

**IN THE CHIEF MAGISTRATE COURT OF RIVERS STATE, NIGERIA  
IN THE RUMUODOMAYA MAGISTERIAL DISTRICT  
HOLDEN AT RUMUODOMAYA**

**BEFORE HIS WORSHIP B.H. ABE (MRS), ESQ., SITTING AT THE CHIEF  
MAGISTRATE COURT 1, RUMUODOMAYA ON THURSDAY THE 12TH DAY OF  
DECEMBER, 2024**

**RMC/SCC/16/CS/2024**

***BETWEEN***

**AUSTIN-AMADI ELIZABETH - CLAIMANT**

**VS.**

**VICTOR ROLAND - DEFENDANT**

**JUDGMENT**

The Claimant claims against the Defendant as follows:

The defendant fraudulently collected the sum of N170,000.00 (One Hundred and Seventy Thousand Naira) only, from the claimant for over seven months' on the pretext of selling an Air Conditioner, albeit both the Air Conditioner and N170,000.00 are still with the defendant.

**Facts**

This suit commenced via a complaint Form RSSC 2 by the claimant against the defendant dated 15<sup>th</sup> April, 2024.

A summons RSSC 3 was filed also by the claimant, served on the defendant, the Affidavit of service Form RSSC 6 is before the Court deposed to by the Court bailiff, Gospel Utorue.

The claimant's counsel, L. O. Ordu, Esq. entered a plea of not liable for the defendant in his absence on the day the matter was called for plea; 30<sup>th</sup> April, 2024. The Court ordered that the defendant be served with a hearing notice.

The Court encouraged both parties to settle out of Court afterwards but to no avail, parties could not seem to reach any amicable settlement.

Hearing commenced afterwards on the 8<sup>th</sup> May, 2024, defendant absent. Cw1 was called to give evidence. Cw1 gave her name as Austin-Amadi Elizabeth, living at Ekara Ekinigbo Road, off NTA Okpara link road, Rumuigbo, a medical practitioner. She knows the defendant. The defendant told her he had an AC for sale, she transferred N171,000.00 to him, via an account number he gave to her on the 3rd

May, 2023 from her Access Bank Account. He bought the AC, installed it in her bedroom. The statement of account of the claimant is before me as Exhibit A. After installing the AC, it made so much noise, and was not cooling optimally, he asked her to buy some more things for the AC and she gave him money, the problem still was not resolved, she returned the AC to him and he promised to refund her, he still has not refunded her till date, she then contacted her lawyer.

The Court ordered a second Hearing Notice to be served on him at the end of evidence that day.

On the 14<sup>th</sup> May, 2024, both parties were in Court, the receipt of payment to the defendant is before me as Exhibit B.

Cw1 bought a new AC, the defendant told the claimant that he had found a new buyer who was working in Bayelsa State, Offshore and Onshore, she contacted a lawyer who served him with the demand notice, admitted in evidence as Exhibit C, and then the matter was brought to Court. She prayed the Court to grant her claim of N171,000.00 for the AC and N129,000.00 legal fees paid to her lawyer. The legal fee receipt is before me as Exhibit D, total amount claimed is N300,000.00.

Cw1 was cross-examined by the defendant himself. She informed the Court as follows in the course of cross examination;

She told the Court the defendant has bought four ACs for her, three split units, one window AC, she confirmed their prices.

She does not have receipts only bank transfer of the payments to the defendant.

The N171,000.00 was for the AC and installation.

He took the AC but left the hanger and kit behind.

Cw2 Arthur Christian Obazee, living at Iworoma Road, Rumuigbo, a public servant, he said he knows the claimant, who is his late uncle's wife. He met the defendant in her house last year while working on electrical issues in the house.

In March, 2024, cw1 called him to complain that the AC the defendant bought for her was not good and he had not refunded her money to her. He met the defendant who told him that the person who bought the AC had gone Offshore and he will collect the money when he gets back, and give it to the claimant.

He went to the defendant's shop twice, the AC is N170,000.00, accessories N1,000.00, which comes to N171,000.00.

Cross-examination of CW2 by the defendant; the following were deduced in the course of cross examination;

He did not confirm from the defendant the claimant bought the AC for N171,000.00.

The defendant did not deny receiving N171,000.00 from the claimant.

He bought four ACs for the claimant.

Que. - Were the ACs bad?

Ans. - I met you with regards to one AC.

Re-examination of CW2;

Que. - Did you confirm that your uncle's wife gave him N171,000.00 for the AC in the claimant and defendant's presence?

Ans. - Yes he did not deny it.

Claimant's counsel closes her case.

The defendant entered his defence on the 30<sup>th</sup> May, 2024.

He gave his name as Victor Roland, living at 127 Harrow Road, Rumuigbo, an Electrical Electronics Engineer, who knows the claimant. In February/March, 2023, the claimant engaged him in some repair works at her home.

She also gave him N120,000.00 to buy an AC for her son's room, a fridge and a second AC. She transferred N220,000.00 to him, N100,000.00 for the fridge, N120,000.00 for the AC, he bought them and they worked perfectly; also bought her a stabilizer.

She asked him to buy one AC and one split unit, N100,000.00 for the split unit, N70,000.00 for the window unit, she transferred the sum of N170,000.00, both worked well.

After three weeks, she called that one AC was spoilt, he discovered the compressor was spoilt in the split unit, she asked him to repair it and sell the AC, that he should leave the AC accessories and loosen only the AC, the accessories will be for the new AC she bought. He told her he will repair it later while doing some other work for her before finding himself in Court.

Cross-examination commenced on the 11<sup>th</sup> June, 2024 by L. O. Ordu, the claimant's counsel.

Pertinent questions with answers asked inter alia are as follows;

The defendant confirmed he supplied four ACs to her (3 split units, 1 window unit)

He bought the ACs for her and gave her the receipts; bought them at Ojoto.

Claimant's counsel insisted he was lying to the Court.

He informed the Court the claimant paid through his accounts, bought ACs for almost a million naira. He used his daughter's account, Joy Chinerem Obinna with UBA.

She paid N170,000.00 for the last ACs, window unit; N70,000.00. Split unit N100,000.00.

He Confirmed buying four ACs again including a fridge and stabilizer.

Denied receiving N222,000.00 from the claimant for one split unit and one window unit.

The first AC was installed in her son's room, Kelechi.

N250,000.00 bought one AC and one fridge, fairly used ones.

Reiterated again he bought the last two ACs for N170,000.00, split unit and window AC.

Over one year between the time the last AC payment was made and the Court's summons.

He confirmed he accepted the transfer of N171,000.00 from the claimant.

He Still insisted he gave her all the receipts though the claimant's counsel says the claimant denies same.

Denied receiving over N800,000.00 from the claimant, accepted receiving N122,000.00

Exhibits D, D1 and E were admitted in evidence.

Que. - The sum of N51,000.00 was transferred to you for the AC wires?

Ans. - The money was for wiring the house not for AC, the AC comes with accessories.

Exhibits F and G were admitted before the Court to show wiring payment and for the AC labour.

She paid N200,000.00 for one split unit, two ACs on the 25<sup>th</sup> April, 2023.

Exhibits F and G show payment of N51,000.00 for the wire accessories and AC for the 23<sup>rd</sup> April, 2023 for labour for the kids AC.

The payment of N122,000.00 for the AC for the kids parlour, is admitted as Exhibit H.

Also admitted in evidence were; Exhibit I affidavit of payment for Exhibit H.

Exhibit J, payment for fridge of N100,000.00 paid on the 25<sup>th</sup> April, 2023.

Exhibit K, affidavit of payment.

Exhibits L and M, payment of N25,000.00 and affidavit for AC related payments made on the 26<sup>th</sup> April, 2023.

Exhibits N and O, payment of N35,000.00 for stabilizer for the window unit on the 28<sup>th</sup> April, 2023, affidavit of payment Exhibit O.

Exhibits P and Q, payment of N40,000.00 for burglary proof for window unit made on the 26<sup>th</sup> April, 2023.

Exhibits R and S, payment of N222,000.00 for window units and affidavit, payment on the 25<sup>th</sup> April, 2023.

Exhibits T and U, payment of N30,000.00 on the 26<sup>th</sup> April, 2023 for window unit AC and attached affidavit.

All the affidavits were deposed by the claimant, monies paid to Joy Chinecherem Obinna as directed by the defendant.

At the end of the cross-examination, the defendant still maintained, he bought only 4 ACs for the claimant, the N171,000.00 being, one split unit N100,000.00, one window AC N70,000.00, accessories N1,000.00 and also two ACs as earlier stated.

The claimant's counsel adopted her final written address dated 13<sup>th</sup> September, 2024, positing that the issue for determination is; whether the defendant is liable to pay back the sum of N170,000.00 paid to him for the purchase of one split AC?

Claimant's counsel contended that the answer is in the affirmative.

See Exhibit A, the payment of N171,000.00 to the defendant on the 3<sup>rd</sup> May, 2023, also see Exhibit B proof of payment, for the purchase of one split unit AC, which the defendant installed in her bedroom, Exhibits C and D also tendered being the demand notice and legal fee receipt.

The defendant was paid N170,000.00 for the only one split unit and N1,000.00 for AC accessories i.e. N171,000.00 and not for AC and fridge as submitted by the defendant.

The defendant has refused to pay the N170,000.00 to the claimant since May, 2023.

All other payments as seen in Exhibits F to U were referred to by the claimant's counsel in her final written address.

The defendant is not a witness of truth, he sold the AC and has refused to refund the claimant. Parties are bound by their contract, the Court should so hold.

The Court should grant;

1. N170,000.00 for the AC.
2. N130,000.00 for cost of litigation.
3. N200,000.00 for damages in favour of the claimant in conclusion.

See;

1. Niger-Dams Authority vs. Laida (1973) ESUR (pt. 1) 361.
2. WDN vs. Oyigbo (1992) 5 NWLR (pt. 77) 100-101.

Also cited section 167(d) EA 2011, evidence not produced, if produced would be unfavourable to the person who withholds it.

### **Issue for determination**

Whether the claimant is entitled to her claim?

### **COURT**

Exhibits tendered; Exhibits A to U relied upon by this Court.

The crux of this matter is one for recovery of money by the claimant from the defendant.

The claimant contends that she transferred N171,000.00 to the defendant on the 3<sup>rd</sup> May, 2023, the defendant bought the AC and installed it in her bedroom. The statement of account evidencing payment of the said sum is before me as Exhibit A, she complained about the AC not being in very good condition after its installation, the AC was thus, returned to the defendant, who promised to refund her the money spent on buying the AC, but has failed and refused to refund same till date.

The demand notice Exhibit C was served on the defendant who still refused to comply and so she sued for the recovery of her money from the defendant.

The receipt for the legal fees is before me as Exhibit D.

The defendant cross-examined cw1 after her evidence-in-chief and it was established that the defendant bought four ACs for the claimant, three split units and one window unit.

Exhibits F and G show payment of N51,000.00 for the wire accessories of the AC and workmanship for the repair of the kids parlour AC, also AC transferred to the defendant on the 23<sup>rd</sup> April, 2023.

Exhibit H and I show the payment of N122,000.00 for two ACs, the defendant did not deny receiving these monies from the claimant for the ACs in the course of cross-examination of the defendant.

Exhibits N and O, show payment of N35,000.00 for stabilizer of the window unit on the 28<sup>th</sup> April, 2023.

Exhibits P and Q, payment of N40,000.00 for burglary proof for the AC, transferred on the 26<sup>th</sup> April, 2023.

Exhibit R and S, payment of N222,000.00 for four window units, transferred on the 25<sup>th</sup> April, 2023 and Exhibits T and U, payment of N30,000.00 transferred on the 26<sup>th</sup> April, 2023 for window unit AC.

These Exhibits show consistency in the character of the defendant.

Evidence of the defendant consistently buying ACs for the claimant in accordance with the contract they both entered for the buying and installation of the ACs, shows that the defendant had been truthful in his transactions with the claimant and that was why the claimant continually patronized him.

The defendant was asked repeatedly the number of ACs he bought for the claimant in the course of cross-examination by the claimant's counsel and he emphatically reiterated he bought four ACs for her, though he did not have the receipts to show, which actually should have been in the possession of the claimant, hitherto, the claimant's counsel contends that the defendant did not give her any of the receipts and refused to produce them in the course of trial.

He also bought her a fridge, see Exhibits J and k, she transferred money to the defendant on the 25<sup>th</sup> April, 2023.

Exhibits R and S both show transfer of N222,000.00 for the AC in her son's (Kelechi) bedroom and window units, made on the 25<sup>th</sup> April, 2023 including Exhibits T and U, which show the transfer of N30,000.00 to the defendant for her son, Kelechi's bedroom for window unit AC on the 26<sup>th</sup> April, 2023.

From Exhibits R, S, T, U, the claimant paid a total of N252,000.00 to the defendant on the 25<sup>th</sup> April, 2023 and 26<sup>th</sup> April, 2023 for the window unit AC in her son's bedroom (Kelechi).

All these payments show that the defendant actually purchased ACs for the claimant and installed them accordingly.

All the above payments were by transfers to the defendant's daughter's account; Joy .C. Obinna as testified by the defendant in his evidence-in-chief.

Cw2 corroborated the evidence of cw1 to the extent that the defendant bought an AC for the claimant, which was not good and has failed to return the money to the

claimant claiming that the person he sold the AC to had gone Offshore and had not returned, same evidence also given by the claimant. They both confirmed the AC price at N170,000.00, accessories N1,000.00.

Though cw2 had told the Court in his evidence-in-chief that he did not confirm from the defendant that the claimant bought the AC at N171,000.00, albeit he said during cross-examination that he confirmed his uncle's wife gave the defendant N171,000.00 for the AC in the presence of the defendant and cw1, which the defendant did not deny.

This makes him seem as a witness who aprobrates and reprobates, not a witness of truth and so the Court cannot attach any weight or probative value to his evidence.

The defendant in the course of his evidence-in-chief, told the Court that the claimant gave him some money to buy certain items aforementioned, a fridge, AC, which worked perfectly. She gave him N120,000.00 for the AC for her son's room, transferred N220,000.00 for the fridge and AC. See Exhibits J, K, R, S, the defendant is being truthful here. He also bought a stabilizer, see Exhibits N and O.

She transferred N170,000.00 to him for one AC, N70,000.00 for one window unit and one split unit (N100,000.00) both worked well. After three weeks, she called that one AC was bad, he discovered it had compressor issues, she asked him to repair it and sell it, which he consented to. He said N250,000.00 bought one AC and one fridge, fridge at N100,000.00 as earlier testified, that would leave the AC at N150,000.00, insisted that he bought two ACs for N170,000.00.

The Court does not have sufficient evidence before it to ascertain if he actually bought one AC for N150,000.00. only evidence of the transfer of N170,000.00 to the defendant by the claimant, see Exhibit A, which the claimant paid for one AC but the defendant says he bought two ACs. He denied receiving N222,000.00 from the claimant in the course of cross-examination for one split unit and one window unit, albeit Exhibits R and S show the claimant transferred the sum of N222,000.00 to him on the 25<sup>th</sup> April, 2023.

He affirmed that it is over one year since the claimant paid for the AC and the Court's summons. See Exhibit A payment made on the 3<sup>rd</sup> May, 2023, N171,000.00 to the defendant by the claimant via her Access Bank Account with Account Number.

He accepted receiving N122,000.00 and N51,000.00, see Exhibits F and G for the AC wiring and accessories, including labour and the AC in the kid's room.

The Court cannot choose and pick what to believe and what not to believe. The Court will only accept as truth the evidence before the Court substantiated by the Exhibits (documentary evidence) tendered as aforementioned. Documentary evidence being the hanger to test the veracity of the witness statement; known as The best evidence rule.



The standard of proof as is trite is discharged on the balance of probability or preponderance of evidence. See section 134 of the Evidence Act, 2011 as rightly put across by the claimant's counsel in her final written address.

Documents tendered as Exhibits do not embark on falsehood like some mental beings, see *Olujinle Vs. Adeagbo* (1988)2 NWLR (Pt. 75) 238 and *BFI Group Corporation Vs. Bureau of Public Enterprises*.

Once documentary evidence supports oral evidence, oral evidence becomes more credible, as documentary evidence always serves as a hanger from which to assess oral testimony. See *Kimdey Vs. Military Governor of Gongola State* (1988) 5 SCNJ 28.

An aggrieved party to a contract has the right to seek for redress before a Court for the restitution of his legal right in a contract.

The aggrieved party can sue the defaulting party for breach of contract, where a valid contract has been entered into by both parties; a legal right has to be established.

A document tendered in Court is the best proof of the contents of such document, and no oral evidence will be allowed to discredit or contradict the contents thereof except in cases where fraud is pleaded. See *A-G., Bendel State Vs. U.B.A.* (1986)4 NWLR (Pt. 37) 547 referred to. Pp. 472, Para F.

All the Exhibits are the best proof of the claimant's case. The claimant has made her case credible on the preponderance of evidence before the Court.

It is trite that a valid contract exists where offer (being certain) from an offeror is accepted by the offerree. *Moreso*, where there is a consideration from a party to a valid contract, such a party can successful sue the party in breach. Furthermore, a contract is an agreement between two or more parties, which creates reciprocal legal obligation or obligations to do or not to do a particular thing. See *Omega Bank Plc. Vs. O.B. Ltd.* (2005) 1KLR (Pt. 189) 157.

In civil cases, the burden of proof is discharged on the balance of probabilities. See section 134 of the Evidence Act 2011 and *Omotoye Vs. ABC (Transport Co.) Ltd.* All FWLR (Pt. 531) 1540 at 1560.

Damages are monies claimed by or ordered to be paid to a person as compensation for loss or injury. In other words, damages are the sum of money which a person wronged is entitled to receive from the wrongdoer as compensation for the wrong. General damages are damages that the law presume follow from the type of wrong complained of and do not need to be specifically claimed. *Iyere Vs. Bendel Feed & Flour Mills Ltd.* (2008) 12 SCM (Pt. 1) 66; *Yalaju-Amaye Vs. A.R.E.C. Ltd.* (1990) 4 NWLR (Pt. 145) 422 referred to P. 71, paras B-C.

General damages need not be specifically pleaded. It arises from inference of law and need not be proved by evidence. It suffices once generally averred in the

pleadings. They are presumed by law to be the direct and probable consequence of the act of the defendant complained of. Unlike special damages, it is generally incapable of substantially exact calculation. *Yalaju-Amaye Vs. Associated Registered Engineering Contractors* (1990) 6 SC 157; *Incar (Nig.) Ltd. Vs. Benson Transport Ltd.* (1975) 3 SC 117 referred to P. 72, paras. F-G.

The object of award of damages is to give compensation to the claimant for the damages, loss or injury which he/she has suffered. However, before damages can be recovered by a claimant, there must be a wrong committed. In other words, recoverable damages by a claimant must be attributable to the breach of some duty by the defendant. See *Bourhil Vs. Young* (1943) AC 92; *Adene Vs. Dantunbu* (1988) 4 NWLR (Pt. 88) 309, (1994) 2 NACR 74 referred to P. 71, paras G – H.

Similarly, it is also the case of the claimant that the breach herein complained caused the claimant general damages to wit: psychological trauma, starvation of funds. The above being the case, it is submitted that once there is a case of breach of contract, the injured party is entitled to damages hence see the case of *Access Bank Plc. vs. Mann* (2021) 13 NWLR (pt. 1792) 160 at 178 paras C-E.

I agree with the claimant's counsel that parties cannot resile from their agreements freely entered, the defendant was contracted to buy ACs for the claimant, which he had been doing from the preponderance of evidence before the Court, see all the Exhibits tendered, the claimant paid N170,000.00 for an AC, see Exhibit A, though not stated, the defendant should have long since refunded the money they both agreed will be received from the sale of the AC.

The claimant having tendered Exhibit A, evidencing payment of N170,000.00 to the defendant, for the AC, the Court will rely on same vis-à-vis the oral evidence of the defendant that the N170,000.00 was for two ACs, one split unit and one window AC.

It is a trite principal of law that he who asserts must prove, see sections 131-134 of the Evidence Act, 2011.

The Court is minded wherefore to lean on the evidence tendered by the claimant (Exhibit A) as the best proof of her claim. It is wrong and fraudulent for the defendant to have kept the claimant out of her money for over one year now causing her financial distress, psychological and physical trauma, he will have to pay damages for all the loss she has secured including the filing of this suit, which would have been avoided, if he had refunded her money to her as they both agreed or after being served with the demand notice; Exhibit C.

Failure to live up to their agreement by refunding the money for the AC, entitles the claimant to damages whether claimed or not, is at the Court's discretion to award damages where justifiable to award same as in this instant case.

The defendant having admitted that he took the AC for repair and the claimant had actually paid him N170,000.00 for the AC; admitted facts we know is trite in law, need no further proof, the Court hereby enters judgment in favour of the claimant.

Accordingly, judgment is entered in favour of the claimant and the Court orders as follows;

1. That the defendant refunds to the claimant, the sum of N170,000.00 (One Hundred and Seventy Thousand Naira) only, paid by the claimant to the defendant, for the purchase of a split unit AC, which the defendant has failed to refund since May, 2023.
2. That the defendant pays the claimant N130,000.00 (One Hundred and Thirty Thousand Naira) only, for legal fees incurred by the claimant, in instituting this suit against the defendant.
3. That damages be paid by the defendant to the claimant in the sum of N300,000.00 (Three Hundred Thousand Naira) only.

This is the judgment of the Court.



**MRS BARIYAAH .H. ABE**  
*Chief Magistrate*  
12th December, 2024.

