivering same personally to the Defendant on the 24th of November 2023 at 10:04am. On the 11th of December 2023, a plea of not liable was entered for and on behalf of the absent Defendant.

SUMMARY OF EVIDENCE

The Claimant in proof of his case called a lone witness and tendered an exhibit marked Exhibit A – F.

The Defendant never appeared to defend this suit hence no evidence was entered for the Defendant.

The relevant facts from the case of the Claimant as presented by the Claimant's sales rep one Chidera Awhare is that he is in charge of sale for the Claimant and he knows the Defendant. That the Claimant and Defendants entered into a subscription agreement where the Claimant supplies the Defendants with pharmaceutical products and the Defendants pay on as you serve basis which simply means once the products are supplied, the Defendants pay as they sell. That the products are supplied weekly and inventory counts are done weekly and that is how invoices are generated and periodic account statements are sent to Defendants via email and whatsapp. The subscription agreement was admitted as Exhibit A, statement of account was admitted as Exhibit B, and Invoices admitted as Exhibit C. CW1 informed the court that after the weekly counts were done and invoices generated, the Defendants refused to pay on the due date and they tried reaching out to them severally and eventually wrote a letter of demand to which they responded and agreed to make a monthly payment of N100, 000.00 but still reneged on that agreement. The letter of demand was admitted as Exhibit D, the email correspondence between parties was admitted as Exhibit E and Receipt for filing this suit was admitted as Exhibit F. Case was adjourned to the 5/2/2024 for cross examination of CW1.

The Defendants never appeared either by themselves or through a counsel to defend this suit even after service of hearing notice hence they were foreclosed from cross examining the CW1 and from defending this suit.

The Claimant on the 17/4/2024 adopted their written address and case was adjourned for judgement now being read.

In the Claimant's written address settled by his counsel D.P Ojule Esq. a lone issue was raised for determination to wit:

Whether from the unchallenged and uncontroverted evidence before this court, the Claimant has made a case to warrant a grant of the reliefs sought.

Counsel answered the above in the affirmative stating that the law is trite that whoever desires any court to give judgement as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist whether it is criminal or civil. Counsel cited **SECTION 137 OF THE EVIDENCE ACT 2011**. Counsel further opined that the Claimant has diligently discharged the burden placed on him through his compelling testimony and documentary evidence. Counsel stated that the evidential arsenal presented by the Claimant is both comprehensive and compelling and urged the court to enter judgement for the Claimant.

RESOLVE

In determination of this suit, I will adopt a lone issue to wit.

Whether the Claimant has proved his case to be entitled to judgement

As already stated, the failure of the Defendant to make an appearance means that the entire evidence adduced by the Claimant is unchallenged. The law is trite that a Court is at liberty to accept and act on unchallenged and uncontroverted evidence. See the case of **OFORLETE V. STATE (2000) 12 NWLR (PT. 681)415**. The court in the case of **ADELEKE V. IYANDA (2001) 13 NWLR PART 729 PAGE 1 AT 23-24 PARA H-A** held that where the Claimant has adduced admissible evidence which is satisfactory in the context of the case, and none available from the Defendant, the case will be decided upon a minimum of proof as this makes the burden lighter.

From the case file, the Claimant has complied with the provisions of **ARTICLE 2 AND 3 OF THE RIVERS STATE SMALL CLAIMS COURT PRACTICE DIRECTION 2023** for the fact that this is a liquidated money demand not exceeding Five million (N5M), the Defendant was served with a demand letter, there is a complaint form, there is an affidavit of service of the summons of court on the Defendant.

On the first claim of the Claimant, by way of evidence, the Claimant has tendered the agreement between parties which was admitted as Exhibit A. In **BABATUNDE & ANOR VS. BANK OF THE NORTH LTD & ORS (2011) LPELR-8249 (SC)** the Supreme Court per Adekeye, JSC stated this principle thus: "The law is that written contract agreement freely entered into by the parties is binding on them. A Court of law is equally bound by the terms of any written contract entered into by the parties. By Exhibit E, the email correspondence by both parties, the Defendants admitted to their indebtedness. It is primary law that facts admitted need no further proof. Placing reliance on both documents, relief one succeeds.

On the second claim of N300, 000.00 as cost of litigation. **ORDER 16 RULE 1(1) OF THE MAGISTRATE COURTS CIVIL PROCEDURE RULES 2007** provides that in fixing the amount of costs, the principle to be observed is that the party who is right, is to be indemnified for the expenses to which he has been necessarily put in the proceedings as well as compensated for his time and effort in coming to court. Costs are not awarded to penalize a party who is ordered to pay them, nor are costs awarded as windfall to a successful party. Costs are meant to indemnify the winning party for his out of pocket expenses representing the actual and true/fair expenses incurred by the litigation. In light of the above and placing reliance on Exhibit F, claim for cost is granted as prayed.

The third claim of N300, 000.00 as general damages. The principles guiding the award of damages in tort are different from those guiding the award of damages in contract. The object of tort damages is to put the plaintiff in that position he would have been in if the tort has not been committed whereas, the object of contract damages is to put the plaintiff in the position he would have been in if the contract had been satisfactorily performed. See **AGBANELO V. UNION BANK OF NIGERIA LTD (2000) 4 SC (PT. 1) 233 AT 245**. From the first and second claim

of the Claimant already granted, the Claimant has been put in the position he would have been if the contract has been satisfactorily performed hence this relief fails.

In conclusion, judgement is entered for the Claimant as follows:

1. The Defendant is ordered to pay the Claimant the sum of N465, 487.00 as debt owed
2. The Defendant is ordered to pay the Claimant the sum of N300, 000.00 as cost of litigation.