

GOVERNMENT OF ABIA STATE OF NIGERIA
IN THE SMALL CLAIMS COURT OF ABIA STATE
HOLDEN AT UMUAHIA
BEFORE HIS WORSHIP MARY UKEJE EMENIKE (MRS) CHIEF MAG. GD. 1
ON THIS FRIDAY THE 14TH DAY OF JUNE, 2024.

CLAIM NO: U/SCC/10/2024

CHIEMELA ISRAEL ONYENWEAKU

- CLAIMANT

VS.

IKECHI NWAKANMA

- DEFENDANT

Parties are present.

APPEARANCES:- The Claimant is self represented, the Defence Counsel is absent.

JUDGMENT:

The Claimant is claiming the following from the Defendant; the sum of **₦668,000.00 (Six Hundred and Sixty-Eight Thousand Naira)** as money he paid the Defendant for a mini bus; the sum of **₦2,200.00 (Two Thousand Two Hundred Naira)** as court fee and the sum of **₦50,000.00 (Fifty Thousand Naira)** as the cost of the action bringing it to a total of **₦720,000.00 (Seven Hundred and Twenty Thousand Naira)**. The claim was filed on the 30/01/2024 and same was served on the Defendant. Affidavit of Service is filed on page 7 of the Courts file.

On the 9/2/2024, plea was taken and the Defendant pleaded not liable to the Claims of the Claimant. Thereafter, the Claimant open his case and testified as PW1. The evidence of PW1 can be summarized thus: That the Defendant has been his neighbour for over 12 years and that he wanted to venture into transportation business of town services, he called the defendant and told him and the defendant asked him to give him time that he will give him a reply in two days.

That three days later, he called the Defendant and the Defendant asked him to come and he went and met the Defendant in his house and the Defendant

showed him a mini bus and told him that the only problem with the mini bus, it has an engine problem which he promised to repair. That the Defendant told him that the only predicament he has was the money to use in repairing the mini bus so they agreed on the price of **₦650,000.00 (Six Hundred and Fifty Thousand Naira)**. That he did not give the Defendant money that day. That the next day, he met the defendant and the defendant told him that he has taken the mini bus to a mechanic at Aba-Road. That he then asked the defendant about the particulars of the mini bus and the Defendant said everything was complete.

That after that day, the next day, the Defendant called him and asked him to come so that they can do the agreement. That the Defendant took him to his guarantor's house at Ubakala and that when they got there, before they signed the agreement, the Defendant asked him to pay and he went opposite the Local Government office and transfer the sum of **₦650,000.00 (Six Hundred and Fifty Thousand Naira)** to the Defendant. That when he gave the Defendant the money, the Defendant told him that since he has paid, in three days, the vehicle will be fixed. He went further to say that he told the Defendant that whatever concerned the oil and the workmanship for the mechanic that he will pay. That when the defendant told him that the vehicle will be ready, he then asked the Defendant for the vehicle particulars and the defendant told him that the particulars are in his house and the Defendant took him to his house, stayed inside his house for over 45 minutes and came out with papers he suspected not to be original papers of the mini bus. That he told the Defendant that those papers were not original papers, the Defendant pleaded with him not to be annoyed that there was a place he borrowed money, that he was going to bring back the particulars of the vehicle that evening and give them to him.

It was his evidence that the Defendant took him to the mechanic workshop and on their way to the mechanic workshop, the Defendant told him that there may be hitches to the vehicle not coming out in 3 days and that he should give him the ~~₦8,000.00~~ he wanted to use in buying oil and he gave it to him and that after he gave the Defendant the ~~₦8,000.00~~, the Defendant told him that the mini bus has a gear problem and he asked him where can it be repaired and the Defendant said it can be repaired at the mechanic

village, Ohia which he gave him ₦1,500.00 transportation fare to Ohia. He went further to say that, the mechanic repaired the gear box and demanded ₦10,000.00 in which he called the Defendant and the Defendant spoke with the mechanic who then accepted ₦7,000.00 and he paid. That when he brought the mini bus back, he called the Defendant severally and asked him for the vehicle particulars the Defendant kept telling him that the person in possession of the particulars has not return and at that point he got scared. That one day, he called the Defendant and told him that he wanted to go to the mechanic workshop to inspect the vehicle, the Defendant told him not to go that if the mechanic knows that he is the one that bought the mini bus, the mechanic will vandalize the mini bus. That when the Defendant told him that, he refused that advice and went to the mechanic workshop and saw that the engine of the mini bus that was coupled was now in pieces and on the ground. That he asked the mechanic why and the mechanic in turn asked him who he was and he introduced himself as the person that bought the mini bus and the mechanic demanded for the vehicle particulars he used in buying the mini bus. That when he heard that question, he went back to the Defendant and asked him for the particulars and the defendant told him 'I have sold my car to you, just go and repair your car'. At that point, he knew he was in trouble. He further testified that he bought the mini bus on the 10/10/2023, that he went to the Central Police Station (CPS) Umuahia and complain that the Defendant was arrested. That he has not seen the bus and has not seen his money and that he wants the Defendant to pay him back his money.

Immediately after the evidence of PW1, he was cross examined and the evidence adduced under cross examination was that from inception of the transaction the Defendant had told the Claimant that the vehicle was in bad condition. That Claimant saw the vehicle and never expected that the repair will be to that extent apart from the rings, that the Defendant on 2/2/2024, called him and told him that the vehicle was at the CPS that he should go and carry his vehicle and that he has not gone to the Police Station since he has already sued the Defendant.

PW2 gave his evidence on the 23/2/2024 and his evidence in summary is that sometime in October 2023, PW1 told him that he bought a mini bus

from the Defendant, that the Defendant couldn't do what they agreed, that the Defendant promised to repair the mini bus but he could not repair it. That when the Claimant told him, he invited the Defendant who came and agreed to repair the mini bus that the Claimant was going to pay the mechanic. That as at that time, the vehicle battery was the problem and he took his own battery from his shop for the vehicle to be started and he left for Port Harcourt. That after about a week, the Claimant called him and told him that the defendant has refused to fix the vehicle for him and that he was going to complain to the Police. PW2 was cross examined on the 8/3/2024 and under cross examination, PW2 said he was not there when the parties had the transaction and that he is not aware that the mini bus is parked at the Police station.

The Defence opened its case on the 22/3/2024 and the Defendant testified as DW1. His evidence can be summarized thus: That he was in his house and the Claimant called him on phone and told him that he needed a car and that he told him that he has a car he wanted to sale but the car has a problem. That the Claimant told him that he will come and see the car. That he took the Claimant to where the mini bus was and the Claimant asked him what was the fault of the vehicle and he told the Claimant that it was engine problem, gear box and tyres. That the Claimant told him that there was no problem. That after that day, the Claimant called him and asked him how much was the cost of the vehicle, because of the condition of the car, he said he was going to sale it at ₦750,000.00 and the Claimant bargained and they finally agreed on ₦650,000.00. That after 5 days, the Claimant called him and asked him to come to Isi gate and when he got there, the Claimant told him that he was ready to buy the vehicle. That after the Claimant agreed to buy the vehicle, he informed the Claimant that he used the particulars of the mini bus to borrow money and that he has taken the mini bus to the mechanic and that when he is paid, he will go and recover the vehicle particulars from the person he borrowed money from. That he took the Claimant to his compound and gave him the photocopies of the vehicle particulars and he had a change of ownership agreement. It was his evidence that he bought some parts, remaining oil seal and gear box and that the Claimant called him and told him that the mechanic has finished repairing

the gear box and had charged him money. That he never heard from the Claimant again. That the next information he had was that the Claimant has taken the gear box back to the mechanic where the car was parked. That the Claimant called him and told him that the mechanic does not want to repair the car but he told the Claimant to asked the mechanic to replace the vehicle.

That the next thing he heard was that the Police from CPS, Bende Road came and arrested him on a Complaint that he sold a stolen car to the Claimant. That the original of the vehicle particulars are with the Police. It was his evidence that at the Police station, they had an agreement that he will ask the mechanic to repair the vehicle and after repairing, the Claimant will pay for the workmanship; that the Police told the Claimant that if he repairs the vehicle, the Claimant will pay him his expenditures before taking possession of the vehicle. That he went and repaired the mini bus and the Police is now calling the Claimant to come and take his vehicle and he has refused to go and what he saw next was a Summons served on him. That he spent ₦150,000.00 in repairing the vehicle.

DW1 was cross examined same day and under cross examination he said he had no agreement to repair the mini bus that it was based on the Police conditions that he repaired the vehicle and took it to the Police station.

DW2 testified on the 26/4/2024 and he gave his name as Joseph Oku Ugo a transporter that he was in his Church when the Defendant and the Claimant came to him and they all went to his house where the Defendant told him that the Claimant want to buy his mini bus. That he asked how much he was going to sale the mini bus he said ₦650,000 and he asked the Claimant if he has enquire about the condition of the mini bus because the vehicle was bad and the Defendant said he has informed the Claimant that the engine of the mini bus was bad; and he asked the Claimant if he is aware of that and the Claimant said yes that the Defendant has told him that after he buys the mini bus, he will go and repair it. That they brought out an agreement and signed and he also signed.

DW2 was cross examined on the 9/5/2024 he said that everything about the transaction happened in his house and he is not aware if the parties had any

other agreement and that he is aware that the Claimant has met the defendant on several occasions before that day they came to his house and that he is not aware the parties went to the Police Station.

At the close of evidence of witness, the defence counsel filed a written address and raised two issues for determination to wit: (a) Whether the Claimant have on the claim and evidence proved that the Defendant entered agreement to repair the mini bus for the Claimant. (b) Was the Claimant aware of the engine problem of the mini bus before he paid the Defendant. The Claimant had no Legal representation and therefore, there was no written address filed on his behalf.

On issue one and two, the Defence Counsel submitted that by Section 131(1) of the Evidence Act, the evidence adduced by the Claimant have not made out a prima facie case to warrant a defence by the Defendant but the Defendant stoutly defended the action and Counsel submitted that the action is frivolous and lacking in merit.

Having gone through the evidence of all the witnesses in this suit, the major issue to be determine is whether the Claimant has been able to prove his case to warrant the Court to grant him his relief. The Claimant is claiming a refund of the sum in which he used in purchasing the mini bus from the Defendant. The disagreement between the parties is that who ought to repair the mini bus. It is glaring from the evidences before me that the Claimant knew that the mini bus was faulty and was not in good condition, it is also crystal clear that the Claimant had several days of negotiation with the Defendant before he finally paid for the mini bus. What I have not been able to see is the side of the agreement that said there will be a refund of the purchase sum in event of the vehicle not being repaired or not in a functionable state after series of repay. There was an agreement to repair the vehicle and the defendant in his evidence in chief said he bought some parts for the repair. It is not the function of the Court to make or rewrite an agreement or contract for the parties. This position of the law was enunciated in the case of **Fakorede & Ors V A.G. Western State (1972) 1 All NLR Pt 1 Pg 178**. It is not the duty of this Court to insert a refund of the sum of ₦650,000.00 when parties never intended same. It is in evidence that the Claimant reported the matter to the Police and the Defendant in his

evidence said based on the conditions given to him at the Police station he repaired the mini bus and took it to the Police station; the Claimant did not dispute that facts but claim that he has already sued the Defendant for a refund. If there was any criminal coloration in the action of the Defendant, it was the duty of the Police to do the needful. Having not gone back to the Police where he the Claimant made a Complaint and the mini bus taken to the Police, this Court will not be invited to do the work of an investigating machinery.

Having said this, I am of the view that the Claimant has not proof his claim against the Defendant and therefore this Suit must fail.

I so hold. Accordingly, this suit against the Defendant lacks merit and is hereby dismiss.

This is the Judgment of the Court.

Signed

His Worship Mary Ukeje Emenike (Mrs)
Chief Mag. Gd. I.
14/06/2024



AGBANYIM C.C. (MRS)
Asst. Chief Registrar I