

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/62/2024

BETWEEN
24th JULY DIAMOND NIG. LTD

AND
MR. KELECHI AUGUSTINE
(Doing business in the name and style of
T- Flash Computers)

JUDGMENT

This suit was instituted via form RSSC 3 of this court on 11-03-24, wherein the Claimant claims against the Defendant is for:

- I. The sum of ₦150,000.00 (One Hundred and Fifty Thousand Naira) only being and representing purchase money for a Sharp Digital Printer Machine.
- II. ₦50,000.00 (Fifty Thousand Naira) as fees.
- III. ₦50,000.00 (Fifty Thousand Naira) as cost.

The Defendant in reaction via form RSSC 5 of this court filed a Defence and a Counter-Claim against the claimant's claims on 03-05-24 disputing the claimant's claim in its entirety and also counter claiming for: An order of court that the supply by the Defendant/Counter-Claimant of a sharp digital printer machine that can print on films with model 5516 to the Defendant in the counter claim upon the latter's demand is valid and subsisting. An order of court that the defendant in the counter claim shall pay the sum of ₦70,000.00 (Seventy Thousand Naira) only being and representing the balance of the sharp printing machine with model 5516 duly delivered by the Counter-Claimant upon the demand by the Defendant in the Counter-Claim. The Claimant also filed a Defence to the Defendants Counter -Claim on 15-05-24 wherein he disputes the Counter-Claim of the Counter-Claimant and urged the court to dismiss same.

In prove of its claim the claimant called a sole witnesses and relied on Exhibits "A" and "B" being cash receipt and a letter captioned "Collection letter on behalf of 24th July Diamond Nigeria Limited. respectively. While in Defence and in prove of his counter claim, the Defendant/Counter-Claimant called two witness DW1 and DW2 and he relied on Exhibits "C","D", "E" and "F". being a printer, film print out, clients instruction and agreement and an Identity card respectively. the sole claimants witness and the two Defendant/Counter-Claimants witnesses were extensively Cross-Examined after their respective examinations-In-Chief. On 27-06-24 the counsels argued and adopted their respective final written addresses.

The summary of the facts of this case from the claimants perspective is that sometime in the month of June 2023 the Claimant went to the Defendants shop to purchase a sharp digital Printer machine. model AR-M205 with serial No: 45112741, that the said machine was not compatible with the Claimants computer and same was returned to the Defendant for a refund of the purchase sum of ₦150,000.00 (One



Hundred and Fifty Thousand Naira) only but that the Defendant has refused or and neglected to refund the claimant the said purchase money.

While the summary of the facts of the Defendants case in defence of the claimants claim is that when the Claimant came to purchase the printer on the said date, the printer was tested by the claimant and the Defendant and the claimant found the printer okay based on her specification.

The two issue raised by counsels for both parties in their final written addresses shall be adopted by this court to wit:

1. *"Whether from the evidence before this Honourable Court the Claimant has been able to prove its case to be entitled to judgment as per the reliefs before this Court?"*
2. *Whether the Defendant has proved his Counter-Claim before this court to be entitled to his counter claim.*

ISSUE 1.

"Whether from the evidence before this Honourable Court the Claimant has been able to prove its case to be entitled to judgment as per the 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.** in arriving at a decision in this judgment I shall rely strictly on the evidence of witnesses in my record, as this court is bound by its records of proceedings on any matter and shall takes notice of their contents in arriving at a just decision. See: **AGBAREH V. MIMRA (2008) 2 NWLR (PT. 1071, 378) (SC).** I state so because in presenting their cases counsels have attempted to give evidence through their particulars of claim and reply to counter claim and defence to counter claim respectively as well as in their respective final written addresses.

This is a case of a simple oral contract(as there is no contractual document before this court) for sale of a sharp digital printer machine and as such inference of the intention of the parties to the contract will be drawn from their conducts in the entire transaction as stated by the witnesses who testified in this case.

The Claimant Claims for a refund of the purchase price of the sharp digital Printer machine, model AR-M205 with serial No: 45112741, which she bought from the Defendant on the ground that the said printer did not meet its specification as the printer was not compatible with its computers and that the printer is not able to print on films, the purchase receipt for the printer was relied on. The CW1 testified on 24-04-24 that she went to the Defendants shop to purchase sharp digital Printer machine, model AR-M205 that the said printer was tested using photocopy only and cash was transferred to the defendant. CW1 maintained this position under cross examination. She further testified that the said printer did not show on her system and that windows 8 did not work on their system for which the defendant called and offered to bring another printer that will work on windows 10 being the operating system of the claimants office computers at a higher price, the claimant testified that she accepted this offer and the Defendant brought another system to her office which worked on windows 10. these facts were not disputed by the Defendant in fact the defendant confirmed these facts in his evidence before this court. The area now in contention is that the claimant claims that she tested the new printer by printing on films and the outcome was that the films was squeezing and so she had to ask the defendant to take it back to his shop and refund her the purchase money. On this fact the defendant also confirms that the printer worked but that the claimant subsequently rejected it and asked him to take it back to his shop and he did , the fact that the



defendant disagrees with as put by the claimant is that the printer worked both on A4 and on film but that a man in the claimants shop insisted on a particular colour output which the defendants printer could not give , as the defendant added that he was hearing of colour output for the 1st time.

The law is that he who alleges the existence of any fact must prove same . see **AMADI V. AMADI (2017) 7 NWLR (PART 1563) S.C.**

The claimant did not tender a squeezed print out of a film from the defendants printer in this proceeding, neither did the Defendant tender a fine print of a film from the printer he took to the claimants office in this proceedings.

In search of answers i shall now turn to Exhibit "C" before this court being the Sharp model AR 5516 copier and printer which the Defendant alleged that it's the same printer he took to the claimant's office and it worked on photocopy and on films as well, he further tendered Exhibit "D" a fine print out of a film before the watchful eyes of the Court, the Claimant and her counsel. However under the fire of cross examination on 22-05-24 the DW1 was asked questions to which he produced answers as follows: "there is nothing to show that Exhibit "C" is what I took to the claimants office" , "there is nothing to show that the printer I brought to court was installed in the CW1's system" . furthermore, on 29-05-24 the DW2 who said he installed the printer in the claimants system and it worked while under cross examination also stated that " no there is no model 5516 in the claimants system", he further explained that model 5516,5517 and 5518 are all the are all same categories and one model, as much as I find it hard to agree with the DW2 on this, he still did not show the court any of the other similar models as that which he alleges he installed. He who asserts the existence of certain facts must proof same **AMADI V. AMADI (supra)** from the forgoing evidence before the court I can deduce that the assertion put forward by the Defendant that the Sharp model AR 5516 copier and printer which he took to the office of the claimant actually worked perfectly in the claimants office or that Exhibit "C" which he brought to court was the same printer which he took to the claimants office has not been proved by the Defendant.

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. For a valid contract to be formed, there must be mutuality of purpose and intention. The two parties must be saying the same thing at the same time. They must not be saying different things at different times. See **Orient Bank Nig Plc v Bilante Intl Ltd (1997) 8 NWLR (Pt 515) 37 Ratio 2 P. 76 Paras C - E.**

The CW1 did testify in her Evidence in Chief before this court on 24-04-24 that "it was when the second printer could not print on films at this point we asked for refund". CW1 was consistent with presenting this fact and maintained same during cross examination on 30-04-24. The DW1 also confirmed this fact when in his Evidence in chief on 09-05-24 he stated that "a man came out of the claimants office and insisted that the output should be a particular colour after diluting and that if its not that particular colour I should take the printer and refund them their money.I took the printer and left." DW2 in his Evidence in chief on 29-05-24 also confirmed the fact that the Claimant was not satisfied with the output of the printer and he and the DW1 took the printer and left, he said " I was hearing them arguing back and forth on the colour of the printout of the film, the man said we should go with the printer so we went back with the printer" .

Glaringly from the facts of this case, the initial contract for which Exhibit "A" was issued being the contract for a Sharp digital printer machine, model AR-M205 entered by the parties has failed, the Defendant in a bid to make amends have offered a superior and more expensive model of printer being



Sharp model AR 5516 copier and printer, the facts of this case as stated above further shows that the claimant was also not satisfied with the new printer and asked for a refund. The law is as stated earlier that parties to a contract must be saying the same thing at the same time. They must not be saying different things at different times. See **Orient Bank Nig Plc v Bilante Intl Ltd (supra)**

on this score I find that the second or extended contract for supply of a better and more expensive printer also failed as the parties were not in agreement, the implication is that parties are to revert to the initial contract for purchase of sharp digital Printer machine, model AR-M205 hence the demand for a refund of the purchase price. I am of the humble view that the Defendants position in denying the claimants claim on the grounds that he has delivered another printer to the claimant is an afterthought because at the point when claimant rejected the said printer the Defendant went back with the printer and till date is still in possession of the printers . he cannot in the circumstance be demanding a balance for a product in his possession. In conclusion I find that the Claimant has proved its case before this court on the standard required by law.

Accordingly it is adjourned as follows:

1. That the Claimant is entitled to the sum of ₦150,000.00 (One Hundred and Fifty Thousand Naira) only being and representing purchase money for a Sharp Digital Printer Machine model AR-M205.
2. ₦50,000.00 (Fifty Thousand Naira) as fees.
3. ₦50,000.00 (Fifty Thousand Naira) as cost.

COUNTER CLAIM

The Defendant/Counter Claimant's claim before this court is as follows:

1. An order of court that the supply by the Defendant/Counter-Claimant of a sharp digital printer machine that can print on films with model 5516 to the Defendant in the counter claim upon the latter's demand is valid and subsisting.
2. An order of court that the defendant in the counter claim shall pay the the sum of ₦70,000.00 (Seventy Thousand Naira) only being and representing the balance of the sharp printing machine with model 5516 duly delivered by the Counter-Claimant upon the demand by the Defendant in the Counter-Claim.

The Defendant in this counter claim denies all the claims herein.

The lone issue in this counter claim is "*Whether the Defendant has proved his Counter-Claim before this court to be entitled to his counter claim?*"

The facts of this case shows that the Counter claimant is still in possession of the two printers subject matters of this suit and as such he cannot be heard to say as stated in his prayer herein that he has supplied the said printer to the claimant. The claimant/defendant rejected the printer and the Defendant/counter-claimant left with it as was confirmed by all the witnesses in the suit. Accordingly this score is resolved against the counter-claimant.

This score having been resolved against the counter-claimant the 2nd relief for payment of balance also fails and same is refused. It is hereby adjudged that the Counter claim of the Defendant Counter/Claimant fails and same is hereby dismissed.

I make no further orders.

Parties are reminded of their rights to appeal.



SAMUEL S. IBANICHUKA, ESQ.
(SENIOR MAGISTRATE)
SIGN: *[Signature]* DATE: 15-7-24

Signed:
S. S. IBANICHUKA, ESQ.
15/07/2024.

THE JUDICIARY
* * *
SIGN: *[Signature]*
DATE: 25.7.24
CASH OFFICE
RECEIVED
SMALL CLAIMS COURT

RIVERS STATE JUDICIARY
CERTIFIED TRUE COPY
SIGN: *[Signature]*
DATE: 15/8/2024
SMALL CLAIMS COURT REGISTER, PH.