

2. An order of award of N140,000 (one hundred and forty thousand naira) being 8% of the purchase price of the Honda crosstour car.
3. An order for the award of damages compensation of N5,000,000 (five million naira) for breach of contract and report of a civil matter to the police and incarceration of the 1st defendant.
4. Cost of this action.

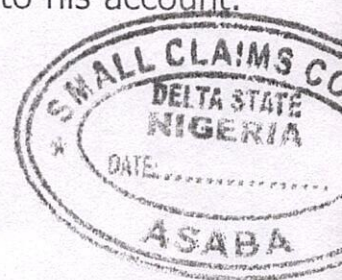
The plaintiff in prove of his claim has put forward as PW1. He testified to the effect that he lives behind Mama Smart Quarters ULO, Asaba. He stated he got to know the two (2) defendants; Mr. Moses and M & A Motors through his electrician, Ifeanyi.

On the 17th of April 2023, he met his car electrician, Mr. Ifeanyi at his office behind M.T.N office Asaba that he wanted to sell his car. He stated that his electrician Mr. Ifeanyi suggested the 1st defendant Mr. Moses Okeke and took him to the 1st defendant's office at ULO, off Ibusa road, Asaba.

PW1 further testified that they went in his Honda crosstour car to the defendant's office. A written agreement was entered which was titled Authority to sell. The 1st defendant gave him a photocopy and took the original.

PW1 stated that after 2 (two) weeks, the 1st defendant informed him that the car need general maintenance to which he transferred the sum of N55,000 (fifty five thousand naira) and additional N5,600 (five thousand, six hundred naira) totaling N60,600 (sixty thousand, six hundred naira) to the 1st defendant. The 1st defendant acknowledges the car was in good shape.

On the 13th of July, 2023, PW1 stated he got notice that the car had been sold and requested the 1st defendant to transfer the money to his account.



The 1st defendant instead, requested to pay at the end of the month of July and subsequently stop taking his calls.

PW1 stated that in August, the 1st defendant finally pick his call and promised to pay at the end of August 2023, but he never did.

The 1st defendant pleaded to pay in September 2023 and requested he snapped the authority to sell, Exhibit D. he then informed the defendant that all the documents for the car are in the village. The defendant then said that he does not have the authority to sell and so the transaction cannot commence and cannot pay the money.

PW1 further testified that on the 1st of October, the 1st defendant requested for more time to pay and informed him that he incurred other expenses in fixing the car and spent the sum of N280,000 (two hundred and eighty thousand naira) in fixing the car which the 1st defendant never informed him prior. PW1 stated that he refused accepting same as he was not aware of such expenses.

The defendant threatened that he should do whatever he wants to do and refused picking his calls. PW1 further testified he reported the case to the police and went to the defendant's car stand at ULO, Ibusa road Asaba with a friend in pretence to buy a car. The defendant came out. The case was reported at Rapid Response Squad and the 1st defendant pleaded for settlement. The 1st defendant paid the sum of N500,000 (five hundred thousand naira) with the agreement he would pay the balance in two (2) weeks. After 2 (two) weeks elapsed, the defendant said he will not pay again as the case was in court in Abuja.



PW1 also testified that he paid his lawyer N1,500,000 (one million, five hundred thousand naira) as legal fees in Abuja for the defendant's claim that he refused paying him the money the 1st defendant spent in repairing his car and N500,000 (five hundred thousand naira) for legal fees for this case. Another N500,000 (five hundred thousand naira) for the police to track the defendant.

PW1 also stated that he bought the said Honda crosstour car from Idada Shawn who issued him receipt for acknowledgment of payment.

Under cross examination;

PW1 admitted he is not aware that mechanic Chibuikwe Aja was not successful in fixing. PW1 also admitted paying the 1st defendant the sum of N55,000 and N5,600 to the 1st defendant's account.

PW1 denied that the 1st defendant informed him that the repair was unsuccessful, neither did the 1st defendant inform him that he was taking the car for further repairs. The defendant only sent him a copy of the agreement he had with the mechanic which he later called and said the car was ok. PW1 denied knowledge of Exhibit F, the repair computation and the defendant never returned the N55,000 and N5,600 he paid for the repairs.

PW1 also denied that he is in court because of his refusal to pay for the repair of the car but for the payment of the sale of the Honda car.

One Ifeanyi Ajeh was put forward as PW2 and he testified to the effect that he is an automobile electrician and knows the plaintiff PW1 who is his customer. The plaintiff comes to his shop to maintain his car. PW2 stated



that he knows the 1st and 2nd defendants. The 1st defendant is a car dealer with office at Iyiabi off ULO road, Ibusa road Asaba.

PW2 further testified that in April 2023, the plaintiff came to his office behind MTN, opposite Church of God Mission, Asaba that he wants to sell his car, a Honda crosstour. He suggested the 1st defendant a car dealer.

PW2 stated that they drove to the 2nd defendant, M & A Motors at Iyiabi Ulo off Ibusa road, Asaba. The plaintiff and 1st defendant entered into an agreement to sell the car for N3,000,000 (three million naira) but does not know the content of the agreement and parties signed in his presence.

PW2 further stated that the car was displayed at M & A motor car stand located at Iyiabi ULO off Ibusa road Asaba as he always passes the car stand to go to work.

PW2 also stated that the car was in good condition because they drove the car from his office to the 1st defendant's office in Asaba.

PW2 further testified that the plaintiff informed him that the car was sold and the defendant only gave him N500,000 (five hundred thousand naira) after he reported the case to the police.

PW2 stated that the 1st defendant called him that he wants to do maintenance in the car in order that there is no complaints about the car during purchase and the plaintiff paid the sum of N55,000 (fifty five thousand naira) when an agreement was entered between the 1st defendant and Mechanic Chibuike Aja, Exhibit E.

PW2 denied that the back of exhibit E is part of the agreement entered by the 1st defendant and the mechanic as he is a party to the agreement Exhibit E and signed as a witness. PW2 also stated that it was agreed that if the car



was not well maintained, the mechanic Chibuike will refund the money to M & A motors.

Under cross examination:-

PW2 stated that his name is Emmanuel Ajeh. He denied signing Exhibit D – authority to sell, an agreement and does not know about the agreement Exhibit D but was there during the agreement between the plaintiff and the 1st defendant. PW2 further stated that he does not know if the N3,000,000 (three million naira) was negotiable.

He denied been told as he was there when the agreement was entered and also took PW1 to the 1st defendant and 2nd defendant, M & A motors.

PW2 admitted he specializes in electrical aspect of a car and cannot fix other fault in a car. PW2 also admitted the car was in perfect condition because it was driven from his shop to the 1st defendant's car stand.

PW2 denied the car was displayed in Kubwa, Abuja but rather the car was displayed at Iyiabi, Ulo Asaba.

PW2 further admitted witnessing Exhibit E, the agreement and wrote his name on it and his name is Ajieh and not Ajah.

Defence opened its case and the 1st defendant was put forward as DW1.

He testified to the effect that he lives in Kubwa, Army Estate, Abuja and is the owner of M & A motors limited. DW1 stated that sometime in April 2023, he came across a Honda crosstour car for sale in Abuja. He called the number on it as he is a car dealer. The plaintiff brought the car to his office at RCC Construction Company Abuja and they entered into an agreement – Exhibit



D with the 2nd defendant M & A motors to sell the car for N3,000,000 (three million naira) negotiable.

He discovered that the car documents bore a different name, one Idada Shawn, whereas the authority to sell bore the plaintiff's name, Nwafor Joseph.

The plaintiff then informed him he will come with the Idada Shawn and the plaintiff said he will add money to the proceeds of the sale of the Honda car to buy a Lexus RX 330 in his car stand when they bargained for N5,000,000 (five million naira).

DW1 further testified that he discovered the car had engine fault, air conditioner fault and sun roof top was leaking which damaged the control button of the window in the car. DW1 stated that he informed the plaintiff and brought the car down to Asaba to be fixed by the plaintiff's electrician PW2.

PW2 latter came with a mechanic, one Ajah Chibuikwe and they entered into an agreement Exhibit E to refund the sum of N55,000 which PW2 witnessed. Unfortunately, they were unable to fix the car. DW1 further stated that the mechanic went into hiding and later sent the sum of N30,000 out of the N55,000. The said money he used to buy engine oil for the car. It was agreed that he sells the car and take the expenses of the repair from the proceeds of the sale of the car. Exhibit F is the breakdown of the expenses and he took the car back to Abuja to sell for the sum of N1,800,000 (one million, eight hundred thousand naira).

DW1 further testified that he wrote to the plaintiff to pay the balance in order to supply the Lexus car but the plaintiff said he was no longer interested in



the lexus car and refused to pay for the expenses of repair exhibit F and 8% of the expenses for selling the car totaling N431,000. The plaintiff later agreed on Whatsapp on the 31st of October to bear all the expenses in Exhibit F but came with policemen to arrest him. DW1 stated he was forced to pay N500,000 (five hundred thousand) and his car was seized. He also stated he was traumatized and seeks N5,000,000 (five million naira) in general damage.

Under cross examination:-

DW1 admitted that the plaintiff came to his office in Abuja. He admitted entering into an agreement with the mechanic and not with the plaintiff. He further admitted that he sold the car on the 13th of July 2023 and also signed the expenses on the car Exhibit F on the sesame day.

DW1 further admitted that the plaintiff instructed him to use his money in repairing the car but never signed the breakdown of expenses of repair Exhibit F.

DW1 further stated that he met PW1 at Wuse market Abuja and they drove the car from Abuja to Asaba.

DW1 also stated that the car was not good and the mechanic came to his office in Asaba.

DW1 admitted that he went to the police station after his release for his car seized by the police and sent the sum of N500,000 (five hundred thousand) to the plaintiff and wrote a second undertaking under duress. DW1 admitted that the car documents does not bear Nwafor Joseph Monday but Idada



Shawn and the Idada Shawn did not give him any document he used in selling the car rather it was the plaintiff who did.

DW1 admitted that he sold the car on the 13th of July 2023 and nobody came for the ownership of the car, neither did he report the car as a stolen car to the police. DW1 admitted that the account number did not tally with the name on the document in Exhibit D. he admitted he does not have receipt for the purchase of the car oil or receipt for the repair of the car because it was done by a road side mechanic. DW1 denied he gave the plaintiff the lexus car or any other car.

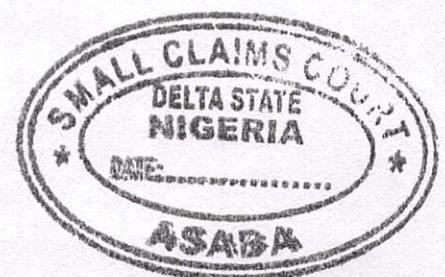
DW1 admitted that no electrician fix the car neither did any mechanic fix the car.

Defence counsel C.J Oranye Esq filed her written address dated the 22nd of March 2024 and filed same day. She adopts same as final argument and urges court to dismiss the plaintiff's claim in its entirety and sustain all the defendant's counter claim.

Plaintiff's counsel M.E Ebenezer Esq filed his written address dated the 20th of March 2024 and filed on the 22nd of March 2024.

Counsel adopts same as final argument and the plaintiff is entitled to his reliefs sought as per his claim and urges court to grant same.

It is the law that the standard of proof in civil proceedings, the burden of proof shall be discharged on the balance of probabilities or preponderance of evidence.



See section 134/135 of the Evidence Act 2011 as Amended and the case of Amokomowo vs Audu (1985) LPELR 495 SC and the case of Mogagi vs Odofin.

This means the plaintiff or defendant in his claim must persuade this court that his version of facts is more probable than that of either opponent.

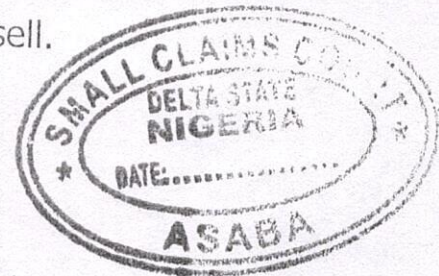
Preponderance would therefore mean greater weight, a sense of greater importance before a judge whom evidence is adduced by parties between him in a civil case comes to a decision to which evidence to reject or upholds.

The court first of all puts the totality of the testimonies adduced by both parties on that imaginary scale and weighs them together. He will then see which is greater by the quality of probative value of the testimony of these witnesses. Probative value is the probability of evidence to reach its proof of purpose of a relevant fact in issue. The ability of evidence to prove something that is relevant to the fact by issue more likely to happen.

Therefore, the issue for determination before this court from the issues raised by parties are;

1. Whether the plaintiff has been able to prove his claim for the sum of N2,500,000 (two million, five hundred thousand naira) being balance for the sale of a black Honda crosstour car. In the light of the probative value of the testimonies of the plaintiff and defendant evidence adduced in court.

It is in evidence that both parties entered into an agreement to sell the plaintiff car for the sum of N3,000,000 (three million naira) as seen in Exhibit D – Authority to sell. Albeit the defendant stated that the said sum was negotiable and also stated in Exhibit B – Authority to sell.



Can the said word negotiable, negate or invalidate the said sum of N3,000,000 (three million naira) to be unascertainable, therefore causing the claim not to fall within the meaning of a liquidated money demand.

"A liquidated money demand is a debt or other specific sum of money usually due or payable and its amount must be already ascertained or capable of been ascertained as a mere matter of arithmetic without any other or further investigation".

See the Supreme Court case of Joseph Uzor & Anor vs Daewoo Nigeria Limited & Anor (2008) 251 SC.

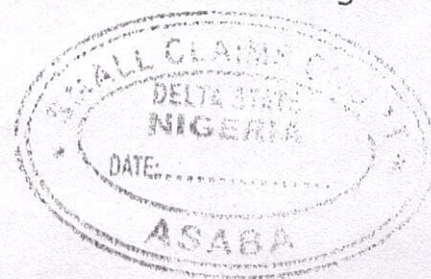
See also the case of Johnny vs Edoja (2007) AFWLR pt 365 at 527 particularly at page 544 paragraph A – C, where the court of Appeal held and I quote;

"A liquidated money demand is defined as a sum of money previously agreed by parties to a contract in case of breach. It is also a claim of an amount previously agreed on by the parties or that can be precisely determined by operation of law or by the terms of parties' agreement"

The plaintiff on the other hand denied that the agreed sum of N3,000,000 (three million naira) was not negotiable despite the words in Exhibit D – Authority to sell.

The plaintiff admitted under cross examination that he was never invited for any negotiation.

The defence on its part tendered exhibit H and I WhatsApp communication between the plaintiff and himself and Exhibit I, Affidavit of compliance showing the plaintiff agreement conceding to the negotiated sum of N1,800,000 (one million, eight hundred thousand naira. The plaintiff further stated that the defendant never informed him that the car was sold and got



to notice the car had been sold. The plaintiff also denied communicating with the defendant through WhatsApp chat but through phone calls.

A close look at Exhibit H – Whatsapp chat shows an abridge and cut off communication. The full contest of the said conversation was conspicuously cut off or surreptitiously omitted. The court cannot rely on this piece of evidence as it is obviously subject of manipulation or alteration. Moreso when the G.S.M provider was not call to tender same as the full or authenticity records from them.

Therefore the weight of probative value to be attached to the said document will be very minimal and of no value.

The defendant has therefore failed to show that the sum of N3,000,000 (three million naira) was negotiated as there is no agreeable negotiated sum before this court.

See the case of Mortex (Nig) Ltd vs Franc tools Co. Ltd (1997) 4 NWLR pt 501 at 603. Per Alagoa JCA held.

"In clear terms, liquidated money demand can be said to be a debt or other specific sum of money usually due and payable, which amount must have been already been ascertained or capable of being ascertained without any other further investigation. Therefore whenever the amount being denied by a party can be ascertained by calculation or fixed by any scale of charges or other positive data, it is said to be liquidated"

Going by the aforesaid, the key word is calculable sum of money. In the instant case, the plaintiff, the proceed of the sale.



It is also pertinent to state that ownership of the said car can be conveniently entertained in criminal cases when the said car have been said to have been stolen or fraudulently converted. The defendant during cross examination admitted that he never reported the car to be stolen to the police, neither did he say the car was stolen.

Therefore the question of ownership of the said car cannot vitiate debt, liquidated money demand of N2,500,000 (two million, five hundred thousand naira) agreed by parties in this case. See the case of Alhaji Abdukardir Abacha vs Kurastic Nigeria Limited (2011) LPELR 22703.

The defendant's refusal or insistence of not paying the plaintiff the agreed sum until he see the said Idada Shawn is analogous to an imputation of a crime which has to be proved beyond reasonable doubt. Same cannot be sustained in a civil suit such as this.

It is also expedient to state that the defendant never refused or insisted on seeing the said Idada Shawn before he sold and receive money from the said sale but conveniently insisted on doing same when it was time to pay the plaintiff the liquidated money demand.

On the issue of the defendant's counterclaim, this court declines jurisdiction to entertain the defendant's counterclaim as same is the subject matter at the Federal High Court, Abuja in suit No: FCT/HC/CV/7841/2023 and which this court had earlier ruled. The defendant's counter claim can be adequately dealt with at the federal high court where he had file his statement of claim which is a reflection of his counter claim, the same term and template with his counterclaim before this court as the defendant is obviously mischievous and his action deemed an abuse of court process. Moreso when the



defendant admitted under cross examination that no electrician or mechanic repaired the car, the defendant is therefore deemed as not a witness of truth.

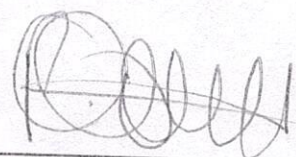
I herefore so hold. The defendant's counterclaim is hereby dismissed.

The plaintiff's claim for N2,500,000 (two million, five hundred thousand naira) is undoubtedly a liquidated money demand which both parties admitted that the defendant paid the sum of N500,000 (five hundred thousand naira) through the intervention of the police.

Therefore the defendant is hereby ordered to pay the plaintiff the liquidated money demand of N2,500,000 (two million, five hundred thousand naira) being proceed of the sale of the plaintiff's car.

The plaintiff only tendered the receipt for the cost of professional fees of N500,000 (five hundred thousand naira) Exhibit A. The court will only grant an award for that which is proven on a balance of probability as the court is not a Father Christmas.

Consequently, the defendant is hereby ordered to pay the plaintiff the sum of N2,500,000 (two million, five hundred thousand naira) being proceed of the sale of the black Honda crosstour car and legal fees of N500,000 (five hundred thousand naira).



P.O. OBAYUWANA
CHIEF MAG. GD. I

27/2/2024

