

IN THE CHIEF MAGISTRATE'S COURT, DELTA STATE OF NIGERIA
IN THE ASABA MAGISTERIAL DISTRICT
HOLDEN AT ASABA (SMALL CLAIM COURT)
BEFORE HIS WORSHIP P. O. OBAYUWANA (MRS) CHIEF MAGISTRATE GRADE I
SITTING ON MONDAY THE 2ND DAY OF DECEMBER, 2024

BETWEEN:

CHARGE NO: SCC/22/2024

MR. ODOH OKEY EMMANUEL

-- ::: **PLAINTIFF**

AND:

MR. OGBOLU UCHE PATRICK

-- ::: **DEFENDANT**

The plaintiff is in court

Defendant is absent in court.

No representative for the defendant.

JUDGMENT

The plaintiff claims against the defendant as follows;

- (1) A declaration that the defendant's wilful refusal to sign his column on the deed of conveyance amounts to a breach of contract.
- (2) An order of this honourable court that the defendant refunds the sum of N900,000 (nine hundred thousand naira) being the remaining balance of the sum of money being refunded to the plaintiff.
- (3) An order for the defendant to pay the sum of N500,000 (five hundred thousand naira) to the plaintiff as exemplary, punitive aggravated and general damage.

- (4) Order for the defendant to pay the sum of N500,000 (five hundred thousand naira) to the plaintiff as general damages.
- (5) An order of this honourable court, compelling the defendant to immediately pay to the plaintiff the sum of N1,000 (one thousand naira) daily from the date of judgment until the judgment sum is discharged by the defendant.
- (6) The sum of N200,000 (two hundred thousand naira) for cost of the action.

All through the trial, the defendant failed/neglected to put up appearance despite several hearing notices served on him as seen in the affidavit of service before this court.

The court consequently proceeded with the hearing of this claim in line with article 8(2) of the practice direction on small claim 2023.

The plaintiff on the other hand was the sole witness and testified on his behalf. He tendered the following exhibits;

Exhibit A1-A4 – Photocopies of bank transfer slip and bank statement of Keystone and UBA respectively

Exhibit B-B1 – Certificate of compliance

Exhibit C – Survey plan of land

Exhibit D – Deed of conveyance between Mr. Uche Patrick Ogbolu and Odoh Okey Emmanuel

Exhibit E – Receipt payment

The plaintiff was put forward as PW1 and he testified to the effect that on the 18th of April 2024, his counsel H.O Ojugo (Esq) introduced him to the defendant that he had a parcel of land to dispose. He started that they all inspected the land and agreed for the purchase sum of N3,500,000 (three million, five hundred thousand naira) which he paid in three (3) instalment to the defendant through his counsel as seen in exhibit A-A4 respectively.

PW1 further testified that after he made payment, he prepared the deed of conveyance and surveyed the land as seen in exhibits D-C respectively.

The defendant became evasive and refused to sign the deed and later admitted to his counsel that the land does not belong to him. The defendant later paid back the sum of N1,600,000 (one million, six hundred thousand naira) and an additional N1,000,000 (one million naira) totaling N2,600,000 (two million, six hundred thousand naira) and the defendant failed to pay back the balance of 900,000 (nine hundred thousand naira) and the sum of N200,000 (two hundred thousand naira) spent on surveying the land. He urges court to grant his claim.

The defendant failed to cross examine the plaintiff and was subsequently foreclosed, put appearance to adduce any evidence to contradict or debunk the plaintiff's claim.

It is trite that in civil proceeding in onus of proof lies on the claimant. The Supreme Court in the case of Christian Ewo & Ors vs

Ogbodo Ani & Ors (2004) Vol 4 monthly judgment of Supreme Court (MJSC) page 119 at 124 ratio 2, the court held alia;

"The onus of proof in civil cases lies on the plaintiff to satisfy the court that he is entitled to the evidence adduced by him to the claim he assert"

Also in the case of owners of Gongola & Anor vs Smurfit Nigeria Ltd (2007) 6 SCA 269 at 290, it was held;

"also firmly settled is that where the evidence of a plaintiff is unchallenged and uncontradicted, particularly, where the opposite party or side had the opportunity to do so, it is always open to the trial court seized of the matter to accept and act on such unchallenged and uncontradicted evidence before it"

It is trite law that where a claimant adduces oral evidence which establishes his case against the defendant in terms of practice direction in a small claim court and the evidence is not rebutted by the defendant, the claimant is entitled to judgment.

Having carefully considered the submission of the plaintiff's counsel in this suit, the issue for determination is whether having regard to the peculiar facts of the case, the claimant is entitled to his claim.

In this case, the plaintiff/claimant is seeking for a declaration that the defendant's wilful refusal to sign his column on the deed of conveyance amounts to a breach of contract.

Article 2(d) states that an action in a small claim court is a claim for a liquidated monetary denied in a sum not exceeding N500,000 (five hundred thousand naira) excluding interest and cost.

To qualify for relief in this court reliance from the trial court such unchallenged evidence must be credible in all circumstance and must be cogent enough to sustain the claim of the plaintiff/claimant.

Also, the principle that in civil cases, the facts are proved on a preponderance of evidence and that when there is nothing on the other side of the balance, the onus of prove is discharged on a neutral prove, provided it is credible and cogent.

See the case of Isaac Omoregbe vs Daniel Lawani (1980) 3-4 SC 1080 at 117.

The plaintiff/claimant has satisfied the principle of law in given evidence to prove his case and the piece of evidence was not controverted or discredited by the defendant. The result in law where the evidence of the claimant has not been controverted is that the defendant is deemed to have accepted as true and admitted.

The plaintiff/claimant claim the sum of N900,000 only being his remaining balance hereby succeeds.

The claimant is also seeking the cost N200,000 (two hundred thousand naira) expended in the survey of the said land and the court hereby grants same.

Meanwhile the payment of exemplary and general damages land payment of N1,000 (one thousand naira) daily from the date of

judgment until the judgment sum is discharged by the defendant is hereby refused.

The court hereby grant the sum of N900,000 (nine hundred thousand naira) being balances of the sum paid to the defendant and N200,000 (two hundred thousand naira) incurred in the survey of the land only.

The judgment is entered according.



P.O. OBAYUWANA
CHIEF MAG. GD. I
02/12/2024