

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

**CLAIM NO: PMC/SCC/562/2025**

**BETWEEN**

**ZIGBE NIG. LTD.**

**CLAIMANT**

**AND**

**1.KENNETH UGWOKE IKECHUKWU**

**2.ATURUOBI CYPRAIN ECHEFULACHI...**

**DEFENDANTS**

*(Trading under the name and style of Skywave Information Technology)*

Parties- Paul Edeh the Manager, represents the Claimant.

Appearances- O.C. Udensi appears for the Claimant.

**JUDGEMENT**

The Claimant in its FORM RSSC 2 filed the 09/09/2025 is praying the Court for the following:

1. The sum of N500,000.00 only, being the outstanding principal sum;
2. The sum of N264,000 being the outstanding interest;
3. 7% monthly pre-judgement interest on the principal sum of N500,000, and 10% post judgement interest on the judgement sum, until fully liquidated;
4. The sum of N300,000 as costs; and
5. The sum of N1,000,000.00 as general damages.

As shown on the affidavit of service, the Defendants were served. O.C. Udensi the Claimant's counsel, entered a plea of not liable on behalf of the Defendants on the 18/09/2025 and the matter was set down for hearing.

Claimant opened its case on the 13/10/2025, called in one witness, tendered six exhibits and closed its case on the 27/10/2025.

The Claimant relinquished its right to file a final written address, urging the Court to enter judgement as per their evidence.

The Defendants did not defend.

**THE CLAIM**

The CWI Edeh, Nnabuike Paul, the Claimant's manager vide its written deposition filed 09/09/2025, stated that: the Claimant is a licensed money lender who assist small and medium scale businesses with loans to be repaid with interests; the 1<sup>st</sup> Defendant on the 18/03/2024 signed a loan contract and borrowed the sum of N500,000 from the Claimant, at an agreed rate of 7% per month; the loan was disbursed on the 12/04/2024; the 2<sup>nd</sup> Defendant guaranteed the 1<sup>st</sup> Defendant; the parties in writing, agreed that as part of the terms, the loan will be for five months which is between 12/05-12/09/2024; the 7% interest is N35,000 monthly; parties agreed that the 1<sup>st</sup> Defendant shall pay to the Claimant the sum of N35,000 monthly; that from the date of disbursement to the date of filing of this suit is 17 months; that the cumulative interest of 7% is N595,000; all that the 1<sup>st</sup> Defendant has paid is N331,000 only; the Claimant has on several occasions, made a demand visit with its staff to the Defendants and appealed for repayment; the Claimant upon Defendants refusal to pay, caused its lawyer to issue letters of demand to the Defendants and same was done on the 24/06/2025; upon refusal to pay, the Claimant engaged its lawyer and incurred the sum of N300,000 as prosecution of this suit; the Defendants' holding unto the Claimant's business money has hampered Claimant's business as its customers cannot access its loan.

The Claimant urged the Court to grant its reliefs.

### EVALUATION/DECISION

This Court has formulated a lone issue for determination, to wit: *Whether the Claimant has discharged the burden placed on it.*

Civil cases are determined on preponderance of evidence with the imaginary scale tilting in favour of the party with the more credible evidence.

"The person who would lose the case if on completion of pleadings and no evidence is led has the general burden of proof." – **ARO V ARO (2000) 1 NWLR (PART 649) 443.**

*"It is elementary law that a party who wants judgment to be entered in his favour must establish his claims by cogent and verifiable evidence."* – Per Muslim Sule Hassan, JCA in **MR. JULIUS OKE V. MR. EZEKIEL JAMI BUNA & ANOR (2024-11) Legalpedia 67715 (CA).**

The Claimant by this suit, is contending that the Defendant breached their contract as he has failed to fully liquidate the loan advanced.

In the case of **FIC CONSTRUCTION LTD. V. NDIC (2013) 13 NWLR PT.1371 p.390 @ 406 - 407**, the court explicated that a contract is an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law. That it is a promise or a set of promises the breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty. Parties must reach a consensus "ad idem" for a contract to be regarded as binding and enforceable. The two or more minds of the parties must

meet at the same point, event or incident. The meeting of the minds of the contracting parties is the most crucial and overriding factor or determinant in the law of contract.

Going further, in the case of **BEST (NIG.) LTD VS. BH (NIG.) LTD. (2011) 5 NWLR Pt.1329 P.95 @ 127**, the Supreme Court defined a contractual relationship to mean a legally binding agreement between two or more persons by which rights are acquired by one party in return for acts or forbearances on the part of the other. It is a bilateral affair which requires the 'ad idem' of the parties. See the following decisions on the point: **ORIENT BANK (NIG.) PLC. V. BILANTE INT'L LTD. (1997) 8 NWLR PT.515 P.37 AND S.G.B. (NIG.) LTD. V. SAFA STEEL AND CHEMICAL MANUFACTURING LTD. (1998) 5 NWLR PT.548 P.168.**

In determining whether an enforceable contract has been formed, certain factors are to be considered. For a contract to be validly formed or entered into, there must be: (i) Offer (ii) Acceptance (iii) Consideration (iv) Intention to create legal relationship, and (v) Capacity to enter into contract. All the five (5) elements or ingredients enumerated supra must be satisfied before there can be a valid contract in law. A contract cannot be legally entered into if any of these elements or ingredients is not satisfied or fulfilled- **PTF V. UWAMU (2001) 5 NWLR PT.705 P.112.**

The formation of contract is therefore governed by the making of an offer by the offeror and the acceptance of same by the offeree. The offer and the acceptance constitute an agreement of the two parties as "consensus ad idem", that is, the intention of both parties are same. Therefore, for a contract to be valid in law, there must be an offer and an acceptance. An acceptance of an offer may be in writing, by conduct or by other means agreed to or acceptable to the parties. See **JOHNSON WAX (NIG.) LTD. VS. SANNI (2010) 3 NWLR PT. 2010 p. 235 @ 245.**

From a careful analysis of the evidence before this Court, the Court is not in doubt that the elements of a valid contract are present and active in the instant sit.

The grouse of the Claimant is that the Defendants breached exhibits C1 and C2.

In resolving the sole issue before this Court, the reliefs of the Claimant shall be dealt with, seriatim.

Reliefs One deals with 'The sum of N500,000.00 only, being the outstanding principal sum, while two deals with 'The sum of N264,000 being the outstanding interest'.

In proof, the Claimant tendered and the Court admitted exhibits C1 and C2. Exhibit C1 is the loan form and entrenched therein are terms as agreed upon, by parties. It constitutes the binding contract between the Claimant and 1<sup>st</sup> Defendant. Exhibit C2 is the form signed by the guarantor, which constitutes another limb of the contract between the Claimant and 2<sup>nd</sup> Defendant. A cursory look at those documents shows that, the parties agreed that the loan sum

was for N500,000 on an interest rate of 7% monthly and the 1<sup>st</sup> Defendant is to remit the sum of N35,000 monthly. That is the agreement of parties reduced into writing.

The law of contract is well settled that given the sanctity of contract, parties are bound by their contract- **MR. ENIWOMAKE RICAHRD OVIVIE V. DELTA STEEL COMPANY LIMITED (2023-03) Legalpedia 79126 (SC).**

It follows therefore, that this Court like any other Court, cannot rewrite the contract of parties but must give effect to it- **OWIGS AND OBIGS NIGERIA LIMITED v. ZENITH BANK PLC (2020) LPELR-50702 (CA).**

Has the 1<sup>st</sup> Defendant breached the contract? The answer to the mind of the Court is in the affirmative. This is because, from the evidence placed before this Court, all that the 1<sup>st</sup> Defendant has paid is the sum of N331,000, contrary to the terms of the agreement entered into by parties.

The law is that, the Claimant shall succeed only on the strength of its case and not coast on the weakness of the defense.

Money lending in our state is governed by laws amongst which is the Money Lenders Law CAP 87, VOL IV Laws of Rivers State of Nigeria, 1999.

Section 11 of the Money Lenders Law CAP 87, VOL IV Laws of Rivers State of Nigeria, 1999 pegs the interest rate at 15% per annum for the first One Hundred thousand naira and 12<sup>1/2</sup>% per annum on any amount in excess of one hundred thousand naira on loans secured by a charge on any freehold property.

Section 11(2) of the Law states that if several sums are loaned to the same person, whether at the same or different times, the rate of interest shall be the same.

Section 13 thereof prohibits compound interest.

In the case of **CHIEF CHRIS NWANKWO V. CHIEF ARTHUR NZERIBE (2004) 13 NWLR (PT.890) 422**, His Lordship, Akintan JCA (as he was) at 434 of the report restated the law, beyond argument inter alia:

*"The position of the law is that a loan transaction which shows that an offence has been committed against Section 114(1) of the Money Lender's Law by charging unauthorized interest is an illegal contract and one which the Courts will not enforce." See - FASHINA V. ODEDINA (1957) 11 ER NLR 45."*

In **FASEL SERVICES LIMITED & ANOR V NIGERIAN PORTS AUTHORITY & ANOR (2009) 9 NWLR (PT. 1146) 400 S.C.**, the Supreme Court in differentiating between illegal contract and void contract held inter alia that: *'...The position of the law is that where a statute declares a contract or transaction between parties not only void but also imposes a penalty for violation, that contract or transaction is illegal ab initio. However where the legal sanction is merely to prevent abuse or fraud and no penalty is imposed for the violation of the*

*provision of the statute, the violation is merely voidable and not illegal... .* See **SOLANKE V. ABED (1962) 1 ALL WLR 230 41 (2008) 3 NWLR (PT.1074) SC.363.**

Again, the apex Court, **Per Achike JSC in PAN BISBILDER (NIGERIA) LTD. V. FIRST BANK OF NIGERIA LTD (2000) 1 N.W.L.R. (Pt. 642) 684 at 693** opined that '*...contracts which are prohibited by statute or at common law, coupled with provisions for sanction (such as fine or imprisonment) in the event of its contravention, are said to be illegal... .*'

The apex Court, in drawing a clear distinction between contracts that are merely declared void and those declared illegal in **Pan Bisbilder (Nigeria) Ltd v FBN Ltd. supra** laid down the test for determining when a contract is merely void and when it is illegal as follows: '*...[i]f the provisions of the law require certain formalities to be performed as conditions precedent for the validity of the transaction without however imposing any penalty for non-compliance, the result of failure to comply with the formalities merely renders the transaction void, but if a penalty is imposed, the transaction is not only void but illegal, unless the circumstances are such that the provisions of the statute stipulate otherwise... .*'

It is germane for the purpose of clarity to reproduce Section 12 of the Money Lenders Law *op.cit.* which provides:

*Any person who loans money at a rate of interest higher than that authorised by the Law shall be liable on conviction to a penalty of ten thousand naira in respect of each such loan.*

From the plethora of authorities relied on, it is glaring even to the blind that Exhibits C1 & 2 are illegal contracts. This is because, the Money Lenders Law in Section 12 prohibits charging an interest higher than what is stipulated and went as far as prescribing punishment for default. The Claimant's interest is 7% monthly, which is way beyond what is allowed by Law.

The law generally speaking is that, the instant loan agreement being illegal, is unenforceable- **RIVWAY LINES LTD. V RHEIN MAS LIND SEE (1993) 7 NWLR (PT 308) 692 @ 711.** The Claimant can only be entitled to the relief he seeks if he shows the Court that he is not *in pari delicto* with the Defendant. There is no evidence before the Court showing that the Claimant did not know that the contract he entered into with the Defendant is illegal. Meanwhile, parties have benefited from the illegal contract. This contract is *ex facie* illegal and the intention of parties to be bound by exhibits C2 & 3 is immaterial as neither of them can derive any right or interest from it. The rule is that Courts will not enforce illegal contracts- **ACB LTD v ALAO (1994) 7NWLR (PT 621) CA.**

However, by the equitable principle of *ubi jus, ibi remedium*, the 1<sup>st</sup> Defendant has benefited from the contract and it will be unconscionable to deny the Claimant its money.

The sum advanced by the Claimant is N500,000, out of which the 1<sup>st</sup> Defendant has paid N331,000. All that the Claimant is entitled to, is less the total sum advanced. I find and so hold.

The 3<sup>rd</sup> relief sought is '*7% monthly pre-judgement interest on the principal sum of N500,000, and 10% post judgement interest on the judgement sum, until fully liquidated*'

Pre-judgment interest includes interest agreed to or by agreement of the parties or established and recognized by trade custom or practice. See **VEEPEE IND. V. COCOA IND. LTD (2008) 4-5 SC (Pt. I) 116.**

In the instant case, there is no evidence by the Claimant that the parties agreed, by an agreement or trade custom on interest to be paid. On this basis, the claim for Pre-Judgment interest fails.

On the claim for Post Judgment interest, the Law is that post-judgment interest is usually statutory and prescribed by a law or the rules of a Court. See **AFRIBANK NIG. PLC V. AKWARA (2006) 5 NWLR (Pt. 974) 619.** The rules of this Court does not provide for interest on Post Judgment sum and this Court cannot *suo motu* include it in the law to suit the Claimant, hence the claim fails. The instant claim fails in its entirety and I so hold.

The 4<sup>th</sup> relief deals with '*The sum of N300,000 as costs*'

In proof of this relief, the Claimant led evidence that they hired the services of a legal practitioner and incurred expenses. Claimant relied on exhibit C5 which is the receipt issued by the Counsel. The law is that cost of litigation is a specie of special damages and requires strict proof as it is not granted just for the asking. **NIGERIAN DYNAMIC LTD. V. AGUOCHA (2002) FWLR (Pt. 104) 630 @ p. 658.**"

The Court finds that the Claimant has led sufficient proof with respect to this relief. I so hold.

The last relief sought by the Claimant is '*The sum of N1,000,000.00 as general damages*'.

General damages are damages which the law implies or presumes to have accrued from the wrong complained of or as the immediate, direct and proximate result of or the necessary result of the wrong complained of. See **CONSOLIDATED BREWERIES PLC. V. AISOWIEREN (2001) 15 NWLR (Pt. 736) 424.** The claim for general damages is an ancillary relief which gets life from the substantive relief. In the instant case, I have earlier in this judgment held that the Claimant has proven its entitlement to part of its relief which is the main substance of this suit. Can it then in the circumstance be said that the general damages which the law implies or presumes to have accrued from the wrong complained of or as the immediate, direct and proximate result of or the necessary result of the wrong complained of has accrued? I think so. I therefore find that the instant relief succeeds and I so hold.

The Defendants despite being aware of the pendency of the instant suit, neither showed up, nor represented in a manner authorized by law.

It is a settled principle of law that an unchallenged evidence is deemed admitted and the Court is enjoined to act on it. This principle was re-echoed by the apex Court in **GEOFFREY OFOZOBA IJOMAH V. OFOMA MOLOKWU (2025-03) LEGALPEDIA 51694 (SC)** held thus:

*"The law is settled by unending case law that evidence not challenged or denied, if credible must be accepted and acted upon as establishing the facts stated therein." – Per Emmanuel Akomaye Agim, J.S.C.*

The evidence to the extent the Claimant has proved its case, is deemed admitted and this Court shall place reliance on same.

Furthermore, the Claimant served on the Defendants, demand letters as in exhibits C3a-c and C4a-c. these letters were not replied to.

In **BEVERLY DEVELOPMENT & REALTIES LTD. VS. TEC ENGINEERING CO. (NIG.) LTD. (2020) LPELR-52023 (CA)**, the Court Per ABIRU, JCA, held as follows: "It is settled law that where a creditor writes letters of demand to a debtor requesting settlement of debt and the amount of the debt is contained in each letter and the debtor does not query the respective figures written in the letters as the debt due, the debtor will be deemed to have impliedly admitted the quoted figures as the amount of debt due."

The loud silence of the Defendants to those letters, are construed by this Court as an admission of its contents. I find and so hold.

To the extent the Claimant has proved its case, judgement be and is accordingly entered for the Claimant. It is consequently ordered that the Defendants jointly and severally pay to the Claimant:

1. The sum of N169,000 (One Hundred and Sixty-Nine Thousand Naira) only;
2. The sum of N300,000 (Three Hundred Thousand Naira) only, as cost;
3. The sum of N500,000 (Five Hundred Thousand Naira) only, as general damages.

These orders are to be complied with, not later than 14 days from the date of this judgement.

SIGNED

ANUGBUM, OBIARERI. N, ESQ.

CHIEF MAGISTRATE I

SMALL CLAIMS COURT III

14<sup>th</sup> November, 2025

