

IN THE MAGISTRATE COURT OF RIVER STATE OF NIGERIA
IN THE PORT HARCOURT MAGISTERIAL DISTRICT
HOLDEN AT PORT HARCOURT

RESUMED ON TUESDAY THE 30TH DAY OF JANUARY, 2024
BEFORE HIS WORSHIP S. S. IBANICHUKA, ESQ
HOLDEN AT SMALL CLAIM COURT 6 PORT HARCOURT

PMC/SCC/275/2023

USIFO OSELE EMOYON-IREZIA

VS.

OLUWAFEMI JOSEPH ADEGBENGA

The Claimant instituted this action against the Defendant via forms RSSC 2 and RSSC 3 of this court claiming for the following:

i. The sum of **₦1,440,000.00 (One Million, four Hundred and Forty Thousand Naira)** being the principal sum owed as at 28/11/2023.

ii. **₦2,000,000 (Two Million Naira)** being general and exemplary damages for the Defendants wanton breach of contract and

iii. **₦500,000.00 (Five Hundred Thousand Naira)** only being cost of this litigation and expenses incurred for this action.

In cause of the proceedings the claimant through CW1 also added a claim of interest on the entire judgment sum at the rate of 20% per annum until the final liquidation of the total judgment debt. The claimant called a sole witness CW1 and tendered exhibits A-J in prove of his claim the Defendant did not defend this suit and was never represented by counsel despite prove of being served with the originating processes in this suit and a hearing notice as well. The issue for determination on this judgment is whether considering the facts of this case the claimant is entitled to all his claims sought before this court.

The Claimant's counsel adopted his final written address dated the 29/01/2024 and filed on same date in which he raised a lone issue for determination to wit: "whether from the unchallenged and controverted evidence before the court, the claimant has made out a case to warrant a grant of the reliefs sought?" he adopted his address and asked the court to grant the total claim as endorsed on the summons filed on 20/12/2023 with interest on the entire judgment sum at the rate of 20% per annum until the final liquidation of the total judgment debt.

The law is trite that where the claimant leads evidence in prove of his case and the Defendant adduces no evidence in rebuttal, the claimant is entitled to judgment on the merits of the case if he meets the standard of prove required by law. In a civil case such as this the standard of prove is on a balance of probability and on a preponderance of evidence. The burden of this prove rests on the claimant. See the cases of **IBANIPIO V. ONYIYANGO (2000) 6 NWLR (PT. 661) PAGE 497 at paragraph E.**

I have carefully considered the evidence adduced by the claimant in this case on prayers 1 and 2, I am convinced that the claimant has proved his case on a preponderance of evidence and is entitled as per his claim. On prayer 3 for the cost of **₦500,000.00 (Five Hundred Thousand Naira)** only being a claim for cost of this litigation, claimant as CW1 stated that he briefed his counsel A. I. Chimezie of Owhonda – Wopara & Co. to take legal actions against the Defendant to recover what is due him. CW1 relied on his solicitor's letter of final demand notice to the Defendant. However, it is note worthy that in all of the claimants evidence and the documents tendered before this court, there is nothing showing proof of the sum of **₦500,000.00 (Five Hundred Thousand Naira)** only which was paid to the Claimant's solicitor, the CW1 did not also state so in his evidence before this curt. The claimant only stated this claim in form RSSC 3 without leading any evidence in prove of same, the implication here is that the claim is deemed to have been abandoned. See the case of **DANJUMA V. JERENGI (2011) 6 NWLR (PART 1244) PAGE 542 AT 557 PARAGRAPH A-B AND OGOH V. KAMALZA (2005) 18 NWLR (PAT 958) PAGE 523 AT 565 PARAS G-H**. The claim of the Claimant for cost of this litigation not been supported by evidence fails for being abandoned by the claimant. I have stated earlier in this judgment that though the claimant did not state in his claim RSSC3, he stated it during evidence that he is also claiming interest on the entire judgment sum at the rate of 20% per annum until the final liquidation of the total judgment debt, this court lack the jurisdiction to grant this prayer. Accordingly it is adjudged as follows:-

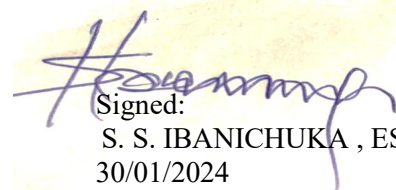
i. That the claimant is entitled to the sum of **₦1,440,000 (One Million, Four Hundred and Forty Thousand Naira)** only being the principal sum owed to the claimant by the Defendant as at 28/11/23.

ii. The sum of **₦2,000,000.00 (Two Million Naira)** Only being general and exemplary damages against the Defendant for the Defendant's wanton breach of contract.

iii. The claim for **₦500,000 (Five Hundred Thousand Naira)** only as cost of this litigation fails and same is refused.

iv. This court lacks the jurisdiction to order interest on the entire judgment sum at the rate of 20% per annum until the final liquidation of the total judgment debt and same is accordingly refused.

I make no further orders.


Signed:
S. S. IBANICHUKA, ESQ.
30/01/2024