

IN THE MAGISTRATE COURT OF RIVER STATE OF NIGERIA
IN THE PORT HARCOURT MAGISTERIAL DISTRICT
HOLDEN AT PORT HARCOURT

RESUMED ON TUESDAY THE 30TH DAY OF JANUARY, 2024
BEFORE HIS WORSHIP S. S. IBANICHUKA, ESQ
HOLDEN AT SMALL CLAIM COURT 6 PORT HARCOURT

PMC/SCC/276/2023

OTONJO EMOYON-IREEDIA
VS.
OLUWAFEMI JOSEPH ADEGBENGA

JUDGMENT

The Claimant in this suit sued through her Lawful Attorney Usifo Osele Emoyon-Iredia against the Defendant as per her forms RSSC2 and RSSC3 for the following:

1. The total outstanding balance of **₦1,920,000.00 (One Million, Nine Hundred and Twenty Thousand Naira)** as at 28/11/2023 which was in the cause of this proceedings and upon application of the claimants counsel which was granted by this court on 22/01/2024 amended to read **₦2,160,000.00 (Two Million , One Hundred and Sixty Thousand Naira)** only.
2. **₦2,000,000.00 (Two Million Naira)** being general and exemplary damages for the Defendants breach of contract and
3. **₦500,000.00 (Five Hundred Thousand Naira)** only being cost of litigation and expenses incurred for this action.

In the cause of this proceedings the Claimant led evidence on her claim on interest on the entire judgment sum at the rate of 20% per annum until the final liquidation of the total judgment debt.

The summary of the claimants case as presented in the evidence of CW1 is that, the claimant entered into an investment contract with the Defendant where she invested an initial sum of **₦240,000.00 (Two Hundred and forty Thousand Naira)** with Return on investment (ROI) of **₦60,000.00 (Sixty Thousand Naira)** per month with R.O.I in percentage at 25% for twelve months, that the Defendant paid the claimant the monthly ROI only for three months and proceeded to unilaterally modify the contract to reduce the ROI, a move which the CW1 testified that the claimant, opposed via a letter to the defendant. CW1 further testified that the Defendant breached the contract, consequently the claimant wrote a letter through

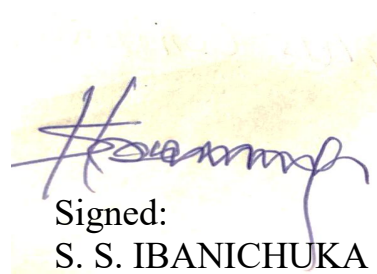
her lawyer to the Defendant, giving the Defendant a final demand notice. CW1 continued in evidence by stating that the defendant has never replied any of the letters written to him demanding for the accrued sum due the Claimant. That the Claimant has incurred avoidable cost, several expenses, hardship and financial loss as a result of the defendants breach to the contract, that the Defendant is liable to all the reliefs sought by the claimant. He concluded by asking the court to grant the unchallenged claims of the claimant as endorsed on form RSSC3, with interest in the entire judgment sum at 20% per annum judgment sum. The CW1 also testified that due to the Defendants refusal to pay the Claimant the money due her, it became imperative to commence a legal action against the Defendant from which he briefed A. I. Chimezie, Esq. of Owhonda – Wopara & Co. to file this suit. The Defendant on his part never entered appearance on this suit, there is prove of service of the originating processes in this suit on the Defendant, there is also prove of service of hearing notice of on the Defendant. However, the Defendant did not appear in court to defend this suit neither was he represented by counsel.

In a suit such as this all that is required of the claimant is to prove her case on a balance of probability or on a preponderance of evidence, the Defendant in this suit did not rebut any of the claims of the claimant in this suit by way of a defence. In such circumstances the Defendant is deemed to have admitted the claims of the Claimant and in deserving cases the claimant will be entitled to his claim. See: **Section 123 of the Evidence (Amendment) Act 2023** and the case of **CBN V. DINNEH (2010) 17 NWLR (PT. 1221) PAGE 125, 162 at paragraphs C-D.**

I have considered the claim of the Claimant and the counsel's final written address. The law is trite that in civil cases the burden of prove is on the Claimant. See **FBN PLC V. ONYIYANGI (2000) 6 NWLR (PT.661) PAGE 497 AT PARAGRAPH E.** The court in considering the claim for the cost of this litigation as contained in Form RSC 3 noticed that besides endorsing this claim on the form RSSC 3 the claimant did not place anything before this court to show that the sum of ₦500,000.00 (Five Hundred Thousand Naira) was paid as cost of this litigation, not in evidence and not as exhibits before the court. This court is therefore not satisfied that the Claimant has proved on a balance of probability that she indeed paid the sum of ₦500,000 (Five Hundred Thousand Naira) as cost of this litigation. As stated earlier the claimant when giving evidence through CW1 added a claim for interest on the entire judgment debt at the rate of 20% per annum until the final liquidation of the judgment debt. On this score, this court lacks the jurisdiction to order as prayed accordingly it is hereby adjudged as follows:-

- (i). That the Claimant is entitled to the sum of **₦2,160,000.00 (Two Million One Hundred and Sixty Thousand Naira)** only, being the principal sum owed to the claimant by the Defendant as at 28/11/2023.
- (ii)The sum **₦2,000,000.00 (Two Million Naira)** only being general and exemplary damages for the Defendants wanton breach of contract.
- (iii) The claim for **₦500,000 (Five Hundred Thousand Naira)** as cost of this litigation fails and same is refused.
- (iv) This court lacks the jurisdiction to grant the prayer for interests on the entire judgment sum at the rate of 20% per annum until final liquidation of the total judgment debt.

I make no further orders.



Signed:

S. S. IBANICHUKA , ESQ.

30/01/2024