

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

SUIT NO: PMC/SCC/09/2025

BETWEEN

MR. AZUBUIKE ERNEST CHUKWUEMEKA

CLAIMANT

AND

BE-MULTI WORLD PLUS LIMITED

DEFENDANTS

BELLO E. O. BINA

ONUOHA GEORGE UCHE

PARTIES: Claimant present. Defendant absent

APPEARANCES: K. A:Abel for the Claimant. No Legal representation for the Defendant

JUDGMENT

The Claimant brought this action via an Ordinary Summons attached with a claim against the Defendants on the 9th day of January, 2025, claiming the relief below:

Debt/Amount Claimed - N2,150,000.00

Fees - N500,000.00

Costs - N1,000,000.00

Total - N3,650,000.00

Upon the filing of the matter in court, an Ordinary Summons attached with the complaint form and claim was served personally on the Defendants via the 3rd Defendant Onuoha George Uche, the project manager of the 1st defendant on the 15th day of January, 2025 at Wiyakara, Ogoni, Rivers State, Nigeria. The Affidavit of Service is also before the Court. The Defendants were absent and not represented in court on the 20/01/2025 when the matter came up for mention despite being served with the originating processes in this suit and upon confirmation of service, a plea of not liable was entered for the absent Defendants. The Court thereafter directed that Written Deposition be filed and served and matter adjourned for adoption.

Mr. Azubuike Ernest Chukwuema, testified under oath as CW1 on the 30th day of January, 2025, adopted his Written Deposition on oath and tendered Seven (7) Exhibits marked as follows: The Be-Multi World Plus Ltd Letter of Intent to Hire Dredging Equipment, dated 12th July, 2024 was admitted and marked as Exhibit A; The Be-Multi World Plus Ltd Terms of Agreement as Exhibit A1; The Dredging Agreement made in August, 2023 as Exhibit A2; The PalmPay transaction receipt by the 3rd Defendant George Onuoha, to the Claimant's Polaris Account in the recipient's name of Ernest Chukwuemeka Azubuike, in the sum of One Million One Hundred Thousand Naira (N1,100,000.00) as Exhibit A3; the Polaris credit alert dated 17th July, 2024 as Exhibit A4; the two pages of the WhatsApp messages from the 3rd Defendant George Uche, to the Claimant as Exhibit A5 and the Reliefs Law Acknowledgement Receipt in the sum of Five Hundred Thousand Naira (N500,000.00) paid by the Claimant on record his lawyer, dated 6th day of January, 2025 as Exhibit to B.

The brief unchallenged evidence of the Claimant CW1 as stated in his deposition is that he is the Chief Executive Officer of Azumsmekus Enterprise Nigeria Limited with office address at No 31 Igwuruta Road, Chokocho, Etche, Rivers State. That the 3rd Defendant, Mr. Onuoha George, the

Operations Manager of the 1st Defendant, Be-Multi World Plus Ltd, called him and introduced himself as a representative of the 1st Defendant and conveyed to him the 1st Defendant's intention to hire his barge. That the 2nd Defendant, who is the Manager/CEO of the 1st Defendant sent him a letter of intent and Terms of Agreement on behalf of the 1st Defendant to hire his companies dredging equipment, which led to a scheduling of a meeting between his company representative and the Defendants. That they thereafter entered into a dredging agreement for the lease of his barge for the sum of One Million One Hundred Thousand Naira (N1,100,000.00) every month, which was to be reviewed after three months. That part of the agreement was that the Defendants were to pay a demobilisation fee at the instance of the 2nd month payment, implying a total sum of One Million Six Hundred Thousand Naira (N1,600,000.00). That it was also agreed that the sum of Five Hundred and Fifty Thousand Naira (N550,000.00) must be paid as part payment of the monthly payment of One Million One Hundred Thousand Naira (N1,100,000.00), before the dredger will be lifted and relocated, which will be included in the first month payment, totalling One Million, Six Hundred and Fifty Thousand Naira (N1,650,000.00) and to return the dredger at the conclusion of the dredging.

Continuing, the CW1 stated that the Defendants pleaded with him to work with them with his team, promising to keep to the terms of the agreement. That he thereafter assembled his team and they worked for the Defendants for three months and out of the three months, the Defendants only paid them for a month and the demobilisation fee. That the Defendants owe his company for the two months that he and his team worked and not paid, which has accumulated to the sum of Two Million One Hundred and Fifty Thousand Naira (N2,150,000.00). That despite repeated demands, the Defendants have refused to pay the money owed his company. That sometime in December of 2024, the Defendants acknowledged their indebtedness to his company in a WhatsApp message that was sent to his private line by the 3rd Defendant. That upon the refusal of the Defendants to pay his company the money owed, he engaged the services of a lawyer to prosecute this matter in court and paid the lawyer the sum of Five Hundred Thousand Naira (N500,000.00). That he has suffered damages as a result of the refusal of the Defendants to pay the money owed his company and therefore claiming the sum of One Million Naira (N1,000,000.00) as damages. That the Defendants do not have any defence to this suit.

The Defendants were absent and not represented in court when the matter came up for cross-examination and they were foreclosed from cross-examining the CW1 and CW1 was discharged and matter adjourned for defence. The Defendants were still absent in court on the 26/02/2025 when matter came up for defence, despite being served with the Summons and the hearing notice and were foreclosed from defending the suit for lack of any intention to defend the suit. The Claimant's Counsel thereafter applied to waive his right to filing of final written address and urged the court to grant the Claimant's relief on the strength of the evidence already led and same was granted and judgment reserved.

From the above, the only issue that calls for determination is whether the Claimant has been able to prove its case on the preponderance of evidence and on the balance of probabilities to be entitled to the relief sought.

Now, in civil cases, the burden of first proving existence or non-existence of a fact lies on the party against whom the judgment of the court would be given if no evidence were produced on either side, regard been had to any presumption that may arise on the pleadings. See Section 133 (1) and (2) of the Evidence Act, 2011 (as amended). See also *Mrs. Funmilayo Mubo Adeniran & ORS V. Mr. Sikiru Adio & Anor* (2024) 16 NWLR (Pt. 1964) pg. 351, (SC). As stated above, the total claim of the Claimant before the court is for payment in the sum of N3,650,000.00 (Three Million Six Hundred and Fifty Thousand Naira), being and representing the accumulated sum due to the Claimant for the two months work done by them for the Defendants, which Claimant claims the Defendants have refused to pay, together with Cost and Fees totalling N1,500,000.00 (One Million Five Hundred and Fifty Thousand Naira), which the Defendants have refused to pay despite repeated demands. The law is now settled that a cause of action in a suit for recovery of debt accrues when a debtor fails to pay his debt after a demand to pay has been made. See *Akinsola & Anor. V Eyinnaya* (2022) LPELR-57284 (CA). See also Article 2 (1) (d) of the Rivers State Small Claims Court Practice Direction, 2024, which makes the service or issuance of demand letter a condition precedent to the commencement of an action against the Defendant.

Examining the case at hand, there is a Letter of Demand dated 12/12/2024 and served on the Defendant same date, which satisfies and shows that the condition precedent for the commencement of this suit has been met. From the various Exhibits before the court, it is not in dispute that both the Claimant and the 2nd and 3rd Defendants, as representatives of the 1st Defendant, executed Exhibits A1 and A2, (the Terms of Agreement and the Dredging Agreement), for the leasing of the Claimant's barge for the sum of N1,100,000.00 (One Million One Hundred Thousand Naira) per month. There is also proof before the court that the sum of N1,100,000.00 (One Million One Hundred Thousand Naira) was paid by the 3rd Defendant, Mr. George Onuoha on behalf of the 1st Defendant, through Pampay, to the Claimant's Polaris Account with number account 5010240393 as evidenced by Exhibit A4. Exhibit A5 also shows the 3rd Defendant acknowledging the Defendant's indebtedness in his WhatsApp message to the Claimant and promising to pay the Claimant before the resumption date of January, 2025.

However, despite the said promise, the Defendants have failed, neglected or refused to pay the Claimant the outstanding sum of Two Million One Hundred and Fifty Thousand Naira (N2,150,000.00), being the Defendants indebtedness to the Claimant for the unpaid two months of work done. The law is trite that where parties have reduced what binds them into a written form, the court is not allowed to rewrite a contract for the parties but to give effect to what was agreed by the parties. The Defendants therefore, having taken benefit of the leased dredging equipment, have a moral duty to perform their own side of the bargain by paying the Claimant the three months of work done and as captured in Exhibits A1 and A2, for which the Defendants have so far paid part. There is no evidence before the court showing or suggesting that the Defendants have paid the outstanding sum due them. The Defendants therefore, having not denied or challenged the above evidence of the CW1 with any credible evidence, is deemed to have admitted same and the law is trite that facts not challenged or controverted are deemed admitted and the court can act on same. See **NACEN V. BAP (2011) 11 NWLR (Pt. 1257) pg 193**. Consequently and in the absence of any credible evidence to the contrary, this court is therefore left with no option than to rely on the uncontroverted evidence of the Claimant. The Claimant is therefore entitled to the said sum of Two Million One Hundred and Fifty Thousand Naira (N2,150,000.00), being the outstanding balance owed the Claimant by the Defendants and I so hold.


As regards the issue of damages, these are damages which the law presumes to have flown from the direct consequence of the act complained of and are unquantifiable in nature and is usually awarded at the discretion of the Court. Although the Claimant is asking for the sum of N1,000,000.00 (One Million Naira only) as general damages, taking into consideration the entire circumstances of this case, I award the Claimant general damages to the tune of N300,000.00 (Three Hundred Thousand Naira) only. Legal fees is assessed at Five Hundred Thousand Naira (N500,000.00), same haven been credibly proved by the Claimant in line with the law.

Accordingly, it is hereby ordered that;

The Defendants shall pay the Claimant the sum of N2,950,000.00 (Two Million Nine Hundred and Fifty Thousand Naira), being and as representing the outstanding indebtedness of the Defendants to the Claimant.

This is the Judgment of this court. I make no further Orders.

Dated this 28th day of February, 2025


LEZIGA C. MITEE (MRS)
CHIEF MAGISTRATE II, MAGISTRATE COURT 10

