

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 16TH

DAY OF AUGUST, 2023.

SUIT NO.:PMC/SCC/77/2023.

BETWEEN:

MISS ADORA AGUGHARAM

CLAIMANT

AND

NAEBI DYNAMIC CONCEPTS LIMITED

DEFENDANT

Case called, Claimant present.

Defendant absent.

JUDGMENT

The Claimant commenced this case against the Defendant on the 16th June 2023 after serving demand letter and claimed as per her claim attached to the summons as follows:-

1. Amount Owed the Claimant - ~~₦~~1,150,000.00
 2. Damages - ~~₦~~ 300,000.00
 3. Cost of litigation - ~~₦~~ 100,000.00
- Total = ~~₦~~1,550,000.00

The Defendant was served with the summons and claim personally on the 20th June 2023 and it was represented and pleaded not liable to the claim.

The Claimant, Adora Agugharam testified as CW1 and a sole witness in proof of her claim. The Claimant tendered Demand and Reply Letters dated 25th November 2022, 5th December 2022, 22nd December 2022, 6th January 2023 and 16th January 2023 as Exhibits A, B, C, D, and E respectively. The Claimant also tendered First Bank Transaction Receipts dated 3rd May 2022, 12th October 2022 and 22nd November 2022 as Exhibits F, F1 and F2 respectively. On its part, the Defendant called one Ogochukwu Ogbe, the Administrative Officer who testified as DW1. The Defendant did not tender

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

any documentary evidence contrary to their assertion of relying on 14 documents during the pre trial on the 5th July 2023. The CW1 and DW1 were fully cross examined by counsel on both sides. At the close of trial, counsel for the parties were ordered to file and exchange final written addresses which they duly complied with. The Claimant's final written address is dated the 8th August 2023 and filed on the 9th August 2023, whilst the Defendant's final written address is dated and filed on the 9th August 2023. The final written addresses were adopted by counsel on both sides on the 9th August 2023.

The learned Defence counsel raised two issues for determination in the said final address thus:

- 1. Whether the Claimant has proved her case on the balance of probability to warrant the grant of her reliefs sought?*
- 2. Whether the Claimant's suit as presently constituted is competent and capable of properly invoking the jurisdiction of this Honourable Court against the Defendants, in all circumstances of this case?*

On his part, the learned Claimant counsel raised a lone issue for determination in the Claimant's final written address thus:

Whether or not, having regards to the unchallenged and corroborative evidence on record before this Court, the Claimant has proved her case on the preponderance of evidence to be entitled to her reliefs in this action?

After a careful review of the claim and evidence before the Court, I find that the Defendant's first issue captures the Claimant's lone issue. I hereby adopt the Defendant's 1st issue in the final determination of this case, thus:

Whether the Claimant has proved her case on the balance of probability to warrant the grant of her reliefs sought?

The law is that he who asserts must prove; and the standard of proof in civil cases is proof on the balance of probabilities or preponderance of evidence. See **Section 131 (1) and 134 of the Evidence Act 2011**. The evidence of the Claimant as CW1 is that the Defendant through its Managing Director Stanley Chike requested her to supply 15 units of Core i5 Laptops and 10 units of Core i7 Laptops. The CW1 thereafter reached out to her suppliers and informed the Defendant's MD that she was able to get only Core i5 laptop as the Core i7 laptop was unavailable at the time. The CW1 upon request by the Defendant's MD supplied 15 units of Core i5 Laptops at the rate of ~~N~~200,000.00 per

unit totaling ₦3,000,000.00 (Three Million Naira Only). The Claimant was also engaged by the Defendant's MD for the installation of the 15 laptops, web-hosting and creating a payment gateway for the Defendant at its office at the International Airport, Omagwa, Port Harcourt at the cost of ₦100,000.00 only but because the Claimant was to source for the funding elsewhere, the Defendant through its MD agreed to pay 50% interest making up ₦150,000.00 only for the additional work. The Defendant's MD from the evidence of CW1 paid only ₦100,000.00 part of the additional work leaving the ₦50,000.00 interest and the ₦3 million cost of the 15 laptops unpaid. After several demands, the Defendant's MD also paid the sum of ₦1.5 million on the 12th October 2022 and another ₦500,000.00 on the 22nd November 2022 leaving a balance of ₦1,000,000.00 and accrued interest of ₦150,000.00 unpaid. The evidence of the CW1 was not controverted during cross examination. The Defendant's sole witness DW1 admitted that she received a demand letter from the Claimant's lawyer for the payment of 15 units of Core i5 Laptops in the sum of ₦1,550,000.00 which was reported to the Director who confirmed the transaction and she replied the letter. The DW1 identified Exhibits B and E as her reply letters to the Claimant's lawyer. Under cross examination, the DW1 admitted the company's indebtedness to the Claimant but said she is not aware if the debt has been paid because she does not work in the finance department. The Claimant as argued by the Claimant counsel has proved her case on the balance of probability or preponderance of evidence as required. Where a party is able to give evidence in support of her claim, the Court is bound to give judgment in favour of the party. See the case of *Usman v Kaduna State House of Assembly [2007] 11 NWLR (Pt 1044) 148 at 198 paras. F-G.*

The law is that where there is a right, there is a remedy as represented in the latin maxim *ubi jus ibi remedium*. The Defendant breached the terms of the contract of supply by not paying the Claimant for the supplied 15 Units of Core i5 laptops as agreed nor within the future dates promised. The act of tying down the Claimant's business capital and foisting bad customer relationship on the Claimant and her suppliers as the Defendant did in this case is simply wicked and callous. The Claimant is therefore entitled to damages and cost. The learned defence counsel, D. E. Nkwo, Esq. had

contended that the Claimant failed to disclose any dispute or relationship or privity of contract between her and the Defendant who is a distinct legal personality from Mr. Chike Stanley and therefore failed to show any reasonable cause of action against the Defendant. The argument of the learned Defence counsel with due respect is hollow, outrightly misconcieved and not supported by evidence. The Claimant testified that she was contacted by Mr. Stanley Chike the Managing Director of the Defendant company to supply 15 units of Core i5 laptops to the Defendant company. The demand letters and replies letters exchanged between the Claimant and the Defendant clearly shows that the Defendant acted through Mr. Stanley Chike who is the Managing Director. A company is in law a person distinct from its promoters and directors. However, a director of a company is in the eyes of the law an agent of the company for which he acts. See the case of *Oriebosi v Andy Sam Investment Co. Ltd. [2014] LPELR-23607 (CA)*. A successful litigant is entitled to cost, but award of cost is at the discretion of the Court whether or not it was pleaded and/or proved. See the case of *Mekwunye v Emirate Airline [2019] LPELR-46553 (SC)*. I hold that the Claimant has proved her claims on the balance of probabilities. The lone issue is resolved in favour of the Claimant. Judgment is hereby entered for the Claimant as follows:

1. The Defendant is Ordered to pay the sum of **₦1,150,000.00 (One Million, One Hundred and Fifty Thousand Naira)** only as outstanding debt to the Claimant forthwith.
2. The Defendant is Ordered to pay the sum of **₦300,000.00 (Three Hundred Thousand Naira)** only as damages to the Claimant forthwith.
3. The Defendant is also Ordered to pay the sum of **₦100,000.00 (One Hundred Thousand Naira)** only as cost to the Claimant forthwith.



C. G. Ali, Esq.
Chief Magistrate Grade 1
16/08/2023

LEGAL REPRESENTATIONS:

1. N.T. Wachukwu, Esq. with H. E. Ejii, Esq. for the Claimant.
2. Defence counsel absent.

