

**IN THE MAGISTRATE COURT OF RIVERS STATE OF NIGERIA
IN THE PORT HARCOURT MAGISTERIAL DIVISION
HOLDEN AT PORT HARCOURT
BEFORE HIS WORSHIP NNEKA E. EZE-OBUZOR
SITTING ON THE 11TH DAY OF MARCH 2024
AT THE SMALL CLAIMS COURT 4 PORT HARCOURT**

SUIT NO: PMC/SCC/238/2023

BETWEEN

MRS QUEEN AMARACHUKWU OKWOR ----- CLAIMANT

AND

AUSTINE OYEDIKACHI PRAISE ----- DEFENDANT

PARTIES: Absent

APPEARANCES: O.N. Okeke Esq. for claimant

No representation for defendant

JUDGEMENT

By a claim dated 13/11/2023, the claimant's claim against the defendant are as follows:

1. The sum of N150, 000.00 as price of 12' bone straight human hair.
2. The sum of N100, 000.00 as general and special damages.
3. The sum of N100, 000.00 as cost of litigation.

PLEA

By the affidavit of service availed this court, the defendant was served the originating process in this suit by substituted means by pasting at the last known address of the defendant on the 8/12/2023 at 1:46pm. On the 13/12/2023, a plea of not liable was entered for and on behalf of the absent defendant. Case was adjourned to the 19/12/2023 for hearing.

SUMMARY OF EVIDENCE

The claimant in proof of her case called a lone witness, the claimant herself.

The defendant never appeared to defend this suit hence no evidence was entered for the defendant.

The relevant facts from the case of the claimant as presented by the claimant herself is that the defendant is her stylist who was introduced to her by her sister. That sometime in October 2023, she gave the defendant her hair (a wig), a 12' bone straight wig for revamping with clear instructions to the defendant to revamp and style the hair. That instead the defendant went ahead to cut the wig from 12' to 8' which was against the instructions given to him. That when the defendant returned the hair, she found out that he had spoiled the wig and she reached out to him to let him know and he was unapologetic about it. That when she got the wig it was valued at N85, 000.00. That as at when this happened, the wig was valued at N150, 000.00. That she reached out to the defendant to pay for the wig and he refused to reply. CW1 urged the court to grant her claims. Case was adjourned to the 30/1/2024 for cross examination of CW1.

Upon the absence of the defendant even after service of hearing notice, the defendant was foreclosed from cross examining the CW1 and from defending this suit.

On the 19/2/2024, the claimant adopted their final written address and case was adjourned for judgement now being read.

In the claimant's final written address settled by her counsel O.N. Okeke Esq. a lone issue was raised for determination to wit:

Whether the claimant has established her case against the defendant to entitle her to the relief sought before this Honourable Court.

Counsel answered the above in the affirmative stating that the claimant has established via her testimony that the defendant damaged her hair by reducing it from 12' to 8'. That the said hair was not replaced by the defendant neither did he refund the amount the claimant bought the hair which is N150, 000.00. That none of the claims of the claimant was challenged by the defendant through cross examination. That the law is trite that unchallenged evidence need no further proof. That the defendant's refusal to join issues with the claimant is a clear admission of his guilt. Counsel referred the court to the case of **MAINAGE V. GWAMMA (2005) 2 FWLR (584) @ 584 RATIO 5**. In conclusion, counsel urged the court to enter judgement for the claimant.

RESOLVE

In determination of this suit, I will raise a lone issue

Whether the claimant is entitled to her claims

As already stated, the failure of the defendant to make an appearance means that the entire evidence adduced by the claimant is unchallenged. The law is trite that a Court is at liberty to accept and act on unchallenged and uncontroverted evidence. See the case of **OFORLETE V. STATE (2000) 12 NWLR (PT. 681)415**. The court in the case of **ADELEKE V. IYANDA (2001) 13 NWLR PART 729 PAGE 1 AT 23-24 PARA H-A** held that where the claimant has adduced admissible evidence which is satisfactory in the context of the case, and none available from the defendant, the case will be decided upon a minimum of proof as this makes the burden lighter.

From the case file, the claimant has complied with the provisions of **ARTICLE 2 AND 3 OF THE RIVERS STATE SMALL CLAIMS COURT PRACTICE DIRECTION 2023** for the fact that this is a liquidated money demand not exceeding Five million (N5M), the defendant was served with a demand letter, there is a complaint form, there is an affidavit of service of the summons of court on the defendant.

On the first claim of the claimant, the sum of N150, 000.00 as price of 12' bone straight human hair. By way of evidence, the claimant has informed the court that the wig was bought for the sum of N85, 000.00 but the present market value is

N150, 000.00. However, there is nothing before the court to support that assertion. It should be noted that the claimant will not be entitled to judgement merely because the Defendant abandoned its defence by failing to lead evidence in support therefore. The court will not accept a piece of evidence which is not cogent merely because the only evidence before the court is that of the claimant. **SEE AREWA TEXTILES PLC V. FINETEX LTD (2003) 7 NWLR (PTB 819 PAGE 322 AT 341, PARAS D-G.** Even where the evidence is unchallenged and uncontroverted, the trial court has the duty to evaluate it and be satisfied that it is credible. Failure to provide anything in prove of the assertion that the present value of the wig is N150, 000.00 leaves the court with the only option of granting the claimant what she paid for the wig.

On the second claim, the sum of N100, 000.00 as general and special damages. The law is clear that the grant of general damages is purely discretionary. It is purely within the prerogative of the trial Judge who after considering the entire facts of the case and evidence tendered in proof of same, can decide the sum of money that will be awarded as general damages. Where there is no evidence to support the claim for damages, the claim would be dismissed. Per the evidence of the claimant, no evidence has been adduced to warrant the granting of this claim and I so hold.

On the last claim, the sum of N100, 000.00 as cost of litigation. **ORDER 16 RULE 1(1) OF THE MAGISTRATE COURTS CIVIL PROCEDURE RULES 2007** provides that in fixing the amount of costs, the principle to be observed is that the party who is right, is to be indemnified for the expenses to which he has been necessarily put in the proceedings as well as compensated for his time and effort in coming to court. Costs are not awarded to penalize a party who is ordered to pay them, nor are costs awarded as windfall to a successful party. Costs are meant to indemnify the winning party for his out of pocket expenses representing the actual and true/fair expenses incurred by the litigation. In light of the above, claim for cost is granted as prayed.

In conclusion, judgement is entered for the claimant as follows:

1. The defendant is ordered to pay the claimant the sum of N85, 000.00 being money for the 12' wig destroyed.
2. The sum of N100,000.00 is awarded as cost of prosecuting this suit