

**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 17TH DAY OF APRIL 2024
AT THE SMALL CLAIMS COURT 4 PORT HARCOURT**

SUIT NO: PMC/SCC/243/2024

BETWEEN

**ONYENWE NWANI
IZUCHUKWU NSOR** } **CLAIMANTS**
AND

INNOCENT MARK ----- DEFENDANT

PARTIES: Claimants present. Defendant absent

APPEARANCES: Jane O.A. James Esq. for Claimant

JUDGEMENT

By a claim dated 20/11/2023, the Claimant's claim against the Defendant are as follows:

1. N4, 586,280.00 being money for steel materials supplied.
2. N300, 000.00 as damages
3. 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 same at the Defendant's door on the 1st of December 2023 at 10.00am. On the 4th of December 2023, the Defendant pleaded not liable to the claims of the Claimants and case was adjourned to the 12th of December 2023 for hearing.

SUMMARY OF EVIDENCE

The Claimants in proof of his case called three witnesses and tendered four Exhibits marked Exhibits A-D.

The Defendant appeared and gave his evidence but refused to appear for cross examination hence his evidence was expunged.

The relevant facts from the case of the Claimant as presented by 1st Claimant is that they are traders at Mile 3 building material. That last year the CW3 introduced him to the Defendant who is his boss, that he had a contract and needed supplies of materials to carry out the contract and he was going to pay for the materials in two weeks' time. That they exchanged numbers and upon the request of the Defendant, they visited his office where he informed them of the contract and that he needed steel materials and was going to make payment in two weeks' time. That the Defendant gave them a cheque to cover for the payment which will be made in two weeks' time. That they gave the Defendant the steel materials and when the two weeks elapsed, the Defendant refused picking their calls and the few times he picked, he promised to pay them but never did. That they gave the Defendant goods worth N4, 586, 280.00. That the goods were not entirely theirs and the people that gave them the goods arrested them. The said cheque was admitted as Exhibit A. The sales invoice was also admitted as Exhibit B1 and B2 respectively. That they took the said cheques to Access Bank who credited them and same day debited them of that payment. Both the cheque deposit and CW1's account statement were admitted as Exhibit C1 and C2.

The CW2 who is the CW1's business partner corroborated the testimony of the CW1 and the CW3 who is the person that introduced the Defendant to the Claimants also corroborated their testimony.

The Defendant appeared and gave his evidence but refused to appear for cross examination hence his evidence was expunged.

On the 12th of March 2024, the Claimants waived their right to address and asked that judgement be entered as per their claims.

RESOLVE

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

Whether the Claimants are entitled to their claims

As already stated, the failure of the Defendant to make himself available for cross examination 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. It is worthy to point out 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 would not accept a piece of evidence which is not material and of no probative value merely because the only evidence before the court is that of the Claimant. See the case of **AREWA TEXTILES PLC V. FINETEX LTD (2003) 7 NWLR PART 819 PAGE 322 AT 341 PARA D-G**. In essence, the evidence of the Claimant must be enough to sustain the claim.

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, by way of evidence, the 1st Claimant has tendered the sales invoice for the steel materials supplied, he has also tendered the cheque issued by the Defendant, their account statement were the said sum was credited and then debited by the bank on the instruction of the Defendant. All these prove the truthfulness in the testimony of the Claimants.

On the second claim for damages, the primary object of the award of damages is to compensate the Plaintiff for the harm done to him. The secondary object of an award of damages is to punish the Defendant for his conduct in inflicting harm. This secondary object can be achieved by awarding in addition to the normal compensatory damages, exemplary, punitive, conductive (sic) retributory damages. Per ELECHI, J.C.A in **MINISTER OF DEFENCE & ORS V. EPHRAIM (2014) LPELR-24245(CA) (PP. 51 PARAS. E)**. Relying on the above, the claim for damages is granted as prayed.

On the third claim for cost of N100, 000.00. Cost of N100, 000.00 is awarded in favour of the Claimant. Cost follows the event and a successful party is entitled to the cost of prosecuting or defending the action either wholly or partly unless he misconducts himself in such a manner that deprives him of such an award. See the case of **UBANI-UKOMA VS. SEVEN-UP BOTTLING CO. & ANOR (2022) LPELR-58497 (SC)**.

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

1. The Defendant is ordered to pay the Claimant the sum of N4, 586,280.00 being money for steel materials supplied.
2. The sum of N300, 000.00 is awarded as damages.
3. The sum of N100, 000.00 is awarded as cost in favour of the Claimant.