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IN THE SMALL CLAIMS COURT: DELTA STATE OF NIGERIA
IN THE EFFURUN SMALL CLAIMS DISTRICT
HOLDEN AT EFFURUN

BEFORE HIS WORSHIP T.R. EWHERIDO (MRS.) CHIEF MAGISTRATE GRADE II
ON WEDNESDAY THE 24TH DAY OF JANUARY, 2024.

SUIT NO: SCC/EFF/8/2023

BETWEEN:-

MR. EFE OGOROR

(Carrying on business under the Name and Style of
Flecter Travels, a subsidiary of Flecter Collections)

... **PLAINTIFF**

AND

1. MR. IKECHUKWU JOSEPH IWEGBU

2. MRS. GIFT NWACHUKWU IWEGBU

... **DEFENDANTS**

JUDGMENT

Plaintiff Claims against the Defendants as follows:

- (i) The said sum of N1,212,000.00 (One Million, Two Hundred and Twelve Thousand Naira) only being unpaid debts.
- (ii) Interest of 20% per annum on the said sum of N1,212,000.00 (One Million, Two Hundred and Twelve Thousand Naira) only, until same is paid.
- (iii) Cost of this action.

The Court proceeded to trial on the 23rd of November, 2023. The Plaintiff, herein referred to as PW1 testified as follows:

That PW1 provided services for the 1st and 2nd Defendants. The 2nd Defendant contracted him to issue tickets for herself, her husband and her five children to travel to the United Kingdom for summer holiday. She wanted two years visas for herself and the 1st Defendant, while for the other Five (5) children she wanted 6 (six) months visas. He gave her a fee of One Million, Nine Hundred and Seventy Thousand, four hundred Naira (N1,970,400.00). She said the 1st Defendant would contact him, which he did.

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Again the 2nd Defendant contacted him and asked for the price of premium lounge service. Also that he should reduce the price. The amount became One Million, Seven Hundred and Twelve Thousand Naira (N1,712,000.00). After a month, the 2nd Defendant again reached out that she was ready and further asked for price reduction. She paid one Million, five hundred thousand naira (N1,500,000.00). He told her his charges were one Million Naira (N1,000,000.00) and that she should pay 50% before he starts and 50% after completion. She paid One Million, Five Hundred Thousand Naira (N1,500,000.00) leaving a balance of One Million, Two Hundred and Twelve Thousand Naira (N1,212,000.00), One Million Naira (N1,000,000.00) being the charge fee. After seven days, the visas came out but they did not complete the payment. There was a balance of Two Hundred and Twelve Thousand Naira (N212,000.00) from the visa fee and One Million (N1,000,000.00) for his charges. He issued a demand notice through Court PW1 tendered the following in evidence.

Exhibit A – Demand Notice dated 14th September, 2023.

Under Cross Examination, PW1 said the initial fee was one Million, Nine Hundred and Seventy Thousand Naira (N1,970,000.00) which was negotiated to one Million Seven Hundred and Twelve Thousand Naira (N1,712,000.00). Also that he said he would try to make a reservation for tourist sight instead of a payment while his fee was One Million Naira (N1,000,000.00). Also, he has proof of these transactions but did not tender them in Court.

At the close of Plaintiff's case, the Defendant gave evidence on the 6th of December, 2023, and called no other witness(es). Her evidence is that when she approached PW1, his bill was over a Million and eight hundred Thousand Naira and she said she would get back to him on the visa fee as they had always done. She gave him the 1st Defendant's number asking the PW1 to negotiate with him. She eventually spoke to him on the 2nd of July, 2023, after he and the 1st Defendant had concluded negotiation and had arrived at a total of One Million, Five Hundred Thousand Naira which she paid. After they got their visas, PW1 informed them he made extra expenses due to the hike in pounds and also, that he paid for tourist tickets for the children. She however reminded him that as at the time she made payment, pounds was still at the rate of N950.00 (Nine Hundred and Fifty Naira) per pound. Also, that they had an arrangement which has always been that such tickets including hotel fees, are reserved. The 1st Defendant then called PW1 and asked for the tickets to which he made payments, failure of which he will not pay for what he has not seen. DW1 further

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gave evidence that she made a request for her three (3) children and her husband only.

Under Cross Examination, she said the visa was for only her three (3) children, herself and her husband and that PW1 did not process visa for the additional two persons who are her husband's cousin's children. They are: Kyla Iwegbu and Kobi Iwegbu. Also that Kyla and Kobi were not included in this July transaction, but that over the years she had given the PW1 up to twelve (12) family names, and that it was in 2021 she made visa application for Esther Iwegbu who gave birth to Kyla and Kobi Iwegbu. Also that she always gives PW1 her documents. In 2021 she gave PW1 documents relating to Kyla and Kobi and a letter of sponsorship indicating that she will sponsor them and she made copies of their data pages from their passports.

Furthermore, DW1 stated that she received a pre-action notice but it was not Exhibit A, as she signed the one she was served.

Also that the 1st Defendant was in Nigeria as at 26th of September, 2023.

She was asked to bring some documents to Court (notice to produce) but the UK visas and immigration checklist was submitted at UK Embassy, Abuja for which she did not have a copy. She does not have a copy of her husband, Kobi and Kyla Iwegbu, as they are not presently in the Country.

DW1 tendered the following and these were admitted as:

Exhibit B – Statement of Account of 2nd Defendant.

Exhibit C – International Passport of Kamsichukwu Iwegbu

Exhibit D – International Passport of Ifechukwude Emmanuella Iwegbu

Exhibit E – International Passport of Chidera Kimberly Iwegbu

Exhibits C, D and E were tendered during Cross Examination.

At the close of the Defence, Learned Counsel to the Defendant M. Esievoidje Esq. filed his Written Address dated 12th January, 2024 as his argument in this Case.

Learned Counsel raised two issues for determination.

- (i) Whether from the plaintiff's Claim and evidence adduced by the parties, both oral and documentary, in this case, the Defendants are indebted to him?
- (ii) Whether the Plaintiff is entitled to his Claim against the Defendants.

In summary, Learned Counsel, submitted that the Plaintiff has the evidential burden to show this Honourable Court by way of credible evidence that the Defendants are indebted to him in the said sum and he had failed to discharge the burden placed on him. Counsel submitted further that the Plaintiff stated that there is a written Contract between him and the Defendant for which the Plaintiff failed to tender neither was there a phone conversation or text messages.

Counsel relied on:-

1. CHEMIRON INTERNATIONAL LTD. V. STENBILINI VISIONONI LTD. (2018) ALL FWLR (PT. 965) P. 48 @ P. 7 - 71 PARAS F - C.
2. IDU GODWIN EMEKA V. HON. LYNDIA CHUBA IKPLAZU (2017) LPELR - 41920 (SC) BLACK'S LAW DICTIONARY 6TH EDITION AT P. 59.
3. FEDERAL MORETGAGE FINANCE LTD. V. EKPO (2005) All FWLR (PART 248) PAGE 1667 AT PAGE 681 PARAGRAPHS E - F.
4. IJI V. ISA (2022) LPELR - 59193 CCA (PP. 21 - 23) PARAGRAPH F.
5. ADISA V. THE STATE (1991) NWLR PT168) PAGE 490 AT PAGE 500.

In his reply Learned Counsel to the Plaintiff M.E. Edah filed a written address dated 15th January, 2024 as his final argument in this Case.

Learned Counsel raised two issues for determination.

- (i) Whether a community reading of by articles 1, 2, 5 and 6 of the Delta State Judiciary Practice Direction on Small Claims 2023 and upon the Defendants failure to file an answer to the Plaintiff Claim contained in the Plaintiffs Plan/Complaint as provided for in Article 6 (1) and 6 (3) of the Practice Direction, the Plaintiff's claim thereof is not deemed admitted in the circumstances by the Defendants.
- (ii) If the answer to the above is in the affirmative, whether in the circumstances of the facts of this admitted Claim, the plaintiff has proved his claim and is thus entitled to reliefs thereof?

In summary, Learned Counsel submitted that by not filing an answer to the Claim, the Defendants did not join issues with the facts stated therein, and are therefore deemed to have admitted Plaintiff's claim. Also, that evidence under cross examination by the Defendants goes to no issue and should be discountenanced, and that they cannot be heard to lead evidence in opposition of the Claim as any such evidence led that is not predicated on the Defendant's answer goes to no issue and should be discountenanced because parties are bound by their pleadings.

Arguing further, Counsel submitted that the Defendants having not filed an answer to the Claim, Plaintiff only needed to lead minimal evidence in proof of his case. Also, that the Court has no option and must act on such evidence, having not been challenged and controverted.. Counsel relied on the following:

1. NACB Limited V. Achagwa (2010) 11 NWLR (Pt. 1205) 339
2. Pasculto V. Adecentro Nigeria Limited (1997) 11 NWLR (Pt. 529) 467 at 481.
3. Isheno V. Julius Berger Nigeria PLC (2008) All FWLR (Part 415) 1632 at 1647 paragraph I.
4. Okrejiminor V. Gbakeji & Anor. (2008) All FWLR (Part 409) 405 at 438 paragraph E- G.
5. Sommer V. Federal Housing Authority (1992) 1 NWLR (Part 219) 548.
6. Nwawuba & Ors. Vs. Enemuor & Ors. (1988) 2 NWLR (Part 78) 581.
7. Aniemeka Emegokwue V. James Okadigbo (1973) 4 S.C 113.
8. Mobil Producing Nigeria Unlimited & Anor. V. Udo (2007) All FWLR (Part 482) 1117 at 1202 – 1203 paragraph H – A.
9. Afribank Nigeria Ltd. V. Moslad Enterprises Ltd. & Anor. (2008) All FWLR (Pt. 421) 877 at 894 – 895 paragraphs E – A.
10. Oracle Resources Ltd. Vs. Nigeria Communication Commissions (2007) All FWLR (Pt. 390) 1482 at 1507 – 1508 para a – g. Also pages 1510 – 1511 paa D – A.
11. Edewor V. Uwegba & Ors. (L.P.E.L.R.) 1009 S.C (1987) 1 NSCC P. 148 at 149.
12. Taiwo V.F.R.N.(2022) L.P.E.L.R. 57826 S.C.
13. Section 131 of the Evidence Act 2011
14. Articles 1,2, 5, 6 of the Delta State practice Direction on Small Claims, 2023.

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15. Articles 6 (1) and 6 (3) of the delta State Judiciary Practice Direction on Small Claims.2023.

In his reply on point of law, Learned Counsel to the Defendant submitted that the Defendant came to give her evidence in Court. The Constitution of the Federal Republic of Nigeria gives the Defendants right of fair hearing.

I have gone through evidence of the parties and I have carefully evaluated the Exhibits before me.

However, on the 28th of November, 2023, the Defendant filed an application dated 28th of November, 2023 praying for:

- (i) An Order staying further proceedings of the case pending the hearing and determination of the said application.
- (ii) An Order striking out the Suit for non service of the Claim and accompanying process on the Defendants/Applicants
- (iii) An Order transferring the case to the Asaba Small Claims District, Delta State.

In support of the motion was a (9) Nine paragraph affidavit deposed to by Oghenechewwen Overen, Esq. I shall treat the Motion first.

Learned Counsel O.M. Esievoadje submitted that failure of service on the Defendant robs the Court of the jurisdiction to entertain the Suit. Also, that the transaction was at Asaba where the Defendant lives so the case should be transferred there as the cause of action arose there.

Counsel relied on

Marion Obimo Mine V. Ojumoola Erilosho and Anor. (1966) All NLR p. 245.

Mark V. Eke (2004) All FWLR (Pt. 200) P. 1455 at 1476 – 1477 para G – C.

In his reply on point of law, Learned Counsel to the Plaintiff O.E. Edah submitted that there is only one Magistrate Court in Delta State. Also, that the Plaintiff resides in Effurun and the case of Mark and Eke (supra) is not applicable as same bordered on substituted service and not personal service, and also it

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was against an artificial person. Also, the Defendant in this case is aware of the case.

Counsel relied on

Akande V. Jeghede (2022) 14 NWLR (Pt. 1849) at p. 125.

Having gone through the preliminary objection dated and filed 28th November, 2023, and listened to submission of Learned Counsel on both sides, I am of the view that reliefs one and three have been overtaken by events of the knowledge of this case by the Defendant and also the events of the commencement of this case in this Court with regards to service, there is an affidavit of service by the Bailiff of this Honourable Court. Furthermore, the Defendants are aware of the Court process against them and the 2nd Defendant has given evidence.

Consequently, the motion on notice dated and filed 28th November, 2023 is hereby refused and accordingly dismissed.

Having gone through the evidence of the witnesses and Exhibits tendered herein the issue for determination is:

Whether the Plaintiff has proved his Claim, and is entitled to the reliefs sought.

Article 6 (3) of the Delta State Judiciary Practice Direction on Small Claims, 2023, made pursuant to Section 274 of the Constitution of the Federal Republic of Nigeria 1999, and Sections 49 and 60 of the Magistrate's Court Law of Delta State, 2006; states:

"Where a Defendant fails to file an answer to a Claim, such Defendant may be held to have admitted the Claim."

The word "may" in its simplest meaning is an expression of possibility, a permissive choice to act or not, and ordinarily, it implies some degree of discretion. This contrasts with the word "shall" which is generally used to indicate a mandatory provision.

Upon a careful perusal of the argument of Learned Counsel to the Plaintiff, it is my view that the arguments made by Counsel and authorities cited herein, are based on settlement of pleadings in the High Court where the conduct of a

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case is complex unlike the Small Claims Court, which is a Court of Summary jurisdiction.

This is a Small Claims Court where the preamble of the practice Direction provides thus

"The objective of the Small Claims procedure is to provide easy access to an informal, inexpensive and speedy resolution of liquidated money demands."

See Article 1 of the Small Claims Practice Direction of Delta State, 2023.

It is important to note that the Defendant, by coming to Court to give evidence is a step ahead of the filing of the defence as provided by article 6 (3) of the Practice Direction on Small Claims, Delta State.

Furthermore, the issue of technicality is long gone as technicality should not be elevated to such a level, that the purpose of justice is defeated.

The law is trite, that at all times, Plaintiff is required to prove his case. The burden of proof in Civil cases is not static, as it shifts from one party to another. Also, the burden of proving the existence or non existence of a fact lies on the party against whom the judgment of the Court would be given if no evidence was produced on either side. Therefore the burden lies against whom the judgment would be given if no more evidence was adduced.

Ehidiamen V. Musa (2010) FWLR (Pt. 21) 930 and also (2020) 8 NWLR (Pt. 669) 54

And

Itauma V. Akpe – Ime (2000) FWLR (Pt. 16) 2809 and (2020) 12 NWLR (Pt. 680) 156.

In the instant case, Plaintiff alleges that the Defendant owes him the sum of One Million, Two Hundred and Twelve Thousand Naira. In order to ascertain same, he tendered Exhibit A,

Exhibits C, D and E were tendered by Counsel to the Plaintiff through the Defendants during cross examination.

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I have taken time to look at the Exhibits and oral evidence of Plaintiff before this Honourable Court viz a viz the Claim and hearing; and I hold the view that the said Exhibits do not help or assist the Plaintiff to prove that the Defendant is indebted to him in the sum claimed. Exhibit A does not show that there was an agreement of the said sum or the contract the parties had.

Similarly Exhibits C, D and E do not show the amount of money owed by the Defendant, to the Plaintiff.

The trial Court has a duty to evaluate the evidence before it and be satisfied that same is credible and sufficient to sustain the claim. See *Gonzee (Nig.) Ltd. V. Nigeria Educational Research and Development Council* (2005) 13 NWLR (Pt. 943) 634 at 650 para D.

I therefore hold that the Plaintiff has not proved his Claim and is therefore not entitled to the Claim.

Accordingly, the Claim is hereby dismissed.

Dated at Effurun thisday of 2024.


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T.R. EwHERIDO (MRS.)
CHIEF MAGISTRATE GD. II

