

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 WEDNESDAY, THE
14TH DAY OF AUGUST, 2024.

SUIT NO. :PMC/SCC/157/2024

BETWEEN:

BARINE BAOVI, ESQ.	----	CLAIMANT
	AND	
BARILEERA JOLLY NDORNE	----	DEFENDANT

Case called.

Claimant present.

Defendant absent and not represented.

JUDGMENT

The Claimant commenced this suit against the Defendant on the 7th day of June, 2024 and claims as per the complaint form and claim attached to the ordinary summons as follows -

Debt/Amount Claimed -	₦2,535,000.00
Costs	- ₦100,000.00
TOTAL	= ₦2,635,000.00

Upon filing the claim, an ordinary summons was issued for service on the Defendant personally. However, following the failure of personal service, the Defendant was served with the ordinary summons and claim by substituted means via WhatsApp through his verified phone number 08036692154 on the 12th day of July, 2024. Despite the service of the originating processes, the Defendant failed to appear in Court.

On the 31st day of July, 2024, plea of not liable was entered for the Defendant and the case was adjourned to the 6th day of August, 2024 for hearing. On the 6th day of August, 2024, the Claimant Barine Baovi, Esq. testified as CW1 and the sole witness. The Claimant tendered a hand written agreement between her and

¹ LL B, LL M, BL, A. IDRI, Chief Magistrate Grade I, and the Presiding Magistrate, Small Claims Court 1, Port Harcourt, sitting at Chief Magistrate Court 7, Port Harcourt, Rivers State.

the Defendant dated 29th September, 2021 as Exhibit A, a Fidelity Bank Statement of Account from 28th September, 2021 to 2nd October, 2021 as Exhibit B, a Union Bank Statement of Account from 9th October, 2021 to 20th October, 2021 as Exhibit C; and another hand written agreement between them dated 10th August, 2023 as Exhibit D. The CW1 was not cross examined by the Defendant who also failed to defend the case.

After the close of trial, the Defendant was foreclosed from defence for failure to appear in Court despite been served with the originating processes. The learned claimant counsel also waived his right of final address and the case was adjourned for judgment.

The lone issue for the determination of this case is thus:

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

The law is that he who asserts must prove the existence of the facts to be entitled to the judgment of Court. See section 131 (1) of the Evidence Act, 2011. The burden of first proving the existence or non-existence of the facts lies on the party against whom the judgment of the Court would be given if no evidence were produced on either side, regard being had to any presumption that may arise on the pleadings. See section 133 (1) of the Evidence Act, 2011. The evidence of the Claimant as CW1 on the 6th August, 2024 is that the Defendant approached her for a friendly loan on the 29th September, 2021 which was granted on the 30th September, 2021 via a bank transfer as shown in Exhibit B. The Claimant granted the Defendant additional friendly loan of ₦30,000.00 and ₦55,000.00 on the 11th October, 2021 and 13th October, 2021 respectively as shown in Exhibit C. The friendly loan transaction was reduced in writing as shown in Exhibits A and D respectively.

The Defendant failed to defend the suit as he never appeared in Court despite been served with originating processes as ordered by the Court. The law is now settled that unchallenged and uncontroverted evidence is deemed admitted and the Court can rely on it. See section 123 of the Evidence Act, 2011. The legal

effect of failure of the Defendant to defend the case is that the evidence of the Claimant is deemed admitted. See the cases of *Okike v LPDC [2005] 15 NWLR (Pt. 949) 7 at 471* and *NBC Plc v Ubani [2013] LPELR-21902 (SC)*.

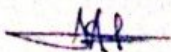
When the Defendant defaulted in the repayment of the friendly loan as agreed, the parties mutually agreed that the Defendant would pay interest on the friendly loan which was calculated and pegged at ₦2,535,000.00 as shown in Exhibit D. The debt now claimed by the Claimant against the Defendant is the friendly loan. The Courts have held that a friendly loan is not a gift but a lifeline 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)*. However, the parties in the instant case entered into agreement for payment of interest when the Defendant failed to repay the friendly loan as and when due. The express agreement by the parties on payment of interest is binding on them. The law is 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 friendly loan agreement (Exhibits A and D).

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 Eynnaya [2022] LPELR-57284 (CA)*. The Claimant testified that a demand notice was served on the Defendant when he failed to pay before the summons was issued against him for the repayment of the friendly loan. I hold that the Claimant has

proved her case and is entitled to the reliefs sought. The sole issue is resolved in favour of the Claimant.

Judgment is hereby entered for the Claimant and against the Defendant as follows:

1. The Defendant is ordered to pay the Claimant forthwith the sum of ₦2,535,000.00 (Two Million, Five Hundred and Thirty-Five Thousand Naira) only representing the unpaid debt owed the Claimant.
2. The Defendant is also ordered to pay the Claimant forthwith the sum of ₦100,000.00 (One Hundred Thousand Naira) only as costs of litigation.



C. G. Ali, Esq.
(Chief Magistrate)
14/08/2024

LEGAL REPRESENTATION:

1. Barine Baovi, Esq. appeared in person.
2. Defendants not represented.

