

IN THE MAGISTRATES' COURT OF RIVERS STATE OF NIGERIA
IN THE PORT HARCOURT MAGISTERIAL DISTRICT
HOLDEN AT SMALL CLAIMS COURT 1, PORT HARCOURT
BEFORE HIS WORSHIP COLLINS G. ALI, ESQ.,¹ TODAY WEDNESDAY, THE
10TH DAY OF JULY, 2024.

SUIT NO.:PMC/SCC/130/2024.

BETWEEN:

PRISCILLIA OGOLO

CLAIMANT

AND

FORTUNE CREST SERVICES LIMITED ----

DEFENDANT

Case called.

Claimant present.

Defendant not represented.

JUDGMENT

The Claimant in this case purchased goods worth ₦46,250.00 from the Defendant company and paid via her Suntrust Bank ATM card on the Defendant company's FCMB POS machine on the 6th day of February, 2024. The transaction was declined at the point of purchase but the Claimant was debited and not given the product. Efforts by the Claimant to get a refund on the product after been informed by her bank that the transaction was successful failed. The Claimant therefore commenced this suit against the Defendant on the 14th day of May, 2024 and claimed as per the claim attached to the Complaint Form and Summons dated and filed on the 14th day of May, 2024 as follows:

Debt / Amount Claimed -	₦46,250.00
Fees	- ₦4,000,000.00
Costs	- ₦500,000.00
TOTAL	= <u>₦4,546,250.00</u>

Upon the filing of the complaint by the Claimant at the Court registry, an ordinary summons to which the claim is attached was issued for service on the

¹ LL B, LL M, BL, A. IDRI, Chief Magistrate Grade I, and the Presiding Magistrate, Small Claims Court 1, Port Harcourt, sitting at Chief Magistrate Court 7, Port Harcourt, Rivers State.

Defendant personally. The summons and claim were served on the Defendant through its administrative officer Favour on the 20th day of May, 2024.

The Defendant entered appearance through one of its officer Favour Wosu and filed a defence as in Form RSSC 5, wherein Part (B) was completed in defence of the claim as follows:

- ✧ It was a POS transaction which reversal procedure is not within the control of of the Defendant.
- ✧ The Claimant was advised on the procedure in relation to the reversal of the funds.
- ✧ The Claimant has bluntly refused to comply with the procedure.
- ✧ This is a gold digging action.
- ✧ The Defendant was not served with any demand letter.
- ✧ This suit should be dismissed with cost of ₦4 million.

The Defendant entered plea of not liable and the parties were ordered to attempt amicable settlement which turned out unsuccessful. The Claimant tendered six (6) document in evidence as Exhibits A, B, C, D, E, F respectively; and testified as CW1 in proof of her case on the 25th June, 2024. The CW1 was fully cross examined by the Defendant counsel. The Defendant on its part called the Supervisor, one Wosu Favour who testified as DW1. The Defendant tendered four (4) document in evidence as Exhibits FCL 1, FCL 2, FCL 3 and FCL 4 respectively. The DW1 was also cross examined by the Claimant counsel.

After the close of trial, the learned counsel for the parties filed and exchanged final written addresses as ordered by the Court. The Defendant's final written address is dated and filed on the 27th day of June, 2024 while the Claimant's final written address is dated and filed on the 1st day of July, 2024. The learned counsel for the parties adopted their respective written addresses on the 2nd day of July, 2024, and the case was adjourned to today the 10th day of July, 2024 for judgment. The learned Defence counsel N. O. Ezeh, Esq. raised a lone issue for determination in the Defendant's final written address thus-

Whether the Claimant has established any liability on the part of the Defendant to entitle her to damages or any relief against the Defendant?

On her part, the learned counsel for the Claimant E. Tam-Kwokwo, Esq. also formulated a lone issue for determination in the Claimant's final written address thus-

Whether the transaction of ₦46,250.00 allegedly reversed on the 6th day of February, 2024 was approved and successful?

I have painstakingly examined the Claimant's claim and the evidence before the Court in support and defence of same by both parties. The issues for determination raised by counsel for the parties are the same but couched differently. However, the lone issue formulated by the learned defence counsel is more encompassing and is hereby adopted. The lone issue is thus-

Whether the Claimant has established any liability on the part of the Defendant to entitle her to damages or any relief against the Defendant?

The burden of first proving the existence or non-existence facts rests squarely on the Claimant who will naturally be at the receiving end and more likely to loose, where no evidence at all is presented in Court by both sides in proof or disproof of the claim. See section 133 (1) of the Evidence Act, 2011. The Claimant as CW1 testified that her POS transaction on the 6th February, 2024 at the Defendant's office declined and showed reversed with a printed receipt of the reversal. The declined or reversed transaction receipt (Exhibit B) was also given to the Claimant at the Defendant's office or store which was subsequently taken to Suntrust Bank for a formal report. At the Claimant's bank, a receipt showing that the transaction approved was given to her which is Exhibit A. The Claimant's Suntrust Bank Nig. Ltd statement of account (Exhibit D) for 1st January, 2024 to 5th June, 2024 at page 7 shows that she was debited the sum of ₦46,250.00 in the POS transaction No. 9999032435 on 6th February, 2024 in favour of the Defendant, Fortunecrest Services POS purchase. That transaction had not been reversed till date as the statement of account (Exhibit D) shows. The Defendant through the DW1 insisted that the transaction declined and that they were not credited with the POS transaction sum of ₦46,250.00 till date. In support of this stance, the Defendant tendered Exhibit FCL 4 which is the FCMB Statement of Account of

Fortune Crest Services Limited linked to the POS machine from 1st January, 2024 to 31st May, 2024. The Defendant's statement account did not capture the Claimant's disputed POS transaction of 6th February, 2024 despite the DWI's evidence that the POS was used for the transaction and other transactions that particular day. The argument of the learned defence counsel on the CBN guideline for resolution of disputed transaction is correct, but there appears to be a deliberate attempt in the instant case to manipulate and distort the relevant document. For instance, how is it that all the Defendant's POS transactions of 6th February, 2024 which includes the Claimant's disputed transaction as captured in Exhibits A and B were not captured in the Defendant's Statement of account (Exhibit D)? The Claimant in my estimation has done what is expected of her as advised by the Defendant's staff, and has shown by her Exhibits A and D that the Defendant was credited with the now disputed transaction of 6th day of February, 2024. It behoves the Defendant to clarify its customer's disputed transaction with her FCMB Bank and not passing the bulk to the customer whose money and goods has being hanging in the balance and unresolved for months. Exhibit D clearly shows that the Claimant's account was debited and the Defendant's account credited with the sum of ₦46,250.00 only on the disputed transaction of 6th day of February, 2024.

The learned defence counsel's argument as to the Defendant not been a proper party is misconceived and misleading. Eventhough, I concede that the sending and receiving banks have major roles to play in disputed POS transaction or ATM transactions by the referenced CBN Guidelines of 2020, it is not automatic. The customers of the banks must lodge a formal complaint to their banks. The Defendant in this case is fixated on its stance that it is the bank's problem and so did nothing to resolve the impasse as admitted by DW1 under cross examination. Leaving the Claimant whose money and goods are hanging in the balance to struggle alone because the Defendant is not directly affected is to say the least bizarre. A business concern with such bad customer relations as the Defendant has shown is not worthy to operate as a business concern. There is evidence before the Court that the Claimant's account was debited while the Defendant's account was credited with the

sum of ₦46,250.00 on the 6th day of February, 2024. There is also unchallenged evidence that the Claimant lodged complaint at her bank where Exhibit A was given to her as proof that the transaction was successful. I hold that the Claimant is entitled to the product paid for and/or refund of the money.

I also hold that the Claimant is entitled to general damages and costs of litigation but not as much as claimed. The law is that the award of general damages is never an avenue for gold digging and thus must be a just and fair recompense for the injury, and must be neither 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).*

In the final analysis, I hold that the sole issue is largely resolved in favour of the Claimant. Judgment is hereby entered for the Claimant and against the Defendant as follows:

1. The Defendant is ordered to pay the Claimant forthwith the sum of ₦46,250.00 (Forty-Six Thousand, Two Hundred and Fifty Naira) only representing the sum of the debited POS transaction on the 6th day of February, 2024.
2. The Defendant is ordered to pay the Claimant forthwith the sum of ₦100,000.00 (One Hundred Thousand Naira) only as general damages.
3. The Defendant is also ordered to pay the Claimant forthwith the sum of ₦50,000.00 (Fifty Thousand Naira) only as costs of litigation.



C. G. Ali, Esq.
(Chief Magistrate)
10/07/2024

LEGAL REPRESENTATION:

1. Gladys Horsfall, Esq. for the Claimant.
2. N. A. Aso, Esq. with N. C. Ezeh, Esq. for the Defendant.

