

**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**  
**THIS FRIDAY THE 23<sup>RD</sup> DAY OF MAY, 2025.**

**CLAIM NO: U/SCC/21/2024**

**BETWEEN**

**EZE CHIDIEBERE PEACE - CLAIMANT**

**AND**

**MRS. UZOAMAKA AMARA (AKA BANK) - DEFENDANT**

Parties are present except the Claimant.

**APPEARANCES:**

**COURT:** Judgment

The Claimant is claiming the following from the Defendant: (a)The Principal sum of **₦389,000.00 (Three Hundred and Eighty Nine Thousand Naira)** and the interest of **₦233,400.00 (Two Hundred and Thirty three thousand four hundred naira)** bringing it to a total of **₦622,400.00 (Six Hundred and Twenty Two Thousand, Four Hundred Naira)**. (b) **₦2,200.00 (Two Thousand Two Hundred Naira) Court fees** (c) **₦400,000.00 (Four Hundred Thousand Naira)** cost. The Claim was filed on the 4/4/2024. The Defendant was served and Affidavit of Service is filed at Page 10 of the Courts file.

The Claimant on the 24/5/2024 opened her case and testified as CW1 and her evidence can be summarized thus: That she got to know the Defendant sometime while she was living at Eket Street by Uzuakoli Road Umuahia and she got to know the Defendant through one Sambo. That

she called Sambo and told him that she wanted to buy potato and that she wanted Sambo to buy the potato for her from the North but that she has a problem she doesn't know who will buy it, someone she will supply the potato unless Sambo will show her someone she can supply the potato to that Sambo told her that he has someone whereby even if he brings in 100 bags of Potato the person will buy it.

And that she asked Sambo if the person he is referring to is sincere and Sambo said yes and called the person's name as Bank. She went further to say that then Sambo was in the North. That in June, 2023, when Sambo brought the 1<sup>st</sup> goods that Sambo sent the phone number of the Defendant to her and she met the Defendant one on one at Express Tower in Umuahia. That when she met the Defendant at Express Tower, Sambo introduced the Defendant to her with one other person. That on that day, the other person (a woman) started quarrelling with Sambo and asking him why he introduced her into the business since she is a POS Operator. That she heard it well and even the defendant was annoyed with Sambo and on that day, Sambo supplied her with bags of potato. She went on to say that she brought the Defendant to Court because the defendant has refused to pay her the balance of the potato she bought from her. That she sold to the Defendant 33 bags of potato and each big size bag was ₦25,000.00 per bag and they were 30 bags in number and 3 small bags at ₦20,000.00 per bag and that the Defendant paid her ₦391,000.00 leaving an outstanding balance of ₦389,000.00 and that the Defendant signed an undertaking with her that any month she defaulted she will pay 10% that is why the money rose to ₦1million plus. It was her evidence that they asked that the Defendant will be paying her ₦100,000.00 (One Hundred Thousand Naira) every month and in a situation where she fails to pay, the defendant will pay 10% of the money and after the agreement, the Defendant only paid ₦100,000.00 after which she has not paid any other money and she tendered the said undertaking as Exhibit A. She went on to say that the transaction she had with the Defendant in the month of June 2023, the Defendant paid her completely and that they had no issue and the off loading of that goods was at one filing station at Express Along Aba Express Road and that the undertaking she had with the Defendant was the July transaction she had with the Defendant and

that this agreement was made in her Lawyers Chambers and that was after she met the Defendant at the market and asked her to pay her and the Defendant said out of the 33 bags of Potato she supplied to her, she only sold it at ₦291,000.00

Cross examination of CW1 took place on the 21/6/2024 and under cross examination, CW1 maintained that she didn't know the Defendant before but the day the potato was offloaded was the day she met the Defendant who was introduced to her by Sambo and the Defendant paid for the potatoe through her and she was the one that gave the Defendant the goods and that the first time Sambo introduced the Defendant to her and on the second time, Sambo came and the defendant brought the money to her.

The Defendant opened her case on the 4/10/2024 and testified as DW1 and her evidence is thus summarized: That she did business with one man named Sambo who brings goods to her. That she has done business with Sambo for more than 12 years now. That he brought potatoe for her to sale and he called her on phone that he is bringing goods for her at Express Tower and she went and carried the goods and that Sambo told her after selling the goods she should give the money to the Claimant to bring for him and after selling, she gave the money to the Claimant. That the next time, Sambo brought another goods and called her on phone, that she went to the express tower and carried the gods. That the trailer that was carrying the goods was also carrying uncooked fufu and the water from the uncooked fufu soaked the potato.

That she selected the goods the ones that were a little bit good and it was given to another person they wanted to supply to who is from Onuimo and the remaining goods she kept them at the express. That she called Sambo on phone and told him that the goods he supplied were not good. That she took some of the potato to the market and when she got there and opened the bags of potato, some potato were rotten while some were so tiny and that she was calling Sambo and giving him update on how the goods was and that the people she sold the potato some were returning it and some were complaining that the potato was bad. She went further to say that the ones she kept at the Express, a tricycle man by name Basil who supplied her goods to people went and supplied it to someone at

Ubakala and the person said he was not going to pay because the potato is rotten and the remaining bags at the express, when she opened it, they were all spoilt. That the ones she gave to her neighbor in the market that sales potato to sale for her, she couldn't sale them because they were all spoilt. That she also called one Oluchi to come and help her sale some and Oluchi came and told her that she cannot sale it. She went on to say that one day, the Claimant called her on phone because Sambo instructed her to the give Claimant the money, that she told the Claimant that she couldn't sale the potato and on that day she gave the Claimant part of the money she sold the goods and that she has given the Claimant total of ₦391,000.00. That one day, the Claimant came to the market with someone and she told the Claimant she couldn't sale the potato and she showed the Claimant the potato where she kept some of them. That the Claimant came with her lawyer to meet her in the market and she was invited to the lawyers office and she went to the lawyers office with her brother in-law. That there at the lawyer's office, the Claimant insisted that she will pay for the goods and that was how they started quarreling in the lawyers office, and the lawyer asked them to go and gave them time to come back but it happened that she couldn't go back because her brother in-law was sick and her son was also sick.

Cross examination of DW1 commenced immediately after her evidence in Chief on the same date. Under cross examination DW1 confirmed that they were 33 bags of potato at ₦25,000.00 for 30 bags and ₦20,000.00 for 3 bags.

That the said Sambo asked her to pay the money to the Claimant but never told her that the business belongs to the Claimant.

The evidence in Chief of DW2 was on the 21/3/2025 and her evidence is summarized thus: She gave her name as Oluchi Dick a trader. That she does not know the Claimant but she has seen the Claimant at her POS stand. That the potato was brought by a Hausa man by name Sambo. That the goods were brought to the Defendant who is in the same business with her. That the way they operate their business is that if she doesn't have goods, she will go and collect from the Defendant.

That she called the Defendant and asked whether she has goods and the Defendant said yes that Sambo was bringing goods for her and that she went to where the Defendant keeps her goods and she met the Defendant there where she was opening the bags of the goods and was crying. That she asked the Defendant whose goods it was and the Defendant replied and said it was the one Sambo brought for her and that she left the Defendant there and went to her shop. That she called Sambo on phone and asked him why he will bring those type of spoilt goods that even if someone dash her those type of goods, she will not accept and that Sambo never replied her what he did was to put off his phone. That after that week, the next week, she heard the Defendant quarreling with somebody and when she went there, it was the defendant quarrelling with the Claimant and she asked what was happening and the Defendant told her that the Claimant is demanding money from her that the Claimant said Sambo asked her to collect money from the Defendant if the Defendant has finish selling the goods. That she asked the Claimant and the Claimant told her that she was the one that ordered for the goods and she told the Claimant it was not her that brought the goods but Sambo. That the Defendant and the Claimant kept quarrelling and that it was then she knew that it was the Claimant that brought the goods and not Sambo. That she knows Sambo very well because it has been a long time they have been in the same business of buying potato and they buy from Sambo.

Cross examination of DW2 commenced immediately after her evidence in Chief under cross examination; DW2 said she is not aware of the business between the Claimant and Sambo and she is not also a party to the business between the Claimant and the Defendant and she is not also aware that the Claimant and the Defendant entered into agreement for the business of potatoe.

DW3 evidence was on the 11/4/2025 and the evidence of DW3 is summarized thus: She gave her name as Chisom Emmanuella, a trader and that she is among the persons that bought the potato, when the potato were brought and that she was there when the goods were brought. That she usually go to that place where the goods were brought to know if what is brought is part of the goods she is selling and she found

out that the goods that were brought that day is part of the goods she is selling. That she found out that water was dripping from the goods. That after inspecting the goods, she said she couldn't buy those types of goods. That the day the potatoes were brought there was a woman that was close to that place where the goods were being offloaded and she has never seen the woman before and she does not know why the woman was there. That after 3 days, she called the Defendant to ask of goods, the Defendant asked her to come and check if there is one she can select that is still good that she went and checked the goods and found out that they are all spoiled and she told the Defendant to return the goods that she cannot sell them. That two weeks later, she went to the market to buy something she heard noise and she asked the person she was with where the noise was coming from and she said it was from the Defendant's shop. When she got to the Defendant's shop, she saw the Defendant exchanging words with a woman and she asked the Defendant what was happening and the Defendant told her that it was because of those goods. That she asked that woman to call Sambo if it was Sambo that sent her because they all know Sambo and if Sambo wants his money, he will always come by himself to collect his money but that woman ignored her.

Cross examination of DW3 commenced immediately after her evidence in Chief. Under cross examination, DW3 said she is not a party to the business the Claimant had with the Defendant and also do not know how many bags of potato the Claimant supplied to the Defendant and also do not know the connection between the Claimant and the said Sambo and cannot also tell if the Claimant came to demand the money for herself or for Sambo but all she knows is that Sambo cannot send the Claimant to come and collect money on his behalf and it is not only the Defendant that the said Sambo supply potato to and when he supply, he collect his money by himself.

At the end of the evidence of witness, the defence filed their written address on the 5/5/2025 and the Claimant's Counsel did not intend to file any written address the defence Counsel adopted his written address on the 23/5/02025. In his written address, the Defendant's Counsel raised two issues for determination to wit: (1) Whether the Doctrine of

frustration does not apply in this transaction between the Claimant and the Defendant and by extension, between the defendant and Sambo (2) Whether the Claimant was right to have gone to recover debt allegedly arising from the sale of potato between Sambo and the Defendant, without any written authorization and introduction from Sambo.

On issue number one, the defence Counsel relied on the case of **Abimbola V Isaac Oni (1992) NSCQR (Pt 52) pg 265-270** where the Court explained that frustration occurs when unforeseen events make it impossible for parties to perform as originally intended. Counsel contended that the bags of potatoes got rotten because of other items parked along with the potatoes and this frustrated the contract. Counsel also submitted that the effect of frustration is that it brings the contract to the end and discharges both parties from contractual obligation. Counsel further submitted that frustration is a defence. Counsel relied on the case of **Akara V Monier Construction Company (Nig) Ltd (1987)2 SC 314 LRN 59** where the Supreme Court defined frustration as a premature determination of an agreement between the parties lawfully entered into owing to the occurrence of the intervening event.

On issue no. two Counsel contended that, it was wrong for the Claimant to have gone to the Defendant to demand the recovery of money accruing from the alleged transaction between Sambo and the Defendant, that the Claimant is not a recovery agency. Counsel contended that there is no written document from Sambo introducing the Claimant. Counsel further contended that the point he is making is that even if the Defendant was supplied with sound bags of potatoes and she sold them, she was not duly and legally bound to give the proceeds to the Claimant who was not introduced by Sambo to the Defendant in writing and any faceless person can pose and collect the money from the Defendant thereby making the Defendant liable.

I have carefully summarized the evidence adduced before me and the written argument of the learned defence Counsel. I will adopt the issues formulated by the defence Counsel for determination.

On issue No one; the Defendant pleads the doctrine of frustration between the Claimant and the Defendant and by extension between the defendant and Sambo. The Court of Appeal in the case of **KLM Royal Dutch Airline V Idehen (2017) LPELR-43575 CA**, the Court stated that frustration of contract would occur where it is established to the satisfaction of the Court that due to a subsequent change in circumstances which was clearly not in the contemplation of the parties, the contract has become impossible to perform. See also the case of **Weco Engineering and Construction Co. Ltd V Dufun (Nig) Ltd & Anor (2019) LPELR -47211 CA** and also **Diamond Bank Ltd V Ugochukwu (2008) LPELR -8093 CA**.

The defence contention is that when she went to the Express Tower to carry the potato, the trailer carrying the potato was also carrying uncooked fufu and the water from the uncooked fufu soaked the potato. Did that scenario brought the transaction to an end? The answer is in the negative. The Defendant according to her in her evidence in Chief, selected the good ones and gave it to a buyer from Onuimo, took some to her shop in the market, gave some to a tricycle man for delivery at Ubakala and she left some at the express. The effect of frustration in a contract is that the transaction would come to an end but in the instant case, the transaction continued. The Defendant at the same time collected the sum of ₦10,000.00 from the Claimant to transport the potato to where she will sale them. DW3 in her opening sentence in her evidence in chief said 'the reason am in Court today is because of the goods the Defendant brought and I am among the persons that bought that goods. The goods is potato. When the goods were brought I was there". In all of the above scenario, in the transaction of buying and selling of the potato, when did frustration occur? The general Principle of Law is that whoever asserts must prove. See **Section 13(1) of the Evidence Act, 2011** (as amended). The Defendant did not take a walk when she said the goods were spoilt and they were not good. She claim to have called one Sambo and told him and also gave the said Sambo update on the State of the goods.

There is nowhere in her evidence where she gave evidence as to what Sambo said or the outcome of her report to the said Sambo. When a party is pleading frustration, that party must prove that an event have occurred



and that event has prevented him from performing the contract in this case the transaction. After presenting these facts, it is the duty of the Court not the party to state whether and when a frustration of a contract has occurred as decided in the case of **Bimba Agro Livestock Co. Ltd V Landmark University (2020)15 NWLR (Pt 1748) Pg 465**. The doctrine of frustration is a defence and a party who relays on it must prove same. I have not seen anywhere in the transaction that the doctrine of frustration applies. If actually the goods were that bad and spoilt as claimed by the Defendant, she would have left the goods for the Claimant who was right there with her. I merely resolve the issue number one against the Defendant.

On issue No. 2 whether the Claimant was right to have gone to recover debt allegedly arising from the sale of potato between Sambo and the Defendant, without any written document and introduction to Sambo. The evidence before me is that the parties had their first transaction in June, 2023 and the Defendant paid fully for the supply of the potatoes. The 2<sup>nd</sup> transaction was in July, 2023 that gave rise to this Suit and in that transaction, the Defendant was given 33 bags of potatoes and the Defendant paid the Claimant the initial payment of ₦291,000.00 and another ₦100,000.00 at the office of Claimant's Lawyer.

In the two transactions, the Claimant has been the one who supplied the Defendant the goods, paid the trailer driver. Infact, the Defendant under cross examination admitted that the Claimant gave her ₦10,000.00 to pay for the offloading of the goods and transporting the goods to her shop in the market. The evidence that the Defendant was introduced to the Claimant by Mallam Sambo as someone the Claimant can supply the goods to when she ventures into the business is not challenged. It is also evidence before me that the Defendant frowned at the Claimant joining the business since she was a POS operator.

DW2 in her evidence in Chief said it was during the quarrel for the balance of the payment for the goods that she knew that it was the Claimant that brought the goods and not Mallam Sambo. DW2 and DW3 said Mallam Sambo cannot send someone to collect money on his behalf for the years they have known him. The defendant under cross examination said in all the years she has been doing business with Sambo, she only pay through

Bank, POS or cash. What this translate to is that, the Claimant cannot embark on a journey of recovery of money for another. The Defendant in her evidence in Chief said she was instructed to give the money to the Claimant and she actually gave the money to the Claimant in the 1<sup>st</sup> transaction and in the 2<sup>nd</sup> transaction she has given the Claimant ₦391,000.00 some leaving a balance of **₦389,000.00 (Three Hundred and Eighty Nine Thousand Naira)**. At no point in time was the Defendant told that the goods belongs to another person apart from the Claimant. Even the said Sambo never for once told the Defendant that he is the owner of the goods. He simply asked the Defendant to give the money to the Claimant according to the Defendant. DW2 that called the said Sambo said in her evidence said that the said man did not respond to her rather he switched off his phone. Can the defendant comfortable say that she does not know that the money the Claimant is asking for belongs to the Claimant? she cannot say so. The Defendant visited the office of the Claimant's lawyer severally for negotiation without hesitation. It can only be correct to say that the Defendant is still not happy that the Claimant ventured into a business she has been doing with the said Mallam Sambo for over 12 years without her permission. From the evidence adduced before this Court, I hold that the Claimant did go to recover debt for a certain Sambo and therefore I resolve the issue number two against the Defendant.

The Claimant is claiming an interest of ₦233,000.00 (Two Hundred and Thirty-three thousand, Four Hundred Naira) as interest in the principal sum for six months. The Claimant tendered Exhibit A as the undertaking the Defendant made. The Defendant said she did not sign Exhibit A. The Claimant tendered Exhibit A and the law is that the document speaks for itself and this is trite see **Gwede V Delta State House of Assembly & Anor (2020) EJSC (Vol. 141)78**. However, there is an exception to this principle of law as seen in Section 128(1) (a) of the Evidence Act 2011 (as amended) '....fraud, intimidation, illegibility, want of the execution, the fact that it is wrongly dated, existence or want or failure of consideration, mistake in fact or law, want of capacity in an contracting party, or the capacity in which a contracting party acted when it is not inconsistent with the terms of contract, or any other matter which if proved would produce

any effect upon the validity of any document, or of any part of it or which would entitle any person to any Judgment, decree or order relating to it'. The Defendant in her evidence said she did not signed Exhibit A and the person she went with to the lawyers chambers refused to signed Exhibit A also. This in my opinion has an element of intimidation. If there was no intimidation, the said Chief Chibuike Princewill would have signed the column that was meant for him on the document! I do not believe that the Defendant on her own signed Exhibit A without intimidation. This has given a negative effect on the validity of Exhibit A. And therefore, I place no value in that document and I hold that it is one of the exceptions to the rules that a document speaks for itself. See the case of **Gana V FRN (2018) EJSC (Vol 96)**. In the light of the above, I am of the view that the Claimant did not prove the 10% interest on the Principle sum claimed by him.

The Claimant has proved her case against the Defendant on the preponderance of evidence and the balance of probabilities. Accordingly, Judgment is and hereby entered for the Claimant in the following terms:

1. The Defendant shall pay to the Claimant the sum of **₦389,000.00 (Three Hundred and Eight Nine Thousand Naira)** being the amount owed the Claimant by the Defendant.
2. The Defendant shall pay the Court fees of **₦2,200.00 (Two Thousand Two Hundred Naira)**.

I make no order as to cost. This is the Judgment of the Court.



**Signed**

**His Worship Mary Ukeje Emenike (Mrs)**

**Chief Mag. Gd. I.**

**23/05/2025**

**AGBANYIM C.C. (MRS)**

**Asst. Chief Registrar I**