

**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 WEDNESDAY THE 28TH DAY OF
FEBRUARY, 2024**

RMC/SCC/03/2024

BETWEEN

MR. AZARI OSARODION KELVIN - **CLAIMANT**

VS.

NWACHUKWU JOSEPH STEPHEN - **DEFENDANT**

Matter for Judgment

Parties; Claimant in Court, defendant absent.

Appearances; C.J. Asoluka, Esq. for the claimant; no representation for the defendant.

JUDGMENT

The Claimant claims as follows:

The claimant claims against the defendant the sum of N3,600,000.00 (Three Million, Six Hundred Thousand Naira) only, being the value of the claimant's Toyota Matrix Vehicle, given to the defendant for hire purchase in September, 2022, which the defendant has since then failed and neglected to pay for.

Facts

The claimant's counsel on the 23rd January, 2024 entered a plea of not liable against the defendant, after the Court confirmed proof of service of the Court's processes on the defendant filed on the 16th November, 2023; that is, the complaint Form RSSC 2, and the Court's summons RSSC 3, the affidavit of service, Form RSSC 6 also, are all before the Court. C. J. Asoluka appeared for the claimant.

The defendant filed a defence and counter claim Form RSSC 5. The defendant claims his not indebted to the claimant, the claimant is owing him N1,251,000.00, he told him to borrow to change his engine, he borrowed it with his generator worth N550,000.00.

Hearing commenced on the 9th February, 2024, the claimant was in Court, the defendant was absent, C. J. Asoluka appeared for the claimant, cw1, Mr. Azari O. Kelvin, a business man gave evidence, informing the Court as follows; the defendant

on the 27th July, 2021, was given the claimant's car, a Toyota Matrix to be remitting N25,000.00 weekly. Three months later, he defaulted, kept on giving excuses. He complained of faults in the car, the claimant came in from Lagos to Port Harcourt to change the tyres (4) and other parts of the car, the Engine also. The defendant offered to buy the car at N3,600,000.00 for hire purchase in September, 2022, promising to pay for the car before December, 2022. In October, he called the defendant but could not get through to him.

On the 3rd January, 2023, the defendant called to say that the police arrested him that was why he had not called, that he will sell some palm fruits and pay him afterwards. On the 27th February, 2023, the claimant called the defendant who told him he had travelled.

His father called the claimant to inform him the defendant's younger brother took the car for bunkering and it got burnt, promising to pay for the car, but failed to.

The claimant served him with a demand notice, in conclusion, he prayed the Court to grant his claim of N3,600,000.00 for the car.

The car particulars are before me as Exhibits A1 – A12, the change of ownership of the car is before me as Exhibit B and the demand letter before me as Exhibit C.

The claimant was foreclosed from cross-examination by the absent defendant. A hearing notice was issued to be served on the defendant.

The defendant was foreclosed from defending this suit on the 12th February, 2024 due to his absence in Court, O. K. Owhonda appeared for the claimant, holding the brief of C. J. Asoluka. The claimant's counsel adopted her final written address on the 28th December, 2024, dated 12th February, 2024.

The claimant's counsel raised a sole issue for determination, whether the defendant is liable to the claim of the claimant?

She submitted that the defendant did not deny the claim of the claimant by contradicting the evidence of the claimant, and that uncontroverted evidence should be accepted as true, relying on INEC vs. Apea & Ors (2015) LPELR – 40672, CA. and other authorities. Further submitting that civil cases are decided on the balance of probabilities and the preponderance of evidence, entitling the claimant to his claim, when the Trial Court puts on an imaginary scale to weigh, the totality of the evidence adduced by the parties before it, before coming to the decision as to which of it to accept as true and which is reject, citing Minister of FCT & Anor vs. Fertile A. Crues Ltd. & Anor (2018) LPELR – 145996 (CA).

She prayed the Court in conclusion to grant the claim of the claimant and hold the defendant liable to the claimant's claim.

Issue for determination

Whether the claimant has sufficiently proved his entitlement to his claim from the entirety of facts before the Court and evidence adduced?

COURT

The claimant in this case granted the defendant the use of his Toyota Matrix Car with plate number: AFM 251MK, engine number: 1228317185 and chassis number 2T1KR32E26C563462 for a weekly remittance of N25,000.00, for the use of the vehicle as a commercial vehicle, on the 27th July, 2021.

Exhibits A1 – A12 are all particulars of the Car, showing that the claimant is the owner of the car.

Exhibit B – change of ownership from the original owner of the car, Tamunokuro Douglas to the claimant, named as buyer of the car, dated 14th June, 2021.

The defendant failed and neglected to keep to the terms of the contract entered into between the claimant and the defendant.

He defaulted in his weekly remittance of N25,000.00, he kept on giving excuses for defaulting. The claimant later sold the car to him for N3,600,000.00 in September, 2022, the defendant again breached the hire purchase agreement, parties entered into by not paying the sum of N3,600,000.00, though the defendant's father told him the car got burnt in an illegal bunkering fire.

The demand letter to the defendant by the claimant's counsel Exhibit C before me, is sufficient notice of the claim of the claimant against the defendant.

It is sad that the claimant's investment in the defendant has been wrongly and fraudulently treated by the defendant. The defendant has acted in clear breach of the agreement twice entered by both parties, acting in bad faith.

A contract is the meeting of the minds of both parties, legal obligations are created therefrom to be performed by both parties. The particulars of ownership of the vehicle, Exhibits A1 – A12 and Exhibit B, prove that the claimant is the owner of the said vehicle for which the defendant and him entered into a business transaction. It behoves on the defendant to abide by the terms of the contract. Parties are bound by their contracts/agreements, they make their own contract and cannot resile from it thereafter without performing their obligations contained therein. The Court in Okoro vs. Okoro (2018) 16 NWLR (pt. 1646) pg. 515 held that, "parties are bound by their agreement freely entered into". See Lordor Chatterm & Daying Rail Way vs. Railway S. E. (1893) AC 423.

It is morally wrong for the defendant to take undue advantage of the claimant twice to defraud him.

For a valid contract to be formed, there must be mutuality of purpose and intention. The two minds must meet as in this instant case, at the same point. The meeting of minds, consensus ad idem, of both parties to the contract, is the most crucial factor or determinant in the law of contract.

The refusal on the part of the defendant to remit the monthly sum of N25,000.00 and the refusal to pay the sum of N3,600,000.00 for the vehicle purchased from the claimant is a gross breach of their contract. See *FBN Plc. vs. Immason & Sons Nig. Ltd.* (2014) All FWLR (pt. 724) 344.

I agree with the claimant's counsel, that the burden of proof rests on the claimant in this case and that civil cases are decided upon the preponderance of evidence and balance of probabilities, as seen in the Evidence Act, 2011, section 134.

The defendant was never in Court to defend this suit by the cross-examination of cw1 or by entering his defence, though he filed a counter claim/defence.

The claimant's counsel also submitted in her final written address, that once the case of the claimant is unchallenged, the Court is to enter judgment in favour of the claimant, no matter how minimal the evidence is. This is trite law, see also the case of *Monkom & Ors. Vs. Odili* (2010) All FWLR (pt. 536) 225. Only minimal proof is required where the case of the claimant is unchallenged. There is nothing before the Court to put on the other side of the imaginary scale against the evidence of the claimant.

Once the defendant is served with the originating processes of the Court, in this case the complaint form and the summons of the Court, he is sufficiently notified of the case filed against him although the defendant filed a counter claim/defence to this suit, but never appeared before the Court to rebut, challenge or discredit the evidence of the claimant against him, or prove his counter claim.

Where a party is given ample opportunity to ventilate his grievance in a Court of law but fails to, he cannot complain afterwards of lack of fair hearing.

The claimant has established his right to the claim filed before this Court and his right to restitution. His legal right has been established to the Court's satisfaction.

I hereby resolve the lone issue before the Court in the favour of the claimant and I am satisfied that the claimant is entitled to his claim, the defendant having breached the contract both parties entered into freely.

The Court consequently orders as follows;

1. That the defendant has breached the hire purchase agreement entered into with the claimant.
2. That the defendant should pay to the claimant, the sum of N3,600,000.00 (Three Million, Six Hundred Thousand Naira) only, for the vehicle of the claimant, given to the defendant for hire purchase since September, 2022.

3. That this payment should be made forthwith.

This is the judgment of the Court.



MRS BARIYAAH .H. ABE
Chief Magistrate
28th February, 2024.

