

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

SUIT NO: PMC/SCC/397/2025

BETWEEN

MR. AZUBUIKE ERNEST CHUKWUEMEKA

CLAIMANT

AND

MR. ORJI EGBIRIKA

DEFENDANT

PARTIES: Claimant present. Defendant absent

APPEARANCES: K.A Abel for the Claimant. No Legal representation for the Defendant

JUDGMENT

The Claimant brought this action via an Ordinary Summons against the Defendant on the 11th day of JULY, 2025, claiming the reliefs below:

Debt/Amount Claimed - N2,300,000.00 (Two Million Three Hundred Thousand Naira)

Court Fees - Nil

Costs - N2,700,000.00 (Two Million Seven Hundred Thousand Naira)

Total - N5,000,000.00 (Five Million Naira)

Upon the filing of the matter in court, an Ordinary Summons attached with the complaint form and claim was served via pasting by Order of Court on the Defendant on the 19th day of September, 2025, at beside Ignatius Ajuru University, Rumuolumeni, Port Harcourt, Rivers State and via his WhatsApp phone 08139938666. The Affidavit of Service is also before the Court. The Defendant was absent and not represented in court on the 29/09/2025 when the matter came up for plea and hearing and upon confirmation of service, a plea of not liable was entered for the absent Defendant and evidence of Claimant's witness one (CW1) taken.

Mr. Azubuike Ernest Chukwuemeka testified under oath on the aforementioned date of 29/09/2025 as CW1 and did not tender any Exhibit in evidence. His brief unchallenged evidence is that he is into dredging sand business at Aleto in Eleme Local Government, Rivers State. That the Defendant on record as a customer, bought one hundred Howo trucks of sand from his dump site at Eleto Eleme Local Government Area where he does his sand business at the total cost of N6,300,000.00 (Six Million Three Hundred Thousand Naira). That out of this sum, the Defendant paid N4,000,000.00 (Four Million Naira) after he petitioned him to the Police first at the Area Command Choba and later at the State CID, Port Harcourt. That whilst at the Police Station, the Defendant was pleading with the Police to give him two weeks to pay up the total sum Six Million Three Hundred Thousand Naira (N6,300,000.00) but the Defendant only transferred the sum of Four Million Naira (N4,000,000.00) to him, leaving the balance of Two Million Three Hundred Thousand Naira (N2,300,000.00) unpaid til date, despite repeated demands, hence the institution of this matter in Court for the recovery of same. The CW1 further stated that after paying the Four Million Naira, the Defendant has remained incommunicado till date and he has lost business in the process. That was the evidence of the CW1 and matter adjourned for cross-examination.

The Defendant was absent and not represented in court on the 07/10/2025 when the matter came up for cross-examination and the Defendant was foreclosed from cross-examining the CW1 and CW1 was discharged and matter adjourned for either definite defence or foreclosure upon confirmation of service of the hearing notice on the Defendant. The Defendant was still absent in

court on the 21/10/2025 when the matter came up for defence, despite being served with the Summons and the hearing notice as ordered and he was foreclosed from defending the suit. The Claimant's Counsel, K. A. Abel 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 reliefs sought.

Now, in civil cases, the burden of first proving 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 only claim of the Claimant is for payment in the sum of N2,300,000.00 (Two Million Three Hundred Thousand Naira), being and representing the outstanding balance or indebtedness of the Defendant to the Claimant for the sand he lifted from the Claimant's sand dump at Ebubu, Eleme, together with cost, which the Defendant has refused to pay despite repeated demands. 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 before the court Form RSSC1, the Letter of Demand, dated the 14th day of May, 2025 which was served on the Defendant on the 19th day of September, 2025, at the aforementioned address, showing that a formal demand for the loan was made and same served on the Defendant, thereby satisfying the condition precedent for the commencement of this suit. The CW1 from his evidence, told Court that the Defendant lifted sand from his sand dump at Ebubu? in Eleme Local Government Area to the tune of N6,300,000.00 (Six Million Three Hundred Thousand Naira). That out of this total sum, the Defendant has paid only N4,000,000.00 (Four Million Naira), leaving a balance of N2,300,000.00 (Two Million Three Hundred Thousand Naira) still to be paid. That he has made several demands for the payment of the balance sum from the Defendant but despite the repeated demands, the Defendant has refused to perform his own side of the bargain by paying back the outstanding balance sum of N2,300,000.00 (Two Million Three Hundred Thousand Naira) for the sand he lifted from the Claimant's sand dump at Eleme aforesaid. The Defendant therefore, having lifted the sand and taken benefit of same and the Defendant having paid part of the total sum, has both the legal and moral duty to pay the outstanding balance sum of N2,300,000.00 (Two Million Three Hundred Thousand Naira) to the Claimant for the sand he lifted. There is no evidence before the court showing or suggesting that the Defendant has paid the outstanding balance sum stated above. The Defendant therefore, having not denied or challenged the above evidence of the CW1 with any credible evidence, is deemed to have admitted same and the law is trite that facts not challenged or controverted are deemed admitted and the court can act on same. See *NACEN V. BAP* (2011) 11 NWLR (Pt. 1257) pg 193. Consequently and in the absence of any credible evidence to the contrary, this court is therefore left with no option than to rely on the uncontroverted evidence of the Claimant.

The law is trite that Courts exists to do substantial justice to parties before it and works with credible evidence and it is the court's view therefore that the Claimant has been able to prove his case with credible evidence and on the preponderance of evidence to be entitled to the relief sought. Premise on the above, the Claimant is therefore entitled to the outstanding balance sum of N2,300,000.00 (Two Million Three Hundred Thousand Naira), being and as representing the Defendant's indebtedness to the Claimant for the sand the Defendant lifted from the Claimant's sand dump at Eleme, Rivers State, together with cost of N100,000.00 (One Hundred Thousand Naira) and I so hold.

Accordingly, it is hereby ordered that;

The Defendant shall pay to the Claimant the balance sum of N2,300,000.00 (Two Million Three Hundred Thousand Naira) to the Claimant, being and as representing the outstanding indebtedness of the Defendant to the Claimant.

That cost of N100,000.00 (One Hundred Thousand Naira) is hereby awarded in favour of the Claimant and against the Defendant.

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

Dated this 10th day of November, 2025



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

