

IN THE MAGISTRATE COURT OF RIVERS STATE OF NIGERIA  
IN THE PORT HARCOURT MAGISTERIAL DISTRICT  
HOLDEN AT SMALL CLAIMS COURT 2 PORT HARCOURT  
BEFORE HIS WORSHIP BLESSINGS VIC-JUMBO, ESQ THIS  
TUESDAY, THE 17<sup>TH</sup> DAY OF MAY, 2023.

SUIT NO: PMC/SCC/05/2023

BETWEEN

NYONG ONYINYE BERYL (MRS.) - CLAIMANT

AND

1. MR. NMA OKEZIE } DEFENDANTS  
2. MRS. MINA OKEZIE }

PARTIES: Claimant is present but Defendants are both absent.

APPEARANCES: E. Finecountry, Esq for the Defendants while the Claimant is selfrepresenting.

**JUDGMENT**

The Claimant initiated this action vide Form RSSC 2 filed on the 15/03/2023 where she claimed as hereunder:

1. N1,638,000.00 being balance of total value of job done.
2. N945,600.00 being accrued interest calculated at 20% rate.
3. N350,000.00 being costs.

Upon failure to effect personal service on the Defendants, the court was moved to grant leave for substituted service and indeed the Defendants were served on the 27/03/2023. Following the service of Complaint (Form RSSC 2) on the Defendants, they caused Form RSSC 5 to be filed on the 28/03/2023 expressing a willingness to settle amicably or proceed to defend this Claim.

On the 12/04/2023 the parties were granted leave to explore settlement in line with Article 9 (1) of the RIVERS STATE SMALL CLAIMS COURT PRACTICE DIRECTION 2023. Parties returned to court on the 19/04/2023 unable to settle amicably. In line with Article 9 (3) RSSCC PD 2023, pre-trial conference was held and hearing scheduled for 26/04/2023. At the trial the Claimant testified for herself and tendered the Job Bills (Exh. A1 and A2), Receipts of materials bought (Exh B1-B16), Affidavit of Compliance with S. 84 EA (Exh. C1), Text messages print-outs (Exh. C2-19, D1-7) and Letters (Exh. E1-E3).

The CW1 was fully examined and discharged. Claimant closed her case and the 1<sup>st</sup> Defendant testified as the sole witness for the Defense and tendered no exhibits.

The case of the Claimant is that the Defendants reached an oral contract with her to renovate their residence for them with her fund and present her bill thereafter which will be paid as soon as the 1<sup>st</sup> Defendant secured a job. The job covered refolding of seats and repainting because the house was in a bad state. The Claimant did the job between August 2021 and November 2021 and presented two bills totaling N3, 188,000.00 out of which the Defendants paid only N1,550,000.00 in 9 instalments leaving a balance of N1,643,000.00. The balance of N1,643,000.00 was not paid despite frantic demands and pleas until she filed this action on the 15/03/2023 but on the 16/03/2023 the Defendants paid N500,000.00 into her account without any communication of same to her.

The DW1 admitted that they agreed with Claimant to carry out the renovations and present her cost proposal which she strategically declined to discuss until she finished the job and submitted 2 Bills. He took the Bills and asked that Claimant discuss the Bills with 2<sup>nd</sup> Defendant. That discussion never took place but Claimant kept making monetary demands on him and he was giving her some "small small monies" until he finally stopped further payments pending when a fixed amount is reached. Defendant said for the sake of their long standing relationship he was advised by his lawyer to settle amicably with the Claimant thus he offered via Exhibit E2 to pay her N1m as final and complete payment as against the N1,638,000.00 she claimed vide Exhibit E1. Sequel to that offer he paid N500,000.00 to Claimant on 16/03/2023 and N300,000.00 on 26/04/2023 leaving a balance of N200,000.00.

In the light of the evidence before the court, the only issue that calls for determination is whether the Claimant is entitled to the reliefs sought.

Although the onus of proof is statutorily placed on the Claimant who is asserting a claim by virtue of sections 131 & 132 EVIDENCE ACT, it will be reasonable to narrow down the issues in controversy by identifying the common grounds. From the evidence before the court both parties agree that:

- 1 There was an oral agreement for the Claimant to carry out renovation jobs for the Defendants.
- 2 There is no contention over the scope of the job.
- 3 There was no prior agreement as to the cost of the job.
- 4 The Claimant was to fund the job.
- 5 There was no agreement as to how Claimant is to source the fund for the job.
- 6 There was no fixed time for the payment.
- 7 The Claimant did the job and submitted two bills which summed N3, 188,000.00.

- 8 The Claimant had prior this action received a total sum of N1,550,000.00 from the Defendants leaving a balance of N1,638,000.00.
- 9 The Claimant has made several demands for the balance to be paid.
- 10 The Defendant offered to pay only N1m which the Claimant did not accept and communicated her rejection of the offer via Exhibit E3.
- 11 However, the Defendants have during the pendency of this action paid to the claimant the sums of N500,000.00 and N300,000.00 respectively.

Now, whilst the law gives recognition to oral contracts, the essential ingredients of a contract must exist for it to be enforceable. See TAURA v. CHUKWU (2018) LPELR45990(CA) 16-17. These essentials are offer, acceptance and consideration. In the instant case these ingredients are identifiable except that there was no definiteness of the consideration. However, the law is trite that the courts are not to rewrite contracts for the parties but to enforce the terms of their contract. See DOHERTY & ANOR v. SUNMONU & ORS (2018) LPELR-46725(CA) 19 C.

The CW1 said:

The agreement was that I will use my personal money to do the job because the 1<sup>st</sup> Defendant was out of job but that they will honour my bill on presentation. We did not agree on what the bill is ... There was no formal agreement as to the amount of the job. There was an oral agreement for the job but no specific amount was agreed, this is because of the long standing relationship.

The DW1 on his part said:

At a point I told the Claimant I was not going to pay her any further money until she had the discussion on a fixed amount with my wife.

The DW1 said this after the Claimant had finished her job, submitted her two bills and Defendant had already started making payment. Under cross examination he further stated: "I cannot remember if I ever asked the Claimant for a discount after she sent her bill". He was rather categorical that it is correct they gave the Claimant the job without any fixed amount.

On the premise of the foregoing, I find that indeed there was a contract between the parties with a blank cheque which the Claimant filled. A contract is defined in TAURA v. CHUKWU (SUPRA) P.9:

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.

The conduct of the parties as revealed by the evidence is that the claimant has the duty to carry out renovation for the Defendants with her own money and the Defendants will

pay the bill she presents. The claimant has done her own part and it is not in the middle of the game, after taking benefit the Defendant will now complain about not capping the job cost. Unfortunately, that is not a wise way of entering into contract relationships as it is very unhealthy and has shredded the long standing relationship.

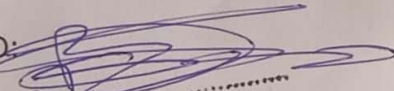
However, I can infer that parties indeed agreed that the Claimant's bill on presentation will be honoured as the contract value. Relying on Exhibits A1, A2, E1 and E3, I hold that the Defendant's indebtedness to the claimant even as at 08/02/2023 when Exhibit E3 was made was N1, 638,000.00. There being no agreement for the Claimant to take out a loan on interest to fund the project, the Claimant not being a money lender by her evidence and also not being a banking institution, is not entitled to the interests claimed. The Defendants having paid the sum of N800,000.00 during the pendency of this case, is therefore left with a balance of N838,000.000 only.

The sole issue for determination is hereby resolved against the Defendant. It is adjudged that the Claimant is entitled to judgement against the Defendants jointly for the balance of N838,000.00 only. The Claims for interests and costs fail as parties shall bear their respective costs.

I make no further orders. This is the judgment of court.

DATED THIS 17<sup>TH</sup> DAY OF MAY, 2023.

SIGNED:



*Blessings Vic Jumbo, Esq.*  
*(Chief Magistrate)*  
Blessings Vic Jumbo, Esq.  
(Chief Magistrate)

