

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 25TH DAY OF MARCH 2025
AT THE SMALL CLAIMS COURT 4 PORT HARCOURT

SUIT NO: PMC/SCC/345/2024

BETWEEN

MR EMMANUEL OKAFOR ----- CLAIMANT

AND

K.E & TECHNICAL SERVICES LTD
MADAM OBINNA KALU } **DEFENDANTS**

PARTIES: Claimant present. Defendant absent

APPEARANCES: K.A. Ogoloma Esq for claimant

C.O. Igwe Esq for defendant

JUDGEMENT

By a summons dated 9/12/2024, the claimant's claim against the defendants are as follows:

1. N2, 630, 000.00 being amount owed the claimant
2. 10% interest from 2017 till judgement
3. N200, 000.00 as cost of litigation.

PLEA

By the affidavit of service availed this court, the 1st defendant was served the originating process in this suit personally on the 16/12/2024 at 2:26pm while the 2nd defendant was served via substituted means by pasting. On the 5/2/2025, a plea of not liable was entered for and on behalf of the absent defendants. Case was adjourned to the 10th, 11th, 12th and 13th of February 2025 for hearing.

SUMMARY OF EVIDENCE

The claimant in proof of his case called a lone witness, the claimant himself and tendered nine exhibits marked Exhibit A, B1, B2, C1, C2, C3, C4, D and E.

The defendants for their defence called a lone witness and tendered five exhibits marked Exhibits F, G, H1, H2 and H3

The relevant facts from the case of the claimant as presented by the claimant himself is that he is a businessman into the business of servicing of valves and that the 2nd defendant is his customer. That he was introduced to the 2nd defendant who needed his services and liked his work and continued to use him for jobs. That in 2017, the defendant called him for a job but pleaded that she had no money and was going to pay later. That after the job, he kept demanding for his payment but the 2nd defendant blocked him and when he eventually saw her face to face, she said she hadn't been paid for the job. That the defendants are owing him the sum of N2, 650, 000.00 plus N200, 000.00 he paid to his lawyer. Invoice of supplies to the defendant was admitted as Exhibit A1, A2 and B.

Waybills were admitted as Exhibits C1, C2, C3 and C4. Letter of demand sent to the 2nd defendant was admitted as Exhibit D and Form RSSC1 admitted as Exhibit E. Case was adjourned for cross examination of CW1.

The defendant for her defence states that she knows the claimant as someone who used to work for her. That what led to this incident was because she contacted the claimant for a client who needed his equipment modified. That he told the client that the claimant does that for her and asked him to contact the claimant. That he claimant and the man discussed. That she wasn't party to the discussion. That after the job, the company that contracted them did not take the equipment due to community issues and the man did not pay the claimant and the claimant informed her that he did not know the man's location since they met in her office. That she gave him the man's number. That she did not know that the claimant hadn't been paid till the claimant informed her and she contacted the man who did not deny owing the claimant but only complained of his attitude and threats which she cautioned him of. That upon further complaints, she sent her worker to go with the claimant to the man's office but they met his absence. That she even suggested the claimant go loose the valve from the machine at the man's yard but he refused asking for N50, 000.00 rental fee per day. That the claimant resulted to abusing and threatening her and she decided to stay clear of the transaction. That she has been doing transactions with the claimant and never owed him. Certificate of incorporation was tendered as Exhibit G. Her account statement was admitted as Exhibit H2 and H3. Case was adjourned for cross examination of DW1.

At the end of evidence, on the 18/3/2025 parties adopted their written addresses and case was adjourned for judgement now being read.

In the defendant's written address settled by their counsel C.O.Igwe Esq. three issues were raised for determination to wit:

- 1. Whether this honourable court can make an order against a person or entity not before it?**
- 2. Whether the claimant is entitled to the sum claimed having already benefitted for the services rendered and paid by the 2nd defendant**
- 3. Whether the 2nd defendant is liable to contract entered into between the claimant and said Mr Abani**

On Issue one counsel submitted that a juristic person is either a natural person in the sense of a human being or an entity created by law and special artificial being created by legislation vested with the capacity to sue and be sued. Counsel posited that the court in **NJEMAZE V SHELL BP (1961) ALL NLR 166** held that the court cannot entertain a matter brought against a non-juristic person. That the court held that the name shell BP was not a juristic person. That when a party uses or is being used in the wrong juristic name such as in the instant case, the court may consider it as a misnomer and a misnomer must be corrected with the leave of court. Counsel posited that the learned counsel to the claimant ought to seek the leave of court to amend and their refusal to amend the misnomer goes to the issue that the 1st respondent is the party they intend to sue. Counsel further urged the court to resolve issue one in favour of the defendant.

On Issue two submitted that in the case of **EGHAREVEBA VS OSAGIE (2008) 18 NWLR (1173) 299** the court held that where there is oral as well as documentary evidence, the latter should be used as a hanger from which to assess the oral evidence. In other words, documentary evidence is the best evidence. Counsel stated that by the content of Exhibit H2 and H3, the claimant adequately paid for the services rendered which by the record, the amount received by the claimant is away more than being claimed. That the last time the claimant received money from the 2nd defendant was in 2018 a fact he intentionally withheld from the court knowing it will be unfavourable to him. Counsel cited **SECTION 167 (D) OF THE EVIDENCE ACT 2011**. That even if the 2nd defendant signed Exhibit C3, does it warrant the claimant to lay claim on a transaction that have already been paid as demonstrated by Exhibits H2 and H3. That the court in **STANBIC IBTC BANK PLC VS L.G.C. LTD (2018) 10 NWLR (1626) 96 (CA)** held that a party would not be allowed to enter into a transaction with the full knowledge of its irregularity take the benefit and turnaround to repudiate the transaction. Counsel urged the court to dismiss the claimant's claim.

On Issue three, counsel submitted that by the testimony in chief of the claimant, the claimant dubiously admitted that there was another person in the transaction but skilfully refused to bare in truth the exact crux of the matter between him and the man wherein he likened it to be a situation of the man being the principal of the 2nd respondent. That can an action be brought against a person when there's a known principal? That the 2nd defendant has stated she has no transaction with

the claimant and was not privy to the transaction between him and Mr Abani and by the case of **EYIBOH VS MUJADDADI & ORS (2021) LPELR-57110 (SC)**, the court stated that in law that a person is not under any obligation to bear the burden of a contract to which he is not privy even though the contract is in his favour or benefit. In conclusion counsel urged the court to dismiss this suit with punitive cost.

In the claimants final address settled by his counsel K.A. Ogoloma Esq. three issues were raised:

- 1. Whether there's a contract between the claimant and the defendants?**
- 2. Whether there is a fundamental breach on the part of the defendants?**
- 3. Whether the 1st defendant is a proper party?**

On issue one counsel submitted that the principles of contract are very clear as stated in the case of **ASSET RESOURCES MANAGEMENT COM. LTD VS ELIZADE NIG LTD** that parties can make their contract thoroughly or in writing as long as all the essential elements can be ascertained and shown to exist. Counsel submitted that there was a contract between the claimant and the defendants as regards the supplies and services of oil tool valves. That the defendant offers is the expression by its readiness to contract on the terms specified by the claimant which if accepted by the offers gives rise to a binding contract. Counsel urged the court to resolve issue one in favour of the claimant.

On Issue two, counsel submitted that in the case of **MCKWUNYE VS EMIRATES AIRLINE (2020) ALL FWLR (1029)** the court held that a fundamental of a contract is a stipulation which the parties have agreed either expressly or by necessary implication which gives to the root of the contract so that any breach of the term may at once and without further reference to the fact and circumstance can be regarded by the innocent party as a fundamental breach and this is conferred on him the alternative remedies as option. Counsel also defined what a fundamental breach entails and urged the court to resolve same in favour of the claimant.

On issue three, can opined that the 1st defendant being a party to the contract, there cannot be a more proper party to the contract of supplies of goods and services in issues than the claimant who supplied goods and services to the 1st defendant. Counsel after defining what a juristic person means as stated in the case of **MULTICHOICE NIG LTD VS. MCSC LTD (2020) ALL FWLR (1063) RATIO 11**

PAGE 843 PARA A-B stated that the defendants counsel has tried to mislead the court as the 1st defendant was a party to this contract of which the 2nd defendant signed invoices with the name of the 1st defendant and affirmed this during cross examination. In conclusion, counsel urged the court to grant their claims.

RESOLVE

In determination of this suit, I will adopt a lone issue to wit.

- 1. *Whether the court can make an order against the 1st defendant?***
- 2. *Whether the claimant has been able to prove his case to be entitled to judgement?***

It is trite law that the standard of proof in any civil case is on the balance of probabilities and that burden lies on the person who will fail if no evidence at all were given on either side. **SEE SECTION 131 AND 134 OF THE EVIDENCE ACT 2011.** From the above, the burden of proof is obviously on the claimant to prove his claim but this burden is not static as it fluctuates as the case goes on. The claimant in the instant case claims the defendants had a business dealing with him and has refused to pay him. In proof of same he tendered invoices and waybills (Exhibits A, B and C). The defendant for her defence states that she had no dealing with the claimant who has been her customer and agreed to the fact that she signs in the name of K. E & technical services ltd but had paid for all services rendered to her by the claimant and in proof tendered Exhibits H2 and H3, her account stamen showing all the services rendered by the claimant that has been paid for and the case at hand has to do with another party who she introduced to the claimant.

On the first Issue, I will simply adopt the submissions of learned counsel the defendants and add that by Exhibit H2 and H3 tendered by the 2nd defendant, the claimant was paid in the name of Kalbi Engineering & Technical services ltd. That should have given the claimant the hint needed to sue the right party irrespective of what is contained in the invoice. Even after Exhibit G (letter of incorporation was tendered) the claimants counsel refused to apply to amend hence leaving the court no option than to believe they really wanted to sue K.E & technical services Ltd. It is trite law that the court cannot entertain a matter against a non-juristic person, accordingly the 1st defendant is struck out from this suit.

On the second issue whether the claimant has been able to prove his case to be entitled to judgement? As already stated, civil cases are decided on the balance of probabilities. The proof on balance of probability implies that the case of both parties will be placed on an imaginary scale of justice and the side of the scale which is heavier and tilt down will be on top in the case. The claimant while giving evidence informed the court that since his services rendered to the 2nd defendant and upon her refusal to pay, she has been avoiding his calls and even blocked him off with her four lines. The claimant blatantly told this court after the 2017 dealings; he had no more business with the 2nd defendant as she blocked him. That evidence was discredited during cross examination as Exhibit H2 shows that money was paid from the 2nd defendant to the claimant on the 16th of March 2018. It is trite law that the court will only act on credible evidence which is reliable upon proper evaluation. The court in the case of **OGUNTAYO V ADEBUTU (1997) 12 NWLR (531) 81 AT 94 PARA A-B** held that a witness who sets out deliberately to mislead the court either by denying facts known to him or misrepresenting facts upon which he is questioned until forced to retract or contradict himself cannot be relied upon because he has by his performance destroyed any rational basis for accepting his evidence in part or total based on credibility. During cross examination the claimant was asked if he stopped working for the 2nd defendant after 2017 and he answered 'Yes after owing me'.

The claimant was also asked when he started doing business with the 2nd defendant and he said 2015 yet Exhibit H2 shows a transfer to him on the 1st of September 2014.

The inconsistencies in the signatures and names also do not help the case of the claimant. The court stated in the case of **KAYILI V. YILBUK (2015) 7 NWLR PART 1457 page 26 AT 77 PARA C** that where there are material contradictions or inconsistencies in the evidence adduced by a party, the court is enjoined to reject the entire evidence as it cannot pick and choose which to believe. The entire evidence must be rejected. A claimant will only succeed on the strength of his case. I have weighed the entire evidence by parties and the balance of truth does not favour the claimant. Accordingly, this suit is dismissed for want of proof.