

IN THE MAGISTRATES' COURT OF RIVERS STATE
IN THE PORTHARCOURT MAGISTERIAL DISTRICT
HOLDEN AT SMALL CLAIMS COURT BEFORE HIS WORSHIP. G.C.AMADI ESQ.
SITTING AT SMALL CLAIMS COURT 1, PORT HARCOURT ON WEDNESDAY, THE 30TH
OCTOBER, 2024.

SUIT NO. PMC/SCC/205/2024

OZUEM HAPPY



CLAIMANT

AND

- 1. FRIDAY EGBO**
- 2. SIMON EJINU**
- 3. MR GOODKNOWS JONATHAN**



DEFENDANTS

JUDGMENT

This is the final judgment in this suit wherein the Small Claim before the court, dated and filed on the 12th August, 2024 is for:

- A. An order directing the defendants to refund the Claimant, the sum of N5,000,000 representing outstanding fees for the lease of the Claimants welding equipment and cost of lost items

In proof of their case, the claimant called one witness and the defendant called two witnesses and a total of three (3) exhibits were tendered in evidence.

On the 3rd September, 2024. the defendant counsel applies for plea of not liable to be entered on behalf of the 1st and 2nd defendant and the matter was set down for hearing.

On the 9th September, 2024, the CW1, the Claimant on record commenced his evidence in Chief and stated that he adopts his written statement on oath dated 6th of September, 2024, wherein he states that he is the owner of two welding machines which he is in the business of leasing out for monetary returns to interested persons having welding jobs. That on 12/11/2023 the defendants approached him to lease the said two welding machines and pursuant to which I leased same to them at the daily rate of N20,000.00 (Twenty Thousand Naira Only) for each of the said machines together with their accessories. That the defendants paid the total sum of N440,000.00 (Four Hundred and Forty Thousand Naira Only) which only covered for eleven (11) days.

That the defendants however held the said equipment and their accessories for a total of (129) One Hundred and Twenty-Nine days bringing the total hiring fees to the sum of N5,160,000.00 (Five Million One Hundred and Sixty Thousand Naira Only). That if we deduct the down payments of N440,000.00 (Four Hundred and Forty Thousand Naira Only) from the total hiring

fees this leaves in his favour an outstanding sum of N4,720,000.00 (Four Million Seven Hundred and Twenty Thousand Naira Only).

That the defendants returned the two welding machines on 19/03/2024. That at the time of the return of the machines, the attached accessories were missing from the machines and unaccounted for. That the missing accessories are as follow

(i) 80 metres of 70m welding cable valued at N9,000.00 (Nine Thousand Naira Only) per metre costing N720,000.00 (Seven Hundred and Twenty Thousand Naira Only)

(ii) Two units of welding masks valued at N7,000.00 (Seven Thousand Naira Only) was not returned though formed part of the leased equipment.

Testifying further, the CW1 stated that the defendants dumped the welding machines in the Belerna Company Yard along Okuru Road Port Harcourt where I retrieved same on 17/03/2024 having spent the sum of N20,000.00 (Twenty Thousand Naira Only) to transport them back to my base, a duty ordinarily imposed on the defendants under the custom and practices obtainable in the leasing industry. That in total the defendants are indebted to me at the total amount of N5,474,000.00 (Five Million Four Hundred and Seventy-Four Thousand Naira Only). That he prepared to accept the sum of N5,000,000.00 (Five Million Naira Only) while abandoning the excess which this court may find payable. That he contacted his solicitors in the firm of G. B. Sanusi & Associates which law firm wrote a demand letter to the defendants demanding the payment of the above sum and which demand was ignored nevertheless.

The CW1 identifies the demand letter and the document was tendered in evidence and is tendered and marked as Exhibit A. Finally the CW1 said he wants the Court to award his prayers as on the face of his claim before the Court.

During the cross-examination of the CW1 on the same date, he testified that he only owns one of the machines and that his friend owns the other one. But he took it from his friend and gave to the defendant. That his friend gave him consent to bring the defendant to Court. That he has the authority in Court and have not tendered it in evidence, That before the time of the agreement, the defendant never met the owner. That he never gave the defendant the machine for N15,000 that it was given for N20,000 and that he gave the machine to the 1st and 2nd defendant. That N20,000 is the daily hire rate, that N15,000 was paid initially because he asked them to take N5,000 each for each machine as their commission, that the 1st and 2nd defendants are agents in the business and they told him, that they are not the end users of the machine. That in the course of the business, the defendants introduced him to the end user. That there was open communication and that whenever the end user paid, the defendants also paid him. That he is not aware that the machine did not return on time because the owner of the badge refused to allow the machine to come off the badge.

That initially the defendants did not explain the reason for the delay, that later they told him that the machine is with the person that hired it and they are having issues. That they never linked him to the end user. That he was talking with the defendants directly. In total, they paid him for 11 days in total and the machine stayed about 129 days. That total paid to him is N440,000 That the first payment when the machine left was given to the defendants. That on the 13th of November, 2023, the first payment was made.

That the 5million Naira claim includes the agency fee of the defendants

That the defendants don't pay him, that they only pay him when the 1st defendant pays them.

After the evidence of CW1, the matter was adjourned for defence.

On the 11th September, 2024, the defendant filed motion for joinder, joining Mr Godknows Jonathan as a party in this suit because he is a necessary party being the end user of the machines in contention before the Court. After due consideration, the application for joinder was granted.

On the 23rd October, 2024, the DW1 who is the 2nd defendant on record commenced his evidence and adopts his evidence on oath wherein he states that the Defendants deny being indebted and or liable to the claimant as per the claims for the sum of Five Million Naira (N5,000,000.00) only, by the claimant before this Honourable Court.

That the Defendants in defence state that the two welding machines and accessories was hired and or used by a third party that is one Mr. Godknows Jonathan who is now the 3rd defendant to the knowledge of the Claimant. That the Defendants in defence state that the said welding machines was hired and or used was for the purpose of the said Mr. Godknows Jonathan, the 3rd defendant.

That the agreed daily amount for the welding machine is sum of Twenty Thousand Naira (N20,000.00) only for each of the welding machine which the 3rd defendant agreed to pay. That the claimant's daily hire rate for the use of the said welding machine is the N15,000.00 and the sum of Five Thousand Naira (N5,000.00) is for the defendants as agents that brokered the transaction.

That the Defendants in defence states that as agents that brokered the said transaction for the hire and or use of the welding machines, the defendants cannot be liable to pay for the use, but rather, the liability is on the defendant that is the end user.

That the Defendants in defence states that, this agreement was reached for the respective sums of monies between the Claimant, Defendants and the said 3rd defendant, wherein the sum of Fifteen Thousand Naira (N15,000.00) was agreed between the claimant and the defendant as the daily hire sum for each of welding machines and Five thousand Naira (N5,000.00) is to go to the defendants who brokered the said transaction for the hire of the welding machines.

That the Defendants in defence state that sequel to the agreement reached by all parties involved, the 3rd defendant made a transfer of Forty Thousand Naira (N40,000.00) only on the 10th day November 2023 to the 2nd defendant representing one (1) day payment for the hire of the two-welding machine

That the Defendants states that on that same date being the 10th day of November, 2023 a transfer of Forty Thousand-naira (N40,000.00) was made by the 2nd defendant to the 1st defendant, who also subsequently transferred to the claimant the sum of Thirty-Four Thousand Naira (N34,000.00) only being one (1) day payment for the two machines

That the Defendants states that on the 13th day of November, 2023 a transfer of another Forty Thousand Naira (N40,000.00) was made by the 3rd defendant to the 1st and 2nd defendants who transferred the sum of Thirty Thousand Naira (N30,000.00) to the claimant. That the Defendants in defence states that on 13th day of November, 2023 another sum of Sixty Thousand naira (N60,000.00) paid by the 1st defendant to the claimant

That the Defendants in defence states that, Mr. Godknows Jonathan has been in possession of the two welding machines for a period of 129 days including the initial hire period of two days.

That the Defendants after much disturbance and calls from the Claimant and defendants to the 3rd defendant on 21st of March, 2024, the 3rd defendant transferred the sum of Six Hundred and Fifty Thousand naira (N650,000.00) to the 2nd defendant representing part payment of the hire of the welding machines and payment for the gas used in the machine, wherein the sum of Four

Hundred Thousand Naira (N400,000.00) only was paid by the 2nd defendant to the claimant as part payment to defray the accumulated days of 129 days owed.

The 1st and 2nd defendant states that the sum of Two Hundred and Fifty Thousand Naira (N250,000.00) only was paid to a third party for the cost of gas used and replacement of oxygen bottles misplaced by the 3rd defendant and that a total sum of Five Hundred and Twenty four Thousand Naira (N524,000.00) has been paid to the claimant in respect of the said hires of the two welding machines. The DW1 identifies his statement of account and same was tendered and admitted in evidence as Exhibit B

During the Cross-examination of the 2nd defendant, the DW1 on the 25th of October, he stated that when he took the 2 welding machines in hire, the 3rd defendant was not there and that the 3rd defendant did not pay directly to the Claimant. That he did not take the equipment from the Claimant from the 1st defendant and he does not know if the equipment belongs to the Claimant. That the equipment stayed with the 3rd defendant for 129 days, that the agent was not with him, that he is only an agent. That the 129 days started from the 10th November, 2023.

On the same date, the DW2, who is also the 2nd defendant on record commenced his evidence and stated that he is adopting his written statement on oath as his evidence before the Court he states that the Defendants deny being indebted and or liable to the claimant as per the claims for the sum of Five Million Naira (N5,000,000.00) only, by the claimant before this Honourable Court.

That the Defendants in defence state that the two welding machines and accessories was hired and or used by a third party that is one Mr. Godknows Jonathan who is now the 3rd defendant to the knowledge of the claimant. That the Defendants in defence state that the said welding machines was hired and or used was for the purpose of the said Mr. Godknows Jonathan, the 3rd defendant.

That the agreed daily amount for the welding machine is sum of Twenty Thousand Naira (N20,000.00) only for each of the welding machine which the 3rd defendant agreed to pay. That the claimant's daily hire rate for the use of the said welding machine is the N15,000.00 and the sum of Five Thousand Naira (N5,000.00) is for the defendants as agents that brokered the transaction.

That the Defendants in defence states that as agents that brokered the said transaction for the hire and or use of the welding machines, the defendants cannot be liable to pay for the use, but rather, the liability is on the defendant that is the end user.

That the Defendants in defence states that, this agreement was reached for the respective sums of monies between the Claimant, Defendants and the said 3rd defendant, wherein the sum of Fifteen Thousand Naira (N15,000.00) was agreed between the claimant and the defendant as the daily hire sum for each of welding machines and Five thousand Naira (N5,000.00) is to go to the defendants who brokered the said transaction for the hire of the welding machines.

That the Defendants in defence states that sequel to the agreement reached by all parties involved, the 3rd defendant made a transfer of Forty Thousand Naira (N40,000.00) only on the 10th day November 2023 to the 2nd defendant representing one (1) day payment for the hire of the two-welding machine

That the Defendants states that on that same date being the 10th day of November, 2023 a transfer of Forty Thousand Naira (N40,000.00) was made by the 2nd defendant to the 1st

defendant, who also subsequently transferred to the claimant the sum of Thirty Four Thousand Naira (N34,000.00) only being one (1) day payment for the two machines

That the Defendants states that on the 13th day of November, 2023 a transfer of another Forty Thousand Naira (N40,000.00) was made by the 3rd defendant to the 1st and 2nd defendants who transferred the sum of Thirty Thousand Naira (N30,000.00) to the claimant. That the Defendants in defence states that on 13th day of November, 2023 another sum of Sixty Thousand naira (N60,000.00) paid by the 1st defendant to the claimant

That the Defendants in defence states that, Mr. Godknows Jonathan has been in possession of the two welding machines for a period of 129 days including the initial hire period of two days.

That the Defendants after much disturbance and calls from the Claimant and defendants to the 3rd defendant on 21s of March, 2024, the 3rd defendant transferred the sum of Six Hundred and Fifty Thousand naira (N650,000.00) to the 2nd defendant representing part payment of the hire of the welding machines and payment for the gas used in the machine, wherein the sum of Four Hundred Thousand Naira (N400,000.00) only was paid by the 2nd defendant to the claimant as part payment to defray the accumulated days of 129 days owed.

The 1st and 2nd defendant states that the sum of Two Hundred and Fifty Thousand Naira (N250,000.00) only was paid to a third party for the cost of gas used and replacement of oxygen bottles misplaced by the 3rd defendant and that a total sum of Five Hundred and Twenty four Thousand Naira (N524,000.00) has been paid to the claimant in respect of the said hires of the two welding machines. The DW2 identifies his statement of account and same was tendered and admitted in evidence as Exhibit C

During the Cross-examination of the 1st defendant, the DW2 on same date, he stated that yes he took the Claimant's two equipment on lease directly for 129 days and that the lease commenced 10th November, 2024 and he returned it on the 19th March 2024. That he does not know if the equipment belongs to the Claimant. That the equipment stayed with the defendant for 131 days. That he was only an agent, That he did not take the equipment to another job for N34000. That the money he agreed with the Claimant is N15,000, That while he has N3000, the 2nd defendant has N2000 per machine. That they did not take the machine for the 10th of November, 2023.

At the close of the evidence of the DW2, the 3rd defendant having been served all processes in this suit as evidenced by an affidavit of service filed on the 10th October, 2024 and having refused or neglected to appear, the 3rd defendants were foreclosed from defending the claim against him and the matter was adjourned for judgment.

That said, I will proceed to consider the case of the parties in the light of the relevant laws. I have noted the essence of the claim and have also taken cognizance of the evidence of the claimant and the defendant and her witness before the court.

ISSUE FOR DETERMINATION:

Whether The Claimant Has Proved His Case To entitle him To The Following orders:

An order directing the defendant to refund the Claimant, the sum of N5,000,000 representing outstanding fees for the resale of the Claimants welding equipment and cost of lost items

The 1st and 2nd defendant have led evidence to show that they were acting as the agents of the 3rd defendant and that the 3rd defendant is the end user of the Claimant's equipment. To

buttress that they were remitting payments to the Claimant as soon as the 3rd defendant paid, they attached their statements of accounts as Exhibits B and C. The Claimant himself confirmed this position during his cross examination when he stated that N15,000 was paid initially because he asked the 1st and 2nd defendant to take N5,000 each for each machine as their commission, that the 1st and 2nd defendants are agents in the business and they told him, that they are not the end users of the machine. That in the course of the business, the defendants introduced him to the end user. That there was open communication and that whenever the end user paid, the defendants also paid him.

It is important to note that the end user, the 3rd defendant never appeared in this matter to defend the claim against him despite being served with the processes of this Court. Before the court adjourned the matter for hearing and heard the matter, the court always satisfied itself that:

1. The processes have been duly served on the defendant
2. That the time before the date of service and the date of hearing was sufficient for the defendant to have appeared had he intended to do so.

Suffice is to note at this point that none of the facts stated by the claimant's witness was controverted in evidence or denied by the 3rd defendant and so will be deemed by this court as admitted. The law is that facts admitted need not be proved by evidence. Please refer to the case of Ayoke V. Bello (1992)10 NWLR (Pt 218) pg 380 Ratio 2; O.A.A Cooperative Society Vs. NACP Ltd (1999) 2NWLR (Pt 590) Pg 234, Ratio 4 to the effect that what is not denied is deemed admitted and what is admitted need not be proved.

On the undisputed and clear evidence before the court, the court will hold that the claimant has discharged the burden of proving that he is entitled to his claim before the Court as against the 3rd defendant only

IT IS THUS ADJUDGED that the 3rd defendant to refund the Claimant, the sum of N5,000,000,00(Five Million Naira) representing outstanding fees for the lease of the Claimant's welding equipment and cost of lost items

AND IT IS ORDERED that the defendant to pay the Claimant, the aforesaid sum of N5,000,000,00(Five Million Naira) representing outstanding fees for the lease of the Claimant's welding equipment and cost of lost items

AND IT IS FURTHER ORDERED that the defendant do pay to the Claimant the total sum of N5,000,000,00(Five Million Naira) above mentioned with immediate effect.

TAKE NOTICE -That if payment is not made as above ordered, a warrant or warrants may issue requiring an officer of the court to levy the sum above mentioned, to the claimant together with further costs.

GIFT C AMADI ESQ
CHIEF MAGISTRATE
GDI
SIGN.....DATE.....

G. CHINYERE AMADI. ESQ.
CHIEF MAGISTRATE G.D.I

