

**IN THE MAGISTRATE COURT OF RIVERS STATE OF NIGERIA  
IN THE PORT HARCOURT MAGISTERIAL DIVISION  
HOLDEN AT PORT HARCOURT  
BEFORE HIS WORSHIP NNEKA E. EZE-OBUZOR  
SITTING ON THE 29<sup>TH</sup> DAY OF JANUARY 2025  
AT THE SMALL CLAIMS COURT 4 PORT HARCOURT**

**SUIT NO: PMC/SCC/289/CS/2024**

**BETWEEN**

**JOHNSON EKOWO  
AND  
OKORIE JOY CHIDINMA**

**PARTIES:** Absent

**APPEARANCES:** A.G. Onuoha Esq. for claimant

**JUDGEMENT**

By a summons dated 13/11/2023, the claimant's claim against the defendant are as follows:

1. N2, 450, 000.00 being amount loaned the defendant plus interest of 20%
2. N250, 000.00 as cost of litigation.

## **PLEA**

By the affidavit of service availed this court, the defendant was served the originating process in this suit personally on the 8<sup>th</sup> of November 2024 at 3pm. On the 20<sup>th</sup> of November 2024, a plea of not liable was entered for and on behalf of the absent defendant. Case was adjourned to the 27/11/2024 for hearing

## **SUMMARY OF EVIDENCE**

The claimant in proof of his case called a lone witness, the claimant himself and tendered two exhibits marked Exhibit A and B.

The defendant never appeared to defend this suit hence no evidence was entered for the defendant.

The relevant facts from the case of the claimant as presented by the claimant himself is that he has known the defendant for over 10 years. She sells goods and accessories and one day, on the 31/10/2023 the defendant approached him for a loan. That she told him that she needed a loan of N800, 000.00 but would like to collect the money in bits on different days. That she will pay 20 % of the money given each month. That he granted her request. That on that 31/10/2023, he gave her the sum of N400, 000.00. On the 3/11/2023, she collected N100, 000.00, on the 7/11/2023, she collected N200, 000.00 and on the 1/12/2023 she collected N100, 000.00. That she used her bookshop to secure the loan. That the defendant undertook and reduced it in writing while including her bookshop as security for the loan and that she will pay 20% as interest. That the defendant promised to pay after season business but has failed to do so even after several oral demands. That the defendant has refused to pay both capital and interest. The undertaking entered by the defendant was admitted as Exhibit A1 and A2 while the letter of demand from the small claims court was admitted as Exhibit B. CW1 concluded by informing the court that the defendant is indebted to him to the tune of N2, 450, 000.00 consisting of the principal sum and the interest. Case was adjourned to the 4/12/2024 for cross examination of CW1.

The defendant never appeared either by herself or through a counsel to defend this suit even after service of hearing notice hence she was foreclosed from cross examining the CW1 and from defending this suit.

The claimant on the 18/12/2024 adopted his final written address dated 16/12/2024 and filed 17/12/2024 and case was adjourned for judgment now being read.

In the claimant's written address, two issues were raised for determination to wit:

1. Whether the claimant has proved his case as required by the standard of proof?
2. Whether the claimant is entitled to the reliefs sought in this case?

On Issue one, counsel stated that **SECTION 134 OF THE EVIDENCE ACT 2011** provides that the standard of proof in civil cases shall be discharged on the balance of probabilities. Counsel highlighted that the CW1 has given his evidence as already summarized and tendered Exhibits A1 and A2 and exhibit B in proof of same and thereafter, the defendant due to her absence, was foreclosed from cross examining the claimant. That by **SECTION 133 (2) OF THE EVIDENCE ACT 2011**, the burden of proof shifts from the claimant to the defendant. That the law is that evidence not challenged nor controverted is deemed admitted by the opposing party. Counsel cited the case of **OKESUJI VS LAWAL (1992) 2 NWLR (222)233**. That the defendant had every opportunity to challenge the evidence of the claimant but refused hence the entire evidence of the claimant is deemed true hence the claimant has met the standard of proof as required in civil cases and answers the question on issue one in the affirmative..

On issue two, counsel affirmed that since the first issue is answered in the affirmative, the claimant is entitled to the reliefs sought. Also stating that litigation is expensive ranging from filling, services through the bailiff and appearance fees of lawyer and other miscellaneous expenses. Counsel concluded by urging the court to grant his reliefs.

## **RESOLVE**

In determination of this suit, I will adopt a lone issue to wit.

### ***Whether the claimant has proved his case to be entitled to judgement***

The failure of the defendant to make an appearance means that the entire evidence adduced by the claimant is unchallenged. The law is trite that a Court is at liberty to accept and act on unchallenged and uncontroverted evidence. See the case of **OFORLETE V. STATE (2000) 12 NWLR (PT. 681)415**. The court in the

case of **ADELEKE V. IYANDA (2001) 13 NWLR PART 729 PAGE 1 AT 23-24 PARA H-A** held that where the claimant has adduced admissible evidence which is satisfactory in the context of the case, and none available from the defendant, the case will be decided upon a minimum of proof as this makes the burden lighter.

From the case file, the claimant has complied with the provisions of **ARTICLE 2 AND 3 OF THE RIVERS STATE SMALL CLAIMS COURT PRACTICE DIRECTION 2024** for the fact that this is a liquidated money demand not exceeding Five million (N5M), the defendant was served with a demand letter, there is a complaint form, there is an affidavit of service of the summons of court on the defendant.

On the first claim of the claimant, by way of evidence, the claimant has tendered the undertaking by the defendant which was admitted as Exhibit A1 and A2. In **BABATUNDE & ANOR VS. BANK OF THE NORTH LTD & ORS (2011) LPELR-8249 (SC)** the Supreme Court per Adekeye, JSC stated this principle thus: "The law is that written contract agreement freely entered into by the parties is binding on them. A Court of law is equally bound by the terms of any written contract entered into by the parties. Per Exhibit A, the first claim of the claimant succeeds.

On the second claim of N250, 000.00 as cost of litigation. Cost follows the event and a successful party is entitled to the cost of prosecuting or defending the action either wholly or partly unless he misconducts himself in such a manner that deprives him of such an award. See the case of **UBANI-UKOMA VS. SEVEN-UP BOTTLING CO. & ANOR (2022) LPELR-58497 (SC)**. Accordingly, cost of N250, 000.00 is awarded in favour of the claimant.

In conclusion, judgement is entered for the claimant as follows:

1. The defendant is ordered to pay the claimant the sum of N2, 450, 000.00 being the loan amount and interest.
2. The defendant is ordered to pay the claimant the sum of N250, 000.00 as cost.