

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  
8<sup>TH</sup> DAY OF NOVEMBER, 2023.

SUIT NO.: PMC/SCC/167/2023.

BETWEEN:

TORUYOUEI EBITIMI GOWON

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CLAIMANT

AND

SAPERE GIDEON OBINNA

DEFENDANT

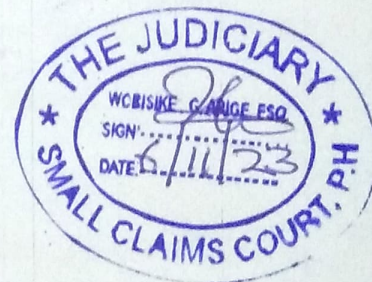
Case called.

Parties absent

JUDGMENT

The Claimant commenced this suit against the Defendant on the 19<sup>th</sup> day of September, 2023 after serving mandatory demand letter on the Defendant and claims as per her claim attached to the summons as follows:

1. Debt / Amount Claimed	- ₦593,000.00
2. Fees	- ₦197,000.00
3. Cost	- ₦79,000.00
<b>TOTAL</b>	- <u>₦869,000.00</u>



Following the filing of the claim on the 19<sup>th</sup> day of September, 2023, summons was issued for service on the Defendant alongside the claim. The Defendant was served with the originating processes by substituted means on the 9<sup>th</sup> day of October, 2023 in compliance with the substituted service Order made by this Honourable Court on the 4<sup>th</sup> day of October, 2023.

The Defendant failed to appear in Court despite been served with summons and the claim. On the 11<sup>th</sup> day of October, 2023 plea of not liable was entered for the Defendant and the case adjourned for trial. When the case came up for trial on the 25<sup>th</sup> day of October, 2023, the Defendant failed to appear in Court and the Claimant therefore proceeded to prove her case. The Claimant, Toruyouyei Ebitimi

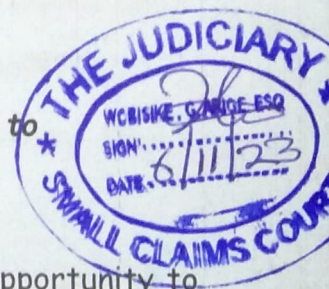
<sup>1</sup> LL B, LL M, BL, A. IDRI, Chief Magistrate Grade I, and the Presiding Magistrate, Small Claims Court 02, Port Harcourt, Rivers State.

Gowon testified as CW1 and tendered demand letter dated 30<sup>th</sup> August, 2023 as Exhibit A and her Access Bank Plc Statement of Account for 25<sup>th</sup> April 2023 to 6<sup>th</sup> May 2023 as Exhibit B. The CW1 was not cross examined by the Defendant who refused to appear in Court despite been served with summons and claim on the 9<sup>th</sup> day of October, 2023. The Defendant was foreclosed from cross examination and defence at the close of trial and the case adjourned for judgment.

The testimony of the CW1 is that she borrowed a total sum of ₦593,000.00 to the Defendant who got a Community town hall building project and requested for the loan from her and promised to pay back a total of ₦790,000.00 which is the principal and interest. The CW1 testified that the Defendant promised to repay the money on or before the end of July 2023 but every attempt to get the Defendant to repay the loan failed as the Defendant kept posting and tossing her around until recently when she called him and he replied that he has gone back to the USA. The CW1 testified that the first money given to the Defendant was ₦100,000.00 through POS in April, 2023 but that she insisted on transfer in the subsequent money given to the Defendant and that all the money given to the Defendant are in her statement of account (Exhibit A). The CW1 testified that the Defendant was served with demand letter by her lawyer and prayed the Court to grant her claims.

After a careful perusal of the claim of the Claimant and the evidence before the Court, the sole issue for determination is thus:

*Whether the Claimant has proved her case to be entitled to the relief sought?*

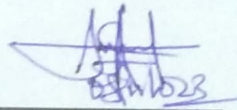


The Defendant did not appear in Court and therefore lost the opportunity to cross examine the CW1 and defend the claim. The implication of the failure of the Defendant to cross examine the CW1 and defend the claim is that the evidence of the Claimant is unchallenged and deemed admitted. The law is now settled that unchallenged evidence is deemed admitted and the Courts are enjoined to accept and act on such unchallenged evidence. See the case of *Owners of M/V Gongola Hope & Anor. v Smurfit Cases (Nig) Ltd & Anor. [2007] LPELR-2849 (SC)*. I accept the unchallenged evidence of the Claimant as truth. The unchallenged evidence before

the Court is that the Claimant gave a friendly loan of ₦593,000.00 to the Defendant on the agreement that the Defendant would repay the sum of ₦790,000.00 which the Defendant failed to redeem despite repeated demands. When the Defendant failed to repay the loan, the Claimant through her lawyer served him a demand letter (Exhibit A) before filing this suit. The law is 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 the debt has been made. See *Akinsola & Anor. v Eyinnaya* [2022] LCN/16153 (CA). A friendly loan is not a gift but a loan from a friend to a friend which makes no room for usury or interest or penalty. It connotes a lifeline thrown by a friend to a friend to bail him out of trouble and does not contemplate profiting from the gesture financially. See the cases of *Champion Breweries Plc v Specialty Link Ltd & Anor.* [2014] LPELR-23621 (CA) and *FBN v I.A.S Cargo Airline Nig. Ltd.* [2011] LPELR-9827 (CA). I hold that the Claimant has proved her case and is entitled to the reliefs sought. The lone issue is resolved in favour of the Claimant.

Judgment is hereby entered for the Claimant as follows:

1. The Defendant is ordered to pay the sum of ₦593,000.00 (Five Hundred and Ninety-Three Thousand Naira) only as unpaid debt to the Claimant forthwith.
2. The Defendant is ordered to pay the sum of ₦197,000.00 (One Hundred and Ninety-Seven Thousand Naira) only as fees to the Claimant forthwith.
3. The Defendant is also ordered to pay the sum of ₦79,000.00 (Seventy-Nine Thousand Naira) only as cost to the Claimant forthwith.



C. G. Ali, Esq.  
Chief Magistrate Grade 1  
08/11/2023

LEGAL REPRESENTATIONS:

1. A. A. Wejinya, Esq. for the Claimant.
2. Defendant not represented.

