

IN THE MAGISTRATE COURT OF RIVER STATE OF NIGERIA
IN THE PORT HARCOURT MAGISTERIAL DISTRICT
HOLDEN AT PORT HARCOURT
BEFORE HIS WORSHIP S. S. IBANICHUKA, ESQ, SENIOR MAGT. GD. I
HOLDEN AT SMALL CLAIMS COURT 6 PORT HARCOURT

PMC/SCC/37/2024

BETWEEN

ABIGAIL JUWAH. ESQ

CLAIMANT

AND

**ECART SERVICES NIGERIA LIMITED ---
(AKA JUMIA NIGERIA)**

DEFENDANT

JUDGEMENT

This suit was commenced via form RSSC 3 of this court on 22-02-24, wherein the Claimant claims against the Defendant are for:

- I. The sum of ₦9,510.00 (Nine Thousand Five Hundred and Ten Naira) only being and representing refund of purchase money due the claimant .
- II. ₦300,000.00 (Three Hundred Thousand Naira) as fees.
- III. ₦150,000.00 (One Hundred and Fifty Thousand Naira) as cost of this litigation.

The Claimant called one witness in prove , the Defendant also called a sole witness in defence of the claimants claims. In cause of this case the following exhibits were relied on; Exhibits "A,B,B1 to B9, C, D,D1 to D3,E, F,F1 and F2". respectively

The witnesses were duly Cross-examined after their respective Examinations-in-chief and on 10-07-24 the counsels argued and adopted their respective final written addresses. With the Claimants Counsels final written address being adopted first because the defendant failed to file its final written address first.

The summery of the facts of this case from the claimants perspective is that the defendant is a registered company which operates an online shop for sale of various items, that she had two transactions with the defendant, the first was on the 14-4-23 for the sum of ₦9,510.00 (Nine Thousand Five Hundred and Ten Naira) and the 2nd transaction was in October, 2023 for the sum of ₦47,220.00(Forty Seven Thousand Two Hundred and Twenty Naira), that for the first transaction the transaction was canceled despite the fact that she sent a copy of her bank debit receipt on whats app to the defendants delivery man who came to deliver the goods she ordered, much to her embarrassment, that it took from about 1-5-24 when this incident occurred till 27-7-24 for the defendant to send her an email that the complain on the first transaction has been closed out. That for the 2nd transaction after paying for the goods through bank transfer she opened the pack and found out that the item was smaller than what was displayed and that the hose of the washing machine was releasing water while it was working, that she requested for return and refund on 28-10-23, that sometime in November,2023 she got a bank alert of ₦37,710.00 (Thirty Seven Thousand Seven Hundred and Ten Naira) leaving a balance of

₦9,510.00 (Nine Thousand Five Hundred and Ten Naira) and an outstanding balance of ₦9,510.00 (Nine Thousand Five Hundred and Ten Naira) from the first transaction as well now totaling the sum of ₦19,020 (Nineteen Thousand and Twenty Naira) for the two transactions. She stated that she paid her lawyer the sum of ₦150,000 (One Hundred and fifty Thousand Naira) for this suit, when the defendant still refused to pay her her outstanding balance she proceeded to serve a letter of demand on the defendant after which the defendant sent her ₦9,510.00 (Nine Thousand Five Hundred and Ten Naira) through one Mr Teddy . That till date the Defendant is yet to complete refund on the second limb of the transaction.

The summary of the case of the Defendant is that the claimant is a customer of the defendant that the claimant initiated two transactions, that for the first transaction the claimant claimed the transfer of funds for the item went through but the defendants agent being the delivery man could not confirm the payment so he took the item back to the office and that communication was sent to their finance team to confirm the transaction. That the money was confirmed to be in their account and afterwards the defendant made payment to the claimants jumia digital wallet. That for the second transaction the claimant placed an order for a washing machine upon receipt she was not satisfied and she requested for a refund, that the defendant agreed and initiated the said process for the sum of ₦47,220.00 (Forty Seven Thousand Two Hundred and Twenty Naira) but that due to technical errors from their bank the refund was done twice ₦37,710.00 (Thirty Seven Thousand Seven Hundred and Ten Naira) and ₦9,510.00 (Nine Thousand Five Hundred and Ten Naira) , that the transaction was done on 1-6-23 but that the claimant claims that she has not received the sum of ₦9,510.00 (Nine Thousand Five Hundred and Ten Naira) that their bank, master card and visa card confirmed to the defendant that the claimant has received the money.

Before I go into the issue for determination, there is need to address a concern raised by the claimants counsel, the records of the court shows that on 10-7-24 being the date adjourned for adoption of final written addresses the claimant counsel has gone ahead to file her final written address because the defendant counsel has failed to file hers within time. The claimants counsel in adopting her final written address urged the court to discountenance the defendants counsels final written address and deem same as being abandoned. The defendants counsel on the other hand prayed the court to consider her final written address as same is already before the court. In the cause of the hearing of this case parties relied on several documents, this court shall consider all of them in reaching a decision one way or the other in this judgement, the defendants final written address was in the courts file as at the day fixed for adoption of final written addresses and in the interest of fair hearing this court shall consider same in reaching its decision in this case.

from the issues raised by counsels for both parties in their respective final written addresses I have raised sole issues for determination to wit:

“Whether from the evidence before this Honourable Court the Claimant has been able to prove her case to be entitled to judgment as per her reliefs before this Court?”

In Civil cases the standard of proof required of the Claimant is a proof on preponderance of evidence, see: **Section 134 of the Evidence (Amendment) Act, 2023.**

This is a case of contract for delivery of items purchased in two transactions on the online platform of the Defendants by the claimant. The terms of the transaction includes *inter alia* a policy of the defendant that if there arises issues in the transaction the defendant shall make refunds to the claimant upon the claimants return of the item. It is not in dispute in this case that the defendant has made complete refunds to the claimant for one of the transactions. However, for the other transaction of the sum of ₦47,220.00 (Forty Seven Thousand Two Hundred and Twenty Naira) the parties agree that a refund of the sum ₦37,710.00 (Thirty Seven Thousand Seven Hundred and Ten Naira) has been made to the claimant, facts admitted need no proof **Section 123 of the Evidence (Amendment) Act 2023.** what is in dispute in this case is whether a refund of the balance of and ₦9,510.00 (Nine Thousand Five Hundred and Ten Naira) has been made to the claimant by the defendant. On this issue both parties relied on Exhibit F1 and F2.

I have carefully examined the said document and I find from Exhibit F2 that there is nothing showing that the said outstanding sum of ₦9,510.00 (Nine Thousand Five Hundred and Ten Naira) was paid from the defendant to the claimant. During cross examination on 11-6-24 the DW1 was shown exhibits F1 and F2 to point out where it shows that the balance of ₦9,510.00 (Nine Thousand Five Hundred and Ten Naira) was made to the claimant but Dw1 could not point out anywhere on the face of the document to support his claim. DW1 also answered under cross examination that Exhibit F1 is an investigation report. The law is that he who alleges the existence of a certain fact must proof same see **Amadi v Amadi (2017) 7 NWLR (PART 1563) S.C.** the documents exhibit F1 and F2 speaks for themselves as an investigation report is not *prema facie* proof of payment or receipt of funds by the claimant, especially as the claimant is still in denial of receipt of the sum of ₦9,510.00 (Nine Thousand Five Hundred and Ten Naira) this score is resolved against the defendant.

The claimant claims before this court is for the sum of ₦3,000.00 (Three Hundred Thousand Naira) which she stated in evidence before this court on 7-5-24 is for expenses, embarrassment to her person arising from the breach of contract by the defendant. The defendants counsel has argued in paragraph 3.4 of her final written address that this court cannot grant a relief of the Claimant based on pain or suffering, she referred to page two of the handbook of this court. I cannot agree less with the counsel for the defendant, accordingly this court shall not grant the prayer of the claimant for the sum of ₦3,000.00 (Three Hundred Thousand Naira) on grounds that the claimant was embarrassed.

However, the facts of this case as stated by the DW1 in his evidence before this court on 23-5-24 and 11-6-24 are that the defendant has a return and refund policy of about seven to fifteen working days, that on both transactions the claimant requested a refund of her money to which the defendant agreed and initiated the return and refund policy. That it is correct that from the month of May, 2023 to January, 2024 the claimant has constantly called the defendants and exchanged correspondence with them in a bid to get her refund but to no avail. The records of the court also shows that the claimants ground of being embarrassed by the defendants action is

not the only ground in which the claimant is claiming the sum of ₦300,000.00 (Three Hundred Thousand Naira) , the claimant also said she spent money making calls, buying data to send emails and made several trips to the bank all which cost money and time. The DW1 in explaining the about Ten months delay in refunding the claimant her money stated amongst other things that he went on leave twice that is why he could not effect the refund. He also admitted under cross examination that while on leave he had someone to do his duty but did not say if or why the person did not attend to the claimants pending issues. The claimant was not refunded her money in the time stated by the defendant in its terms of engagement to no fault of the claimant. the attitude of courts is that in the absence of fraud or mistake, a court does not write or rewrite an agreement for parties as parties are bound by their agreement. See **A G Rivers State v A G Akwa Ibom state (2011) 45 (pt 2) NSCQR 1041 at PP 1204 - 1205.**


Where there is a wrong there is a remedy. this is a case where the claimant is deserving of some sort of compensation for the wrong suffered due to the delay in refund of her money by the defendant. This score is resolved in favour of the claimant.

The claimant also claims for cost of this litigation. Cw1 stated in her evidence before this court that she paid her lawyer the sum of ₦150,000.00 (One Hundred and Fifty Thousand Naira), this was not disputed by the defendant.

In the circumstance, the claim of the claimant succeeds, accordingly it is adjudged as follows:

1. That the claimant is entitled to the sum of ₦9,510.00 (Nine Thousand Five Hundred and Ten Naira) being balance of money owed the claimant by the defendant.
2. The sum of ₦200,000.00 (Two Hundred Thousand Naira) as damages
3. ₦150,000.00 (One Hundred and Fifty Thousand Naira),as Cost of litigation

Dated this 9th day of October, 2024.


Signed:
S.S. IBANICHUKA , ESQ.
9/10/2024.

