

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 18TH OF
AUGUST 2023

SUIT NO. PMC /SCC/82/2023

DANDY KPIRIBEE

CLAIMANT

AND

EWINUBARI ROLAND

DEFENDANT

FINAL JUDGMENT

This is the final judgment in this suit wherein the Claim before the court, dated and filed on the 23rd June, 2023 is for:

1. An order of this Court, compelling the defendant to pay the Claimant, the sum of N2.5 Million Naira (Two Million, Five Hundred Thousand)as refund of the purchase price of the one and half plot of land.
2. The sum of 1.5 Million(One Million, Five Hundred Thousand) Naira as General damages

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

On the 5th day of July, 2023, an application to enter plea of not liable for the Defendant was granted and the matter was set down for hearing on the 11th of July, 2023.



On the 11th day of July, 2023. Parties were present. On this date, the defendant Counsel, C. Ejiogu applies for adjournment and the Claimant Counsel is not objecting and the matter was adjourned to the 17th July, 2023 for hearing.

On the 17th July, 2023, parties were present with their counsels in Court. On this date, the CW1, Dandy Kpiribee testified that he knows the defendant who used to come to their market to preach and that sometime in the year, 2020, the defendant approached him that he has a piece of land (A one and half plot of land) At Mummy 4, back of Police Station. That he indicated his interest because as he saw him preaching , he taught he was telling the truth. That he paid for the land. One and half plot at the price of N2.5 million Naira. That after paying, he did his survey and fenced the land. Testifying further, the CW1 stated that by the year 2021, he planted economic trees like Coconut and plantain on the land .That as he was going to the land to plant Cassava, one Mr. Suka Idayo met him at the land and stopped him from planting. That the said Mr. Suka asked him who sold the land to him and he mentioned the defendant and told him that they have a deed of conveyance between them.

At this point, the CW1 identifies the deed of conveyance and same is tendered in evidence, no objection from the defendant's counsel and the deed is admitted in evidence and is marked as Exhibit A.

Testifying further, the CW1 stated that after this confrontation with Mr, Suka Idayo, he went home and told of his experience with Mr. Suka Idayo to the defendant and the defendant told him not to mind Mr. Suka Idayo; that he should go on with anything he is doing there. That some days later, he went back to the land and as he was there, Mr. Suka Idayo came with some boys and took his shovels and beat him up mercilessly. That after that. Mr. Suka came to his shop and arrested him plus the defendant to State CID. That he paid for the defendant's release at the State CID. That the defendant asked him to transfer the case at his own expense to Zone 16 and Bayelsa State. That he reported the matter to Zone 16 and it was from there, that the Zone 16 people came and arrested Mr. Suka Idayo to come and explain how he owns the land. That Mr. Suka Idayo showed all his rightful document and they told the defendant to show his own document and the defendant had nothing to show.



So he went back and asked the defendant to refund his purchase money of N2.5 million Naira for the one and half plot of land. That he told his lawyer to write a letter of refund but there was no response. That the defendant only received the latter and signed it.

Concluding, The CW1 stated he wants the Court to recover his money from the defendant and the matter was adjourned to the 26th of July, 2023 for cross-examination of CW1.

During the cross examination of CW1 , he stated that he arrived at the purchase price by the total money he gave to the defendant which he acknowledged and gave him the deed. Testifying further, the CW1 stated that it is not correct that he was joining forces with Mr. Suka Idayo to fight the defendant .That Suka Idayo beat him up on the land and insulted his wife why should he join forces with him? That he is not aware that the land was allocated to the defendant by Mr. Suka Idayo. That the defendant showed him the land before he paid. That it is not true that he is in possession of the Land and nobody is disturbing him and he connived with Mr. Suka Idayo to rob the defendant of extra money.

At the close of the evidence of CW1, the matter was adjourned to the 7h day of August, 2023 for motion/Defence On the 18th of August 2023. Parties were present. G.B Sanusi with L.V Lesiga(Mrs.) for the Claimant and J.C Ejiogu for the defendant, On this date, the defendants was not ready to move his motion and instead of the matter going on for defence, it was adjourned to the 14th August, 2023 for motion/defence. On the 14th August, 2023, Parties were present. On this date, the defence counsel informs the Court that he is not ready to field his witness because he insist that his motion which was served on his learned counsel for the Claimant at Court must be heard first. That it will be prejudicial to the interest of the party sought to be joined if the matter proceeds for defence without hearing the motion

The Court in her ruling says there is no likelihood of prejudice to the party sought to be joined especially since his time to respond to the motion had elapsed. That if hearing goes on today, whenever the defence counsel is ready to move his motion, witnesses can be applied to be recalled for that purpose, That the court cannot be adjourning aimlessly' The Court notes with blatant displeasure, the insistence of



the defendant Counsel that he will not go on with his matter even though he admits that his witness is in Court.

At this point, the Claimant counsel waives his right to reply to the motion that was served on him this same morning and says that the defendant can move his motion.

The Defendant Counsel moves motion on Notice dated 27th July 2023 for an application to file counter claim out of time and also to join the party sought to be joined. In the absence of any objection, the said prayers were granted and the matter was adjourned for hearing and the Court did a trial prescheduling for parties and three (3) dates : The 15th of August 2023 and the 16th of August, 2023 were taken to conclude the matter .The prescheduling was done considering that this is a small claims matter and the date for the scheduling was already on the 53rd day from the date of filing and the Small Claims Court Practice Direction stipulates that between the date of filing and judgement must be within 60 days and anything done outside this time window is a nullity.

On the next date adjourned, the Claimant counsel was present and the defendant counsel was absent. The Claimant Counsel applies that the defendant be foreclosed from defence and their Counter Claim struck out. The Court in her ruling considered that this date was agreed between the parties and their Counsel and there was no shred of explanation for the absence of the defendant counsel and the defendant was foreclosed from defence and their counter claim was struck out and the matter was adjourned for judgement.

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 couched a lone issue for determination and that is whether the Claimant has discharged the burden of proving his claim before the Court.

Suffice is to say that before the court adjourned the matter for hearing and heard the matter, the court always satisfied itself that:

1. The processes have been duly served on the defendant



2. That the time before the date of service and the date of hearing was sufficient for the defendant to have appeared had he intended to do so.

During his evidence, the Claimant have testified that he paid for the land. One and half plot at the price of N2.5 million Naira and that when the matter went to the police, the defendant could not present any document to buttress his ownership assertions.

During Cross-examination of the CW1, his evidence as to the purchase price and the deed transaction was untouched and uncontroverted.

It is also important to note at this point that none of the facts stated by the Claimant's witness above was controverted in evidence or denied by the defendant and so will be deemed by this court as admitted.

The law is that facts admitted need not be proved by evidence. Please refer to the case of *Ayoke V. Bello* (1992)10 NWLR (Pt 218) pg 380 Ratio 2; *O.A.A Cooperative Society Vs. NACP Ltd* (1999) 2NWLR (Pt 590) Pg. 234, Ratio 4 to the effect that what is not denied is deemed admitted and what is admitted need not be proved.

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.

Furthermore the Claimant have also claimed for general damages for the harassment he suffered as a result of the wrongful sale of the property by the defendant. From police harassment, to the hassles of transferring the matter from one Station to the other and to his being mercilessly beaten up by Mr. Suka Idayo who tagged the claimant a trespasser and whom the Claimant said presented proof of his ownership of the land at the police station and the defendant had nothing to show.

General damages will thus be awarded to cushion these emotional and physical effects suffered by the Claimant.



IT IS THUS ADJUDGED that the Defendant to pay the Claimant, the sum of N2.5 Million (Two Million, Five Hundred Thousand Naira) only as refund on the purchase of the one and half plot of land from the defendant.

AND IT IS ORDERED that the defendant to pay the Claimant, the aforesaid of N2.5 million Naira (Two Million, Five Hundred Thousand Naira) for the refund of the purchase price of the One and Half plot of land.

AND IT IS ALSO ORDERED that the sum of N1,000,000 (One Million Naira) be paid to the claimant by the defendant as general damages with immediate effect

AND IT IS FURTHER ORDERED that the defendant do pay to the registrar of this court, the sum of 2.5 Million Naira as refund on the purchase price and the sum of N1,000,000 as general damages. Totaling the sum of N3.5.Million Naira(Three Million Five Hundred Thousand)with immediate effect.

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.I