

IN THE SMALL CLAIMS COURT OF RIVERS STATE OF NIGERIA
IN THE PORT HARCOURT MAGISTERIAL DISTRICT
HOLDEN AT PORT HARCOURT

ON MONDAY THE 19TH DAY OF FEBRUARY, 2024
BEFORE HIS WORSHIP WOBIA CRISTABEL AKANI, ESQ.
SENIOR MAGISTRATE GD.1

SUIT NO. PMC/SCC/277/2023

BETWEEN:

IBINABO LAMBERT SANIPE

V.

ACCESS BANK PLC

Parties absent.

O. R. Idise for the Defendant.

No appearance for the Claimant.

Matter is for Judgment.

JUDGMENT

The Claimant herein commenced this suit against the Defendant vide Form RSSC2 on 21st December 2023 after serving the Defendant with the demand notice on 28th November 2023.

By the summary of claim contained in the summons Form RSSC3, the Claimant claims against the Defendant the sum of One Million Seven Hundred Thousand Naira (N1,700,000.00) only broken down as follows:-

- | | | |
|------------------------|----|---------------|
| i. Debt/amount claimed | -- | N500,000.00 |
| ii. Fees | -- | N1,000,000.00 |
| iii. Costs | -- | N200,000.00 |

Service of the Claims and Summons was effected on the 22nd December, 2023 as shown in the Affidavit of Service deposed to by Chinnah Chamberline, a Bailiff of Court attached to the Small Claims Court, Port Harcourt. When the case came up on the 11th January, 2024, the Defendant was not represented in court. Following the non appearance of the Defendant, a plea of not liable was entered for the Defendant and the Claimant proceeded to prove his case on the directive of the court pursuant to the provisions of Article 8(2) RSSCC (Practice Direction) 2023.

The Claimant gave evidence for himself as CW1 and tendered the following document in evidence as Exhibits

1. Sales Agreement Receipt issued by the Claimant - Ibinabo Lambert Sanipe to Abubakar Michael Abraham for the sale of one Toyota Avalon with Reg. YAB 157NH-Exhibit C1.
2. Photocopy of Vehicle Particulars for one Toyota Avalon with Reg. No. YAB157NH-Exhibit C2
3. Letter of Demand for Immediate Removal of Withdrawal Restriction dated 27th November 2023 written by Emmanuel H. Okagua of E. H. Okagua & Co. and addressed to the Manager, Access Bank Plc, Azikiwe Road - Exhibit C3.

The Claimant says he sold his Toyota Avalon vehicle with Registration Number YAB 157 NH to one. Mr. Michael Abraham for the sum of Three Million Five Hundred Thousand Naira (N3,500,000.00) which was paid into the Claimant's Access Bank account. The Claimant says he did some transactions on the account amounting to about Three Million Naira but that when he tried to carry out further transactions, he found that he was unable to access the funds left in the account. The Claimant says that he approached the bank to find out why he was unable to access his funds and no cogent reason was given but he was told to write officially to the bank which he did but was still unable to access the money in his account. The Claimant also says that he eventually engaged a lawyer, E. H. Okagua Esq. to write to the bank in September, 2023 following which the restriction placed on his account was lifted. However, the Claimant has still not been granted access to the N500,000.00 left from the car sale transaction, hence the filing of this action.

At the close of the Claimant's examination-in-chief, the matter was adjourned to 18th January 2024 for cross examination of the CW1. On the said date, the Defendant was not represented in court and was foreclosed from cross examining the witness. The matter was slated for defence on 23rd January 2024. Again, the Defendant was absent from and was foreclosed from defending the action.

On 6th February 2024 when the case came up for adoption of final address, O. R. Idise Esq. appeared for the Defendant and stated that the Defendant had a Notice of Preliminary Objection before the court. This court directed the Defendant to file its response to the Claimant's final written address which had been served on the defendant and raise its objection therein as all interlocutory applications would be addressed in the judgment in line with the provisions of Article 13(2) of the Rivers State Small Claims (Practice Direction) 2023.

I shall therefore take the preliminary objection first. The Defendant is challenging the jurisdiction of this court to entertain this matter on the grounds that the Small Claims Court of Rivers State is for simple debt recovery

matters whereas this matter involves a bank-customer relationship which the Small Claims Court has no jurisdiction over. He relied on a plethora of cases as well as Section 251(1)(d) of the 1999 Constitution of the Federal Republic of Nigeria submitting that by virtue of the Constitution, concurrent jurisdiction is conferred on the Federal High Court and the State High Court to entertain matters involving banker-customer relationships and that there is no mention of Magistrate Court under section 251 of the 1999 Constitution of the Federal Republic of Nigeria. He urged the court to strike out the suit for want of jurisdiction.

In response to the Preliminary Objection, Counsel for the Claimant says that the proviso to Section 251(1)(d) CFRN has been misconstrued by the Defendant as the Constitution did not state anywhere that exclusive jurisdiction is conferred on the State High Court to entertain banker-customer issues to the exclusion of other courts. Further, that any court properly established by law can hear matters involving a bank and its customer and the Small Claims Court having been established by the Chief Judge of Rivers State pursuant to Section 274 CFRN is one of such courts so empowered. He also says that Article 2(1)(a)-(d) further confers jurisdiction on this court. He urged the court to dismiss the preliminary objection.

I have considered the arguments of Counsel and I find that the crux of the argument is whether this court has jurisdiction to entertain this suit. Section 251 of the Constitution provides a list of matters over which the Federal High Court has exclusive jurisdiction. However, under Section 251(d) which relates to banking matters, there is a proviso thereto which reads thus-

“Provided that this paragraph shall not apply to any dispute between an individual customer and his bank in respect of transactions between the individual customers and the bank;”.

The proviso does not state anywhere that the State High Court to the exclusion of all other courts has concurrent jurisdiction over banker-customer relationships with the Federal High Court. It only removes the toga of exclusivity from the Federal High Court in relation to such matters without more. The implication of this is that any court of law properly established can adjudicate over such matter. Again, this court also derives its jurisdiction from the Practice Direction of the Small Claims Court as the parties herein both carry on business or reside in Rivers State, the cause of action arose in Rivers State and the claim is for a sum certain.

I therefore hold that this court has jurisdiction to hear and determine this matter and the preliminary objection is dismissed.

Now back to the main claim.

The law is trite that where the evidence given by a Claimant is unchallenged and uncontroverted the court ought to accept and act on it as a true version of the case it seeks to support. See **CONSOLIDATED RESOURCES LTD V. ABOFOR VENT. (NIG) LTD (2007) 6 NWLR (PT. 1030) 221.**

It is also the law that where a party has been presented with the opportunity to defend himself and he fails to do so, the obvious conclusion would be that he has chickened out or he has no defence. See. **THE PRINCIPAL GOVERNMENT SECONDARY SCHOOL, IKACHI & ANOR V. DORCAS IGBUDU (2005) 12 NWLR (PT. 940) 543.**

In the instant case, the Defendant was served with the originating processes and they never came to court until the final address of the claimant was served on them. Even at this stage, the Defendant never put up any defence no matter how weak. They also did not present this court with any reason why the Claimant has been unable to access the sum of N500,000.00 in his account being balance of payment made to him for the sale of his Toyota Avalon vehicle.


The clear conclusion is that the Defendant has no defence and as such, this court is inclined to believing the account of the Claimant. I therefore hold that the Claimant has proved his entitlement to the sum of N500,000.00 in his Access Bank account which the Defendant has restricted him from accessing.

The Claimant has asked for the cost of litigation. The law is trite that cost of litigation is in the realm of special damages which must be specifically pleaded and proved. The Claimant has not put anything before this court in support of this head of claim and so it fails.

In the circumstances, I enter judgment for the Claimant and make the following orders:

1. The Defendant shall forthwith release the sum of N500,000.00 withheld by the Defendant to the Claimant and allow him access to the said sum.
2. N500,000.00 costs to the Claimant.




WOBIA CRISTABEL AKANI, ESQ.
Senior Magistrate Gd.1
20/02/2024