IN THE SMALL CLAIMS COURT OF RIVERS STATE OF NIGERIA

IN THE PORT HARCOURT MAGISTERIAL DISTRICT

HOLDEN AT PORT HARCOURT

CLAIM NO: PMC/SCC/146/2026

BETWEEN

OLUCHUKWU JOSEPH IFEANYICHUKWU
(SUING THROUGH HIS LAWFUL ATTORNEY SAMUEL CHINEDU ANYAELE) **CLAIMANT**

AND

ELLA LOGISTICS SERVICES **DEFENDANT**

Parties are absent.

Appearances- J.I Noah appears for the Claimant; V.U. Nwuju appears for the Defendant.

JUDGEMENT

The Claimant instituted this matter vide a summons filed the 20/04/2026 and is praying the Court for the following:

1. The sum of N2,000,000.00 being the value of items sent to the Defendants for shipping;
2. The sum of N800,000. 00 as cost of litigation; and
3. The sum of N2,000,000.00 as cost.

The Defendant was served on 04/05/2026, sequel to which a plea of not liable was entered for the Defendant on the 11/05/2026 by V.U. Nwuju, the Defendant's counsel and the matter was set down for hearing.

The Claimant commenced hearing on the 05/06/2026, fielded one witness, tendered six exhibits and closed its case on the 08/06/2026.

The following exhibits were tendered by the Claimant:

C1 a-c – Power of Attorney;

C2 a & b- Notice of breach and letter of demand dated 08/01/2026;

C3 a-c – Photographs;

C4 – Transaction receipt from Fidelity bank;

C5 a-j – WhatsApp chats; and

C6 a- d – WhatsApp chats.

The Claimant filed its final written address on 15/07/2026.

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The defense opened its case on 24/06/2026, fielded a sole witness, tendered Exhibits D-Certificate of compliance; D1-- Email from UPS; D2 a-c-- ELLA Logistics intake form; D3 a-e – Invoice from ELLA Logistics Services; and D4 1-30 –WhatsApp chats. The defense closed its case on 08/07/2026.

The Defendant filed its final written address on 14/07/2026. Parties adopted their final written addresses on the 15/07/2026.

THE CLAIM

The CW1 the sole witness and lawful attorney of the Claimant testified that, the Claimant donated a power of attorney to him on 20/12/2025. On 01/11/2025, the Claimant approached the Defendant for shipment of items to Canada in view of Christmas festivities, to be used by his family in Canada. The Defendant made a list of how the items would be sent and they were packaged into three boxes, with the weight attached. A service charge of N836,275 as demanded by Defendant, was paid by the Claimant. The Defendant undertook to deliver the shipment on or before Christmas. Tracking codes were sent and they were found to be non-existent as even UPS which the Claimant was referred to, directed the Claimant to go back to the Defendant as they did not have those tracking numbers. The Defendant did not deliver till January 2026 as they only delivered two out of the three boxes. The undelivered box contains 10 pieces of clothing which cost N135,000 per piece, four jackets which cost N140,000 per piece, two pieces of clothing owned by the Claimant's son, soap and other items, worth over N100,000. The Claimant wrote to them and parties exchanged correspondences. The Defendant is yet to refund or return the undelivered box.

The Claimant in its written address, raised and argued two issues for determination. Sam C. Anyaele on behalf of the Claimant argued that the Claimant, having proved its case, the burden shifted to the Defendant to prove that she delivered the items to the Claimant. On the second issue, the Counsel contends that the evidence of the Defense was contradictory on material issues and should be rejected.

THE DEFENSE

Bankole Michael Olusina, the sole witness for the defense, testified that on 31/10/2025, Claimant came with a shipment and as it is their practice, the shipment was arranged in boxes. In the instant case, it was arranged in three boxes, to be shipped to Canada. An intake form was issued to the Claimant, containing details of the sender/receiver and declared value of the shipment. The amount charged was paid by the Claimant. The door to door delivery is handled by UPS USA, for final delivery. When there was complaint of non-delivery of one of the boxes, the Defendant wrote to UPS and vide a mail, UPS said the box has been delivered on 13/12/2025, though the mail was received on 21/01/2026.

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In her final written address, the Defendant raised and argued one issue for determination. U.C. Eze on behalf of the Defendant, argued that the CW1 lacked firsthand knowledge of the material facts and was therefore incapable of giving credible evidence. Counsel further argued that the Claimant's case is riddled with inconsistencies as the Claimant is also unable to quantify its alleged loss. Counsel for the defense also contends that the claims before this Court is founded largely on speculative, contradictory and unsupported evidence, and should be dismissed.

COURT

The Court has the powers to adopt, reframe or even modify the issues raised by parties. The Supreme Court re-echoed this principle in **OBOT v. STATE (2026) LPELR-83546 (SC)** when it held thus:

"Prefatorily, this Court is at liberty and possesses the power to accept, reject, or modify all or any of the issues formulated by the parties and frame its own issues if in its view, such issues as formulated by the parties, will not lead to a proper determination of the appeal. The purpose of formulating issues for determination is to narrow the issues in controversy between the parties in the interest of accuracy, clarity, and brevity to lead to more judicious and proper determination of an appeal." ***Per ABUBAKAR SADIQ UMAR, JSC (Pp 7 – 8 Paras F – B)***

Consequently, this Court has formulated one issue for determination, thus:

- Whether the Claimant has proved its case to be entitled to judgement.

The Supreme Court in a case reported on 28th April 2025 in **IGWENAGU V MIN., F.C.T & 3 ORS (2025) 7 N.W.L.R (PT.1988) 145** spake thus:

'By virtue of sections 131, 132 and 133(1) of the Evidence Act, 2011, a plaintiff bears and owes the initial burden of proving the facts asserted in the pleadings upon which the claims are predicated on the balance of probabilities or preponderance of credible evidence. Until that burden is satisfactorily discharged, the claims are liable to fail and be dismissed without the need for a consideration of the case presented by the defendant; since in the circumstances he owes no burden of proving his defense to the action. In that situation, there would be no evidence that calls for reversal or rebuttal by the defendant...Mozie v Mbamalu (2006) 15 NWLR (PT. 1003) 466.'

It follows therefore that on the Claimant lies the burden of proof in civil cases.

The grouse of the Claimant in the instant case is that is one out of the three boxes the Defendant was obligated to deliver to the Claimant and his family in Canada, was not delivered.

A safe starting point in the resolution of the lone issue raised, shall be, dealing with the reliefs sought, *seriatim*.

In relief one, the Claimant is praying the Court for the sum of N2,000,000 as cost of the items not shipped.

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As has been led in evidence, the Claimant sent items to the Defendant to be shipped to Canada and the Defendant packed them into three boxes. The Claimant contends that, only two boxes have been delivered, leaving the whereabouts of the third box, unknown.

The Defendant on the other hand, contend ferociously that they have delivered the three boxes.

In course of cross-examination of DW1 on 24/06/2026, the following transpired:

Q. Do you have anything to show that the three boxes were delivered?
A. The first two were delivered. The mail is for the third.
Q. Show us the delivery dates of all three boxes.
A. Exhibit D1 shows that. Exhibit D4 1-30.

Exhibit D1 is a mail from UPS dated 21/01/2026. It reads thus: *Dear Ella Logistics Services, I hope this message finds you well. I can confirm that the shipment with tracking number 1ZH259466835259691 was dropped off on December 27, 2025, and delivered to the customer on January 13th, 2026 at 10:37 AM as seen on our internal tracking system. At this point, we have concluded our investigation and considered this matter closed.*

Exhibit D4 1-30 is a bundle of WhatsApp chat between the Claimant and staff of the Defendant who processed the shipment. As can be seen in page 28 of exhibit D4, it was on 29/12/2025 that the Defendant supplied tracking details to the Claimant - 1ZH259466825112303, 1ZH259466829212082, and 1ZH259466835259691.

Exhibit C6 a-d is a part of exhibit D4 1-30, particularly, 24, 25,26, and 27. From exhibit C6 a-d, what was not delivered and the subject matter of the instant suit is the box with the tracking number- 1ZH259466835259691. Meanwhile, pursuant to the mail sent by UPS as reproduced above, the said shipment was delivered on 13/01/2026. A quick juxtaposition of the email sent by UPS and the proof of delivery as shown on UPS website shows that the box delivered on the said 13/01/2026 was the one with the ID Number- 1ZH259466829212082 and not 1ZH259466835259691 as claimed by the mail in exhibit D1.

On further cross-examination of 08/07/2026 of DW1, the following transpired:

Q. D4 28 contains evidence of delivery of the boxes.
A. It shows the delivery of the second batch (2nd delivery)
Q. There are communications between you and Claimant after delivery of the last batch.
A. Yes, D4 29.
Q. The box referred to was the last box for which we are in Court.
A. Yes. As at the time of this communication, UPS has not gotten back to us to show that the 3rd box was delivered.

The excerpts above show that two boxes were delivered, though the Defendant contends that the third box was delivered as told them by UPS. DW1 told this Court that there was a glitch in communication between the head office in Lagos and the branch office in Port Harcourt

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where the shipment was created, which made the staff of the Defendant to keep assuring the Claimant of the delivery of the last box.

As led in evidence, the Defendant as at 25/02/2026 was still reassuring the Claimant of the delivery of the last box. When asked, DW1 said exhibit D4 28 is the only evidence of delivery of Claimant's package.

In **AUSTIN LAZ THERMOPLASTIC INDUSTRIES LTD & ANOR v. GTBANK (2025) LPELR-81398(SC) (Pp 27 - 28 Paras F - E),** the apex Court held thus: *"The law is long-since settled that evidence elicited during cross-examination from the adverse party constitutes the case of the party cross examining. This Court, per Kekere-Ekun, J.S.C. (now CJN), in the case of MTN V Corporate Communication Investment Ltd (2019) LPELR-47042 (SC), while relying on an earlier decision of this Court Per Onnoghen, JSC (later CJN) in the case of Akomolafe V Guardian Press Ltd. (2010) 3 NWLR (Pt.1181) 338, 351, F-H, held firmly as follows:*

"It is settled law that evidence elicited from a party or his witness(es) under cross examination, which goes to support the case of the party cross-examining, constitute evidence in support of the case or defence of that party. If at the end of the day the party cross-examining decides not to call any witnesses, he can rely on the evidence elicited from cross examination in establishing his case or defence. In such a case, you cannot say that the party calls no evidence In support of his case or defence." Per JUMMAI HANNATU SANKEY, JSC (Pp 27 - 28 Paras F - E)

The evidence of DW1 that exhibit D4 28 is the only evidence of delivery of the Claimant's package, lends credence to the evidence of the Claimant.

The Court held in **ONUBOGU v. ANAZONWU & ORS (2023) LPELR-60288(SC) (Pp 41 - 42 Paras B - A)** that: *"In civil cases, the burden of proof shifts and it oscillates between the Plaintiff and the Defendant. However, the onus of adducing further evidence is always on the party who would fail if such evidence were not produced. See OMISORE V. AREGBESOLA (2015) 15 NWLR (PT. 1482) 205; AGBAKOBA V. I.N.E.C. (2008) 18 NWLR (PT. 1119) 489; ESEIGBE V. AGHOLOR (1993) 9 NWLR (PT. 316) 128." Per ADAMU JAURO, JSC (Pp 41 - 42 Paras B - A).*

The Claimant has placed before this Court, proof of delivery of the other two boxes. The burden has shifted to the Defendant and has been stated above, there is no proof that the box with the tracking number 1ZH259466835259691 was delivered. There is no proof of delivery, neither is there any communication of such before this Court.

Having found that the Defendant did not deliver the third box, what then is the value of such box? The Claimant in course of its evidence told this Court that, the undelivered box contains 10 pieces of clothing which cost N135,000 per piece, four jackets which cost N140,000 per piece, two pieces of clothing owned by the Claimant's son, soap and other items, worth over N100,000.

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Exhibit D2 a-c is a document titled intake form. It houses the details of the sender/receiver, items to be shipped and declared value of the items. On its face, the Claimant declared N700,000 as the value of the items to be shipped. This piece of evidence is in sharp contrast with the evidence led by the Claimant and the relief as set out on the face of the originating process.

In **DAGAZU CARPETS LTD v. BOKIR INTERNATIONAL CO. LTD & ANOR (2025) LPELR-80302(SC) (Pp 33 - 33 Paras B - E)** it was held thus: *"One point cries for emphasis. A party can prove a case by dint of parol evidence or documentary evidence. It is not mandatory that a party must adduce viva voce evidence to prove an action. Tendering relevant documentary evidence is sufficient to prove a case. In deserving circumstances, documentary evidence is more reliable than oral evidence. The reason is not farfetched. Documentary evidence is permanent, incorruptible and indelible unlike oral testimony which oozes out of vocal cord of a witness and susceptible to denial and distortions by its author." Per OBANDE FESTUS OGBUINYA, JSC (Pp 33 - 33 Paras B - E)*

In the face of manifest discrepancy such as in the instant case, oral evidence cannot override the contents of a document. More-so, the document is an original copy and was signed by the Claimant. Exhibit D2 c is a breakdown of the weight and cost of each of the three boxes. Amongst the break down, the Claimant did not lead any evidence of which of the breakdowns, belong to the undelivered box.

As has been pointed out, the Claimant declared N700,000 as the value of the items shipped. What portion of that N700,000 covers the undelivered box? The Claimant did not lead any evidence in answer thereto. This Court is not a *Vasco Dagama*, embarking on a voyage of discovery, as that is not the duty of the Court.

The Court cannot as well speculate as the Court is also forbidden from so doing.

For the purpose of clarity and avoidance of doubt, the Court is of the considered opinion that the Defendant breached the contract of shipment as it has left the box with number-1ZH259466835259691, undelivered. However, to be entitled to relief one, the sum claimed must be a liquidated money demand.

Article 18 of the Practice Direction of this Court defines liquidated money demand to mean, *'a debt or other specific sum of money usually due and payable and its amount must be already ascertained or capable of being ascertained as a mere matter of arithmetic without any further investigation.'*

The sum owed for the undelivered box is not already ascertained, neither is it capable of being ascertained by a mere matter of arithmetic without any further investigation.

Relief two is the sum of N800,000 as cost of litigation.

It has been held in a plethora of authorities that cost of litigation is in the sphere of special damages and shall be proved strictly. I have searched the length and breadth of the evidence

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led by the Claimant, and in no sentence did the Claimant lay claims or lead evidence in proof of same. The law is settled that where no evidence is led in proof of a relief, it is deemed abandoned. The Court is of the considered opinion that that relief for cost of litigation was a mere decoration. It fails and is refused. I so hold.

The last relief is for the sum of N2,000,000.00 only, as cost.

In **EZENNAKA v. COP, CROSS RIVER STATE & ANOR (2022) LPELR-59628(SC) (Pp 37 - 40 Paras E - C)**, the Court posited thus: *"award of costs by a Court, is usually regulated by the Rules of Court which vest the Court with the judicial discretion to assess and make order for costs as the facts and circumstances of a case may warrant or justify.*

The award of costs in a matter is therefore generally, regarded as discretionary on the part of the Court, which discretion is always required by law to be exercised judicially and judiciously. See Akinbobola v. Plisson Fisko Nig. Ltd. (1991) 1 NWLR (pt. 167) 270, Olasape v. N.B.N. Ltd. (1985) 3 NWLR (pt. 11) 147, UBA v. GMBH (1989) 1 NWLR (pt. 110)374, Anyegbunam v. Obaka (1993) 5 NWLR (244) 449, NNPC v. Clifco Nig. Ltd. (2011) 10 NWLR (pt. 1255) 234. This position of the law is premised on the principle that costs follow or should follow events and that a successful party in litigation is entitled to be indemnified for all the reasonable expenses incurred in the prosecution of a matter up to judgment. These expenses include fees for services of counsel, production of witnesses/evidence and genuine and reasonable out of pocket expenses incurred in the course of trial by the successful party, e.t.c.. See Ojiegbe v. Ubani (1961) 2 NSCC 1153, Onabanjo v. Ewetuga (1993) 4 NWLR (pt. 288) 443, Uzoma v. Okorie (2000) 15 NWLR (pt 692) 882, Sogunro v. Yeku (2003) 12 NWLR (pt. 853) 644, Int. Offshore Constr. Ltd. v. Shoreline Lift-Boats Nig. Ltd. (2003) 16 NWLR (pt. 845) 157, ACB v. Ajugwo (2012) 6 NWLR (pt. 1295)97.

By virtue of the provisions of Order 15 rule 3 of the Magistrate Court (civil procedure) Rule 2007, the Court is enjoined to award to a successful party, cost.

The Court from the foregoing evaluation, is not in doubt that the Claimant has to an extent, discharged the burden placed on it in law.

To the extent that the Claimant has proved its case, judgement be and is hereby entered for the Claimant. It is consequently adjudged that the Defendant pays to the Claimant, the sum of N1,000,000.00 as cost, not later than 21 days from the date of this judgement.

SIGNED

ANUGBUM, OBIARERI. N, ESQ.

CHIEF MAGISTRATE I

SMALL CLAIMS COURT IV

27th July, 2026



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