IN THE HIGH COURT OF JUSTICE

OF EDO STATE OF NIGERIA

IN THE BENIN JUDICIAL DIVISION

HOLDEN AT BENIN CITY

BEFORE HIS LORDSHIP, HON.JUSTICE P.A. AKHIHIERO

ON MONDAY

THE 10TH DAY OF FEBRUARY, 2025.

BETWEEN: ***SUIT NO. B/303/2020***

1. MR. KINGSLEY OBI
2. MRS. GIFT OBI } ***----------CLAIMANTS***

AND

MR. EBOIGBE OSARUMWENSE ----------DEFENDANT

JUDGMENT

The Claimants instituted this suit against the Defendant vide a Writ of Summons and Statement of Claim filed on the 23rd of June 2020.

However, the Claimants extant pleadings is their Amended Statement of Claim dated and filed on the 10th of January, 2022 wherein they claimed against the Defendant as follows:

1) ***A declaration that the Defendant's unilateral decision to purchase roofing sheets of a standard lower that the standard agreed with the Claimants amount to a breach of contract;***

2) ***A declaration that the Claimants being the financiers of the alleged purchased roofing sheets are entitled to be handed over the receipts of the alleged purchase of the roofing sheets;***
3) ***An order on the Defendant to remove the substandard roofing sheets he supplied to the Claimants for the building and refund to the Claimants, the sum of One Million, Seventy Thousand Naira (N1, 070,000.00) only being the total sum of money given to the Defendant by the Claimants for the purchase and fixing of the roofing sheets;***
4) ***The sum of One Million, Five Hundred Thousand Naira (N1, 500,000.00) only being the cost of this legal proceedings;***
5) ***General Damages of the sum of Ten Million Naira (N10, 000,000.00) only, against the Defendant for the inconveniences and hardship foisted on the Claimants by the Defendant's breach of contract.***

The Writ of Summons, Statement of Claim and other accompanying processes were served on the Defendant and he entered appearance and filed a Statement of Defence.

At the hearing, the 2nd Claimant testified, tendered two letters as exhibits and the matter was adjourned to enable the Defendant's counsel cross examine her. Unfortunately, the Defendant and his counsel never showed up in the Court to cross examine the 2nd Claimant despite the hearing notice served on them so the Defendant was foreclosed from cross examining the 2nd Claimant.

From the evidence adduced at the hearing, the Claimants' case is that they entered into an agreement with the Defendant to roof their house which was under construction.

According to them they agreed with the Defendant that he should buy and use high quality 4.5 black roofing sheets to roof the house. They said that the Defendant told them that as at that time in 2019, the high quality 4.5 black sheets would cost N1, 000,000.00 and he charged them the sum of N70, 000.00 as workmanship to install the roof on the building.

The Claimants agreed with him and instantly advanced to him the sum of N700, 000 with a promise to pay him the balance sum of N370, 000 before he finished the job.

The Defendant allegedly roofed the Claimants' house with a roof that initially appeared to be black in color and the Claimants promptly paid the Defendant the balance sum of N370, 000 as agreed.

The Claimants alleged that within some days after the installation of the roof, they started noticing some serious deterioration and drastic change of colour of the roofing sheets from its supposed original black color to brown.

The Claimants immediately complained to the Defendant about the inferior quality of the roof and the Defendant allegedly apologized to them and promised to go back to the Company that supplied the roofing sheets to him to change them after the Covid 19 pandemic as he alleged that the Company was closed because of the pandemic.

According to them, later on, the Defendant changed the story and claimed that he delivered and fixed the roof as agreed and paid for by the Claimants. The Claimants demanded to see and have the receipt or the invoice of the purchase of the said roofing sheet, but the Defendant refused to produce the receipt or invoice and also refused to disclose the company from which he bought the roofing sheets.

The Claimants instructed their solicitor to write the Defendant requesting him to replace the inferior roofing sheets with the quality sheets as agreed or remove the inferior sheets and refund all their money. The letter was admitted as Exhibit "A" at the hearing.

The Defendant's solicitor replied the aforesaid letter and maintained that the roofing sheets were of good quality and that the brownish colour was caused by dust on the roof. He promised that in the interest of peace, the Defendant will arrange to wash the entire roof so that the original colour can appear.

The Claimants maintained that the Defendant breached their contract and failed to supply and install the superior roofing sheets which they paid for, hence they have instituted this suit to seek redress.

On the 20th of April 2024, the Claimants formally closed their case and same was adjourned to 11th of July 2024 for defence/adoption of written address.

Fresh Hearing Notice was issued and served on the Defendant.

On the date slated for the defence of this suit, the Defendant was again absent without any explanation and the Court foreclosed him from defending the suit and the matter was adjourned for final address.

On the date fixed for the final address, the Defendant's counsel appeared in the Court and obtained the leave of the Court to withdraw their legal representation for the Defendant in this suit.

The suit was again adjourned for final address and Fresh Hearing Notice was served on the Defendant.

On the next date, the Defendant did not show up in Court so the Claimant's counsel adopted his final written address and the matter was adjourned for judgment.

In his final written address, the learned counsel for the Claimants, ***R.I.D. Okezie Esq.*** formulated a sole issue for determination as follows:

"Whether the Claimants have proved their case on the preponderance of evidence to be entitled to the reliefs (i), (ii) & (iii) being bought in this case.(claimants hereby withdraw relief (iv) as no evidence was given there for)"

Arguing the sole issue for determination, learned counsel submitted that the Claimants' evidence was not challenged and they have proved their case on a preponderance of evidence to be entitled to reliefs (i), (ii), (iii) & (v) as claimed.

He submitted that it is settled law that where parties entered into a contract of sale of goods and they both agreed on the quantity and/or quality of the goods to be supplied, failure to supply the goods according to the agreed specifications would amount to a breach of contract for which the buyer should be entitled to reject the goods, repudiate the contract and demand for the price paid and damages for breach of contract. He referred to the case of ***Eastchase Alimunium Products Ltd v. Ugwu & Amor (2016) LPELR-40936*** and quoted extensively from the said judgment.

Furthermore, he submitted that where parties freely enter into a contract, they are bound by the terms of the contract, particularly where those terms are not unlawful

or illegal. He relied on the case of ***Aminu Ishola Investment Ltd. v. Afribank Nig, Plc (2013) LPELR-20624 (SC).***

He posited that the Claimants in this case pleaded and led evidence to show that they agreed with the Defendant to install high quality roofing sheets on their house which was under construction. He said that the Defendant breached the contract by supplying substandard roofing sheets.

Counsel submitted that this transaction is mainly regulated by the provisions of the ***Sale of Goods Act, 1893***. He referred the Court to ***Section 13 of the Act*** which provides as follows:-

"Where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description; and if the sale by sample, as well as by description, it is not sufficient that bulk of the goods corresponds with the sample if the goods do not also correspond with the description."

He also referred to ***Section 14(2) of the Act*** which also provides thus: ***"Where goods are bought by description from seller who deals in goods of that description (whether he be the manufacturer or not) there is an implied condition that the goods shall be of merchantable quality..,."***

Learned counsel posited that even if there were no specified description of the quality of the roofing sheets to be supplied to the Claimants by the Defendant, the above reproduced sections of the ***Sale of Goods Act, 1893*** would apply as there is an implied condition in every sales transaction under the Act that the goods shall be of merchantable quality.

Counsel posited that since there was evidence in Exhibit A" (Letter from Claimants solicitor to the Defendant) that the parties agreed on the description or quality of the roofing sheets required to be bought (which fact was not denied in "Exhibit B") the provision of ***section 14 of the Act*** is applicable to this case.

He said that the parties joined issues on whether the agreed quality was the quality purchased by the Defendant and the only way to ascertain if the Defendant bought the quality as agreed upon by the parties was for him to produce the receipt or

invoice issued to him at the point of purchase of the roofing sheets by the seller or manufacturer.

He said that the Defendant refused to produce the receipt .or invoice issued to him by the seller of the roofing sheets and that this amounts to with-holding evidence contrary to the provisions of ***section 167 (d) of the Evidence Act, 2011***.

Counsel submitted that in a sale of goods transaction, where goods are sold and upon delivery they are discovered to be defective, the buyer is automatically entitled to repudiate the contract and demand a refund and he cited the following cases: ***(i) Uchenna Cyprian v. Emmanuel Uzo (2015) LPELR(CA); (2) First Bank of Nigeria Plc v. Ozokwere (2006) 4 NWER (pt. 970) 442; and (3)Stag Engineering Co. Ltd. v. Sabako (Nig) Ltd & Anor (2008) LPELR8485 (CA).***

Counsel submitted that since the Defendant has failed to show that the roofing sheets he fixed for the Claimants were in conformity with the specifications agreed upon by the parties, the Claimants are automatically entitled to the reliefs they are seeking herein, save relief (iv) which has earlier been withdrawn.

He urged the Court to resolve the sole issue for determination in favour of the Claimants.

I have carefully considered all the processes filed in this suit, together with the evidence led in the course of the hearing and the address of the learned Counsel for the Claimants.

As I have already observed, the Defendant did not put up any defence to this suit so the evidence of the Claimants remains unchallenged.

The position of the law is that evidence that is neither challenged nor debunked remains good and credible evidence which should be relied upon by the trial court, which has a duty to ascribe probative value to it. See the following decisions on the point: ***Monkom vs. Odili (2010) 2 NWLR (Pt.1179) 419 at 442; and Kopek Construction Ltd. vs. Ekisola (2010) 3 NWLR (Pt.1182) 618 at 663.***

Furthermore, where the Claimant has adduced admissible evidence which is satisfactory in the context of the case, and none is available from the Defendants,

the burden on the Claimant is lighter as the case will be decided upon a minimum of proof. See*: **Adeleke vs. Iyanda (2001) 13 NWLR (Pt.729) 1at 23-24.***

However, notwithstanding the fact that the suit is undefended, the Court would only be bound by unchallenged and uncontroverted evidence of the Claimant if it is cogent and credible. See*: **Arewa Textiles Plc. vs. Finetex Ltd. (2003) 7 NWLR (Pt.819) 322 at 341***.

Even where the evidence is unchallenged, the trial court still has a duty to evaluate it and be satisfied that it is credible and sufficient to sustain the claim. See: ***Gonzee (Nig.) Ltd. vs. Nigerian Educational Research and Development Council (2005) 13 NWLR (Pt.943) 634 at 650***.

Applying the foregoing principles, I will evaluate the evidence adduced by the Claimants to ascertain whether they are credible and sufficient to sustain the Claims.

I am of the view that the sole Issue for Determination in this suit is: ***whether the Claimants are entitled to the reliefs claimed in this suit.***

Essentially, the substratum of the Claimants claim is for breach of contract. From the evidence adduced at the hearing which was not challenged, the Claimants entered into an oral contract with the Defendant to roof the Claimants' house with high quality 4.5 black roofing sheets at the total cost of N1,070,000.00 (One Million and Seventy Thousand Naira).

The Claimants paid the Defendant the agreed contract sum but later discovered that he used very inferior quality roofing sheets to roof their house.

It is an established rule of law that a contract may be in writing, oral or even implied. Consequently, a contract between parties may be expressed by words or by an agreement in writing. Similarly a contract could be implied by conduct of the parties themselves as in this instant case. See the following cases: ***KWARA CO-OPERATIVE FEDERATION & ORS V. YUSUF (2014) LPELR-23793(CA) (PP. 23 PARAS. A-G; J. F. OSHEVIRE LTD VS TRIPOLI MOTOR LTD (1997) 5NMLR (PT 503) 1; OMEGA BANK (NIG) PLC VS OBC LTD (2002) 16NWLR (PT 794) 483; DAHIRU VS KAMALE (2001) FWLR PT. 62 P. 1853;***

and ***CHRISTIAN V. UMARA & ANOR (2021) LPELR-53242(CA) (PP. 5-6 PARAS. E).***

Furthermore, it is elementary law that the burden is on the Claimants to prove that there was a contract between them and the Defendant and that the contract was breached to their disadvantage. See the cases of ***ORJI VS ANYASO (2000)2 NWLR (PART 643) PAGE 1;*** and ***ARFO CONSTRUCTION CO. LTD V. MINISTER OF WORKS & ANOR (2018) LPELR-46711(CA) (PP. 23 PARAS. B).***

In the instant case, the Claimants adduced uncontroverted evidence to show that a clear term of the contract was for the Defendant to roof their house with good quality 4.5 black roofing sheets at the total cost of N1,070,000.00 (One Million and Seventy Thousand Naira). Shortly after the house was roofed, they discovered to their utmost dismay that the black roof had turned brown. They contacted the Defendant and informed him of the unsavoury development but he was unwilling to remedy the apparent defect.

In his written address, the learned counsel for the Claimants relied heavily on the provisions of ***Sections 13 and 14 of the Sale of Goods Act, 1893*** which provide as follows:-

"Section 13 Where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description; and if the sale by sample, as well as by description, it is not sufficient that bulk of the goods corresponds with the sample if the goods do not also correspond with the description."

"***Section 14(2) Where goods are bought by description from seller who deals in goods of that description (whether he be the manufacturer or not) there is an implied condition that the goods shall be of merchantable quality..,."***

It is settled law that in respect of contracts for the sale of goods, the Courts are enjoined not to apply the general law but to apply the statutory provisions regulating the sale of goods within that jurisdiction. See the case of ***ORJI V. ANYASO (1999) LPELR-5710(CA) (PP. 37-43 PARAS. C-C).***

However, it must be noted that the statute regulating the sale of goods in Edo State is not the ***Sale of Goods Act of 1893*** which is a colonial statute of general application which was adopted by Nigeria before we gained independence. Rather, the appropriate statute is the ***Sale of Goods Law of Bendel State, 1976 as applicable in Edo State.*** Incidentally, the ***Sale of Goods Law of Bendel State, 1976*** is based entirely on the ***English Sale of Goods Act of 1893.***

As a matter of fact, the exact provisions of ***Sections 13 and 14 of the English statute*** are replicated in ***Sections 14 and 15(b) of the Sale of Goods Law of Bendel State, 1976 as applicable in Edo State*** which provides as follows:

"Section 14 Where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description; and if the sale by sample, as well as by description, it is not sufficient that bulk of the goods corresponds with the sample if the goods do not also correspond with the description."

"***Section 15(b) Where goods are bought by description from seller who deals in goods of that description (whether he be the manufacturer or not) there is an implied condition that the goods shall be of merchantable quality:***

Provided that if the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed."

As the learned counsel for the Claimants rightly posited, from the aforesaid provisions, it is clear that even if there was no specified description of the quality of the roofing sheets to be supplied to the Claimants by the Defendant, by the aforesaid provisions, there is an implied condition in every contract of sale of goods that the goods shall be of merchantable quality.

Where as in the instant case, the buyer clearly specifies the description of the goods he wants to buy, the seller is under the obligation to supply the goods with the exact description or simply inform the buyer that he does not have goods of that description.

In a contract for the sale of goods, where goods are sold by description and upon delivery failed to conform to the description, the buyer is automatically entitled to repudiate the contract and demand a refund. See ***FBN PLC VS OZOKWERE***

(2006) 4 NWLR (PT.970) 422; and ***STAG ENGINEERING CO. LTD V. SABALCO (NIG) LTD & ANOR (2008) LPELR-8485(CA) (PP. 26 PARAS. A).***

Furthermore, where as in the instant case, the seller supplies goods that are different from the specified description, the buyer is entitled to reject the goods and repudiate the contract or accept them and sue for damages. See the case of ***EASTCHASE ALUMINIUM PRODUCTS LTD V. UGWU & ANOR (2016) LPELR-40936(CA) (PP. 10-11 PARAS. A).***

In the old English case of ***Re Moore and Co. Ltd. v. Laudarer and Co. (1921) 2 K. B. 519*** the Court held that the purchaser was entitled to reject the whole consignment, even though he suffered no actual damage from the breach, because the goods delivered, differed in essential particulars from those described and ordered. See also the case of ***Adel Boshali vs. Allied Commercial Exporters Ltd. (1961) All NLR 917***.

It has been held that even if the seller's deviation from specification is not substantial, the buyer is still entitled to reject the goods, if he is so inclined. This position was upheld in the old case of ***Arcos Ltd. v. Ronaasen and Son (1933) A.C. 470 @ 479.***

In the instant case, the roofing sheets which the Defendant installed on the Claimants' house were of inferior quality. This was a clear breach of the implied condition of merchantable quality.

From the foregoing, I hold that the Defendant was in breach of the contract between him and the Claimants.

Coming to the claim for the sum of Ten Million Naira (N10, 000,000.00) as general damages for the inconveniences and hardship foisted on the Claimants by the Defendant's breach of contract it is settled law that once a breach of contract is established, damages will follow.

General damages are those losses that flow naturally from the adversary and it is generally presumed by law as it need not be pleaded or proved. General damages are awarded by the Court to assuage the loss caused by an act of the adversary. See ***Union Bank Vs Odusote Bookstores Ltd (1995) 9 NWLR (part 421) 558, Unity Bank Plc Vs Jahswill Onwudiwe & Anor (2015) LPELR - 24907 (CA) 1.***

The assessment of general damages is not predicated on any established legal principle. Thus, it usually depends on the peculiar circumstances of the case. See: ***Ukachukwu vs. Uzodinma (2007) 9 NWLR (Pt.1038) 167; and Inland Bank (Nig.) Plc vs. F & S Co. Ltd. (2010) 15 NWLR (Pt.1216) 395.***

The fundamental objective for the award of general damages is to compensate the Claimant for the harm and injury caused by the Defendant. See: ***Chevron (Nig.) Ltd. vs. Omoregha (2015) 16 NWLR (Pt.1485) 336 at 340.***

Thus, it is the duty of the Court to assess General Damages; taking into consideration the surrounding circumstances and the conduct of the parties. See: ***Olatunde Laja vs. Alhaji Isiba & Anor. (1979) 7 CA.*** The quantum of damages will depend on the evidence of what the Claimant has suffered from the acts of the Defendant.

In the instant case, although the Claimants did not elaborate on the extent of losses occasioned by the Defendant's breach of contract, going through the entire gamut of the Claimants' evidence, it is clear that the Defendant actually caused the Claimants some discomfort by his refusal to remedy the defect caused by the inferior roofing sheets with which he roofed the Claimants' house. In the event he is entitled to some damages which are at the discretion of the Court using the test of a reasonable man. See: ***Artra Industries (Nig.) Ltd. vs. N.B.C.I (1998) 4 NWLR (Pt.546) 357; Ogbechie vs. Onochie (1988) 4 NWLR (Pt.70) 370***.

In his final address, the learned counsel informed the Court that the Claimants are abandoning the claim for the sum of One Million, Five Hundred Thousand Naira (N1, 500,000.00) only being the cost of this legal proceedings.

On the whole, the sole issue for determination is resolved in favour of the Claimant.

The Claimants' claims succeed and judgment is entered in favour of the Claimants as follows:

1) ***A declaration that the Defendant's unilateral decision to purchase roofing sheets of a standard lower that the standard agreed with the Claimants amount to a breach of contract;***

2) ***A declaration that the Claimants being the financiers of the alleged purchased roofing sheets are entitled to be handed over the receipts of the alleged purchase of the roofing sheets;***
3) ***An order on the Defendant to remove the substandard roofing sheets he supplied to the Claimants for the building and refund to the Claimants, the sum of One Million, Seventy Thousand Naira (N1, 070,000.00) only being the total sum of money given to the Defendant by the Claimants for the purchase and fixing of the roofing sheets;***
4) ***General Damages of the sum of Three Million Naira (N3, 000,000.00) only, against the Defendant for the inconveniences and hardship foisted on the Claimants by the Defendant's breach of contract.***

The Defendant shall pay the sum of N200, 000.00 (Two Hundred Thousand Naira) to the Claimants as costs.

P.A.AKHIHIERO
JUDGE
10 /02/2025

<u>COUNSEL:</u>

R.I.D. Okezie Esq.----------Claimants.

Unrepresented---------- Defendant