

**IN THE MAGISTRATES' COURT OF RIVERS STATE**  
**IN THE PORT HARCOURT MAGISTERIAL DISTRICT**  
**HOLDEN AT PORTHARCOURT BEFORE HIS WORSHIP. G.C. AMADI ESQ.**  
**SITTING AT SMALL CLAIMS COURT AT CHIEF MAGISTRATE COURT 15, ON THE 26<sup>TH</sup> OF**  
**JUNE 2023**

**SUIT NO. PMC /SCC/34/2023**

1. CHUKWUDI CHRISTIAN NWEKE
2. EMMANUEL CHINONSO OFORHA

} CLAIMANTS

AND

1. ENGR. EMMANUEL WILSON AYONOADU
2. MRS. DIANA WILSON AYONDADU

} DEFENDANTS

**JUDGMENT**

This is the final judgment in this suit wherein the claim before the court, dated and filed on the 19<sup>th</sup> May, 2023 is for:

1. An order of this Court compelling the defendants to pay the Claimant, the sum of N485,000 as capital.
2. An order of this Court compelling the defendants to pay the Claimant the sum of N500,000 as general damages.

In proof of his case, the Claimant called two Witness and the defendant called two witnesses.

On the 23rd day of May, 2023, the Claimant was absent and the defendants were 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 31<sup>st</sup> of May, 2023, the CW1, One Emmanuel Oforha testified that the 1<sup>st</sup> defendant is his former landlord in his former shop at No. 13 Elelenwo by Woji, Port Harcourt, Intels Plaza and the 2<sup>nd</sup> defendant is the wife of the 1<sup>st</sup> defendant.

That on the 11<sup>th</sup> of January, 2023, he was in his house when the security called him early in the morning that the Landlord's wife wants to buy something from his shop. That he got to the shop and met the 2<sup>nd</sup> defendant who said she wants to buy 2 Orthopedic foams worth 185,000 Naira each for a 6 by 6 size, 4 duvets bedspreads worth 24,000 Naira each and 4 Mouka Pillows worth N5,000 each. That when it was time to pay, the 2<sup>nd</sup> defendant said that the phone she is supposed to make the transfer from is in the house, that she needs to





use her token from the phone but of which was at home to make the payment. That the 2<sup>nd</sup> defendant promised to make the transfer immediately she gets home before 40 minutes from the time she took the foams.

That after 2 hours, when he did not receive any alert, he called her, the 2<sup>nd</sup> defendant said she will make the transfer, that "I should give her 30minutes" and that he waited for another one hour, then he called her back.

That when he called her back, the 2<sup>nd</sup> defendant said she spoke with her husband, the 1<sup>st</sup> defendant and the 1<sup>st</sup> defendant said that they being the Claimants are owing them rent. The CW1 then told her that the latest development is not in their agreement.

Testifying further, the CW1 stated that he asked the defendants to refund the balance which they refused, and that is why they are in Court.

That when he reached out to the defendants, they directed him to talk with their lawyer, that because of the debt, they failed in their sales target to their clients. That he reached out to the 1<sup>st</sup> defendant through the 2<sup>nd</sup> defendant. The Claimants counsel applies to tender same in evidence and same was admitted in evidence as Exhibit A.

That the total goods they bought is N486,000, and that no amount has been refunded till date. That they wrote a demand letter to the defendants. The Claimant counsel seeks to tender the demand letter. The 1<sup>st</sup> defendant objects that he never received any demand letter and no foundation was laid. In admitting the demand notice the Court stated that based on an affidavit of non-service dated and filed on the 15<sup>th</sup> of May, 2023, the demand notice was ordered to have been served by substituted means by pasting at the address of the defendants. Same was admitted as Exhibit B. In conclusion, the CW1 stated that the defendant had messed up their business targets, that he wants his claim as on the face of the claim.

During the cross-examination of the PW1 on the same date, he stated that it is true that he told the defendants to deduct the rent he is owing them from the purchases, So the defendants offered to return one foam worth N185,000 and 2 pillows worth N10,000. That he refused because it was not up to his money. That so much time has passed, that he cannot take the items back. That he wants his money. That they are supposed to give him back N245,000 after deducting rent from the N486.000. That it is not true that he arrested the defendants.

Testifying further, the PW1 stated that it was 2 weeks later, that they offered to return one foam and that he did not accept the offer because the value is less than what they were owing him and that he served the defendants the demand notice at Tete's plaza, that he did not serve them but that it was pasted.

On the 8<sup>th</sup> day of June, 2023, the CW2, one Chima Chamberlain, a bailiff who lives at Ozuoba testified that he received copies of letters of demand to serve the defendants at NO.13 Trans-Amadi, Elelenwo Road.

On the 23<sup>rd</sup> day of March, he went to deliver the letter and upon arrival, he met one Mr. Peter and that he called the 2<sup>nd</sup> defendant who informed him that they being the defendants are currently out of town and that he should drop the letter with Mr. Peter. That at that





point, he called Mr. Peter and insisted on talking with his lawyer before he will receive the letter. That the Mr. Peter was unable to call his lawyer, therefore, he pasted the letter on the wall and made endorsements. The CW2 seeks to tender the endorsement and return of the Exhibit 'B' and same was admitted in evidence as **Exhibit 'C'**

On the 15<sup>th</sup> day of June, 2023, the DW1, one Peter Dorathy commenced his evidence and stated that the Claimants were former tenants in his place and stated inter alia that one day, he saw a man who entered the compound and introduced himself as a lawyer and said he wanted to see the landlord. That he told them that he does not know the landlord, that it is his brother that he knows, That he told the lawyer to read the process and when he heard the Claimants' name he refused to sign and then the lawyer pasted the process and he flung it away.

During Cross examination on the same date, the DW1 stated that he saw the 2<sup>nd</sup> defendant return the foam and 2 pillows and the duvet. That the Claimant did not accept the foam till date.

On the 19<sup>th</sup> day of June, 2023 during the evidence of DW2, One Egbuku Sydney stated that he is the lawful attorney to the Defendants and that the Claimants are tenants in a locked shop belonging to the defendants.

That on the 11<sup>th</sup> of January, 2023, he received a call from Chinonso Emmanuel and he was demanding for N480,000 for the purchase of two (2) foams, four pillows and 2 duvets That after the call, he called the defendants to confirm and the defendants stated that since the month of January, 2022, the Claimant have not paid his rent even after several demands of the claimant's rent that is to expire on the 27<sup>th</sup> March, 2023. That the Claimant had promised to pay up before the 22<sup>nd</sup> day of May, 2022 but that they never paid any rent. That because of that she now paid professional fees of N200,000 to quit the Claimants on the 5<sup>th</sup> September, 2022.

That a 7 days owners' intention to recover possession was filed at Elelenwo Magistrate Court

That on the 9<sup>th</sup> day of September, 2022, the defendants came with the bailiff of Court and saw the 1<sup>st</sup> Claimant but did not see the 2<sup>nd</sup> Claimant and the 1<sup>st</sup> Claimant was served personally and they pleaded with the 1<sup>st</sup> Claimant to vacate the property.

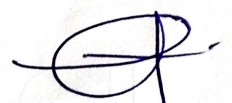
That later after the 2<sup>nd</sup> defendant took the Claimants foam because of the monies they were owing them. That the Claimant reached out to him and that he reached out to them to come and carry their one foam and two pillows but they didn't come. That instead, the Claimant resorted to seeking police arrest.

Power of Attorney is identified and is sought to be tendered and is tendered as **Exhibit D**.

Professional fees receipt is also admitted in evidence as **Exhibit E**.

7 days owners intention to recover possession and particulars of claim is also admitted in evidence as **Exhibit F and G** respectively.

In conclusion, the DW2 stated that the defendants are not owing the Claimants any money.





During the evidence of DW2 at the same date, he stated that during the period that the parties were testifying in open court that he was seated in Court. That the claim and the issue before the Court is for refund of money from purchase of foam.

That to his knowledge the foams have not been paid for by the defendants because they said the Claimants are owing them rent and made them to suffer detriments.

That the issue of rent is before the Elelenwo Magistrate Court and has not been withdrawn after they vacated the property. That there is an understanding between the Claimants and the 2<sup>nd</sup> defendant to return part of the goods which belongs to them, that he has no proof of the agreement to that effect, that it was only orally agreed.

At the close of the evidence of the DW2, there was no re-examination and the defendant counsel closes the case of the defendants and the matter was adjourned for judgment.

A total of seven (7) 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.

Issues are joined on the following:

That the defendants are owing the Claimants the sum of N485,000, however, defendants are of the position that the debt has been cancelled by the outstanding rent and professional fees incurred in pursuing a claim against the claimants as in Exhibits F and G.

The question still remains whether the Claimant has discharged the burden of proving his Claim before the Court.

The Claimant in this matter has vigorously asserted that he supplied goods to the Defendants worth over 485,000 and he has made frantic effort by calling and sending demand letters as in Exhibits **B & C** to no avail, hence he filed this suit to recover the cost of the goods supplied to the Defendants. The Defendants did not deny the supply of the items listed by the Claimant but the Claimant was a tenant in one of their property and owed rent in the sum of 200,000 and he has incurred legal expenses trying to recover the said rent owed him by the Claimant by filing a suit. The Defendants through DW2 admitted that the goods were supplied to them but they refused to pay because the Claimant was owing rent and that one foam and two pillows were later returned to the Claimant to set off the outstanding debts but he declined the offer because it was sent 2 weeks later. The 1<sup>st</sup> Claimant during cross-examination stated that though the defendants offered to return one foam and two pillows, that he did not accept the offer because the value is less than what they were owing him. That so much time has elapsed now. That he wants the sums claimed before the Court.





It is important to note that the matter before this court is recovery of debt and not recovery of rent. The defendants have admitted to buying foams and other sleeping accessories from the Claimant to the sum claimed before the Court. It is now trite that facts admitted is deemed proved.

The general principle of law is that he who assert must prove coined from the old maxim incumbit probation qui dicit non qui negat which means that the burden of proving as fact rest on the party who asserts the affirmative of the issue and not upon the party who denies it, for a negative is usually incapable of proof. See *Omisore v. Aregbesola* (2015) 15 NWLR (Pt. 1482) p. 217. See also section 131 (1) of the evidence Act, 2011.

The burden of proof is the task of establishing before the court the claim of a party. Thus, the Claimant has accomplished through cogent and compelling evidence including the admission of the defendants as having incurred the above sum. See section 1 of the evidence Act, 2011.

I therefore hold that the burden of prove has been discharged by the Claimant, therefore he is entitled to recover the cost of goods supplied to the Defendants.

#### **On The Issue of General Damages**

The CWI in his evidence stated that due to the delay in payment of goods supplied to the Defendants, it affected its supply targets to their clients. The DW2 also confirmed that the money has not been paid over to the Claimant, reason being that the Claimant is owing them rent. The Defendants pretentiously went to the business of the Claimant without the intention of paying while the matter was pending in another court. The law frowns at self-help no matter the form, and this is what the court has observed in this matter.

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. This can be seen in *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 Defendants. It does not depend upon calculation made and figure arrived at from specific items. See *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 and *Osuji v Isiocha* (1989) 6 S.C. (Part II) 158; (1989) 3 NWLR (Part 111) 623





On the undisputed and clear evidence before the court, the court will hold that the Claimants has discharged the burden of proving that they are entitled to their claim for general damages before the Court.

IT IS THUS ADJUDGED that the Defendants are to pay the Claimant the sum of N485,000 (Four Hundred & Eighty-Five Thousand Naira) being the cost of the goods supplied to the defendants.

AND IT IS FURTHER ADJUDGED that the Defendants are to pay the Claimant, the sum of N300,000(Three Hundred Thousand Naira) as general damages.

AND IT IS ORDERED that the defendants pay to the Claimants, the aforesaid sum of N485,000 (Four Hundred And Eighty Five Thousand Naira) and sum of N300,000 (Three Hundred Thousand Naira) above mentioned, representing the cost of the goods supplied to the defendants and general damages to the total sum of N785,000.00 (Seven Hundred And Eighty Five Thousand Naira) Only.

AND IT IS FURTHER ORDERED that the defendants are to pay to the Registrar of this court the total sum of N785,000(Seven Hundred and Eighty-Five Thousand Naira) above mentioned as 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 CHINYERE AMADI, ESQ  
CHIEF MAGISTRATE  
SIGN..... DATE.....

G. CHINYERE AMADI. ESQ.  
CHIEF MAGISTRATE G.D.II