

IN THE MAGISTRATES' COURT OF RIVERS STATE OF NIGERIA
IN THE PORT HARCOURT MAGISTERIAL DISTRICT
HOLDEN AT SMALL CLAIMS COURT 1, PORT HARCOURT
BEFORE HIS WORSHIP COLLINS G. ALI, ESQ.,¹ TODAY WEDNESDAY, THE
17TH DAY OF APRIL, 2024.

SUIT NO.:PMC/SCC/58/2024.

BETWEEN:

SARVIC INDUSTRIAL SERVICES LIMITED ----- CLAIMANT

AND

ALCON NIGERIA LIMITED ----- DEFENDANT

Case called.

Parties absent.

JUDGMENT

The Claimant company commenced this suit against the Defendant company on the 7th March, 2024 after serving the Defendant company with mandatory demand letter dated 17th February, 2024. The Claimant therefore claims against the Defendant as per its claim attached to the complaint form and summons as follows:

1. Debt / Amount Claimed -	₦ 2,737,000.00
2. Fees	- ₦ 2,000,000.00
3. Costs	- ₦ 200,000.00
TOTAL	= <u>₦4,937,000.00</u>

The Defendant was served with the originating processes on the 11th March, 2024 but it failed to enter appearance either through a legal representative or officers, despite been served with fresh hearing notice on the 22nd March, 2024. Plea of not liable was entered for the Defendant in accordance with the rules of Court and the case proceeded to trial.

The Claimant company testified through its Managing Director, Mr. Edwin Oise who testified as CW1 and tendered thirty-five (35) documents which were received in evidence as EXHIBITS A, A1, A2, A3, B, B1, B2, B3, C, C1, C2, C3, C4, D, D1, D2, D3, D4, D5, D6, D7, D8, E, E1, E2, E3, E4, F, F1, F2, G, H, H1, J, and J1 respectively.

¹ LL B, LL M, BL, A. IDRI, Chief Magistrate Grade I, and the Presiding Magistrate, Small Claims Court 1, Port Harcourt, Rivers State.

These documents include LPOs, Delivery notes, Invoices, Demand Letters, and Letter Delivery Receipts. The CW1 was not cross examined by the Defendant company which equally failed to defend the suit despite been served with summons and fresh hearing notice; and was consequently foreclosed from cross examination, defence and final address.

After the close of trial, the learned Claimant Counsel A. J. Nikoro, Esq. waived his right of address and the case was adjourned for judgment.

Having carefully examined the claims and evidence adduced by the Claimant's sole witness in proof of the claim, the lone issue for determination in my considered view is thus:

Whether the Claimant have proved its case to be entitled to the reliefs sought?

In civil cases and indeed in all cases, the burden of proof is on the party who will fail if no evidence at all were given by both sides; and that party is the Claimant. See sections 132 and 133 (1) of the Evidence Act, 2011 (as amended). The CW1 testified unchallenged that the Defendant company engaged the Claimant company in a supply contract vide Local Purchase Orders (LPOs) for the supply of various safety materials between 2021 and 2022. The CW1 testified that the supplies were made as shown in the Delivery Notes and Invoices issued to the Defendant for payments which were not fully paid till date as the Defendant is still owing the sum of ₦2,737,000.00. The CW1 testified that the Claimant demanded for the payment of the outstanding sum through its lawyer but the Defendant have refused to pay the balance. The CW1 asked the Court to order the Defendant to pay the outstanding sum with additional costs of ₦2million and ₦200,000.00 for the period been denied of the money and fees. The Defendant did not cross examine the CW1 nor defend the claims as I have stated earlier; and the implication is that the evidence is deemed admitted. See section 123 of the Evidence Act, 2011 (as amended). The law is that failure to cross examine a witness on material evidence implies a tacit acceptance of same. See the cases of *Gaji v Paye [2003] LPELR-1300 (SC)* and *Oan*

Overseas Agency Nigeria Ltd. v Bronwen Energy Trading Ltd & 2 Ors. [2022] LPELR-57306 (SC). I so hold.

The Claimant claimed for additional costs of ₦2million and ₦200,000.00 for the period been denied of the money and fees. Award of costs is at the discretion of the Court and such exercise of discretion must be done judicially and judiciously. A Claimant in a case for breach of contract is entitled to damages and costs; particularly where as in the instant case, the Claimant have proved that the Defendant denied it payment for goods supplied between 2021 and 2022. Whilst I concede that the Claimant is entitled to costs, it is important to state that the Claimant's claim for costs which is nearly more than the principal sum is unreasonable. The law is that the award of general damages (*and let me add costs*), is never an avenue for gold digging and thus must be a just and fair recompense for the injury, and must be neither too high as to be scandalous nor too low as to be ridiculous. See the cases of *Pearse v Jinadu & Anor [2017] LPELR- (CA)* and *Chevron Nigeria Limited v Titan Energy Limited [2013] LPELR-21202 (CA) Per GEORGEWILL, J.C.A (P. 85, para. B)*. The Claimant is entitled to costs but not as much as claimed. The sole issue is resolved in favour of the Claimant and against the Defendant.

Judgment is hereby entered for the Claimant as follows:

1. The Defendant is hereby ordered to pay the Claimant the sum of ₦2,737,000.00 (Two Million, Seven Hundred and Thirty-Seven Thousand Naira) only representing unpaid contract balance forthwith.
2. The Defendant is hereby ordered to pay the Claimant the sum of ₦500,000.00 (Five Hundred Thousand Naira) only as costs forthwith.



C. G. Ali, Esq.
(Chief Magistrate)
17/04/2024

LEGAL REPRESENTATION:

1. U. C. Azuonye, Esq. for the Claimant.
2. Defendant not represented.

