**IN THE SMALL CLAIMS COURT OF RIVERS STATE OF NIGERIA**

**IN THE PORT HARCOURT MAGISTERIAL DISTRICT**

**HOLDEN AT PORT HARCOURT**

**CLAIM NO: PMC/SCC/752/2025**

**BETWEEN**

**RUKPOKWU DIVINE SOLID CO-OPERATIVE**

**& CREDIT SOCIETY LTD** **CLAIMANT**

**AND**

**MR. JACOB UMANA** **DEFENDANT**

Blessing Akoko the treasurer and Stella George the leader, represents the Claimant. Defendant is present.

Appearances- C.T. Fibika holding the brief of Odinaka Emenike appears for the Claimant; A.G. Awashi appears for Defendant.

## JUDGEMENT

The Claimant took out a Summons on the 06/11/2025 and is praying the Court for:

1. The sum of N650,000 being the loan and interest advanced in 2024;
2. The sum of N150,000 as cost of litigation; and
3. The sum of N200,000 as cost.

The Defendant as shown on the face of the affidavit of service, was served on 05/12/2025 and A.G. Awashi, the Defendant's counsel, entered a plea of not liable on behalf of the Defendant.

The Claimant opened its case on the 18/12/2025, fielded two witnesses, tendered six exhibits and closed on the 09/02/2026. The Claimant filed its final written address on 10/04/2026

The defense opened its case on the 09/02/2026, fielded three witnesses, tendered two exhibits and closed its case on the 23/03/2026. The defense filed its final written address on 09/04/2026, and their reply on points of law on 16/04/2026

Parties adopted their respective final written addresses on the 16/04/2026.

## THE CLAIMANT'S CASE

The Claimant fielded two witnesses: Blessing Akoko the treasure as CW1; Stella George the leader, as CW2. The Claimant as led in evidence, amongst other things, gives out loans. The Defendant is a member of the Claimant and neighbor of the CW1. The Defendant was given a loan of N500,000 which was credited to him in two tranches of N244,000 vide transfer and was given a cash of N256,000. The loan was on an interest rate of 5% which was N200,000.

The loan was for 8 months after which the Defendant is to return a total of N700,000. The loan was to run from 19/02/- October 2024. The Defendant paid the sum of N200,000. The loan was reconstructed. After repayment of the second loan elapsed, the interest has been yielding till date, totaling N650,000. The Defendant issued a cheque of N1,200,000. When the Defendant could not pay up, the Claimant issued a letter of demand.

In her final written address, the Claimant raised and argued a sole issue for determination.

It is their contention that the signed acknowledgement in exhibit C1 stands unchallenged as primary evidence of the loan disbursement and Defendant's indebtedness. The fact that the loan was got from Mr. Sam is irrelevant. In all, the Claimant urged the Court to grant their reliefs.

**THE DEFENSE**

The Defendant filed its defense and counter claim on 17/12/2025. The Defendant counterclaims:

- The sum of N120,000 as solicitor's fee,

The Defense fielded three witnesses: Jacob Umana the Defendant testified as DW1; Obichere Thaddus, the DW2; Idongesit Monday Akpan as the DW3.

The Defendant testified that he is a member of the Claimant who has obtained loan from the Claimant on several occasions. The Defendant initially wanted a loan of N2,500,000 and was made to pay 5% of the total sum but when the money was not forthcoming, the Defendant asked for the sum of N500,000 in January 2024. Later, the Claimant transferred the sum of N244,000 to Defendant's wife's account, as directed. The Defendant complained and Claimant said he deducted the sums of N200,000 for Mr. Sammie for the special loan which they out-sourced from Mr. Sammie, N50,000 as interest, N6,000 for meeting disbursements. The Defendant further testified that he has paid off the loan of N244,000 advanced to him.

In her final written address, the defense raised and argued two issues for determination. A.G. Awashi on behalf of the Defendant argued that the Claimant did not lead any evidence chronicling the facts and figures of its claim before this Court. Counsel also contends that the evidence of the Claimant's witnesses are contradictory and the Court can neither pick/choose, nor can the Court embark on a voyage of evidence finding.

In its reply on points of law, Counsel posited that the interest charged offends the Money Lenders Laws CAP 87 Laws of Rivers State, 1999.

**EVALUATION OF EVIDENCE/DECISION**

In the case of **IFENNE v. A.B.U, ZARIA & ORS (2023) LPELR-59590 (SC)**, the Supreme Court posited, thus:

*"This Court, no doubt, has an unfettered discretion to re-frame, re-arrange or re-formulate issues for determination by the parties to meet the justice of a case and in the interest of accuracy, clarity and brevity... ."* **Per CHIMA CENTUS NWEZE, JSC (Pp 11 - 12 Paras D - A)**

It follows therefore that this Court shall from the issues raised by parties, distill two issues for determination, thus:

1. Whether the Claimant is entitled to the judgement of this Court;
2. Whether the counterclaim has merit.

**ISSUE I- Whether the Claimant is entitled to judgement of this Court**

The law is settled that in civil cases, the burden of proof lies on the Claimant as he would fail should no other evidence be called upon, on either side.

The Court re-echoed this principle in **DICKSON v. IJALAYE (2025) LPELR-80588(SC)** when it held thus: *"It is a settled principle of law that in a civil case, the burden of proof lies on the person who desires the Court to give judgment as to any legal right or liability which depends on facts which he asserts to prove that those facts exist. It is also settled that the burden of proof in a particular proceeding lies on the person who would fail if no further evidence is given on either side. See Sections 131 and 132 of the Evidence Act, 2011. The burden of first proving the existence or nonexistence of a particular fact lies on the party against whom the judgment of the Court would be given if no evidence were produced on either side, regard being had to any presumption that may arise on the pleadings. Where a party adduces sufficient evidence to satisfy the Court that the fact sought to be proved is established, the burden shifts to the person against whom judgment would be given if no further evidence were adduced. The burden of proof would then continue to shift until all the issues in the pleadings have been dealt with. See Section 133 of the Evidence Act."* ***Per MOHAMMED BABA IDRIS, JSC (Pp 26 - 27 Paras D - C)***

The standard of proof required is not beyond reasonable doubt, but on preponderance of evidence and in this case, lies on the Claimant.

In resolving the sole issue raised, the reliefs of the Claimant shall be dealt with, *seriatim*.

Relief 1 deals with the sum of N650,000 being the balance of the unpaid loan.

The Claimant claims that the Defendant who is a member of the cooperative and knows the terms and conditions of the cooperative, was granted a loan of N500,000, which is to run for eight months and the cumulative interest was N200,000. The loan was disbursed to the Claimant in cash and by transfer. The loan ended in October 2024 and as per the policy of the cooperative, it was reconstructed and Defendant was notified. All the Defendant paid was N400,000 as interest, leaving the capital.

The grouse of the Claimant is the refusal of the Defendant to pay up the loan. The Defendant on the other hand, claims that all he was given is N244,000 which he has fully repaid.

Before I proceed, I shall point out that both parties are inconsistent with the dates referred to as the dates of occurrence of the events in course of this proceedings. Parties do not seem to have a firm grasp of the particular dates the incidents occurred. It is worrisome.

Exhibit C1a-h is the alleged Loan form which is the basis of this contention.

The Claimant alleged that the Defendant was granted a loan of N500,000. In proof, they tendered and the Court admitted exhibit C1a-h. On the face of this document are terms and conditions agreed upon by parties. The Claimant claimed it advanced the sum of N500,000 to the Defendant vide its wife's Fidelity bank account.

The Defendant claimed it got only N244,000 by transfer. The Claimant tendered two documents- exhibits C1 a-e which is the subject of controversy and C2 a-e. on the reverse side of both documents is a written acknowledgement of the sum received and the mode of receipt by the Defendant. The signature of the Defendant is visible on both documents.

In course of cross-examination, the Defendant admitted signing a portion of exhibit C1 a-f and denied signing the portion that acknowledged the fact that he got the N500,000 in cash and transfer. Exhibit C2 was tendered to show that, that is the pattern parties have been operating with. There is a signature by the part where the breakdown of the figures are written, to which the Defendant denied signing.

In **CAPITAL HOTELS PLC & ORS v. ABDULLAHI (2020) LPELR-52315 (CA)**
*"...a Court is allowed to examine signature and arrive at a finding. See MOBIL PRODUCING (NIG) UNLTD V. HOPE (2016) LPELR -41191(CA) where the Court held as: "By the authoritative decision of the Apex Court in ADENLE v. OLUDE (supra) vis-a-vis the provisions of Section 101 of the Evidence Act (supra), the Court below and indeed any trial Court for that matter, has a duty to take the initiative of making the necessary comparison of signatures in documentary exhibits before it before coming to a reasonable conclusion in the matter.*

In **ISAAC KOLOKO & ANOR V. ALEXANDER ANAYO NKWONTA (2020)LPELR-52195(CA),** the Court held that Section 108 of the Evidence Act (which is now Section 101 of the Evidence Act, 2011), requires the Court to compare signatures on a document admitted or proved to the satisfaction of the Court to have been made by that person, and that while it is correct that the trial Court is entitled to make use of the documents in the case file in order to arrive at a just decision, it has to be remembered that a Court is not a knight errant marauding all over the place in a quest for chivalric virtues.

On this same issue, in **EZECHUKWU & ANOR v. ONWUKA (20050 LPELR-6115 (CA),** the Court postulated thus:
*"In respect of the comparison made by the learned trial Judge, it is now settled that where there is a dispute as to signature, the duty of a Court is to compare the same. There is statutory provision for this in Sections 108(1) of the Evidence Act. See also the case of Adenle v. Olude*

*(2002) 18 NWLR (Pt. 799) 413 @ 430 C. A." **Per IKECHI FRANCIS OGBUAGU, JCA (Pp 80 - 80 Paras C - E)***

A cursory look at exhibits C1 and C2 reveals some salient facts, viz:

- The Defendant acknowledged receipt of N500,000;
- The Defendant authorized payment of the sum into his wife's account domiciled in Fidelity bank;
- The signature beside the acknowledgment and authorization are the same;
- The signature against the transfer and cash is different from the other two signatures and the ink colour is darker than the one used in the entire acknowledgement page.

The inference the Court can draw from the above is to agree with the Defendant that he did not sign that he 'collected N244,000 by transfer and N256,000 in cash'.

To further worsen the issues, the Claimant in its letter of demand admitted as exhibit C4 alluded to the fact that the entire N500,000 was paid to the Defendant vide the Fidelity bank account of Defendant's wife. This is in sharp contrast with the written acknowledgement tendered by the Claimant as shown in exhibit C1. Meanwhile, the statement of account from the said Fidelity bank of Defendant's wife shows that what was paid in was N244,000. It is marked exhibit D1 a-j.

The oral evidence of the Claimant's two witnesses also lent credence to their contradictory documentary evidence. At all material times, the oral and documentary evidence of the Defendant is to the effect that what he got was N244,000 which he has fully repaid.

It is settled that a Court faced with two conflicting pieces of evidence, without explanation of the conflict is bound to reject both pieces of evidence- **UDE V. NWARA (1993)2 NWLR (PT.278)638.** A party cannot blow hot and cold. He cannot affirm at one time and at another time deny what he affirmed previously. He cannot approbate and reprobate. In **ONAFOWOKAN V. STATE (1987)3 NWLR (Pt.61) 538 at 553** the erudite jurist Oputa JSC, faced with two conflicting pieces of evidence likened the situation to a sculpture of Madona with a child and said one cannot separate one from the other without destroying the entire sculpture. The Court cannot pick and choose which of the two conflicting pieces of evidence to ascribe probative value to and which one to discredit. D).

The burden of proof as was re-echoed earlier in this judgement rests squarely on the Claimant who would fail if no evidence were called at all on the other side. It is when the Claimant has discharged the burden placed on her that the evidential burden will shift to the Defendant. In the instant case, the Claimant has not done a good job of discharging that burden. It is he who asserts and not he who denies, that proves.

The law is also settled that the Claimant will succeed on the strength of its case alone and not coast on the weakness of the defense.

I shall pause at this point to pay attention to the contention of the defense Counsel. The Defendant in its reply on points of law contends that the Claimant charged an interest which contravenes Section 11 of the Money Lenders Law, CAP 87, Laws of Rivers State, 1999. It is apposite to state that the Court takes a voyages into the Money Lenders' Law.

**Section 31 of the Moneylenders Law CAP 87 VOL 4, Laws of Rivers State, 1999** provides thus: *Moneylender includes every person whose business is that of money lending or who carries on or advertises or announces himself or holds himself out in any way as carrying on that business, whether or not he also possesses or owns property or money derived from sources other than the lending of money and whether or not he carries on the businesses as a principal or as an agent; but shall not include –*

*a. any society registered under the Co-operative Societies Law; or*
*b. anybody Corporate, incorporated or empowered by special Law or law of legislature to lend money in accordance with such Law or law of legislature; or*
*c. any person bona fide carrying on the business of banking or insurance or bona fide carrying on any business, not having for its primary object the lending of money, in the course of which and for the purposes whereof he lends money, or*
*d. any person or body corporate exempted from the provisions of this Law by order of the Commissioner; or*
*e. any pawn broker licensed under the Pawn Brokers' Law where the loan is made in accordance with the provisions of the Pawn Brokers' Law and does not exceed the sum of four thousand naira.*

A glean of exhibit C6 shows that it is a certificate of registration made pursuant to Section 5 of the Nigerian Co-operative Societies Decree No 90 (now an Act of 2004). A careful reading of Section 31 of the Money Lenders' Law cited above, particularly paragraph a show that the Claimant is covered and not caught up by the Money Lenders' Law.

In plain terms, the Money Lenders Law does not govern the Claimant.

The claim for loan is the principal relief in this suit.

The Court of Appeal postulated in **FBN PLC v. BIATEMP VENTURES LTD & ANOR (2026) LPELR-83186 (CA),** that:
*"Now, the law is firmly settled that where a principal relief fails, any relief ancillary, consequential or derivative thereof must also fail. In other words where the principal relief fails, any ancillary relief, no matter how attractively framed, must equally fail. This principle is rooted in logic, fairness and legal coherence: One cannot reap compensation for a wrong which the Court has found not to exist."* **Per ADEBUKUNOLA ADEOTI IBIRONKE BANJOKO, JCA (Pp 37 - 37 Paras A - B)**

It follows therefore that where the principal relief fails, it will amount to an academic exercise to embark on adjudication of the ancillary relief which gets life from the substantive relief.

From the totality of what is placed before me, I find that the Claimant having failed to lead credible evidence in proof of its claims, it fails and is dismissed with no order as to cost. I so hold.

**ISSUE II- Whether the counterclaim has merit.**

In **IBE & ANOR v. IBE (2024) LPELR-80164 (SC)**, the apex Court posited thus:
*"Invariably, the term counterclaim denotes a claim for relief asserted against an opposing party consequent upon an original claim. Most especially, a counter claim filed by the Defendant in opposition to, or as a set-off against the Plaintiff's claim. See BLACK'S LAW DICTIONARY, 11th edition (2019) @441. A counterclaim is fundamentally a separate and independent action (suit). It is a trite fundamental principle, that a claim as an independent action, does not have to even relate to the Plaintiff, or arise out of the same transaction. See EFFIOM VS. IRONBAR (2000) 11 NWLR (pt. 678) 344 @ 347. By virtue of the very special nature thereof, a counter claim is not merely a deference to the Plaintiff's claim, but rather it's substantially a cross-action.*
The Court went further to state in **EGWU & ANOR v. ANUMENE (2024) LPELR-79935(SC),** thus:

*"I need not iterate that a counter-claim is a distinct claim and stands on its own as a claim. Thus, where there is a counter-claim, the defendant who has counter-claimed stands as a plaintiff while the plaintiff in the original claim becomes a defendant in respect of the counter-claim."*
Simply put, the burden of proof is on the counter-Claimant.

The Counter-claimant claims the sum of N120,000 as fee for solicitor.

The law is settled that a claim for solicitor's fee is in the realm of special damages and must be strictly proved. I have travelled the length and breadth of the evidence led and no scintilla of evidence was led in proof of that claim. At best, the deduction the Court can draw is that, the counter-claimant for want of reliefs, used it as a mere decoration of FORM RSSC5.

The law as laid down is that where no evidence is led in proof of a relief, it is deemed abandoned. I find and so hold.

The counter claim fails and is dismissed with no order as to cost.

SIGNED
ANUGBUM, OBIARERI. N, ESQ
CHIEF MAGISTRATE I
SMALL CLAIMS COURT IV

29th April, 2026.

THE JUDICIARY
SIGN...
DATE: 4/6/2026
SMALL CLAIMS COURT, PH