

On the 11/3/24, claimant counsel, Stephen Agwanwor, Esq. did not address the court in line with Article 12 of the Rivers State Small Claims Practice Direction 2023, but rather he applied to waive his right of address.

RESOLUTION

I think the facts and circumstances as set out herein in extenso will serve as sufficient materials to deal with the issues which have arisen to be considered in this matter. I shall however recapitulate, if need be, on further facts as per the record in the course of this judgement. This case has been fought on the evidence and exhibit tendered at the trial by the claimant. The important question to answer that has arisen in this matter is;

Whether or not the claimant has made out a prima facie case calling for the judgement of this court in his favour?

In that light, I have to start by examining the facts and evidence proffered as to crystallize the main borne of controversy between the parties. This has to be so, as he who asserts has the onus to prove his assertion by calling credible evidence consistent with his facts to prove his case. I sought refuge under the cases of; **Oboh v Obaika (2024) 2 NWLR [Pt. 1922] 421 at 423; and Orianzi v A- G, Rivers State (2017) 6 NWLR [Pt. 1561] 224.**

Furthermore, by virtue of S. 133(1) and (2) of the Evidence Act, 2011, in civil cases, the burden of first proving the existence and non-existence of a fact lies on the party against whom the judgement of the court would be given, if no evidence were produced on the other side.

Relief (a) is the sum of N510, 000.00 being the amount for the replacement of faulty engine.

In this case, the claimant told this court that he contracted and paid defendant the sum of N510,000.00 to replace the faulty engine of his sienna car on the 17/11/21 and Jan. 2022, but the defendant has failed to either replace the engine or return the money to him, despite repeated demands made by claimant.

The Supreme Court has in the case of **Akinyemi v Odua Investment Co. Ltd. (2012) 49 NSCQR 405** defined contract according to black's law dictionary, as an agreement between two or more parties creating obligations that is enforceable or otherwise recognizable under the law.

Generally, a party seeking to enforce his right under a contractual agreement must show that he has fulfilled all the conditions precedent and that he has performed all those terms which ought to have been performed. I place reliance on the case of; **BFI Group Corp. v BPE (2012) 18 NWLR [Pt. 1332] 209 at 217 Ratio 6.**

In the instant case, it should be noted that exhibit A (Payment Agreement) is the touchstone of the transaction between the parties. To have a more comprehensive overview, the said exhibit A is hereunder reproduced thus;

EXHIBIT A² IN P/MC/300/177/23 Mr Patrick Oputa vs Mr
- Eze Ihuoma
1/01/5-3-2024


PAYMENT AGREEMENT

I, Eze Ihuoma of No 4 Badumere Street, off Khana Street, D-Line, Port Harcourt, hereby acknowledge receipt of N420,000.00 (Four Hundred and Twenty Thousand Naira) on the 17/11/2021 and N30,000 (Thirty Thousand Naira) on the 14/11/2021 and N20,000 (Twenty Thousand Naira) on the 18/1/2022 and N40,000 (Forty Thousand Naira) on the 24/1/2022, totalling N510,000 (Five Hundred and Ten Thousand Naira).

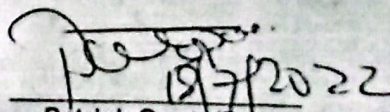
The said total sum of N510,000 (Five Hundred and Ten Thousand Naira) was received from Patrick Oputa in respect of the replacement of a faulty engine in a Sienna Car and the repair of Shift Solenoid in another Sienna car.

Further to my failure to replace the faulty engine and repair the shift solenoid of the Sienna Cars as expected within a maximum 1month period, it was agreed that I should return the funds received.

It was further agreed that 10% interest rate monthly will be charged on the total funds received if the money is not returned as at 28/2/2022 and 15% monthly on the cumulative sum if the fund is not returned as at 31/7/2022.



Eze Ihuoma /Date



Patrick Oputa /Date

Looking at exhibit A, it is clear from the above that upon payment of the amount by claimant, it became an offer which defendant accepted on the 17/11/21 and Jan. 2022. Same created a contract between the parties during the validity period. It needs no gainsaying that after the acceptance of the payment by defendant, the contract became binding on them as it involves duty, obligations and responsibility. After considering and scrutinising exhibit A, as well as the relevant applicable law, this court is of the concluded view that in fact, a binding contract exist between the parties outside oral evidence. The general principle of law is, documents tendered as exhibits are very vital as they do not embark on falsehood like some mortal beings. See *Olujinle v Adeagbo* (1988) 2 NWLR [Pt. 75] 238.

It must be reiterated that the court must treat as sacrosanct the terms of an agreement freely entered into by the parties. This is because, parties to a contract enjoy their freedom to contract on their own terms so long as same is lawful. See *Afrotech Tech. Services (Nig.) Ltd. v M.I.A. & Sons Ltd.* (2000) 15 NWLR [Pt. 692] 730 at 788.

The parties further agreed at the last paragraph of Exhibit A, that in the event of failure of defendant to refund the amount on 28/2/22 and 31/7/22, 10% interest rate monthly and

15% monthly on the cumulative sum of the total funds will be charged respectively. Unfortunately, this court cannot grant a relief for which no prayer is made. See **ministry of land and housing Bauchi State v Tijjani (2021) LPELR – 55039**. Since claimant did not ask, this court cannot grant same.

Apart from the above, the evidence of claimant on record showed that the N510, 000.00 paid for the replacement of the engine was a consensus reached by the parties at the time of the transaction but defendant failed to keep to his own side of the contract. Therefore, he is bound to pay for the said amount he received for the replacement of the engine. Thus, **Relief (1)** succeeds.

The sum of N400,000.00 for fees and cost is the claim in **Relief (2)**.

Under this claim, I must observe that, the law of evidence is all about proof of a particular issue. Therefore, a claimant has a duty to show how he came to be entitled to his claims before a court of law can grant them. For validity of that principle of law, see the cases of; **Aharuka v FBN Ltd. (2010) 3 NWLR [Pt. 1182] 465 at 469 Ratio 2; and Balogun v Labiran (1998) 3NWLR [Pt.80] 66.**

I have painstakingly scrutinized the record of proceedings to find out how the claimant arrived at that figure, I saw nothing in the records to that effect. The claimant failed to lead any evidence whatsoever to show his right to the claim. He is therefore not entitled to any claim for fees and cost.

Flowing from the heels of all that I have said, I cannot but hold that this case has merit and it is hereby granted in part. Accordingly, judgement is entered forthwith as follows;

- a. The defendant is ordered and shall pay to claimant the sum of N510, 000.00 being the amount paid for the replacement of Claimant's sienna car faulty engine.
- b. The sum of N400,000.00 for fees and cost is not granted.

For the avoidance of any possible doubt, the claimant's relief (2) is hereby dismissed.


BETTY SUNNY – HART, ESQ.
Chief Magistrate.
15/3/24

