IN THE SMALL CLAIMS COURT OF RIVERS STATE OF NIGERIA

IN THE PORT HARCOURT MAGISTERIAL DISTRICT

HOLDEN AT PORT HARCOURT

CLAIM NO: PMC/SCC/317/2024

BETWEEN

1.MRS. EJIKEM JULIANA ----------
2.MR. MAGNUS EJIKEM **CLAIMANTS**

AND

MR. EMMANUEL CHIJIOKE ---------- **DEFENDANT**

Parties- Absent

Appearances- I. A. Michael appears for the Claimant.

JUDGEMENT

The Claimant had on the 19/11/2024 taken out a summons seeking for the total sum of N3,559,500 only, as debt owed him by the Defendant. Upon proof of service filed the 11/12/2024, the Defendant was seen to have been served the originating processes on the 11/12/2024, and I. A. Michael the Claimants' counsel on behalf of the Defendant entered a plea of not liable. The matter was accordingly set down for hearing, which commenced on the 19/12/2024 with the Claimants fielding in one witness, tendering three exhibits and closing their case on the 20/12/2024. The Claimant relinquished his right to file a final written address.

The Defendant was also issued a hearing notice on the 22/01/2025 as evidenced in the affidavit of service filed the 24/01/2025 but neither showed up nor was he represented.

CLAIMANT'S CASE

The Claimants are traders who deal on tailoring materials, residing in Eleme of Rivers State and Aba of Abia State, all in Nigeria. It is the testimony of the CW1 who doubles as the 2nd Claimant that in March 2024, Defendant bought goods from them worth N2, 729,500 and made a deposit of N600,000, with a promise to return in two weeks' time. He did not return as promised but has thereafter, made a total payment of N1, 420,000, leaving a balance of N1,309,500. Defendant didn't repay as he promised, despite repeated demands.

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EVALUATION/DECISION

The task before the Court is to determine *whether the Claimants have a made out a case to entitle them to judgement of this Court.*

What the law expects of the Claimants in civil cases is proof beyond probabilities, simpliciter- **Section 133(1) & (2) of the Evidence Act 2011.** In **Section 131 of the Evidence Act *supra*,** it is the Claimants that would fail should no evidence be called on the other side and as such, the burden of proof lie on their shoulders.

The grouse of the Claimants in the instant suit is an alleged breach of contract between the parties.

The Claimants have led evidence that the Defendant bought items from them as shown in exhibit C2, the receipt dated 01/03/2024. On the face of exhibit C2, the Defendant allegedly bought items worth N2,729,500 and the last payment of N250,000 was made by Defendant on the 28/04/2024.

The law sets down basic elements of a valid and binding contract to be offer and acceptance, as well as intention to create legal relations and consideration- **OMEGA BANK NIGERIA PLC V O.B.C. LIMITED [2005] Legalpedia (SC) 11711.**

A holistic analysis of the facts placed before this Court shows that those elements are present and complete. Did the Defendant intend not to be bound by that contract, his lack of intention if not expressly stated, can be inferred. In the instant case, the Defendant had taken steps to perform part of the obligations placed on him by making certain payments as can be seen from a cursory look at exhibit C2. By no stretch of legal imagination can the Court infer that he lacked intention to be bound.

The law of contract is well settled that given the sanctity of contract, parties are bound by their contract/agreement- **MR. ENIWOMAKE RICHARD OVIVIE V. DELTA STEEL COMPANY LIMITED (2023-03) Legalpedia 79126 (SC).**

The parties in the instant case are bound by their agreement as evidenced in exhibit C2. It follows therefore, that this Court like any other Court, cannot rewrite the contract of parties but must give effect to it- **OWIGS AND OBIGS NIGERIA LIMITED v. ZENITH BANK PLC (2020) LPELR-50702 (CA).**

Let me take a break at this point to pay attention to exhibit C1. It is titled 'DEMAND FOR PAYMENT OF DEBT'. The Claimants alleged that they issued that letter to the Defendant and what was tendered was an alleged *'endorsement and return copy'*. There is nothing on the face or reverse side of exhibit C1 showing that it was served on the Defendant. There is no acknowledgement neither is there a remark by the person who allegedly served it. For the

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purpose for which it was tendered and admitted, it lacks weight and no probative value shall be ascribed to it.

As has been noted in course of this judgement, the Defendant has defaulted in discharging the obligation placed on him by exhibit C2 and the Claimants are entitled to some form of recompense.

Claimants are laying claim to legal fees. The law is that, he who asserts must lead credible evidence in proof. Per Ejembi Eko in **AKINBADE & ANOR v. BABATUNDE & ORS (2017) LPELR-43463(SC)** on whether he who asserts must prove, spake thus:

'...When the burden of rebutting this presumption in law is taken together with other legal burdens placed on the Appellants, as the plaintiffs, their task is rather enormous. He who asserts must prove under the Evidence Act...'

The cost of litigation is a specie of special damages and strict proof is required. Claimants in proof of this claim tendered and the Court admitted exhibit C3. Worthy of mention is the fact that exhibit C3 is a shabby hand-written piece of paper, with no care and regard given to professionalism. To the mind of the Court, that document was hastily procured. However, for what it is worth, the Claimants have termed it the receipt issued to them by their Counsel, the Court cannot state/hold otherwise. The Claimants' counsel is however cautioned.

It is germane to succinctly state that the evidence as led by Claimants were unchallenged and the Court is enjoined to place reliance on them, and I so hold. The burden placed on Claimants in law is proof beyond probabilities and nothing more. Notwithstanding, where the Defendant does not defend as in the instant case, what is expected is minimal proof. The Court finds that the Claimants have discharged the burden placed on them and are entitled to judgement.

Judgement be and is accordingly entered in favour of Claimants jointly and it is adjudged that the Defendant pay to the Claimants jointly, the following:

1. N1,309,500 (One Million, three hundred and nine thousand, five hundred naira) only, being the balance of the sum owed the Claimants;
2. N1,000,000.00 (One million naira) only, as cost; and

It is further ordered that these orders are to be complied with not later than 21 days from today.

SIGNED ANUGBUM,
OBIARERI N.
SMALL CLAIMS COURT III
17/02/2025



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