

**IN THE CHIEF MAGISTRATE COURT OF RIVERS STATE OF NIGERIA  
IN THE RUMUODOMAYA MAGISTERIAL DISTRICT  
HOLDEN AT RUMUODOMAYA**

**BEFORE HIS WORSHIP B.H. ABE (MRS) ESQ., SITTING AT THE CHIEF  
MAGISTRATE COURT 1 RUMUODOMAYA ON TUESDAY THE 15TH DAY OF  
OCTOBER, 2024**

**RMC/SCC/09/2024**

***BETWEEN***

**MRS BERNADETIE NTUPUANYA CHIME - CLAIMANT**

**VS**

**MRS MARY SOLOMON - DEFENDANT**

Matter for Judgment

Adokiye T. Irisominabo, Esq., for the claimant and J. C. Onumaegbu, Esq. for the defendant.

**JUDGMENT**

The claimant claims as follows;

1. The defendant owes the claimant the sum of N1,211,000.00 (One Million, Two Hundred and Eleven Naira) only, as payment for 39 bags of rice supplied to the defendant by the claimant in December, 2022. The claimant wrote a demand letter to the defendant in November, 2023.
2. Claim for damages of N3,500,000.00 (Three Million, Five Hundred Naira) only.

The defendant filed a counter claim, counter claiming as follows;

1. A declaration that a contract for the supply of 100 bags of 50kg stone free rice subsisted until breached.
2. An order of Court that the supply of 99 bags of stone rice rather than the 100 bags of stone free rice ordered by the defendant, in December, 2022 instead of October, 2022 is a breach of contract.
3. N15,000.00 per bag of the 99 stone rice bags supplied by the claimant.
4. N2,000,000.00 for general damages for harassment, arrest and trauma, suffered by the defendant as a result of breach of agreement by the claimant, also loss of customers.

## Facts

Forms RSSC 2 the complaint form, RSSC 3 (summons), RSSC 4 affidavit of non-service deposed by the Court bailiff, Gospel .U. Ntorue, dated 30<sup>th</sup> January, 2024, RSSC 6 affidavit of service are all before the Court, Form RSSC 5 also; counter claim also included.

The defendant was served via substituted service with the leave of Court on the 15<sup>th</sup> January, 2024 by pasting on her entrance door in her presence.

The defendant contends that they have substantially paid off the agreed sum.

A statement of defence is also filed with a counter claim attached dated 29<sup>th</sup> February, 2024.

Parties filed their statements on Oath, the claimant's counsel prayed the Court to amend the claim of the claimant to add N3,500,000.00 for damages, which the Court conceded to.

Leave of Court was granted to both parties to settle out of Court amicably on the 1<sup>st</sup> March, 2024. Both parties were in Court, E.E. Okpara appeared for the claimant, while S. K. Demua appeared for the defendant.

On the 30<sup>th</sup> April, 2024, after several adjournments, the Court was informed that parties could not settle, the leave of Court granted for out of Court settlement was thus vacated, the Court adjourned for hearing.

On the 7<sup>th</sup> May, 2024, the claimant gave evidence, A. T. Irisominabo appeared for the claimant while J. C. Onumaegbu appeared for the defendant, the defendant was in Court.

The claimant, Bernadette .N. Chime living at 16 Shell Road, Oyigbo, off location road, informed the Court that she is a rice seller, a bag of rice currently goes for N70,000.00 to N75,000.00 after her disposition on oath was adopted as her evidence, dated 23<sup>rd</sup> February, 2024.

The statement of account from Zenith Bank for the claimant was adopted in evidence as Exhibit A.

The agreement dated 16<sup>th</sup> December, 2022 and IOU signed by both parties dated 19<sup>th</sup> December, 2022 was admitted in evidence as Exhibit B, the demand letter Exhibit C, response to the said demand letter by the defendant's solicitor Exhibit D, she prayed the Court to grant all her claims.

From the claimant's written statement on oath dated 23<sup>rd</sup> February, 2024, she deposed as follows;

That she is the claimant in this suit, in December, 2021, Stella Chidinma Sunday brought the defendant to her shop at Eke Oyigbo Market, Port Harcourt – Aba express way, Oyigbo, Rivers State, the defendant bought 8 bags of rice which were not stone free.

Later in May, 2022, the same Stella Chidinma Sunday brought the defendant to her house, the defendant asked her to supply a bulk order of bags of rice to her like the type she bought in December, 2021, she told her she did not have that brand.

On the 29<sup>th</sup> July, 2022, the defendant paid the claimant the sum of N1,030,000.00 to her Zenith Bank Account 2251250605 in seven deposit transactions. The defendant called to tell her she will be paying in small installments until it is complete to cover what she wants to buy, she informed Stella Chidinma Sunday, see the bank statement from Zenith Bank; Exhibit A covering the period 1<sup>st</sup> January, 2022 to 31<sup>st</sup> December, 2022.

The defendant also paid another N1,000,000.00 to her Zenith Bank Account on the 18<sup>th</sup> November, 2022, amounting to N2,030,000.00 without any formal agreement as to the quality, price or quantity of the rice.

She called the defendant to ask how many bags she will like to buy, she said 100 bags, stone free. She asked her to send her account details so she could return the money, because the money could not buy 100 bags of stone free sold between N31,000.00 and N33,000.00 per bag.

The defendant insisted and said she will send her more money to cover the difference, the claimant told Chidinma Sunday via a phone call. She also asked her for her account details to return the money.

The defendant in November, 2022 told the claimant to buy large bags of rice of N250kg, stone free and repackage them for her; this she did, repackaged them into 40 bags of 50kg each, 40 bags of 25kg totaling 60 bags of stone free rice. The bags of rice were stone free and repackaged at her own expense; totaling N1,980,000.00 at N33,000.00 each bag.

The defendant on the 6<sup>th</sup> December, 2022, came to her house and asked the claimant to supply them to her house, being satisfied with the rice. The defendant had before that day placed an order for 50 empty bags of 50kg rice bags at N800.00 each totaling N40,000.00 and 20 empty 25kg rice bags at N600 each totaling N12,000.00, cumulatively amounting to N52,000.00.

The claimant's husband and driver delivered the bags of rice and the empty rice bags to the defendant's house at Akwaka, Rumuodomaya.

The defendant was owing her N2,000.00 for this order. She called the claimant to ask for another 40 bags of rice to be bought on credit, the claimant refused.

Chidinma Sunday pleaded with her to sell her the 40 bags on credit, she agreed in writing with the defendant to deliver 20 bags of rice to the defendant first, and the remaining 20 bags of rice would be supplied after she makes her payment for the first 20 bags of rice. See the agreement dated 16<sup>th</sup> December, 2022 signed by both parties, Exhibit B.

The claimant sent 27 bags of rice to the defendant's house, Chidinma her neighbour received them, because the defendant was at Oil Mill Market where the rice was bought, without receiving payment, on the 16<sup>th</sup> December, 2022.

On the 19<sup>th</sup> December, 2022, she sent the remaining 13 bags to the defendant, one was rejected by the defendant for not being full. The defendant did not pay for the 39 bags of rice.

The parties signed an IOU in the presence of Chidinma Sunday dated 19<sup>th</sup> December, 2022, to the effect that the defendant is indebted to her to the tune of N1,209,000.00, for the supply of 39 bags of rice, at N31,000.00 per bag. Exhibit B, the IOU.

The defendant told her, her husband was not happy that she signed the IOU. The defendant refused to pay the claimant despite repeated demands by the claimant, she said she was not indebted to her and that she should go to Court, that was in April, 2023.

In September, she briefed her lawyer to write a letter of demand to the defendant, served on her personally on the 22<sup>nd</sup> November, 2023. The defendant's counsel responded, via letters dated 18<sup>th</sup> September, 2023 and 28<sup>th</sup> November, 2023, Exhibits C and D.

Her rice business has shut down as a result of the debt by the defendant, she cannot engage further in business.

### **Cross-examination of cw1 on the 10<sup>th</sup> May, 2024**

Que. - Do you know the business the defendant is doing?

Ans. - Rice Business.

Que. - Have you had any business with her?

Ans. - In December, 2021, the defendant came to her shop and bought 8 bags of rice and paid for them at N24,000.00 different brands of rice.

Que. - The defendant requested for 100 bags of stone free rice from you?

Ans. - No. 50kg per bag?

Also deduced were as follows;

She agreed to sell the rice to the defendant in December, 2023.

Stone free Nigeria rice and stone rice are different.

She supplied 60 bags of stone free rice at N33,000.00 each not N24,000.00 each, denied selling at N24,000.00 for each bag of rice.

Denied knowing the defendant bought rice for her contribution customers.

Denied the defendant called for a refund afterwards.

N33,000.00 for the first 60 bags, N31,000.00 for the 40 bags.

Confirmed supplying the rice in December, 2022.

Confirmed that they did not agree on the quality and quantity off rice. She showed the defendant the N24,000.00 quality of rice.

The defendant bought farm rice first for N24,000.00 in December, 2021.

They both agreed on the N31,000.00/N33,000.00 per bag before proceeding with the business.

At the end of cross-examination of cw1, cw2 gave evidence on the 15<sup>th</sup> May, 2024 led by the claimant's counsel, the defendant was in Court.

Stella .C. Sunday, adopted her statement on oath dated 23<sup>rd</sup> February, 2024.

The defendant is well known to her, they both reside in the same compound at Akwaka, Rumuodomaya, Rivers State, she does thrift contribution for rice and other foodstuff. She corroborated the evidence of cw1 with regards to how the defendant and the claimant met and the transaction between them, for the claimant to sell the defendant 100 bags of stone free rice. She confirmed that the defendant paid the claimant N2,030,000.00 for the 100 bags of rice, which was not enough for the 100 bags of rice, stone free rice, sold for between N31,000.00/N33,000.00 per bag.

Confirmed that the claimant delivered 60 bags of rice to the defendant. She pleaded with the claimant to supply the defendant with another 40 bags of rice on credit; that the defendant will pay by January, 2023. Cw2 confirmed that she received the 27 bags of rice in writing on behalf of the defendant, another agreement was also contained on that same page, signed by the claimant/defendant on the 16<sup>th</sup> December, 2022.

The receipt note was admitted as Exhibit E.

Confirmed the 12 bags of rice sent to the defendant, one was rejected for not being full on the 19<sup>th</sup> December, 2022.

The IOU was signed in her presence, the defendant admitted owing the claimant N1,209,000.00 for the supply of 39 bags of rice at the rate of N31,000.00 each bag.

She approached the defendant few days after Christmas in 2022, the defendant told her, "I will make sure mama suffers before she gets her money".

The defendant's husband in January, 2023 assured her the defendant will pay the claimant, that the defendant was yet to begin a fresh round of thrift contributions for the new year.

In April/May, 2023, the defendant denied owing the claimant.

The defendant threatened cw2 with death, because she had been persistent by asking her for the claimant's money, being the person who introduced them.

### **Cross-examination of cw2**

Que. - You did not see the defendant sign an agreement with the claimant?

Ans. - She signed, they signed an IOU between two of them in my presence.

She confirmed that the claimant supplied 100 bags of stone free rice to the defendant.

Denied that the claimant agreed to supply 100 bags of stone rice to the defendant.

She confirmed that the claimant called her to say that the defendant paid her without knowing the quality and quantity of rice she was paying for.

Confirmed the agreement between both parties for the defendant to buy the 100 bags of rice (stone free) at a high rate.

Denied the claimant breached the agreement by supplying only 60 bags of stone rice to the defendant.

The parties had two agreements because the defendant could not pay for the first set of rice supplied.

Denied that the defendant signed under duress.

Confirmed that the defendant has no physical shop, distributes the rice to her thrift contributors.

Confirmed that the claimant asked for the defendant's account details to return her money to her, the claimant also called the defendant to return her money to her.

Denied that the claimant could not supply 100 bags of stone free rice but took money for it.

Denied being aware that the claimant supplied bad rice to the defendant, which led to her arrest by her contributors.

At the End of her cross-examination, there was no reexamination, claimant's counsel closed his case afterwards.

On the 23<sup>rd</sup> May, 2024, the defene opened her case.

Dw1 gave her name as Mary Solomon living at Akwakwa, Rumuodomaya in Obio/Akpor Local Government Area, Rivers State, a business woman, an Akawo business. She adopted her statement on oath dated 1<sup>st</sup> March, 2024. Her Akawo cards were admitted in evidence as Exhibits E1 and E2.

The bank statement of Dw1, from GTB, evidencing transfer to the claimant's Zenith Bank Account is before me as Exhibit F.

Exhibit D confirmed by the defendant.

She deposed as follows from her statement on oath;

That Stella Chidinma Sunday introduced her to the claimant in 2021. She bought 8 bags from her in December, 2021, stone free rice.

In 2022, May, she went to the claimant's house with Stella .C. Sunday, she told the claimant that she wants 100 bags of 50kg stone free rice at N24,000.00 per bag, for October, 2022, totaling N2,400,000.00.

She sent the claimant N1,400,000.00 on the 29<sup>th</sup> July, 2022, the money was sent in batches from Mr. Solomon Monday and Mr. Umoh Ime Archibong, her husband's friend. The claimant confirmed receipt of the transfer.

In October, 2022, she called the claimant and informed her that she needs the rice, but the claimant informed her that when her supplier Alhaji brings the rice, she will inform her.

In November, 2022, she paid the balance of N1,000,000.00 to the claimant's Zenith Account from her GTB Account, the proof is before the Court.

Her customers started asking for the rice and felt she had fraudulently used their money for her own business. She informed Chidinma Sunday, who called the claimant, the claimant told her that Alhaji her supplier was ill. The claimant called her towards the end of November and told her that Alhaji was sick.

In December, the claimant told her the rice was now N31,000.00 to N33,000.00 stone free rice, she told her they already had an agreement prior to that time and she had no extra money to add. She also told Chidinma Sunday.

In December, 2022, second week, the defendant received 30 bags of 50kg and 14 bags of 25kg rice from the claimant that is 37 bags of rice, 11<sup>th</sup> December, 2022.

The quality of rice was very poor and filled with stones, she told the claimant who said that was what was available at time. She received the rice out of desperation and threats from her customers.

In December, 2022, the claimant delivered 20 bags of 50kg stone rice and 6 bags of 25kg stone rice, that is N23,000.00 bags of 50kg rice supplied by the claimant. 60 bags in total of 50kg. In December, the defendant (16<sup>th</sup> December, 2022) went to the claimant's house to demand for the rice and the claimant told her to pay N31,000.00 for the remaining rice, the new price per bag for the 50kg rice, for the 40 bags still left with her, she refused and cried, insisting that the previous agreement should still subsist, she was asked to sign an agreement with the claimant by the claimant's husband, which she did out of frustration and desperation.

On the 16<sup>th</sup> December, 2022, the claimant supplied only 27 bags of 50kg rice to her and she returned one bag, because it was torn, 26 bags of 50kg rice received on the 16<sup>th</sup> December, 2024.

On December 19, 2022, the claimant delivered 13 bags of rice, totaling 99 bags of 50kg stone rice received from the claimant, all efforts to get the remaining bag of rice from the claimant failed.

She never ordered for empty bags of rice from the claimant, her rice were all bagged.

No other agreement signed apart from that of 16<sup>th</sup> December, 2022.

She is not owing the claimant N1,211,000.00.

The claimant breached their agreement by supplying poor quality of rice, supplied late and in several batches contrary to their agreement. She has as a result, lost a lot of customers, she was threatened and harassed by them and also arrested.

She had to resell some of the rice at a lower price to be able to pay her customers who rejected the stone rice.

### **Cross-examination of Dw1 by A. T. Irisominabo Esq;**

Dw1 confirmed that the rice will be supplied in October, 2022.

Dwi1 confirmed last payment in November, 2022.

Que. - The last set of rice was N24,000.00 per bag?



Ans. - N18,000.00 for stone free rice in 2021.

Que. - the claimant never agreed for credit supply you paid N2,400,000.00 to the claimant?

Ans. - I paid N2,030,000.00 for 24 bags of rice

She told the claimant she needs stone free and not stone rice.

Que. - You did not transfer N1,400,000.00 to the claimant?

Ans. - No (in her evidence she said, she transferred N1,400,000.00).

Que. - The claimant confirmed the price of the first 50 bags at N33,000.00 per bag after the payment of N1,000,000.00 by you?

Ans. - No.

She denied that the claimant told her rice was N31,000.00 before the supply of 39 bags of rice, they agreed on N24,000.00 per bag not N33,000.00 per bag, she signed for N24,000.00 per bag that they both agreed when the claimant's husband asked her to sign.

She did not pay for the last 39 bags of rice supplied to her.

Que. - Before transferring rice to your customers, you do not open them?

Ans. - No she gives me one bag sealed.

The claimant supplied bad rice to her, her customers arrested her, she supplied 99 bags. The claimant forced her to sign if not she would not have supplied to her.

She confirmed that some customers take less than half bag of rice, she shares it.

Denied signing the IOU on the 19<sup>th</sup> December, 2022

She denied using empty bags of rice to repackage the rice

Confirmed the rice supplied was filled with sand/stones.

She realized the rice was bad from the beginning of the supply.

She did not know the rice was bad till her customers called to abuse her, she was arrested, had to sell the rice to Aboki to repay her customers sold it at a lesser price because of the poor quality.

Some of her customers brought the rice back to her.

Confirmed that her customers and her saw stones in the rice and sand.

## **Evidence of Dw2**

Dw2 adopted his statement on oath, dated 29<sup>th</sup> May, 2024, after identifying same as his evidence before this Court. Gave his name as Solomon Monday Abraham.

The statement of account from paragraph 5 is admitted in evidence as Exhibit G.

Deposit slip in paragraph 6 is admitted in evidence as Exhibit H.

Paragraph 7; account statement admitted as Exhibit I.

I am the husband of the defendant, I am conversant with the facts of this case, the defendant does thrift contribution giving out food items including bags of stone free rice.

The defendant agreed with the claimant to supply her with 100 bags of stone free rice at N24,000.00 per bag.

I sent a total of N1,000,000.00 from my Access Bank Account No: 0017072858 to the claimant's Zenith Bank Account on the 29<sup>th</sup> July, 2022.

A copy of my Access Bank Account Statement showing the transfer is attached.

A deposit of N30,000.00 also made same day, Zenith Bank Account Number: 2251250605 on the 29<sup>th</sup> July, 2022, a copy of the deposit slip is attached.

My colleague on my request, Umoh Ime Achibong transferred N500,000.00 from his Access Bank Account Number: 0016754284 to the claimant's Zenith Bank Account on the 29<sup>th</sup> July, 2022 for the payment of the stone free rice ordered by the defendant, from the claimant. A copy of the bank account statement showing the transfer is attached.

The claimant failed to door the rice in October, 2022.

The claimant delivered very poor quality of rice to the defendant in December, it was stoned and dark in colour.

The defendant suffered hardship and arrest from her clients sue to the poor quality of rice.

That I used my personal funds to replace the rice, some bags of it, the defendant fell ill due to the constant crying at night for fear of her client's threats.

## **Cross-examination of Dw2 on the 27<sup>th</sup> June, 2024**

Confirmed the defendant told him the rice was N24,000.00 per bag, and to be supplied in October, 2022.

He stated that some of the bags were torn so they could see the rice was very bad.

### **Evidence of Dw3 on the 3<sup>rd</sup> July, 2024**

Dw3 gave her name as Ukeme Lawrence, a caterer, has a restaurant, living at No. 12 Deeper Life Road, Rumuodomaya, confirmed her witness statement on oath dated 29<sup>th</sup> May, 2024, adopts same.

Knows the defendant, a friend and customer since 2002, former neighbour.

Does contribution/weekly/daily.

The defendant supplies her rice from her contribution for her catering business, stone free rice.

In 2022, the defendant failed to supply her rice, but when she supplied in December, 2022, the rice was of very bad quality, stoned and poor in colour, she did not use it for her business, she arrested the defendant, the defendant gave her one bag, which she changed out of three bags, since then she stopped business with the defendant.

She was surprised when the defendant told her, she was taken to Court, by the claimant.

### **Cross-examination of Dw3**

The claimant was not part of the defendant's contribution.

The defendant called her to testify, she explained what happened to her, I arrested the defendant. I want justice for her.

Counsels adopted their final written addresses on the 22<sup>nd</sup> July, 2024. Defence adopts her written address dated 8<sup>th</sup> July, 2024, claimant's counsel adopts his dated 17<sup>th</sup> July, 2024. Reply on points of law dated 20<sup>th</sup> July, 2024 also adopted, both prayed the Court to grant their claims and counter claims.

### **The Defence in her final written address posited as follows; Issues for determination:**

1. Whether the claimant is entitled to the reliefs claimed in this suit?
2. Whether the defendant is entitled to the reliefs claimed in the counter claim?

## Issue one

It is sufficient to state at this point that a valid contract/agreement was entered into by the parties. In *EYIBOH vs. MUJADDADI* (2022) 7 N.W.L.R. (Pt. 1830) 381 at Page 448, para. G, Per SAULAWA, J.S.C, the Court on the meaning of contract held thus;

*“A contract is an agreement in which a party undertakes to do or not to do a particular thing”.*

Furthermore, in the case of *EL-HANAN VENTURES LTD. vs. R. M. S. LTD.* (2021) 10 N.W.L.R. (Pt. 1784) 221 at Page 229, paras. F-G, Per HASSAN J.C.A. The court stated thus;

*“A valid contract exists between the parties when a valid offer and a valid acceptance is identified. Also when the parties are in agreement, a valid contract exists and there would be no need to identify if there was offer and acceptance”.*

(P. 231, Paras E-F)

*“It is necessary, to reiterate the elements of a binding and enforceable contract, which are offer, acceptance, intention to create a legal relationship, consideration and capacity to contract”.*

Flowing from the foregoing, we respectfully submit that there was a valid contract/agreement between the parties as the Claimant showed the Defendant samples of rice, she made her choice, and further made payments for order. Also there is no conceivable way the Defendant would pay as much as N2,030,000.00 to the Claimant's bank account without reaching a conclusive agreement with the Claimant and also knowing exactly what she is paying for as alleged by the Claimant.

We most humbly urge this Honourable Court to discountenance the submissions of the Claimant that there was no initial agreement as to quality, quantity and price of the order placed by the Defendant.

With respect to the delivery of the purchase, the Claimant agreed with the Defendant to deliver the purchase by October, 2022, but by the records the Claimant did not only delay the delivery, the Claimant also delivered 60 bags of very poor quality stone rice instead of stone free rice ordered by the Defendant. The said delivery was made in December 2022, after the Defendant must have suffered series of threats, harassment and arrest from her customers who felt betrayed and defrauded. The Defendant had to resell some bags of rice at a lower price to be able to pay some customers who out rightly rejected the stone rice.

We most humbly submit that the Claimant did not only breach the agreement with the Defendant but also altered the agreement by fraudulently drawing up an IOU for the Defendant to sign in order to get the remaining 40 bags of rice. The said IOU contained a totally different price for the remaining 40 bags of rice from what was earlier agreed on by the parties and by the Court of Appeal judgment in *EL-HANAN*

VENTURES LTD vs. R. M. B. LTD (Supra) at 231-232, paras G-A, Per HASSAN J.C.A.

*“The offer is a definite understanding made with the intention that it shall become binding on the person making it as soon as it is accepted by the person whom it is addressed. In the instant case, there is an agreement between the parties. Parties are under obligations to honour agreements voluntarily entered into between them. They are bound by the terms of their contract and are not expected to read into the contract what is not in it, as was done by the appellant in this case”.*

See also JULIDS BERGER (NIG) PLC vs. T.R.C.B LTD (2019) 5 N.W.L.R. (Pt 1665) 219.

We further submit that the Claimant and her husband locked up the Defendant in their house on the 16<sup>th</sup> December, 2022 and threatened that the Defendant will not get even a grain of rice from the remaining 40 bags of rice until she signs the IOU. The Defendant being under pressure, harassment, threats and arrest from her customers reluctantly signed the IOU in order to get the remaining 40 bags of rice from the Claimant, to settle with her customers. The Claimant cannot abandon and breach the earlier agreement and expect to create a new one to oppress the defendant. In DHL INT'L NIG. LTD vs. EZE-UZOAMAKA (2020) 16 N.W.L.R (Pt. 1751) 445 at pp. 484-485, paras G-C, Per OGBUINYA J.C.A.

*“A contract is a legally binding agreement between two or more persons whereby rights and duties are acquired by one party in return for acts or forbearances on the part of the other ... It is trite law, that the parties and courts are bound by the terms of the contracting parties. In other words, the law does not allow either the parties or the courts to add to or subtract from terms of the contract reached by way of consensus ad idem”.*

See BEST (NIG.) LTD. vs. B.H (NIG.) LTD. (2011) 5 N.W.L.R. (Pt. 1239) 39.

The IOU the basis upon which the Claimant came to court, in law is illegal and unenforceable. The law presume the following contracts to be unenforceable.

- a. Contracts under duress: Contracts entered into under duress, coercion or undue influence are unenforceable.
- b. Unconscionable contracts: Contracts that are excessively one-sided or unfair may be deemed unenforceable.
- c. Contracts with uncertain or impossible terms: Contracts with terms that are too vague or impossible to perform are unenforceable.

The IOU was fraudulently obtained under duress with its unconscionable f and impossible terms thus cannot effectively form the basis for a valid contract.

The Claimant having had the agreement for the supply of 100 bags of stone free rice can only be discharged by performance. Hence the Claimant cannot turn around to create a new agreement whilst she has failed and refused to fully perform the first. In order to discharge a contract by performance, both the express and implied terms must be performed. Furthermore, the terms must be performed to the expected standard of performance. When the parties to a contract fulfil the obligations arising under the contract within the time and manner prescribed, then the contract is discharged by performance. The Claimant did not discharge her contract by performing it so she cannot bring up a new IOU on the Defendant. The Supreme Court in the case of ADEDEJI vs. OBAJIMI (2018) 16 N.W.L.R. (Pt. 1644) 146 at pp. 167-168, paras. H-B. Per BAGE J.S.C. held thus:

*"It is now trite law, that a valid contract may be discharged by one of four ways known to law namely: a) by performance. b) by express agreement. c) by doctrine of frustration. d) by breach.*

We most humbly urge this Honourable Court to discountenance the IOU fraudulently drawn up by the Claimant as it was entered under duress by the Defendant and that vitiates the fundamental elements of a valid contract/agreement. See S.P.D.C.N. LTD vs. NAWAWKA (2003) 6 N.W.L.R (Pt. 815) 184 SC.

We further submit that the Defendant does not sell rice, she only orders sealed bags of stone free rice and deliver them to customers that contributed for bags of rice thus the Defendant has no need for the empty bags of rice since the Defendant is a thrift contributor and not a rice vendor. The Claimant has not proved or led evidence whether documentary or otherwise that the Defendant requested for empty bags of rice. In the case of NSIONU vs. NSIONU (2011) 16 N.W.L.R. (Pt. 1274) 536 at page 547, para. G, Per AUGIE, J.C.A.

*"It is settled law that an averment of a fact in any pleadings is no evidence and can never be so construed. It has to be proved by evidence, subject to admission by the other party, and any pleaded fact that is not proved or supported by evidence is deemed abandoned".*

See OLOWOFOYEKU V OLOWOFOYEKU (2011) 1 N.W.L.R. (Pt. 1227) 177.

In conclusion, we most humbly submit to this Honourable Court, that the Claimant did not only breach the agreement with the Defendant by supplying very poor quality of stone rice instead of stone free rice but also supplied the rice late in December 2022 contrary to the agreement to supply in October 2022. We further submit that the Claimant fraudulently drew up an IOU to take advantage of the pressure, frustration and desperation the Defendant was placed on by her customers.

Furthermore, the Defendant suffered untold hardship, harassment, depression, threats and pressure from her customers who felt betrayed and defrauded. The Defendant on one occasion was arrested by one of her customers who made major contributions in 2022.

In view of the forgoing, we most humbly submit to this Honourable Court that the Claimant is not entitled to the reliefs sought by this action and accordingly we respectfully urge Your Worship to dismiss this action with substantial cost against the Claimant.

In the case of B.A.L CO. LTD. vs. LANDMARK UNIVERSITY (2020) 15 N.W.L.R (Pt.1748) 465 at page 499, para. G, Per SAULAWA J.C.A.

*“A counter claim is a claim for relief asserted against an adversary party after an originating claim has been made. A counter claim, strictly so called, is a defendant's claim in opposition to or as a set off against, the plaintiffs claim. Also termed counter action; counter suit; cross-damages; cross-action, et al.*

On this note, the Defendant's counter claim is for N15,000.00 per bag for the 99 bags of poor quality stone rice supplied by the Claimant instead of stone free rice as was ordered by the Defendant. The said supply, which was made in December 2022 instead of October 2022.

The Defendant further claims the sum of N2,000,000.00 as general damages for harassment, arrest and trauma suffered by the Defendant as a result of breach of agreement by the Claimant. The law is settled that the fundamental object of awarding damages for breach of contract is to place the injured party, so far as money can do it, in the same position as if the contract had been strictly performed. In the case of DHL INT'L NIG. LTD. vs. EZEZOAMAKA (Supra) at page 495, para. B, Per OGBUINYA J.C.A.

*"Damages have been defined as: "that pecuniary compensation which law awards to a person for the injury he has sustained by reason of the act or default of another whether the act or default is a breach of contract or tort".*

A claim for general damages that emanates directly from a breach of contract is one of compensatory damages that flows from the type of wrong complained about. The purpose of damages is to compensate a party for damage, injury or loss suffered. See VITAL INV. LTD. vs. CAP PLC (2022) 4 N.W.L.R. (pt. 1820) 205 SC.

We most humbly submit to this Honourable court that a party who has wholly or in part performed his side of the agreement and not received the agreed counter-performance is entitled to restitution in respect of his own performance. As stated in the case of EL-HANAN VENTURES LTD. vs. R.M.S. LTD. (Supra) Per HASSAN J.C.A. at page 232, paras A-D;

*“A party who has wholly or in part performed his side of the contract, and not received the agreed counter performance is entitled to restitution in respect of his own performance. Where this consists of payment of money, the payer has the right to seek to get it back. In the instant case, the appellant as rightly found by the trial court, failed in its obligation of supplying the machine to the respondent and which resulted in a breach of contract, the respondent would be entitled to an appropriate remedy and the return of the money it paid for total failure of consideration.*

See *OLUSEGUN vs. ADETOLA* (2018) 12 N.W.L.R. (pt. 1634) 483 at 486.

In conclusion, we most respectfully submit that the law presumes general damages as flowing from the wrong complained of by the victim. They need not be specifically pleaded and strictly proved. It is at the discretion of the court to award general damages. In all cases of breach of contract, the Court has the onerous duty to base the award upon the loss naturally flowing from the breach. It is the duty of the court to apply the legal method of assessment to any qualification and not to take any pre-estimated determination as if the damages were special and so provided for in the contract.

Flowing from the foregoing, we most respectfully submit that the Defendant has sufficiently proved her counter claim and is entitled to the reliefs sought therein.

### **Claimant's counsel's written address**

The summary of the facts contained in the Claimant's evidence, particularly in the Written Statement on Oath of cw1 is that in May 2022, the Defendant negotiated with the claimant and informed the Claimant of her intention to place a bulk order of bags of rice. They could not conclude on the quality of the rice to be supplied, and as such, could not determine the contract sum, that is, the price per bag; neither did the Defendant precisely state the number of bags of rice she wanted delivered.

The Defendant made two sets of payments thereafter, for the rice - the first being N1,030,000.00 (One million, and thirty thousand naira) only, made .on 29th July, 2024 and the second being N1,000,000.00 (One million naira) only, made on 18th November, 2022. It was immediately after the second set of payment was made in November 2022, that parties agreed upon the quality, quantity and price of the rice to be supplied, to wit, stone-free rice, one hundred bags and N33,000.00 (Thirty-three thousand naira) only, per bag, respectively.

The money paid by the Defendant, could only cover for sixty (60) bags of rice was summed at N1,980,000.00 (One Million, Nine Hundred and Eighty Thousand Naira) only, and seventy (70) empty rice bags at N52,000.00 (Fifty-two thousand naira) only, thereby making the Claimant to add N2,000(Two thousand naira only) of her money, to complete that order on 6th December, 2022. Upon a subsequent contract with the Defendant, the Claimant further supplied thirty-nine (39) bags of rice to the Defendant, at N31,000 (Thirty-one thousand naira) only, each, which the Defendant is yet to pay for. The Claimant has therefore approached the Court to recover same.

The Claimant humbly submits that the sole issue which arises for determination in the present suit is as follows, namely:

**WHETHER THE CLAIMANT HAS DULY PROVED HER CASE AGAINST THE EFENDANT AND IS THEREFORE ENTITLED TO THE RELIEFS SOUGHT IN THAT REGARD?**



It is the humble submission of the Claimant that civil cases, including an action for recovery of liquidated money demand, are proved ~n the balance of probabilities, based on the preponderance of evidence. It is trite that' under the Evidence Act, the onus is on the Claimant to prove his case, by producing credible evidence of the facts upon which he seeks to make his case.

It is the humble contention of the Claimant that, in the entirety of her case, she was able to plead and prove the aforementioned facts which established her claim to the liquidated money demand and damages, the particulars of which are as follows:

- i. That the Claimant and Defendant never entered into an agreement in May 2022, particularly with respect to the quality, quantity and price of the rice to be supplied.
- ii. That it was until November 2022, immediately after the last payment was made, that the parties agreed on the quality, quantity and price.
- iii. That all the Claimant received from the Defendant was N2,030,000.00 (Two million, thirty thousand naira) only, as evinced in Exhibit "A", and it was upon the receipt of the last set thereof, that the parties entered into an oral agreement for the supply of one hundred (100) bags of stone-free rice at N33,000.00 (Thirty-three thousand naira) only per bag, with the a further commitment by the Defendant to complete payment in further instalments.
- iv. That the said N2,030,000 (Two million, thirty thousand naira only) got exhausted with the supply of sixty (60) bags of rice and seventy (70) empty rice bags, supplied on 6<sup>th</sup> December, 2022.
- v. That the Defendant is still in debt of W2,000 (Two thousand naira only) to the Claimant, from the first supply made on 6<sup>th</sup> December, 2022.
- vi. That a fresh agreement was entered into between the Claimant and the Defendant, for the supply of the remaining forty (40) bags of rice desired by the Defendant, upon her inability to pay up the balance in instalments, as committed. The contract sum was N31,000.00 (Thirty-one thousand naira) per bag, and same supply was completed on 16<sup>th</sup> December, 2022, out of which thirty-nine (39) bags were eventually received by the Defendant.
- vii. That the Defendant has refused to pay the Claimant the outstanding NI,209,000 (One million, two hundred and nine thousand naira) only for the said thirty-nine (39) bags of rice supplied to her, and the N2,000.00 (Two thousand naira) only balance from the first supply made on 6<sup>th</sup> December, 2022.
- viii. That as a result of the refusal of the Defendant to pay her debt to the Claimant, the Claimant can no longer afford to engage in the rice business, and that the value and purchasing power of the debt owed by the Defendant has drastically

reduced, given the astronomic increase of the price of a bag of rice to at least N70,000.00 (Seventy thousand naira) only per bag.

1. EL-HANAN VENTURES LTD.V R.M.S. LTD. (2021) 10 NWLR 215, 231(E - F).
2. FIDELITY BANK PLC V M. C. IND. LTD. (2022) 7 NWLR (Pt. 1829) 351, (P. 374 (A)).

The Claimant has shown via corroborated evidence, that there was never an oral agreement between the Claimant and Defendant, in May 2022, and we humbly urge the Court to so hold.

See: ORIE IT BANK (NIG.) PLC V. BILANTE INTL. LTD. (1997) 8 NWLR (Pt. 515) 37, 78 (A - B).

The Claimant contends that she and the Defendant eventually entered into an oral agreement on 18<sup>th</sup> November, 2022, after receiving the second set of payment, and she fully discharged the same, when she supplied sixty (60) bags of rice and seventy (70) empty rice bags to the Defendant on 6<sup>th</sup> December, 2022. It is the opinion of the Claimant, that she has satisfactorily placed the express terms of both the supply agreement dated 16<sup>th</sup> December, 2022 and the IOU dated 19<sup>th</sup> December, 2022, between her and the Defendant, before this Court. This Honourable Court is therefore urged to so hold that the said agreement and IOU are valid and binding upon the Claimant and Defendant.

The Claimant contends that she and Defendant never agreed that the rice would be supplied on credit. This contention is in line with the statement elicited from D.W. 1 under cross-examination. The Defendant's claim that the Claimant was in breach of the agreement, by not supplying in October 2022, will not pull its weight on the balance of probabilities, given that by the said October, 2022, the Defendant had not completed payment for one hundred (100) bags of rice. Assuming but not conceding that parties agreed to have the rice supplied in October, 2022, it is improbable for the Claimant to supply one hundred (100) bags of rice at a time when payment for same had not been completed, and we therefore urge the Court to hold that the Claimant could not have been in breach of that agreement, in that regard.

The parties entered into an IOU wherein the Defendant, as promisor, promised to pay N1,209,000.00 (One million, two hundred and nine thousand naira) only, to the Claimant, as the consideration for the supply of thirty-nine (39) bags of rice, one bag of rice, having been returned for not being of merchantable quality. The said agreement and IOU, embodies all the aforementioned elements of a valid contract. We therefore urge the Court to so hold.

The Claimant contends that parties are bound by the terms of their contract and are not expected to read into the contract what is not in it. Where there is a contract regulating an arrangement between parties, the duty of the court is to interpret that contract and give effect to the wishes of the parties, as expressed. The condition for

the contract, having been fulfilled, and no fraudulent intention established, the Defendant is bound by the said agreement of 16th December, 2022 and the IOU of 19th December, 2022, and we urge the Court to so hold.

1. JULIUS BERGER (NIG.) PLC. V. T.R.C.B. LTD. (2019) 5 NWLR (PT. 1665) 219, 256-257 (G - B).
2. OBANYE V. D.B.N. PLC (2018) 17 NWLR (Pt. 1648) 375, 389 (D - F)

It is the further submission of the Claimant, that the Defendant as D.W. 1 alleged on the one hand in her evidence, that she never signed the IOU dated 19th December, 2022, or any other document with the Claimant, in respect of the transaction in issue, besides the agreement dated 16th December, 2022. However, under cross-examination, the same Defendant contradicted her evidence, when she said that she was coerced to sign the IOU contained in EXHIBIT "B"; the very IOU, which she claimed to have never signed. This exposes another gross contradiction and inconsistency in the evidence of the Defendant, all done in a bid to renege from her contractual obligations to the Claimant and deny the Claimant of her benefits under their contract. No, she said under duress.

Further, where the credibility of a witness is successfully impeached, his evidence loses probative value. We therefore urge this Honourable court to hold Dw1 as untruthful witness, and consequently attach little to no probative value to her evidence in whole.

- See: 1. GE INTL OPERATIONS LTD. V Q-OILGAS SERVICES (2015) 1 NWLR (Pt. 1440) 244, 270-271 (H - A)
2. OBRI V STATE (1997) 7 NWLR (Pt. 513) 352, 362 (F - G)
  3. MONOPRIX (NIG.) LTD. V. OKENWA (1991) 3 NWLR (Pt. 383) 325,341 (B - C)

The law is trite, it is humbly submitted, that a material contradiction in the evidence put forward by a party renders the entire evidence of that party unreliable, as the Honourable Court is not at liberty to pick and choose what parts of a party's case to believe. It is humbly contended that this amounts to an act of a probating and reprobating, and the law is trite that a party is not permitted to a probate and reprobate at the same time on one issue.

The Honourable Court is therefore, most respectfully, urged to hold that the entire defence put forward by the Defendants is contradictory, and cannot be relied upon.

1. ARIOLU vs. ARIOLU (2011) 11 NWLR (Pt. 1260), 288 AT 308 (F - G).
2. GODWIN UGWUANYI vs. NICON INSURANCE PLC (2013) 11 NWLR (Pt. 1366) 546, 585 (A).
3. OGUNTAYO vs. ADEBUTU (1997) 12 NWLR (Pt. 531) 83, 93 (D - E)

The Defendant, in trying to renege from her contractual obligation to the Claimant, has implied that she signed the agreement on 16th December, 2022, under undue

influence. The burden of proof lies on he who makes the assertion. This burden, in the opinion of the Claimant, has not been discharged by the Defendant, on the balance of probabilities.

The Claimant submits that counter-claim is to be proved specifically. Where there is a counter-claim, the onus is as much on the Defendant in his counter-claim, as on the Claimant in the main claim to establish his counter-claim. The onus he must, to succeed, discharge to the satisfaction of the Court and on the evidence brought by him. In this regard, the Defendant, as Claimant in the counter-claim, must rely on the strength of his case not on the weakness of the case of the Claimant. If this onus is not discharged, the proper judgment should be against him. The Defendant having counter claimed for damages, need to specifically show what they have suffered.

See: GARBA V KUR (2003) 11 NWLR (Pt. 831) 280,301-302 (H - F).

Your Worship, if any or all of the bags of rice were of poor quality as alleged, the Defendant before this Court, would have returned same to the Claimant. Under cross-examination, the Defendant first alleged that her customers pay upfront for the rice supplied to them, but still went ahead to contradict herself when she said that due to the poor quality of the rice she received, she sold the rice to the same customers for a lesser price. The story of the Defendant is highly improbable and abysmally inconsistent. The Defendant has not established on the balance of probabilities that the Claimant was/is in breach of their agreement, and is therefore not entitled to her counter-claim, and we urge the Court to so hold.

It is the contention of the Claimants that the evidence of Dw2 cannot be relied upon given that he, upon cross-examination, concurred that he is an interested witness and accordingly, a tainted witness. A tainted witness could be a biased witness, that is to say, a witness who, because of his prejudices and sentiments, will invariably give evidence in favour of the party calling him with little or no regard for the truth.

1. UDO V ESHIET (1994) 8 NWLR (Pt. 363) 483,501 (E - G)
2. OCHANI V STATE (2017) 18 NWLR (Pt. 1596) 1, 34 (D - F)

Furthermore, D.W. 2 also confirmed that the allegations made in his evidence as to the facts surrounding the agreement between the Claimant and Defendant for the supply of rice, was told to him by the Defendant, since he was not physically present when they negotiated their supply agreement. Once it is found that a deposition is laced with hearsay, the court cannot ascribe probative value to it. To do otherwise, is like asking the court to sieve the oral evidence (in the form of written statement on oath) of witnesses to determine which part of it is hearsay or not so as to give probative value to the aspect of the evidence that is not hearsay. Furthermore, hearsay evidence, such as that of Dw2, is inadmissible by virtue of Section 77 of the Evidence Act, and we therefore urge this Honourable Court to so hold.

1. KAKIH V P.D.P. (2014) 15 NWLR (Pt. 1430) 374, 418-419 (H - A).
2. PUNCH NIG. LTD. V JUMSUM NIG. LTD (2013) 12 NWLR (Pt. 1260) 162, 184 (E - F).

Furthermore, the Claimant's claim for damages and the evidence adduced thereto, remain uncontroverted by the Defendant, who is deemed to have conceded the items of damages. The Court has no option but to accept and act on the uncontroverted evidence of the claimant.

SYNDICATED INVEST. HOLDINGS LTD. V. NITEL TRUSTEES LTD. (2023) 5 NWLR (Pt. 1876) 131,155 (C - H) A.-G., LEVENTIS NIG. LTD. V. AKPU (2002) 1NWLR (Pt. 747) 182, 212-213, (F - C).

Whilst it is the humble submission of the Claimant that the Address of Counsel, no matter how brilliant, cannot take the place of evidence, the Legal Practitioner for the Defendant appears to have overlooked the fact that the crux of the defence put forward by the defenddant at trial was that parties agreed to N24,000 as the unit price per bag and that the Defendant consequently paid N2,400,000 (Two million, four hundred thousand naira) only, for one hundred bags of rice, as contended by Dw1 vide her Written Statement on Oath. Additionally, Dw1 despite claiming to have paid N2,400,000.00 (Two million four hundred thousand naira) proceeded to state under cross-examination that she paid N2,030,000 (Two million, thirty thousand naira only). A fact, which poses a material contradiction.

It is therefore humbly submitted that, notwithstanding the misconceived and erroneous submission and contentions of the Defendants in their Final Written Address, the Claimants have furnished clear and uncontroverted evidence of the validity of the agreement entered into between the Claimant and Defendant on 16thDecember, 2022 and the AIOU dated 19th December, 2022, and the Honourable Court is, most respectfully, urged to so hold.

In the light of all the foregoing facts and matters, and the humble submissions above, the Honourable Court is hereby urged to enter judgment in favour of the Claimant, and grant her the reliefs sought, as contained in her Complaint. This is because the Claimant has duly proved her case, on a balance of probabilities, and upon the preponderance of the credible evidence placed before this Honourable Court, that she is entitled to her claim and reliefs sought thereunder.

### **Reply on Points of Law of the Defence**

The Claimant's submission that the Defendant's evidence is contradictory is unfounded and misleading. The Defendant in her statement on oath admitted to signing the IOU out of frustration and desperation and under duress. The Defendant also maintained same position during cross-examination by Claimant Counsel on 29<sup>th</sup> May, 2024.

The court has held in plethora of cases that unfounded and misleading submissions of a counsel are inimical to the spirit of justice and fairness. Unfounded and misleading allegations can be detrimental to the judicial process and should be discouraged. See OGBUANYIY A vs. OBI (2019) LPELR-47235 (CA) and AKINLADE vs. AKINBI (2019) LPELR-47115 (CA).

The legal principle that "documents speak for themselves" is known as the "Best Evidence Rule" or "Documentary Evidence Rule". This rule states that:

*"Where a document is relied upon as evidence, the original document itself is the best evidence of its contents, and a party seeking to prove the contents of a document must produce the original document or a certified true copy thereof, unless it is not possible to do so, in which case secondary evidence may be admitted".*

This rule is embodied in Section 88 of the Evidence Act 2011, which states:

*"Documents shall be proved by primary evidence except in the cases mentioned in this Act".*

The original document being the statement of account from the bank which have been tendered as Exhibits F, G, H and I, clearly show that the N2,030,000.00 reflected the statement of accounts of both parties even though payments were made that did not pull through to the Claimant's account. The content of these documents are unambiguous and unequivocal and they provide the best evidence to prove the actual amount being paid and relied upon by the Defendant.

In accordance with the Best Evidence Rule, as embodied in Section 88 of the Evidence Act, 2011, the original documents are the best evidence of their contents. We most humbly submit that these documents speak for themselves and conclusively prove the payments made to the Claimant by the Defendant.

In emphasizing this point, the Supreme Court in FELICIA AKINBISADE vs. THE STATE (2006) 17 NWLR (Pt. 1007) 184 at 201 Per NIKI TOBI J.S.C stated thus:

*"The most reliable if not the best evidence in most cases is documentary evidence. I say so because it is, in most instances, more reliable than oral or parol evidence. Although documentary evidence could be victim of forgery, by human conduct, act or intervention, the instances of forgery are less when compared with oral or parol evidence, where witnesses tell lies with ease".*

According to section 123 of the Evidence Act, 2011, which provides that: *"facts admitted need not be proved"*.

We most humbly submit to this Honourable Court that the Claimant did not deny in their address that the quality of the rice was poor as the evidence of Dw1 and Dw3 remains unchallenged. We urge this Honourable Court to hold so.

The DW2 having satisfied the above conditions can be said to have passed the test of a competent witness and as that is competent to give evidence in Court.

The Claimant's submission that the Dw2 is an interested witness is unfounded and without merits. The testimony of Dw2 is objective, credible and reliable and his interests are not aligned with those of the Defendant.

The testimony of DW2 is objective and consistent with other evidence on record. The Dw2 has no personal stake or gain in the outcome of this case and his testimony is not motivated by self-interest. The testimony of Dw2 is corroborated by other credible evidence on record before this Honourable Court in Exhibits G, H and I. We most humbly urge this Honourable Court to disregard the Claimant's attempt to discredit the testimony of Dw2 and instead consider the testimony on its own merits.

It is the Claimant's submission that DW3 have failed to show a direct relationship between the Claimant and the contribution agreement between the Defendant and Dw3.

This is a misconception. The key consideration here should not be the witness' relationship with the parties but rather the following:

- a. Relevance: Does the witness have information or evidence relevant to the case?
- b. Credibility: Is the witness trustworthy and believable?
- c. Objectivity: Can the witness provide an impartial accounts of events or do they have a vested interest in the outcome?

The DW3 being a competent witness can testify about specific facts or events that the Dw3 have personal knowledge of regardless of relationship with either of the parties. The key is that the witness must have a relevant information or evidence to share not necessarily to establish any relationship in the matter.

We urge this Honourable Court to discountenance the submissions of the Claimant that the Dw3 has failed to show a direct relationship between the Claimant and the contribution agreement between the Defendant and Dw3 as a competent witness need not establish any relationship with either of the parties as long as the evidence of the witness is relevant, credible and objective. We urge this Honourable Court to hold so.

### **Issues for determination**

1. Whether the claimant is entitled to her claims with regards to the facts of this case and from the preponderance of evidence before the Court?
2. Whether the defendant is entitled to her counter claims?

### **COURT**

This case is basically one of the contract, wherein both parties entered into a contract with regards to the supply of rice, 100 bags of stone free rice by the claimant to the defendant, wherefore the claimant claims the defendant is owing her the sum of N1,211,000.00 as balance for 39 bags of rice supplied to the defendant by the claimant in December, 2022.

In the determination of this issue, I need to identify the focal points of the claimant.

The contention of the claimant is that the Defendant is in breach of the contract hence the claims against the defendant including the claim for damages. Therefore, in order to resolve this dispute the proper document to look at is the said agreement. This is the law. The principle was captured by the Supreme Court in the case of *AGBAREH vs. MIMRA* (2008) 2 NWLR (PT. 1071) 378 when it held:

“When parties enter into an agreement, they are bound by its terms and that either of them or the Court cannot legally or properly read into the agreement terms on which the parties have not agreed to. As a matter of fact Section 132 of the Evidence Act states that the only admissible evidence of a contract is the contract itself although the Section recognizes exceptions. Thus if and where there is any disagreement as to what is or are the terms or terms of an agreement on any particular point the authoritative and legal source of information for the purpose of resolving the disagreement is of course the written agreement executed by the parties”.

The Court of Appeal also held in *ZENITH BANK PLC V. EMIRATES CREDITCORE AND INVESTMENT LTD* (2016) LPELR-41586 (CA) thus:

“It is a well settled general principle of law that when parties enter into an agreement and they have reduced same into writing that is what should govern their relationship. If there is any dispute, the agreement will be the reference point and none of the parties would be allowed to vary add or subtract or resile from it.”

See *UBA vs. OZIGI* (1994) 3 NWLR (PT. 333) 385.

Now the substantive claim of the claimant is for a declaration that the Defendant/Counter Claimant breached both its express and implied obligation and covenants in their contract.

It is trite that to sustain this claim, the claimant has to prove the alleged breach or breaches. The law places the burden on he who asserts to lead evidence to establish the existence or none existence of what he alleges. See Sections 131(1) and 133 (1) of the Evidence Act and *ORJI vs. DORJI TEXTILE MILLE NIG LTD* (2010) ALL FWLR (PT. 519) 999.

In an effort to discharge this obligation or the burden of proof, the claimant testified that; in December, 2021, the defendant bought 8 bags of rice, which were not stone free from her. In May, 2022, the defendant asked her to supply a bulk order of rice to her like the one she gave her in December, 2021, the claimant made it clear to her that she did not have that brand of the rice.

On the 29<sup>th</sup> July, 2022, the defendant paid the claimant the sum of N1,030,000.00 to her Zenith Bank Account, see Exhibit A, shows payments by the defendant to the claimant via transfer of seven deposit transactions amounting to N1,030,000.00, the defendant had called to tell her she will be paying in installments. The defendant also paid another N1,000,000.00 to the claimant on the 18<sup>th</sup> November, 2022. See Exhibit



A, amounting to N2,030,000.00 without any formal agreement as to the quality, quantity and price of the rice.

The defendant later told her after she called her that she will like 100 bags of stone free rice. She told her the stone free rice was N31,000.00 to N33,000.00 and that N2,030,000.00 could not buy 100 bags of stone free rice, so she should send her account details for her to return the money to her. She (claimant) in November, 2022 repacked 60 bags of stone free rice for the defendant at N33,000.00 each totaling N1,980,000.00. The defendant also asked for the supply of 50 bags of empty 50kg rice at N800.00 each and 20 empty bags of 25kg each at N600.00 totaling N52,000.00.

She also asked for another 40 bags of rice on credit, 20 bags first batch and 20 bags second batch after the defendant had paid. See Exhibit B; 20 bags, at N31,000.00 today and 20 bags after payment has been made, dated 16<sup>th</sup> December, 2022 signed by both parties, also endorsed thereon is; delivered 27 bags of rice on the 16<sup>th</sup> of December, 2022, received by Mrs. Chidinma Sunday, yet not paid (cw2).

Also endorsed is, that the claimant has completed the supply of 40 bags of rice agreed with the buyer, yet to pay as formally dictated, totaling N1,209,000.00 signed by both parties, dated 19<sup>th</sup> December, 2022.

One bag of rice returned back is also endorsed on the document, Exhibit B.

The defendant has not yet paid for the rice endorsed on Exhibit B.

From this narration of facts by the claimant, the defendant paid N2,030,000.00 in total to the claimant for the supply of 60 bags of rice at N33,000.00 per bag for the stone free rice and 70 bags of empty rice bags at N52,000.00, this will give a total of N2,030,000.00. The defendant left N2,000.00 unpaid. See Exhibit A.

From Exhibit B, the agreement between both parties, the claimant supplied another 40 bags of rice to the defendant at N1,209,000.00 plus N2,000.00 unpaid from the first batch of 60 bags equals N1,211,000.00 being the sum claimed by the claimant against the defendant. See Exhibit B, signed by both parties.

Parties to a contract cannot resile from the contract. A contract is an agreement between both parties, for a contract to be valid, there must be consensus ad idem, the meeting of both minds. If there is any dispute to the contract, the reference point will be the agreement between both parties, they cannot resile, vary or add to the contract afterwards. See the cases aforementioned.

It is the duty of this Court to read the contract of both parties and not rewrite same for both parties, as rightly submitted by the claimant's counsel, see claimant's counsel written address. Parties are bound by the terms of their contract, see Exhibit B, the defendant is bound by Exhibit B to pay the claimant, the agreed sum of N1,211,000.00, clearly written in Exhibit B, without any ambiguity.

The claimant has upheld and fulfilled her own part of the contract by supplying fully the 39 bags of rice as agreed with the defendant, which the defendant has failed to pay for, See Exhibit B; clearly written that the defendant is yet to pay for the 39 bags of rice.

Any party who breaches the laws of a contract is guilty or liable for breach of contract.

Mrs. Chidinma Sunday who received the 40 bags of rice on the defendant's behalf also endorsed that the defendant had not yet paid for the rice. Exhibit B dated 19<sup>th</sup> December, 2022, that is the agreement dated 16<sup>th</sup> December, 2022.

Also see Exhibit C, the letter of demand by the claimant's counsel dated 18<sup>th</sup> September, 2023, demanding for the payment of N1,211,000.00 from the defendant for the supply of 39 bags of stone free rice at 50kg each bag of rice.

This was corroborated by Chidinma Sunday's evidence from her statement on oath, who gave evidence as cw2. See sections 131 to 134 of the Evidence Act, 2011, he who asserts must prove. Cw2 confirmed that the defendant had not paid for the 39 bags of rice supplied to her by the claimant, between 16<sup>th</sup>/19<sup>th</sup> December, 2022, at N31,000.00 each bag of stone free rice.

Cw2 also told the Court that the defendant threatened her with death, because she had persistently been asking her for the claimant's money being the one who introduced the defendant to the claimant, also told her that, she will make sure mama suffers before getting her money.

In the course of cross-examination of cw1, she confirmed that she sold 60 bags of stone free rice at N33,000.00 each bag to the defendant, totaling N1,980,000.00 and N31,000.00 for 39 bags of rice at N1,209,000.00, they both agreed on the quality and price of the rice, see Exhibit B, this was also confirmed by cw2 in cross-examination, the defence failed to discredit the evidence of cw1 and cw2 with regards to the quality, quantity and price of rice supplied by the claimant to the defendant.

The defendant has acted in breach of the agreement between her and the claimant with regards to the payment of the 39 bags of stone free rice supplied to her.

It is a trite principle of law that he who asserts must prove, see Section 131(1) of the Evidence Act, 2011, where this was given statutory sanction. See also section 132 of the Evidence Act, 2011.

The standard of proof as is trite is discharged on the balance of probability or preponderance of evidence. See section 134 of the Evidence Act, 2011 as rightly put across by the claimant's counsel in her final written address.

Documents tendered as Exhibits do not embark on falsehood like some mental beings, see *Olujinle vs. Adeagbo* (1988)2 NWLR (Pt. 75) 238 and *BFI Group Corporation Vs. Bureau of Public Enterprises*.

Once documentary evidence supports oral evidence, oral evidence becomes more credible, as documentary evidence always serves as a hanger from which to assess oral testimony. See *Kimdey vs. Military Governor of Gongola State* (1988) 5 SCNJ 28.

An aggrieved party to a contract has the right to seek for redress before a Court for the restitution of his legal right in a contract.

The aggrieved party can sue the defaulting party for breach of contract, where a valid contract has been entered into by both parties; a legal right has to be established.

In this case, the claimants have established their legal right and indeed are entitled to the sum claimed against the defendants; being the balance of the amount for the supply of the rice to the defendant.

In the case of *Dodo Vs. Salanke* (2006) 9 NWLR, Pp. 472-473, Para H-B, per Alagoa, JCA commented on the bindingness of contents of document on a party who signs same. Where a person signs documents, he authenticates his full agreement to their contents and must be bound by their terms.

See *Allied Bank (Nig.) Ltd. Vs. Akubeze* (1997) 6 NWLR (Pt. 509)375 referred to. Pp. 472-473, paras H-B. The Court held in this case that the defendants are bound by the documents signed by them as seen in Exhibits A and B, and they must execute the terms of the investment agreement; Exhibit B, which they failed to do so and so were rightly sued by the claimant.

A document tendered in Court is the best proof of the contents of such document, and no oral evidence will be allowed to discredit or contradict the contents thereof except in cases where fraud is pleaded. See *A-G., Bendel State Vs. U.B.A.* (1986)4 NWLR (Pt. 37) 547 referred to. Pp. 472, Para F. All the Exhibits are the best proof of the claimant's case. The claimants have made their case credible on the preponderance of evidence before the Court.

It is trite that a valid contract exists where offer (being certain) from an offeror is accepted by the offerree. Moreso, where there is a consideration from a party to a valid contract, such a party can successful sue the party in breach. Furthermore, a contract is an agreement between two or more parties which creates reciprocal legal obligation or obligations to do or not to do a particular thing. See *Omega Bank Plc. Vs. O.B. Ltd.* (2005) 1KLR (Pt. 189) 157.

In *Ogundalu Vs. Macjob* (2015) 3 S.C.N.J. page 98, the Court held that:

*“A person seeking to enforce his right under a contractual agreement must show that he has fulfilled all the conditions precedent and that he has performed all those terms which ought to have been performed by him”.* The claimants have indeed fulfilled all the conditions precedent for recovery of their money from the failed contract entered into with the defendants by proof of documentary evidence. See Exhibits A-E.

In a civil case, the burden of proof rests upon that party, whether claimant or defendant, who substantially asserts the affirmative before evidence is gone into. In other words, the burden of proof lies on the person who will fail, assuming no evidence has been adduced on either side.

The burden of proof rests on the claimant in this case.

Further, in respect of particular fact, this burden rests on the party against whom judgment will be given if no evidence were produced in respect of those facts. Once the party produces the evidence that will satisfy the Court, then the burden shifts on the party against whom judgment will be given if no more evidence were adduced. *Tewogbade Vs. Akande* (1968) NMLR 404; *Oyovbiare Vs. Omamurhomu* (1999) 10 NWLR (Pt. 621) 23 referred to, P. 427, paras. A-D.

A contract is an agreement between two or more parties, which creates reciprocal legal obligation or obligations to do or not to do a particular thing. For a valid contract to be formed there must be mutuality of purpose and intention. The two or more minds must meet at the same point, event or incident. Where or when they say different things at different times, they are not *ad idem* and, therefore, no valid contract is formed. The meetings of minds of the contracting parties are the most crucial and overriding factor or determinant in the law of contract.

The refusal on the part of the defendants to pay back the balance of the contract sum of the claimant is indeed a breach of contract. A breach of contract occurs when one of the parties in breach has acted contrary to the terms of the contract. See *F. B. N. Plc. Vs. Immason & Sons (Nig.) Ltd.*, (2014) All FNLR (Pt. 724) P. 344.

The Court is always expected to arise at the correct decision or findings based on the evidence before it, See *FBN Plc. vs. Imasuen & Sons Nig. Ltd.* (2004) All FWLR (Pt. 125) pg. 342.

The failure of the defendant to pay the claimant amounts to an actionable breach of contract.

The Court places reliance on Exhibit B, the agreement signed by both the claimant and defendant in the presence of cw2, Stella .C. Sunday, who received the first batch of 27 bags of rice delivered on the 16<sup>th</sup> December, 2022. Documentary evidence being the best reliable type of evidence. See *Akinbisade vs. State* (2006) (pt. 1007) 17 NWLR pg. 201, see Exhibits.

Hitherto, the defendant claims that she is into thrift business popularly known as Akawo Business, See Exhibits E1 and E2, her Akawo Cards. The defendant states that on the 29<sup>th</sup> July, 2022, she paid the claimant N1,400,000.00 in batches from Mr. Solomon Monday and Mr. Umoh Archibong for 100 bags of stone free rice at N24,000.00 per bag totaling N2,400,000.00.

The payment of N1,000,000.00 to the claimant is before the Court as Exhibit F; the bank statement of the defendant from GTB to the claimant's account on the 18<sup>th</sup>

November, 2022, also testified by the claimant, see Exhibit A aforementioned, this is proof of the payment of N1,000,000.00 to the claimant.

The defendant failed to produce evidence of the payment of N1,400,000.00 to the claimant on the 29<sup>th</sup> July, 2022, see sections 131 to 134 of the Evidence Act, he who asserts must prove. The burden of proof lies on the defendant to prove the payment of N2,400,000.00 to the claimant for the 100 bags of stone free 50kg rice. See the following cases; interdrill.

- Nsionu vs. Nsionu (2011) 16 NWLR (pt. 127) 546.
- Sections 133(1)(2) of the Evidence Act, 2011, when a person is bound to prove any fact, the burden of proof lies on that person.

The claimant was to supply the said rice in October, 2022, but the claimant failed to supply same, in December, 2022, the claimant told her the rice was now N31,000.00 to N33,000.00, she received 37 bags of rice from the claimant, very poor quality of rice, filled with stones, the agreement she signed was signed out of duress. She denied owing her N1,211,000.00.

#### **Questions the defendant needs to answer**

1. Why didn't she return the rice at the time she found out the rice was bad and of very poor quality?
2. Why didn't she insist that the agreement signed on the 16<sup>th</sup> December, 2022, be discarded or ripped apart after she gained her freedom; stating that she was locked in the house and forced to sign the agreement?
3. Instead of reselling the rice at a lower rate, why didn't she return the rice to the claimant?
4. No evidence of the bad quality of rice supplied to her by the claimant, no pictures, no videos, no evidence of the payment of N1,400,000.00 to the claimant for the rice, only evidence of payment of N1,000,000.00, see Exhibit F, same as Exhibits A.

In the course of cross-examination, she said she paid the claimant N2,030,000.00 as confirmed by the claimant for 24 bags of rice and not N2,400,000.00, the claimant's counsel asked, which she had said she paid in her evidence-in-chief (statement on oath), she said she paid N1,000,000.00 and N1,400,000.00, not N2,030,000.00.

She also denied transferring N1,400,000.00 to the claimant in the course of cross-examination whereas in her evidence, she said she transferred N1,400,000.00 to the claimant on the 29<sup>th</sup> July, 2022.

She confirmed the claimant supplied 100 bags of rice to her (99 bags).

The defendant denied signing the agreement dated 16<sup>th</sup>/19<sup>th</sup> December, 2022.

It is evident from Exhibit B, that the defendant signed both the agreement on 16<sup>th</sup> December, 2022 and 19<sup>th</sup> December, 2022, the signature on the agreement of 16<sup>th</sup> December is the same with that of 19<sup>th</sup> December, 2022, with the same phone numbers clearly written out, one does not need an expert to see that the signatures are both the same.

In the course of cross-examination, the defendant said, she realized the rice was bad from the beginning of the supply and also said during cross-examination that she did not know the rice was bad till her customers called her to abuse her and arrest her, so she had to sell same to an Aboki at a lower price. I will like to reiterate that there is nothing before the Court to show the bad quality of rice she claims the claimant sold to her; he who comes to Equity must come with clean hands; "Equity aids the vigilant and not the indolent".

Dw2 – the defendant's husband, gave evidence, tendered Exhibit G in proof of the payment of N1,000,000.00 to the claimant.

Exhibit H – Payment of N30,000.00 to the claimant, he paid the claimant N1,030,000.00 for the supply of 100 bags of stone free rice at N24,000.00 per bag. His colleague sent N500,000.00, see Exhibit I – his bank statement. The claimant failed to deliver the rice in October, 2022, delivered very poor quality in December, 2022.

He confirmed during cross-examination that the defendant told him all that had occurred between her and the claimant.

Dw3, a caterer confirmed that the defendant supplied her bad rice in December, 2022 and so she arrested her, the defendant is her customer/friend.

In the course of Cross-examination of Dw3, she told the Court that the defendant called her to testify, told her what happened to her (Hearsay Evidence), submitted also by claimant's counsel.

Dw2 paid N1,030,000.00 to the claimant and not N1,400,000.00 as alleged by the defendant, see Exhibits E, H and I, which the claimant had already stated on oath was paid by the defendant to her, that is N2,030,000.00 to the claimant, the claimant told the Court she received N2,030,000.00 from the defendant, see Exhibit A for the first batch of 60 bags of rice at N33,000.00 each and empty bags of 50kg rice.

From the Exhibits G, H, I – the defendant paid only N1,030,000.00 to the claimant.

N500,000.00 – 29<sup>th</sup> July, 2022, see Exhibit G, bank statement of Dw2, Access Bank to Zenith Bank.

N30,000.00 – Deposit slip 29<sup>th</sup> July, 2022 to Zenith Bank (claimant).

N500,000.00 – On the 29<sup>th</sup> July, 2022, see Exhibit I, his bank statement; Access Bank to Zenith Bank.

From the evidence of Exhibit G, the bank statement of Dw3 from Access Bank, he paid only N500,000.00 to the claimant, that is Solomon Monday, the husband of the defendant.

These payments and the N1,000,000.00 paid by the defendant on the 18<sup>th</sup> November, 2022, show that the claimant received only N2,030,000.00 from the defendant and not N2,400,000.00 as contended by the defendant.

From her evidence, evidence of Dw2 and cross-examination of Dw1, it is evident that she is not a witness of truth, she keeps on aprobating and reprobating. It is trite that where a witness gives evidence which the Court sees as not been truthful and misleading, the Court is to strike out such evidence.

This Court is a Court of justice and evaluates cases based on facts and evidence, the Court is not a Father Christmas to pick and choose what evidence to rely on. The evidence of the defendant has been so discredited and controverted by the claimant's counsel that the Court sees the defendant as not being a witness of truth and so cannot rely on her evidence. She has lied to the Court and contradicted her evidence in the course of cross-examination, which aims to check the veracity of the witness's (Dw1) statement and discredit same.

As evident above, the claimant's counsel exposed her lies, her discrepancies and contradictory evidence given during her statement on oath and cross-examination; in his final written address.

The defendant has failed to prove her entitlement to her counterclaims, too many holes in her story.

The defendant is not a witness of truth conclusively.

The defendant has failed to prove the payment of N2,400,000.00 to the claimant for 100 bags of rice at N24,000.00 per bag while Exhibit B, the agreement dated 16<sup>th</sup> December, 2022 shows that parties agreed to the supply of 40 bags of 50kg rice to the defendant at N31,000.00 per bag, signed by both of the parties, with 27 bags of the said rice received by Stella Chidinma cw2. The defendant also signed on the 19<sup>th</sup> December, 2022 that she had not yet paid for the 40 bags of 50kg rice though one bag was bad, totaling N1,209,000.00.

I will to ask again, why didn't the defendant return the rice to the claimant upon discovering that the rice was of very poor quality?

Why is there is no evidence before the Court to substantiate her claim?

In *Adedeji vs. Obagimi* (2018) 16 NWLR (pt. 1644) pg. 165 para. G, it was held that Courts are imbued with the judicial authority and jurisdiction to give contractual agreement between parties, provided that such contracts are rooted within the law.

It is the duty of this Court to construe the agreement/contract as seen in Exhibit B in line with the clear intention of the parties. See *Adedeji vs. Obajimi* (supra) 149 and *Olatunde vs. O.A.U.* (1998) 5 NWLR (pt. 549) 178.

Extraneous evidence as that given by the defendant cannot vary, subtract from or contradict the terms of Exhibit B; the contract where the agreement is embodied in written terms. See *SG Western Nigeria vs. Adebonojo* (1971) 1 All NLR 178 and *Adedeji vs. Obajimi* (supra) P. 166.

The claimant has proved the evidence of their contract by tendering Exhibit B, which embodies the terms of the contract between the claimant and the defendant, which the defendant has clearly breached.

The contract stipulated the time frame for the payment of the purchase price of the 40 bags of 50kg rice.

The refusal of the defendant to pay the contract price for the 40 bags of rice has discharged the contract between the parties, by breaching the said contract. See *Tsokwa Oil Marketing Coy. vs. B.O.N. Ltd.* (2002) 11 NWLR (pt. 777) 163.

The breach committed by the defendant is due to the failure of the defendant to pay for the 39 bags of rice as agreed between parties, see Exhibit B. See *Best Nig. Ltd. vs. Blackwood Hodge (Nig.) Ltd.* (2011) 5 NWLR (pt. 1239) 95.

The Court must always respect the sanctity of the agreement between parties, Exhibit B in this case, reached by both parties, this Court cannot rewrite the contract before the Court; Exhibit B, parties are bound by their agreements, they must be in consensus ad idem. See *Best (Nig.) Ltd. vs. B.H. (Nig.) Ltd.* supra pp. 116-117 and 126 – 127.

The signatures of the defendant appended to Exhibit B for 16<sup>th</sup> December, 2022 and 19<sup>th</sup> December, 2022 show that parties were at consensus ad idem; the said contract being enforceable.

This Court will not rely on the evidence of Dw2 and Dw3 as they both gave hearsay evidence, which is inadmissible under our laws, they gave evidence with regards to what the defendant told them and not to establish the truth of the defendant's story. The evidence did not flow from them directly.

See sections 37, 38 and 126 of the Evidence Act, 2011.

1. *Dill Intl Nig Ltd. vs. Eze-Uzoamaka* (2020) 16 NWLR (pt. 1751).
2. *Opara vs. AG Fed* (2017) 9 NWLR (pt. 156) 61/488 pg. 489.

The elements of a binding contract, which are enforceable are seen as follows;

1. Offer
2. Acceptance
3. Intention to create a legal relationship



4. Consideration
5. Capacity to contract

These are all present in the instant case, wherefore the contract is binding on both parties.

An offer was made to the defendant who accepted same and signed, Exhibit B, the agreement between both parties. See *El Hannam Ventures Ltd. vs. R.M.S. Ltd.* (2021) 10 NWLR (pt. 1784) 231.

The defendant is not allowed by law to resile from the agreement, the claimant having performed her own obligations by supplying the agreed 40 bags of rice to the defendant. See also *BPS Construction and Engineering Co. Ltd. vs. FCDA* (2017) 10 NWLR (pt. 1572) 1.

The offer in this case is a definite understanding made with the intention that it will become binding on the supplier (claimant) as soon as it was accepted by the defendant. The defendant's signature on the agreement is acceptance of the offer so contained/contained therein.

The consideration in the instant case is the profit, interest, right accruing unto the claimant, see *Eyiboh vs. Mujaddadi* (2022) 7 NWLR (pt. 1830) 413 and *BFI Group Cooperation vs. B.P.E.* (2012) 18 NWLR (pt. 1332) 209.

The Court will grant damages against the defendant in favour of the claimant emanating from the direct breach of contract by the defendant, for failing to pay for the 39 bags of rice of 50kg each, delivered by the claimant to the defendant on the 16<sup>th</sup>/19<sup>th</sup> December, 2022.

If the defendant had paid for the rice, she will not be in breach of Exhibit B; their agreement. The cost of the said breach will be borne by the defendant. This covers the loss incurred by the claimant, losing her source of livelihood, her business, her customers. See;

1. *Vital Investment Ltd. vs. CAP Plc* (2022) 4 NWLR (pt. 1820) pg. 249.
2. *Agu vs. General Oil* (2015) 17 NWLR (pt. 1488) 327.

This will help the claimant mitigate against her losses, it is a compensation for her losses. See *UBN Plc. vs. Ajabule* (2011) 18 NWLR (pt.1278) 152.

The claimant needs to be restored to the position as if the contract had not been breached. See;

1. *UBA Plc. vs. Bil Industries Ltd.* (2006) 19 NWLR (pt. 1013) 61.
2. *British Airways vs. Atoyebi* (2014) 13 NWLR (pt. 1424) 253.
3. *B.A.L.W. Ltd. vs. Landmark University* (2020) 15 NWLR (pt. 1748) 501.

The evidence of the claimant has clearly been substantiated to the Court's satisfaction, her evidence being cogent and credible, the exhibits E, H, I tendered by the defendant buttress the claim/facts of the claimant that she received N2,030,000.00 from the defendant who claims she paid N2,400,000.00 to the claimant but could not tender any evidence in proof of same but rather tendered evidence in support of the claimant's claims.

The claimant's evidence was not debunked by the defence in the course of cross-examination whereas that of the defendant was grossly discredited by the claimant's counsel during cross-examination, the defendant reneging from her testimony and contradicting her evidence by falsifying her earlier statement or oath.

See *Eyo vs. Onuna* (2011) 11 NWLR (pt. 1257) 1.

The Court accordingly hereby enters judgment on the preponderance of evidence in favour of the claimant and orders as follows;

1. That the defendant pays the claimant the sum of N1,211,000.00 (One Million, Two Hundred and Eleven Thousand Naira) only, being payment for the 39 bags of stone free rice of 50kg each bag, supplied to the defendant by the claimant, in December, 2022.
2. That damages in the sum of N3,500,000.00 (Three Million, Five Hundred Thousand Naira) only, be paid by the defendant to the claimant.
3. That the counterclaims of the defendant be and are hereby dismissed.

This is the judgment of the Court.

**MRS BARIYAAH .H. ABE**  
**Chief Magistrate**  
**15th October, 2024.**

