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

SUIT NO: PMC/SCC/190/2025

BETWEEN

DOMINANT-TREASURE PORT HARCOURT MULTIPURPOSE COOPERATIVE SOCIETY LIMITED — **CLAIMANT**

AND

MR. LEE PRINCE KABOLOOBARI — **DEFENDANT**

PARTIES: Claimant present, rep. by Claimant's Sales Rep/Chairman, Nadum Nekabari. Defendant absent.

APPEARANCES: Nadum Nekabari appears for the Claimant. No legal representation for the Defendant.

JUDGMENT

The Claimant brought this action via an Ordinary Summons against the Defendant on the 25th day of April, 2025, claiming the reliefs below:

Debt/Amount Claimed - N4,500,000.00 (Four Million Five Hundred Thousand Naira) for the loan sum and accrued interest
Court Fees - N300,000.00 (Three Hundred Thousand Naira
Costs - N200,000.00 (Two 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 on the Defendant personally on the 23/05/2025. The Affidavit of Service is also before the Court. The Defendant was absent and not represented in court on the 15/09/2025 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 taken.

Mr. Nadum Nekabari, the Manager of the Claimant, testified under oath on the said date of 15/09/2025 as CW1 and tendered Eight (8) Exhibits, admitted and marked as follows: The Dominant Treasure Port Harcourt Multipurpose Cooperative Society Membership Form in the name of Mr. Lee KabolooBari Prince, with the date of 12/07/2023, as Exhibit A; The Application Letter by Lee KabolooBari Prince for the said loan dated 10/07/2023 as Exhibit A1; The Guarantor/ Eligibility Form with the judiciary stamp date of 03/08/2023 as Exhibit A2; The Offer Letter of Loan with Reference Number DTL 000101, dated 11/01/2024 and signed by the parties as Exhibit A3; The Loan Agreement with the judiciary stamp date of 25/04/2025 as Exhibit A4; The First letter regarding default dated 15th March, 2024 as Exhibit A5; The 2nd letter regarding default dated 16th April, 2024 as Exhibit A6; The 3rd letter regarding default, dated 16/05/2025 as Exhibit A7.

The unchallenged evidence of Nadum Nekabari who testified as the CW1 is that he is the manager and sales representative of the Cooperative, which was founded in 2023 and is into the business of Loan Services. That the Defendant approached the Cooperative for membership and was duly registered in the year 2023 after paying the Five Thousand Naira Membership fee. That months later, the Defendant applied for a loan of N307,500.00 (Three Hundred and Seven Thousand Five Hundred Naira) and he was credited with the said sum on the 14th day of February, 2024 with a reduced interest rate of 1.9 percent per annum. That from that day till date, the Defendant who supposed to be paying the sum of N31,000.00 (Thirty One Thousand Naira) per month for year to cover both the capital and the interest, has refused to pay. That this condition holds when a customer regularly pays the loan according to the agreed terms but when the customer fails to pay, the reduced balance method changes to Compound Interest plus default charges and interest on the default charges which is Twenty Thousand Naira. That all these are contained in the Agreement and Offer letter which the Defendant signed. That upon the failure of the Defendant to pay the said loan sum, they served him with several reminders but all to no avail, which necessitated their claim before the court for the recovery of the sum of N5,000,000.00 (Five Million Naira) before the court. That was his evidence 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 the cross-examination of the CW1 and he was foreclosed from cross-examining the CW1 and the CW1 was discharged and matter adjourned for either definite defence or foreclosure. The Defendant was equally absent in court on the 21/10/2025 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 representative, Mr. Nadum Nekabari informed the court that he does not want to file any address 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 in the sum of N4,500,000.00 (Four Million Five Hundred Thousand Naira), being and as representing the outstanding the indebtedness of the Defendant to the Claimant for the Loan 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 Exhibits A5, A6 and A7, written by the Claimant to the Defendant, demanding for the immediate payment for the money owed, showing that a formal demand for the money 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 total loan sum of N307,500.00 (Three Hundred and Seven Thousand Five Hundred Naira) was taken by the Defendant from the Claimant as evidenced on Exhibit A3 (The Loan Offer letter). I have taken a careful look at all the Exhibits before the court and especially Exhibits A3 and A4 (The Loan Offer letter and the Loan Agreement), which the CW1 testified to as being the binding document or agreement between the parties and I can not see where it is written or documented that upon the failure to pay the loan regularly, that the reduced balance method of 1.9 percent changes to Compound Interest plus default charges and interest on the default charges, which is Twenty Thousand Naira, as testified by the CW1. On Exhibit A3, I can see the lender is stated to be the Claimant; type of facility being a personal loan; Facility Amount to be N300,000.00; Repayment frequency as monthly, Interest rank as 33% per annum; Tenor to be 12 months and processing fees is stated to be N7,500.00 (Seven Thousand Five Hundred Naira) which is stated to be deductible as processing fee upon the approval of the loan. I have equally gone through Exhibit A4, the Loan Agreement and apart from the explanation and interpretation of some of the terms used in the Loan Agreement, did not also see any discussion about Compound Interest, as testified by the CW1. 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. The Claimant (CW1) was not able to prove or substantiate his claim as regards the interest on the Loan sum and the Compound Interest and the law is loud on the fact that Courts exist to do substantial justice to parties before it and works 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"

Similarly, the CW1 who testified and presented himself as someone who does loan business, did not tender the Money Lenders License and therefore in breach of Section 2 (1) & 3 (b) of the Money Lender's Law CAP 87, Laws of Rivers State of Nigeria, 1999, which means the Claimant is carrying on its money lending business in violation of the law. However, the law is trite that a person who has taken benefit from a contract can not resile from his obligation on the premise that the contract is illegal. See MAX BLOSSOM LTD V. VICTOR & ORS (2019) LPELR-47090 (CA). See also the case of MTN NIGERIA COMMUNICATION LIMITED V. CORPORATE COMMUNICATION INVESTMENT LIMITED (2019) LPELR-47042 (SC). It therefore follows that the Defendant, having taken benefit of the loan that was given to him, has a moral duty to perform his own side of the bargain by paying back to the Claimant the said sum of N300,000.00 (Three Hundred Thousand Naira), 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 said sum of N300,000.00 (Three Hundred Thousand Naira) only, being the outstanding sum owed the Claimant by the Defendant and I so hold.

Accordingly, it is hereby ordered that;

The Defendant shall pay the Claimant the sum of N300,000.00 (Three Hundred Thousand Naira) only, being the outstanding sum owed the Claimant by the Defendant.

The Defendant shall pay post judgment interest of 1.9% on the judgment sum per month commencing from the month of this judgment until the judgment sum is liquidated.

Cost of N50,000.00 (Fifty 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

Mitee

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

THE JUDICIARY
SIGN
DATE 18/11/2025
SMALL CLAIMS COURT, PH