

IN THE MAGISTRATE COURT OF RIVER STATE OF NIGERIA
IN THE PORT HARCOURT MAGISTERIAL DISTRICT
HOLDEN AT PORT HARCOURT
BEFORE HIS WORSHIP S. S. IBANICHUKA, ESQ
SITTING AT SENIOR MAGISTRATE COURT 6 PORT HARCOURT
SUIT NO: PMC/SCC/65/2025

BETWEEN

ZINA BENEDICT ESQ

CLAIMANT

AND

PATRICIA OGBONYANO

DEFENDANT

JUDGMENT

This suit was instituted via forms RSSC 2 and 3 filed on 20/02/25 wherein the Claimant's claims against the defendant is for:

- i. The sum of N90,000.00 (Ninety Thousand Naira) only being and representing money paid to the defendant for a contract to sew gown.
- ii. N200,000.00 (Two Hundred Thousand Naira) only representing solicitors fees.
- iii. N500,000 (Five Hundred Thousand Naira) only as special and general damages.

The Defendant in reaction filed an amended defence and a counter claim though she did not file a form RSSC 5 of this court, wherein the Defendant/Counter-Claimant denied the claims of the claimant and counter claimed as follows:

- I. the sum of N250,000.00 (Two Hundred and Fifty Thousand Naira) being and representing loss of business earnings for the defendant from the 13/01/2025 till date.
- II. The sum of N750,000.00 (Seven Hundred and Fifty Thousand Naira) being and representing mental,emotional and psychological trauma the defendant has gone through in the hands of the claimant...
- III. The sum of N650,000. (Six Hundred and Fifty Thousand Naira) being and representing solicitors fees.

The claimant filed a defence to the defendant's counter claim and the defendants counsel also filed a reply to the Claimants defence to the counter claim.

In prove of her case, the claimant called a sole witness (CW1) and tendered one Exhibit, Exhibit A, The Defendant also called one witness (DW1) and tendered Exhibits B, C, D, D1 to D3, E and E1 respectively. The two witnesses were cross examined, parties closed their respective cases. The parties filed, exchanged and adopted their respective final written addresses on 8/4/25 hence this judgement.

The summery of the facts of the Claimants case are that on the 13/01/25 the claimant contracted the defendant to make a full corset dress for her to be worn on her birthday dinner party celebration, and to be used to snap the birthday photo shoots and also to be

from the evidence of both parties before this court. Therefore, the sum in contention here is the sum of N89,000,00 (Eighty-Nine Thousand Naira).

The law is that facts admitted need no further proof See section **Section 123 of the Evidence (Amendment) Act 2023**.

ISSUE 1

"Whether the claimant has proved her case on the standard required by law in a civil case?"

The claimants primary claim before this court is for the sum of N90,000,00 (Ninety Thousand Naira) only being and representing money paid to the defendant for a contract to sew a cosset gown which the defendant allegedly breached its terms.

The claimant has in support of her claim stated in her statement on oath filed on 11/03/25 and adopted on 13/03/25, that she did not use the dress for her birthday and that her birthday was on 23/01/25, that the photo shoot was done in the dress made by the defendant for the claimant and posted on 18/01/25, that the dress was poorly sown.

The law is that he who alleges the existence of any fact must prove same. see **AMADI V. AMADI (2017) 7 NWLR (PART 1563) S.C.**,

The claimant has also stated that she has planned her birthday to be an elaborate event, and held on 23/01/25 but she did not wear the dress, there are no pictures from this elaborate birthday showing what cloth the claimant wore for her birthday besides the dress in issue, the claimant did not also show this court how her specification of the dress ought to be which the defendant did not meet up to do.

The burden of proof in civil cases has two distinct facets , the first is the burden of proof as a matter of law and the pleadings, normally termed as "the legal burden of proof", the second is the burden of proof in the sense of adducing evidence usually described as the "evidential burden of proof" (which is what we are concerned with in the circumstances of this case), while legal burden of proof is always static and never shifts, the evidential burden of proof shifts or oscillates consistently as the scale of evidence preponderates. See the case of **APOSTLE PETER EKWEOZOR & ORS V. REGISTERED TRUSTEES OF THE SAVIOR APOSTOLIC CHURCH OF NIGERIA (2020) LPLER – 49568 (SC)**

From the evidence before this court in the instant case I am of the view that the claimant failed to substantiate her claim before this court as the claimant left the court handicapped with nothing to rely on in granting the claims of the claimant before this court.

In the circumstance prayer one of the claimants claim fails. The claimants principal claim having failed all other ancillary claim fails as well.

See **Nwaogu v Atuma (2013) 11 NWLR (Pt 1364) 117 (SC)**.

Accordingly, all the claims of the claimant before this court fails and the claim is hereby dismissed.

The Cost of N20,000.00 (Twenty Thousand Naira) is awarded in favour of the claimant against the defendant.

COUNTER CLAIM

The defendant has a counter claim before this court as stated earlier. It is on record that the Defendant/Counter-Claimant as follows:

- I. for the sum of N250,000.00 (Two Hundred and Fifty Thousand Naira) being and representing loss of business earnings for the defendant from the 13/01/2025 till date.
- II. The sum of N750,000.00 (Seven Hundred and Fifty Thousand Naira) being and representing mental, emotional and psychological trauma the defendant has gone through in the hands of the claimant...
- III. The sum of N650,000. (Six Hundred and Fifty Thousand Naira) being and representing solicitor's fee.

The defendant to this counter claim also filed a defence to this counter claim on 13/03/25 but did not support same with any witness deposition.

The issue for determination in this counter claim is

Whether the Defendant Counter - Claimant has been able to prove her counter claim?

This is a counter claim and the nature of counter claim as stated by the court of Appeal in the case of **Aberuagba v Oyekan (2020) 2 NWLR (Pt 1707) 165 CA**, is that a counter claim is a distinct action by a defendant against a plaintiff, with its independent and separate life from the main claim, and with a distinct existence.

On claims one and two of the counter-claim being claims for "loss of business earnings for the defendant from the 13/01/2025 till date and claim for emotional and psychological trauma the defendant has gone through in the hands of the claimant" ...

This is a small claims court and this court can only entertain claims for liquidated money demand and other related matters in the sum not exceeding N5,000,000.00 (Five Million Naira).

In the case of **KABO AIR LTD & ANOR VS. MIMI BUREAU DE CHANGE LTD & ANOR (2020) 4 NWLR (PT.1715) 488 at Page 502, Paras B-F** liquidated debt was defined to be among other things a specific sum of money usually due and payable

The above prayers are not liquidated debts as they are not liquidated sums due and payable but anticipated, also the small claim court cannot award cost for pain or suffering, see **bullet point 3 of the Rivers State Small Claims Court hand book 2024** Accordingly, prayers one and two of the counter claim fails and same are refused.

In the circumstance prayer one and two of the counter claimants claim having failed, prayer three being an ancillary claim also fails.

See **Nwaogu v Atuma (2013) 11 NWLR (Pt 1364) 117 (SC)**.

Finally, all the claims of the counter claimant before this court fails and the counter claim is hereby dismissed.

The defendant to the counter claim did not file any witness deposition neither did the defendant to the counter claim lead any evidence in defence of her counter claim, the defence to counter claim is deemed to have been abandoned. See **Ochin v Ekpechi (2000) 5 NWLR (Pt 656) 225. CA.**

Therefore, there shall be no order as to cost.

Dated 24th day of April 2025

Signed:

S. S. IBANICHUKA, ESQ.

24/04/2025.

SAMUEL S. IBANICHUKA, ESQ.
(SENIOR MAGISTRATE)
SIGN  DATE 24/4/25

