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Plea of not liable was entered for the Defendant on the 8th day of May, 2024 and the case adjourned to the 21st and 22nd day of May, 2024 for hearing. The Claimant testified as CW1 during the hearing and called his wife, Ifeoma Aleru who testified as CW2. The Claimant tendered his First Bank Statement of Account for the period of 4th August, 2020 to 20th December, 2020 as Exhibit A. The CW1 and CW2 were fully cross examined by the learned defence counsel E. F. Etukudo, Esq. The Defendant was foreclosed from defence and address on the 25th day of June, 2024 for failure to appear in court despite been served with fresh hearing notice through her counsel.

After the close of trial on the 25th day of June, 2024, the case was adjourned for judgment. I have perused the claim and evidence led by the Claimant witnesses in proof of the claims thereof. Therefore the sole issue for the determination of this case is thus:

Whether the Claimant has proved his case to be entitled to the reliefs sought?

The law is that he who asserts must prove the existence of the facts he asserts to be entitled to the judgment of the Court. See section 131 (1) of the Evidence Act, 2011. The burden of proving the 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 testified that he contracted the Defendant on 11th day of January, 2018 by paying her the sum of ₦300,000.00 to treat his wife's (CW2) infertility. The Claimant's wife was treated by the Defendant and she became pregnant according to the CW1's testimony. CW1 testified that after his wife took in, he paid another ₦1,500,000.00 as agreed to

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deliver a baby boy. The CW1 testified that his wife kept going for antenatal every Thursdays and purchasing drugs worth ₦2,000.00 from the Defendant's hospital between 2018 and 2023 without been delivered of the baby. The CW1 testified that despite the payments he made, the Defendant has failed to deliver his wife of the pregnancy since June, 2022 till date after his wife was treated and confirmed pregnant by the Defendant. Under cross examination, the CW1 admitted that his wife was treated by the Defendant and that she became pregnant after the treatment. The CW1 admitted that his wife was admitted in the Defendant's hospital for about 7 months but insisted that he provided her with food during period in question. The CW2 as expected corroborated the CW1's evidence.

The Small Claims Court entertain claims for simple liquidated money demand not exceeding ₦5,000,000.00 including costs. See **Article 2 (1) (d) of the Rivers State Small Claims Practice Direction, 2023**. The term liquidated money demand has been held to be a sum of money previously agreed upon by the parties to a contract, if the action is based on a breach of contract. See the case of *Digital Security Technology Ltd & Anor v. Andi [2017] LPELR-43446 (CA)*, (Pp. 23-24 paras. A), Per **OGUNWUMIJU, J.C.A.** For a claim to amount to liquidated money demand, the sum must be arithmetically ascertainable without further investigation, if it is in reference to a contract, the parties to the contract must have mutually and unequivocally agreed on a fixed amount payable on breach; and the agreed and fixed amount to be known prior to the breach. See the case of *Etukudo & Anor. v Akpan [2013] LPELR-20414 (CA)*. In the instant case, there is no agreement between the parties that a particular amount would be paid in the event of any breach. The Claimant witnesses admitted in their evidence-in-chief and cross examination that the payment made to the Defendant was for fertility treatment and In Vitro Fertilization (IVF) procedure, for which the CW2 admittedly underwent at the Defendant's Amazing Health Centre.

In Vitro Fertilization (IVF) is an assisted reproductive technology procedure used to treat a range of fertility problems. It entails a physician surgically removing

eggs from a woman's ovaries, and then fertilize the collected eggs with sperm in the embryology laboratory. Once fertilized, the embryos are transferred into the woman's womb to implant and develop into a pregnancy. This IVF medical procedure involves a lot, in terms of costs and steps but does not have 100% success rate. Statistics has it that women under 35 years have most success rate, but women between ages 35 - 37 also have a 40.5% rate of success. However, women between the ages of 38 and 40 have a lower success rate at 26% - 4%; and over 40 years has the lowest success rate at 8.2% according to CDC data of 28 November, 2023.² The evidence before the Court clearly shows that CW2 who is over 39 years was treated on the IVF procedure as agreed eventhough the CW2 was not delivered of the IVF pregnancy. The Claimant has failed to prove that the claim herein is a liquidated money demand nor that there was an agreement to refund the money expended on the IVF procedure in the event of failure, which is most unlikely in IVF process. I hold that the Defendant is not liable to the claims.

In the final analysis, the sole issue is resolved against the Claimant and in favour of the Defendant.

IT IS ORDERED that this suit be and is hereby dismissed as same is frivolous and lacking in any merit whatsoever.

I make no order as to costs.



C. G. Ali, Esq.
(Chief Magistrate)
03/07/2024

LEGAL REPRESENTATION:

1. P. C. Wireh, Esq. for the Claimant.
2. Gideon Eyidie, Esq. holding the brief of E. F. Etukudo, Esq. for the Defendant.

². <http://www.nordicalagos.org/>; accessed on 03 July, 2024.

