

**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 12TH DAY OF FEBRUARY 2024
AT THE SMALL CLAIMS COURT 4 PORT HARCOURT**

SUIT NO: PMC/SCC/239/2023

BETWEEN

NNAEMEKA OSINACHI OKOYE ----- CLAIMANT

AND

- 1. BENTEK ENGINEERING SERVICES LTD**
- 2. ILLOZUMBA PASCHAL EMEKA BENT**
- 3. FOGHOLA BETHEL FAMOUS**
- 4. SOLOMON CHUKWUEMEKA ENWERE**

DEFENDANTS

PARTIES: Parties absent

APPEARANCES: S.L.O. Agbo Esq with B.M. Chukwuma Esq for claimant.

No representation for defendant

JUDGEMENT

By a claim dated 13/11/2023, the claimant's claim against the defendant are as follows:

1. The sum of N4, 000, 000.
2. The sum of N400, 000.00 as damages.
3. The sum of N600, 000.00 as cost.
4. 10% post judgement interest per month from the date of judgment till final liquidation of judgment sum

PLEA

By the affidavit of service availed this court, the 2nd defendant was served the originating process in this suit personally and the 1st, 3rd and 4th defendants were served by substituted means by pasting. On the 13/12/2023, a plea of not liable was entered for and on behalf of the absent defendants. Case was adjourned to the 20/12/2023 for hearing.

SUMMARY OF EVIDENCE

The claimant in proof of his case called a lone witness, the claimant himself and tendered three exhibits marked Exhibits A-C.

The defendant in reply to the case of the claimant and for his defence called a lone witness and tendered six exhibits marked Exhibits D-I.

The relevant facts from the case of the claimant as presented by the claimant himself is that in January 2023, the 2nd defendant Paschal met him with two friends and claimed they had a business they want to do but they have cash constraint. That they demanded for N4, 000,000.00 and within one week, they will pay him the sum of N6, 000,000.00 claiming that the two extra million will be for appreciation. That he transferred the sum of N4, 000,000.00 to Mr Paschal and him and his friend gave him a cheque of N6, 000,000.00. That he also sent the receipt of payment showing the payment. That after two weeks, they started giving him stories. That the 2nd defendant also stopped picking his calls hence he consulted a lawyer to issue him a demand notice which he never responded to

and then he engaged his lawyer who charged him N600, 000.00 to get back his money. The cheque was tendered and admitted as Exhibit A. The claimant's statement of account was admitted as Exhibit B1 and certificate of compliance with Section 86 of Evidence Act 2011 as Exhibit B2. Letter of demand was also admitted as Exhibit C. Case was adjourned to the 16/01/2024 for cross examination of CW1.

The relevant facts from the case of the defendants in reply to the case of the claimant and for their defence which was presented by the 2nd defendant is that they had a contract with Julius Berger via a subletted LPO from A.U Oconnelli. The said purchase order was admitted as Exhibit D and the LPO was admitted as Exhibit E1 and E2. That the said job was for N520, 000,000.00. That they couldn't get access to the required funds as at the time to start the project and they needed immediate funds to mobilize to site and that was when he told the claimant of the job. That they met and he made available the documents to the claimant and when the claimant inquired about what he needed, he informed him it was to hire an excavator and low bed and the amount was N4, 000,000.00. That the claimant agreed to be part of the business. Receipts to hire the said equipment were admitted as Exhibits F1 and F2. That before the claimant made the transfer, he asked for cheque to cover his expenses and while they offered him N5, 000,000.00, he insisted on N6, 000,000.00. That the cheque of N6, 000,000.00 was issued without date as they had informed the claimant that when they have money they will inform him so he can present the cheque. That they couldn't get money from Julius Berger to continue the contract after raising an invoice as they were yet to reach the agreed milestone for payment. Said invoice was admitted as Exhibit G. the trucking list was also admitted as Exhibit H. that presently the job is at a halt and being delayed and they're working on getting the LPO directly from Julius Berger. That they were asked to get a letter from a bank and they've gotten that. Said letter from Zenith bank was admitted as Exhibit I.

On the 26/2/2024 parties adopted their written addresses and case was adjourned for judgement now being read.

In the defendants written address settled by their counsel I.A. Nzenwa Esq. a lone issue was raised for determination to wit:

WHETHER THE CLAIMANT HAS PROVED HIS CLAIMS TO BE ENTITLED TO RELIEF SOUGHT.

It is the legal argument of counsel that by Exhibit A, a contractual relationship has been established between the defendants and claimant and whether oral, is legally binding. That the contractual relationship between parties was for the claimant to inject N4, 000,000.00 as his own contribution in the business venture in return for N2, 000,000.00 of which the claimant received an undated cheque. That the claimant has failed to prove that he is not part of the business venture and that the onus is on a party who asserts to prove. Counsel cited the case of **MRS BETTY DAREGO V. A.G LEVENTIS (NIG) & 3 ORS (2015) CA/L/481/2011**. Counsel further stated that mere dishonouring of the cheque does not amount to intention to cheat. That the DW1 testified that the cheque was undated because the claimant was told to wait for instruction before presenting it. That the above testimony was not challenged hence the court ought to act on it. Counsel concluded by urging the court to hold that the claimant has failed to substantiate his claim and dismiss the suit.

In the claimants written address settled by his counsel S.L Agbo Esq. a lone issue was raised for determination to wit

IS THE CLAIMANT ENTITLED TO THE RELIEFS SOUGHT?

Counsel also amended their claim to include 10% post judgement interest per month from the date of judgment till final liquidation of judgment sum. For the above issue raised, Counsel argued that it is trite law that proof in civil cases is on preponderance of evidence or balance of probabilities. That the defendant has stated how the defendants approached him for a loan of N4, 000,000.00 with an interest making it N6, 000,000.00. That despite the testimony of the claimant, the defendants filed no defence. That by **ARTICLE 6(3) OF THE PRACTICE DIRECTIONS** of the court, where the defendant fails to file a defence, he may be held to have admitted the claim. That the testimony of the defendant's sole witness is to no avail as the law is firmly settled that evidence led where no defence is filed goes to no issue. Counsel cited the case of **AMININAOWUK & ORS V. DAREGO & ORS (2011) LPELR – 9099 (CA)**. That the claim by the defendant that the cheque was not dated was wrong as the cheque was clearly dated 16/04/2023 and oral

evidence cannot contradict the contents of the said cheque. In conclusion, counsel urged the court to hold and grant the claims of the claimant.

RESOLVE

In determination of this suit, I will adopt the lone issue raised by the defendants to wit:

WHETHER THE CLAIMANT HAS PROVED HIS CLAIMS TO BE ENTITLED TO RELIEF SOUGHT.

The general principle is "The standard of proof in civil cases is on the balance of probabilities under **SECTION 134 OF THE EVIDENCE ACT 2011**. The law is settled that this standard of proof is placed on the preponderance of evidence. This means the standard required for a claim to succeed is that one side's evidence outweighs the other. The evidence that is applied in any civil matter must be credible evidence and it must be deployed by any of the parties making the claims.

From the case file, the claimant has complied with the provisions of **ARTICLE 2 AND 3 OF THE RIVERS STATE SMALL CLAIMS COURT PRACTICE DIRECTION 2023** for the fact that this is a liquidated money demand not exceeding Five million (N5M), the defendant was served with a demand letter, there is a complaint form, there is an affidavit of service of the summons of court on the defendant.

I will agree with defence counsel that the case before the court is one of contract albeit oral. An agreement can be oral, or can be inferred from the conduct of the parties thereto. Notwithstanding the contract is oral, it is enforceable. In the instant case, the conduct of the parties shows that the agreement was not in writing. For a valid contract to come into being in law there must be a definite offer by the offeror and definite acceptance by the offerree and of course a legal consideration. There must be mutuality of

purpose and intention. See the case of **DAHIRU VS. KAMALE (2001) FWLR PT.62 18S3**. Where a party alleges the existence of oral contract, that party has the burden of proving the assertion to the satisfaction of the Court. In the instant case the claimant gave oral evidence of what transpired and what was agreed, he highlighted the key terms and he was able to prove the existence of the essential elements. Therefore, it is my view that an oral contract between the parties exists and is enforceable although there are discrepancies as to some terms. Parties are ad idem that the sum of N4, 000,000.00 was given by the claimant to the defendants with an interest of N2, 000,000.00. The only bone of contention is that while the claimant says it's a loan, has provided a cheque issued him in lieu of payment, the defendants alleges that it's a business investment which will be paid back after the business is done. It is trite that burden of proof in civil suits lies on the claimant. The initial burden of proof in a civil claim lies on the Plaintiff or Claimant and after the initial burden, it shifts on the Defendant to present evidence to controvert same failing which what the plaintiff placed will hold sway, see **EZEMBA V. IBENEME & ANOR (2004) LPELR-1205(SC)**. The claimant has by Exhibit A proven that he gave money to the defendants to be repaid by the defendants with an interest and a cheque was given to guarantee that payment. The defendant disproves this and say it's a business investment like other parties have made. Like defence counsel said, he that alleges must prove. The defendant via his testimony has not been able to prove that the said sum was an investment. He has however been able to prove that a business does in fact exist which parties are also ad idem. He has not been able to tell this court the interest to be enjoyed by other investors. He has also not been able to clear why other investors were not given a cheque. During cross examination he was asked why he was not given a cheque as an investor and he said because he's part of the business. That clearly tells the court that the relationship of the 2nd defendant with the business and that of the claimant is very different. While the defendant keeps repeating that the cheque was not dated, Exhibit A before the court bears the date 16/04/2023. The defendants never objected to the admission of this document. The court is enjoined to weigh evidence before it on an

imaginary scale. This court has looked at the evidence before it and weighed it on a balance of scale and this balance tilts towards the claimant. Hence relief one succeeds.

On the second claim of N400, 000.00 as damages. The principles guiding the award of damages in tort are different from those guiding the award of damages in contract. The object of tort damages is to put the plaintiff in that position he would have been in if the tort has not been committed whereas, the object of contract damages is to put the plaintiff in the position he would have been in if the contract had been satisfactorily performed. See **AGBANELO V. UNION BANK OF NIGERIA LTD (2000) 4 SC (PT. 1) 233 AT 245**. By the testimony of both parties, parties are ad idem that there was an agreement of N2, 000,000.00 interest on the N4, 000,000.00 given to the defendants. Based on the above, the claim for damages succeeds.

On the third claim of the sum of N600, 000.00 as cost. The courts have held that where evidence is proven as regards the amount expended in the litigation of a suit cost ought to be awarded to indemnify the winning party. Costs are not awarded to penalize a party who is ordered to pay them, nor are costs awarded as windfall to a successful party. Costs are meant to indemnify the winning party for his out of pocket expenses representing the actual and true/fair expenses incurred by the litigation. Upon Exhibit C, cost of N600, 000.00 is awarded.

On the fourth claim of 10% post judgement interest per month from the date of judgment till final liquidation of judgment sum. Unfortunately the magistrate court rules do not acknowledge the award of post judgement interest. It is totally at the discretion of the court but that discretion unfortunately will not be exercised in favour of the claimant

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

1. The defendants are ordered to pay the claimant the sum of N4, 000, 000.00.
2. The defendants are ordered to pay the claimant the sum of N400, 000.00 as damages.
3. The defendant are ordered to pay the sum of N600, 000.00 as cost to the claimant.