

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

ON WEDNESDAY 13TH DAY OF JULY 2022
BEFORE HIS LORDSHIP: HON JUSTICE O. A. ADENIYI
SITTING AT COURT NO. 8 MAITAMA – ABUJA

SUIT NO: FCT/HC/CV/2589/2020

BETWEEN:

OLUCHI VIVIAN UCHE
CLAIMANT

AND

O. I. NOTHING PASS GOD GLOBAL INTEGRATED LTD....
DEFENDANT

JUDGMENT

The Claimant is an Abuja-based legal practitioner. The summary of her case, according to facts gathered from processes filed to commence the instant action, is that sometime in December, 2017, she engaged the services of the Defendant, a transportation and courier company, to send a parcel to Lagos, Nigeria, at an

agreed cost which she paid; but that it turned out that the parcel was not delivered to the recipient in Lagos, as agreed. The Claimant's efforts to resolve the matter amicably with the Defendant did not yield any fruitful outcome. As a result, the Claimant commenced the present action, vide Writ of Summons and Statement of Claim filed on 09/09/2020 and by the Amended Writ of Summons and Statement of Claim filed on 31/03/2021, the Claimant claimed against the Defendant, the reliefs set out as follows:

- 1. A declaration of this Honourable Court that the contract agreement for the delivery of the Claimant's parcel, entered into by the Claimant and the Defendant is valid and subsisting and parties are liable for any breach therein.***

- 2. A declaration of this Honourable Court that the failure of the Defendant to deliver the Claimant's***

parcel as agreed between the Claimant and the Defendant constitutes a flagrant breach of contract.

3. An order of this Honourable Court mandating the Defendant to deliver the Claimant's parcel as agreed between the Claimant and the Defendant or in the alternative pay the sum of ₦500,000.00 (Five Hundred Thousand Naira) only, being special damages to the Claimant.

4. The sum of ₦5,000,000.00 (Five Million Naira) only, as damages for breach of contract by the Defendant of the contract agreement entered into between the Claimant and the Defendant represented by the staff of the Defendant (Mr. Kelechi Omeh AKA K.C), for the onward transmission of the parcel of goods from Abuja to Lagos.

5. The sum of ₦1,000,000.00 (One Million Naira) only as cost of this suit.

The Defendant contested the Claimant's claim *vide* Statement of Defence filed on 02/03/2021, to which a Counter-Claim is sub-joined whereby the Defendant claimed from the Claimant as follows:

- 1. An order awarding the Counter-Claimant exemplary damages in the sum of Five Million Naira (N5,000,000.00) against the Claimant for the hardship, distraction, embarrassment and ridicule suffered by the Defendant as a result of the actions of the Claimant.***

At the plenary trial, the Claimant testified in person and called one witness on *subpoena*. She adopted her *Statement on Oath* as her evidence in chief. She further tendered six (6) documents in evidence as exhibits. The Claimant's witness, **Peniel Akpan**, rendered oral testimony. They were both cross-examined by the Defendant's learned counsel.

In turn, the Defendant fielded two witnesses. The **DW1** is **Kelechi Omeh**, whose name featured severally in the Statement of Claim. He was the Waybill Officer of the Defendant at the material time. The **DW2** is **Mr. Ugochukwulkedimma**, the Defendant's Branch/Transport Manager at the material time. The two witnesses adopted their respective *Statements on Oath* and were both cross-examined by the Claimant's learned counsel.

Upon conclusion of plenary trial, parties filed and exchanged their written final addresses. In his final address filed on 29/03/2022, the Defendant's learned counsel, **Benson O. Aghaegbuna, Esq.**, formulated a sole issue for determination, namely:

Whether the Claimant has certify (sic - satisfied) the Court that she is entitled on the evidence adduced by her to the declarations and damages she seeks.

In the Claimant's final address filed on 19/04/2022, her learned counsel, **S. E. O. Maliki, Esq.**, identified three issues as having arisen for determination in this suit, namely:

- 1. Whether the Claimant has proved her case by discharging the onus placed on her on the preponderance of evidence to be entitled to the grant of the reliefs in the terms sought before this Honourable Court.***
- 2. Whether from the entire circumstances of this case, this Honourable Court shall be on firm ground to award general damages in the terms sought in favour of the Claimant.***
- 3. Whether from the entire circumstances of this case and upon a total appraisal and evaluation of the evidence before this Honourable Court the failure of the Defendant to call its General Manager in its Lagos Office who is a vital***

witness in this proceedings is not fatal to the Defence of the Defendant thereby raising the presumption of withholding of evidence against the Defendant.

Having appraised the totality of the admissible evidence on record and the totality of the circumstances of this case, my view is that the only areas of dispute between the parties in this case can be captured in two main issues, which, without prejudice to the issues formulated by the respective learned counsel, I distill as follows:

- 1. Whether or not the Defendant breached the contract of courier entered between her and the Claimant; and if so, whether or not the Claimant is entitled to the damages claimed.***
- 2. Whether or not the Defendant established her entitlement to the Counter-Claim.***

I have taken due benefits of the arguments canvassed by learned counsel in their respective written submissions. As I consider needful in the course of this judgment, I shall make specific reference to their arguments.

DETERMINATION OF ISSUES

ISSUE ONE:

It is not in dispute between the parties that on 08/12/2017, the Claimant approached the Defendant at her office located at No. 75, Hospital Road, Nyanya, Abuja, FCT, for the purpose of sending a parcel to Lagos through the Defendant's courier service. See paragraphs 3 and 4 of the Statement of Claim, admitted in paragraph 3 of the Statement of Defence.

Parties are also *ad idem* that the Defendant agreed to render the courier service to the Claimant and charged the Claimant the sum of **₦1,500.00 (One Thousand,**

Five Hundred Naira) only, for the service, which sum the Claimant paid and a receipt was issued to her in that regard. See paragraph 11 of the Statement of Claim admitted in paragraph 8 of the Statement of Defence. To further substantiate her claim, the Claimant tendered in evidence as **Exhibit C4**, the Way Bill Receipt dated 08/12/2017, issued to her by the Defendant, as evidence of the transaction/contract between them.

As shown on **Exhibit C4**, the parcel for delivery is described as “**One Small White Bag**” and the same was to be delivered at the Defendant’s Maza-Maza office in Lagos. It is also disclosed on **Exhibit C4** that the recipient of the parcel was one **Peniel** with mobile phone No. **08180846065**.

Parties were not in dispute as to the truth of the facts set out in the foregoing. Indeed the Way Bill Receipt, **Exhibit C4**, was not impeached at the trial and it

establishes the parcel-delivery contract between the parties.

Now, from evidence on record, it seems to me that the dispute between the parties with respect to the issue under determination, can be narrowed to two focal areas. The first is as to a determination of the contents of the parcel couriered by the Claimant through the Defendant's office; and secondly is as to whether or not the recipient received the parcel.

The Claimant, in her testimony, had testified in paragraph 5 of her *Statement on Oath* as follows:

“5. That Mr. Kelechi Omeh requested to know the content of what I intend to send and I subsequently listed the items to be: Two Corporate Affairs Commission original certificates (TrippleTS Chops and Catering and Harry's Smith Law Chambers), two small gifts bag, each containing uniform contents, that includes (baby toys, cooking grater, shopping bag and

baby fancy water bottles), a Binatone product blender juice extractor and other little gifts items.”

When cross-examined by the Defendant’s learned counsel, the Claimant further testified as follows:

“It is correct that the said Kelechi wrote “one small white bag” in the Waybill he gave me. That was his choice of language. I asked why my items were not itemized by way of description of contents and he said “Madam, that’s how we do it when the items are much. No problem, your parcel go reach Lagos.”

The divergent evidence of the Defendant is rendered by the **CW1**, the said **Mr. Kelechi Omeh**, who attended to the Claimant on the date in question, in paragraphs 5, 9 and 11 of his *Statement on Oath*, where he stated as follows:

“5. That in the morning of 8th December, 2017, being Friday, while I was busy attending to customers in my office situated at No. 75, Hospital Road, Nyanya, FCT, Abuja, the Claimant came and met me with a torn

white leather/waterproof bag containing a Blender which was about to fall off of which she intended to send /way-bill to Lagos. The Claimant further told me that the Blender is a wedding gift meant for her friend that will be holding her wedding the following day being Saturday, 9/12/2017 and that since she cannot make it to the wedding in person, that she has to purchase the Blender as a present so that Peniel her friend will pick it the following day being Saturday morning and present same on her behalf at the wedding.

9. That none of the items listed in paragraph 5 of the Statement of Claim was ever brought to our office, seen or received by me from the Claimant on 8/12/2017 except a small white leather containing a blender and to which I charged her One Thousand, Five Hundred Naira (N1,500.00) couple with the urgency of the message.

11. That I did not document anything for the Claimant as she claimed but only cellotape the

leather/waterproof bag that was used to wrap the blender and of which I indicated innocently as one small white bag without envisaging that the Claimant will fabricate all these lies against me.”

From the evidence of both the Claimant and the **DW1**, what has emerged is that both parties agreed at least that a blender was in the Claimant’s parcel handed over to the Defendant for courier to Lagos. Whilst the Claimant testified that there were other items in the package, apart from the blender, the **DW1** insisted it was only the blender that the Claimant presented for courier carriage.

Now, in order to resolve this dispute, it seems to me that the relevant document of reference is the Way Bill, **Exhibit C4**. I have again examined the document. It was tendered by the Claimant herself. At the column captioned “**Items**” the following is inserted “**One small**

white bag.” The document was endorsed by both the Claimant and the **DW1**.

In view of the divergent oral testimonies of the Claimant and the **DW1** with respect to the content of the parcel the Claimant deposited with the Defendant, the only reliable and acceptable evidence on the subject remains **Exhibit C4**. The document having listed only an item namely **“One small white bag,”** the Court cannot accept the Claimant’s oral testimony to explain the contents of the said **“one small white bag.”** I so hold.

By the provision of **s. 128(1)** of the **Evidence Act**, oral testimony is inadmissible to vary, alter or add to the contents of a written contract. See Agbareh Vs. Mimra [2008] 2 NWLR (Pt. 1071) 378; Ashakem Plc. Vs. AsharatulMubashshurun Investment Ltd. [2019] LPELR-21134(SC).

Accordingly, the Court hereby rejects the items set out by the Claimant in paragraph 5 of both her Statement of

Claim and her *Statement on Oath*, as the content of the parcel sent through the Defendant to Lagos. This must be so since there is nothing in **Exhibit C4** that links the “**one small white bag**” stated as the item for courier service with the items listed by the Claimant in paragraph 5 of her *Statement on Oath*. It would amount to an exercise in speculation for the Court to assume that the contents of the small white bag are the items listed by the Claimant in her *Statement on Oath* when **Exhibit C4**, tendered by her, did not state so expressly; except of course, where there is an admission on the part of the Defendant.

In the present case, the Defendant clearly admitted that what was contained in the said bag is a blender and no more. In the circumstances therefore the Court hereby holds that the content of the small white bag delivered by the Claimant to the Defendant for onward courier delivery to Lagos on 18/12/2017, was a blender.

Now, the second area of dispute is as to whether or not the Defendant performed her obligation under the contract by delivering the Claimant's parcel to the recipient in Lagos, as agreed.

The Claimant testified that as agreed with the Defendant, the parcel ought to be delivered to the recipient in Lagos on 09/12/2017; and that her friend, **Peniel**, whose name is indicated on **Exhibit C4**, was meant to collect the parcel from the Defendant's **Maza-Maza Park**, in Lagos. The Claimant testified that about three days after the parcel was sent; and while she was still out of Abuja, she received a distress call from the recipient that she had visited the Defendant's park three times repeatedly and was yet to receive the parcel; that upon her return to Abuja on 20/12/2017, she went to the Defendant's Abuja office where she sent the parcel to inquire as to why the parcel she had sent days back was yet to be delivered to the recipient in Lagos.

The Claimant narrated all her efforts at getting the Defendant to explain the disappearance of her parcel in paragraphs 17 – 35 of her *Statement on Oath*, after which she consulted her Solicitor to write to the Defendant to formally demand for apology and compensation over the loss of the parcel. She tendered copy of the letter as **Exhibit C6**(original of which the **DW1** tendered as **Exhibit D1**).

The Claimant also called as witness the supposed recipient of the lost parcel, **PenielAkpan**, who testified on *subpoena*. In her testimony she narrated how she met the Claimant through a mutual friend in Abuja in 2016 and had been in touch with her ever since. The relevant portion of her testimony is reproduced as follows:

“I remember that on 7th December, 2017, the Claimant informed me that she was going to Court in Nyanya and that she will send the Certificate at a transport company around the vicinity, which was

different from our previous arrangement that she should send through Peace Park. The next day she called me that she had sent the parcel along with the certificates through Nothing Pass God Transport. She also sent to me the Waybill No. That was on 08/12/2017 and told me that the parcel will arrive the next day.

The next day, I went to the terminal of the transport company at MazaMaza, Lagos. I showed them the Waybill No. and they told me there was no parcel with that Number available at that time. I tried to reach the Claimant to give her a feedback on the spot but I did not get through to her and I left. I went back the next day to confirm. They were so rude to me. I was embarrassed by the way the Defendant's agents attended to me. At that point, I decided to leave.

Vivian (the Claimant) reached out to me some days after. She pleaded with me to go there one more time to see if the parcel was available, which I did reluctantly. I was told again, upon my next visit to the

Defendant's terminal, that the parcel was not available. At this time, I decided to forgo it. At this time my friends that I linked with her were already on my neck. At the end of the day, Vivian was able to refund the clients' monies for the jobs they gave her."

Under cross-examination by the Defendant's learned counsel, the witness denied collecting any parcel from the Defendant's terminal in Lagos.

The sum total of the **CW1**'s testimony is that she did not take delivery of the parcel at the Defendant's terminal in Lagos as the Defendant failed to deliver same to her after three visits to her terminal in **Maza-Maza**, Lagos.

The **DW1**, in his testimony, merely stated that the Defendant delivered the parcel to the stated recipient in Lagos, by name **Peniel**, without going further to substantiate the statement with any proof whatsoever. Under cross-examination by the Claimant's learned counsel, the **DW1** further testified as follows:

“It was the General Manager in our Lagos Office who informed me that Peniel received the parcel. The General Manger is still working with the Defendant.”

The Defendant’s **DW2** equally testified, under cross-examination by the Claimant’s learned counsel that he was not the one that delivered the Claimant’s parcel in Lagos.

I agree with the contention of the Claimant’s learned counsel that, on the basis of the evidence on record, the Defendant failed to debunk the Claimant’s claim that the Defendant did not deliver the parcel to the recipient in Lagos as agreed to by both parties. I further agree with the Claimant’s learned counsel that the **DW1**’s testimony in this regard is inadmissible hearsay; and that failure of the Defendant to call her said General Manager in Lagos who, the **DW1** claimed delivered the parcel to **Peniel**, worked against her.

I must however, disagree with contention of the Claimant's learned counsel that the Defendant's failure to produce in evidence the Way Bill dispatch or Record book of 08/12/2017, referred to in paragraph 29 of the Statement of Defence, must raise a presumption that the said document contained list of items the Claimant purported to send through the Defendant to Lagos. Rather, by my understanding of the context of the averment in paragraph 29 of the Statement of Defence, the Defendant had intended to produce the said dispatch book to establish that the parcel was delivered to the recipient in Lagos. Having not produced the document, the Court is entitled to presume, by virtue of the provision of **s. 167(d)** of the **Evidence Act**, that the document would have been unfavourable to the Defendant if it was produced.

From the basis of the evidence on record therefore, I am satisfied that the Claimant has established a clear case

of breach of contract against the Defendant, to the effect that the Defendant failed to perform her obligation under the contract entered into between the two parties on 08/12/2017, for which the Claimant furnished consideration, to deliver the Claimant's parcel to the recipient in Lagos. I so hold.

The trite position of the law, as correctly submitted by the Claimant's learned counsel, is that in an action of this nature, where breach of contract is established, remedy in general damages is available to the Claimant. In other words, where two parties have made a contract which one of them has broken, the damages which the other party ought to receive in respect of such breach of contract should be such as may fairly and reasonably be considered either as arising naturally, that is, according to the usual course of things from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of the

parties at the time they made the contract, as the probable result of the breach of it.

The principle is therefore that the Claimant is entitled to be restored, in so far as monetary compensation can do, to the position she would have been had the contract not been breached, as depicted in the maxim *restitutio in integrum*. See Okongwu Vs. NNPC [1989] 4 NWLR (Pt. 115) 295; Orji Vs. Anyaso [2000] 2 NWLR (Pt. 643) 1; Adekunle Vs. Rockview Hotel Limited [2004] 1 NWLR (Pt. 853) 161; Cameroon Airlines Vs. Otutuizu [2011] 4 NWLR (Pt. 1238) 512.

Furthermore, in any action for breach of contract, the measure of damages is the loss flowing naturally from the breach and is incurred in direct consequence of the breach and its quantum need not be pleaded or proved as it is generally presumed by law. See also Gonzee (Nig). Ltd. Vs. NERDC [2005] 13 NWLR (Pt. 943) 637.

In the present case, the Claimant claimed the sum of **₦500,000.00(Five Hundred Thousand Naira)** only as the cost of items purported to be contained in the parcel meant to be delivered in Lagos through the Defendant. She further claimed the sum of **₦5,000,000.00 (Five Million Naira)** only, as damages for breach of contract.

As I had found in the foregoing, the Claimant was unable to prove precisely the content of the white small bag handed to the Defendant to be couriered to Lagos; even though the Defendant had conceded that the parcel contained only a juice extractor blender. The Claimant testified that she purchased the blender for the sum of **₦100,000.00 (One Hundred Thousand Naira)** only; whereas the purchase receipt she tendered, **Exhibit C3**, bears the sum of **₦50,000.00(Fifty Thousand Naira)** only as the cost of the blender and other item purchased together with it. The implication is

that the Claimant's oral testimony cannot be relied on as the basis to assess the cost of the blender. I so hold.

It is also in evidence that the Claimant spent the sum of **₦1,500.00(One Thousand, Five Hundred Naira)** only as the cost of transporting the parcel to Lagos.

It is also in evidence that as a result of the Defendant's failure to explain the whereabouts of the parcel, the Claimant was compelled to brief a lawyer to make a demand for the return of the parcel and compensation from the Defendant.

The unchallenged evidence on record is further that the Claimant's friend in Lagos, **PenielAkpan**, who was meant to receive the parcel from the Defendant's terminal, visited the place on three occasions before giving up on her bid to collect the parcel.

From the totality of the evidence on record therefore, it cannot be gainsaid that the Claimant suffered loss and

damages as a result of the Defendant's breach and is therefore entitled to be compensated in monetary terms. I sold hold.

On the basis of the established evidence on record as analyzed in the foregoing, I hereby resolve issue one for determination in this case in favour of the Claimant.

ISSUE TWO:

Issue two relates to the Defendant's Counter-Claim, whereby she claims the sum of **₦5,000,000.00 (Five Million Naira)** only from the Claimant as exemplary damages for the hardship, distraction, embarrassment and ridicule suffered by the Defendant as a result of the actions of the Claimant.

I had examined the pleadings and evidence on record. The Defendant merely pleaded that she had suffered hardship, distraction, embarrassment and ridicule as a result of the actions of the Claimant; but failed,

however, to furnish evidence of such suffering, hardship, distraction, embarrassment and ridicule. The Defendant also failed to furnish evidence of the actions of the Claimant that caused her the sufferings, etc, as alleged.

In the circumstances, I must hold that the Defendant failed to establish any such suffering, hardship, etc, as disclosed in her Counter-Claim as against the Claimant. Accordingly I hereby resolve issue (2) against the Defendant.

As I draw the curtains on this judgment, let me remark that I found arguments canvassed by the Claimant's learned counsel in his final address as rather too unwieldy and unnecessarily verbose. A final address should be brief, direct, succinct and straight to the point. A final address, containing reproduction of appellate Courts' decisions, especially with respect to trite issues of law, loses its essence and unproductively tasks the Court.

Learned counsel would do well to take note of this and make necessary amends in the future.

In the final analysis, the judgment of the Court is that the Claimant's case succeeds in substantial part. For avoidance of doubts and abundance of clarity, judgment is hereby entered in favour of the Claimant upon terms sets out as follows:

- 1. It is hereby declared that failure of the Defendant to deliver the Claimant's parcel in Lagos in the manner as agreed on 08/12/2017, constitutes a breach of contract between the two parties.***
- 2. The sum of ₦3,000,000.00 (Three Million Naira) only, is hereby awarded to the Claimant as general damages for the Defendant's established breach of the contract afore-stated.***

3. I assess costs of this action, in the sum of ₦200,000.00, in favour of the Claimant against the Defendant.

4. The Defendant's Counter-Claim is hereby dismissed.

OLUKAYODE A. ADENIYI

(Presiding Judge)

13/07/2022

Legal representation:

S. E. O. Maliki, Esq.— for the Claimant

B. O. Aghaegbuna, Esq. – for the Defendant