

IN THE MAGISTRATES' COURT OF RIVERS STATE OF NIGERIA

IN THE PORT HARCOURT MAGISTERIAL DISTRICT

HOLDEN AT SMALL CLAIMS COURT 2, PORT HARCOURT

BEFORE HIS WORSHIP COLLINS G. ALI, ESQ.,¹ TODAY WEDNESDAY, THE 4TH

DAY OF OCTOBER, 2023.

SUIT NO.:PMC/SCC/95/2023.

BETWEEN:

VICTOR CHIZINDU WELEKWE

(Suing through his lawful attorney
Esondu Welekwe, Esq.)

CLAIMANT

AND

1. MORGAN DANIEL

2. EMEKA ELLIOT ONWUNA

}

DEFENDANTS

Case called.

Claimant attorney present.

Defendants absent.

JUDGMENT

The Claimant and the 2nd Defendant are teacher colleagues and works in the same school while the 1st Defendant is an in-law of the 2nd Defendant by marriage. The 2nd Defendant connected his colleague the Claimant to the 1st Defendant to purchase a fairly used car which was eventually not delivered to the Claimant years after payment. The Claimant through his lawful Esondu Welekwe, Esq. commenced this suit against the Defendants on the 7th July, 2023 after serving demand letter and claimed as per his claim attached to the summons as follows:-

- | | | |
|------------------------|----------|----------------------|
| 1. Debt/Amount Claimed | - | ₦1,000,000.00 |
| 2. Damages | - | ₦1,000,000.00 |
| 3. Costs | - | ₦500,000.00 |
| Total | = | ₦2,500,000.00 |



The Defendants were served with the summons and claim by substituted means on the 4th August, 2023 but they did not appear in Court despite been served. Based on

¹ LL B, LL M, BL, A, IDRI, Chief Magistrate Grade I, and the Presiding Magistrate, Small Claims Court 02, Port Harcourt, Rivers State.

the non-appearance of the Defendants, plea of not liable was entered on their behalf on the 9th August, 2023 and the case adjourned for trial.

The Claimant's attorney Esondu Welekwe, Esq. testified as CW1 and tendered Power of attorney in his favour dated the 2nd February, 2021 as Exhibit A, FCMB Deposit slip and GT Bank Statement as Exhibit B and B1, Certificate of compliance dated 17th August, 2023 as Exhibit B2, Petition Letter to the Commissioner of Police dated 23rd July, 2021 as Exhibit C and demand letters dated the 19th June, 2023 and 7th July, 2023 as Exhibits D and D1 respectively. After the close of trial, the Claimant filed final written address on the 25th August, 2023 as ordered by the Court.

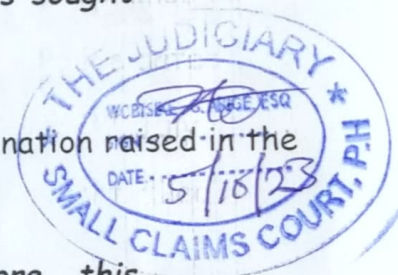
The learned Claimant counsel distilled a lone issue for determination in the Claimant's final written address thus:

Whether by the evidence of the Claimant before this Honourable Court, the Claimant is entitled to the reliefs sought in this suit?

I intend to adopt and hereby adopt the sole issue for determination raised in the Claimant's final written address as follows:

Whether by the evidence of the Claimant before this Honourable Court, the Claimant is entitled to the reliefs sought in this suit?

The law is now well entrenched that he who asserts must prove to be entitled to judgment of Court. See section 131 (1) Evidence Act, 2011. The Claimant's attorney in proof of his claim as CW1 testified that sometime in June 2019 the Defendants offered to sale a one month old Nigerian used black coloured Toyota Camry XLE 2005 (model) full option car to the Claimant and settled for ₦1,000,000.00 only out of which the Claimant made advance payment of ₦200,000.00 only through the 2nd Defendant on the 26th June 2019. The CW1 testified that the Claimant further paid the balance ₦800,000.00 only to the defendant directly in two tranches of ₦400,000.00 each on the 7th July 2019 and 8th July 2019 respectively. The 1st Defendant failed to deliver the car to the Claimant on the 9th July 2019 as agreed despite repeated demands. The CW1 was not cross examined

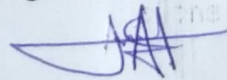


by the Defendants who never appeared in Court despite been served with summons and claim. The evidence of the Claimant witness as argued by the learned Claimant counsel is unchallenged and accordingly deemed admitted. The failure of an adverse party to cross examine a witness upon a particular matter is a tacit acceptance of the truth of the evidence of the witness. See *Gaji & Ors. v Paye [2003] LPELR-1300 (SC)*.

The Claimant has established that there was an oral contract of sale of a Toyota Camry car between him and the Defendants at an agreed sum of ₦1,000,000.00 only which the Defendants breached despite receiving the full payment of the agreed sum. A breach of contract connotes that the party in breach had acted contrary to the terms of the contract either by non-performance, or by performing the contract not in accordance with its terms or by wrongful repudiation of the contract. See *Chung v Plateau Express Services Ltd [2018] LPELR-45391 (CA)*. In this case, the Defendants failed to perform their part in the contract of sale by refusing to deliver the car to the Claimant after receiving full payment as shown in Exhibits B and B1. I therefore hold that the Claimant is entitled to recover the money paid and damages for the loss which he may have incurred as a result of the breach. The lone issue is resolved in favour of the Claimant.

Judgment is hereby entered for the Claimant against the Defendants as follows:

1. The Defendants are ordered to pay the sum of ₦1,000,000.00 (One Million Naira) only as debt owed the Claimant forthwith.
2. The Defendants are ordered to pay the sum of ₦300,000.00 (Three Hundred Thousand Naira) only as damages to the Claimant forthwith.
3. The Defendants are also ordered to pay the sum of ₦200,000.00 (Two Hundred Thousand Naira) only as cost of litigation to the Claimant forthwith.



C. G. Ali, Esq.
Chief Magistrate Grade 1
04/10/2023

LEGAL REPRESENTATIONS:

1. Esondu Welekwe, Esq. for the Claimant.
2. Defendants not represented.

