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 MARCH 2025

AT THE SMALL CLAIMS COURT 4 PORT HARCOURT

SUIT NO: PMC/SCC/312/2024

BETWEEN

EKENE MADU GODWILL ------ CLAIMANT

AND

MOORE PROSPER PAUL------ DEFENDANT

PARTIES: Claimant present. Defendant absent

APPEARANCES: J.O. John Esq for claimant

S.O. Aburu Esq for defendant

JUDGEMENT

By a summons dated 15/11/2024, the claimant's claim against the defendant are as follows:

1. N308, 000.00 being balance of debt owed the claimant
2. N500, 000.00 being cost of litigation

3. N1000,000.00 as damages.

PLEA

By the affidavit of service availed this court, the defendant was served the originating process in this suit by handing same to his counsel on the 22/11/2024 at 01:41pm. On the 26th of November 2024, a plea of not liable was entered for and on behalf of the absent defendant. Case was adjourned for report of settlement or hearing.

SUMMARY OF EVIDENCE

The claimant in proof of his case called a lone witness, the claimant himself and tendered four exhibits marked Exhibit A, B1, B2 and B3.

The defendant for his defence called a lone witness and tendered two exhibits marked Exhibits C1 and C2.

The relevant facts from the case of the claimant as presented by the claimant himself is that the defendant owns the laundry shop where he launders his clothes. That he took 12 of his new clothes to the laundry for ironing and handed same to the defendant's staff called Joseph and upon his return to take his clothes as agreed, he was being dribbled by the staff. That upon threat to arrest the staff, the defendant intervened and the said staff alleged that the 12 clothes had been stolen. That the defendant pleaded with him and promised to pay him N200, 000.00 instead of the N398, 000.00 which he bought the clothes. That he agreed and a verbal agreement as to mode of payment was entered by both parties. That the defendant agreed to pay N30, 000.00 that day and N20, 000.00 at the end of the month and the sum of N20, 000.00 monthly till the money is completely paid off. That the defendant paid only N90, 000.00 and refused to pay again even after several calls and sms. The receipts of the clothes was admitted as Exhibit A. Transaction receipts showing payments to the claimant by the defendant was admitted as Exhibit B1, B2 and B3. Case was adjourned to the 12/12/2024 for cross examination of CW1.

The defendant for his defence stated that he was called by his landlord that the claimant came for his clothes in his shop and his boy said the clothes were nowhere to be found. That he told the claimant to see him when he was back to town which he did and he pleaded with the defendant not to arrest his boy and

agreed to pay him N50, 000.00 which he paid N30, 000.00 immediately and end of the month, he made another deposit of N20, 000.00 but the claimant said it was not enough and asked him to pay N100, 000.00 that is an extra N50, 000.00. That he paid N40, 000.00 in two successions making a total of N90, 000.00 leaving N10, 000.00. The text message between defendant and claimant was admitted as Exhibit C2. That due to his inability to offset the N10, 000.00 the claimant ran to court and filed this suit. Witness concluded by informing the court that he was only served with complaint form. Case was adjourned for cross examination of DW1.

At the end of evidence, on the 27/2/2025 parties adopted their final address and case was adjourned for judgment.

In the defendant's final address settled by his counsel S.O. Aburu Esq. two issues were raised for consideration to wit:

1. ***Whether from the preponderance of the evidence, the claimant was able to prove his case entitling him the reliefs sought in this suit?***
2. ***Whether from the circumstances of this suit a prima facie case of the reliefs claimed was established thereby entitling the court to exercise jurisdiction?***

On Issue 1, counsel answered in the negative that it is settled law that anyone who desires any court to give judgement as to any legal right or liability dependent on the existence of facts shall assert and prove that those facts exist and the evidence must be valid, sufficient, authentic and current. Counsel cited the case of **KINDLEY V M.G OF GONGOLA STATE (1988) 2 NWLR (PT 77) 473, AMADI V AMADI (2017) 7 NWLR (1563) 108 @ 131-132 PARA G-F AND SECTIONS 131 & 132 OF THE EVIDENCE ACT 2011.** Counsel stated that the preponderance of evidence principle applies in civil cases which means that a claimant must prove his case by presenting more convincing evidence than the defendant particularly tipping the scale of justice in his favour. Counsel argued that Exhibit A was made in the course of this case. That there is no proof that the defendant agreed to pay the claimant N100, 000.00 or N308, 000.00. That the defendant has proven via Exhibit C2 that the claimant was demanding for extra N50, 000.00. That the claimant did not serve form RSSC1 which is a demand notice on the defendant and that there is no cause of action and the claimant has no locus standi to

institute this action. Counsel urged the court to grant the issue in favour of the defendant and dismiss the claimant's claim.

On Issue 2, counsel posited that the claimant has not been able to prove any prima facie case to entitle him to judgement. That the claimant must demonstrate a legally recognized reason for seeking redress, supported by substantial evidence and proving a breach of a legal duty or right that entitles him to the relief sought. Counsel also submitted that it is settled law that where a statue or rules of court prescribes a condition precedent to the assumption of jurisdiction , that condition precedent must first be fulfilled before there is jurisdiction. That the claimant failed to establish his own obligation to any contract between him and the defendant in respect of the reliefs in this suit.

In the claimant's final written address settled by his counsel J.O. John Esq, a lone issue was raised for determination to wit:

Whether in the circumstances and evidence before this honourable court, the claimant has established his case against the defendant and therefore entitled to his claims.

Counsel submitted that he who asserts must prove and the claimant has proven his case. That the claimant has proven the amount owed him by the defendant and has shown how and the circumstances that gave rise to the defendant's indebtedness. Counsel referred the court to Exhibit A, B1, B2 and B3 which were never controverted at trial showing the total cost of the claimant's clothes and receipts of part payment of the debt. That the defendant admitted that he had made part payment of N90, 000.00 to the claimant before the matter was brought to court. Counsel submitted that the law is trite that facts admitted need no further proof. Counsel also submitted that the defendant was evasive during cross examination in a bid to deny the debt owed the claimant. Counsel also pointed out that Exhibit C2 does not disclose any agreement to the effect that the claimant and the defendant agreed to the sum of N50, 000.00 or N100, 000.00 for the full and final settlement of the defendant's debt. During adumbration, counsel posited that the defendant did not deny his boy as his staff hence he is liable to the claimant vicariously. In conclusion, counsel posited that the balance of probabilities is overwhelmingly in favour of the claimant.

RESOLVE

In determination of this suit, I will adopt a lone issue to wit.

Whether the claimant has proved his case to be entitled to judgement

It is trite law that the standard of proof in any civil case is on the balance of probabilities and that burden lies on the person who will fail if no evidence at all were given on either side. **SEE SECTION 131 AND 134 OF THE EVIDENCE ACT 2011.** From the above, the burden of proof is obviously on the claimant but that burden is not static as it fluctuates as the case goes on. The claimant has alleged that he entered into an oral agreement with the defendant to pay him the sum of N200, 000.00 after his clothes were stolen at his laundry but the defendant only paid the sum of N90, 000.00 leaving a balance of N110, 000.00. In proof of the above, the claimant tendered Exhibit A, showing the cost of the clothes, Exhibit B1, B2, B3 showing that the defendant made a total payment of N90, 000.00 to him. Now parties are ad idem that the sum of N90, 000.00 was paid to the claimant by the defendant. The bone of contention is that while the claimant says they agreed to a total payment of N200, 000.00, the defendant says they agreed to a total payment of N100, 000.00. It then falls on the claimant to proof that a total payment of N200, 000.00 was agreed. However, the defendant in proving that they agreed on the total payment of N100, 000.00 tendered Exhibit C2. I have read Exhibit C2 and the message from the claimant says 'Swanky good morning how work and family, please Swanky the guy I bought cloths on credit to replace the ones your company lost is on my neck. I have paid its remaining 50k if you can pay me that 50k now today the 16th of August I will forget the rest which is 100k that's why am calling you'. A look at this message sent on the 16th of August after the defendant had already paid the sum of N50, 000.00 (in instalments of N30,000.00 and N20, 000.00) only shows that if the claimant is asking for payment of N50, 000.00 to forget the rest which is N100, 000.00, their agreement was for N200, 000.00. The defendant insist that their agreement was for N50, 000.00 then N100, 000.00. The simple question then is 'if you agreed for N100, 00.00 and you have paid N50, 000.00 and the claimant is requesting for urgent N50, 000.00 to forget the rest, what rest is he talking about? The defendant did not disagree in that text message to say if I pay N50, 000.00 I'm done with our agreement what rest are you talking about? He simply replied 'Bros I dey busy no worry before 30th you go receive'. An acceptance of that message

from the claimant. From the above, Exhibit C2 corroborates the testimony of the claimant that parties agreed for the sum of N200, 000.00 which N90, 000.00 has been paid. It is trite law that parties are bound by their agreement albeit oral. An oral agreement freely entered into by parties is binding on the parties thereto and gives rise to an enforceable contract. **OMEGA BANK (NIG) PLC V. OBC LTD (2002) 16 NWLR (PT. 794) 483.** Accordingly the first claim succeeds to that extent.

It is the argument of counsel to the defendant that the claimant has no case against the defendant. The principle of vicarious liability comes into play. "Now, what is the position of the law on vicarious liability of a Master for the tortious wrongful acts of his Servant? What are the essential elements whose presence is a sine qua non for the invocation and operation of the very old doctrine of vicarious liability, which has stood the test of time being rooted in the earliest years of the Common Law that a Master would be held liable for the wrongs of his Servant while acting in the course of his employment? The doctrine means that one person takes the place of another so far as liability for the tort is concerned... The liability of the master is dependent on the Plaintiff being able to establish the servant's liability for the tort and also that the servant was not only the master's servant but that he also acted in the course of his employment. See the case of **FBN PLC V. PAUL (PP. 26-27 PARAS. B).** The claimant via his testimony has proven that the said Joseph acted in his course of employment. The defendant also corroborates this by calling the said joseph his boy. This was admitted and needs no further proof.

On the allegation that the defendant was not served a demand notice, the demand notice served on the defendant via pasting by the bailiff of court and endorsed is in the case file and that defeats that allegation.

On the claim for N500, 000.00 as cost of litigation. This claim fails for want of proof.

On the claim for damages of N1, 000, 000.00. The principle guiding the Courts in awarding or refusing damages is not at all far-fetched. It has been enunciated and reiterated in a plethora of formidable authorities. In the locus classicus, BALOGUN VS. NATIONAL BANK NIGERIA LIMITED (1978) LPELR - 723 (SC), the Apex Court aptly postulated: (In) an action for breach of contract as this is, damages are not at large and a plaintiff must always plead and prove his actual loss otherwise he is

entitled to nominal damages only. Where two parties have made a contract which one of them has broken, the damages which the other party ought to receive in respect of such breach of contract should be such as may fairly and reasonably be considered either arising naturally, i.e. according to the usual course of things, from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties at the time they made the contract as the probable result of the breach of it. See the case of **BIMBA AGRO LIVESTOCK CO. LTD V. LANDMARK UNIVERSITY (2019) LPELR-47724(CA) (PP. 42-47 PARAS. E)** Flowing from the above the sum of N200, 000.00 is awarded as damages.

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

1. The defendant is ordered to pay the claimant the sum of N110, 000.00 for the clothes stolen.
2. The defendant is ordered to pay the claimant the sum of N200, 000.00 as damages.