

IN THE MAGISTRATES' COURT OF RIVERS STATE
IN THE PORTHARCOURT MAGISTERIAL DISTRICT
HOLDEN AT SMALL CLAIMS COURT BEFORE HIS WORSHIP. G.C.AMADI ESQ.
SITTING AT SMALL CLAIMS COURT 1, PORT HARCOURT ON TUESDAY, THE 12th
NOVEMBER, 2024.

SUIT NO. PMC/SCC/248/2024

FLORA NWADINMA FESTUS-IFODE Esq



CLAIMANT

AND

THANKGOD CHIKWOKWA ACHAKALA



DEFENDANT

JUDGMENT

This is the final judgment in this suit, wherein the Small Claim before the court, dated and filed on the 16th July, 2024 is for.

- A. An order directing the defendants to refund the Claimant, the sum of N864,000 (Eight Hundred And Sixty Four Thousand) Naira representing the refund for money given for the supply of 1,600 blocks at Zion Outreach Prayer Ministry, Amala in Ngor Okpala LGA, Imo State.
- B. Cost of litigation to the sum of N2,000,000
- C. Cost to the sum of N1,000,000.00

In proof of their case, the claimant called one witness and the defendant called two witnesses and a total of thirteen (13) exhibits were tendered in evidence.

On the 21st October, 2024 the Claimant's counsel applies for plea of not liable to be entered on behalf of the defendant and the matter was set down for hearing.

On the 23rd October, 2024, the CW1, the Claimant on record commenced his evidence in Chief and stated that she adopts his written statement on oath dated and filed on the 21st of October, 2024, wherein she states That he the claimant in this suit and as such she is conversant with the facts leading to this suit. That sometime on the 10th of August, 2024, the defendant was paid by her to supply building blocks to Zion Outreach Prayer Ministry, Amala in Ngor- Okpala Local Government Area of Imo State.

That on that said day, she also travelled to Amala to receive the said blocks but the defendant never showed up. That upon her return to Port Harcourt on the evening of 10th August, 2024, she visited the block industry of the defendant to inquire as to why the blocks were not delivered, the defendant pleaded to be allowed to supply the blocks the next day being the 11th of August, 2024 on or before 12 noon.

Testifying further, the CW1 stated that she allowed the defendant that opportunity and he also

defaulted. As a result of all these defaults, he has been at his block industry to discuss refund of his money and also taken other steps to resolve this issue amicably but the defendant is not yielding to her efforts.

That as a result, she wrote the defendant a letter of demand to the defendant, The CW1 identifies letter of demand and receipt of professional fees from rights and remedies legal practitioners and Claimant's statement of Account from UBA ad they were all admitted in evidence as Exhibits A,B and C respectively.

During the cross-examination of the CW1 on the same date, she testified that the 1st time, she transacted with the defendant was on the 9th of August, 2024. That on the first day, he took the defendant to the site where the 1600 blocks, 6 inches of blocks will be offloaded for the 1st transaction. That she was there the first day and they received the block with the site engineer. That the blocks she paid for on the 10th August, 2024 was not delivered. That she was on site and she saw only one truck having only 700 blocks and he asked them to offload and the defendant said No, until the 2nd truck arrives and he never arrived until the close of work when the site Engineer left the site and she also left.

That she took her calls after she left site. That when she saw missed calls, she called the defendant to know what happened. He said I can come to the block industry the next day with the police

That before she left the site on the 10th August, she called the defendant to tell him that he has breached the contract.

That she responded to the text messages of 11th August, 2024.

That she is not aware that the defendant's workers were in danger because she left the site as it was close of work. That she is not aware that there were threats from the men that sprang from the bush. That she is not aware of what happened on the 10th after close of work after 5pm because she returned to Port Harcourt.

That the defendant pleaded that they should allow him to drop the blocks before 12 noon on the 11th of August. That the site Engineer waited till 3:30 and he didn't see them

That the mechanic never informed him of the fault that made them not to drop the blocks on the 10th. That there was no official report to the Nigerian Army. That the angry mob did not damage the blocks.

That on Tuesday, she saw the blocks all offloaded in front of the defendant's block industry.

After the evidence of CW1, the Claimant closed her case and the matter was adjourned for defence. On the 30th October, 2024, the DW1, who is also the defendant testified and stated that he has a block industry situate at Rumuosi and he doing business under the name and style of ACHAKALA'S BLOCK INDUSTRY

That the claimant engaged the defendant to supply 1,600 (One Thousand Six Hundred) six (6) inches hollow block at Zion Outreach prayer Ministry, Amala in Ngor-Okpala Local Government Area of Imo State. That the transaction was made on the 10/8/2024 and the claimant made payment of ₦ 864,000.00 (Eight Hundred and Sixty Four Thousand Naira) via transfer. That the 1600 blocks was sold at ₦310.00 per block which amount to 2496,000.00 (Four Hundred And Ninety Six Thousand Naira).

That the cost of transporting the blocks to the site in Ngor-Okpala Imo state was 230.00 (Two Hundred And Thirty Naira) per block and the 1600 blocks amount to the sum of ₦368,000.00 (Three Hundred And Sixty Eight Thousand Naira).

The sum total of the value of the blocks and transportation amount to the sum of ₦ 864,000.00 (Eight Hundred and Sixty Four Thousand Naira). That the blocks were to be supplied on the day

of payment being the 10/8/2024 and they took the 1600 blocks to the site on the 11/8/2024 due to a mechanical fault of one of the vehicle which we communicated same to the claimant That there was no time so they agreed that the blocks will be transported to Imo State and will be returned back at that amount.

That the claimant did not also inform the defendant that there is dispute on the land where the claimant showed the defendant workers to off load the blocks

That the claimant was the one who showed the defendants workers where to offload the blocks, That the claimant showed the workers where to off load the blocks and left. The blocks were to be supplied on the day of payment being the 10/8/2024 and we took the 1600 blocks to the site on the 11/8/2024 due to a mechanical fault of one of the vehicle which we communicated same to the claimant

That the payment is for the 1600 blocks and transportation to Imo State.

That there was no time that they agreed that the blocks will be transported to Imo State and will be returned back at that amount.

.The claimant showed the workers where to off load the blocks and left and on that day the claimant was with her daughter when she took the defendant workers to show them where to off load the blocks.

That the defendant workers have off loaded about 300 blocks when the men came out of the bush with machetes and began to threaten the lives of the workers. That the defendant workers call the defendant and inform him of the situation.

That the defendant asks the workers to wait to enable him call the claimant.

That the defendant called the claimant over 20 times but she was not taking her calls, the defendant now resorted to send her text message. That the defendant sent text messages and she did not respond to the text messages sent to her.

That he printed out the text messages and attached same to this witness deposition and mark same as "ANNEXURE 14

That the number of the men increases by the minute and they are saying that the defendant workers should reload the blocks and leave the site immediately.

That the defendant workers began to reload the blocks as ordered by the men, some of the men began to use their machetes to destroy the blocks. That the blocks destroyed by the men that came out of the bush were about 100 blocks.

That the blocks were reloaded and transported back to the defendant's block industry. That the claimant then called on the 12/8/2024 that did they off-load the

blocks at the site and the defendant said No. That thereafter, the claimant began to demand for the N864, 000.00 transferred to the defendant's account and that after two weeks, the claimant called and demanded for the money she paid for the 1,600 blocks which is the N864,000.00 (Eight Hundred And Sixty Four Thousand Naira) and that on the 12/9/2024, he was called by an Officer of the Nigerian Army to meet him at Bori camp which Ij did.

That the Army officer did not want to hear from the defendant all he was concerned was when is the defendant transferring the N864,000.00 (Eight Hundred And Sixty Four Thousand Naira) to the claimant, without words.

The DW1 identifies the text message and the certificate of compliance and both is admitted in evidence as Exhibit D and E respectively.

After the evidence of DW1, on the same day, the DW1 was cross-examined and he testifies as follows: that 1600 blocks were sold at N310 per block and not N310.

That the initial date of delivery was on the 10th of August, 2024 but they alerted the complainant on the issue of bad tyre and before the they could come, it was already 3pm. So that when the driver came around 7pm, in the evening she saw the old tyre on the block and the new tyre fixed and they made mention of refund and the defendant said No, all she wants is her block. That the

next day being Sunday, the blocks were delivered on site. That on the very first day on the 9th August, the Claimant was on site to receive the block, That the defendant told them where to drop the blocks that Sunday. That when she told them where to drop the blocks they offloaded 30% when a group of people stopped them and they tried to reach the Claimant but she refused to pick her calls. That the blocks he delivered on the 11th which is a Sunday, that the boys said if he does not take them back, that they will kill them. That around 8pm, when they got to his site, the Claimant called him to say whats up? After calling her over 20 times with text message. That after the attack that there was no police because it was late so they did not report to the police. That it was not at the same point, that they offloaded the blocks.

The Claimant's counsel shows the DW1 the text message sent to him by the Claimant and same is admitted in evidence together with the certificate of compliance as Exhibits F and G respectively. That the mechanical failure was communicated. That on th 2nd day, the Claimant was there and the blocks offloaded in her presence

That it is not true that on the 11th of August, 2024, he was not able to deliver. That he does not have any receipt before this Court that she made some expenses to fix the mechanical fault. That the site is a church site at Imo State. That the boys harassed his boys with Matchet and told them that if they don't move, they will kill them. That he does not have pictures of the destruction, That on the 12th August, 2024, the Claimant came to the factory and saw the blocks and they were not offloaded. That his phone is ITEL P55 666l

That on the 12th of August, 2024, the Claimant did not call him but she came to his office, The DW1 is shown the call logs of the Claimant from MTN. That the Claimant came to his office on the 10th in the morning. The Claimant's counsel applies to tender same in evidence. Certificate of authentication and call log from MTN is admitted in evidence as Exhibit H and J respectively .That it is not true that he told the Claimant that he will eat the money and nothing will happen.

On the 4th of November, 2024, the DW2, one Mr Didi Sylvanus adopts his evidence on oath and states that he is a worker at the defendant block industry and by virtue of his position, he is conversant with the facts of this case.

That on the 10/8/2024 the claimant paid for 1600 six inches hollow blocks which is to be taken to Zion outreach prayer Ministry, Amala in Ngor-Okpala Local Government area of Imo State.

That the truck he was in arrived first before the second truck

The claimant took him to the place where the 1600 blocks will be off loaded. That the claimant was with her daughter that day and they both left. That having shown them the place, they started off loading the blocks. That shortly, two men came from the bush part, said they should stop offloading the blocks at this site. That before the men came; they had off loaded about Three hundred blocks.

That the men were with machetes. That the men then ordered that the owner of the blocks should be informed that they don't need blocks here, That he then called the defendant and informed him of the situation and what the men said and what they have on them.

That the defendant then ask him to wait for him to call the claimant.

That, they waited for like 30 minutes, and he then called the defendant again and he said he has called the claimant over 20 times and the claimant is not taking her calls

as called the claimant over 20 times and the claimant is not taking her calls. That the defendant then informed him that since the claimant is not taking her calls that he would resorts to send her text message.

Testifying further, the DW2 stated that the defendant then called him to inform him that he has sent messages and the claimant is not responding. That as the defendant tried calling the

claimant the number of the men increases by the minute and the threat was so much that we may be harmed by them

That he then call the defendant that what do we do, the defendant ask him to check if the police check point close to the area if there are police officers there.

But that when he checked there was no police officer there which he informed the defendant on phone.

That the defendant then said since the situation is like this, they should reload the blocks and return to the block industry in Port Harcourt

That in the process of reloading the blocks a total number of about 100 blocks were damaged by the angry men that came from the bush That he has photographs of the trucks at the site and the blocks they off loaded before the men stopped us. The DW2 identifies three photos and same are admitted in evidence as Exhibits K,L,L1 and L2 respectively

After the evidence of DW2, on the same day, the DW2 was cross-examined and he testifies as follows: That the DW1 was not present at the site on the 11th of August, 2024. That the money for the transaction was not sent in his account, That it is not true that all he has come to tell this Court, is what his boss told him. That his business with the transaction starts and ends with delivery. That the boys that harassed them is not in the pictures, because he didn't take pictures of the men, That he did not also take pictures of the blocks that were destroyed, That the pictures on Exhibit L -L3 is the same environment as the site. That the church site has been cleared and there are no palm trees, That on the 9th of August, they offloaded some blocks on the road and took some blocks inside and that on that 9th, the Claimant was on site with the engineer to receive the blocks, that the defendant, the DW1 was also there.

That the initial date of the 2nd delivery is supposed to be on the 10th of August, 2024, That on the 11th of August, they did not arrive late.

That they arrived when the church was in service and the Claimant showed him where to offload the blocks, that this was on the 11th of August, 2024. That the Claimant never asked him to offload the blocks and he refused.

That the Claimant showed him where the blocks should be offloaded and she left and he never saw her that day again, That she told hm around 1:30-2:pm in the afternoon, That he offloaded the blocks at the place that the Claimant showed him, That this was done before everybody left. That the agreement that the defendant had with the Claimant is that the claimant should be at the site to receive the block, That they did not report to the police because the police had left That there is no nearest police station, everywhere is bush.

That as the time, the Claimant asked them to drop the blocks, there were police people there.

That they did not report to the church because they do not know who is in charge. That it is not true that they went very late to deliver and nobody on site to take delivery. That the first date, they delivered, it was a Saturday and everybody was on site but the last delivery was done on a Sunday and there was nobody on site. That when the Claimant engaged them, the initial date of delivery is 10th August 2024.

At the close of the evidence of DW2, the matter was adjourned for final addresses

That said, I will proceed to consider the case of the parties in the light of the relevant laws. I have noted the essence of the claim and have also taken cognizance of the evidence of the claimant and his witness before the court.

ISSUE FOR DETERMINATION:

Whether The Claimant Has Proved His Case To entitle him To The Following orders:

- A. An order directing the defendants to refund the Claimant, the sum of N864,000 (Eight Hundred And Sixty Four Thousand) Naira representing the refund for money given for the supply of 1,600 blocks at Zion Outreach Prayer Ministry, Amala in Ngor Okpala LGA ,Imo State.
- B. Cost of litigation to the sum of N2,000,000
- C. Cost to the sum of N1,000,000.00

The defendant in their written address, formulates two issues for determination and that is whether :

3.0

3.1 The issues formulated for determination are as follows:

1. Whether where a party pleads impossibility of performance of a contract whether the court will make out a different case for the party.
2. Whether where a remote damage is done should the damage be imposed on One party.

It should be noted that the following issues are not in contention

That the Claimant paid the sum of #864,000 to the defendant for the supply of 1600 , 6 inches of blocks for the 10th of August 2024

That on the said 10th of August, 2024 the claimant also travelled to Amala to receive the said blocks but the defendant never showed up. That upon her return to Port Harcourt on the evening of 10th August, 2024, she visited the block industry of the defendant to inquire as to why the blocks were not delivered, the defendant pleaded to be allowed to supply the blocks the next day being the 11th of August, 2024 on or before 12 noon and the CWI testified in Chief that she allowed the defendant that opportunity. Please note that the effect of this ,is that the date of delivery was mutually shifted to the 11th of August 2024 by both parties.

The bone of contention is, as to the status of the delivery on the 12th of August 2024. While the Claimant is of the position that delivery was not done, the defendant via the DW1 and DW2 stated that they delivered the blocks but were offloading the blocks, before they were harassed by some men from the bush who threatened them with machet to load the blocks back and take them back or they will kill them and so they loaded the blocks back and took them back to Port Harcourt. To corroborate this assertion, the defendant tendered D and L,L1 and L2.

Exhibit D is a text message and Exhibit L –L2 are pictures of a parked truck with blocks beside the parked trucks, to which the DW2 tendered to show that they offloaded some trucks before the men from the bush stopped them.

I have taken a look at the said Exhibit D tendered by the DW1 which is a text message embodying defendant's communication to the Claimant that she is not picking her calls and that the community boys said they will not accept the block again, that they should go back to Port Harcourt. The said Exhibit D bears no time stamp or date stamps and has nothing on the face of it, to show that it was part of a phone record. In my opinion, in my opinion, it is not safe to rely on Exhibit D. However, the Exhibit F tendered by the Claimant through the DW1 is the same message record as Exhibit F, except that on the Exhibit F , there is an earlier message dated 10th of August .Exhibit F is a very key document. It shows first of all that there was a breach of the contract and a default on the agreement by the defendant on the 10th of August , however as pointed out earlier, the default of 10th of August is not in issue as both parties have agreed that indeed there was a breach and the Claimant as CW1 had testified that she decided to give the parties another chance to deliver on the 12th of August, 2024. The effect of this is that the date of delivery was mutually shifted to the 12th of August 2024 by both parties.

The said content of Exhibit F at 15:38 and 15:45 tendered by the Claimant herself is good proof that the delivery was interrupted by the community boys after trying to reach the Claimant.

On the said Exhibit F, tendered by the Claimant, it shows that at 3:38, the defendant was complaining that he had been calling the Claimant that she is not picking up and at 3:45pm on the same Exhibit F, the defendant was texting the defendant that the community boys are not accepting the blocks again and that they should take the blocks back to Port Harcourt. The said content of Exhibit F was also corroborated by the evidence of the DW2, who was one of the delivery people from the defendant in site on the 12th of August.

furthermore, during the cross-examination of the CW1 she stated that the defendant pleaded that they should allow him to drop the blocks before 12 noon on the 11th of August. That the site Engineer waited till 3:30 and he didn't see them. It is important to note that this piece of evidence as the 12 Noon, on the 11th of August being the bench mark time for supply was not corroborated in evidence. The law is trite that the court as an unbiased umpire cannot take the words of parties for it, especially when the adverse party is stating a contrary position. Parties must always adduce evidence in support of their claims. The at this point is even more necessary when the DW2 in his evidence stated that they were early at the site on the 11th of August and that the church service was still on when they came and that they met the Claimant who even showed them where to drop the blocks at around 1:30-2:00pm in the afternoon and that they started offloading immediately and that the Claimant left and shortly after, the men from the bush accosted them to stop. That the agreement that the defendant had with the Claimant is that the claimant should be at the site to receive the block

The question on the mind of the Court is: Did the site Engineer really wait till 3:30 on the 11th Of August 2024. The Court finds this difficult to believe because, on Exhibit F tendered by the Claimant, herself, shows that at 3:38, the defendant was already complaining via text message that he has been calling the Claimant but she was not picking up. I really wish that the Claimant had called the Engineer, he is a vital witness that could have given the particular time he left the site on the 12th of August, 2024 which will aid the Court in determining if the defendant delivered the blocks late or not and if there was indeed a breach of the contract on the 12th of August, 2024. In the absence of the direct evidence of the Engineer, reliance will be placed by this Court on the evidence of DW2 corroborated by the contents of exhibit F on the 11th of August 2024 before the Court.

The CW1 in her cross-examination stated that she replied to the DW1's text message on the 11th of August, however on the Exhibit F tendered by the Claimant, there is no reply to the two text messages sent to the Claimant by the defendant.

On the preponderance of evidence before the Court and on the scale of probability, this Court hereby holds that the defendant's boys arrived the Claimants site in the afternoon on the 12th August, 2024 and the defendant took all reasonable steps under the circumstance to fulfill the contractual obligations and to inform the claimant of the impediment to performance as can be seen from Exhibit F.

In their final written address before the Court, the Claimant have submitted that the Exhibit D tendered by the defendant was not printed long enough to show other messages exchanged between the parties and also the date and time was deliberately left out by the defendant. That consequently, that the defendant has put himself on a collision course with Section 167(d) of the

Evidence Act, 2011 which frowns seriously at withholding of evidence by a party because such a party knows fully that such evidence exists.

Like I earlier discussed, the default of the 11th of August was shifted by the defendant and the shifting forward of the date of performance was permitted by the CW1 who admitted, that she permitted the shifting forward of the contract after the DW1 pleaded to before 12 noon the next day. So the issue of withholding the message of the 10th of August as to the default that was communicated and mutually agreed to be shifted by the parties is of no consequence in Law.

In their written address, the defendant has raised issues of Impossibility to perform the contract as agreed with the Claimant but was impeded by community boys as stated by the defendant. They deny liability or default in the performance of the contractual obligations as the inability to offload the blocks was due to circumstances beyond the defendant's control and not due to any fault, negligence or lack of action on the part of the defendant.

That the performance of the contract was interrupted or impeded by the emergence of a force majeure which was not occasioned by the defendant. Also the defendant relies on the common law doctrine of frustration to the effect doctrine of frustration was evolved to mitigate the rigour of the common law's insistence on literal performance of absolute promises so as to give effect to the demands of justice, to achieve a just and reasonable contract expectation

The Court does not agree with the defendant on his submission in the Force Majeure because Force Majeure is based on contract rather than operation of law and so it must be specifically provided for in parties' contract before it can avail any party as a defence for the non-performance of the contract under Nigerian law. None of the parties have testified that force Majeure is part of their oral contract before the Court, so the submission of defence counsel on this point is discountenced.

However, the argument raised by the defence counsel on the issue of frustration appears tenable. The Appellate Courts have held in plethora of cases held to the effect the mere occurrence of an event does not and will not make the doctrine of frustration avail a party. That It must be shown further that the said event occurred after the contract has been made, that the parties never contemplated the occurrence of the said event in the contract and that the happening of the event makes the performance of the contract impossible. See *Mazin Engineering Limited v. Tower Aluminum (Nigeria) Ltd* (1993) 5 NWLR (pt. 295) Pg. 526. *Pulse line Services Ltd V. Equatorial Trust Bank* (2010) LPELR-4886(CA); *Weco Engineering and Construction Co. Ltd V. Dufan (Nig) Ltd & Anor* (2019) LPELR-47211(CA)

The common law doctrine of frustration of contract applies in this case because the DW2 have stated in evidence that the performance of the contract was ongoing on the said 11th of August, 2024 when some men from the bush armed with cutlass ordered them to load the blocks back and leave the site or they will kill them and that they made frantic efforts as envisioned in Exhibit F to communicate with the claimant on the happenings but she was not picking her calls.

The effect of this termination by frustration is that the party who has successfully raised and proven frustration in the contract will be discharged from performing the contract and as well discharged from payment of damages as held in the case of *Abdullahi & Anor V. Lead Automobile Co. Ltd* (2020) LPELR-51940 (CA). In line with the above decision of the appellate Court, the claim for general damages and litigation cost hereby fails.

Because it is evidence and agreed by both parties that the blocks are still in the custody of the defendant and the exhibits L-L3 or any other document tendered by the defendant did not show that any of the blocks were destroyed, the Court hereby holds that the Claimant is entitled to the refund of the money advanced to the defendant to the supply of the blocks which is to the sum of N864,000.

Consequent upon all of the above the Court hereby holds that the Claimant is entitled to the refund of the purchase price of the blocks less the cost of transportation because money given for transportation of the blocks to the site have already been expended in terms of fuel cost and truck hire to and from the site at Imo State

IT IS THUS ADJUDGED that the defendant to refund the Claimant, the sum of N496,000 (Four Hundred And Ninety SIX Thousand Naira) representing the purchase price for the supply of 1,600 blocks to Zion Outreach Prayer Ministry, Amala in Ngor Okpala LGA, Imo State less transportation cost.

AND IT IS ORDERED that the defendants to pay the Claimant, the aforesaid sum of N496,000 (Four Hundred And Ninety SIX Thousand Naira) representing the purchase price for the supply of 1,600 blocks to Zion Outreach Prayer Ministry, Amala in Ngor Okpala LGA, Imo State less transportation cost with immediate effect.

TAKE NOTICE –That if payment is not made as above ordered, a warrant or warrants may issue requiring an officer of the court to levy the sum above mentioned, to the claimant together with further costs.

GIFT C. AMADI, ESQ.
CHIEF MAGISTRATE
G.D.I
SIGN..... DATE.....

**G.CHINYERE AMADI. ESQ.
CHIEF MAGISTRATE G.D.I**

THE JUDICIARY
SIGN.....
DATE: 12/12/2022
SMALL CLAIMS COURT, PH