

**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 20TH DAY OF SEPTEMBER 2023
AT THE SMALL CLAIMS COURT 5 PORT HARCOURT**

SUIT NO: PMC/SCC/175/CS/2023

BETWEEN

MR. CHINAGORUM CHIKODI ----- CLAIMANT

AND

MR. OKECHUKWU OKEKE

**(Doing business in the name and style of OkMarine
Global Services)**

DEFENDANT

PARTIES: Parties Absent

APPEARANCES: O.C. Edward Esq. for the claimant.

No representation for defendant.

JUDGEMENT

By a claim dated 25/09/2023, the claimant's claim against the defendant are as follows:

1. N450, 000.00 being amount issued on a cheque.
2. N100, 000.00 as damages.

3. N100, 000.00 as cost of litigation/professional fee of lawyer.

PLEA

By the affidavit of service availed this court, the defendant was served the originating process in this suit by substituted means by pasting at the door of the defendant on the 5th of October 2023 at 12pm. On the 18th of October 2023, a plea of not liable was entered for and on behalf of the absent defendant.

SUMMARY OF EVIDENCE

The claimant in proof of his case called a lone witness, the claimant himself and tendered two exhibits marked exhibits A and B.

The defendant never appeared to defend this suit hence no evidence was entered for the defendant.

The relevant facts from the case of the claimant as presented by the claimant himself is that he is a business man who does business in the name and style of Nasco Firefighting equipment servicing & Co. Nig. Ltd. That he knows the defendant whose name is okechukwu okeke and does business in the name and style of OK Marine Global Services. That on the 15th of November 2022, the defendant via his company purchased a good complete set of fireman suit, three pieces. That each cost N150, 000.00 making it a total of N450, 000.00. That after he made the supply, the defendant asked him to come back and when he did, he was issued with a cheque bearing 3rd of January 2023 in the defendant's business name, OK marine global services. That the defendant refused him from cashing that cheque and asked him to come for another. That he was given another cheque bearing 5th of May 2023 and on that day, he tried reaching the defendant to inform him he wants to go cash the cheque but the defendant refused to pick his calls. That after two days, the bank returned the cheque unpaid and since then the defendant has refused to pick his calls or pay him. That he contracted his lawyer who took the sum of N100, 000.00 to prosecute the case which he paid and was issued a receipt. That he got a letter of demand and served same on the defendant who called him promising to pay but since he's been unreachable. Both

the cheque and receipt were tendered and admitted as Exhibits A and B respectively.

The defendant never appeared either by himself or through a counsel to defend this suit even after service of hearing notice hence he was foreclosed from cross examining the Cw1 and from defending this suit.

The claimant waived their right to address and asked that judgement be entered as per their claims.

RESOLVE

In determination of this suit, I will raise a lone issue

Whether the claimant is entitled to his claims

As already stated, the failure of the defendant to make an appearance means that the entire evidence adduced by the claimant is unchallenged. The law is trite that a Court is at liberty to accept and act on unchallenged and uncontroverted evidence. See the case of **OFORLETE V. STATE (2000) 12 NWLR (PT. 681)415**. The court in the case of **ADELEKE V. IYANDA (2001) 13 NWLR PART 729 PAGE 1 AT 23-24 PARA H-A** held that where the claimant has adduced admissible evidence which is satisfactory in the context of the case, and none available from the defendant, the case will be decided upon a minimum of proof as this makes the burden lighter.

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.

On the first claim of the claimant, by way of evidence, the claimant has tendered the cheque book in proof of his testimony that the defendant issued him a cheque in lieu of payment and a receipt in proof of payment of professional fees for the last claim. On the last claim, Cost follows the event and a successful party is entitled to the cost of prosecuting or defending the

action either wholly or partly unless he misconducts himself in such a manner that deprives him of such an award. See the case of **UBANI-UKOMA VS. SEVEN-UP BOTTLING CO. & ANOR (2022) LPELR-58497 (SC)**.

On the second claim for damages, it is trite law that the amount of damages awarded by the trial court is based on the evidence before the court. Where there is no evidence to support the claim for damages, the claim would be dismissed. The essence of the award of damages is to give compensation to the claimant for the loss of injury which he has suffered i.e. to restore the claimant to a position as if the contract has been performed. I daresay the award of cost to the claimant for prosecuting this case covers for this and I am of the opinion that granting this said relief will amount to double compensation. Hence this relief is accordingly refused.

Flowing from the above, I hold that the claimant is entitled to the reliefs sought.

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

1. The defendant is ordered to pay the claimant the sum of N450, 000.00 being money owed for fireman suits supplied.
2. The sum of N100,000.00 is awarded as cost of prosecuting this suit