

**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 24TH DAY OF MARCH 2025
AT THE SMALL CLAIMS COURT 4 PORT HARCOURT**

SUIT NO: PMC/SCC/26/2025

BETWEEN

MR COSMOS OPARA ---- CLAIMANT

AND

MRS CHINYERE NWACHUKWU ----- DEFENDANT

PARTIES: Claimant present. Defendant absent

APPEARANCES: Sir I.O. Nwodoh Esq. for claimant

JUDGEMENT

By a summons dated 22/1/2025, the Claimant's claim against the Defendant are as follows:

1. N1. 750, 000.00 being debt owed the claimant by the defendant
2. N500, 000.00 as cost of legal fees and consultation
3. N1,000,000.00 as cost of litigation and inconvenience

PLEA

By the affidavit of service availed this court, the Defendant was served the originating process in this suit personally on the 3rd of February 2025 at 4.00pm. On the 6th of February 2025, upon the application of defence counsel, a plea of not liable was entered for the defendant and case was adjourned to the 11th of February 2025 for hearing.

SUMMARY OF EVIDENCE

The Claimant in proof of his case called a lone witness, the claimant himself and tendered one exhibit marked Exhibit A.

The Defendant for her defence called a lone witness, the defendant herself and tendered five exhibits marked Exhibits B - F.

The relevant facts from the case of the Claimant as presented by the claimant himself in his deposition on oath is that he is a business man who was engaged by the defendant to help process and perfect all necessary payment requirements/documentations that will assist the defendant secure and receive payment of the money owed her by Niger Delta Development Commission (NDDC) in the tune of N18, 000, 000.00 and he was entitled to 10% of that sum which amounted to N1, 800, 000.00 and to that effect a cheque was issued him in the business name of the defendant. Said cheque was admitted as Exhibit A. That upon the payment of the sum of N18, 000,000.00 to the defendant, he presented the cheque for payment but was told it was outdated and obsolete. That upon being called upon, the defendant refused that they had any contractual relationship. That the defendant paid him the sum of N50, 000.00 and has refused to make any further payment which led him to seek legal redress and paid his lawyer the sun of N500,000.00. Case was adjourned for cross examination of CW1.

For her defence, the defendant via her witness deposition on oath states that it was one Mr Ovie Onisoye whom she had an agreement with to collect 10% with a date which terminated on the 30th of June 2022 and it was in furtherance of the agreement that the defendant issued a cheque to Mr Onisoye in 2022 and the cheque had no name as instructed by Mr Onisoye. That it is that cheque that the

claimant put his name and dated it 2024. That the handwriting for the date and name is different from that of the amount. That after the agreement with Mr Onisoye terminated, the defendant engaged the services of One Prince Oferemba on the 13th of November 2022 to recover same contract sum which also was terminated on the 30th of November 2022. Said agreements were tendered as Exhibits B and C respectively. That the claimant did not perfect any TSA, batch number and voucher as alleged. That she was surprised when the claimant called her requesting for her TSA number which she sent via whatsapp but on the advice of her husband, called the claimant not to continue with the process. The whatsapp correspondence was admitted as Exhibit F. That the payment was N16, 554, 832.16 as against the N18, 000,000.00 alleged by the claimant as he did not follow up with the payment. Account statement of defendant was tendered as Exhibit G. That the claimant came to know about the payment via her gift of N50, 000.00 to himself and Mr Onisoye. That her Christian sister helped her to secure the payment. Whatsapp correspondence between defendant and said person was admitted as Exhibit E. Case was adjourned for cross examination of DW1.

On the 5th of March 2025, parties adopted their written address and case was adjourned for judgement.

In the defendants final address settled by her counsel C.E. Opia-Adiele Esq. three issues were raised for determination to wit:

- 1. Whether the claimant has proved or established a case for entitlement of N1, 750, 000.00**
- 2. Whether the defendants are liable to pay N1,000,000.00 in legal consultancy and litigation cost**
- 3. Whether the claimant has shown the defendant is the alter ego of Emadag Integrated Services.**

On issues 1 and 2, counsel argued that the case is one of contract/agreement and an alleged breach thereof and in proof of same, the claimant tendered Exhibit A. that the law is that the claimant is to lead evidence on points raised in the defendants pleading. Counsel pointed that the claimant did not join issues with the defendant in her 17 paragraph statement of defence as well as the six exhibits tendered. That it is clear that the operative documents are Exhibits B and F and where Exhibit b initiates, Exhibit F puts a final nail on the coffin by directly

requiring that the claimant hands off on the payment. Counsel submitted that the burden is on who alleges and asserts and not the other way round. Counsel cited section 135 of the evidence act and case of CHIEF ADEFIOYE ADEDEJI V. J.O OLOSO & ANOR (2007) 1 SCNJ 379.

On Issue 3, counsel argues that the court should resolve the issue in favour of the defendant as the defendant has in paragraph 2 of her statement of claim and paragraph 3 of her witness deposition denied being the sole proprietor of Emadag Integrated services. In conclusion, counsel urged the court to find in favour of the defendant by evaluating and giving life to Exhibits B, D and F and dismiss the claims of the claimant with cost.

In the claimant's final address settled by his counsel Sir I.O.Nwodoh Esq. a lone issue was raised for determination to wit:

Whether the claimant on the preponderance of evidence has proved his case on the simple debt to be entitled to judgement as per his reliefs?

Counsel submitted that the claimant has satisfactorily proved his case on the preponderance of evidence and should be entitled to judgement. Counsel submitted that the claimant put forward his case bth orally and with documentary evidence (Exhibit A) which was made more manifest and clearer by the defendant's Exhibit F. counsel further opined that the claimants case is unwavering

RESOLVE

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

Whether the Claimant has proved his claim to be entitled to judgement.

It is trite law that the standard of proof in any civil suit is on the balance of probabilities. **SEE SECTION 134 OF THE EVIDENCE ACT 2011.** The proof on balance of probability implies that the case of both parties will be placed on an imaginary scale of justice and the side of the scale which is heavier and tilt down will be on top in the case. The balance of probability also implies the balance of truth.

In the instant case, to prove his claim that the defendant procured his service to help her get her payment from NDDC and they agreed to 10%, the claimant tendered Exhibit A. The defendant on the other hand disputes this and states that

she only procured two persons and had an agreement with them via Exhibit B and C. That she also told the claimant not to go ahead with pursuing her payment (Exhibit F). It is the case of the claimant that he had no written agreement with the defendant. Hence an oral agreement was entered by both parties.

I have looked at the testimony and exhibits tendered by both parties. It is my considered view that whatever agreement entered into by parties was cancelled and vitiated by Exhibit F, a clear and express instruction by the defendant to the claimant to hands off the said payment. A party cannot be forced into a contract. The defendant gave a clear instruction to the claimant to hands off and if he still went ahead to pursue the contract, he does so at his own risk. The defendant cannot be said to have breached her agreement with the claimant as there was no contract after 2 July 2023 as there can be no breach or inducement of a non-existent contract. See the case of **BEST NIG LTD V. BLACKWOOD HODGE (NIG) LTD (2011) 5 NWLR (1239) 95 AT 122 PARA G-H**

Upon the above principle, I find no merit in the claim of the claimant hence this suit is dismissed accordingly. I make no order as to cost.