

**IN THE MAGISTRATE COURT OF RIVERS STATE OF NIGERIA
IN THE PORT HARCOURT MAGISTERIAL DIVISION
HOLDEN AT PORT HARCOURT
BEFORE HIS WORSHIP NNEKA E. EZE-OBUZOR
SITTING ON THE 29TH DAY OF MAY 2024
AT THE SMALL CLAIMS COURT 4 PORT HARCOURT**

SUIT NO: PMC/SCC/279/CS/2023

BETWEEN

MR JOEL OPUWARI ----- CLAIMANT

AND

MR IDONGESIT STEPHEN UKOENINI----- DEFENDANT

PARTIES: Defendant present. Claimant absent

APPEARANCES: C. Ohaekwe Esq. holding brief of O.V. Asiegbu Esq for claimant.
G.N. Okpah-Egumah Esq. for defendant.

JUDGEMENT

By a claim dated 22/12/2023, the claimant's claim against the defendant are as follows:

1. N200, 000.00 being balance of payment for car sold to the defendant
2. N500, 000.00 damages for breach of agreement
3. N300, 000.00 being cost of litigation

The defendant's counter claim against the claimant are as follows:

1. N900, 000.00 as special damages
2. N500, 000.00 as general damages

PLEA

By the affidavit of service availed this court, the defendant was served the originating process in this suit by delivering same personally to the defendant on the 15/1/2024 at 7:24am. On the 15/1/2024, by the application of defence counsel, a plea of not liable was entered for and on behalf of the absent defendant. Case was adjourned to the 22/1/2024 for hearing.

SUMMARY OF EVIDENCE

The claimant in proof of his case called a lone witness, the claimant himself and tendered five exhibits marked exhibit A, C, D, E and F.

The defendant for his defence called a lone witness, the defendant himself and tendered one exhibit marked Exhibit B.

The relevant facts from the case of the claimant as presented by the claimant himself is that sometime in February 2023, he wanted to sell his car and posted it on Facebook and a car agent told him he had a buyer and introduced the defendant to him. That the defendant called him on phone that he was given his number by the agent. That he asked the defendant to come and test run the car and the defendant did and after the test running, they agreed price of N1, 100, 000.00 but the defendant did not have the complete money. That the defendant pleaded with him that he will drop a part payment of six hundred and something thousand. That after the some days the defendant brought the balance to make the money N900, 000.00 and pleaded that he be given two months grace to pay the balance of N200, 000.00 and the car was released to him. That on the date agreed for the payment, the defendant called him to tell him the car is a stolen car and the next call he received was from Kala police station and when he got there he was detained that he sold a stolen car to the defendant. That he took the police men to where he bought the car and they arrested two persons there. That after the police found out the car was not stolen, they fixed a date for all parties to come and when the defendant refused to show up, the police released him.

CW1 informed the court that the agreement between parties was already before the court. Payment receipt for litigation was admitted as Exhibit A. Case was adjourned to the 30/1/2024 for cross examination of CW1.

During cross examination of CW1, the defendant through his counsel tendered the photocopy of vehicle particulars given to the defendant as Exhibit B. CW1 was recalled by his counsel and he tendered the original vehicle particular as Exhibit C and also tendered the vehicle particulars bearing the name of the defendant as Exhibit D. Case was adjourned for defence

It is the case of the defendant for defence as presented by the defendant himself that he knows the claimant. That in February 2023 he came in contact with the claimant who had a Toyota Camry to sell when he was looking for a car to buy. That the claimant invited him to his place and on getting there he saw two similar Toyota cars and a mechanic was working on one of them and one was just parked. That the claimant informed him he wanted to sell the parked one and asked him to check it. That he informed the claimant will be bring his mechanic to check it and told him his budget for the car was N900, 000.00. That while leaving the claimant asked his direction and offered to drop him on his way out with the mechanic. That he entered the parked her intended to buy with the claimant while the mechanic drove the car being worked on. That while driving on the way, the claimant got a call from the mechanic that the other car had stopped by Shell gate. That the claimant pleaded with him for them to go back and meet the mechanic with the other car. That on getting there the claimant pleaded with him that he had no money to fix the bad car and asked that the defendant help him with the sum of N625, 000.00 to fix the car. That he informed the claimant that they were yet to negotiate on the car he was willing to buy and the claimant pleaded that he should help him and he will sell the good car to him. That he went to the bank and made a transfer to the claimant and they went back to where the car was parked. That on getting there, they pleaded with him that they wanted to buy spare parts from Ikokwu and asked that he releases the good car to them to convey the mechanic to the place while he waits with the claimant in the bad car. That he agreed after much persuasion and waited with the claimant. That they waited for 2-3 hours and the mechanic did not show up with the car he paid for. That he raised alarm which attracted people and someone offered to help move the car and they agreed that the car be moved to his (defendant's

house). That the claimant dropped the document of the bad car and the documents bore two different names with none bearing the claimant's name. That the next day he didn't see the claimant so he informed him to refund him as he was not interested in buying the car again. That the claimant told him he was no longer going to sell the car for N900, 000.00 but N1, 100, 000.00 and to drop the car at the police station if he was not going to be patient as he had used the money earlier given to him and will retrieve the car from the station when he had the money to pay back. That he called the claimant that he was ready to pay the N1, 100, 000.00 for the good car and asked him to bring it and retrieve the bad one. That he informed the claimant he will pay a total payment of N900, 000.00 and asked for some time to complete the remaining N200, 000.00. That the claimant asked him to send the money and he sent the sum of N225, 000.00 to complete the money N900, 000.00. That the next day the claimant asked that he sends extra N30, 000.00 and he did as the claimant informed him the money was to prepare the car papers for him. That the claimant called him to come to Rumuola and take delivery of the car but when he got there the claimant presented him with a document to sign with the promise that he will bring the good car to him the next day. That the next morning he didn't see the claimant nor the car so he went to Kala Police and presented the paper and the police requested for the car which was towed to their station. That he was later advised to go to Elimgbu police station and he went to CP monitoring unit and the car was moved there. That upon his complain, the police invited the claimant who refused to honour the invitation. That after some months, the police at Kala called him that the claimant was there and he went there and he informed them the matter was now with CP monitoring and they told them to move there but the claimant refused to come. That after a while the claimant arrested him with police on the allegation that they had a business of N1.1 Billion. That he was locked up for two days and later released. DW1 urged the court to tell the claimant to either bring the car he paid for or refund his N930, 000.00 paid.

During cross examination of the defendant, the account statement of the claimant was tendered as Exhibit E and F respectively.

On the 6/5/2024, parties adopted their processes and case was adjourned for judgement now being read.

In the claimant's written address settled by his counsel Asiegbu Victor O. Esq. three issues were raised for determination to wit:

- 1. *Whether the claimant has proven his case as required by law and is entitled to the reliefs sought.***
- 2. *Whether or not the Defendant borrowed money to the claimant to fix the car he sold to him.***
- 3. *Whether or not the car is stolen vehicle or belongs to the claimant.***

On Issue one, counsel submitted that it is clear from the oral evidence on oath of both parties as well as their answer during cross examination that the defendant is indebted to the claimant as shown on the sales of Car agreement (Exhibit A) signed by both parties. That the defendant also admitted that the claimant agreed to sell the car for N1, 1000,000.00 and he drove the car to artillery. Counsel posited that facts admitted require no further proof by referring the court to the case of **PINA V MAI-ANGWA (2018) LPELR-44498 (SC) @ PAGE 144 PARAS C-D RATIO 2**. Counsel also submitted that apart from these admissions of the defendant, the claimant still led evidence to further establish those facts which were neither challenged nor controverted during cross examination. That Exhibits A1, E and E1 tendered through the defendant during cross examination further establishes that the claimant left the car in the Defendant's house on the 11th of February 2023 and he made further payments of the car to the claimant's bank account. Counsel in citing the case of **ASMAN MANUFACTURING AND MECHANICAL COMPANY LIMITED & ANOR V. SPRINGBANK PLC (2012) ALL FWLR (613)1864 @ 1914 PARA A-B** submitted that from the evidence of the claimant and the documentary evidence in support, it is not in doubt that the defendant is indebted in the sum of two hundred thousand naira to the claimant.

On Issue two, counsel submitted that the defendant admitted on oath during his oral testimony and under cross examination that he gave the claimant Six Hundred and twenty five thousand naira to fix the spoilt car of same make of the one he wanted to buy but said he has no evidence or agreement showing that he borrowed the said amount to the claimant. Counsel submitted that the defendant gave the claimant money to fix any spoilt car, neither was he shown any two cars of same make to buy. That the money he paid to the claimant was an advance for the car he bought.

On Issue three, counsel submitted that prior to this business transaction between the claimant and the Defendant, the claimant has always been the bonafide owner of the car with no adverse claim of ownership over the car. That when it became clear that the Defendant could not proof the allegation of the stolen car, he resorted to saying he was not given the car he paid for. That the claimant also tendered Exhibit D.

On the claim for cost of action, counsel submitted that the claimant has led oral evidence I proof of same and tendered Exhibit B in support. In conclusion, claimant's counsel submitted that the claimant has discharged the burden of proof which rests on him and thus entitled to his claims.

The defendant in his written address settled by his counsel G.N. Okpa-Egumah Esq four issues were raised for determination to wit:

1. Whether the claimant has discharged the burden placed on him on a balance of probability.
2. Whether the claimant can be allowed to benefit from his own wrong?
3. Whether the claimant has established by credible evidence that he is entitled to the reliefs as sought?
4. Whether the defendant has by way of counter claim is entitled to a refund of N900, 000.00 and N30, 000.00 the money had and received without more?

On issue one, counsel submitted that the claimant has not discharged the burden placed on him on a balance of probability as in law he who asserts must proof and the burden on the claimant remains until the claimant is able to establish by credible evidence that he is entitled to the claims before this court at the stage the burden place on him is discharge. That the claimant told the court that a car agent approached him that they have a buyer for his car who introduced me to Mr Stephen. That during cross examination the defendant was asked if he knew any Mrs Ada that linked him to the claimant was arrested at Kala Police station and the defendant said No. That the claimant did not produce evidence of his link to Mrs Ada and Mr Godwin either by whatsapp messages before the court because he knows if he produced evidence, such evidence will be against him because they both informed the Claimant to refund the defendant his money which he could not refund having use the money to fix the spoilt car hence this

amounts to withholding evidence with respect to Section 167 (D) 2011. Counsel also referred the court to the case of **AKINBODE V. STATE (2019) 18 WRN PAGE 41 AT PAGES 79-80, LINES 45-40 RATIO 11**. Counsel also stated that the defendant did not know of Exhibit C and D and only got to see it in court because the claimant held on to it in a bid to extort money from the defendant who he knew was a vulnerable man seeing he had little or no idea about a car and since the defendant has already deposited money with him showing the transaction was not done in good faith. Counsel submitted that the claimant has not discharged the burden placed on him as there is no evidence before the court neither did he call witnesses who linked him with the defendant to corroborate his oral testimony in favour of the claimant's case.

In arguing Issue two, counsel argued that there is no evidence from the claimant that he is honest to the trusted amount paid to him to deliver the car initially paid for by the defendant. That there is nothing to show that he remitted part of the money paid or the total but rather he's forcing the defendant to pay extra N200, 000.00 knowing the defendant cannot let go of the N900, 000.00 already paid. Counsel submitted that in law, a person who breaches an agreement is supposed to refund the money entrusted to him as the instant case. That the claimant cannot benefit from his own wrong. That the claimant agreed that he never gave the defendant Exhibits C and D to enable him use the spoilt car. That the agreement signed by the parties is inconclusive as the claimant did not deliver the car and the document to the defendant which amounts to breach of contract. Counsel referred the court to case of **TERIBA VS. ADEYEMO (2010) 47 WRN PG 155 AT 175 LINE 45, RATIO 4**. Counsel urged the court to resolve same in favour of the defendant.

In arguing Issue three, counsel adopted their submissions on issue one and two and further submitted that the claimant has not led credible evidence to proof he is entitled to his claims. Counsel also further opined that the defendant was not privy to the legal fee paid by the claimant to his counsel hence not enforceable. That a contract is only enforceable against a party that is privy to it. Counsel referred the court to the case of **GUINNESS NIG PLC V. NWOKE (2000) 15 NWLR (PT 689) 135 AT 150**.

In arguing the last issue counsel adopted their submissions in the other issues and submit that by way of counter claim, the defendant has made out his case and

was able to prove that he gave the claimant the sum of N900, 000.00 for car and N30, 000.00 for car paper which was admitted by the claimant. In conclusion counsel urged the court to dismiss the claimant's suit and grant the defendant's counter claim.

RESOLVE

In determination of this suit, I will raise two issues for determination to wit:

- 1. Whether the Claimant is entitled to his claims.**
- 2. Whether the Defendant is entitled to his counter-claim.**

On Issue one, it is trite law that the standard of proof in any civil suit is on the balance of probabilities. **SEE SECTION 134 OF THE EVIDENCE ACT 2011.** The proof on balance of probability implies that the case of both parties will be placed on an imaginary scale of justice and the side of the scale which is heavier and tilt down will be on top in the case. The balance of probability also implies the balance of truth. In the instant case it is the case of the claimant that the defendant bought a car from him for the sum of N1, 100, 000.00 and a part payment of N900, 000.00 apart from the N30, 000.00 given for car particulars and refused to pay the rest stating that the car was stolen. In proof of the above, the claimant referred the court to the agreement between parties, the transfer of ownership to the claimant as the new owner as Exhibit C, transfer of ownership and particulars to the defendant as Exhibit D, his account statement showing deposit from the defendant as Exhibit E and F. The law is simple that he who asserts must prove. When a person is bound to prove the existence of facts, it is said that the burden of proof lies on that person. **SEE SECTIONS 131 AND 132 OF THE EVIDENCE ACT 2011.** The claimant via his testimony and the exhibits tendered has been able to prove to the court that he is the owner of the said car, that the claimant and defendant had a sales agreement and that the defendant paid the claimant the sum of N30, 000.00 for change of ownership. The initial burden of proof in a civil claim lies on the Plaintiff or Claimant and after the initial burden, it shifts on the Defendant to present evidence to controvert same failing which what the plaintiff placed will hold sway, see **EZEMBA V. IBENEME & ANOR (2004) LPELR-1205(SC).**

In controverting the above testimony of the claimant, the defendant states that the claimant promised to sell him a particular car but fraudulently gave him another car which is faulty while at the same time collecting the sum of N900,000.00 in pretence of trying to collect money to fix his other bad car. The defendant only tendered one Exhibit which is the particulars of the car from the former owner as Exhibit B. It is his story that the said agreement between him and the claimant was signed in contemplation of the delivery of the original car he paid for. He also informed the court that he had to go to the police to make report as the claimant refused to deliver the particular car he paid for. The defendant did not present to this court why the claimant was not indicted in that case. He only said the claimant refused to show up. Nothing was presented to this court as regards that case. It is also the case of the defendant that the claimant had two cars and sold him the faulty one after they had agreed on the good car. What the court cannot seem to fathom is why the defendant did not state the registration number of the said car he paid for and the one that he was given being that he tendered Exhibit B which contains same registration number as all documents before this court. All documents tendered by the claimant has one registration number. The defendant did not object or raise any argument that the car he paid for had another registration number or that the registration number belongs to the car he was fraudulently given. During the testimony of the defendant he informed the court that he was given the particulars of the faulty car to hold. However, both the agreement he signed with the claimant contains same registration number. The question in the mind of the court arising from the defence of the defendant is 'can two cars have the same registration number'? If they had different registration numbers, why did the defendant not state it?

The defendant also informed this court that the claimant asked him to pay the sum of N30,000.00 to process the car documents for him and the next day, he called him to come to Rumuola for the car but when he got there, he gave him the agreement to sign under the pretence that he will bring the car to him after the signing. The defendant stated that he signed said agreement because that was all he had to proof he had made payment to the claimant. However, this court looking at the agreement, it was signed on the 20/02/2023 while the payment for the car particulars via Exhibit F (claimant's account statement) was made on the 23rd and 28th of February 2023 way after the agreement had been signed. This clearly disputes the testimony of the defendant. The agreement

between the defendant and the claimant also had witnesses. The defendant did not inform this court who signed as a witness for him or invite said person in his defence. Unfortunately, the defendant's story does not make sense to any common man and without any evidence to support his claim, the court has nothing to work with. Hence the defendant being unable to prove his claims, same fails.

I have looked and compared the exhibits tendered by both parties, I have placed this on a scale and it tilts towards the Claimant.

On the first claim of the claimant, by way of evidence, the claimant has tendered the agreement between parties. In **BABATUNDE & ANOR VS. BANK OF THE NORTH LTD & ORS (2011) LPELR-8249 (SC)** the Supreme Court per Adekeye, JSC stated this principle thus: "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. Flowing from the above, the first claim of the claimant succeeds.

On the second claim of N500, 000.00 damages for breach of agreement. The principles guiding the award of damages in tort are different from those guiding the award of damages in contract. The object of tort damages is to put the plaintiff in that position he would have been in if the tort has not been committed whereas, the object of contract damages is to put the plaintiff in the position he would have been in if the contract had been satisfactorily performed. See **AGBANELO V. UNION BANK OF NIGERIA LTD (2000) 4 SC (PT. 1) 233 AT 245**. From the first claim of the claimant already granted, the claimant has been put in the position he would have been in if the contract has been satisfactorily performed hence this relief fails.

On the third claim of N300, 000.00 being cost of litigation. The essence of costs is to compensate the successful party for part of the loss incurred in the litigation. Costs cannot cure all the financial loss sustained in the litigation. It is also not meant to be a bonus to the successful party, and not to be awarded on sentiments. Per the evidence before the court, cost is granted as prayed. See **OYEDEJI V. AKINYELE (2001) FWLR (PT 77) 970 at 1001**

In conclusion, judgement is entered for the claimant as follows:

1. The defendant is ordered to pay the claimant the sum of N200, 000.00 being balance of payment for car sold to the defendant
2. The defendant is ordered to pay the claimant the sum N300, 000.00 as cost of litigation