

IN THE MAGISTRATES' COURT OF RIVERS STATE OF NIGERIA

IN THE PORT HARCOURT MAGISTERIAL DISTRICT

HOLDEN AT SMALL CLAIMS COURT 1, PORT HARCOURT

BEFORE HIS WORSHIP COLLINS G. ALI, ESQ.,¹ TODAY TUESDAY, THE 20TH

DAY OF FEBRUARY, 2024.

SUIT NO.:PMC/SCC/01/2024.

BETWEEN:

BLESSING WILBERFORCE

CLAIMANT

AND

MR. ECHEDIKE KINIKANWO KINGSLEY

DEFENDANT

Case called.

Parties absent.

JUDGMENT

The Claimant commenced this suit against the Defendant on the 9th January, 2024 after serving the Defendant with mandatory demand letter on the 18th December, 2023. By the Claimant's complaint form and the summons issued on the 9th January, 2024; the Claimant claims against the Defendant as follows:-

Debt/Amount Claimed	-	<u>₦3,000,000.00</u>
Fees	-	<u>₦1,875,000.00</u>
Costs	-	<u>₦125,000.00</u>
TOTAL	=	<u>₦5,000,000.00</u>

The originating processes were served on the Defendant on the 26th January, 2024 following the Order of this Honourable Court for substituted service granted on the 17th January, 2024. The Defendant failed to appear in Court despite been served, thereby leading to the entry of plea of not liable on his behalf on the 31st January, 2024; and the case adjourned for trial.

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

The Claimant testified in proof of her claim as CW1 and tendered four (4) documents which were received in evidence as exhibit and marked Exhibits A², B³, C⁴ and D⁵ respectively. The Defendant did not appear in Court to cross examine the Claimant nor defend the suit.

After the close of trial, the learned Claimant counsel A. A. Wejinya, Esq. addressed the Court orally on the 14th February, 2024; and the case was adjourned for judgment. I have carefully examined the claims of the Claimant and the evidence in support of same, the sole issue for determination in my considered view is thus:

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

The oral testimony of the Claimant as CW1 is that the Defendant was introduced to her by a friend to be assisted with a friendly loan of ₦3,000,000.00 (Three Million Naira) only in June 2023 to enable the Defendant execute a job awarded to him by MCC. The CW1 testified that by their agreement as shown in Exhibit B, the Defendant was to repay the loan within two months (July and August 2023) with a monthly interest of ₦375,000.00 only. The CW1 testified that the Defendant in assuring her that the money will be repaid, gave her a copy of his Deed of conveyance which was tendered as Exhibit D during the trial. The CW1 testified that the Defendant paid her the interest for the first month of July 2023, but failed to pay at the end of the second month of August 2023; as the post-dated cheque she presented to the bank did not go through. The CW1 testified that after she had informed the Defendant that the cheque did not clear and was requested by the Defendant to give him some more time, she discovered to her surprise that MCC had paid the Defendant for the job done but the Defendant refused to repay the loan. The CW1 testified that every effort to get the Defendant to pay the debt have failed as the Defendant no longer respond to her phone calls and messages. The CW1 testified that the money given to the Defendant is her business money and that her

² Letter of Demand dated 15th December 2023.

³ Memorandum of Understanding between the Claimant and the Defendant dated 29th June 2023.

⁴ Defendant's Polaris Bank post-dated cheque in favour of the Claimant dated 31st July 2023.

⁵ Defendant's Deed of Conveyance used as collateral.

business have since been affected by the refusal of the Defendant to repay her. The CW1 asked the Court to grant her claims and costs.

The loan granted the Defendant by the Claimant is written and captured in their memorandum of understanding which was tendered as Exhibit B. The law is now settled that parties to a contract are strictly bound by the terms of their agreement and a Court cannot read into the agreement the terms on which the parties have not agreed. See the cases of *Agbareh v Mimra* [2008] All FWLR (Pt. 409) 559 at 564 ratio 8, *UBN Ltd v Ozigi* [1994] 3 NWLR (Pt.333) 385 and *Best (Nig.) Ltd. v Blackwood Hodge (Nig.) Ltd. & Ors.* [2011] All FWLR (Pt. 573) 1955 at 1959 ratio 7. I hold that the Defendant is bound to fulfill his obligation under the memorandum of understanding (Exhibit B).

The law is 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] LPELR-57284 (CA) OR LCN/16153 (CA). In this case, there is evidence of demand for the debt and refusal to pay. The debt from evidence before the Court is a friendly loan. 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). The testimony of the Claimant is that they agreed that the loan would be repaid within two months with monthly interest of ₦375,000.00 which the Defendant paid for one (1) month only. Meaning that the Defendant is owing the principal sum and interest for the second month. There is no evidence on the second head of claim for fees, and therefore the second head of claim for fees is refused.

The law is that where evidence given by a party is not contradicted by the adverse party, it is deemed admitted. I hold that the Claimant has proved her case

and is partly entitled to the reliefs sought. The lone issue is largely resolved in favour of the Claimant and against the Defendant.

Judgment is accordingly entered for the Claimant as follows:

1. The Defendant is hereby ordered to pay the Claimant forthwith, the sum of ₦3,000,000.00 (Three Million Naira) only representing unrepaid friendly loan.
2. The Defendant is hereby ordered to pay the Claimant forthwith, the sum of ₦375,000.00 (Three Hundred and Seventy-Five Thousand Naira) only as agreed and unpaid interest for the month of August 2023.
3. The Defendant is hereby ordered to pay the Claimant forthwith, the sum of ₦125,000.00 (One Hundred and Twenty-Five Thousand Naira) only as costs for expenses and legal fees.



C. G. Ali, Esq.
(Chief Magistrate)
20/02/2024

LEGAL REPRESENTATION:

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

