

IN THE MAGISTRATES' COURT OF RIVERS STATE OF NIGERIA
IN THE PORT HARCOURT MAGISTERIAL DISTRICT
HOLDEN AT SMALL CLAIMS COURT, PORT HARCOURT
BEFORE HIS WORSHIP COLLINS G. ALL, ESQ.,¹ TODAY MONDAY, THE 23RD DAY
OF DECEMBER, 2024.

SUIT NO.:PMC/SCC/200/2024.

BETWEEN:

MR. GIFT NWEKE

CLAIMANT

AND

CHIEF ONWUKANJO IFEANYICHUKWU

DEFENDANT

Case called.

Claimant present.

Defendant absent.

JUDGMENT

The Claimant in this case was granted local purchase order (LPO) by the Defendant for the supply of cement and sand at the Defendant's construction site in Port Harcourt. The Claimant duly supplied the cement and sand but the Defendant failed to fully pay for the supplies as agreed despite repeated demands. The Claimant therefore commenced this suit against the Defendant on the 6th day of August, 2024 for the recovery of the debt owed him after serving the Defendant with mandatory demand letter dated the 16th day of July, 2024.

Wherefore the Claimant claims against the Defendant as per his claim attached to the summons as follows:

1. Debt / Amount	- ₦2,940,000.00
2. General and Specific Damages	- ₦1,500,000.00
3. Costs of litigation	- ₦500,000.00
TOTAL	=₦4,940,000.00

Upon the claim been filed, the Defendant was served with the originating processes by substituted means on the 20th day of August, 2024; following the order for substituted service granted by this Honourable Court on the 14th day of August, 2024. The Defendant appeared in Court and pleaded not liable to the claims; and the case proceeded to trial when efforts to settle the case amicably failed.

The Claimant testified as CW1 and tendered seven (7) documents which were received in evidence as exhibit and marked Exhibits A, B, B1,C, D, D1 and E respectively. For emphasis,

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

Exhibit A is an LPO dated 10th March, 2024 for the supply of cement and chippings. Exhibits B and B1 are Waybills dated 13th March 2024 and 5th April, 2024 for the delivery of 300 bags of cement and buckets of sand, Exhibit C is a friendly loan agreement between the Claimant and Birvanee Limited dated 13th March, 2024, Exhibits D and D1 are WhatsApp chats between the Claimant and the Defendant and certificate of compliance, while Exhibit E is the Claimant's FCMB statement of account from 1st April to 30th April, 2024. The CWI was fully cross examined by the learned defence counsel. The Defendant testified in defence of the suit as DW1 on the 12th December, 2024 and tendered one document (First Bank Statement of Account dated 26th to 31st March, 2024) which was received in evidence as Exhibit F. The DW1 was also cross examined fully by the learned Claimant counsel. Exhibit F does not show that the payment therein went to the Claimant, however the combine effect of Exhibits D and E is that the Defendant paid the sum of ₦200,000.00 only to the Claimant on the 21st April, 2024.

After the close of trial, the parties filed and exchanged final written addresses as ordered by this Honourable Court. The Defendant's final written address is dated the 16th December, 2024 but filed on the 17th December, 2024, whilst the Claimant's final written address is dated and filed on the 17th December, 2024. The learned counsel for the parties adopted their respective written addresses on the 19th December, 2024 and the case was adjourned to today for judgment.

The Defendant raised two issues for determination in his final written address thus:

- 1. Whether in a breach of contract, the party injured is entitled to compensation in damages?*
- 2. Whether it is trite, Judicial and Judicious for a party in breach to sue for damages while the other party injured is still nursing the heavy wound occasioned by the breach of that other party?*

On his part, the Claimant raised a lone issue for determination in his final written address thus:

Whether the Claimant is entitled to the reliefs sought before this Court?

I have carefully perused the final written addresses of counsel on both sides, and I will not bother to reproduce same here. However, after a painstaking review of the claim and evidence before the Court, I wish to adopt and hereby adopt the lone issue for determination raised by the Claimant thus:

Whether the Claimant is entitled to the reliefs sought before this Court?

The first point for me is the issue of the duration of this case from filing to judgment which has exceeded the 60 days provided for under Article 14 (3) of the Small Claims Practice Direction, 2024. The reason for this stems from the fact that this Honourable Court proceeded on

annual leave of 30 working days on the 1st September, 2024 shortly after the Defendant was served on 20th August, 2024. This notwithstanding, a judgment given after 60 working days as in the instant case shall not be invalid by reason of the entire proceedings of Court having exceeded 60 working days. See **Article 14 (4) Small Claims Practice Direction, 2024**.

Let me now turn to the merit of the case. The testimony of the CW1 is that he was issued LPO by the Defendant to supply 600 bags of cement and chippings as shown in Exhibit A. The supply was to be in two batches of 300 bags each and payment within 14 days of supply. The Claimant supplied 300 bags of cement and one trip of sand as later requested by the Defendant. The total cost of the cement and sand supplied was ₦3,115,000.00 out of which the Defendant paid the sum of ₦200,000.00 only on the 21/04/2024 after repeated demands. The Defendant admitted in his evidence that he gave the Claimant a contract for the supply of cement and chippings but the Claimant said another person would supply the chippings. The Defendant also admitted that the Claimant supplied him 300 bags of cement and two trips of sand. The Defendant claimed he paid the Claimant about ₦600,000.00 so far for the supplies but evidence before the Court shows that the Defendant paid only ₦200,000.00 on the 21st April, 2024. The Defendant's argument of delayed supply and supply not in accordance with specification is clearly an afterthought put up to frustrate the legitimate claim of the Claimant under the contract of supply.

The Law is well settled that where there is a contract by which one party undertakes to supply the other with goods at a stipulated price, the seller is bound to deliver the goods, and the buyer, upon accepting the delivery of the goods, is bound to pay the purchase price of the goods. See the case of *Clement Horst Co v Biddell Bros. (1912) AC 18*) cited with approval in the case of *Abba v Shell Petroleum Development Company of Nigeria Limited [2013] LPELR-20338 (SC) (Pp. 21 paras. A)*. Per GALADIMA, JSC (P. 21, paras. A-E). There is uncontroverted evidence before this Honourable Court that the Defendant is indebted to the Claimant and has refused to pay the debt despite the issuance of demand letter dated 16th July, 2024. The law is now settled that a Court can accept and rely on uncontroverted and unchallenged evidence of a party. See the case of *Owners of M/V Gongola Hope & Anor. v Smurfit Cases (Nig) Ltd & Anor. [2007] LPELR-2849 (SC)*.

In a recovery of debt suit like this one, a cause of action will accrue when a debtor fails to pay his debt after the demand to pay the debt has been made. See *Akinsola & Anor. v Eyalunqay [2022] LPELR-57284 (CA) (Pp. 27 paras. B)*. I hold that the Claimant is entitled to recover the unpaid debt from the Defendant.

The Claimant prayed the Honourable Court for general/specific damages of ₦1,500,000.00 and cost of ₦500,000.00 against the Defendant. General damages in law represents all items of loss which a Claimant is not required to specify to be able to recover monetary

compensation in a civil trial. General damages unlike specific damages need not be specifically proved to be granted. See the case of *Akinkugbe v Ewulum* [2008] 6 MISC 134 at 136-137. On the other hand, award of cost in civil cases is at the discretion of the Court whether or not it is pleaded. See the cases of *Mekwunye v Emirates Airline* [2019] LPELR-46553 (SC) and *NNPC v Clifco Nig. Ltd.* [2011] or LPELR-2022 (SC). Whilst I concede that the Claimant is entitled to general damages and costs of litigation, it is also important to state that the Claimant's claim for general damages which is nearly the amount of principal sum is unreasonable. The law is that the award of general damages (and let me add costs), is never an avenue for gold digging and thus must be a just and fair recompense for the injury, and must neither be too high as to be scandalous nor too low as to be ridiculous. See the cases of *Pearse v Jinadu & Anor* [2017] LPELR- (CA) and *Chevron Nigeria Limited v Titan Energy Limited* [2013] LPELR-21202 (CA) Per *GEORGEWILL, J.C.A* (P. 85, para. B). The Claimant is entitled to general damages and costs of litigation but not as much as claimed. The lone issue is resolved in favour of the Claimant.

Judgment is hereby entered for the Claimant and against the Defendant as follows:

1. The Defendant is hereby ordered to pay to the Claimant the sum of **₦2,915,000.00 (Two Million, Nine Hundred and Fifteen Thousand Naira)** only, representing unpaid debt forthwith.
2. The Defendant is hereby ordered to pay to the Claimant the sum of **₦200,000.00 (Two Hundred Thousand Naira)** only as general damages forthwith.
3. The Defendant is hereby ordered to pay to the Claimant the sum of **₦100,000.00 (One Hundred Thousand Naira)** only as costs of litigation forthwith.


C. G. Abi, Esq.
(Chief Magistrate)
23/12/2024

LEGAL REPRESENTATION:

1. Nyekechi Amadi-Ikpa, Esq. with Raphael Okpara, Esq. for the Claimant
2. Anointed Overcomer Ajah, Esq. for the Defendant

