

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

ON MONDAY THE 23RD DAY OF OCTOBER, 2023
BEFORE HIS WORSHIP A. O. AMADI-NNA, ESQ
CHIEF MAGISTRATE GD. 1

SUIT NO. PMC/SCC/132/2023

BETWEEN

EUCHARIA CHINELO OKAH -- -- -- -- CLAIMANT

VS

OLIVER SAMUEL -- -- -- -- DEFENDANT

Defendant present.

D. O. Ogwuwere appears with I. C. Johnie for the claimant.

I. E. Chioma appear for the defendant.

JUDGMENT

The claimant claims against the defendant as follows:

1. The sum of N3,600,000.00 (Three Hundred and Sixty Thousand Naira) being balance of capital advanced by the claimant to the defendant to trade which the defendant stopped paying profit to the claimant since April 2023 and withheld the balance of the capital till date despite the oral and written demand made on him.
2. The sum of N100,000.00 (One Hundred Thousand Naira) as cost of litigation.
3. The sum of N1,000,000.00 (One Million Naira) as damages.

In proof of her case the claimant was the only witness in support of her case and gave evidence as CW1 and tendered Exhibits "A1-"A4" and "B" while the defendant was the only witness in her defence and tendered 3 exhibits - Exhibits "C1", "C2" and "D".

CW1, Eucharia Chinelo Nkoseyimu Okah said the defendant encouraged her to invest in his Forex Trading and that her investment will be safe with him. That loss or no loss she will be getting her profit every month from the

investment. Further that if she wants to retrieve her investment he should be given one month notice.

On the 25th day of September, 2022 she invested the sum of N200,000.00.

In October that same year she invested another N281,300.00. She spent N1,300.00 for the POS charges. On 6th January this year 2023 she invested another N2,000,000.00, through transfer from her GTB account. Further that on same 6th of January this year 2023 she paid N20,000.00 to the defendants GTB account to balance the N280,000.00 investment she did with the defendant in 2022. Also that on the 28th of January this year again she did a N1 Million investment with the defendant from her GTB account. That the last investment she did with the defendant was sometime in April this year when she invested N400,000.00 with him including POS charges which made it N401,000.00 making the total investment she made with the defendant from 2022 to 2023 to N3,900,000.00. She further said that the total profit she has collected from the defendant from her investment is N2,344,000.00.

That in May this year 2023 he called the defendant and asked him why her profit for the month of May has not been paid but he did not answer her call only to inform her on 14th of May that Forex has crashed and asked her to give time from that May to June ending for him to trade and pay her her investment and capital. She further said that at the end of the month of June she received an alert of N300,000.00 from the defendant and he said it was her investment and not profit. That her investment now reduced from N3.9 Million to N3.6 Million. The defendant asked her to give him more time for the remaining part of her investment.

That since then the defendant has been trading and making money from her investment and has refused to pay her her money and all effort for her to retrieve her investment has been in vain. She further said that the defendant asked him to get a lawyer for them to sign an agreement but when she got the lawyer he refused to sign. After all effort made to get the

defendant to pay her her money failed her lawyer issued the defendant a demand letter. She tendered the statements of account numbers she gave the defendant to pay in her account details as Exhibits "A1" - "A4". She also tendered the printed text messages where the defendant said she will pay her her money by June ending as Exhibit "B". She prayed the court to compel the defendant to pay her her N3.6 Million she invested in the defendant's Forex business and also pay her N1Million as damage for the inconveniences she was put through by flying from Lagos to Port Harcourt which is not easy due to the risk involved. Also the risk of taking permission from her work place and the risk of leaving her under aged kids in the hands of a Nanny. She further said that the defendant despite saying that Forex Trade has crashed is still trading with her investment.

Under cross examination CW1 said before she entered into the Forex Trading transaction, there was an oral agreement with the defendant. That the defendant did not tell her that Forex trading comes with gains or losses. That when she invested with the defendant he was paying her her profit and also making profit from her investment. Further that the defendant has sent her a total of N300,000.00 from her investment. That the total profit the defendant has paid her so far from her investment is N2,304,000.00 while the defendant has so far returned the sum of N300,000.00 on her investment on the 30th of June 2023. She further said that she had earlier said in evidence that the defendant told her that loss or no loss she will get her profit and this was an oral agreement. That the defendant refused to sign the agreement the day they were to sign the agreement. That the defendant has paid her the sum of N3,344,000.00 out of the N3.9Million she gave to him.

The defendant has also paid N300,000.00 from her investment to reduce the money to N3.6 Million. That it is not written that transfer made from Exhibits "A1" - "A4" were profits from her investment. The defendant did not tell her that she suffered loss from her investments. He told her that

Forex has crashed and she did not accept this since he had earlier told her that she will be making profit every month from her investment.

DW1, Oliver Samuel said sometime last year the claimant got to know him through her sister Eucharia Benjamin. He had been trading in the Forex market for Eucharia Benjamin who invested into the Forex market and he was trading for her and they were making profits.

The claimant called him and said he also wanted to invest into the Forex trading. The claimant invested the sum of N200,000.00 in September 2022 making her the fourth person he was trading for.

That when they make profit they share amongst themselves. He paid the claimant consistently until December 2022 when she decided to increase her investment investing a total of N3.9 Million. He further said that he was paying the claimant and the total money he paid her is N2.7Million. That the business was moving smoothly until May 2023 when Forex business crashed and they had lots of losses. The claimant started threatening his life if he does not pay her her money. He laid a complaint at Ada George Police Station the complainant at was invited but she refused to go. She also sent unknown persons to his house to threaten him. She also threatened his parents who advised him to have a peace talk with them but it did not work. They also met the claimant's lawyer but it was not successful. Soon after that he was issued a court summons. He further said that the claimant is not entitled to the N3.6 Million she is claiming and the N100,000.00 as cost of litigation.

That the claimant is also not entitled to the N1 Million as damages. That he counter claimed that the claimant should pay him the sum of N4Million because he ran away from his house and he petitioned to the police that they were threatening his life. He tendered as Exhibit "C1" and "C2" two banks statements from First Bank and GTBank to show that he has been paying the complainant since she joined the Forex trading. He also tendered

Exhibit “D” whatsapp chats to show that he has been communicating with the claimant.

Under cross examination DW1 said as at September 2022 he had 7 months experience on Forex trading.

That a trader in Forex trade may use or may not use software and he does not use software in his trading because it has its own lapses. He received a total of N3.9 Million in investment from the claimant and he has paid her a total of N2.7 Million. As they were making profit for 5 to 7 months from October to April 2023 when he was paying her. That he also paid her in June 2023. These payments were from her own share of the profit of the Forex trading. He further said that he cannot remember telling the claimant that he will pay her all her money to the last kobo and never promised her this. That the claimant pressured him to say that he will pay her after the Forex crashed and she threatened his life. Also that he gave her the N300,000.00 because she was pressuring him to pay her her capital. This N300,000.00 was paid to her in June making the total money he paid to her to N2.7 Million. That the N2.4 Million was part of her own share of the profit. Further that Exhibits “C1” and “C2” contain all the money he had paid to the claimant.

This is the case for the defence. At the close of the defendant’s case counsel for the parties orally addressed the court on 20/10/2023.

In his address, defendant’s counsel submits that going by the nature of the investment between the claimant and the defendant, this court lacks the jurisdiction to entertain an investment between parties which is common ground and unchallenged because it touches and concern the issue of foreign currency. Further submits that parties cannot confer jurisdiction. Refer to the case of FRN v Solomon (2018) ALL FWLR part 934 page 1085 at pages 1107 para E. Further that the claim and evidence before the court show that the investment the parties entered into is an issue of Forex

trading which entails bringing and selling of foreign currency in line therefore robbing the court of its jurisdiction.

Counsel submits that a party who takes advantage of a contract cannot turn around to castigate the genuineness of the contract. Refer to **JOSEPH V. KWARA STATE POLYTECHNIC (2014) ALL FWLR page 145 at 1236 to 1237**. Further submits that the claimant is bound by the liabilities that come with Forex Trading. Submits that Exhibit “B” the whatsapp message between the claimant and the defendant where the defendant agreed to refund the claimant after loss of the Forex Trading qualifies as a statement made without prejudice. Counsel urged the court to discountenance Exhibit “B”. Also that the N300,000.00 paid by the defendant to the claimant after the loss of the Forex Trade is an act done without prejudice. That this was paid due to the pressure mounted by the claimant. Counsel also referred the court to the Judgment delivered by Hon. Justice F. A. Fiberesima on 22nd February 2023 in PHC/486/FHR/2022.

Claimant’s counsel in his address submits that this court has the jurisdiction to entertain this case and referred to Rivers State Small Claims Court Hand-book page 2 where it is stated that small claims court has jurisdiction in recovery of debt cases of not more than N5 Million. Also refer to Form RSSC2. Counsel submits that the defendant having started paying back the capital to the tune of N300,000.00 and left a balance of N3.6 Million, it has become a simple debt and no longer Forex transaction.

That the case of **JOSEPH V KWARA STATE POLYTECHNIC (supra)** cited by the defendant’s counsel is not relevant to this case since the claimant has come here to recover debt which the defendant has paid N300,000.00 remaining N3.6 Million. Counsel states that Exhibit “B” was not marked without prejudice and the case of **EBULOCHA V ACB BANK (Supra)** cited by the defence counsel on document marked without prejudice is not relevant to this case. Counsel urge the court to place value or weight on Exhibit “B”. Counsel states that from Exhibit “B” which was not made without prejudice

where the defendant promised to pay the claimant her money to the last kobo and also requests a lawyer's agreement to ensure that he will not run away with the money, it is obvious that the defendant knows he is owing the claimant and pleaded for time and paid the sum of N300,000.00 in partial fulfillment of his promise. Submit that admitted facts need no further proof. Counsel refer to **OGBIRI V NAOC (2011) ALL FWLR (Part 577) page 810 at 812 ratios 3 and 4.**

Counsel states that the defendant has not been able to prove his counter claim. That the claimant and not the defendant was the one inconvenienced. There was also no evidence of any threat to the defendant's life.

I have reviewed the evidence of CW1 the claimant and DW1 the defendant. I have also taken into consideration all the exhibits tendered and the written submissions of counsel.

The two issues that arise for determination before this court is "whether from the totality of evidence the claimant has proved his claim to be entitled to Judgment"?

2. "Whether the defendant is entitled to his counter claim?"

The evidence of CW1 the claimant and DW1 the defendant shows that there was no written agreement entered into by the parties when the claimant invested in the defendant's Forex trading. The claimant did not even meet the defendant and all their communication was done through text (sms) messages, whatsapp message and phone calls. Therefore there was no written agreement between the parties even though the claimant has said under cross examination that there was an oral agreement the evidence before the court show that there was no agreement either written or oral between the parties as to the Forex trading transaction they entered into. The parties having entered into this Forex trading transaction when the claimant invested into the Forex market which was being traded by the defendant DW1 before the Forex market crashed leading to the defendant

being indebted to the claimant, this has now become a case of recovery of debt which gives this court the jurisdiction to entertain this case contrary to the submission of the defendant's counsel. The defendant has even in his evidence in Chief said that he has paid back the sum of N300,000.00 to the claimant. Therefore this court has the jurisdiction to entertain this claim. The Rivers State Small Claims Court Hand book states in page 2 that the Rivers State Small Claims Court has jurisdiction recovery of debt case of not more than N5 Million.

The evidence before the court which is not in dispute between the parties is that the claimant invested a total of N3.9 Million with the defendant on the Forex trading. The Defendant has paid the claimant a total sum of N2.7 Million as profit from her investment including the N300,000.00 the defendant said he paid under threats. Therefore the Forex having crashed and the claimant having received a total of N2.7 Million in total from the defendant, she cannot come back and claim the total capital sum she invested again since there was no agreement that if the Forex trade crashed she will be paid all her money.

The claimant's counsel is urging the court to place much reliance on Exhibit "B" the whatsapp message between the claimant and the defendant where the defendant stated "believe me I will pay you to the last kobo". This court will not place much reliance on Exhibit "B" since this whatsapp message exchange between the parties took place while the parties were still talking before the matter was filed in court. I agree with the defendant's counsel that this statement Exhibit "B" should be marked without prejudice, therefore much reliance will not be placed on it.

Accordingly from the foregoing I am of the view that the claimant having received a total sum of N2.7 Million as profit on investment including the N300,000.00 the defendant said she paid through threats she is only further entitled to the sum of N900,000.00 (Nine Hundred Thousand Naira) to make up the total sum she invested.

The defendant has failed to prove his counter claim and is hereby dismissed. Accordingly from the foregoing, Judgment is hereby given in favour of the claimant as follows;

Court: 1. That the defendant is to pay to the claimant the sum of N900,000.00 to make up the total sum the claimant invested in the defendant's Forex Trading business which has been left unpaid after the Forex Trading business the claimant invested with the defendant crashed.

2. That the defendant is to pay to the Claimant the sum of N200,000.00 (Two Hundred Thousand Naira) as cost.

Signed:
A. O. Amadi-Nna, Esq.
Chief Magistrate GD.1
23/10/23