

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 8, ON THE 19TH OF
JANUARY 2024

SUIT NO. PMC /SCC/240/2023

EBIMOPA TAM-KWOKWO

} **CLAIMANT**

AND

BRAVE GLOBAL RESOURCES LTD

} **DEFENDANT**

JUDGMENT

This is the final judgment in this suit wherein the claim before the court, dated and filed on the 14th November, 2023 is for:

1. An order of this Court compelling the defendant to pay the Claimant, the sum of One Hundred And Forty Nine Thousand Naira as the sum for the refund of the purchase price of the refrigerator, Haier Thermocool Double door HRF95 BEX
2. An order of this Court compelling the defendant to pay the Claimant, the sum of Four Million Naira(N4,000,000) only as damages.
3. An order of this Court compelling the defendant to pay the Claimant sum of Five Hundred Thousand Naira (500,000) as cost of litigation in initiating this suit against the defendants.

In proof of her case, the Claimant called one witness and the defendant never appeared in this matter.

On the 22nd of November, 2023, the Claimant was absent and the defendant was present. An application to enter plea of not liable for the defendant by the Claimant Counsel was granted and the matter was set down for hearing.

On the 16th day of January, 2024, the Claimant was present and the defendant was absent. On this date, the CW1, who is also the Claimant on record commenced her evidence in Chief and stated that she is a legal practitioner of Silas & Co with office address No.11 Okomoko Street, D/Line off Olu-Obasanjo Road, Port Hacourt, Rivers State and that the defendant is a limited liability company registered under the laws of the Federal Republic of Nigeria, which engages in the sale of electrical appliances as well as interior decoration items.

That On the 19th of August, 2023, she went to the defendant store at No. 242 Aba Road, Beside Coscharis Car Wash by Airforce Junction, Rivers State to buy home appliances for her newly acquired apartment. That on her request to purchase a refrigerator, a fan and an electrical iron, she was advertised to an array of electrical appliances from different brands. That she chose the brand of electrical iron of Binatone brand and an electrical fan of Binatone Brand and on her choice for a refrigerator, she told the sales representative of regular power outages in the area where she moved into and expressed her desire for a refrigerator that will serve well in terms of long power outages of more than 24 hours.

Testifying further, the defendant stated that she was introduced to a Haier Thermocool Double door HRF95BEX Refrigerator which was advertised to her as having Three (3) days post power outage cooling and refrigeration and she indicated interest to purchase it and the refrigerator was sold to her at a cost of One Hundred and Forty-nine Thousand Naira (N149,000) and was informed of a promo awarding me a bottle of kings groundnut oil for free. That the electrical fan was sold to her at the price of Twenty-One Thousand (N21,000) and the electrical iron was sold to her at Eight Thousand Naira (N8,000) only. That the total of commodities bought was a total of One Hundred and Seventy-eight Thousand Naira (N178,000.00) only and was issued a receipt which is dated 19 of August, 2023 The receipt was identified by the CW1 and sought to be tendered and was admitted as **Exhibit A**.

Testifying further, the defendant stated that upon the refrigerator being turned on at her place of residence the next day, the refrigerator emitted noises that was not too proportional to that of a normal refrigerator and that little droplets of water sprouted out at the top and sides of the refrigerator and formed pockets of water at the top and trickled to the floor at the sides of the refrigerator. That she also observed that at power outage, the freezer part of the refrigerator which was blocked melted to water at a 30 minutes time frame after a power outage and the refrigerator which was also cold enough during the period of present electricity lost its coldness. That so she reported the incident to the defendant's store, to which a staff of the defendant instructed her to observe same and if it continues, she should return it.

That on the 24 of August, 2023, she returned the refrigerator to the defendant's store at her expense of Five Thousand Naira (5,000) only from her premises and she was issued a defect item form by the defendant with her details as well as her complaint upon my return which is dated 24. The defective form was identified by the CW1. The Claimant's counsel applies to tender same in evidence. The form dated 24th of August was admitted and marked as **Exhibit B**.

Continuing, the CW1 stated that the defendant's proceeded to inform her that she would not get a replacement but the issue would be forwarded to a technician for repairs and that she refused repairs on the refrigerator as a refrigerator bought brand new and not a second hand, thrift/hand me down product, That she sought to speak to the manager but was

Informed that the manager was not present. So she left the refrigerator and all its appurtenances and components at the address of the defendant and departed with no express consent for the refrigerator to be repaired but to be given a replacement at the time because it was returned only five (5) days after.

That some days later, she was called by one person of the name Eki who introduced himself to as a technician who was to repair her refrigerator. That she informed him of her disapproval of a brand new refrigerator bought to be repaired and he stated that he has no authority whatsoever that he was only in charge of repairs. That in one of her physical visits to the store to demand the money, that if the money is not refunded that she would sue in my capacity and was responded to by the defendants customer care representative that she should go ahead, that they have lots of cases in court.

That she was called and informed that her refrigerator could not be fixed as indeed the refrigerator was defective beyond repair on the 11th of October, 2023. That she formally wrote a letter of demand dated 14th October, 2023

defendants requesting for a refund of the purchase price of the refrigerator. The said letter was identified by the CW1 and sought to be tendered by the Claimant's counsel. The letter dated 17th October, 2023 was admitted in evidence and marked as Exhibit C.

Testifying Further, the defendant stated that her finance took a hit as well as she was subjected to preparing temporal meals so as to avoid warming food constantly which led to losing its taste and spent more in purchasing meals rather than eating personal homemade refrigerated meals and that the large quantity of food made as a result of the purchase of the fridge all went bad and was subjected to constantly worming to try and preserve the food. That all through the period the defendants never apologized nor showed remorse to the inconvenient nature of the situation. That even upon the service of the letter of demand and the serve of this suit on the defendants they have shown no recourse to their handling of the situation.

That she want the court to grant me the sum of Four Million, Six Hundred and Forty-nine thousand Naira (N4,649,000) only as stated in my claims comprising :One Hundred and Forty Nine Thousand Naira (N149,000) as the sum for the refund of the purchase price.;Four Million Naira(N4,000,000) only as damages for the physical, psychological trauma and suffering she was subjected to due to the defendants refusal to refund her money paid as purchase price for the refrigerator Haier thermocool Double door HRF95 BEX as the defendants have caused and put me in serious jeopardy, stress, difficulty and inconvenience;the sum of Five Hundred Thousand Naira (500,000) as cost of litigation in initiating this suit against the defendants.

At the close of the evidence, having sighted the hearing notice duly endorsed by the defendant and the affidavit of service filed on the 11th day of January, 2024, the defendant were foreclosed from cross-examining the CW1 and from defence and the matter was adjourned for judgement.

A total of three (3) exhibits were tendered in evidence in the course of the trial.

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 read all the exhibits and 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.

It is in evidence via Exhibit 'A' that the Claimant paid the sum of N149,000 to the Claimants as purchase price for Haier Thermocool Double door HRF95 BEX. This fact was not controverted in evidence and it is now trite that facts admitted need no further proof. So the first claim is satisfied, the Courts preoccupation is now on the 2nd and the 3rd claim which is for:

1. An order of this Court compelling the defendant to pay the Claimant, the sum of Four Million Naira (N4, 000,000) only as damages.
2. An order of this Court compelling the defendant to pay the Claimant sum of Five Hundred Thousand Naira (500,000) as cost of litigation in initiating this suit against the defendants.

On The Prayer For General Damages:

The CW1 have testified that she suffered a lot of inconveniences because of the defective refrigerator. That her finance took a hit as well as she was subjected to preparing temporal meals so as to avoid warming food constantly which led to losing its taste and spent more in purchasing meals rather than eating personal homemade refrigerated meals and that the large quantity of food made as a result of the purchase of the fridge all went bad and was subjected to constantly worming to try and preserve the food. That all through the period the defendants never apologized nor showed remorse to the inconvenient nature of the situation. That even upon the service of the letter of demand and the serve of this suit on the defendants they have shown no recourse to their handling of the situation.

It is certainly undisputed from evidence before the Court that the Claimant's claim for general damages arose directly from the careless and non challant conduct of the defendant who held on to the money of the Claimant even after it was confirmed that they could not repair the defective refrigerator. As testified by the CW1, the inconveniences and emotional hurt to the Claimant is quite regrettable.

The correct assessment for general damages remains an award that compensates the injured party and restores it to the position it would have been had the breach or injury not occurred.

As a result, the assessment of damages is based purely on damages flowing naturally from the breach. *Stephen Okongwu V NNPC* (1989) 4 NWLR (Pt 115) 296 @ 306h-307a; *GFK Investment Ltd V Nigeria Telecommunications Plc* (2009) 15 NWLR (Pt 1164) 344; @ 384D-E.

The award is quantified by what in the opinion of a reasonable person is considered adequate loss or inconvenience which flows naturally, as generally presumed by law, from the act or conduct of the Defendant. It does not depend upon calculation made and figure arrived at from specific items.

Odulaja v Haddad (1973) 11 SC 357; (1973) 11 S.C.

(Reprint) 216; *Lar v Stirling Astaldi Limited* (1977) 11-12 SC 53; (1977) 11-12 SC (Reprint) 106

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 her claim for general damages before the Court.

Consequently, the Court orders the defendant to pay to the Claimant, the sum of N2,000,000 (Two Million Naira) as general damages

On The Claim For Cost Of Litigation

On the cost of litigation, the Appellate Courts have reiterated times without number that cost of litigation is in the class of special damages that must be strictly proven. Please refer to the case of

Lonestar Drilling Nig. Ltd v. New Genesis Executive Security Ltd [2011] LPELR – 4437 CA

Naude v Simon [2014] ALL FWLR [Pt. 753] CA 1878. per Akomolafe- Wilson JCA

International Offshore Construction Ltd & 3 Ors. v Shoreline Lifeboats Nig. Ltd [2003] 16 NWLR [Pt. 845] p. 157

The Claimant in this case did not show proof of their claim for the cost incurred from litigation which is in the class of special damages. For instance, the Claimant could have attached some documentary evidence in the form of receipts or proof of transfer of funds to a counsel or firm evidencing the cost of litigation.

In the absence of any proof of the special claim for cost of litigation, the claim for cost of litigation fails

IT IS THUS ADJUDGED that the defendant pay to the Claimant, the sum of One Hundred And Forty Nine Thousand Naira as the sum for the refund of the purchase price of the refrigerator, Haier Thermocool Double door HRF95 BEX

IT IS THUS ADJUDGED that the Defendant is to pay the Claimant, the sum of N2,000,000(Two Million Naira) as general damages for the emotional and financial stress and disappointments and trauma associated with paying for a new product that never worked nor served its purpose and no communication on getting a refund money despite repeated visits and demands.

AND IT IS ORDERED that the defendant is to pay the Claimant, the aforesaid sum of N2,149,000(Two Million, One Hundred and Forty Nine Naira) representing the refund money for the refrigerator (Haier Thermocool Double door HRF95 BEX) and award for general damages with immediate effect.

AND IT IS FURTHER ORDERED that the defendant do pay to the Registrar of this court the total sum of N2,149,000(Two Million, One Hundred and Forty Nine Naira) above mentioned as the refund money for the purchased refrigerator (Haier Thermocool Double door HRF95 BEX) and general damages.

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.

GIFT C AMADI, ESQ
CHIEF MAGISTRATE
GDI
SIGN.....DATE.....

**G. CHINYERE AMADI. ESQ.
CHIEF MAGISTRATE G.D.I**