

**IN THE CHIEF MAGISTRATE COURT OF RIVERS STATE OF NIGERIA
IN THE RUMUODOMAYA MAGISTERIAL DISTRICT
HOLDEN AT RUMUODOMAYA**

**BEFORE HIS WORSHIP B.H. ABE (MRS) ESQ., SITTING AT THE CHIEF
MAGISTRATE COURT 2 RUMUODOMAYA ON WEDNESDAY THE 8TH DAY OF
NOVEMBER, 2023**

RMC/SCC/20/CS/2023

BETWEEN

ADEGLORY FOOD EMPIRE - CLAIMANT

VS.

ALAGBA MARY JANE - DEFENDANT

Matter for Judgment

Parties;

JUDGMENT

The Claimant claims as follows:

The sum of N166,000.00 (One Hundred and Sixty-Six Thousand Naira) only, from the defendant, being for food ordered from Port Harcourt and sent to the defendant in Owerri. She has been sending false alerts to the claimant.

Facts

The claimant via a complaint form dated 5th October, 2023 (Form RSSC 2) together with Form RSSC3; the summons, served the defendant via an order for substituted service dated 5th October, 2023, dated 16th October, 2023, in commencement of his case against the defendant.

Form RSSC 6 is before the Court, being the affidavit of service deposed to by the Court bailiff dated 18th October, 2023.

The claimant's counsel entered a plea of not liable for the absent defendant on the 20th October, 2023, the defendant was not represented, C. O. Ojiverwe appeared for the claimant.

Cw1 was called to give evidence, he gave his evidence thus;

My name is Godspower Obed, living at No. 1 School Road, Okuama, Port Harcourt, an entrepreneur at Adeglory Food Empire, the defendant is my customer, I know her.

On the 7th July, 2023, the defendant ordered food worth N25,000.00, on the 13th July, 2023, N15,000.00, 17th July, 2023, N8,500.00, N2,000.00 transferred to their account for food delivery to Owerri, account name: Mary Alagba Jane, account number: 9161413715, Opay Digital Services as a pledge to pay all together.

On the 20th July, 2023 she ordered N31,000.00 for food.

On the 25th July, 2023, she ordered N53,000.00, on the 4th August, 2023, she ordered seafood rice, N8,500.00, Okro soup, N17,000.00, Juice, 2,000.00, delivery fee was N3,500.00 to Owerri on Rivers Joy Mass transit, totaling N30,500.00, discount of N500.00 was given to her.

From 7th July, 2023 to 4th August, 2023 she incurred a total debt of N166,000.00.

The correspondence between the defendant and the claimant via WhatsApp chat is Exhibit A and A1; the certificate of compliance in accordance with section 84 of the Evidence Act, 2011.

The demand notice written to the defendant by the claimant's lawyer is before the Court.

He prayed the Court to grant his claims in conclusion, the defendant was foreclosed from cross-examination afterwards due to her absence in line with the rules of Court 2007.

A hearing notice was ordered to be served on the defendant. Claimant closed his case, the Court adjourned for defence.

On the 25th October, 2023, the defence was foreclosed from defending this suit, the defendant was absent and the defence counsel also.

On the 31st October, 2023, the claimant's counsel, C. O. Ojirevwe Esq, adopted her final written address dated 27th October, 2023.

The defendant was absent on the said date and not represented.

Issue for determination

Whether the claimant is entitled to his claim?

COURT

The claimant in proof of his claims tendered Exhibits A and A1, Exhibit A, being the correspondence between the parties with regards to the food that was supplied by the claimant to the defendant in Owerri.

The parties entered into a contract, which the defendant has breached, I just do not understand why the claimant kept on supplying food to the defendant even after several failed payments.

A hearing notice was served on the defendant but she failed and refused to appear before this Court to defend this suit against her.

1. In the cases of Adekoya Vs. Attah (2022) LPELR 57223 CA.
2. Banigo Vs. Governor of Adamawa State (2012) All FWLR (pt. 633) 1908,

The Courts emphasized the importance of a hearing notice.

The defendant was also served with a demand notice dated 8th September, 2023, notifying her of the claimant's recourse to legal means to recover his debts inclusive of legal fees and damages.

The defendant sent fake alerts to the claimant, I agree with the claimant's counsel that this amounts to obtaining through fraud, a criminal offence, which should be prosecuted by the police, not in this civil suit.

A separate criminal charge should be filed against the defendant for such criminal/fraudulent acts.

Exhibit A clearly shows the correspondence with regards to the various food supplies given to the defendant who refused to pay for same.

The defendant was never in Court to defend this suit against her, she was also not represented. She was served with the hearing notice, the Court's summons and the demand notice by the claimant's lawyer, but still failed to pay her debt to the claimant or enter her defence to this claim

In a civil case the onus of proof is discharged on minimal proof where evidence is neither challenged nor contradicted.

The Court is authorized to come to the determination of a suit on the part of the claimant where there exists no justifiable reason for the absence of the defendant.

See O15 rules 1 and 3, rules of Court, 2007.

It is trite law that where a party to a suit does not challenge, controvert or rebut the evidence of the opposing party, the Court ought in the circumstances, to decide the case on the part of the party present in Court. See UBN Plc Vs. Chima Eze (2014) All FWLR (pt. 734) 56-57; Kosile Vs. Folarin (1999) 3 NWLR (Pt. 107).

The Court is allowed by law to determine a case on the preponderance of evidence produced by a party to a proceeding, no matter how minimal, the said evidence is. He who asserts must prove; see sections 133 and 134 of the Evidence Act, 2011 and also see the case of Christopher .I. Monkomb and two others Vs. Augustine Odili (2010) All

FWLR (Pt. 336) 542, wherein the Court of Appeal held, “where only one party calls evidence, minimum proof is required of him in order for his claim to succeed”.

The Court does not owe a defaulting party, the duty to beg for evidence or search for evidence to support or rebut his/her case.

Cw1’s credibility is impeachable and is competent enough for the Court to rely on his evidence.

In *Nwokocha Vs. AG. Imo State* (2016) 17 WRN page 61 at 80 line 49, on the rule pertaining to fair hearing, per Ogunbiyi JSC as he then was stated thus:

“The rule pertaining to fair hearing simply means that parties must be given the opportunity to present their cases. Where a party delays deliberately the hearing of his case, he will not be classified as coming within the rule”.

In *Ratio 5* page 81 lines 10-25 on whether a party who has been afforded the opportunity of being heard and refused to do same can be heard complaining of a breach of fair hearing:

“Judicial authorities are well pronounced that where a party to a suit has been accorded every opportunity of being heard evidently, and for no just cause whatsoever refuses to enter his defence or neglects to attend the sittings of the Court, he is deemed to have voluntarily abandoned his case or defence and cannot be heard to complain of any breach or denial of fair hearing”.

In *UBN Plc. Vs. Chima Eze* (2014) All FWLR (Pt. 734) 56-57, the Court held that “where the plaintiff pleads special damages and gives the necessary particulars and adduce evidence of it without the defendant challenging or contracting the evidence adduced, he has discharged the onus of proof placed on him and unless the evidence is such that no reasonable Court can accept it, it ought to be accepted.

I must reiterate emphatically, that in a civil case the onus of proof is discharged on minimal proof where evidence is neither challenged nor contradicted.

Unchallenged evidence must be both credible and reliable to be accepted and relied upon by the Court. It must also support and prove the fact in issue. See *Ibrahim Vs. Garki* (2017) 9 NWLR (prt 1571) 382.

Parties to a contract are bound by the terms and conditions of the agreement entered into between them and it is not permissible for either party to unilaterally vary the terms of the contract. See *Henkel Chem Vs. A. G. Ferrero & Co.* (2003) 4 NWLR (pt. 810) 306.

I expected the defendant to be more diligent in defending this case, but hitherto this was not the case. The defendant does not expect this Court to descend into the arena of conflict and put up a defence for her.

The above notwithstanding, it is not the duty of the Court to supply evidence or fill in the gap in the evidence of a party in a case where he/she has failed to do that. The Court cannot even substitute its own view for matters on which there should be and there was no evidence.

A trial is not an investigation and investigation is not the function of the Court. A trial is the public demonstration and testing before a Court of the cases of the contending parties.

The demonstration is by assertion and evidence and the testing is by cross examination and argument.

The function of the Court is to decide between the parties on the basis of what has been so demonstrated and tested. What was demonstrated in this Court by the claimant support the claimant's case. See *Bornu Holding Co. Ltd. Vs. Bogoco* (1971) 7 NSCC 321 *Muhammadu Duriminiya Vs. C.O.P.* (1961) NRNLR 70.

Furthermore, there is no doubt that Court exists to do justice, but then, not an abstract justice, but justice according to law and rules of procedure. It is also justice when the party has proved his case.

There is also no duty on any Court to do justice when a party has failed woefully to prove his/her case. It is true that justice can be done by examining the substance of the matter and by paying but scant reliance on technicalities, but then, that policy presupposes that the party before the Court has proved his case according to the standard provided by the law. See *Ezenwosu Vs. Ngonadi* (1988) 3 NWLR (pt. 81) 163.

In the instant case, no defence was entered for the defendant, the evidence of cw1 remains unchallenged and uncontroverted.

The defendant failed to rebut, challenge, or controvert the case of the claimant. It is worthy of mention that the defendant fully admitted these facts as the defendant did not put up any defence in this suit. The defendant rather elected not to call evidence in rebuttal of the claimant's claim.

The Court of Appeal in *Bill and Brothers Ltd. and Ors. Vs. Dantata & Sawoe Construction Co. Nig. Ltd. & Ors.* (2021) 12 NWLR (Pt. 1789) 50 @ 63 ratio 21 held that where a defendant elects not to call evidence, he must be taken as admitting the facts of the case as stated by the plaintiff.

No evidence was given, be it oral or documentary, for he who asserts must proof, see sections 131 to 134 of the Evidence Act, 2011.

It is trite law that equity aids the vigilant and not the indolent.

Same also applies in the claim for professional fee.

The claimant's counsel is seeking for the cost of N100,000.00 (One Hundred Thousand Naira) to be awarded against the defendant.

Generally, the basis of award of interest is that a party has been kept out of his money for certain period by the other party who had the use of it and has to pay compensation see also. The Supreme Court case of U.B.N. Plc. Vs. Awmar Properties Ltd. (2019) All AFWLR (pt. 987) pg. 903 at 928; paras C-E where it was held as follows:

“The basis of an award of interest is that the defendant has kept the plaintiff out of his money and the defendant has had the use of it to himself. So he ought to compensate the plaintiff accordingly. If the case is of a commercial nature and money should have been paid some time ago, but was not paid, it ought to carry interest. A person deprived of his money must be compensated. Where the respondent proved that the appellant was in possession of its money for a considerable period of time, the Court of Appeal rightly affirmed the award of interest made thereon by the trial Court”.

The Court cannot go into a fact finding mission on its own. It is the duty of the party who asserts to proof by evidence. The Court is not allowed to descend into the arena of conflict.

Consequently, the Court enters judgment in favour of the claimant and hereby orders as follows;

1. That the defendant pays to the claimant, the sum of N166,000.00 (One Hundred and Sixty- Six Thousand Naira) only, for the supply of food ordered by the defendant, from Port Harcourt to Owerri, between the period of 7th July, 2023 and 25th July, 2023, which the defendant failed to pay.
2. That it is also ordered, the defendant pays the claimant, the sum of N200,000.00 (Two Hundred Thousand Naira) only, for damages suffered by the claimant, having being deprived of his business money; inclusive of his capital and profit, by the defendant, affecting the productivity and success of the claimant’s business.
3. That it is finally ordered, that N100,000.00 (One Hundred Thousand Naira) only, be paid by the defendant to the claimant for legal fees in instituting this unavoidable case.

This is the judgment of the Court.

MRS BARIYAAH .H. ABE
Chief Magistrate
8th November, 2023.

