

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY  
HOLDEN AT ABUJA**

**THIS MONDAY THE 13TH DAY OF SEPTEMBER, 2021**

**BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE**

**SUIT NO: CV/3045/19**

**BETWEEN:**

**MITCHEL AUTOMOBILE LTD.....CLAIMANT**

**AND**

**1. GRENACO NIG. LTD**

**2. ARCH. FEMI JOHN OLOWO**

} .....DEFENDANTS

**JUDGMENT**

This is a matter filed initially under the undefended list procedure on 26th September, 2019. Having carefully considered the processes, this court on 27th November, 2019 inclined to the view that the case was not cognisable under the said procedure and accordingly transferred the matter to the General Cause list and ordered for pleadings to be filed.

By a statement claim dated 24th November, 2020 and filed same date at the court's Registry, the Plaintiff claims against the Defendants jointly and severally as follows:

- a. **An order directing the Defendants jointly and severally to pay the Claimant the sum of N6,400,000(Six Million Four, Hundred Thousand**

**Naira) only being the balance of hire fee and the purchase price of the vehicle the Defendants owe the Claimant.**

- b. An order directing the Defendants to pay the Claimant post judgment interest of 20%.**
- c. An order directing the Defendants to pay the Claimant N300,000(Three Hundred Thousand Naira) only being the cost of this suit.**

From the Record of Court, the Defendants were all duly served with the originating court processes but they never appeared in court or filed any process and indeed were never represented despite service of hearing notices at different times during the course of this proceedings.

In proof of its case, the Plaintiff called only one witness, Prince Ajibola Adedoyin, the Managing Director of Claimant who testified as PW1. He deposed to a witness statement on oath dated 24th January, 2020 which he adopted at the hearing. He tendered in evidence the following documents:

1. Copy of Zenith Bank Cheque in the sum of N5,000,000 issued by 1st Defendant in favour claimant dated 12th March, 2018 was admitted as **Exhibit P1.**
2. Invoice issued by Claimant to 1st Defendant dated 22nd February, 2018 was admitted as **Exhibit P2.**
3. Cash receipt issued by Claimant to 1st Defendant dated 22nd February, 2018 in the sum of N6,900,000 “being payment for Hyundai Sonata” was admitted as **Exhibit P3.**
4. Document titled certificate of title, New York State was admitted as **Exhibit P4.**

PW1 then urged the court to grant the claims of Claimant.

As stated earlier, despite service of the originating court processes and hearing notices at different times on the defendants, they never appeared in court or filed any process in opposition. Now I recognise that fair hearing is a fundamental element of every trial process and it has some key attributes: these include that the court shall hear both sides of the divide on all material issues and also give equal treatment, opportunity and consideration to all the parties. See **Usani V Duke (2004) 7 N.W.L.R (pt.871) 116; Eshenake V Gbinijie (2006) 1 N.W.L.R (pt.961) 228.**

It must however be noted that notwithstanding the primacy of right of fair hearing in any well conducted proceedings, it is however a right that must be circumscribed within proper limits and not allowed to run wild. No party has till eternity to present or defend any action. See **London Borough of Hounslow V Twickenham Garden Dev. Ltd (1970) 3 All ER 326 at 343.**

The defendants have been given every opportunity to respond to the allegations of plaintiff and they have exercised their right not to respond. Nobody begrudges this election. It is only apposite to reiterate that nobody is under any obligation to respond to any court process if they so elect. I leave it at that.

In the final written address of Plaintiff settled by Nnaemeka Oguaju, Esq., one lone issue was raised as arising for determination thus:

**“Whether or not this court can act on the unchallenged evidence of the Claimant and grant his claims.”**

In the court’s considered opinion, and on the state of the pleadings and evidence, the lone issue raised by claimant can be better framed or formulated in the following terms as follows:

**“Whether from the facts and circumstances of this case, the Plaintiff has proved its case to entitle it to all or any of the Reliefs sought?”**

Now from the pleadings and evidence led at trial, the case of Plaintiff is situated on the alleged failure of the Defendants to live up to their commitments or obligations to pay for a **Hyundai Sonata Car** which the 2nd Defendant allegedly hired initially and which was then subsequently sold to the him. The case by Plaintiff is

simply to compel the Defendants to pay for both the outstanding balance due on the hire of the car and the purchase price of the car.

Let me perhaps underscore the precise foundational premise of the case of the plaintiff from its pleadings. The relevant paragraphs streamlining the case of the Plaintiff are as follows:

- 4 The Claimant avers that the 2nd Defendant's came to her office and hired Hyundai Sonata Saloon Car 2015 with Chasis No: 5NPE24AFXFH210949 for some months with agreed sum of N1,900,000(One Million Nine Hundred Thousand Naira) only, wherein the 2nd Defendant paid N500,000(Five Hundred Thousand Naira) only cash as a deposit to the Claimant and left the balance of N1,400,000 (One Million Four Hundred Thousand Naira) only unpaid.**
  
- 5 The claimant avers that on 27th February, 2018, 2nd Defendant came to her office and told her that he wanted to purchase the car (Hyundai Sonata Saloon Car 2015) he took on hire with the agreed purchase price of N5,000,000(Five Million Naira) Only. Thereafter the Claimant calculated the outstanding balance of N1,400,000 (One Million Four Hundred Thousand Naira) only with N500,000 already paid cash together with purchase price of N5,000,000 (Five Million Naira) only and issued to the 2nd Defendant cash receipt and invoice dated 27th February, 2018 for the total sum of N6,900,000(Six Million Nine Hundred Thousand Naira) Only, the said cash receipt and invoice is hereby pleaded and will be relied upon at the trial.**
  
- 6 Consequently, the 2nd Defendant issued to the Plaintiff a postdated Zenith Bank Cheque dated 12th March, 2018 of N5,000,000(Five Million Naira) only for the payment of the purchase price of the vehicle and the vehicle which was in his custody on hire was officially delivered to him although they still have balance of N1,400,000 outstanding for hiring the vehicle. When the said cheque was presented for payment at a due date it was returned unpaid. The said cheque is hereby pleaded and will be relied upon at the trial.**

**7 The Claimant avers that since then the Defendants has not paid to the Claimant the total indebtedness of N6,400,000(Six Million Four Hundred Thousand Naira) only which is the balance of hire fee and purchase price respectively.”**

The evidence of PW1 is largely within the structure of the facts averred above. The duty of court is to now evaluate the evidence led to situate proof of the above averments in the pleadings. This is so because, it is settled principle of general application that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist. See **Section 131(1) Evidence Act**. By the provision of **Section 132 Evidence Act**, the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side, regard being had to any presumption that may arise on the pleadings.

It is equally important to state that in law, it is one thing to aver a material fact in issue in one’s pleadings and quite a different thing to establish such a fact by evidence. This is because it is now elementary principle of law that averments in pleadings do not on their own constitute evidence and must therefore be proved or established by credible evidence unless same is expressly admitted.

Now a convenient starting point is to understand the precise situations basis of the relationship of parties. As stated earlier, the pleadings and evidence are the critical elements that provide the basis to interrogate the claims of Plaintiff. By paragraph 4 of the claim and evidence of PW1, the case is that 2nd Defendant came to the office of the of Plaintiff and hired a Hyundai Sonata Saloon Car 2015 for some months at the sum of **₦1,900,000** but that 2nd Defendant only paid **₦500,000** leaving a balance of **₦1,400,000**.

Now on the evidence, nothing was precisely proffered by Plaintiff beyond bare oral assertions situating this hire of car agreement for “some months” and the defined terms to govern the relationship. If the consideration for the hire was N1,900,000 and part payment of **₦500,000** was made by 2nd Defendant, there is nothing in concrete terms supporting that any part payment was made leaving a balance of **₦1,400,000**.

It is really difficult to accept that the car in question will be given to 2nd Defendant for “some months” on hire without any paper trail or documentation situating the relationship and the fact that some amount was due as balance for the hire of the Hyundai Car.

In paragraph 5 of the Claim and the evidence of PW1, he stated that on 27th February, 2018, the 2nd Defendant came to their office and informed them that he wants to purchase the car he took on hire and they agreed to sell to him and the purchase price agreed was **₦5,000,000**. That in addition to the sum of N1,400,000 due from 2nd Defendant as balance for the hire of the car plus the N500,000 part payment for the hire, the total sum due from the 2nd Defendant was the sum of N6,900,000. That the Plaintiff issued a cash receipt vide **Exhibit P3** dated 22nd February, 2018 and an invoice also dated 22nd February, 2018 vide **Exhibit P2** to the 2nd Defendant.

In paragraph 6 of the claim and the evidence of PW1, the Plaintiff stated that the 2nd Defendant issued a post dated cheque of 1st Defendant dated 12th March, 2018 vide **Exhibit P1** in the sum of **₦5,000,000** only for the purchase of the car without including the outstanding balance for the hire, which bounced on presentation at the bank. Finally in paragraph 7, the Plaintiff stated that the Defendants have not paid the total indebtedness which now reads N6,400,000 (contrary to N6,900,000 pleaded in paragraph 5) representing the balance of the hire fee and the purchase price respectively.

Let us again critically scrutinise these averments. As stated earlier, nothing was put forward by Plaintiff situating any car hire relationship with Defendants and that any money was agreed for the hire and also that any amount was outstanding. Again, if the 1st Defendant offered to buy the car at the sum of **₦5,000,000** and that the alleged balance due on the hire of the car was added to the purchase price, there is again nothing in evidence to creditably support this arrangement between parties.

Let me perhaps at this point have recourse to the documentary evidence tendered by Plaintiff to assess their probative value. **Exhibit P2**, dated 22nd February, 2018

is the invoice issued by Plaintiff which describes the car as a “**Hyundai Sonata**” in the name of 2nd Defendant. There is the sum of **₦6,900,000** on the exhibit. There is however nothing on this exhibit to show what part of this sum is for the balance of the sum for hire; what part represents the value of the car and finally what part reflects the N500,000 deposit paid for the hire. **Exhibit P3** is a cash receipt in the name of 2nd Defendant issued by Plaintiff. The cash receipt unequivocally states that “**the sum of Six Million, Nine Hundred Thousand being payment for Hyunda Sonata**” received from 2nd Defendant.

The column for cheque is blank while there is a marking in the cash column suggesting that the payment was made in cash. This cash receipt clearly speaks for itself and in no uncertain terms states that the above identified sum was received from 2nd Defendant for the Hyundai vehicle. There is again nothing in this receipt or Exhibit showing that the payment includes payment for the alleged initial hire and the part payment of **₦500,000** allegedly paid by 2nd Defendant.

The logical deduction to be made from this **Exhibit P3** is that the 2nd Defendant has paid the consideration for the car in the sum of **₦6,900,000**. There is nothing in this **Exhibit P3** to show or situate that the price for the car was **₦5,000,000** or that any balance for hire of the same car was added to the value of the car and incorporated in the receipt.

The law is settled that no additions, alterations or indeed any interpolations can be made to **Exhibits P 2 and P3** to suit a particular purpose. See **Section 128 of the Evidence Act**. Again this **Exhibit P3** will even appear to derogate from the case made out by Plaintiff. Let me explain. If as stated in paragraphs 4 and 5 of the claim that the hire fee was N1,900,000 and the 2nd Defendant paid N500,000, it meant that the outstanding balance on the hire was N1,400,000. When this amount is added to the N5,000,000 purchase fee for the car, the total outstanding sum due will have been N6,400,000. The question that then arises here is how was the amount of N6,900,000 received from 2nd Defendant arrived at? This amount is certainly more than both the balance for the hire of the car and the actual purchase price.

This confusion as to even the amount due can be seen in the different amounts of the indebtedness stated by Plaintiff in paragraphs 5 and 7 of the claim. Even if I accept that this is a typographical error in paragraphs 5 and 7 and I take the sum in paragraph 7, to wit: N6,400,000 as the total indebtedness representing the balance of the hire and purchase price, **Exhibit P3** showing the actual amount of N6,900,000 received from 2nd Defendant will undermine completely any contentions made in the said paragraph 7. Indeed if N500,000 was received from the very beginning as part payment for the hire, why then is the amount still featuring in the computation of the outstanding sums due as done in paragraph 5 of the statement of claim?

It is important to note that in law documents serve as a hanger to determine the credibility of oral evidence. Where documentary evidence contradicts oral evidence, such oral evidence will lack probative value.

In the same vein, it is apposite to add that in law, oral or documentary evidence must be accurate in the sense that it brings out the facts as averred in the statement of claim. In other words the evidence led must dance to the same music as in the statement of claim. Where the evidence led does not bring out the facts in the statement of claim, or where there is material contradiction, the court is entitled to hold and will hold that the claimant did not prove his case. Here the court uses the statement of claim as a reference point because that is where the facts of the case originally germinate. See **Boniface V Anyika & Co. Lagos (Nig) Ltd V. Uzor (2006) 15 NWLR (pt.1003) 560 at 572 B-C.**

Now what is strange in this case particularly in the light of **Exhibit P3** which indicates that the payment for the car was received in cash, the Plaintiff stated that the 2nd Defendant vide **Exhibit P1** gave a post-dated cheque in the sum of N5,000,000 for the purchase of the same car and that it bounced on presentation.

Again, this **cheque** raises fundamental and unanswered questions: If the 2nd Defendant has paid vide **Exhibit P3, N6,900,000** for the Hyundai car, on what basis is he issuing a post dated cheque in the sum of N500,000 for the same car over which money has been received? If the post-dated cheque is only for N5,000,000 as stated, what about the due and remaining balance of N1,400,000 for

the hire of the same car which Plaintiff said was incorporated to the total price of the car?

There is even really nothing on the evidence precisely and definitively establishing that **Exhibit P1** the post-dated cheque has any link or nexus with the sale of the Hyundai car covered by both **Exhibits P2 and P3**. The said cheque **Exhibit P1** will appear to relate to an entirely different transaction. This appears to be so because **Exhibits P2 and P3** all have a date of 22nd February, 2018 showing clearly that money was received for the car sale while the alleged purported cheque is dated 12th March, 2018 and presented at the bank on 27th March, 2018 more than a month after the receipt by Plaintiff of the sums in **Exhibit P3**. This also in my view, explains why the amount in the cheque does not reflect the total indebtedness said to be due from the Defendants which Plaintiff claimed is **₦6,400,000**.

Unfortunately, as I have sought to demonstrate above, there is no clear and sufficient evidence to support the case made out by Plaintiff with respect to any indebtedness due from Defendants. I have at length gone through the exhibits tendered and what they have done is to undermine or compromise the very basis of any complaint of indebtedness. The point to perhaps again underscore at the risk of prolixity is that pleadings, however strong and convincing the averments may be, without evidence in proof thereof, go to no issue. Through pleadings, people know exactly the points which are in dispute with the other. Evidence must then be led to prove the facts relied on by the party to sustain the allegations raised in the pleadings. See **Union Bank Plc V Astra Builders (W/A) Ltd (2010) 5 NWLR (pt.1186) 1 at 27 F-G**. Averments in pleadings are therefore not evidence. There should be no confusion or doubt about this position.

It is therefore difficult by the confluence of unclear and fluid facts proffered by Plaintiff to situate any indebtedness arising from a hire of a car and the sale of same. Yes, the Defendants may have not defended this action, but as stated earlier, this does not in any manner relieve the Plaintiff of the burden of ensuring that the evidence led in support of their case sustains creditably the case made out within the threshold as allowed by law. See the provision of **Order 32 Rule 3 of the Rules of Court 2018**. The Plaintiff unfortunately did not cross this threshold in this case. Again, I agree that the parties in this case may have had some

transactional relationship but the reality and in the context of the precise claims in this case and the threshold of proof in law is that there is nothing showing or indeed clear materials furnished denoting that the defendants have by words or conduct evinced an intention not to perform or expressly declared that they are unable to perform their obligations with respect to a defined obligation(s) in some essential respect.

There was nothing before court to show a refusal by defendants to perform its side of any contract in any material respect and the court cannot speculate or engage in any futile exercise of speculation or conjecture. Furthermore there was nothing before me to allow for the conclusion that the defendants do not intend to be bound by the terms, which in this case was non-existent or fluid and unclear at best, or that they are determined to do so in a manner inconsistent with their obligations. The point to underscore is that the whole trial process, whatever its imperfections is completely evidence driven. Not just any kind of evidence but admissible evidence with probative value, qualitative and with credibility. Where evidence lacks these key values and is improbable, inherently contradictory, feeble and or tenous, that would amount to a failure of proof. See **A.G. Anambra State V A.G Fed. (2005) All F.W.L.R (pt.268) 1557 at 1611; 1607 G-H.**

On the whole, the single issue raised for determination is answered in the negative. As a consequence of this holding, all the reliefs sought by plaintiff are not availing. For the avoidance of doubt, the plaintiff's case therefore fails completely and it is accordingly dismissed.

.....  
**Hon. Justice A.I. Kutigi**

**Appearances:**

- 1. Nnaemeka Oguaju, Esq., for the Plaintiff.**