

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 28TH
DAY OF AUGUST, 2024.

SUIT NO. :PMC/SCC/184/2024

BETWEEN:

BISHOP AMBROSE BRIGHT

CLAIMANT

AND

ANAYO NWAENWE

DEFENDANT

Case called.

Defendant present, Claimant absent.

JUDGMENT

The Claimant commenced this suit against the Defendant on the 9th day of July, 2024 and claims as per the complaint form and claim attached to the ordinary summons as follows -

Debt/Amount Claimed - ₦5,000,000.00

TOTAL = ₦5,000,000.00

After the claim was filed by the Claimant, an ordinary summons was issued for service on the Defendant personally. The Defendant entered appearance and filed Form RSSC 5 which is the form for admission/defence on the 13th day of August, 2024. The Defendant admitted the sum of ₦410,000.00 only and denied the Claimant's remaining claim. The Defendant insisted that he agreed with the Claimant for a refund of ₦3,000,000.00 only if the Claimant failed to purchase the property; and that the ₦3,000,000.00 had been refunded.

Plea of not liable was entered for the Defendant and the case was adjourned for amicable settlement or trial. However, the settlement failed and the case proceeded to trial with the Claimant testifying for himself as CW1 and the sole witness. The Claimant tendered two (2) Access Bank transfer receipts Nos. 015079137 and S038220957 as Exhibits A and A1, an Access Bank Statement of Account from 08/10/2022 to 12/10/2022 as Exhibit B and a Demand Notice dated 14th November, 2023 as Exhibit C

¹ LL B, LL M, BL, A. IDRI, Chief Magistrate Grade 1, and the Presiding Magistrate, Small Claims Court 1, Port Harcourt sitting at Chief Magistrate Court 7, Port Harcourt, Rivers State.

respectively. The CWI was personally cross examined by the Defendant and the case adjourned for defence. The Defendant testified in his defence as DW1 and the sole witness. The DW1 also tendered a temporary land agreement dated 02/05/2022 and signed by himself and the Claimant as Exhibit D. The DW1 was fully cross examined by the learned Claimant counsel C. C. Okafor, Esq. and the case was adjourned for judgment.

I have carefully perused the claim of the Claimant, the oral evidence and documents tendered on one hand, and the defence of the Defendant, his oral testimony and document tendered on the other hand. Therefore the sole issue for the determination of this case is thus:

Whether the Claimant has proved his case to be entitled to the reliefs sought?

The law is that he who asserts must prove the existence of the facts to be entitled to the judgment of Court. See section 131 (1) of the Evidence Act, 2011. See the case of *Sharing Cross Edu Services Ltd v Umaru Adamu Enterprises Ltd & Ors. [2020] LPELR-49567 (SC)*. The burden of first proving the existence or non-existence of the facts lies on the party against whom the judgment of the Court would be given if no evidence were produced on either side, regard being had to any presumption that may arise on the pleadings. See section 133 (1) of the Evidence Act, 2011. The onus of proof therefore first lies on the Claimant who has alleged that the Defendant is indebted to him as claimed. The testimony of the Claimant Ambrose Bright a clergyman as CW1 is that their church had an accommodation need for which his lawyer Barr. Okafor took him to the Defendant to purchase land at Eliji. The CW1 testified that they agreed for ₦25million and he paid ₦7million via transfer to the Defendant's account and another ₦1million through Barr. Okafor making up a total of ₦8 million. The CW1 told the Court that he demanded for the refund of the money but the Defendant refunded only ₦3million. He testified that further demands for the balance failed before the case was filed in Court. Under cross examination by the Defendant on the 14th August, 2024, the CW1 maintained that ₦7million was paid directly to the Defendant and ₦1million through his lawyer. The CW1 admitted that he was taken to the Defendant by an agent one Mr. Romanus and that he agreed on the price for the land

with the Defendant. The CW1 admitted that installmental payment was agreed for the land purchase and that the duration was stated in the agreement. The CW1 denied summoning the Defendant at Amadioha ozuzu Etche juju shrine and DSS before bringing the case to Court. On his part, the Defendant Anayochi Nwaenwe as DW1 maintained that the Claimant came to him on the 1st May, 2022 through an agent one Mr. Romanus to purchase land. The DW1 testified that they agreed for ₦25 million which was to be paid in two installments, and he was asked by the Claimant to keep the land for them. The DW1 testified that the Claimant paid ₦7 million and agreed to pay the balance on or before 31st March, 2023, with a further agreement that the Claimant would be refunded only ₦4 million as damages if he fails to meet up with the deadline as agreed. The DW1 told the Court that the agreement was written and signed by both of them but the Claimant defaulted and returned after 31st March, 2023 to declare that he was unable to pay the balance. The additional money the DW1 received after the initial ₦7 million was ₦410,000.00 paid by the Claimant lawyer around that same 2022. The DW1 maintained that he had refunded the ₦3 million to the Claimant as agreed, but the Claimant later called him to say that he no longer agrees to their earlier agreed terms of forfeiting ₦4 million upon default. The DW1 stated that the only money he is liable to refund the Claimant is the ₦410,000.00 received through the Claimant's lawyer not too long after the initial ₦7million was paid in October, 2022. The DW1 insisted under cross examination that he is only liable to refund ₦410,000.00 to the Claimant as he had refunded him ₦3million in 2023 after he declared his inability to complete the payment for the land as agreed.

There is evidence before the Court as shown in Exhibit D which was executed on the 2nd May, 2022 that the parties expressly agreed that the Claimant would forfeit the sum of ₦4 million out of the ₦7million paid as deposit for the land in October, 2022 in the event that the Claimant failed to pay the balance of ₦18million on or before 31st March, 2023. The Claimant admitted under cross examination on the 14th August, 2024 that everything concerning the transaction was stated in the agreement but laboured in vein to deny the existence of the agreement which was tendered by the Defendant as Exhibit D. The law is settled that parties to a contract are strictly bound by the terms

of their agreement and a Court cannot read into the agreement the terms on which the parties have not agreed. See the case of *Best (Nig.) Ltd. v Blackwood Hodge (Nig.) Ltd. & Ors.* [2011] All FWLR (Pt. 573) 1955 at 1959 ratio 7. The law is also trite, that where parties have entered into agreement voluntarily and there is nothing to show that such agreement was obtained by fraud, mistake, deception or misrepresentation, they are bound by the terms of the agreement. See cases of *BFI Group Corporation v B.P.E* [2012] LPELR-9339 (SC) (PP. 23-24 Para. C) and *Skye Bank Plc v Adegun* [2024] LPELR-62219 (SC). The parties in this case mutually and voluntarily agreed on the terms of the land purchase agreement which the Claimant had breached. I agree as canvassed by the Defendant that it was a violation of the agreement for the Claimant to have declared his inability to proceed with the land purchase after the 31st March, 2023. It would have been unreasonable for the Defendant to agree to keep his property that was up for sale for a period of nearly one (1) year from 2nd May, 2022 to 31st March, 2023 without consideration as alleged by the Claimant. I hold that the Claimant has failed to prove his claim. The only amount the Defendant is liable to pay or refund the Claimant is the sum of ₦410,000.00 admitted to have been received from the Claimant's counsel shortly after the ₦7million was paid in October, 2022. The sole issue is largely resolved against the Claimant and in favour of the Defendant.

Judgment is hereby entered as follows:

1. The Claimant's claim for ₦5,000,000.00 lacks merit and is hereby dismissed
2. The Defendant shall pay to the Claimant the sum of ₦410,000.00 (Four Hundred and Ten Thousand Naira) only received from the Claimant's counsel.
3. IT IS ORDERED that the Defendant do pay the sum of ₦410,000.00 (Four Hundred and Ten Thousand Naira) only to the Claimant forthwith.


C. G. Ali, Esq.
(Chief Magistrate)
28/08/2024

LEGAL REPRESENTATION:

1. C. C. Okafor, Esq. for the Claimant.
2. T. Nwikinaka, Esq. for Defendant.

