

**IN THE SMALL CLAIMS COURT OF RIVERS STATE OF NIGERIA**  
**IN THE PORT HARCOURT MAGISTERIAL DISTRICT**  
**HOLDEN AT PORT HARCOURT**

**SUIT NO: PMC/SCC/213/2025**

**BETWEEN**

**STERLING BANK PLC**

**CLAIMANT**

**AND**

**NNAEMEKA FIDELIS DURU**

**DEFENDANT**

**PARTIES: All Absent**

**APPEARANCES: Barr. M.M Emetu for the Claimant. No Legal representation for the Defendant**

**JUDGMENT**

The Claimant brought this action via an Ordinary Summons against the Defendant on the 7th day of May, 2025, claiming the reliefs below:

Debt/Amount Claimed - N1,391,983.73

Fees - Nil

Costs - N200,000.00

Total - N1,591,983.73

Upon the filing of the matter in court, an Ordinary Summons attached with the Complaint Form and Claim was served on the Defendant by substituted means via the Defendant's WhatsApp number: 08035285467 and via his yahoo mail address macfidelx05@yahoo mail.com on the 5th day of August, 2025 in line with the Order of Court. The Affidavit of Service is also before the Court. The Defendant was absent and not represented in court on the 17/09/2025 when the matter came up for proof of service and plea and upon confirmation of service, a plea of not liable was entered for the absent Defendant.

Mr. Disciple Amadi, the Recovery Loan Agent of the Claimant, testified under oath on the 29/09/2025 as CW1 and tendered Six (6) Exhibits, admitted and marked as follows: The Offer letter with the date of Wednesday, June 30th, 2021 as Exhibit A; The Sterling Bank statement of account of the Defendant with the date of January, 01, 2018-March 14th, 2025 as Exhibit A1; The Retail Loan-Spectator with the date of January 01, 2018-March 14th, 2025 as Exhibit A2; The letter of Demand Letter, Form RSSC1, dated and filed 17/04/2025 as Exhibit A3; The Lions Law Firm receipt of payment in the sum of N200,000.00 (Two Hundred Thousand Naira), dated 10th day of March, 2025, as Exhibit A4 and the Certificate of compliance with the stamp date of 26/09/2025 as Exhibit A5.

The unchallenged evidence of the Claimant (CW1) is that sometime in June of 2021, the Defendant applied to the Claimant for a loan facility through the Claimant's loan platform called PAYWITHSPECTA and was offered a loan sum of N2,000,000.00 (Two Million Naira), which said sum was transferred to the Defendant's account number 0083447704 NNAEMEKA FIDELIS DURU STERLING BANK PLC, on the 30th day of June, 2021. That it was agreed that interest rate of 24% per annum shall apply to the loan sum, as contained in the offer letter. That the sum of N188,386.11 (One Hundred and Eighty Eight Thousand Three Hundred and Eighty Six Naira Eleven Kobo) was also agreed as the monthly instalment to be paid by the Defendant to the Claimant for 12 months to liquidate the loan sum and interest. That if the Defendant had kept to his own side of the bargain and kept up with the repayments, the loan sum would have been liquidated

by May, 2022. That upon default of the loan repayment, the loan kept attracting penalties and interest and upon the conclusion of the loan processes, the Claimant generated a Retail Loan Account with No. 0082548556 that was assigned to the Defendant, showing all the activities regarding the loan, which includes the outstanding balance of the loan repayment, accrued interest and penalties associated with the loan. The CW1 further stated that as at August, 2024, the Defendant is still indebted to the Claimant to the tune of N1,391,983.73 (One Million Three Hundred and Ninety One Thousand Nine Hundred and Eighty Three Naira Seventy Three Kobo), and despite being served a demand letter, same has remained unpaid till date, hence the payment of the sum of N200,000.00 (Two Hundred Thousand Naira) to a lawyer for the institution of this suit in court for the recovery of same.

The CW1 was present but the Defendant was absent in court on the 21/10/2025 when the matter came up for the cross-examination of the CW1 and the Defendant was foreclosed from cross-examining the CW1 and the CW1 was discharged. Hearing Notice was ordered to be filed and served on the Defendant at least five (5) working days before the next hearing date and matter adjourned for either definite defence or foreclosure. The Defendant was equally absent in court on the 25/11/2025 when the matter came up for defence and upon confirmation of service of the hearing notice on the Defendant, he was foreclosed from defending the suit for lack of any intention to defend the suit. The Claimant's Counsel Barr. M.M Emetu thereafter applied to waive his right to filing of final written address since the matter is undefended and urged the court to grant the Claimant's relief on the strength of the evidence already led and same was granted and judgment reserved.

From the above, the only issue that calls for determination is whether the Claimant has been able to prove his case on the preponderance of evidence and on the balance of probabilities to be entitled to the relief sought.

Now, in civil cases, the burden of first proving the existence or non-existence of a fact lies on the party against whom the judgment of the court would be given if no evidence were produced on either side, regard been had to any presumption that may arise on the pleadings. See **Section 133 (1) and (2) of the Evidence Act, 2011 (as amended)**. See also **Mrs. Funmilayo Mubo Adeniran & ORS V. Mr. Sikiru Adio & Anor (2024) 16 NWLR (Pt. 1964) pg. 351, (SC)**.

As stated above, the claim of the Claimant before the court is for payment of the sum of N1,391,983.73 (One Million Three Hundred and Ninety One Thousand Nine Hundred and Eighty Three Naira Seventy Three Kobo), being and as representing the outstanding indebtedness of the Defendant to the Claimant for the Loan facility collected and not yet paid, despite repeated demands, together with cost. The law is now settled that a cause of action in a suit for recovery of debt accrues when a debtor fails to pay his debt after a demand to pay has been made. See **Akinsola & Anor. V Eyinnaya (2022) LPELR-57284 (CA)**. See also **Article 2 (1) (d) of the Rivers State Small Claims Court Practice Direction, 2024**, which makes the service or issuance of demand letter a condition precedent to the commencement of an action against the Defendant.

In the instant case, there is a Letter of Demand, Form RSSC1, dated 17th April, 2025, (Exhibit A3), that was served on the Defendant, demanding for the immediate refund of the money owed, showing that a formal demand for the loan sum was made and same was served on the Defendant, thereby satisfying the condition precedent for the commencement of this suit.

From the evidence of the CW1 above, it is clear and not in dispute that a loan sum of N1,391,983.73 (One Million Three Hundred and Ninety One Thousand Nine Hundred and Eighty Three Naira Seventy Three Kobo), with an interest rate of 24% per annum on the loan, was taken by the Defendant as agreed by the parties and as contained in the offer letter, Exhibit A3. A careful perusal of the said Exhibit A3 which the CW1 testified to as being the binding document or agreement between the parties, clearly shows that the sum of N188,386.11 (One Hundred and Eighty Eight Thousand Three Hundred and Eighty Six Naira Eleven Kobo) was agreed as the monthly instalment to be paid by the Defendant to the Claimant for a 12 months period to liquidate the loan sum and interest. The law is trite that where parties have reduced what binds them into a written form, the court is not allowed to rewrite a contract for the parties but to give effect to what was agreed by the parties. It is also the law that Courts exist to do substantial justice to parties

before it and work with cogent, credible and verifiable evidence whether the matter is defended or not. **Section 131 Evidence Act (EA), 2011** is very apt on this point wherein it provides thus:

**"Whoever desires any court to give Judgment as to any legal right or liability on the existence of facts which he asserts must prove that those facts exist".**

From the facts and documentary evidence before the court, it is clear the Claimant (CW1) has been able to prove or substantiate his claim regarding the loan sum and the interest on the Loan sum claimed. The Defendant therefore, having taken benefit of the loan that was given to him, has both a moral and a legal duty to perform his own side of the bargain of paying the Claimant the said loan sum of loan sum of N1,391,983.73 (One Million Three Hundred and Ninety One Thousand Nine Hundred and Eighty Three Naira Seventy Three Kobo), being and as representing the loan and the accrued interest on the Loan facility collected by the Defendant from the Claimant, especially as there is no evidence before the court showing or suggesting that the said sum has been liquidated. Consequently and premised on the forgoing, the Claimant is therefore entitled to the sum of N1,391,983.73 (One Million Three Hundred and Ninety One Thousand Nine Hundred and Eighty Three Naira Seventy Three Kobo), representing the outstanding indebtedness of the Defendant to the Claimant for the Loan facility collected and I so hold. Legal fees is assessed at N100,000.00 (One Hundred Thousand Naira) especially in view of Exhibit A4 and I so hold.

Accordingly, it is hereby ordered that;

The Defendant shall refund or pay the Claimant the loan balance sum of N1,391,983.73 (One Million Three Hundred and Ninety One Thousand Nine Hundred and Eighty Three Naira Seventy Three Kobo), being and as representing the outstanding indebtedness of the Defendant to the Claimant for the Loan facility collected.

The Defendant shall pay the sum of N100,000.00 (One Hundred Thousand Naira) to the Claimant as legal fees as assessed by Court.

**This is the Judgment of this court. I make no further Orders.**

Dated this 17th day of December, 2025

*Cltee*  
LEZIGA C. MITEE (MRS)  
CHIEF MAGISTRATE I, MAGISTRATE COURT 12.

