

IN THE MAGISTRATES' COURT OF RIVERS STATE OF NIGERIA
IN THE PORT HARCOURT MAGISTERIAL DISTRICT
HOLDEN AT SMALL CLAIMS COURT 1, PORT HARCOURT
BEFORE HIS WORSHIP COLLINS G. ALI, ESQ.,¹ TODAY WEDNESDAY, THE
3RD DAY OF APRIL, 2024.

SUIT NO.:PMC/SCC/32/2024.

BETWEEN:

1. OKAFOR MICHAEL ZIMUZOR
2. EZUZU GODSPOWER HAPPY
3. EZUZU GODSPOWER PRISCA AMARACHI
4. CHIGBO IKENNA TOCHUKWU
(ICEVOLT GREEN ENERGY SERVICES)



CLAIMANTS

AND

AUGUSTINE IGHOTEGUONOR

DEFENDANT

Case called.

Parties absent.

JUDGMENT

The Claimants commenced this suit against the Defendant on the 7th February, 2024 after serving the Defendant with mandatory demand letter dated 21st August, 2023. By the Claimants' complaint form and the summons issued on the 7th February, 2024 to which the particulars of claim is attached; the Claimants claims against the Defendant as follows:-

Debt/Amount Claimed	-	<u>₦2,306,831.68</u>
Costs	-	<u>₦600,000.00</u>
TOTAL	=	<u>₦2,906,831.68</u>

The originating processes were served on the Defendant personally on the 13th February, 2024; and the Defendant entered appearance. The Defendant filed defence and counterclaim on the 19th February, 2024 in response to the Claimants' claim. The Defendant stated that the Claimant breached their agreement by refusing to honour same inspite of persistent requests and demands. The Defendant counterclaimed against the Claimants as follows:

Refund of money paid for the equipment - ₦2,600,000.00
Costs of site repairs and inconveniences - ₦2,400,000.00

¹ LL B, LL M, BL, A. IDRI, Chief Magistrate Grade I, and the Presiding Magistrate, Small Claims Court 1, Port Harcourt, Rivers State.

TOTAL = ₦5,000,000.00

The Defendant pleaded not liable to the claims on the 14th February, 2024 and the case was adjourned for pre-trial proceedings and report of settlement. During the trial, the 2nd Claimant (Ezuzu Godspower Happy) testified for the Claimants as CW1. The Claimants also tendered documents which were received in evidence and marked as Exhibits A,² B,³ B1,⁴ B2,⁵ B3,⁶ B4,⁷ C,⁸ D⁹ and E¹⁰ respectively. The Defendant testified in defence of the claims as DW1 and tendered documents which were received in evidence and marked as Exhibits G,¹¹ G1,¹² G2,¹³ H,¹⁴ J,¹⁵ K,¹⁶ L,¹⁷ M,¹⁸ N¹⁹ and P²⁰ respectively. The CW1 and DW1 were fully cross examined by the learned counsel on both sides and the case was adjourned for final address as ordered by the Honourable Court.

The Defendant's final written address is dated the 14th March, 2024 and filed on the 15th March, 2024; while the Claimants' final written address is dated and filed on the 18th March, 2024. The learned counsel for the parties adopted their respective final written addresses on the 20th March, 2024 and the case was adjourned for judgment.

The summary of the evidence of the CW1 is that the Defendant entered into a power contract with the Claimants for installation and management of HVAC cooling and heating equipment which was successfully installed after the contract was signed and initial deposit paid by the Defendant as agreed under the power contract (Exhibit A). The Defendant is said to be owing the sum of ₦2,306,831.68 after a

² Power Contract / Agreement dated 9th August, 2022.

³ Payment Receipt dated 4th August, 2022.

⁴ Payment Receipt dated 4th October, 2022.

⁵ Payment Receipt dated 8th November, 2022.

⁶ Payment Receipt dated 1st January, 2023.

⁷ Payment Receipt dated 7th February, 2023.

⁸ Invoice dated February, 2023.

⁹ Demand Letter dated 21st August, 2023.

¹⁰ Certificate of authentication dated 7th February, 2024

¹¹ Defendant's PHED Oct./Nov. 2023 Enery payment receipt dated 11/10/2022.

¹² Defendant's PHED Oct./Nov. 2023 Enery payment receipt dated 16/10/2022.

¹³ Defendant's PHED Oct./Nov. 2023 Enery payment receipt dated 23/10/2022 & 09/11/2022.

¹⁴ IceVolt Website Downloaded Materials.

¹⁵ Bundle of WhatsApp chat between Defendant and Mr. Godspower.

¹⁶ Bundle of WhatsApp chat between Defendant and Mrs. Godspower.

¹⁷ Email messages between Defendant and Mr. Zim.

¹⁸ Defendant's Certificate of compliance.

¹⁹ Defendant's legal fees payment receipt.

²⁰ Defendant's USB Video clips.

discount of ₦1,340,000.00 as cost of withdrawn battery and inverter as shown in Exhibit C. The Defendant as DW1 did not dispute the power contract but claims the installed equipment particularly the battery and inverter system did not meet his specification as he had requested for lithium batteries and not tubular batteries and inverted compressor as opposed to the regular one; to serve his energy needs but discovered that the equipments were not as presented to him. The Defendant stated that by his valuation of the withdrawn batteries, inverter and protection system which he put at ₦3.2million as opposed to the Claimants' discounted ₦1.3million; his actual outstanding balance should be about ₦340,000.00 only. This is regardless of the Defendant's complaint of the malfunctioning of the equipment.

The learned defence counsel had argued amongst other things that the parties intended a hire purchase and not lease agreement as shown in the Power Agreement. Counsel citing section 4 of Hire Purchase Act, 1968 argued that the Defendant was convinced of what he needed by the information gotten from the Claimants' website. Counsel contended that the equipment malfunctioned and that the Defendant was entitled to damages because the items forming part of the ENVAC had warranties ranging from one year to two years but none lasted for full one month. Counsel cited the case of *Nigerian Motors Industries Ltd v Elegant Twins School of Cosmetology & Clinic (Nig.) Ltd & Anor.* [2021] LPELR-55665 (CA). On his part, the learned Claimant counsel argued that there is no dispute that the Claimants leased the equipment to the Defendant with the option that the Defendant would own it after full payments. Counsel contended that the Claimants tendered the power contract setting out the amount payable and the terms of the contract. Counsel argued that the Defendant set up irrelevant and illogical defences which cannot defeat the claim as they run contrary to law and evidence. Citing the cases of *Isheno v Julius Berger (Nig.) Plc* [2008] LPELR-1544 (SC), *Olanlege v Continental Nigeria Ltd* [1996] 7 NWLR (Pt 458) 29 at 40 and section 128 (1) of the Evidence Act, 2011, the learned Claimants' counsel submitted that parties are bound by their contract and cannot vary their written contract by parol evidence.

The law is that written contract agreement freely entered into by the parties is binding on them. A Court of law is equally bound by the terms of any written contract entered into by the parties. Where the intention of the parties to a contract is clearly expressed in a document, a contract agreement; the Court cannot go outside that document to give effect to the intention of the parties. The general principle is that where the parties have embodied the terms of their contract in a written document, extrinsic evidence is not admissible to add to, vary, subtract from or contradict the terms of the written instrument. See the cases of *Okonkwo v C.C.B. (Nig.) Plc. [1997] 6 NWLR (Pt.507) 48*, *Babatunde & Anor. v Bank of the North Ltd & Ors. [2011] LPELR-8249 (SC)* and *Union Bank of Nigeria Plc v Ajabule & Anor. [2011] LPELR-8239 (SC)*. The contract between the Claimants and the Defendant who is an engineer is as contained in the Power Contract/Agreement (Exhibit A). The Defendant failed to point out from the contract agreement what obligations the Claimants failed to carry out under the contract but rather relied on informations purportedly gotten from the Claimants' website and not captured in the contract he signed. I agree with the Claimants' counsel that the Defendant cannot be availed by the defence he has set up. I consider the Defendant's defence and counterclaim as an afterthought set up to deny the Claimants' full entitlement to the agreed contract sum. The Defendant's counterclaim is dismissed.

Judgment is entered for the Claimants as follows:

1. The Defendant is hereby ordered to pay the Claimants forthwith, the sum of ₦2,306,831.68 (Two Million, Three and Six Thousand, Eight Hundred and Thirty-One Naira, Sixty Eight Kobo) only representing the unpaid contract balance.
2. The Defendant is hereby ordered to pay the Claimants forthwith, the sum of ₦100,000.00 (One Hundred Thousand Naira) only as costs.


3/4/2024

C. G. Ali, Esq.
(Chief Magistrate)
03/04/2024

LEGAL REPRESENTATION:

1. M. J. Micah, Mrs. for the Claimants.
2. Uzoma O. Benjamin, Esq. for the Defendant.

