

IN THE SMALL CLAIMS COURT OF RIVERS STATE OF NIGERIA
IN THE PORT HARCOURT MAGISTERIAL DISTRICT
HOLDEN AT PORT HARCOURT

RESUMED ON MONDAY THE 23RD DAY OF OCTOBER, 2023
BEFORE HIS WORSHIP A. O. AMADI-NNA, ESQ.
SITTING AT CHIEF MAGISTRATE COURT 10, PORT HARCOURT
SUIT NO. PMC/SCC/136/2023

BETWEEN:

EDULPHUS INTERNATIONAL SCHOOL
v.
BALVIO SECURITY NIGERIA LIMITED

Defendant present.

Claimant absent.

C. A. David appear for the Claimant.

D. T. I. Banigo appear for the Defendant.

JUDGMENT

The claimant's claims against the Defendant as follows:-

1. The total sum of N1,179,000.00 (One Million, One Hundred and Seventy Nine Thousand Naira) being total cost of items stolen by the Defendant's staff.
2. The sum of N2,000,000.00 (Two Million Naira) for general damages and inconvenience / hardship caused to the Claimant by the Defendant.

A plea of not liable was entered for the Defendant.

In proof of their case the Claimant called one witness as CW1 and tendered 5 exhibits, Exhibits "A1 – A5" while the Defendant also called one witness in defence of their case and tendered one exhibit "Exhibit "B".

CW1, Simon Young said he is the Director of the Claimant and that they engaged the Defendant to provide security to guard and protect the properties of their school. They pay their monthly fees to the Defendant who in turn pay their own staff. Further that the Defendant are to provide 24 hours security protection over the properties of the

school. That once in a while the Defendant bring in or change their staff. When the Defendant came in they started noticing that some of their properties were missing. At another time one of the security staff called Ezekiel destroyed a burglary proof to a window into the classroom. They made verbal complaint to one of the supervisors the Defendant used to send to the school. At one time an LG TV screen and an LG DVD bought from Jumia meant for the students were removed amongst several other things that were removed from the compound. They made several complaints to the Defendant and rejected a computer monitor they brought in lieu of a TV screen.

They also made complainants to them in writing after they had exhausted verbal complaints.

Further that the Defendant's also brought the sum of N20,000.00 which they said was from the Guarantor to Ezekiel for the TV Screen. That the said the Defendants did not do anything about the other items though they documented and sent them the things that were removed and they acknowledged that those things were removed. The cost of what Ezekiel removed at that time was over N400,000.00. He also said that another security man called Christopher stole their items and when he complained to the Defendant, a deduction was made to their monthly salary in lieu of what the said Christopher took which was N28,000.00. He further said that another security man the Defendant brought called Sigalo removed everything that had metal, plastic or aluminium in the school costing over N700,000.00 and crippled academic activities in the school. The details of what he removed was sent to the Defendant. The security man was arrested and charged to court.

He tendered the letters of correspondences between them and the Defendants as Exhibits "A1" – "A4" while he tendered the charge sheet in which the said Mr. Sigalo the security man was charged to court was Exhibit "A5".

Under cross examination, CW1 said the Defendant brought a computer monitor which was rejected and they came back to pay N20,000.00. That on the incident concerning Mr. Christopher, they deducted the sum of N28,000.00 from the monthly bill of the Defendant at source by refusing to pay them for that month. He further said that the Defendants have not denied that the security men stole from the school. Also that he bought the items listed in Exhibit A4 but he no longer has the receipts.

This is the case for the claimant. I now go to the case for the defence.

DW1, Anthony Damiete Bala said he runs a security company called Balvid Security Nigeria Limited. That one Mrs. Chinyere contacted him in 2017 to provide security guards for the school. He did a risk assessment of the property and made recommendation for 2 security guards but the said Mrs. Chinyere pleaded with him that they did not have money to afford 2 security guards, that they will start with one. He also requested for an inventory but did not get it. He further said that Mr. Ezekiel their security Guard left the Claimant's school in November 2017 with LG TV and LG DVD recorder which Mr. Ezekiel's Guarantor pleaded that he did not want a police case and replaced them. Further that in August 2019 Mrs. Chinyere again called her that another of their security men, Mr. Christopher had sold a no parking sinage placed outside the school and it was agreed that the cost shall be deducted from source and this was done. He also said that in 2022, there was an incident again involving another of their security man called Mr. Sigalo. Mrs. Chinyere called him that the Christmas tree and the trampulin that makes it stand were missing and they needed them replaced. Mr. Sigalo was arrested to Okporo Police station but Mrs. Chinyere refused to go and make statement but instead sent a list of items she said were missing from the school.

Further that in January 2023 CW1, Simon Young wrote to them Exhibit "A1" which he replied on 12th January 2023. He tendered the letter as Exhibit "B". He also received a letter from the Claimant dated

30th March 2023 which he responded same day. Also that on the 18th day of August, 2023 he was issued summons to appear before this court and also received a third letter from the Claimant on same 18th of August, 2023. He further said they are not liable to the Claim since the claimants have added other items to the list of missing items after they have been settled.

Under cross examination DW1 said that it is not in dispute that their staff Mr. Ezekiel, Mr. Christopher and Mr. Sigalo stole from the Claimant. That in furtherance to the stealing Mr. Sigalo was also charged to court. That it was their staff who were on active duty when these series of stealings occurred.

That he told this court that he received a letter Exhibit “A4” stating all the stolen items after they carried out inventories. Further that Exhibit “A4” came after he had received the court summons. Further that all the deductions made by the school were reflected in Exhibit “A4”.

Under re-examination DW1 said he did not get a copy of any of the inventory taken after the incident even though he requested for it.

This is the case for the defence. Counsel for the parties adopted their final written address before this court on the 20th day of October 2023.

The defendant’s final written address is dated and filed the 17th day of October 2023 while the Claimant’s final written address is dated 16th and filed 17th day of October 2023.

In his address, Claimants counsel raised a sole issue for determination, that is; “Whether on the basis of the relative strengths of the evidence of the rival parties before this Honourable Court, the Claimant has proved his case on the requisite civil standard of preponderance of evidence (balance of probability)?”

Counsel submits that the DW1 did not deny that three of its staff were involved at several intervals of stealing the valuable properties of the Claimant while giving his evidence in chief and under cross examination. That facts admitted need no further proof. Refer to the

case of BAALO V. FEDERAL REPUBLIC OF NIGERIA (2016) 13 NWLR (part 1530) 400.

Counsel submits that the Claimant has proved his case on the preponderance of evidence (balance of probability). Counsel urged the court to resolve the issue for determination formulated in favour of the Claimant and grant the reliefs claimed by the Claimant.

In his address Defendant's Counsel raised a sole issue for determination; that is "Whether the claimant has proved his case and is entitled to the grant of the reliefs sought in this case?"

Counsel contends that the Claimant has failed to discharge the burden of proof on him. That the Claimant's evidence was grossly discredited during cross examination and shown not to be worthy of belief. Further that the claimant affirmed under cross examination that there was no inventory at the commencement of the transaction and that he had no receipt to authenticate his claim in Exhibit "A4". Also refer to paragraph 4 of Exhibit "A2" which reads "the cost of the items removed was settled by part of your monthly bill". That this clearly indicates that the issues of Mr. Ezekiel and Mr. Christopher were amicably resolved except that of Mr. Sigalo who was handed over to the police by the Defendant. That DW1 has demonstrated in his testimony how he tried to resolve the issues by involving the guarantor of Mr. Ezekiel and Mr. Christopher in the matters with active involvement of Mr. Chinyere. Further that the Defendant has stated in his testimony that Exhibit A4 was an after thought as no formal demand was made between 2017 and January 2023. Submits that the Claimant has failed to prove its entitlement to the reliefs.

I have reviewed the evidence of CW1 for the Claimant and Dw1 for the Defendant. I have also taken into consideration all the 6 exhibits tendered and the written submissions of counsel.

The issue that arise for determination is "whether the claimant has proved its claim on the balance of probability for Judgement to be given in its favour?" The claimants sole witness, CW1 has given

evidence of how the 3 security guards provided by the defendant Mr. Ezekiel, Mr. Christopher and Mr. Sigalo at various times stole from the claimant. The defendants witness DW1 did not deny this evidence, thus admitting the evidence the Claimants witness CW1. He only said that some of these items have been replaced. However CW1 when he gave evidence and under cross examination said that many more items were stolen and they were documented and sent to the Defendant. There is evidence Exhibit "A5", that Mr. Sigalo one of the Defendants security men was charged to court for stealing from the claimant. In the case of case **Daniel V. INEC (2015) ALL FWLR (Pt. 787) 993 SC at 1028 Para C** it was held that admission clearly and unequivocally made is best evidence against the person making it. Further facts admitted need no further proof.

Accordingly from the foregoing it is my view and I hereby hold that the claimant has proved its case against the Defendant on the balance of probability for Judgment to be entered in its favour.

Judgment is hereby given in favour of the claimant as follows:-

1. The Defendant is to pay to the Claimant the sum of N1,179,000.00 (One Million, One Hundred and Seventy Nine Thousand Naira) being total cost of items stolen by the Defendant's staff.
3. The Defendant is to pay to the Claimant the sum of N500,000.00 for general damages and inconveniences/hardship caused to the claimant by the Defendant.
3. The Defendant is to pay to the claimant the sum of N200,000.00 as cost.

Signed:

A. O. AMADI-NNA, ESQ.
(Chief Magistrate Gd. 1)
23/10/2023