

**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 14, ON THE 14<sup>th</sup> OF**  
**AUGUST 2023**

**SUIT NO. PMC /SCC/93/2023**

MRS MODUPE ADENIRAN

} CLAIMANT

AND

MRS PEACE ENWUME AJOKU

} DEFENDANT

**JUDGMENT**

This is the final judgment in this suit wherein the claim before the court, dated and filed on the 7<sup>th</sup> of July 2023 is for:

An order of this Court compelling the defendant to pay the Claimant, the sum of N324,224 as money for refund on clothes that were bought by the Claimant from the defendant but were returned because they were outside size specifications.

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

On the 24<sup>th</sup> day of July, 2023, an application to enter plea of not liable for the Claimant was granted and the matter was set down for hearing.

On the 2nd of August, 2023, the Claimant was absent but represented by her attorney and the defendant was also absent. On this date, the CW1, one Peace Akpan stated that the Claimant is her family friend and that he has a Power of Attorney to represent her, the said Power of Attorney filed on the 19<sup>th</sup> of July, 2023 is admitted in evidence as Exhibit A.

Testifying further, the CW1 stated that the defendant sold clothes to the Claimant on two occasions. That on the 1<sup>st</sup> occasion, the defendant sent oversized clothes when the Claimant clearly told her size. On receiving the clothes, they were too big , so she complained to the defendant that the clothes were oversized

That the defendant asked the Claimant to help sell the clothes since she could not wear it and the Claimant sold the clothes and kept the money.

That the 2<sup>nd</sup> time, the defendant ordered for another set of clothes and she made the same mistake of sending oversized clothes and the Claimant became angry and returned the



clothes to the defendant and she acknowledged that she has received the clothes and the Claimant asked for her money and she said she will return it. But that this year, the defendant changed her mind and said she is no longer refunding the money that the Claimant should come and pick smaller set of clothes. That while the Claimant was sending the clothes, the defendant agreed that she will foot the transportation bills.

Testifying further, the CW1 stated that the conversation between the parties took place on WhatsApp. The CW1 identifies the certificate of compliance for the electronically generated whatsapp messages and also identifies the WhatsApp messages and they are admitted in evidence as **Exhibit B,C1-C17 respectively**.

The CW1 stated that the claimant is claiming N324,000 as refund for the clothes.

At the end of the evidence of CW1, the defendant is foreclosed from cross examining the CW1 and from defence and the matter was adjourned for judgment

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 have also taken cognizance of the evidence before the court. 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.

Suffice is to say that before the court adjourned the matter for hearing and heard the matter, the court always satisfied itself that:

1. The processes have been duly served on the defendant
2. That the time before the date of service and the date of hearing was sufficient for the defendant to have appeared had he intended to do so.

It is also important to note at this point that none of the facts stated by the Claimant's witness above was controverted in evidence or denied by the defendant and so will be deemed by this court as admitted. The law is that facts admitted need not be proved by evidence. Please refer to the case of Ayoke V. Bello (1992)10 NWLR (Pt 218) pg 380 Ratio 2; O.A.A Cooperative Society Vs. NACP Ltd (1999) 2NWLR (Pt 590) Pg 234, Ratio 4 to the effect that what is not denied is deemed admitted and what is admitted need not be proved.

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 his claim before the Court.

**IT IS THUS ADGUDGED** that the Defendant to pay the defendant the sum of N324,000 (Three Hundred And Twenty Four Thousand Naira) as refund on the clothes purchased from the defendant by the Claimant which was returned afterwards for being out of the size specifications.

**AND IT IS ORDERED** that the defendant to pay the Claimant, the aforesaid of N324,000 (Three Hundred And Twenty Four Thousand Naira) **with immediate effect**

**AND IT IS FURTHER ORDERED** that the defendant do pay to the Registrar of this court the total sum of N324,000 (Three Hundred And Twenty Four Thousand Naira) as refund for the returned clothes

**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.

**G. CHINYERE AMADI, ESQ.**  
**CHIEF MAGISTRATE**  
**GD II**

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