

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 5th OF
NOVEMBER 2023

SUIT NO. PMC /SCC/145/2023

MR. OSISIOGU NDUBUISI AUSTIN

} CLAIMANT

AND

MR. OCHUBA EBUBE
GOLDBAY GLOBAL LTD.

} DEFENDANTS

JUDGMENT

This is the final judgment in this suit wherein the small claim before the court, dated and filed on the 4th of September, 2023 is for:

1. An order of this Court compelling the defendants to pay the Claimant, the sum of N800,000 representing monies paid to the defendant for the installation of toughened glass railings and toughened glass for bathroom cubicles
2. An order of this Court compelling the defendant to pay the Claimant, the sum of N450,000 for cost of litigation.
3. The sum of 1,000,000 as general damages

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

On the 12th, October, 2023, an application to enter plea of not liable for the Claimant was granted and the matter was set down for hearing.

On the 19th October, 2023, the Claimant testified as CW1 and stated that his registered business name is NdeeSystems Teebox Nigeria Limited based in Port Harcourt.

That in October, 2021 when they were finishing up on their family home, they needed the services of a glass man that will fabricate staircase glass rails and shower cubicles for 3 bathrooms. That they saw this website that had the needed wares, so they contacted the 2nd defendant who showed them fantastic designs and they hired them to construct the rails for them. That the total agreed amount was N1,890,000, That on the 23rd October, 2023, Part Payment of N800,000 was made to the account of the 2nd defendant from his personal account and the receipt of funds was confirmed same day by the 1st defendant and sent a receipt via whatsapp and promised to deliver on the job within 3 weeks but they never

delivered till date, That it has been one story or another. The CW1 identifies the receipts and receipt from the 2nd defendant dated 23rd October, 2021, GTBank Transaction receipt , whatsapp chat for 29th November 2021 and 2nd December, 2021 and 10th December, 2021, and 11th December, 2021, certificate of Compliance dated 28th August, 2023, Demand letter dated 2nd August , 2022, another whatsapp message dated 29th August 2022 and 20th August 2022 and receipt dated 25th August 2023 are all admitted as Exhibits **A'B'C'D'E'F'G'& H'** respectively.

In conclusion, the CW1 stated that he wants the Court to grant their claim as on the face of the claim before the Court.

At the end of the evidence of CW1, in the light of the filed hearing notice and affidavit of service before the Court, the defendant was 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 claim for Cost of litigation, the receipt as in Exhibit H is a satisfactory proof of the claim , which is in class of special damages.

On the claim for general damages, it is obvious that the Claimant whose money was tied down since October, 2021, have suffered financial and emotional hardship for the endless wait for the refund of his money and non-performance of the agreement terms.

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.

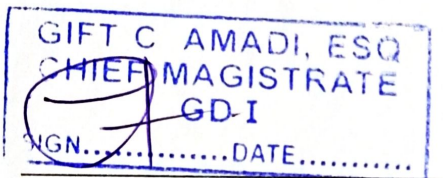
IT IS THUS ADGUDGED that the Defendant to pay the sum of N800,000 representing monies paid to the defendant for the installation of toughened glass railings and toughened glass for bathroom cubicles.

IT IS ALSO ADGUDGED that the Defendant to pay the sum of N450,000 (Four Hundred And Fifty Thousand Naira) for cost of litigation

IT IS FURTHER ADGUDGED that the Defendant to pay the sum of N300,000(Three Hundred Thousand) as general damages

AND IT IS ORDERED that the defendant to pay the Claimant, the aforesaid sum of **N1,550,000,00(One Million, Five Hundred And Fifty Thousand Naira)** representing refund money, cost of litigation and general damages on or before the 14th November, 2023.

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 G.D.I**