

IN THE MAGISTRATES' COURT OF RIVERS STATE OF NIGERIA  
IN THE PORT HARCOURT MAGISTERIAL DISTRICT  
HOLDEN AT SMALL CLAIMS COURT 3, PORT HARCOURT  
BEFORE HIS WORSHIP COLLINS G. ALI ESQ.,<sup>1</sup> TODAY MONDAY, THE 5<sup>TH</sup>  
DAY OF JUNE, 2023.

SUIT NO.:PMC/SCC/19/2023.

BETWEEN:

UDEH EDWINA LINDA

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CLAIMANT

AND

MRS. JOVITA OKEKE

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DEFENDANT

Case called.

Claimant present, Defendant absent.

JUDGMENT

The Claimant commenced this case against the Defendant on the 23<sup>rd</sup> March 2023. The Claimant had served the Defendant with a demand letter (Exhibit A) before this suit was commenced and the demand letter is deemed as adequate compliance with the mandatory demand notice required under Art. 2 (e) RSSCC (Practice Direction) 2023.

By the summary of claim contained in the summons, the Claimant claims against the Defendant for unreplaced and non-refund for purchased deep freezer as follows:-

1. Debt / Amount Claimed - ₦120,000.00
  2. Damages - ₦1,500,000.00
- Total = ₦1,620,000.00

Following the affidavit of non-service by a Bailiff, Obodo Chinonyerem Eze on the 28<sup>th</sup> March 2023, an application for substituted service on the Defendant was granted on the 6<sup>th</sup> April 2023. The Defendant was served with the claim and summons by substituted means on the 13<sup>th</sup> April 2023 as shown in the affidavit of service deposited by Obodo Chinonyerem Eze a Bailiff of Court attached to the Small Claims Court, Port Harcourt on the 13<sup>th</sup> April 2023.

Upon being served, the Defendant filed a defence and counterclaim on the 20<sup>th</sup> April 2023; and stated as follows:

1. I dispute all the claims because the Claimant never returned the freezer to me or any authorised staff of Orah Electronics Limited as there is no receipt of return produced by the Claimant.

<sup>1</sup> LL B, LL M, BL, A. IDRI, Chief Magistrate Grade II, and the Presiding Magistrate, Small Claims Court 03, Port Harcourt, Rivers State.



2. Whereas the document which is the receipt of return is mandatorily issued on all goods returned to Orah Electronics Ltd and that the freezer is not in the store/shop of the Defendant.
3. Counterclaims against the Claimant for ₦300,000.00 (Three Hundred Thousand Naira) only as cost of filing and defending this suit, the Claimant been aware that her claims are false.

During the trial, the Claimant testified as Cw1 and called her husband Dr. Udeh Innocent who testified as Cw2. The Claimant and Cw2 tendered the following documents:

1. Photocopy of Purchase receipt of Orah Electronics Ltd dated 27/02/2021 - Exhibit A
2. Demand Letter - Exhibit A1
3. Reply Letter by Orah Electronics Ltd dated 20/02/2023 - Exhibit A2
4. DHL proof of delivery dated 20/02/2023 - Exhibit A3
5. Sterling Bank Statement of Innocent Ifeanyi Udeh for 22/2/021 to 28/2/021 - Exhibit B.

The Defendant testified in her defence as Dw1 and tendered two documents as follows:

1. Orah Electronics Limited Certificate of Incorporation dated 30/09/2011 - Exhibit D
2. Orah Electronics Limited's Memo & Articles of Association - Exhibit D1.

The case of the Claimant is that she and her husband (Cw2) on the 27<sup>th</sup> February 2021 paid for and took delivery of a Bruhm chest deep freezer valued ₦120,000.00 from the Defendant at Orah Electronics Limited shop owned by the Defendant's husband. The Claimant stated that she had in mind to purchase a Scanfrost brand of the deep freezer but was convinced by the Defendant whose husband and herself are their church members to take the Bruhm chest deep freezer brand and assured that they could return it if it doesn't meet their purpose. The Claimant testified that the Bruhm chest deep freezer did not freeze as expected and was returned to the Defendant's Orah Electronics shop few days after by the Cw2 and she also went to the Defendant's shop to inform them that the freezer did not meet her purpose but the Defendant told her that if she did not take the returned deep freezer, it means that she had gifted her the deep freezer. The Claimant testified and was corroborated by the Cw2 that despite several demands and complaints to their church leaders, the Defendant and her husband have refused to replace the deep freezer nor refund the purchase price of ₦120,000.00.

The Defendant admitted been at her husband's Orah Electronic Limited shop on the 27<sup>th</sup> February 2021 when the Claimant and her husband (Cw2) walked into the shop to purchase deep freezer but denied that she was the one who transacted with the Claimant and convinced her to purchase the deep freezer. The Defendant stated that she is neither the owner nor a director of Orah Electronics Limited which is owned by her husband. The Defendant testified that all she said to the Claimant on



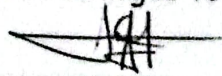
the day of the transaction is that she has a similar bruhm freezer in her house which is still working perfectly well. The Defendant testified that she is neither with the Claimant's deep freezer nor her money and that she knows nothing about the transaction.

At the close of trial counsel for the parties filed and exchanged final written addresses. The final written addresses were adopted on the 2<sup>nd</sup> June 2023 and the case adjourned for Judgment. I have carefully perused the final written addresses of the counsel on both sides but will not bother to reproduce same in this Judgment.

The facts of this case reveals that the Defendant who is the wife of the owner of Orah Electronics Limited acted as the agent of the business concern. Generally, the agent of a disclosed principal is not liable to a third party when that agent acts within the context of his or her authority. However, when an agent exceeds the limit or bound of his or her authority, such agent will be held liable for the acts of his principal. See *Cotecna Int'l Ltd v Churchgate Nig. Ltd & Anor. [2010] LPELR-897 (SC)*. The Defendant beside selling the bruhm chest deep freezer at her husband's Orah Electronics Limited shop to the Claimant which was later returned for not fitting the desired specification, went further to convince the Claimant who is their church member; of the durability of the product by stating that she has a similar bruhm freezer in her house which is still working perfectly well. Although, there is evidence that the sum of ₦120,000.00 cost of the bruhm chest deep freezer was paid into the Orah Electronics shop and that the deep freezer was returned to the same Orah Electronics shop after the Defendant sold the product to the Claimant, the Defendant who is the wife of the owner of Orah Electronics Limited and the one who convinced the Claimant to go for the brand beyond acting as agent of Orah Electronics Limited is liable to the Claimant. I so hold. I hold that the Claimant is also entitled to refund but the cost of ₦1,500,000.00 claimed is outrageous. In its stead, I award the cost of ₦100,000.00 only in favour of the Claimant. The Defendant's counterclaim of ₦300,000.00 is deemed abandoned as no evidence was led in support of same. The counterclaim is hereby dismissed.

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

1. The Defendant is hereby ordered to pay the sum of ₦120,000.00 (One Hundred and Twenty Thousand Naira) only being cost of the returned bruhm chest deep freezer to the Claimant forthwith.
2. The Defendant is ordered to pay the sum of ₦100,000.00 (Two Hundred Thousand Naira) only as general damages to the Claimant forthwith.



C. G. Ali Esq.  
Chief Magistrate Grade II  
05/06/2023

**LEGAL REPRESENTATION:**

1. A. N. Muoma Mrs. for the Claimant.
2. V. U. Uzochukwu Esq. for the Defendant.

