

IN THE MAGISTRATES' COURT OF RIVERS STATE OF NIGERIA  
IN THE PORT HARCOURT MAGISTERIAL DISTRICT  
HOLDEN AT SMALL CLAIMS COURT 2, PORT HARCOURT  
BEFORE HIS WORSHIP COLLINS G. ALI ESQ.,<sup>1</sup> TODAY WEDNESDAY, THE  
2<sup>ND</sup> DAY OF AUGUST, 2023.

SUIT NO.:PMC/SCC/69/2023.

BETWEEN:

NKAMBI JOSEPHINE POSI (MYTIME COOPERATIVE) ----- CLAIMANT

AND

UKACHUKWU REUBEN CHRISTIAN ----- DEFENDANT

Case called.

Parties absent.

JUDGMENT

The Claimant commenced this case against the Defendant on the 13<sup>th</sup> June 2023 and claimed as per the claim attached to the summons as follows:-

- |                               |               |
|-------------------------------|---------------|
| 1. Amount Owed the Claimant - | ₦354,000.00   |
| 2. Fees                       | - ₦100,000.00 |
| 3. Cost                       | - ₦50,000.00  |
| Total                         | = ₦504,000.00 |

The Defendant was served with the summons and claim by substituted means on the 8<sup>th</sup> July 2023, but the Defendant did not appear in Court neither did he file any defence to the claim.

Following the Defendant's non appearance in Court, plea of not liable was entered on his behalf on the 19<sup>th</sup> July 2023 and the case proceeded to trial. The Claimant who is the manager of My Time Cooperative testified as CW1 and the sole witness. The Claimant tendered the Defendant's loan application form signed on 8<sup>th</sup> October 2021 (Exhibit A), Defendant's handwritten application letter dated 21<sup>st</sup> September 2021 (Exhibit B), Nest frost chest freezer purchase receipt dated 18<sup>th</sup> February 2015 (Exhibit C), Defendant and Guarantors' national identity slip (Exhibits D, and D1) and

<sup>1</sup> LL B, LL M, BL, A. IDRI, Chief Magistrate Grade I, and the Presiding Magistrate, Small Claims Court 02, Port Harcourt, Rivers State.

Defendant's repayment calendar (Exhibit E). The CW1 was not cross examined after her oral testimony which implies that the Claimant's case is unchallenged.

The testimony of the CW1 is that the Defendant is a member of their cooperative who collected loan of ₦200,000.00 in October 2021 for the duration of six (6) weeks and he agreed to a weekly repayment of ₦10,000.00 only. The CW1 testified that the Defendant repaid for few weeks and stopped. The CW1 also testified that at the time of filing the case, the Defendant was owing ₦375,000.00.

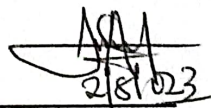
I have looked at the Defendant's loan application form (Exhibit A) signed on the 8<sup>th</sup> October 2021. The content shows that the Defendant was granted ₦200,000.00 loan at 3% interest for 32 weeks (8 months) at a weekly repayment of ₦8,000.00 and not ₦10,000.00 as testified by CW1. It was also agreed that 23% default charge will apply in the case of default payment. By Defendant's repayment chart (Exhibit E), he repaid a total sum of ₦256,000.00 by weekly payment of ₦8,000.00 from 15<sup>th</sup> October 2021 to 20<sup>th</sup> May 2022 when he stopped.

From the tenor of the loan agreement, the ₦200,000.00 with 3% interest per month gives the sum of ₦192,000.00 as interest for the 32 weeks or 8 months. By implication therefore, the Defendant should have repaid a total sum of ₦392,000.00 within the 8 months tenor of the loan; but defaulted in the last five (5) weeks of the loan period and subsequently till the Claimant issued him demand letter and filed this suit on the 13<sup>th</sup> June 2023. A subtraction of ₦256,000.00 from ₦392,000.00 will leave a balance of ₦136,000.00 only as unpaid principal and accrued 3% interest at the expiration of the loan period on the 30<sup>th</sup> June 2022. The CW1 in her testimony on the 26<sup>th</sup> July 2023 told the Court that the Defendant was owing a total sum of ₦375,000.00 as at the time of filing the suit; which presupposes that 23% default charge was added to the outstanding sum of ₦136,000.00 at the expiration of the loan on the 30<sup>th</sup> June 2022. The agreement by the parties on 23% default charge is contrary to law and therefore cannot be enforced by the Court. Eventhough the law is that parties agreed interest rate is enforceable, See *Olalomi v Nig. Ind. Dev. Bank [2009] 7 MJSC 136 at 167 para. A*; the Court cannot enforce an illegal contract.

By the proviso to section 13 (1) Moneylenders Law, parties in a loan contract can agree on default charge of simple interest not exceeding the rate charged on the principal sum. I find that the 23% default charge in the loan contract agreement is excessive and above the 3% agreed on the principal sum which is within what the law allows. I hold that the Claimant is entitled to 3% default charge on the outstanding sum of ₦136,000.00 from 1<sup>st</sup> July 2022 to 31<sup>st</sup> July 2023 and not beyond that.

Judgment is hereby entered for the Claimant as follows:

1. The Defendant is ordered to pay the sum of ₦136,000.00 (One Hundred and Thirty-Six Thousand Naira) only to the Claimant forthwith as outstanding loan and interest as at 30<sup>th</sup> June 2022.
2. The Defendant is ordered to pay the sum of ₦53,040.00 (Fifty-Three Thousand, Forty Naira) only to the Claimant forthwith as default charge from 1<sup>st</sup> July 2022 to 31<sup>st</sup> July 2023.
3. The Defendant is ordered to pay the sum of ₦100,000.00 (One Hundred Thousand Naira) only to the Claimant forthwith as fees.
4. The Defendant is also ordered to pay the sum of ₦50,000.00 (Fifty Thousand Naira) only to the Claimant forthwith as cost.

  
2/8/23

C. G. Ali Esq.  
Chief Magistrate Grade 1  
02/08/2023

**LEGAL REPRESENTATIONS:**

1. P. U. Amadi, Esq. for the Claimant.
2. Defendant not represented.

