

IN THE MAGISTRATE COURT OF RIVER STATE OF NIGERIA
IN THE PORT HARCOURT MAGISTERIAL DISTRICT
HOLDEN AT PORT HARCOURT
BEFORE HIS WORSHIP S. S. IBANICHUKA, ESQ
SITTING AT SENIOR MAGISTRATE COURT 6 PORT HARCOURT

SUIT NO: PMC/SCC/270/2023

BETWEEN

- 1. MR. OSAMIDIAMEN SIMON**
- 2. WIZCOAST OIL EXPLORATION CO. LTD**

AND

MR SOLOMON IKPESA

JUDGMENT

This suit was instituted via forms RSSC 2 and 3 of this court on 13-12-23, wherein the Claimant's claims against the defendant is for:

- I. the sum of ₦3,366,000.00 (Three Million, Three Hundred and Sixty Six Thousand Naira) only being and representing debt due to the claimant from A.G.O. Supply business transaction between the parties in 2020.
- II. And for the sum of ₦5000.00 (Five Hundred Thousand Naira) only representing cost of this litigation.

The defendant in reaction via form RSSC 5 of this court filed a Defence and a Counter Claim against the claimant on 20-12-23 disputing the claimant's claim in its entirety and also counter claiming for the sum of ₦2,000,000.00 (Two Million Naira) only being and representing all the inconveniences and the cost of engaging a lawyer in defence of this suit. The Claimant also filed a Defence to the Defendants counter claim on the 8-01-24. In prove of their case the claimants called two witnesses, while in Defence and in prove of his counter claim, the Defendant/Counter Claimant called a sole witness DW1, the Defendant himself. In the cause of this case and in proof of their cases an array of documents were tendered, namely exhibits A-L, the two claimants/witnesses and the sole defendant/counter claimants witness was extensively cross examined after their respective examinations-in-chief. On 12-2-2009 the parties adopted their respective final addresses. The Defendant/Counter Claimant in arguing his final written address dated and filed the 5/2/2024 commenced by seeking leave of this court to correct or amend , the word claimant in the title of his written address to read Defendant. There being no objection, the said application was accordingly granted. The Defendant/Counter claimants' counsel went on to argue his final written address, wherein he raised a sole issue for determination, he argued that the claimant did not at anytime during the cause of the proceeding amend his claims before the court, and that any other evidence led by the claimant witness goes to no issue, that assuming without conceding that the court is to rely on the evidence led by the claimants instead, that the 1st claimant specifically stated that he is claiming ₦666,500.00 (Six Hundred and Sixty-Six Thousand, Five Hundred Naira) only with an additional ₦500,000.00 (Five Hundred Thousand Naira), he concluded that the claimants are supposed to prove their case on the strength of their

case and not on the weakness of the Defendants cases. On his counter claim the Defendant's counsel submitted that once a party proves damages to any other he is entitled to be awarded same, he relied on the case of *NPA V. ACHMED* (2017) 12 NWLR PT 1578, 72 at 92, paragraphs F-G. The Claimant in adopting his final written address dated and filed the 8-2-2024, wherein he raised a sole issue for determination drew the courts attention to the Defendants counsels final written address which exceeds the prescribed number of pages according to the rules, he submitted that their should be consequences. He concluded by submitting that the evidence led before this court has cleared any controversies when it comes to how much the Defendant is owing the claimants. The summery of the facts of this case from the claimants perspective is that sometime in the year 2020 the Defendant ran into the claimant and informed him that he is into AGO business but did not have funds, that the 1st Claimant volunteered the sum of ₦2,000,000.00 (Two Million Naira) for the business and also introduced the 2nd Claimant to the Defendant , that with the funds of the 1st Claimant the 2nd Claimant was able to lift and deliver the product (AGO) of the Defendant to its destination. That since then the Defendant has paid the 1st Claimant the sum of ₦2,100,000.00 (Two Million, One Hundred thousand Naira) only and has paid the 2nd Claimant the sum of ₦400,000.00 (Four Hundred Thousand Naira) only. The summary of the facts of the Defendants case in defence of the claimants claim is that for the 1st Claimant the Defendant is not owing him any money as his claims before this court are not consistent and for the 2nd Claimant the Defendant states that he does not owe him any money as the defendant has over paid the 2nd claimant. The claimant relied on signed agreements between the parties but the Defendant in his defence argued that he was intimidated and forced to sign the documents and the post dated cheque he issued to the claimants. The lone issue raised by counsel for both parties in their final written addresses shall be adopted by this court to wit: ***“Whether the claimant’s on a preponderance of evidence has discharged the onus of proof to be entitled to judgment as per their reliefs before this Court?”***

In civil cases the standard of proof required of the claimant is a proof on preponderance of evidence, see: **Section 134 of the Evidence (Amendment) Act, 2023**. As simple and straight forward as this case seems there are still some arrears that need to be addressed in this judgment as counsel's in their final written addresses have attempted to give evidence. In arriving at a just determination of this case I shall be considering all the documents tendered before this court in cause of the proceeding and the evidence led by all the witnesses which forms the courts record, it is trite to do so because address of counsel no matter how succinctly and brilliantly coached cannot take the place of evidence needed to prove a case. See **ALIKHA & ANOR V. ELECHI & ORS (2017) LPELR-7823 (SC)** and **ACCESS BANK PLC V. K. C. INTERNATIONAL LTD (2018) LPELR – 43668 (AC)** and parties are bound by the terms of their agreements, See **A. G. RIVERS STATE V. AG ALWA IBOM STATE (2011) NWLR (PT. 1248) 31 AT 81**. This court is also bound by its records of proceedings on any matter and takes notice of their contents in arriving at a just decision. See: **AGBAREH V. MIMRA (2008) 2 NWLR (PT. 1071, 378) (SC)**. This is a case of contract where the claimants claim that what bounds them and the Defendant in this case is **“Exhibit A”** the MOU, a look at **“Exhibit A”** shows that the claimants

and the Defendant signed the document and their witnesses also signed. However, the Defendant alleged while being led in Evidence in chief that he was forced to sign “Exhibit A” while under cross examination on 31-01-24 the Defendant as DW1 testified that he took “Exhibit A” from the meeting where all parties have signed to his house for his witness to sign, he also testified that despite being forced or threatened to sign “Exhibit A” he has not approached the police or any court to state his claim. DW1 explained that the reason he has not approached the court or the police after being threatened by the claimants to sign Exhibit A is because he wants peace. The law is that he who alleges the existence of any fact must prove same. see **AMADI V. AMADI (2017) 7 NWLR (PART 1563) S.C.**. The case of **B. O. N. LTD V. AKINYOYE (1991) 12 NWLR (PART 631) 392 at 404** is instructive to the effect that where an issue of fraud, intimidation, illegality, want of due execution or misrepresentation has not been proved the court will not accept oral evidence to contradict a written document. The burden of proving that the Defendant was forced or threatened to sign Exhibit A rests on the defendant who alleges so and he has failed to discharge same. Consequently on this score, it is resolved that the document that bounds parties in this suit is Exhibit A” as the oral evidence of DW1 cannot be used to contradict “Exhibit A”. the Defendant’s counsel in paragraph 3.2 to 3.4 of his final written address argued that the claim of the claimant is not a claim contemplated by Article 1 of the Rivers State Small Claims Court Practice Direction 2023 to the extent that the claimants claim is not a simple and liquidated debt, he relied on the case of **KABO AIR LTD & ANOR VS. MIMI BUREAU DE CHANGE LTD & ANOR (2020) 4 NWLR (PT.1715) 488 at Page 502, Paras B-F** to define liquidated debt to be among other things a specific sum of money usually due and payable. He added that the claimants claim is not specific and liquidated. To answer the question I shall take a look at forms RSSC 2 and 3 before this court, the sum the claimant claims for is for a specific amount of ₦3,366,000.00 (Three Million, Three Hundred and Sixty Six Thousand Naira) only and for the sum of an additional ₦500,000.00 (Five Hundred Thousand Naira), representing cost of litigation. The 1st Claimant has in his evidence in chief on 15-01-24 before this court maintained that the original sum the Defendant owes him is ₦2,666,500.00 (Two Million, Six Hundred and Sixty Six Thousand, Five Hundred Naira) only, the CW2 has also during his evidence before this court on 22-01-2024 testified that the Defendant owes 2nd Claimant the sum of ₦2,666,500.00 (Two Million Six Hundred and Sixty Six Thousand, Five Hundred Naira), the above evidence of CW1 and CW2 are also consistent with **Exhibit L** before this court which was tendered through the DW1, the Defendant in this suit, Exhibit L also states in its content that the 2nd Claimant is entitled to the sum of ₦2,666,500.00 (Two Million, Six Hundred and Sixty Six Thousand, Five Hundred Naira). It is worthy of note that unlike evidence of “Exhibit A”, the Defendant did not deny signing “Exhibit L” on his own free will. By the claimants claim in their evidence before this court the defendant has paid the 1st Claimant a total sum of ₦2,100,000.00 (Two Million One Hundred thousand Naira) only. ₦2,666,500.00 (Two Million six Hundred and Sixty Six Thousand Five Hundred Naira) being the sum endorsed by all parties to this suit on “Exhibit L” , the balance will be ₦566,500 (Five Hundred and Sixty Six Thousand, Five Hundred Naira) while following the same model above the sum claimed as

balance of the debt owed to the 2nd Claimant by the defendant after payment of ₦400,000.00 (Four Hundred Thousand Naira) will be ₦2,266,600 (Two Million, Two Hundred and Sixty Six Thousand, Five Hundred Naira) only. The claim of the sum of ₦566,500 (Five Hundred and sixty Six Thousand, Five Hundred Naira plus ₦2,266,500 (Two Million Two Hundred and Sixty Six Thousand Five Hundred Naira) being the claim of the 1st and 2nd Claimant's restrictively, by their evidence on record before this court plus an additional claim of ₦500,000.00 (Five Hundred Thousand Naira) being and representing cost of this litigation will amount to a total sum of ₦3,333,000.00 (Three Million, Three Hundred and Thirty Three Thousand Naira) and not the sum of ₦3,866,000.00 (Three Million, Eight Hundred and Sixty Six Thousand Naira) as claimed by the Claimants on the face of form RSSC 3, the claimant's counsel failed in an attempt to correct the figures in his final written address as counsel's address cannot take the place of evidence needed to prove a case. See the case of **ALICHA & AOR V. ELECHI & ANOR (Supra)**

Moreso, this court being a Magistrate Court is also bound by the Magistrate Courts Rules, by **Order 15(3) of the Rules** of this court this court can make orders in the interest of justice. Accordingly this court holds that by the evidence led before the court and by document (Exhibit L) tendered in this proceedings the sum due to each of the claimants before this court which has been established by credible and overwhelming evidence is the sum of ₦2,266,500 (Two Million Six Hundred and Sixty Six Thousand, Five Hundred Naira). This court will not in the light of a minor discrepancy in the figures dismiss the claimants claims (if proved) in the face of overwhelming evidence. The claimant has led evidence to show that the Defendant has paid the 1st claimant the total sum of ₦2,100,00.00 (Two Million, One Hundred Thousand Naira) Onl, while the Defendant by his own evidence has paid the 2nd Claimant the sum of ₦400,000.00 (Four Hundred Thousand naira) only. The defendant has rather than deny this fact in the case of the 1st claimant admitted to having paid same, but in the case of the 2nd Claimant the Defendant argues that he has over paid him. I am of the view that the claimants have established the amount the Defendant owes them before this court. The burden of proof in civil cases has two distinct facets , the first is the burden of proof as a matter of law and the pleadings, normally termed as "the legal burden of proof". The second is the burden of proof in the sense of adducing evidence usually described as the "evidencial burden of proof" (which is what we are concerned with in the circumstances of this case), while legal burden of proof is always static and never shifts, the evidencial burden of proof shifts or oscillates consistently as the scale of evidence preponderates. See the case of **APOSTLE PETER EKWEZOR & ORS V. REGISTERED TRUSTEES OF THE SAVIOR APOSTOLIC CHURCH OF NIGERIA (2020) LPLER – 49568** (SC) relating the above to the instant case and on the strength of the Exhibits before this court, the claimants have discharged the burden of proof required of them in the circumstances the burden now shifts to the Defendant. The Defendant never denied paying the 1st claimant the sum of ₦2,100,000.00 (Two Million, One Hundred Thousand Naira) rather he admitted same during his evidence in chief, he also admitted paying the 2nd claimant the sum of ₦400,000.00 (Four Hundred thousand naira). The law is that facts admitted need in further proof. See **Section**

123 of the Evidence (Amendment) Act 2023. However the Defendant while denying being indebted to the claimants admitted that he has overpaid the 2nd Claimant on 29-01-2024. DW1 testified that he paid the 2nd claimant ₦400,000.00 (Four Hundred Thousand Naira) on 31-01-24 while under cross examination DW1 further testified that he paid the 2nd claimant a further ₦2,700,000.00 (Two Million, Seven Hundred Thousand Naira), while still under cross examination DW1 admitted that besides the business in the instant case he has done other businesses with the 2nd Claimant, consequently DW1 was confronted with “**Exhibit K**” being statement of account showing a transfer of ₦2,700,000.00 (Two Million Seven Hundred Thousand Naira) from the Defendant to the 2nd Claimant, DW1 was asked to read the narration to the payment of the said sum and he confirmed it to be payment to 2nd claimant for supply of 17,000 litres of product. The record of this court shows that the initial contract for which the 2nd claimant delivered AGO for the Defendant is 25,000 litres and not 17,000 litres as confirmed by the Defendant in his evidence on 29-01-24 which said evidence was not denied or rebutted by the claimants, It follows therefore that the ₦2,700,000.00 (Two Million, Seven Hundred Thousand Naira) which the Defendant claims was for the initial transaction was actually for another subsequent transaction and the oral explanation of the DW1 cannot be used to contradict the contents of “Exhibit K”, see section 128 of the Evidence (Amendment) Act 2023. Accordingly this score is resolved against the defendant. Consequently in summary of the foregoing, I hold that the debt owed to the 1st claimant by the Defendant and the claim for legal fees which is yet to be determined at this stage is ₦566,500.00 (Five Hundred and Sixty Six Thousand, Five Hundred Naira) only and the debt owed to the 2nd Claimant by the defendant less the admitted sum of ₦2,266,500.00 (Two Million, Two Hundred and Sixty Six Thousand, Five Hundred Naira) only, less of cause the claim of legal fees jointly claimed by the claimants.

on the propriety or otherwise of the claimants claim for the sum of ₦500,000.00 (Five Hundred thousand Naira) being and representing legal fees of this suit. The 1st claimant in his evidence on 15-01-24 stated that he has something to show that he paid his lawyer legal fees and he subsequently tendered the official receipts for legal services of OJB & Partners the claimants’ counsel and same was admitted in Evidence as “**Exhibit C**”. this fact was not rebutted by the defendants counsel by way of cross examination. However, the defendant counsel in his final written address at paragraph 4.4. Thereof raised the vexed issue of law and argued that it is in faced against public policy and that the courts have held that public policy abhors the award of cost to a litigant for engaging a counsel to fight his battle with his opponent, he relied on the case of *KABO AIR LTD & ANOR V. MUMU BUREAU DE CHANG LTD & ANOR* (2020) 4 NWLR (PT. 1715) 488 AT Page 504, Paras G-H, he submitted that all evidence and exhibits led by the claimants in respect of payment to their solicitor is an inadmissible evidence and cannot be used to support the cause for which it was adduced. I refer parties to the case of **UNION BANK OF NIGERIA PLC VS. MR. N. M. OKPARA CHIMAEZE** (2014) LL JR-SC. The facts of the case are on all fours with the instant case to the effect that, during the trial of the case the claimant pleaded and tendered a receipt of ₦150,000.00 (One Hundred and fifty Thousand naira) as money he paid to his lawyer as cost of the litigation, the High Court sitting in Edo

State, Coram Omage J (as he then was) entered judgment in favour of the claimant as per his claim, including the sum claimed as legal fee. The defendant dissatisfied by this decision appealed to the Court of Appeal, the court of Appeal did not only affirm the decision of the trial court to grant the relief of solicitors fee but increased same by an additional ₦1,000,000.00 (One Million Naira) the applicant still aggrieved by the decision appealed to the Supreme Court, at the Supreme Court, the counsel for the Respondent submitted that the court cannot refuse damages in a proper case on basis of public policy, he relied inter alia on the case of **BARGE V. GANDUMA (2001) 13 NWLR (PT 731) 693**. The Supreme Court after going through the records of the counsel below held that, the foregoing findings of the lower court given the pleading and the testimony of PW1 in this case the (CW1) as well as Exhibit MOC 7 (in this case Exhibit C) is unassailable. The Apex Court concluded by holding that in the case at hand appellants contention that the lower courts affirmation of the trial courts award to special damages is wrong is manifestly incorrect. that the trial courts award that proceeded on the basis of respondents specific pleadings and evidence in strict proof of the facts on the authorities cannot be faulted. By the principle of stare decises I am bound by the decision of the Apex court and consequently this score is resolved against the Defendant, the claim of cost of this litigation was proved by the claimants and same is unchallenged in evidence by the Defendant. This court being a small claims court is a magistrate court and equally bound by the **MAGISTRATE CIVIL PROCEDURE RULES** by **ORDER 15 RULE 3 OF THE RULES** thereof, this court is enjoined to in all causes and matters make any order which it considers necessary for doing justice, whether such order has been expressly asked for by the party entitled to the benefit of the order or not. Accordingly it is adjourned as follows:

1. That the 1st Claimant is entitled to the sum of ₦566,500.00 (Five Hundred and Sixty Six Thousand, Five Hundred Naira) only being the balance of the debt owed him by the Defendant as proceeds of the business between the parties.
3. That the 2nd Claimant is entitled to the sum of ₦2,266,500 (Two Million Two Hundred and Sixty Six Thousand and Five Hundred Naira) only being balance of the debt owed him by the Defendant as proceeds from the business transaction between the parties.
3. That the 1st and 2nd Claimants are jointly entitled to the sum of ₦500,000 (Five Hundred Thousand Naira) only being and represent the cost in this litigation.

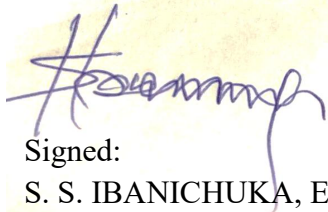
COUNTER CLAIM

The Defendant/Counter Claimant's claim before this court is for the sum of ₦2,000,000.00 (Two Million Naira) representing the cost of all the inconveniences for dragging him before two counts on the same subject matter and for cost of engaging a lawyer in defence of the claimants suit. The Defendant as DW1 led evidence on 29-1-24 that he is being dragged by the Claimants to two different courts on same issue, during cross examination on 1-02-24 he admitted that in the other court he was charged with threat to life, it goes without saying that "**Exhibit E**" before this court is a complaint in a criminal proceeding, there is no element in Exhibit E that makes it same as the instant case and as such the defendant was in error when he claimed he is being

dragged before two courts on the same issue and same cannot avail him in his counter claim for damages. The Defendant Counter/Claimant also claimed in his counter claim in form RSSC 3 for the cost of engaging a lawyer. No evidence was led in support of this claim and no specific amount was claimed as cost of the litigation. This claim is deemed abandoned and same is refused. Accordingly, the Counter claim of the Defendant Counter/Claimant fails.

Parties are to bear their respective costs.

Parties are reminded of their rights to appeal.

A handwritten signature in blue ink, appearing to read 'S. S. IBANICHUKA', is written over a yellow highlight on the document.

Signed:

S. S. IBANICHUKA, ESQ.

20/02/2024.