

**IN THE CHIEF MAGISTRATE COURT OF RIVERS STATE OF 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 TUESDAY THE 17TH DAY OF
SEPTEMBER, 2024**

RMC/SCC/13/2024

BETWEEN

MR. EGAH FIDELIS OKII

-

CLAIMANT

VS

- 1. MR. JOHN BOLAJI DANIEL**
- 2. MR. HASSAN ADELEKE**

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DEFENDANTS

Matter for Judgment.

Claimant present, defendant absent

Erikefe .E. Evwiekpaefe Esq. for the claimant, .A. Paschal Odeyh Esq. for the defendants.

JUDGMENT

The claimant claims as follows;

The claimant claims the sum of N3,215,000.00 (Three Million, Two Hundred and Fifteen Thousand Naira) only, being the balance of the unpaid sum of the Hire Purchase agreement entered into on the 23rd August, 2023.

A Letter of demand served on the defendant.

Facts

This matter commenced with the filing of Form RSSC 1 the demand letter, Form RSSC 2; the complaint form, dated 4th April, 2024, RSSC 3; the summons dated 4th April, 2024, Form RSSC 5, the form of admission, defence and counter claim, by the defendants, counterclaiming the sum of N200,000.00 as cost of litigation dated 12th April, 2024.

This matter commenced on 17 April 2024, all the parties were in Court. E.E. Erikefe Esq, appeared for the clamant, while A.P. Odeyh appeared for the defendants, the complaint was read to both defendants, who both pleaded not liable to the claim. The Claimant's counsel applied for out of Court settlement, the defence counsel was not

opposed, Court conceded, the Court thus adjourned to 19th of April 2024, for Report of Settlement.

Hearing commenced on the 8 of May, 2024, due to the failure of parties to settle amicably out of Court.

E. E. Erikefe Esq. appeared for the claimant, A. P. Odeyh Esq for the defendants.

Cw1 gave his name as Egah Fidelis Okii, living at Ondo State, a business man, who said he knows the defendants.

He testified as follows;

He gave his car to the 1st defendant, the 2nd defendant was his guarantor, a Toyota Sienna car, with registration number RUM 220 AE, gave it to him for Hire Purchase at N5,000,000.00, commencing from 23rd August, 2023, to be paying N45,000.00 weekly, the 1st defendant paid for three weeks and stopped. He began giving excuses to the claimant.

Exhibits A1 to A6, were tendered by the claimant's counsel, being the Car particulars, same admitted in evidence.

Exhibit B, the Hire Purchase Agreement was also tendered and admitted in evidence.

The first defendant had three accidents with the car and for over four to five weeks he stopped paying the N45,000.00 weekly, he did not give him the car, the claimant returned to Ondo from Port Harcourt and asked him to return the car to his friend, a car dealer, the defendant (1st) sent him pictures of the car being towed.

The 1st defendant sold the car, sent him N400,000.00, he said he sold the car for N1,500,000.00, the car that the claimant bought over N5,000,000.00.

He sent N1,100,000.00, N100,000.00 and N50,000.00 giving a total of N1,650,000.00, including the N45,000.00 weekly i.e. N135,000.00, giving a total of N1,785,000.00.

The claimant demanded N3,215,000.00 from the 1st defendant, who refused to pay but threatened the claimant. He prayed the Court to grant him his claim in conclusion.

Cross-examination of cw1 on the 29th May, 2024

The following were deduced in the course of cross-examination by the defence counsel;

- The car was not a brand new car.
- It was bought from Mr. Bayo
- He carried out some work on the car after buying it.

- He confirmed the Hire Purchase agreement between the claimant and the 1st defendant entered into on the 23rd August, 2023, at N45,000.00 weekly, paid for three weeks.
- The 1st defendant complained of the car overheating, bad radiator, asked for N50,000.00 to fix the car, but the claimant said he did not have.
- Also complained of bad tyres, asked for N30,000.00 for the car, when he went to Auchi.
- The 1st defendant brought a buyer for the car, the claimant did not agree on any amount to sell the car.
- The Hire Purchase agreement was for 28th August, 2023 to 28th February, 2026.
- The 1st defendant sent him N1,500,000.00 through three different accounts.
- His claiming N3,215,000.00.

Reexamination

Are you still being paid on the Hire Purchase agreement or has it been terminated i.e. from the N3,215,000.00?

Answer: N3,215,000.00 is the balance of the Hire Purchase after being paid the N1,785,000.00, claimed because of the breach of the Hire Purchase Agreement.

The claimant closed his case.

Defence – 11th June, 2024 led by A.P. Odeyh, Esq.

The 1st defendant gave his name as Bolaji Daniel, a driver, he knows the claimant, knew him through his wife, they do POS together, they go to the same church and are neighbours.

He entered into an agreement in 2023 with the claimant, a Hire Purchase agreement, on the 23rd August, 2023, he used the car for three weeks after then he called the claimant that the gearbox was bad, he said he could not fix it, that the car should be returned to Mr. Bayo, because he bought it from him.

Mr. Bayo is his church member and neighbor, he advised him to buy the gearbox and not sell the car.

He asked Mr. Bayo and him to sell the car, or drive it to Ondo State. The car was sold for N1,800,000.00.

Mr. Ezekiel called the claimant to say he will buy the car at N1,500,000.00, he will pay part payment now and pay the balance later. Mr. Bayo called that he had a buyer for N1,800,000.00, though Mr. Bayo was later robbed at his house, his account was wiped clear and his phone stolen.

He sent the claimant N1,500,000.00, the balance of N300,000.00 was shared among five people. The claimant said he will take N1,800,000.00 and not N1,500,000.00; the account number was sent to him via the claimant, he asked for the details via whatsapp.

Exhibits C1 to C7 – Transfer receipts, evidencing the transaction between the claimant, Mr. Bayo's inlaw and the 1st defendant, were tendered and admitted in evidence.

Exhibit D, the attached Certificate of authentication also admitted in evidence.

Exhibits E and F, the Demand letters dated 5th and 6th March, 2024, admitted in evidence.

Cross-examination of Dw1 on the 26 of June, 2024, by the claimant's counsel

Dw1 confirmed the Hire Purchase Agreement between both parties.

Also confirmed the Sienna Toyota Car, at N45,000.00 weekly, he paid for only three weeks at N135,000.00.

He Sold the car at N1,800,000.00.

He gave the claimant N1,785,000.00.

Insisted that the claimant asked him to sell the car at N1,500,000.00

Denied taking out the tyre of the car.

He confirmed that the claimant had told him to park the car at the car stand.

The claimant asked him to return the car to Mr Bayo to sell the car.

He confirmed that the claimant asked him to park the car at the car stand due to all his complaints, also told him to drive the car to Ondo but he said no.

Mr. Bayo brought a buyer for the car.

He confirmed selling the car at N1,800,000.00

He remitted only N1,650,000.00 to the claimant and shared the N150,000.00 to other agents (N1,800,000.00)

His wife only carried out POS transactions.

Dw2 gave evidence on the 9th July, 2024 , led by the defence counsel. Gave his name as Hassan Adeleke, a business man, the 1st defendant's guarantor. The 1st defendant was the claimant's driver, driving a Sienna car, drove it for three weeks,

told him the car was having issues, he called the claimant, the owner of the car who asked him to return the car to Mr. Bayo to sell the car.

Cross-examination of Dw2

Confirmed Hire Purchase Agreement between the claimant and the 1st defendant.

1st defendant told him what he told the Court, he confirmed being his guarantor.

The Defence closed his case, thereafter and the Court adjourned for adoption of final written addresses.

The Defence adopted his final written address on the 22nd July, 2024, dated 15th July, 2024, claimant's counsel adopted his dated 18th July, 2024 filed same day, praying the Court to enter judgement in his favour. The Defence counsel prayed the Court to dismiss the suit against the defendant.

The claimant's counsel submitted therein, as issue for determination; Whether the Defendants are liable to pay the balance sum of N3,215,000.00 only being the balance of Hire Purchase Agreement sum between the parties?

He wherefore submitted as follows;

The Claimant was unequivocal in his Examination-in-chief and cross examination before this court that the said sienna car, wherein Exhibit A; the Particulars of the said car ,being the subject matter of the Hire Purchase Agreement being 5,000,000 and the sum of N1,785,000 only was paid, this was not contested by the 1st and 2nd Defendants, Your Worship , Exhibit A the particulars of the said car were also tendered to buttress the fact that the Claimant did not at any time authorize the 1st Defendant nor any other person to sell his car, hence it could have been given to the 1st Defendant as proof that he was authorized to sell by the Claimant.

Your worship, looking at the evidence before you holistically, the 1st Defendant further, after sale of the said sienna car (subject matter of the Hire Purchase Agreement) sold same on his own volition and kept back the sum of N300,000, alleging that it was for agency, one will wonder a car in his custody, he sold it and withheld N300,000.00, having sold it for N1,800,000 initially only sent the claimant, N1,500,000 and after his nefarious act was exposed, he sent additional N150,000, what a heart of deceit and fraud against someone (Claimant) that gave you a means of livelihood.

Your worship in the course of the cross examination the 1st defendant clearly admitted remitting only N1,650,000 (adding N150,000.00 more) only through his wife Mrs. Temitope John after further inquiring why the car should be sold by the first Defendant, Amazingly, your worship, no evidence was called by the Defendants to contradict the evidence of the claimant that the car was ever consented to be sold by both parties as the claimant unequivocally stated that he did not at any time

consent to the sale, hence he is claiming his balance sum of N3,215,000 the Hire Purchase Agreement being N5,000,000.00 only.

Your worship, from the Hire Purchase Agreement being Exhibit B before this court paragraphs 3 and 9, it was clearly stated that if the 1st Defendant who is referred to as the "Hiree" in the said Hire Purchase Agreement sells the sienna car, he shall be liable to forfeit the entire sum of five million naira, now being the balance hence we have come to this Honorable court to enforce the reality of the said Hire Purchase Agreement.

Your worship, the above is a contractual Agreement which is enforceable by law; we refer your worship to the case of WDN vs OYIBO (1992) 5 NWLR 77 AC 100-101 wherein the court of Appeal stated that parties are bound by their contract. We therefore urge this court to so hold and grant our relief sought.

3.5 Besides, Your Worship, the said person; Bayo that the 1st Defendant alleged was informed to sell the car in conjunction with him was not called as a witness, which goes to show that the 1st Defendant is hiding a vital/fundamental truth/evidence he does not want this Honorable Court to know so as not to be used against him. We refer your worship to **Section 167(d) of the Evidence Act, 2011 as Amended**, which provides thus "**evidence which could be and is not produced would if produced be unfavorable to the person who withholds it.**"

From the foregoing, therefore we urge your worship to hold that the 1st Defendant is not a witness of truth and that he sold the car being moved by his own greed, in addition with the fact that he also acted as an Agent leaving the said Claimant in pains of not having realized his hard earned sweat of purchasing a car for business (the Hire Purchase Agreement).

More so, your worship, the 1st Defendant said in the course of cross examination that he doesn't have the Account details of the Claimant, your worship Exhibit B which is the Hire purchase Agreement before this court paragraph 2 at all material time has in it, the Account details of the claimant from inception, it was therefore false hold by the 1st Defendant to tell this court that he does not have his (Claimant's) account details even when he also told this court he has paid some money to him for 3 weeks, which he clearly tendered as Exhibits before this Court.

Also Your Worship, the 1st Defendant alleged it was his wife (Mrs. Temitope John) that has the Claimant's account nos; wonderful! One would ask how? Someone who is not a party as admitted by the 1st Defendant in cross examination, would be privy to same if not given by the said 1st Defendant; obviously, the said account of the claimant is in the Hire purchase Agreement and at all material time has been with the 1st Defendant, who has come to tell falsehood to this court, because it is obvious he has been paying money into the Claimant's account from the commencement of the said Agreement.

Besides your worship, a car driven to the stand by the same 1st Defendant, who greedily sold it told himself, that he is now an Agent to receive Agency fee, didn't

advert his mind that it is the Gear of a car that moves the car but came to tell the court an afterthought that the car has gear fault. In fact, your worship the car was driven away by the said buyer as confirmed by the 1st Defendant the Agent/seller and did not recall that he will be caught as telling falsehood before this Court.

Your Worship, the claimant is in debt as a result of the continuous refusal of the 1st and 2nd Defendants to pay/remit the balance of the sum of N3,215,000 (Three Million, Two Hundred and Fifteen Naira) only being the balance of the Hire Purchase Agreement of 23rd August, 2023.

Your worship, from the foregoing we are urging this Honorable court to grant our claim as prayed, as the claimant did not consent to the sale of the sienna car, subject matter of the Hire Purchase Agreement, which was in good condition in the course of the Hire Purchase Agreement which was clearly on record that even the person the 1st Defendant sold to, drove away the sienna car.

In reply to issue one raised by the Defendant's Counsel, it's our response that there is nothing before your Worship to show that the said Hire Purchase Agreement dated the 23rd day of August, 2023 was determined by the Claimant to exonerate the Defendants from paying, the total sum of N5,000,000.00 only, being the Hire Purchase Sum, having paid only N1,785,000 only balancing the sum of N3,215,000.00 only.

Furthermore, it is clearly in bad faith for the 1st Defendant to sell the sienna car in his custody/possession which is on Hire Purchase without the consent of the Claimant and also act as an Agent to further defraud the Claimant whose hard earn money is being held, thereby causing more untold hardship on the Claimant. We urge Your Worship to so hold.

Conclusively, from the foregoing we state categorically that the Hire Purchase Agreement entered by the parties on 23rd day of August, 2023, the subject matter, the Sienna Car having been sold by the 1st Defendant without the consent of the Claimant, the Claimant is entitled to the full sum of N5,000,000.00 only as stated in the said Hire Purchase Agreement.

The defence raised three issues for determination thus;

- a. Whether or not the Hire Purchase Agreement was determined?
- b. Whether or not the Defendants Acted as Agent(s) and are entitled to their commission?
- c. Whether or not the Defendant is indebted to the claimant.?

Your worship, we humbly submit upon the complain/confirmation by the parties that the vehicle had Gear Box issue, in response, the Claimant instructed that the Vehicle be returned to the Seller Mr. Bayo who is the car dealer to sell same on behalf of the Claimant. That it was at that point that the Hire Purchase Agreement was determined see; section 9 (2) of the Hire Purchase Act (Cap 169) 1990. See the case of

Animashaun vs. CFAO & Bentworth Finance V. De bank, see *also section 9(5) Hire Purchase Act (cap 169) 1990.*

It is trite law that Hire Purchase can be determined in two ways, either the Hirer voluntary returned the car or the owner recovers the car from the Hirer, in the instance case the Hirer informed the owner of the issue and the owner recovered the vehicle by instructing the 1st Defendant to return the vehicle to the source of purchase for it to be sold.

My Worship, we answer issue two above in Affirmative; Agent as defined in Law of Agency is one who is authorized to act for or in place of another. In the case of *Godwin vs. CAC (1998) 14 NWLR (pt 584)*, the term "Agent" was defined per *Ogwuebu JSV*. By none rebuttal from the claimant who accepted payment till date from the buyer brought by the Car Dealer amongst the 1st Defendant, agency existed and still subsists between the Claimant and the 1st Defendant.

The law is that an agent is entitled to a commission when engaged to act on behalf of parties thereof, in the instance case, the Claimant instructed the 1st Defendant to return the Sienna vehicle to the car dealer for purpose of sell. In Examination in Chief of CWI, the Claimant admitted. Hence, the 1st Defendant amongst others became an agent and entitled, when the Claimant accepted the offer of the buyer, sent his bank account, received the money thereof till date. We submit that the Claimant be foreclosed-from denying his consent to sell and or being in receipt of the amount sold.

Your worship the Defendants are not indebted to the Claimant; the 1st Defendant paid N45,000.00 each within the three (3) weeks upon signing the Hire Purchase Agreement before the vehicle developed Gear issue, it is clear that Defendant did not default/breach the Hire Purchase Agreement while it subsisted. Moreso, the 1st Defendant as an agent has no liability in law when he brought the Claimant, the buyer of the said Vehicle to deal on the consideration of N1,500,000.00 that isn't disputed nor rejected till date by the Claimant. The Claimant cannot approbate and reprobate at the same time.

It is also trite law, that agents are entitled to their commissions FROM THE PROCEEDS OF SALE. In other not to inconvenience the agreement of the Claimant the vehicle was sold for 1,800,000.00 (One Million, Eight Hundred Thousand Naira) and the N300.000:00 out of it was agreed as agency fee, which is to be shared as commission between the facilitators/agents in the transaction including the 1st Defendant.

Your worship the vehicle purchase sum (N1,500,000:00) was sent to the Claimant as soon as the sale was completed. Mr. Bayo; was sent (N100,000.00 (One Hundred Thousand Naira) through his Brother-in-law's account, MR. ECHEFU VICTOR CHIBUIKE as provided in his statement of account.

We urge this Honourable Court to dismiss the Claims of the Claimant in its entirety as same lacks credibility and does not disclose any reasonable course of action thereof.

Issues for determination by this Court

1. Whether the first defendant is indebted to the claimant to the sum of N3,215,000.00 (Three Million, Two Hundred and Fifteen Thousand Naira) only from the Hire Purchase Agreement?
2. Whether the claimant asked the first defendant to sell his car at N1,800,000.00?
3. Whether the Hire Purchase contract was terminated by the claimant?

COURT

Both parties confirmed that they both entered into a Hire Purchase Agreement for N5,000,000.00 with respect to the car in dispute, a Sienna Toyota Car, at N45,000.00 weekly for three weeks, which the first defendant paid to the claimant i.e. the N135,000.00 for three months.

The claimant claims the sum of N3,215,000.00 left with the first defendant from their Hire Purchase Agreement after receiving N1,785,000.00 from the first defendant from the sale of the car including N135,000.00 for three weeks of N45,000.00 weekly, and N1,650,000.00 from the sale of the car.

The first defendant's defence is that he has no money left to return to the claimant, due to the fact that the claimant asked him to sell the car at N1,800,000.00, he remitted N1,650,000.00 to the claimant and used N150,000.00 for agency fees. See Exhibits C1 to C7 respectively, proof of the above transactions to the claimant from the first defendant.

1. The Court will now determine if the first defendant is indebted to the claimant to the sum of N3,215,000.00 from their Hire Purchase agreement?
2. Whether the claimant asked the first defendant to sell the car?

The first defendant informed the Court that he sold the car at N1,800,000.00, he removed N1,500,000.00 for the claimant, N300,000.00 for agency fees, out of which Bayo gave the claimant N100,000.00 and he gave him N50,000.00, totaling N1,650,000.00 given to the claimant, N150,000.00 for agency fees.

He sold the car on the instruction of the claimant, Mr. Bayo brought the agent to buy the car, the claimant asked him to return the car.

His wife only did POS transaction in this suit.

The claimant claims he asked him to return the car to the car dealer, Mr. Bayo, he did not agree on any amount to sell the car with the first defendant.

To prove sale of the car for the claimant, the 1st defendant could have tendered the proof of such a conversation between the parties, he said he had text messages and correspondence between both of them but he did not prove any, the burden of proof is on the first defendant to show that they had the correspondence with respect to the sale of the car that was given to him by the claimant, the onus of proof is on the first defendant, documentary evidence is the hanger for oral evidence, it supports oral evidence and gives it more credibility. It is trite law that he who asserts must prove.

See sections 131-134 of the Evidence Act, 2011 as amended.

See *Interdrill (Nigeria Ltd.) vs. UBA* (2017) All FWLR (pt. 904), *Kimdey vs. Military Governor of Gongola State* (1988) 5 SCNJ 28, it was clearly stated therein that documentary evidence supporting oral evidence makes it more credible and reliable.

Though it is the claimant's claim that the Court will consider and it is his duty to prove same, the burden of prove in civil cases shifts to the defendants in the course of trial, the burden of proof here shifted to the first defendant, the moment he claimed the claimant asked him to sell the said car. It is not for the claimant to prove that he did not ask him to sell the car, the claimant in proof of his claim tendered Exhibits A1 – A6, the car particulars to show that he owns the car and Exhibit B, the Hire Purchase Agreement, the basis/foundation of his claim.

This he proved on the preponderance of evidence and balance of probabilities. See *Interdrill (Nig. Ltd.) vs. UBA* (supra) pg. 1202, see section 134 of the Evidence Act 2011, burden of proof discharged on the balance of probabilities, also see sections 131 – 133 of the Evidence Act, 2011 for burden of proof and standard of proof required in civil cases.

From The Hire Purchase Agreement between the claimant and the first defendant in respect of the Toyota Sienna car, model 2004 with registration number: Rum 220 AE, the Terms of agreement are as follows;

That the Hire Purchase sum of the said Sienna Toyota car is N5,000,000.00 for two years and six months , 28th August, 2023 – 28th February, 2026 at N45,000.00 weekly, account details provided.

In proof of the transactions between the first defendant and the claimant, Exhibits C1 to C7 were tendered;

Exhibit C1 – Transfer of N50,000.00 to the claimant, being his own N50,000.00 from the car sale.

Exhibit C2 – Transfer of N400,000.00 to the claimant.

Exhibit C3 – Transfer of N100,000.00 to Echefu Victor Chibuike.

Exhibit C4 – Transfer of N100,000.00 to the agent in Aba.

Exhibit C5 – Transfer to the claimant of N45,000.00

Exhibit C6 – Transfer to the claimant of N45,000.00

Exhibit C7 – Transfer of N45,000.00 to the claimant.

All transfers were via the first defendant's wife except Exhibit C3.

Exhibit D – Certificate of compliance.

Exhibit E – the Demand letter written to the first defendant by the claimant's counsel dated 5th March, 2024, requesting for the balance of N1,850,000.00 to be paid to the claimant with regards to the Hire Purchase Agreement, and to remit the total sum of N5,000,000.00 for the Sienna car.

Exhibit F – Is the response to Exhibit E by the first defendant's counsel dated 6th March, 2024, denying the first defendant's indebtedness of N5,000,000.00 to the claimant.

Parties are bound by the terms of agreement willingly signed as in this instant case, see Rhodes Vivour JSC in Interdrill (Nig.) Ltd. vs. UBA (supra) pp. 1203.

Parties to a contract are bound by the terms of the contract and cannot resile from same, doing so, will lead to breach of contract with serious consequences on the part of the defaulter.

The parties to the hire purchase contract, the cause of Action in this suit, entered into an agreement, it was agreed between both parties that the 1st defendant will remit the sum of ~~N~~45,000.00 to the claimant weekly, till the sum of ~~N~~5Million is fully paid for the cost of the car, commencing from 28/8/23 to 28/2/26 that is 2yrs and six months, see Exhibit B; 1st page.

The claimant was paid only ~~N~~1, 785,000.00 out of ~~N~~5,000,000.00, being the agreed sum for the Toyota Sienna car, model 2004, White, registration no: Rum 220 AE, Chasis no: 5TD2A29CX4S220181. Engine no: 7070782, with the said car being in good and perfect condition at the time the first defendant took possession of the car from the claimant.

This was also the evidence of both parties, both parties stated this in their examination – in- chief and also confirmed same in the course of cross examination.

I agree with the claimant's counsel that if the claimant had authorized the first defendant to sell his car, he would have passed ownership of the said vehicle to the buyer by handing him the particulars of the car still in the claimant's custody.

Exhibit B, first page, shows that the car was in good and perfect condition before being handed over to the first defendant, the first defendant by appending his signature to the document, Exhibit B had conceded to all that was contained in the Hire Purchase Agreement including the fact that the car was in good and perfect condition.

His reason for selling the car as per his evidence-in-chief and cross examination was due to the various maintenance issues he had to deal with, the radiator, the tyre, the

gear box, the car overheating, etc. for which the claimant did not give him money for the repairs.

Both parties agreed that the claimant asked him to park the car with Mr. Bayo, at the car stand; they both affirmed this in the course of cross-examination and stated same in the course of evidence-in-chief.

The crux of the issue is that the claimant did not instruct or authorize the first defendant to sell his car but rather gave it to him for Hire Purchase purposes.

I further agree with the claimant's counsel that the first defendant collected ₦150,000.00 without the consent of the claimant out of the ₦1, 800,000.00 for the car to pay three agents, this was very wrong and smacks of fraud and deceit.

Why would the first defendant, Suo motu collect ₦150,000.00 out of the ₦1, 800,000.00 to pay three agents without asking the claimant who owns the car?

At the time of selling the vehicle, it still belonged to the claimant; the first defendant had no right to carry out any transaction with the said vehicle without the clear consent of the claimant.

As earlier mentioned, there is no proof of such a correspondence between the claimant and the first defendant before this Court.

The court cannot descend into the arena of conflict and go looking for evidence to support the case of either parties.

The defence could have called Bayo as a witness to corroborate the evidence of the first defendant, since he was the one whom allegedly brought an agent to buy the car according to the evidence –in-chief of Dw1.

The claimant's counsel was right to submit same. I must ask why didn't Bayo give evidence in this case with respect to the role he played in selling the said car? See section 167(d) of the Evidence Act 2011, which deals with the Court presuming the existence of certain facts, (d) provides that evidence which could be produced and is not produced, would be unfavorable to the person whom withholds it.

In this case, would the Evidence of Bayo whom the claimant told the first defendant to park the car with, whom the first defendant alleged sold the car for ₦1, 800,000.00 be unfavorable to the first defendant if he had called him as a witness? Could Bayo have confirmed the transaction, acting on the directive of the claimant?

Is Dw1 a witness of truth? Has he acted in any way for the Court to believe him, did he acted on the directive of the claimant to sell the car?

From the sale of the car, why did the first defendant pay ₦50,000.00 to himself, which he later remitted to the claimant after the sale of the car? He gave this in Evidence and also stated this during cross examination. Was he an agent to be entitled to the

sale or the Hiree of the Hire Purchase Agreement/driver of the vehicle, that is a party to the Hire Purchase Agreement?

It is only if the claimant had authorized the sale with the first defendant will he see himself as an Agent entitled to agency fee.

Why were they about 5 persons involved in the sale of the car whom shared ₦300,000.00 (100k Bayo, 50k first defendant, 150k 3 others) out of the ₦1,800,000.00 without the consent of the claimant, the owner of the vehicle, that is the said Sienna car? Taking something that does not belong to you is stealing and a criminal offence under our Criminal Code, section 390 (9), vol. II laws of Rivers State of Nigeria 1999. This was done fraudulently and an act of bad faith.

It is the case of the defence that the vehicle was not fit for Hire Purchase and so the Agreement was frustrated.

From the Evidence of the claimant, the car was driven by the first defendant for two months and some weeks, he asked the claimant to sell the car to him afterwards, before the parties entered into the Hire Purchase Agreement. This was not discredited by the defence in the course of cross examination of the claimant.

At the time of driving the car before the Hire Purchase contract, why did the first defendant not notice that the car was faulty? Why wait till the parties got into a Hire Purchase contract? This act of his is suggestive of fraud on his part.

I disagree strongly with the defence counsel that the first defendant acted as an agent and is entitled to his commission from the sale of the vehicle? Firstly, there was no contract between the claimant and first defendant over the sale of the sienna car, the contract was one of Hire Purchase and not an outright sale of the vehicle. The first defendant is a party to the Hire Purchase Agreement and not the claimant's agent.

The first defendant clearly defaulted in the Hire Purchase Agreement by breaching the terms thereof as contained in Exhibit B, the Hire Purchase Agreement.

There is no proof to show that the claimant is approbating and reprobating as submitted by the defence in his final written address.

The burden of proof has been discharged on the balance of probabilities and preponderance of Evidence, the Court relying heavily on Exhibit B, the Hire Purchase Agreement, this is where the Court has attached greater weight in giving its judgment in this suit.

The claimant has offered Evidence in proof of his claim satisfactorily which the first defendant has failed to rebut, controvert or discredit. See *Sterling Bank Plc vs. Falola* (2015) All FWLR, pg. 24, see Per Angie JCA pg. 25 paragraphs A – F.

The first defendant could not prove that the claimant gave him the authority to sell his Sienna car, he acted in breach of the Hire Purchase Contract and is liable to pay

the claimant the sum of N3,215,000.00, being the balance of the sum of N5,000,000.00, agreed as the cost of the Sienna car from Exhibit B (The Hire Purchase Agreement).

The following paragraphs in Exhibit B provide as follows;

Paragraph 3 provides that; the owner of the said Sienna car remains the owner and can only be transferred to the Hire Purchase (first defendant) on discharge of the Hire Purchase sum of N5,000,000.00.

The car therefore still belongs to the claimant until the sum of five million has been fully paid by the first defendant.

Paragraph 4 further provides that; the owner shall recover the said Toyota Car from the hiree if he defaults for two weeks consecutively in paying the said sum of N45,000.00 as agreed between the parties.

Paragraph 5 provides that; the repairs shall be at the cost of the hiree with regards to the change/repair of the gearbox and or engine, which shall be done jointly 50/50, but all other repairs at the cost of the hiree, exclusively.

Hitherto, the first defendant was to bear the repair of the tyre, radiator etc. while the repair of the gearbox was to be by both of them.

Paragraph 9 provides that; where the hiree sells or cause to be sold through any negligent act, cause the owner to lose his ownership of the said Toyota car, he or his guarantor shall be held liable for the payment. Applicable to this instant suit.

Paragraph 10; that the guarantor shall be held liable in the terms aforementioned etc. contained in the Hire Purchase Agreement.

Paragraph 11; all clauses in the Hire Purchase Agreement shall be binding on the parties and represent their true interest.

By virtue of this agreement, which is binding on both parties, especially with regards to paragraphs 9, 10 and 11, the defendants are both liable to the claimant for the payment of the total sum of N5,000,000.00 for the said Sienna car.

It is the duty of the Court to interpret the agreement of parties and not to rewrite same for them.

The Court has just picked out the relevant clauses, which show the liability of the defendants to the claimant.

The contract was not repudiated by the claimant, the defendants defaulted, breached the Hire Purchase Agreement, by defaulting on the terms therein provided in the said Agreement, there is nothing to show that the claimant asked the defendants to sell the said sienna car.

The Court will not grant the counter claim of the defendants, if the first defendant had received the consent of the claimant with regards to the sale of the car, they will not be in Court and the first defendant will not need the services of a lawyer.

The defendants having repudiated the Hire Purchase Agreement, the contract is hereby terminated, the claimant is allowed by law to seek for damages.

Wherefore, the Court hereby enters judgment in favour of the claimant and orders as follows;

1. That the defendants pay the claimant, the sum of N3,215,000.00 (Three Million, Two Hundred and Fifteen Thousand Naira) only, being the balance of the unpaid sum of the Sienna Car, given to the first defendant on a Hire Purchase Agreement.
2. That the counterclaim of the defendants, claiming N200,000.00 (Two Hundred Thousand Naira) only, for the cost of this litigation, be and is hereby dismissed.

This is the Court's judgment.

MRS BARIYAAH .H. ABE
Chief Magistrate
17th September, 2024.

