

IN THE MAGISTRATES' COURT OF RIVERS STATE
IN THE PORT HARCOURT MAGISTERIAL DISTRICT
HOLDEN AT PORT HARCOURT BEFORE HIS WORSHIP. G.C. AMADI ESQ.
SITTING AT SMALL CLAIMS COURT AT CHIEF MAGISTRATE COURT 15, ON THE 15TH OF
JUNE 2023

SUIT NO. PMC /SCC/26/2023

MR FRANCIS ELECHI

}

CLAIMANT

AND

STUDIO 24 COVID LTD /MANAGER

}

DEFENDANT

JUDGMENT

This is the final judgment in this suit wherein the claim before the court, dated and filed on the 26th April, 2023 is for:

1. An order of this Court compelling the defendant to pay the Claimant, the sum of N85,000 as sum for services not delivered.
2. An order of this Court compelling the defendant to pay the Claimant the sum of N500,000 as general damages
3. An order of this Court compelling the defendant to pay the Claimant, the sum of N500,000 for Cost of litigation.

In proof of his case, the Claimant called one witness and the defendant called two witnesses

On the 8th day of May, 2023, the Claimant was absent and the defendant was present. An application to enter plea of not liable for the defendant by the Claimant Counsel was granted and the matter was set down for hearing.

On the 10th day of May, 2023, the Claimant was present and the defendant was present. On this date, the CW1, who is also the Claimant on record commenced his evidence in Chief and stated that he had cause to require a portrait for a friend's wife that was turning 60 and visited the defendant business place and requested for a same day delivery portrait to be made for that purpose. That the defendant's attendant replied that they do not do same day delivery and he asked them that if he pays for express if they will be able to do that and in response the defendant attendant took him to a room where the portraits were sold and he

chose one and asked for the price and the attendant said its N85,000 and he asked why it was so expensive and the attendant replied that because its express order. That the attendant then brought a POS and he paid for the portrait. The CW1 tenders the receipt from the POS and same is tendered and admitted in evidence as Exhibit A

Testifying further the CW1 stated that after the payment, he now asked the attendant what time he is coming to pick up and the attendant told him that it wont be ready that day and he told her that he wanted Express and immediately asked for a refund and they asked him to wait for the Manager and he waited for 10 minutes and they said since he cannot wait he should drop his account details; which he dropped and they promised to transfer the money back into his account.

That on that day, the money was not transferred and he waited for a couple of days and called the defendant and they said they were waiting for authorization from Lagos for the refund and that he visited the office of the defendant and the manager was not around. That he was begging for his money to be refunded for work that the defendants did not do. That he sent whatsapp messages to them, yet there was no response, then they asked their lawyer to write a letter.

The Claimant seeks to tender the printout of the whatsapp messages. Same are admitted in evidence and marked as Exhibit B

The CW1 also identifies the demand letter and same is admitted in evidence and is marked as Exhibit C

Testifying further, the CW1 stated that after Exhibit C nothing happened but that as soon as the defendants were served the processes of Court, they quickly made the transfer.

The CW1 stated that he wants the Court to grant him his claim for damages for the long time duration that the defendant held down his money for work they didn't do.

That they brought lawyers to Court and he is asking for 500,000 for general damages and another 500,000 for cost of litigation.

During the Cross Examination of CW1 on the same day, he stated that it is not correct that he was informed that he would not get his refund that same day

At the Close of the Cross-Examination, the Claimant counsel inform the Court that this is the close of the case of the Claimant.

On the 16th of May, 2023, the Defendant opened their case and fielded DW1, One Blessing Amos of NO. 2 Amadi Street, Navy Road, Rumuigbo, Port Harcourt. That she noticed that the Claimant is suing Studio 24 media Ltd but she works for Studio 24 Covid Ltd

That on the 27th day of March 2023, she had an attack of sickle cell so she left the outlet to the hospital and that while she was out, the CW1 showed up at their outlet and said he wanted a portrait to be made and delivered that same day and the attendant informed the CW1 that same date delivery is not possible but that the CW1 still went ahead to choose and paid for a frame. That after making the payment, the CW1 asked the attendant what time on the same day he will come to pick up the portrait ,that he said he needs the frame

in 2 hours and the attendant repeated and informed him that same day delivery is not possible and the attendant called her and she informed the attendant on phone that same date delivery is not possible. That it takes time to produce. That at that point, the CW1 then asked for a refund and that she said that the CW1 will get his refund but did not specify when because she is not the finance officer.

That after that, she reached out to the defendant on WhatsApp messages and also paid physical visit to his office to apologize for the delay in the refund and to make the refund but she met the defendant's office locked and she was told it's a salah holiday. That she went another day and met a young man in the CW1's office who took her identification details and promised to get back to the defendant.

That the Claimant served her Court summons and she was just about to go into the hospital for proper investigation and she was able to still reach out to the CW1 and all he said is that they will meet in Court. That the defendant later got the refund as she promised.

The DW1 identifies a doctor's report and same is tendered and admitted in evidence as **Exhibit D**.

On the 30th of May, 2023, during the cross-examination of DW1, she stated that she is not the person that attended to the CW1 on the day he came out to their business premises to make an order for a frame. That what she knows about the happening of the day is what was told her by the attendant. That she never had the account number of the defendant prior to the date. That it took her about a week to send a mail to the finance department but that she called them same day to create an awareness about the defendant.

That she intended to make a transfer to the defendant but the CW1's number kept showing an account without a name.

That is true that they had a WhatsApp conversation where the CW1 was asking for a refund and that throughout the conversation she never told the defendant that she was having issues with transferring money to him because the conversation never got to that point. That the refund was made on the 20th day of April 2023.

Online transaction receipt is identified and tendered in evidence and is admitted and marked as **Exhibit E**.

On the 14th June, 2023, the DW2 one Obitiego Sandra of No. 5Wogu Street testified as CW2 and stated that on the 27th March, 2023, the CW1 came to their business premises to ask for a frame and she informed him that their Company does not do same day portraits and that the CW1 asked to be shown the samples of frames and thereafter he made a payment of N85,000 through POS machine. That after the payment he started making issues that he wants the portrait same day and she had to reach out to the DW1, who is her manager and the DW1 took up from there and that is all she knows about the matter. That the money was refunded 3 weeks after the payment.

During the cross examination of the DW2 on same date, she stated that on the day of the incidence when she reached out to the DW1, she was not picking up her calls because she was on sick leave. That on the date of the incidence, she told the CW1 to drop his account



details for refund and he supplied it and she dropped the bank details and information and that's all she knows.

At the end of the Cross-examination of DW2, the Claimant's counsel applies that in accordance with Page 4 of the handbook of the Rivers State Small Claims Court that she applies that the name of the defendant on record be amended from Studio 24 Media Ltd to Studio 24 Covid Ltd.

The defendant counsel objects that the issue came up as a result of cross-examination and that the Claimants entered the transaction fully aware of the name of the defendant. That granting the application will be detrimental to the defendant's case.

In granting the application for amendment, the Court stated that the Court of law is always poised to do substantial justice between the parties and that moreover Page 4 of the Handbook of the Small Claims Court makes allowance for an application of this nature to be made at this time and to be granted. So the defendant name was amended to Studio 24 Covid Ltd

At the close of the evidence, the matter was adjourned for judgement.

A total of five (5) 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.

It is in evidence via Exhibit 'E' that the defendants paid the sum of N85,000 to the Claimants account as refund of the sum paid to the defendant for the portrait. So, the first claim is satisfied, the Courts preoccupation is now on the 2nd and the 3rd claim which is for:

1. An order of this Court compelling the defendant to pay the Claimant the sum of N500,000 as general damages
2. An order of this Court, compelling the defendant to pay the claimant the sum of #500,000 for the. Cost of litigation.

On The Prayer For General Damages:

Issues have been joined as to the fact that the Claimant money paid to the defendant on the 27th March 2023 as in Exhibit A was not refunded until the 20th April 2023 after the commencement of this suit. The DW1 had stated that the reason for the delay is because she didn't have the complete banking details of the Claimant and interestingly did not deem it important to fetch it from the Claimant in their correspondence as in Exhibit A. Moreover, the DW2 have stated during evidence that on the 27th March 2023 the Claimant gave his Banking details and information which she forwarded to the office.

It is obvious that the defendant for whatever reasons prolonged the refund of the Claimant and cause him great discomfort which made him file this suit and the said refund was done only after the summons in this suit was filed.

It is certainly undisputed from evidence before the Court that the Claimant's claim for general damages arose directly from the careless conduct of the defendant who held up the Claimant's money for no justifiable reason for 3 weeks which naturally occasioned inconveniences and emotional hurt to the Claimant.

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.

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

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.

Consequently, the Court orders the defendant to pay to the Claimant, the sum of N500,000 (Five Hundred Thousand Naira) as general damages

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

Naude v Simon [2014] ALL FWLR [Pt. 753] CA 1878. per Akomolafe- Wilson JCA

International Offshore Construction Ltd & 3 Ors. v Shoreline Lifeboats Nig. Ltd [2003] 16 NWLR [Pt. 845] p. 157

From the authorities on this issue, it is stated that the solicitor's fee or cost of prosecuting a legal action will fall under the category of special damage which means it has to be pleaded specifically and evidence adduced to prove.



To satisfy the standard of proof required for special damages, The Claimant in this case did need to produce or tender letter of instruction engaging the legal counsel to prosecute the matter stipulating the legal fees, a receipt or invoice from the counsel to the party

The Claimant in this case, failed to attach any documentary evidence in the form of receipts or proof of transfer of funds to the Counsel or firm evidencing the cost of procuring a lawyer and filing the suit. UNION BANK OF NIGERIA PLC V. MR. N.M. OKPARA CHIMAEZE (2014)-SC.

In the absence of any proof of the special claim for cost of litigation, This Court holds that the claim for cost of litigation fails.

IT IS THUS ADJUDGED that the Defendant is to pay the Claimant, the sum of N500,000(Five Hundred Thousand Naira) as general damages for the emotional stress and disappointments and long days of tying down the money of the Claimant and depriving him of making use of his money as and when due.

AND IT IS ORDERED that the defendant is to pay the Claimant, the aforesaid sum of N500,000(Five Hundred Thousand Naira) with immediate effect.

AND IT IS FURTHER ORDERED that the defendant do pay to the Registrar of this court the total sum of N500,000(Five Hundred Thousand Naira)) above mentioned as general damages.

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
G.D II

G. CHINYERE AMADI. ESQ.
CHIEF MAGISTRATE G.D.II