

**IN THE HIGH COURT OF JUSTICE, EDO STATE OF NIGERIA**  
**IN THE BENIN JUDICIAL DIVISION**  
**HOLDEN AT BENIN CITY**

**BEFORE HIS LORDSHIP, THE HON. JUSTICE V.O. EBOREIME JUDGE,**  
**SITTING IN HIGH COURT NO. 10, BENIN CITY,**  
**THIS WEDNESDAY THE 12<sup>TH</sup> DAY OF FEBRUARY, 2014.**

**SUIT NO.B/876/2010:**

**B E T W E E N:-**

CHIEF JOSEPH AMADASUN

í

CLAIMANT/RESPONDENT

AND

1. IYI EGHOSA  
[SUING THROUGH HIS LAWFUL } DEFENDANTS/COUNTER  
ATTORNEY IYI-EWEKA IGBINOVIA} CLAIMANTS
2. OSAMEDE OSAROBO

**JUDGMENT**

This action was instituted by a Writ of Summons dated the 23<sup>rd</sup> day of November, 2010 wherein the Claimant claimed the following reliefs in the attached Statement of Claim in paragraph 20 thus:-

- (a) A declaration that the Hire Purchase Agreement dated 30<sup>th</sup> July 2010 entered into between the Plaintiff and the Defendant has been grossly violated by the defective Benat ó Tractor.
- (b) An order to set aside the hire Purchase Agreement dated 30<sup>th</sup> July 2010 between the Plaintiff and the Defendant. Because the Plaintiff was misled by the willful misrepresentation of the Defendant.

- (c) An order that the initial deposit of N700,000.00 (Seven Hundred Thousand Naira) paid for the purchase of the Benat Tractor be refunded to him.
- (d) The sum of N697,000.00 (Six Hundred and Ninety-Seven Thousand Naira) as Special Damages. The breakdown of which is as follows
  - (i) N200, 000.00 (Two Hundred Thousand Naira). Being cost of transportation of the Benat ó Tractor from Lagos State to Benin City, Edo State.
  - (ii) N437, 000.00 (Four Hundred and Thirty Seven Thousand Naira) only. Being total cost of attempts to repair the said Benat-Tractor.
  - (iii) N60, 000.00(Sixty Thousand Naira) being cost of hiring four watchmen to guard the tractor from theft and vandalism from August 2010 at the rate of N20, 000.00 (Twenty Thousand Naira) per month and N20,000.00 (Twenty Thousand Naira) monthly from November 2010 till the determination of this case.
- (f) The sum of N300, 000.00 (Three Hundred Thousand Naira) as General Damages.

The Defendant filed a Statement of Defence and Counter Claim dated the 14<sup>th</sup> day of February, 2011. An Amended Statement of Defence was filed on the 9<sup>th</sup> day of November, 2011. The Claimant on the 5<sup>th</sup> day of March, 2012 filed his

Amended Statement of Claim which was dated the 1<sup>st</sup> day of March, 2012. On the 4<sup>th</sup> day of April, 2012, the Defendant filed an Amended Counter Claim in this suit while the 2<sup>nd</sup> Defendant was subsequently join by an order of this Court on the 26<sup>th</sup> day of April, 2012. In the Defendant's Amended Counter-Claim, the Defendants/Counter-Claimants have asked for two reliefs which are:

- ö(a) Specific performance of the Hire Purchase Agreement dated on the 30<sup>th</sup> day of July, 2010 day of July, 2010(sic).
- (b) Five Million Naira (N5, 000,000.00) only as general damages for the breach of contract.ö

It is also on record that that this Court struck out the claim of the Claimant on the 5<sup>th</sup> day of April, 2012 while the Motion filed by the Claimant to relist the suit dated 10<sup>th</sup> day of July, 2012 was struck out on the 16<sup>th</sup> day of July, 2012.

The Defendants/Counter Claimant file their witness Deposition on the 8<sup>th</sup> day of January, 2013.

On the 13<sup>th</sup> day of June, 2013, the Defendants/Counter Claimants opened their Defence by calling on the 2<sup>nd</sup> Defendant, Osamede Osarobo as D.W.1. He adopted his written deposition on oath on the 8<sup>th</sup> day of January, 2013. Through this D.W.1, Exhibit öAö was admitted in evidence. Exhibit öAö is the Hire Purchase Agreement between Iyi-Eghosa and Chief Joseph Amadasun which was dated the 30<sup>th</sup> day of July, 2010.

When the matter came up for continuation of defence on the 30<sup>th</sup> day of October, 2013, the D.W.1 tendered Exhibit 6B6 in evidence. Exhibit 6B6 is the Power of Attorney donated by Mr. Iyi-Eweka to Iyi-Eweka Igbinovia. It was dated the 29<sup>th</sup> day of July, 2011. The D.W.1 was not cross examined. The Defendants/Counter-Claimants closed their case.

Despite hearing notice issued on the Claimant, he did not come to Court.

The Defendants/Counter-Claimants on the 11<sup>th</sup> day of November, 2013 adopted their Written Address dated 7<sup>th</sup> November, 2013 and filed on the 8<sup>th</sup> day of November, 2013 wherein they submitted two issues for determination which are as follows:-

1. Whether the Defendants/Counter-Claimants have proved his (sic) case as required by law, sufficient for the grant of the reliefs sought.
2. Whether the Defendants/Counter-Claimants is (sic) entitled to damages in the circumstances of this case.

In arguing issue one, Learned Counsel to the Defendants/Counter-Claimants Submitted that where the agreement between two parties is contractual in nature, the two parties are bound by it; he argued that if any question should arise in respect thereof; the terms contained in the relevant document or documents must be interpreted to decide the question. He relied on **ADEBEST TELECOM. (NIG.) LTD. V. UBN PLC.** (2011) ALL FWLR (PART 557) Page 783 Ratio 3;

**FAGBENRO V. AROBADI** (2006) ALL FWLR (PART 310) Page 157 Ratio 5;  
**C.O.E. EKIADOLOR V. OSAYANDE** (2011) ALL FWLR (PART 566) Page  
504 Ratio 3; **BABA V. NIGERIA AVIATION TRAINING CENTER** (1991) 5  
NWLR (PART 192) 388 AT PAGES 524 ó 525 paragraphs G ó A.

Learned Counsel further submitted that in Civil cases, the onus of proof is on the Claimant consistent with the provision of Sections 132 and 134 of the Evidence Act, 2011; that the standard of proof is that on balance of probabilities or on the preponderance of evidence relying on **OKEREKE V. NWANKWO** (2003) 9 NWLR (PART 826) page 592 at 604 Ratio 17, **ABUBAKAR V. JOSEPH** (2008) Vol. 18 MJSC.1.

Learned Counsel submitted on the meaning of "Preponderance of evidence" or "Balance of probabilities" to be the evidence or case of the party on whom lies the proof being more likely to be true or more probable citing **INEC V. RAY** (2004) 14 NWLR (PART 892) at 103 Rationes 12 -14. He further submitted that the Court is enjoined to place the evidence of both parties side by side on an imaginary scale to see where the evidence weighs in order to determine where the balance of probability lies, citing **OWIE V. IGHIWI** (2005) 5 NWLR (PART 917) page 184 at 189 Rationes 1 ó 10.

Learned Counsel also argued that it is a trite law that a Counter-Claim is to all intents and purposes a separate and independent action, relying on **OGBONNA**

**V. A.G. IMO STATE** (1992) 1 NWLR 647 AT 675. He argued that in a Counter-Claim, the Defendant/Counter-Claimant stands in the position of a Claimant while the original Claimant assumes the position of a Defendant, citing **IKEM V. PIDAH DACKAGING LTD.** (2011) ALL FWLR (PART 601) Page 1478 Ratio 2. Learned Counsel submitted that paragraphs 1, 2, 4, 5 and 6 of Exhibit ðAö bind the parties and the Claimant cannot resiles from the agreement, citing the case of **A.G. RIVERS STATE V. A.G. AKWA IBOM STATE** (2011) ALL FWLR (PART 579) Page 1033 Ratio.

Furthermore, learned counsel argued that any fact which has not been categorically countered or denied by a party is deemed admitted in law by the party, citing **NZERIBE V. DAVE ENGINEERING CO. LTD.** (1994) 8 NWLR (PART 361) 124; **EFET V. INEC** (2011) ALL FNLR (PART 565) page 206 Ratio 5. He also argued that where evidence is given by a party in a proceeding that is not challenged by the adverse party who had the opportunity to do so, the Court ought to act on it, relying on **CAMEROON AIRLINES V. OTUTUIZU** (2011) ALL FWLR (PART 570) page 1266 Ratio 6; **ODULAJA V. HADDAD** (1973) 11 S.C. 357; **ISIAKA V. STATE** (1012) ALL FWLR (PART 645) page 386 Ratio 6.

On Issue Two(2), Learned Counsel to the Defendants/Counter-Claimants submitted that it is a settled law that once the breach of contract or agreement is established, damages follows; that damages are losses that flow naturally from the

adversary and it is generally presumed by law as it need not be pleaded nor proved; that it is awarded by the trial Court to assuage losses caused by an act of the adversary, relying on the Cases of CAMEROON AIRTIMES V. OTUTUIZU (Supra) at page 1267 Rationes 9 ó 10; OZIGBA ENGR. CO. LTD. VS. IWUAMADI (2011) All FWLR (PART 553) page 2007 paragraphs A ó B. Learned Counsel also submitted that exemplary damages are usually awarded whenever the Defendantø conduct is sufficiently outrageous to merit punishment as where it discloses malice, fraud, cruelty, insolence, flagrant disregard of the law and the like, citing DUARA VS. DANHAUWA (2011) ALL FWLR (PART 558) page 994 Ratio 5. And he urged this Court to grant the Defendantsø/Counter-Claimantsø case. I have carefully considered the case of the Defendants/Counter-Claimants through their pleadings, witness called and exhibits tendered and I am of the opinion that the two issues canvassed by the learned counsel to the Defendant/Counter-Claimant are germane in determining this case.

In looking at issue one (1), I think it is most appropriate to reproduce the evidence of the only witness who testified on behalf of the Defendants/Counter-Claimants.

**WITNESS WRITTEN DEPOSITION ON OATH**

õI, Mr. Osamuede Osarobo, Male, Christian, Businessman, Nigerian Citizen of No. 46, Edaiken Primary School Road, Benin City, do hereby declare on oath and state as follows:

1. That I know the 1<sup>st</sup> defendant/counter claimant.
2. That I also know claimant who is also a family relative.
- . That Eghosa Iyi who leaves in Europe is my cousin and deals on shipping of vehicles (Trailer trucks) to Nigeria for sale. He authorized his father to sue on his behalf.
4. That on or about the month of July 2010 the Claimant visited our house at 46, Edaiken Primary School Road, Benin City and informed me and my uncle (1<sup>st</sup> Defendant father) that he is interested in one of the Benart Trailers my Cousin Eghosa Iyi brought from Europe, as he needed it for his sand excavated business.
5. That we all including the claimant here in called Eghosa Iyi on phone (Speaker Phone) and we all discussed it.
6. That the claimant myself, my other relative Austin Iyi and the claimants Mechanic then proceeded to Lagos, the Tinkar island wolf where the vehicle was kept after clearing same from the wolf.



7. That the claimant took a second Mechanic who he picked in Lagos, to further inspect the Vehicle and it was again certified very Okay.
8. That after the second inspection, the claimant pleaded with all of us to return to Benin where we all then negotiated and bargained the price of the vehicle.
10. That Iyi Eghosa had fixed the selling Price at the sum of N5m but upon the plea of the claimant, we all agreed upon the sum of N3.2million Naira.
11. That the claimant Immediately paid the sum of N700,000.00 and then appealed to us all to allow him pay the balance sum at an installment of N500, 000 monthly as he was then not financially buoyant having just been released by kidnappers who kidnapped him for ransom
12. That the transaction was reduced into writing and both parties and witnesses signed the hire purchase agreement dated 30/7/2010.
13. That the claimant at the due date when he was to pay the first installment of N500, 000.00 started giving one excuse or the other.
14. That when asked for the money, the claimant claimed a major part of the vehicle had broken down and he needed to buy it in Germany.

15. That meanwhile the vehicle was seen working on a daily bases but the claimant kept deceiving us all including my cousin Eghosa Iyi about the state of the Vehicle.
16. That the claimant did not return the vehicle to us and also refused to the installments.
17. That the claimant has now used and abandoned the tractor in his burrow pits where he excavates sand from without paying the balance sum and he has put the vehicle now in a state of disrepair.
18. That I was involved in the transaction from the beginning until when the claimant rather than meet his obligation under the agreement rushed to court to use the court as a shield against meeting with his obligation.ö

The above piece of evidence were not contradicted by way of cross-examination. The position of the law is quite trite that such piece of evidence should be accepted as proof of a fact it seeks to establish. See **MILITARY GOVERNOR OF LAGOS STATE V. ADEYIGA** (2012) Vol. 205 LRCN 1 Ratio 8 which says:-

öThe position of the law where evidence is unchallenged or uncontroverted is that such evidence will be accepted as proof of a fact it seeks to establish. A trial Court is entitled to rely and

act on the uncontroverted or uncontradicted evidence of a plaintiff or his witness. In such a situation, there is nothing to put or weigh on the imaginary scale of justice. In the circumstance the onus of proof is naturally discharged on a minimum proof.ö

It is however trite law that a counter claim is to all intents and purposes a separate and independent action in its own right where all the rules of pleading apply.

This position of the law was given judicial impetus in the case of **OGBONNA V. A – G, IMO STATE & ORS.** (1992) 7 LRCN 221 at page 267 where Karibi-Whyte, JSC. (as he then was) said:

öA Counter-Claim is to all intents and purposes a separate and independent action in its own rightí A defendant may apply for summary judgment based on a Counter-Claim. A Plaintiff is usually entitled to counter-claim on a defendant's counter-claim. All the rules of pleading apply to counter-claim. Thus, where a defendant files a counter-claim, Plaintiff is bound to file his defence to such counter-claim. In the absence of a defence, no issue has been raised and the Court is obliged and bound to enter judgment for the claim in the counter-claim on the grounds that Plaintiff has no defence to the Counter-claimö.

The case of the Defendant/Counter-claimant is mainly anchored on Exhibit 1 of the Higher Purchase agreement between Iyi-Eghosa and Chief Joseph Amadasun, that is, the Claimant herein. The terms of that agreement are covered in paragraphs 1 to 7 there, which are reproduced herein:

1. That the sum of (N700, 000.00) Seven Hundred Thousand Naira) only Shall be first deposit to be made on the 30<sup>th</sup> day of July, 2010.
2. That subsequently, the sum of (N500, 000.00) Five Hundred Thousand Naira) only will be paid monthly for the five months, commencing on the 30<sup>th</sup> of August till 30<sup>th</sup> December, 2010.
3. That in the event of default of payment for two months (2 months) the owner shall recover the said BENAT-TRACTOR.
4. That this High Purchase Agreement supersedes any informal or oral agreement as regards the BENAT-TRACTOR.
5. That after completion of payment a final Transfer Agreement shall be executed by the owner in favour of the purchaser.
6. That the Purchaser (Chief Joseph Amadasun) has agreed and accepted to effect repairs, and bear the cost of maintenance of the BENAT-TRACTOR.
7. That the purchaser (Chief Joseph Amadasun) shall licence, and do the registration of the BENAT-TRACTOR.

In respect of the above Hire Purchase Agreement, the D.W.1 testified on Oath at paragraphs (10) ó (17) thus:

- õ(10) That Iyi-Eghosa had fixed the selling price at the sum of N5m. but upon the plea of the Claimant, we all agreed upon the sum of N3.2 million Naira.
- (11) That the Claimant immediately paid the sum of N700, 000.00 and then appealed to us all to allow him pay the balance sum at an instalment of N500,000.00 monthly as he was then not financially buoyant having just been released by kidnapper who kidnapped him for ransom.
- (12) That the transaction was reduced into writing and both parties and witnesses signed the hire purchase agreement dated 30/7/2010.
- (13) That the Claimant at the due date when he was to pay the first instalment of N500,000.00 started giving one excuse or the other.
- (14) That when asked for the money, the Claimant claimed a major part of the vehicle had broken down and he needed to buy it in Germany.
- (15) That meanwhile the vehicle was seen working on a daily bases but the Claimant kept deceiving us all including my cousin Eghosa Iyi about the state of the vehicle.

- (16) That the Claimant did not return the vehicle to us and also refused to pay the instalments.
- (17) That the Claimant has now used and abandoned the tractor in his borrow pits where he excavates sand from without paying the balance sum and he has put the vehicle now in a state of disrepair.

It is trite that averments in pleadings are facts as perceived by the party relying on them which must be accompanied by oral or/and documentary evidence to verify the facts pleaded. In **CAMEROON AIRLINES V. OTUTUIZU** (2011) Vol. 195 LRCN 198 at 231 paragraph P, my Lord, Rhodes-Vivour, JSC said:

“Averments in pleadings are facts as perceived by the Party relying on them. There must be oral or/and documentary evidence to show that the facts pleaded are true.”

In this case, the Defendants/Counter-Claimants have pleaded in their Counter claim which they have further fortified with the testimony on oath of the D.W.1 including the tendering of Exhibits “A” and “B”. I therefore find as a fact by the evidence of the Defendants/Counter-Claimants that the Claimant has flagrantly breached the provisions of the Higher Purchase Agreement which he entered with the 1<sup>st</sup> Defendant/Counter-Claimant voluntarily.

As argued by the Learned Counsel to the Defendants/Counter Claimants, supported by Exhibit 5A, the Claimant deposited Seven Hundred Thousand Naira (N700, 000.00) and agreed to pay the balance sum of Two Million Five Hundred Thousand Naira (2.5m) within a period of five months. The Claimant also agreed and accepted to effect repairs and bear the cost of maintenance of the BENAT TRACTORI. I hold that Claimant cannot resile from the agreements which is binding and enforceable on both parties. See the case of A.G. RIVERS STATE V. A.G. AKWA IBOM STATE (2011) ALL FWLR (PART 579) page 1033 Ratio 10 where the Supreme Court said:

“Where parties enter into an agreement they are bound by its terms, this is because a party cannot ordinarily resile from a contract or agreement because he later found that the conditions of the agreement are not favourable to him.”

On ISSUE TWO as to whether the Defendants/Counter-Claimants are entitled to damages in the circumstances of this case, it is trite that a party who desire any relief before a Court must plead with particularity and prove by credible evidence that he is entitle to that relief. The Supreme Court, per Alagoa JSC, at pages 186- 187 paragraph JJ-A in UNIJOS V. IKEGWUOHA (2013) Vol. 224 (PART 1) 169 held:

“It is the law that for a party to be awarded any relief by a

Court of law, that party must not only plead with particularity but also prove by credible and convincing evidence that he is indeed entitled to the relief he seeks.

As I earlier stated, the claim of the Counter-claimant has no defence; the evidence given by D.W.1 and the documents tendered, especially Exhibit "A" remains uncontradicted and unchallenged. The Defendants/Counter-Claimants have proved by undeniable evidence that there was a contract between the 1<sup>st</sup> Defendant and the Claimant which the latter has breached. It is a trite law that once there is a breach of contract which is established, damages follow which need not be pleaded or proved. It is awarded to assuage a loss caused by an act of the adversary. The Supreme Court held in Cameroon AIRLINES VS OTUTUIZU (Supra) per Rhodes-Vivour, JSC at pages 227 & 228 paragraphs JJ & A thus:-

"Once breach of contract is established damages follow. General damages are thus losses that flow naturally from the adversary and it is generally presumed by law, as it need not be pleaded or proved. General damages is awarded by the trial Court to assuage a loss caused by an act of the adversary."

In the instant case, there was a Hire Purchase Agreement for BENAT & TRACTOR for the sum of N3,200,000.00 (Three Million Two Hundred Thousand Naira) upon which the Claimant paid N700,000.00 (Seven Hundred Thousand



Naira) only with an agreement that the balance of N2,500,000.00 (Two Million Five Hundred Thousand Naira) would be paid by the Claimant for five months at the rate of N500,000.00 (Five Hundred Thousand Naira) only monthly to cover the periods of 30<sup>th</sup> August, 2010 to 30<sup>th</sup> December, 2010.

After the Claimant paid the initial N700,000.00 (Seven Hundred Thousand Naira), he never paid any other money to the 1<sup>st</sup> Defendant/Counter-Claimant in respect of this Hire Purchase Agreement (Exhibit 5A) this is a breach which this Court cannot condone or encouraged.

Paragraph 3 of Exhibit 5A said:

“That in the event of default of payment for two months (2 months) the owner shall recover the said BENAT-TRACTOR.”

The D.W.1 has also deposed on Oath through his evidence at paragraphs 16 and 17 (reproduced earlier) that the res has been abandoned in the burrow pits of the Claimant where he excavates sand from and that the Claimant has put the vehicle in a state of disrepair. How does one now access the damages in this breach of contract? The Supreme Court held in **MARINE MANAGEMENT ASSOCIATE INC. & ANOR VS. NATIONAL MARITIME AUTHORITY** (2012) Vol. 214 LRCN 100 at 140 paragraph K, per Mohammed, JSC held that:

“The law is indeed well settled that in a case of breach of

contract, which is what the present case is, assessment of damages is calculated on the basis of the loss sustained by the injured party, which loss was either in the contemplation of the contract or is an unavoidable consequence of the breach.ö

In this case, the loss is easy to ascertain. The unpaid balance for the cost of the vehicle is N2.5m (Two Million Five Hundred Thousand Naira) which ought to have been paid in December, 2010. I therefore hold that the Defendants/Counter-Claimants are entitled to the award of damages and answer issue two in the affirmative.

I therefore order that the Claimant specifically perform the term of the Hire Purchase Agreement which is the payment of the balance N2.5m as the vehicle has been put by him in a state of disrepair.

I also award the sum of N2, 000,000.00 (Two Million Naira) as general damages against the Claimant in favour of the 1<sup>st</sup> Defendant/Counter-Claimant flowing naturally from the breach of Exhibit öAö.

HON. JUSTICE V.O. EBOREIME  
JUDGE  
12<sup>TH</sup> FEBRUARY, 2014

Counsel:  
Okoro Stephen, Esq. for Claimant  
Evbayiro Usunobun, Esq. for Defendants.

\*Mos.

