

IN THE MAGISTRATES' COURT OF RIVERS STATE
IN THE PORT HARCOURT MAGISTERIAL DISTRICT
HOLDEN AT PORTHARCOURT BEFORE HIS WORSHIP. G.C. AMADI ESQ.
SITTING AT SMALL CLAIMS COURT AT CHIEF MAGISTRATE COURT 8, ON THE 2nd OF
FEBRUARY 2024

SUIT NO. PMC /194/2023

MR. JERRY AZUBUIKE

}

CLAIMANT

AND

1. MR NOSA EDEBIRI

}

DEFENDANT

JUDGMENT

This is the final judgment in this suit wherein the claim before the court, dated and filed on the 11TH October, 2023 is for:

1. An order of this Court compelling the defendants to pay the Claimant, the sum of N1,445,000 as balance for electrical materials supplied to him by the Claimant
2. The sum of Three Million Naira(3,000,000)only as damages which is made up of
 - I. Two Hundred And Fifty Thousand Naira(N250,000) as cost of litigation.
 - II. Eight Hundred Thousand Naira(N800,000) paid as interest on loan collected.
 - III. Five Hundred Thousand Naira(500,000) as cost of action in suit No: PMC/634/2020 and
 - IV. One Million, Four Hundred And Fifty Thousand Naira (N1,450,000)only as emotional and psychological trauma caused by the defendant
3. An order of this court compelling the defendants to pay the Claimant the sum of N300,000 as damages.

In proof of his case, the Claimant called one witness and the defendant called no witness.

On the 6th day of November, 2023, the Claimant was present and the defendants were present. An application to enter plea of not liable for the defendant by the defendant Counsel was granted and the matter was set down for hearing.

On the 18th day of January, 2024, the CW1, who is also the Claimant on record testified and adopts his written statement on oath dated and filed the 8th day November, 2023 wherein he testified that he is a businessman and the MD of JERTO INTERNATIONAL CO. at No. 37 Okija Street, Mile 1, Diobu Port Harcourt and deals on the sales and supply of electrical materials.

That sometime around October, 2017, the defendant approached him and said he would want him to supply him with electrical materials for use in his new building and that he would pay him after the supply having been introduced to him by his brother IK Edebiri. That he accepted and they discussed on the items to supply him and their prices. He also promised to introduce /connect him to some of his other friends.

That he supplied to him the entire electrical materials required in his building situated at House 4, (Right wing), King Bob Street, off Sani Abacha Road, G.R.A, Port Harcourt. That he supplied him goods totaling the sum of Two Million Fifteen Thousand, One Hundred Naira (N2,015,100) only. That he issued him with a proforma invoice evidencing the items he supplied and the cost of the materials.

That of the total amount of goods supplied to the defendant, he has only paid the sum of Five Hundred And Seventy Thousand Naira (N570,000) only, leaving a balance of One Million, Four Hundred And Forty -Five Thousand, One Hundred Naira (N1,445,100) only.

That all efforts made for the defendant to pay him is to no avail, as the defendant have failed and refused to pay.

That as a result of the defendant's refusal to pay him, he had to take a loan of Two Million Naira (N2,000,000) only from one Mr, Charles Obi of Chachris International Co Ltd, to pay off the creditors and he collected some of the materials which he supplied to the defendant and he paid an interest of Eight Hundred Thousand Naira (800,000)

That in the present suit, he paid his lawyer the sum of N250,000 and he was issued a receipt

That sometime in June, 2019, he instructed his lawyer to write a demand letter to the defendant to pay but upon his refusal to pay, he caused his lawyer in 2020 to file a suit against the defendant in Suit No. PMC/634/2020 and paid his lawyer the sum of N500,000 out of the N800,000 he was charged.

That the defendant said he will not pay him because he said he has more connections than him and that in one occasion, when he went to defendant's house to ask for his money, the defendant loosed his dog on him and he was bitten by the dog and further used the Abacha police station to arrest him. The CW1 identifies the Receipt from his lawyer, M.O Akunesiobike and another receipt from G.O. Tamuno & Co, Agreement for loan, termination of loan, quotation from Jerto International Co. dated 15th of November 2017 and another quotation dated the 15th of December, 2017, another quotation dated 25th October, 2017 and Demand letter dated 6th June, 2019; were tendered in evidence by the

Claimant's counsel, were not objected to by the defendant's counsel and was admitted in evidence as Exhibit A,B,C,D and E respectively.

In conclusion, the CW1 states that he is claiming for the following:

1. An order of this Court compelling the defendants to pay the Claimant, the sum of N1,445,000 as balance for electrical materials supplied to him by the Claimant
2. The sum of Three Million Naira(3,000,000)only as damages which is made up of
 - I. Two Hundred And Fifty Thousand Naira(N250,000) as cost of litigation.
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 - III. Five Hundred Thousand Naira(500,000) as cost of action in suit No: PMC/634/2020 and
 - IV. One Million, Four Hundred And Fifty Thousand Naira (N1,450,000)only as emotional and psychological trauma caused by the defendant
3. An order of this court compelling the defendants to pay the Claimant the sum of N300,000 as damages.

At the close of the evidence in chief of the CW1, the CW1 was cross examined on same date and testifies that the defendant have not paid him 80% of the total goods he supplied to him. That the only goods he did not supply were the ones that he cancelled, That the defendant have never called him to come pick up his goods because they were faulty. That the defendant is not part of the loan agreement and did not sign same, that he(The CW1) was the one that sourced for the loan to pay for the things that the defendant is owing him. That he has sat down with the defendant to reconcile the difference in the invoice. That he cannot remember if he deducted the items he cancelled from the total figure before he made his claim.CW1 is shown Exhibit Item 2 and 3 and he states that he excluded the cancelled items from the total, That after deductions, the defendant is owing him Three Hundred and Seventy Two Thousand Naira

The CW1 is also shown Exhibit E, Item 3 and Items 4 and he states that they were supplied in packets and not in pieces.

That it is not true that it is because the reason why the defendant did not pay the balance is because the figures were inflated and it is not also true that is the reason why they called for reconciliation of N350,000 Balance and not N1, 372,000.That his share from the defendants bush entry is N100,000 out of the N200,000 that was given to him to share with his colleagues. That though the defendant is not part of the loan transaction, but the defendant is aware that he took loan to offset the credit he had incurred from the defendant's debt

In conclusion, the CW1 states that the defendant is owing him N1, 372.000

On the 31ST January,2024, the defence opened his case and the DW1 who is also the defendant on record testifies and adopts his written statement on oath dated and filed on the 23rd January, 2024. The DW1 testifies thus: That sometime in October, 2017,the Claimant came into his building site at House 4, Lokpobiri Street, Off Sani Abacha Road, GRA Phase 111, Port Harcourt, Rivers State and introduced himself as a dealer on electrical materials and requested that I should award him the contract of supplying some

of the electrical parts required in the building project. That after much negotiations with the claimant, they both agreed that he would supply some of the materials on the condition that any material supplied by him, shall be verified by both parties and payment made after some time.

That in the course of the said transaction, the defendant supplied some of the electrical items but not all the goods as contained in the proforma invoice as claimed by him were good as some were rejected by him as a substandard product and were duly marked with asterisk

That contrary to the Claimant's claim, the total values of goods supplied to him by the Claimant and duly accepted by him is N850, 000 and not N1, 445,100

That the records of goods supplied to him by the Claimant is contained in the proforma invoice Nos-0248, 0164 and 0157 dated 20/10/2017, 15/12/2017 and 15/11/2017. That not all the goods supplied in the proforma invoice was supplied to him by the Claimant.

That he has paid the sum of N570,000 out of the N850,000 being the total value of goods supplied to him by the Claimant leaving a balance of N280,000

That the Claimant fraudulently added the value of goods which he did not supply to him as part of the debt he is owing him

That he has compensated the Claimant on the land transaction to the sum of N437,000 as part of the debt and to show good faith, he did not deduct it from the balance.

That the Claimant also collected the sum of N1,500,000 from his client as bush entry and have not accounted for same and is still holding over till date. That he is not a party in the loan transaction as in Exhibit C.

That it is the outright refusal of the Claimant to reconcile the figures with him based on items supplied to him that resulted in the delay in the liquidation of this debt till date. That he is not liable to the Claimant's claim for damages and /or cost.

During the cross-examination of DW1, he stated that the total sum supplied in N1, 342,400 out of which he has paid N800,000. That he has invoices to show this and the invoices are with his lawyer. The DW1 identifies Exhibit E and states that it is correct that the items that were cancelled were not supplied.

The DW2 looks at Exhibit at No 2 and states that he has not given the Claimant his balance because when he looked at the invoice, there were so many discrepancies. That he looked for the Claimant everywhere but he was nowhere to be found and he hasn't seen him since 2017 for reconciliation but that he had other dealings with him in 2019 but it was not physical. That he is ready to pay the balance of N280,000 but not today.

Finally, the DW1 stated that he has never rejected the CW1's supplies.

At the close of the evidence of the DW1, there was no re-examination and the defendant counsel closed the case of the defendants and the matter was adjourned for judgment.

A total of eight (8) exhibits were tendered in evidence in the course of the trial.

That said, I will proceed to consider the case of the parties in the light of the relevant laws. I have noted the essence of the claim and have also taken cognizance of the evidence before the court. I have read all the exhibits and I have couched a lone issue for determination and that is whether the Claimant has discharged the burden of proving his Claim before the Court.

The general principle of law is that he who asserts must prove, coined from the old maxim incumbit probatio qui dicit non qui negat which means that the burden of proving as fact rest on the party who asserts the affirmative of the issue and not upon the party who denies it, for a negative is usually incapable of proof. See *Omisore v. Aregbesola* (2015) 15 NWLR (Pt. 1482) p. 217. See also, Section 131 and (2) Evidence act 2011, and *Agwaramgbo v. I Dumogu* (2008) 5 NWLR (Pt. 1081) p. 564 at 572.

Issues are joined on the fact that goods were supplied by the Claimant to the defendant as on Exhibits E, F and G.

Issues are also joined on the fact that in liquidating the total sum, the defendant paid the Claimant, the sum of N570,000

Issues are also joined on the fact that the goods that were cancelled on the face of the said exhibits were not supplied.

However, the defendant had gone further to state that the goods marked asterisk were rejected by himself as substandard. However again, the CW1 during cross-examination has stated that the defendant never called him to come to return the goods. This was affirmed by the defendant himself during the conclusion of his cross-examination when he stated that he never rejected the defendant's supplies.

Apart from the deposition of the DW1 that he rejected the goods on asterisks on Exhibits E-G , which he contradicted himself during cross examination, there is no other shred of evidence to support the defendant's assertion that he rejected the goods marked as asterisk nor returned them to the Claimant.

In the light if the above, in order to determine actual sum of debt owed by the defendant , this Court will focus on the total sum of the cancelled items on the Exhibits E-G to check and if the cancelled items were correctly deducted from the total on each invoice E-H or not.

Starting from Exhibit E before the Court, There is no cancelled item on Exhibit E and the total sum is **N703,100**

On Exhibit F, there are two cancelled items (Nos 2-3) .A summation of the NON-CANCELLED items as in Nos 1,4 and 5 gives a total of **N62,000(Sixty Two Thousand Naira) Only**

On Exhibit G, No.9 is cancelled which is to the sum of N10,000. The total sum on the Exhibit G is N 1,249,500, minus N10,000 (which is the sum against the cancelled item

No.9) which is equals to **N1,239,500(One Million, Two Hundred And Thirty Nine Thousand, Five Hundred Naira) only**

So total sum on Exhibits **E,F AND G** is: **N703,100** plus **N62,000** plus **N1,209,500** which is the to the grand total of **N2,004,600**

Since both the defendant and the Claimant are in agreement that the defendant paid the sum of N570,000.The aforesaid paid sum of N570,000 will be deducted from the total of Exhibit E, F and G as explained above.

Which is N2,004,500(Two Million, and Four Thousand, Five Hundred Naira) minus the mutually admitted paid sum of N570,000 (Five Hundred And Seventy Thousand) which is to the sum of **N1,434,600**; Which is the outstanding yet to be paid by the defendant .

i. **On The Claim For Cost Of Litigation**

On the cost of litigation, the Appellate Courts have reiterated times without number that cost of litigation is in the class of special damages that must be strictly proven. Please refer to the case of Lonestar Drilling Nig. Ltd v. New Genesis Executive Security Ltd [2011] LPELR – 4437 CA;International Offshore Construction Ltd & 3 Ors. v Shoreline Lifeboats Nig. Ltd [2003] 16 NWLR [Pt. 845] p. 157

The Claimant in this case have attached documentary evidence in the form of Exhibit A, which is the official receipt from the law firm of the Claimant's counsel.On the strength of the evidence of CW1 and Exhibit A, the claim for cost of litigation succeeds.

ii. **On The Claim For Eight Hundred Thousand Naira(N800,000) paid as interest on loan collected.**The Defendant have denied the knowledge of the existence of a loan agreement,The defendant cannot be bound by transactions that he was not privy to nor incur liabilities therefrom.The claim for interest on loan fails.

iii. **On the Claim Five Hundred Thousand Naira(500,000) as cost of action in suit No: PMC/634/2020.**The said suit No: PMC/634/2020 is different from this suit .I don't see why Counsel is claiming cost of action in respect of a suit in a completely different suit. This claim head fails.

iv. **On the prayer for general damages for One Million,Four Hundred And Fifty Thousand Naira (N1,450,000)only as emotional and psychological trauma caused by the defendant**

The correct assessment for general damages remains an award that compensates the injured party and restores it to the position it would have been had the breach or injury not occurred.

As a result, the assessment of damages is based purely on damages flowing naturally from the breach. Stephen Okongwu V NNPC (1989) 4 NWLR (Pt 115) 296 @ 306h-307a; GFK Investment Ltd V Nigeria Telecommunications Plc (2009) 15 NWLR (Pt 1164) 344; @ 384D-E.

The award is quantified by what in the opinion of a reasonable person is considered adequate loss or inconvenience which flows naturally, as generally presumed by law, from the act or conduct of the Defendant. It does not depend upon calculation made and figure arrived at from specific items. See *Odulaja v Haddad* (1973) 11 SC 357; (1973) 11 S.C.

(Reprint) 216; *Lar v Stirling Astaldi Limited* (1977) 11-12 SC 53; (1977) 11-12 SC (Reprint) 106 and *Osuji v Isiocha*

(1989) 6 S.C. (Part II) 158; (1989) 3 NWLR (Part 111) 623

The CW1 testified in chief that That the defendant said he will not pay him because he said he has more connections than him and that in one occasion, when he went to defendant's house to ask for his money, the defendant loosed his dog on him and he was bitten by the dog and further used the Abacha police station to arrest him.

The defendant as DW1 never expressly rebutted the fact of the dog bite and the arrest of the Claimant as testified by the CW1. We know that it is now trite that facts not denied are deemed in law as admitted.

It is obvious that the defendant for reasons of lack of reconciliation prolonged the refund of the Claimant and caused him great discomfort which made him file this suit. It would have been a great show of good faith if the defendant had gone ahead to pay the Claimant, the outstanding which the defendant believed is the right outstanding instead of sitting on the Claimant's balance since the year 2017. Apparently, the defendant occasioned inconveniences, psychological and emotional hurt to the Claimant.

On the undisputed and clear evidence before the court, the court will hold that the claimant has discharged the burden of proving that he is entitled to his claim for general damages before the Court.

3. On the Claim for An order of this court compelling the defendants to pay the Claimant the sum of N300, 000 as damages. The Court cannot award damages twice as special and general damages have already been awarded by this Court as in Prayers B(i) and (iv) respectively

IT IS THUS ADJUDGED that the Defendant is to pay the Claimant the sum of N1, 434,600 as balance for electrical materials supplied by the Claimant to the defendant.

IT IS FURTHER ADJUDGED that the Defendant to pay to the Claimant, the sum of N250,000 as cost of litigation.

IT IS ALSO ADJUDGED that the defendant pay to the claimant ,the sum of N300,000 as general damages for the emotional and psychological trauma caused by the defendant

AND IT IS ORDERED that the defendant is to pay the Claimant, the aforesaid sum of **N1,984,600(One Million ,Nine Hundred And Eighty Four Thousand, Six Hundred Naira),N250,000(Two Hundred And Fifty Thousand) and N300,000(Three Hundred Thousand)** representing the balance for electrical materials supplied , the cost of litigating this claim and general damages respectively which is to the total sum of **N1,984,600(One Million ,Nine Hundred And Eighty Four Thousand, Six Hundred Naira)** with immediate effect.

AND IT IS FURTHER ORDERED that the defendant do pay to the Registrar of this court the total sum of **N1,984,600(One Million ,Nine Hundred And Eighty Four Thousand, Six Hundred Naira)** above mentioned.

TAKE NOTICE –That if payment is not made as above ordered, a warrant or warrants may issue requiring an officer of the court to levy the sum above mentioned, to the Claimant together with further costs.

GIFT C AMADI, ESQ
CHIEF MAGISTRATE
GD I
SIGN.....DATE.....

**G. CHINYERE AMADI. ESQ.
CHIEF MAGISTRATE G.D.I**

THE JUDICIARY *
WCBSIKE, GARIBO ESQ
SIGN:.....
DATE: 6/2/2020