

IN THE MAGISTRATES' COURT OF RIVERS STATE OF NIGERIA

IN THE PORT HARCOURT MAGISTERIAL DISTRICT

HOLDEN AT SMALL CLAIMS COURT 1, PORT HARCOURT

BEFORE HIS WORSHIP COLLINS G. ALI, ESQ.,<sup>1</sup> TODAY WEDNESDAY, THE

29<sup>TH</sup> DAY OF MAY, 2024.

SUIT NO.:PMC/SCC/72/2024.

BETWEEN:

1. MR. BERNARD ULOMA IROEGBU  
2. MRS. VERONICA ONYINYECHI IROEGBU } CLAIMANTS

AND

MR. ONUMAEGBU MAYOR IHEUKWUMERE ---- DEFENDANT

Case called.

Parties absent except the 1<sup>st</sup> Claimant.

JUDGMENT

The Claimants originally commenced this suit against the Defendant at the High Court of Rivers State in Suit No. PHC/3093/CS/2022. The case was later transferred through the Chief Registrar's office on the 14<sup>th</sup> day of March, 2024 for documentation and reassignment to the Small Claims Court. On the 26<sup>th</sup> day of March, 2024 the case was documented at the Small Claims Registry and assigned to this Court. The claims of the Claimants as can be gleaned from the statement of claim filed on the 27<sup>th</sup> day of September, 2022 are as follows:

1. An order of Court directing the Defendant to pay over to the Claimants the sum of ₦3,660,000.00 been money expended by the Claimants in purchasing a parcel of land beside former cattle market Iriebe and known as and called Ekwu Egba Land Iriebe in Obio/Akpor Local Government Area of Rivers State from the Defendant which contract was not concluded. The said sum arose as follows: cost of land ₦3,300,000.00, bush entry ₦30,000.00, deed of conveyance ₦50,000.00, agency fee ₦200,000 and surveying ₦80,000.00

<sup>1</sup> LL B, LL M, BL, A. IDRI, Chief Magistrate Grade I, and the Presiding Magistrate, Small Claims Court 1, Port Harcourt, sitting at Chief Magistrate Court 7, Port Harcourt, Rivers State.

2. An order of Court directing the Defendant to pay over to the Claimants the sum of ₦720,000.00 been money expended by the Claimants in the relocation bid by the Defendant which contract was not concluded. The said sum arose as follows: further payment for land ₦200,000, Local Government/Community permit ₦250,000.00, security fee ₦30,000.00 fresh surveying ₦140,000.00 and payment to his PA Emeka ₦100,000.00.
3. An order of Court directing the Defendant to pay over to the Claimants the sum of ₦107,400.00 being and representing money expended on site and which arose as follows: lorry load of blocks ₦29,000.00, tipper load of sand ₦24,000.00, 8 bags of cement ₦2,800.00 by 8 bags which is ₦22,400.00 and 8 drums of water at ₦1,000.00 each been ₦8,000.00, labour ₦3,000.00 by 8 which is ₦24,000.00.
4. The sum of ₦1,000,000.00 as damages for breach of contract and general damages.

The Defendant was earlier served with the writ of summons at the High Court on the 28<sup>th</sup> day of April, 2023 before the case was transferred and commenced *de novo* in this Court. Upon the case been reassigned to this Court, the Defendant was served with fresh hearing notice and the 1<sup>st</sup> Claimant's written statement on oath on the 26<sup>th</sup> day of April, 2024. The Defendant failed to appear in Court despite been served with the hearing notice thereby prompting the entry of plea of not liable on his behalf on the 8<sup>th</sup> day of May, 2024.

On the 14<sup>th</sup> day of May, 2024 the 1<sup>st</sup> Claimant testified as CW1 and the sole witness for the Claimants by adopting his written statement on oath filed on the 23<sup>rd</sup> day of April, 2024. The CW1 tendered five (5) documents which were received in evidence as exhibits and marked EXHIBITS A, A1, B, C and D respectively. The CW1 was not cross examined by the Defendant who also failed to appear in Court. The Defendant did not defend the claim and therefore was foreclosed from defence and address on the 14<sup>th</sup> day of May, 2024.

After the close of trial, the learned Claimants counsel filed final written address on the Order of this Honourable Court. The Claimants final written address dated the 16<sup>th</sup> day of May, 2024 and filed on the 17<sup>th</sup> day of May, 2024 was adopted by the learned Claimants counsel on the 28<sup>th</sup> day of May, 2024 and the case was adjourned to the 29<sup>th</sup> day of May, 2024 for judgment. The learned Claimants counsel Lady J. C. Aguh distilled two issues for determination in the Claimants' final written address thus:

- i. Whether the Claimants have proved their case on the preponderance of evidence.*
- ii. The effects of unchallenged and uncontroverted evidence.*

After a painstaking examination of the case put forward by the Claimants, the sole issue for determination in this case is thus:

***Whether the Claimants have proved their case and therefore entitled to the reliefs sought?***

The Claimants' case is that the Defendant agreed to sale one plot of land to them which they paid for and commenced building on the land. The Claimants however could not continue the building due to cash crunch and later planned to resale the land but discovered to their shock that the Defendant had resold the land to someone else who had erected structure on the land. The Defendant upon demand by the Claimants agreed to refund them for the botched land sale transaction, but have since refused to make the refund after several demands including the undertaking he made during Police intervention in the case. The CW1 testified that they resolved for the Defendant to pay them ₦3,500,000.00 out of which the Defendant had paid ₦500,000.00 only. The Defendant failed to appear in Court despite been aware of the claims against him which makes the Claimants' claims unchallenged. The law is that unchallenged evidence is deemed admitted and the Courts are enjoined to accept and act on such unchallenged evidence. See the case of *Owners of M/V Gongola Hope & Anor. v Smurfit Cases (Nig) Ltd & Anor. [2007] LPELR-2849 (SC)*. The failure of the Defendant to defend the case despite been served with fresh hearing notice on the 26<sup>th</sup> day of April, 2024 is a tacit acceptance of the truth

of the evidence given by the Claimants in this case through the CW1. The law is now settled that facts admitted need no further proof. See section 123 of the Evidence Act, 2011 (as amended)

In view of the evidence of the CW1 that their claims against the Defendant has been narrowed down to ₦3,500,000.00 during police intervention in the matter out of which the Defendant has paid the sum of ₦500,000.00. I hold that the Claimants are entitled to the sum of ₦3,000,000.00 and damages. The sole issue is resolved in favour of the Claimants.

In the final analysis, judgment is hereby entered in favour of the Claimants and against the Defendant as follows:

1. The Defendant is ordered to pay the Claimants the sum of ₦3,000,000.00 (Three Million Naira) only representing outstanding and unpaid debt forthwith.
2. The Defendant is ordered to pay the Claimants the sum of ₦300,000.00 (Three Hundred Thousand Naira) only as damages forthwith.



C. G. Ali, Esq.  
(Chief Magistrate)  
29/05/2024

LEGAL REPRESENTATION:

1. Lady J. C. Aguh for the Claimants.
2. Defendant not represented.

