

IN THE MAGISTRATE COURT OF RIVER STATE OF NIGERIA
IN THE PORT HARCOURT MAGISTERIAL DISTRICT
HOLDEN AT PORT HARCOURT

BEFORE HIS WORSHIP S. S. IBANICHUKA, ESQ
SITTING AT SENIOR MAGISTRATE COURT 6 PORT HARCOURT

SUIT NO: PMC/SCC/261/2024

BETWEEN

DAVID FAMOUS

AND

- 1. CHRISTIAN UDEME ALEXANDER**
- 2. MIRACLE OKWUSIKE**
- 3. UDEME ALEXANDER AKPAN**

JUDGMENT

This suit was instituted via forms RSSC 2 and 3 of this court on 15-12-23, wherein the Claimant claims against the Defendant's is for:

- I. The sum of ₦2,440,000.00 (Two Million, Four Hundred and Forty Thousand Naira) only being and representing the balance of the sum due to the Claimant from a failed sale of land transaction..
- II. The sum of ₦300,000 (Three Hundred Thousand Naira) only representing cost of this litigation.

The Defendant in Defence to the Claimant's claims, filed a Defence via form RSSC 5 of this court on 14-02-24 disputing the claimant's claim in its entirety. In prove of his case the Claimant called two witnesses (CW1 and CW2) and tendered Exhibits A to E. In Defence to the claimant's claims the Defendant's called a sole witness DW1, all the witnesses were cross examined and parties closed their respective cases. Parties adopted their respective final written addresses on 18-03-24. The Defendant counsel T Bekeowei, Esq in his final written address dated and filed the 15/03/2024 raised two issues for determination and argued that the 2nd and 3rd Defendants are not parties to the contract between the Claimant and the 1st Defendant. He added that the 1st Defendant is not liable to the claims of the claimant because the 1st Defendant is the one who has suffered from the breach of the contract by the claimant and that the 1st Defendant is entitled to sue the claimant for specific performance, he

urged the court to discountenance the claims of the Claimant. The claimant's counsel Ugochukwu U Amadi adopted his final written address dated and filed on the 15/03/24 where he raised one issue for determination and urged the court to hold that the claimant has proved his case.

The summery of the facts of this case is that sometime in the year 2023, the claimant needed to purchase land and was shown a piece of land situated at Akwu Akpa Ngbamati Rumuomah Family land , Rumuokparali in Obio/Akpor Local Government Area of Rivers State, by the 2nd Defendant and that he gave the 2nd Defendant the sum of ₦100,000.00 (One Hundred Thousand Naira) only as bush entry for the two plots of land and paid a surveyor the sum of ₦140,000.00 (One Hundred and Forty Thousand Naira) only, that he paid his lawyers the sum ~~₦300,000.00~~ (Three Hundred Thousand Naira) only, that before payment for the land, the 2nd and 3rd Defendants told the claimant that the land belongs to the 1st Defendant, that if anything goes wrong they will make sure they fix it. That the claimant paid the sum of sum of ₦5,000,000.00 (Five Million Naira) to the 1st Defendant via bank transfer, remaining a balance of ₦7,000,000.00 (Seven Million Naira), for the parcel of land that when the claimant got to the cite on Monday he and his agent found out that the beacons of the land has been removed by some unknown persons who told him that the land does not belong to the 1st Defendant, he called the 1st defendant to come and confront the unknown persons but the 1st Defendant was not reachable, that he started demanding for his land or his money, finally the parties ended up at the police station and the 1st Defendant has since refunded the sum of ₦3,000,000.00 (Three Million Naira) to the Claimant, leaving a balance of ₦2,000,000.00 (Two Million Naira).

From the issues raised by the counsels in their respective final written addresses I shall raise a lone issue for determination to wit: *“Whether the claimant on a preponderance of evidence has discharged the onus of proof on him to be entitled to judgment as per his reliefs before this Court?”*

In civil cases the standard of proof required of the claimant is a proof on preponderance of evidence, see: **Section 134 of the Evidence (Amendment) Act, 2023.**

This is a case of contract for sale of land, where the claimant claims that he has paid the sum of ₦5,000,000.00 (Five Million Naira) for purchase of the land and in the process he has also incurred other expenses. Exhibits were tendered in proof of all the transactions except proof of payment of legal fees, the testimony of the Claimants witnesses were not controverted by the defendant's

neither were the documents relied on discredited, the records of this court as stated by the CW1 and CW2 is that the 1st Defendant has refunded the sum of ₦3,000,000.00 (Three Million Naira) to the Claimant, leaving a balance of ₦2,000,000.00 (Two Million Naira). the DW1 in his evidence on 27/2/24 also corroborates this fact, the law is that facts admitted need no further proof, see **Section 123 of the Evidence (Amendment) Act 2023**, and **CBN V. DINNEH (2010) 17 NWLR (PART 1221) PAGE 125-162 AT PARAGRAPH C-D**, However on the 11-03-24 the Dw1 under the fire of cross examination alleged that the said ₦3,000,000.00 (Three Million Naira) he refunded to the Claimant was done under duress by the police, it is trite law that he who alleges the existence of any fact must prove same, see **AMADI V. AMADI (2017) 7 NWLR (PART 1563) S.C.** The burden of proving that the 1st Defendant was forced by the Police to transfer ₦3,000,000.00 (Three Million Naira) rests on the 1st Defendant who alleges so and he has failed to discharge same. The Defendants counsel also argued in issue two of his final written address that the claimant is in breach of the contract of the parties and that it is the 1st Defendant instead that has the right to sue for damages or specific performance, from the records of this court in this case the Defendant did not file a counter claim and there in no evidence by the defendants that supports this argument by the Defendants counsel, the position of our law is that address of counsel no matter how succinctly and brilliantly coached cannot take the place of evidence needed to prove a case. See **ALIKHA & ANOR V. ELECHI & ORS (2017) LPELR-7823 (SC)** and **ACCESS BANK PLC V. K. C. INTERNATIONAL LTD (2018) LPELR – 43668 (AC)**. Hence in the absence of any evidence to support issue two of the Defendants counsel final written address same fails and is resolved against the 1st Defendant.

In civil cases the burden of prove rests on the Claimant, the CW1 in his evidence on stated that he paid his lawyer the sum of ₦300,000 (Three Hundred Thousand Naira) , however such special claim was not supported by any evidence , this court could not find anything before it to substantiate such a claim, accordingly same fails and is refused.

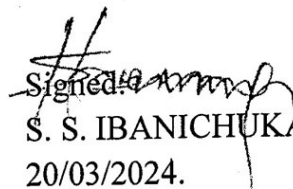
Parties are bound by the terms of their agreements, See **A. G. RIVERS STATE V. AG AKWA IBOM STATE (2011) NWLR (PT. 1248) 31 AT 81**. in this case Exhibit D binds the claimant and the 1st Defendant , particularly the indemnity clause thereof . This court agrees with the argument of the Defendants counsel in issue one of his final written address that the 2nd and 3rd

defendants are not parties to exhibit D and are not bound by same. There is crystal clear proof before this court in evidence of CW1 and supported by Exhibit A that the 2nd Defendant was paid the sum of ₦100,000 (One Hundred Thousand Naira) for bush entry for a transaction that has now failed. There is also proof of payment of ₦140,000 (One Hundred and Forty Thousand Naira) for survey as shown in Exhibit B. Accordingly it is adjudged as follows:

1. That the Claimant is entitled to the sum of ₦2000,000.00 (Two million Naira) only against the 1st Defendant being the balance of the sum of ₦5000,000.00 (Five Million Naira) owed the claimant for failed contract of sale of land.
2. That the Claimant is entitled to the sum of ₦100,000 (One Hundred Thousand Naira) only against the 2nd Defendant representing the sum owed the claimant by 2nd Defendant as bush entry received by the 2nd defendant from the claimant for the said failed transaction.
3. That the claimant is entitled to the sum of ₦140,000 (One Hundred and Forty Thousand Naira) against the 1st, 2nd and 3rd Defendants jointly being and represent the cost of survey of the land in the failed transaction..

Parties are to bear their respective costs.

Parties are reminded of their rights to appeal.

Signed: 
S. S. IBANICHUKA, ESQ.
20/03/2024.

