

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 4, ON THE 22ND Of MAY 2023

SUIT NO. PMC /SCC/08/2023

UZOCHUKWU CHARLES EGBUNAMI

} CLAIMANT

AND

JAMES NDUBUISI NWEKE

} DEFENDANT

JUDGMENT

This is the final judgment in this suit wherein the claim before the court, dated and filed on the 21st of March, 2023 is for:

1. An order of this Court compelling the defendant to refund the Claimant, the sum of N3,800,000 (Capital and 10 months interest) as money paid to him to partner with him in Car sales.
2. An order of this Court compelling the defendant to pay the defendant, the sum of N1,000,000.00 (One Million Naira) as damages.
3. Two Hundred Thousand Naira as cost of litigation.

In proof of his case, the Claimant called one witness and the defendant did not call any witness in this matter.

On the 17th April, 2023 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 27th day of April, 2023, the Claimant was present and the defendant was also present and on this date, the CW1, who is also the Claimant on record commenced his evidence in Chief and stated that the defendant is his friend, brother and mentor and that sometime in August 2021, that he shut down the supermarket business he was doing and sold off everything and the money he realized from the sales in addition to some money he had in his account, he decided to buy a car to use for bolt transport business.

That he went to the defendant and told him of his plans but the defendant discouraged him and told him that he cannot get rich through Bolt business and that it will be difficult for him to do Bolt business since he is new in Port Harcourt. that instead of buying a car that I should bring the money and partner with him in the Car business and that they will share every profit made monthly and that he told him that he sells at least one car every month and that out of every car sold he will be getting N200,000 monthly profit on the car business. That the defendant asked him how much he had with him and he told him that he had 2,700,000.00 (Two Million and Seven Hundred Thousand Naira) That the defendant then asked him to bring the money to partner with him and from then he started transferring the money to his 1st bank Account from his Zenith Bank Account as follows:

That in August, 2021, he transferred N1.4 million to his 1st bank Account and in September, 2021, he transferred N400,000 into the defendant's Account. In October, 2021, he transferred N500,000 to the defendant's brother at the defendant's request by name Ejikeme Nweke.

That in October 2021, he transferred N200,000 into the defendant's account. That in the same October, 2021, he transferred all the N200,000 into the defendant's account. That in the same October, 2021, he transferred 200,000 into the defendant's account through POS. That in total, he transferred the sum of N2.7 Million Naira. The CW1 identifies the receipts and the Claimant's witness seeks to tender same in evidence. The defence Counsel is not objecting.

Four Counter Cheque duplicates from Zenith Bank Limited dated 20th November, 2021, 12th November, 2021, 11th August, 2021 and 10th of September 2021 are all admitted in evidence as Exhibits A, A1, A2 and A3 respectively.

The CW1 also tenders his Zenith Bank Statement and same is not objected and is admitted in evidence as Exhibit "B" and "B1". On application, original of the statements were substituted by the photocopy.

That while all of this was going on, the defendant never gave him N200,000 as agreed that instead he was giving him peanuts and whenever he complains, he will give one excuse or the other and that when it became obvious to him that the defendant is not willing to comply, he started asking him for the principal sum which he contributed and the defendant was reluctant to comply. That after mounting pressure on the defendant, the defendant transferred N900,000 leaving the balance of N1.8 million Naira in addition to 10 months of outstanding payments of N200,000 each which was his monthly profit on the Car business that the defendant promised to pay him.

That after several demands, when it became obvious that the defendant will not make any more payments to him, he instructed his Lawyer who wrote a demand letter, that the defendant is with the original copy of the said demand letter, Demand letter was tendered in evidence and is marked as **Exhibit "C"**

Testifying further, the CW1 stated that he wants the Court to award his prayers as on the face of the Claim.

On the same date, during the cross-examination of CW1 stated that the mentor/friend/brother relationship with the defendant started in February, 2021 and that he saw the defendant as a rich man that he was looking up to. That prior to this time, the defendant used to come to his supermarket to patronize him. That he knows the defendant as a car dealer that sells Nigeria Used Cars and that he knew the defendant before he had issues with his business.

Testifying further, the defendant stated that that there was no written agreement between himself and the defendant, that what they had was an oral agreement. That he did not carry out his research when the defendant told him to invest in the car business.

On the 8th of May, 2023, whilst the CW1 continued in his cross-examination. The Claimant counsel applies for judgment on the admitted sum of 1.8 million Naira out of the 2.7 million Naira from the form of admission RSSC5. The defendant Counsel is not objecting and the court in making reference to the form RSSC5 filed before the court and the admission of same by the learned defence counsel in open Court entered judgement in favour of the Claimant to the admitted sum of N1.8 million Naira to be paid at the end of the substantive suit.

Continuing his cross-examination, the CW1 stated that he did not conduct an investigation before he gave the defendant money and that he did not involve any lawyer before getting into the investment, that it is not true that he wants to extort the defendant because he thinks he is a rich man. That no 3rd party witnessed the agreement.

At the end of the cross-examination of CW1, the matter was adjourned for defence on the 17th of May 2023.

On the 17th day of May, 2023. Parties were in Court. The Claimant counsel was present and the Defendant counsel was absent and there was no written or otherwise explanation as to his absence.

The Claimant's counsel at this point, applies that the defendant be foreclosed from defence and same was granted and the defendant was foreclosed from defence and the matter was adjourned for Judgment.

A total of Nine (9) 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 the filed defence before the Court, I 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 Claims For Before The Court: An order of this Court compelling the defendant to refund the Claimant, the sum of N3,800,000 (Capital and 10 months interest) as money paid to him to partner with him in Car sales

On the first Claim of whether the Claimant is entitled to an order of this Court compelling the defendant to refund the Claimant, the sum of N3,800,000 (Capital and 10 months interest) as money paid to him to partner with him in Car sales.

During hearing, the Claimant had stated in evidence that he gave the defendant, the sum of N2,700,000 as money for partnership and tendered Exhibits A1-A3 and B-B2. The CW1 further stated out of the owed N2,700,000 that after mounting pressure on the defendant, the defendant transferred N900,000 leaving the balance of N1.8 Million Naira in addition to 10 months of outstanding payments of N200,000 each which was his monthly profit on the car business that the defendant promised to pay him.

On the balance of N1.8 million Naira after the payment of N900,000 on the initial N2.7 million Naira, the Defendant in their Form RSSC5 have admitted the payment of N900,000 to the Claimants account leaving the balance of N1.8 Million.

In open Court on the 8th of May, 2023, the Claimant counsel applies for judgment on the admitted sum of 1.8 Million Naira out of the 2.7 million Naira from the form of admission RSSC5.

The defendant Counsel is not objecting and the court in making reference to the form RSSC5 filed before the court and the admission of same by the learned defence counsel entered judgement in favor of the Claimant to the admitted sum of N1.8 Million Naira to be paid at the end of the substantive suit.

So from the above admission and judgement, what is left in contention is the sum of N2,000,000 which is the sum representing the 10 months interest of N200,000 monthly.

So the question now is: Has the Claimant discharged the burden of proving that he is entitled to the N2,000,000 which is the sum representing the 10 months interest of N200,000 monthly.

During the cross examination of CW1, he has stated that there is no written agreement showing that indeed a partnership to the said sum was entered and that there is no witness to the said partnership agreement to which such interest of N200,000 was agreed to be accrued monthly.

It is now trite that he who asserts must prove and in the absence of any corroboration on the claim of 200,000 monthly interest, by either documentary evidence or witness

to show that indeed such N200,000 was agreed to be paid monthly, the Court will hold that the Claimant have failed to prove that he is entitled to the sum of N200,000 as monthly interest.

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 before the Court.

Whether The Claimant have shown proof for an order of this Court compelling the defendant to Pay The Claimant, The sum of N1,000,000.00 (One Million Naira) as Damages and the sum of N200,000 As Cost Of Litigation.

It is not in dispute that starting from August 2021 to November,2021, the Claimant had transferred the sum of 2,700,000.00(Two Million and Seven Hundred Thousand Naira) to the defendant who did not pay him back until July 2022 when the defendant transferred the sum of N900,000 to the Claimant.

The court is of the stance that a lot of inconvenience has been occasioned by the long term holding down of the Claimant's money by the defendant. General damages will thus be awarded to cushion the natural effects of tying down the Claimant's money for at least a year and almost 6 months.

Thus the sum of N500,000 is awarded against the defendant as general damages for holding back the monies of the Claimant for that period of time.

On the Proof Two Hundred Thousand Naira as cost of litigation: It is the stance of this Court that cost of litigation is in the class of special damages that must be particularized and strictly proven with credible and cogent evidence :KLM ROYAL DUTCH AIRLINES v. IDEHEN (2017)LPELR-43575 (CA)

In this case, the Claimant counsel did not lead any credible or cogent evidence to prove his special claim for cost of litigation. That claim head fails

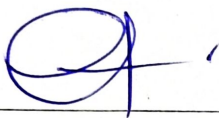
IT IS THUS ADJUDGED that the Defendant to pay the Claimant the admitted sum of N1.8 Million Naira (One Million, Eight Hundred Thousand Naira) (For which Judgment have been entered in favor of the Claimant as refund of the outstanding sum of the money given to the defendant.

AND, IT IS FURTHER ADJUDGED that the Defendant to pay the Claimant, the sum of N500,000(Five Hundred Thousand Naira)as general damages flowing from the unquantifiable inconveniences and suffering occasioned from the defendant holding down the Claimant's money for a period of time.

AND IT IS ORDERED that the defendant to pay the Claimant, the aforesaid sum of N1.8 million Naira (One Million, Eight Hundred Thousand Naira) and the sum of N500,000(Five Hundred Thousand) Naira as general damages with immediate effect.

AND IT IS FURTHER ORDERED that the defendant do pay to the Registrar of this court the total sum of N2,300,000 (Two Million, Three Hundred Thousand Naira) above mentioned representing the outstanding sum of the money advanced to the defendant and N500,000 (Five Hundred Thousand Naira) 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.



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