

**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 22ND DAY OF SEPTEMBER 2023
AT THE SMALL CLAIMS COURT 5 PORT HARCOURT**

SUIT NO: PMC/SCC/172/2023

BETWEEN

MR. OKUNZUWA MONDAY GRACIOUS ----- CLAIMANT

AND

MR. BARIKO BARIKURA DAVID ----- DEFENDANT

PARTIES: Absent

APPEARANCES: O.J. Amuri Esq. for claimant

No representation for defendant

JUDGEMENT

By a claim dated 22/09/2023, the claimant's claim against the defendant are as follows:

1. N1, 000, 000.00 being amount for loan obtained by the defendant in February 2022.
2. N3, 600, 000.00 representing the 20% interest rate from February 2022 to September 2023.

PLEA

By the affidavit of service availed this court, the defendant was served the originating process in this suit by delivering via substituted means to wit: by sending to the defendant's Whatsapp number on the 13/10/2023 at 2:01pm and read receipt shown as proof to the court. On the 16/10/2023, a plea of not liable was entered for and on behalf of the absent defendant.

SUMMARY OF EVIDENCE

The claimant in proof of his case called a lone witness, the claimant himself and tendered three exhibits marked exhibits A-C.

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 via his written deposition dated 23/10/2023 and filed same day is that sometime in February 2022, the defendant approached him for a loan facility with an interest rate of 20% per month. That the defendant's GT Bank account was funded with the sum of N1, 000,000.00. That he has his monthly statement of account through his email that he printed using his android phone to show the transfer. That after giving the defendant the money, he kept calling the defendant to liquidate the interest and loan all to no avail. That upon the defendant's refusal to defray the debt, he contacted his counsel who wrote a letter of demand to the defendant yet the defendant did not bother to comply with the harmless demand notice. The letter of demand was also pleaded. That as of now, the interest together with the loan sum stands at the tune of N4, 6000,000.00. The demand notice was tendered and admitted as Exhibit A. The bank statement and letter of compliance were also admitted as Exhibits B and C respectively.

The defendant never appeared either by himself or through a counsel to defend this suit even after service of hearing notice hence he was foreclosed from cross examining the CW1 and from defending this suit and case was adjourned for address.

The claimant on the 13/10/2023 adopted their written address and this case was adjourned for judgement now being read.

The claimant in their written address submitted by his counsel O.J Amuri Esq. raised a lone issue for determination to wit:

Whether the claimant has adduced evidence to be entitled to the reliefs sought?

The claimant posits that it is trite that in civil proceedings, the burden of proof lies on the claimant who is under obligation to prove his claim. Counsel cited the case of **G.U.O OKEKE & SON LTD v. USIFOR (2008) ALL FWLR PT 428**. That it is also settled law that he who assert must prove same. Counsel cited the case of **OMONIYI V. SODEINDE (2003) 13 NWLR PT. 53**. Counsel also submitted that by the tendering and admission of Exhibits A, B and C, the claimant has proven that the defendant is indeed owing him and since this piece of evidence was not challenged, the court has been enjoined in a plethora of authorities to evaluate evidence of this nature and ascribe probative value. In summation, counsel submitted that the court grant the claimant his reliefs in the interest of justice.

RESOLVE

In determination of this suit, I will adopt the lone issue raised by claimant's counsel:

Whether the claimant has adduced evidence to be entitled to the reliefs sought?

As already stated, 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. It is worthy to point out that the claimant will not be entitled to judgement merely because the defendant abandoned its defence by failing to lead evidence in support therefore. The court would not accept a piece of evidence which is not material and of no probative value merely because the only evidence before the court is that of the claimant. See the case of **AREWA TEXTILES PLC V. FINETEX LTD (2003) 7 NWLR PART 819**

PAGE 322 AT 341 PARA D-G. In essence, the evidence of the claimant must be enough to sustain the claim.

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 2023** 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 his account statement showing he made a transfer of N1, 000,000.00 to the defendant.

On the second claim, nothing apart from the demand letter has been tendered to prove that the parties agreed to the payment of 20% interest on the loan sum. The only documentary evidence before the court is a demand letter which has no endorsement to show that the defendant was in receipt of it. That aside, in **ADEYEMI v. HAN and BAKES (NIG) LTD (2000) 7 NWLR Pt. 663 330** the Court held thus: "...the Law on pre Judgment interest is that the award must be based on either Statute or mercantile custom or equity and the plaintiff must plead the basis and lead satisfactory evidence". The claim for pre Judgment interest must arise from one of the following: (a) Statute (b) Mercantile Custom and Practice (c) Equity (d) Agreement. Furthermore, pre Judgment interest must be specifically pleaded in the statement of claim and therefore credible evidence must be led in support of the pleadings." For the claimant to succeed in this claim for pre judgment interest in a Court of law, it must be pleaded in the statement of claim. Also, the grounds upon which the claim of interest is based must be stated, whether the claim is based on contract or statute. There is nothing before this court to show that parties had any contract as regards the payment of 20% interest as word of mouth and the demand letter before the court cannot suffice. Accordingly this relief fails for want of proper evidence.

However cost of N100, 000.00 is awarded in favour of the claimant. 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)**.

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

1. The defendant is ordered to pay the claimant the sum of N1, 000, 000.00 being money for loan obtained by the defendant in August 2022.
2. The sum of N100, 000.00 is awarded as cost in favour of the claimant.