

IN THE MAGISTRATES' COURT OF RIVERS STATE  
IN THE PORT HARCOURT MAGISTERIAL DISTRICT  
HOLDEN AT PORTHARCOURT BEFORE HIS WORSHIP. G.C. AMADI ESQ.  
SITTING AT SMALL CLAIMS COURT AT CHIEF MAGISTRATE COURT 14, ON THE 23<sup>RD</sup> OF  
OCTOBER 2023

SUIT NO. PMC /SCC/149/2023

MISS QUEEN NZIANWA BARIZASI

} CLAIMANT

AND

MR. FRANK AMADI CHUKWUDI

} DEFENDANT

JUDGMENT

This is the final judgment in this suit wherein the claim before the court, dated and filed on the 29<sup>th</sup> of August, 2023 is for:

1. An order of this Court compelling the defendant to pay the Claimant, the sum of N1,000,000 being money borrowed to the defendant by the claimant out of which N110,000 has been paid.
2. N400,000 as general damages
3. N300,000 as cost of litigation

The Claimant called two witnesses and the defendant called one witness.

On the 7th day of September, 2023, the Claimant was present and the defendant was absent. An application to enter plea of not liable for the defendant by the Claimant counsel was granted and the matter was set down for hearing.

On the 10<sup>th</sup> day of August, 2023, the CW1, who is also the Claimant on record testified that the defendant talked to her on the phone and asked her to borrow him the sum of 1 Million Naira. That she asked him when he will pay back and he said that he will pay back in a month, when he gets the return on his investment, he did at the office.

That on the 17th of November, 2021, the defendant came to her office and knelt down and told her that another person will buy the car and that she asked him for an agreement and he said that he will make an agreement later but right now she should insert the word

borrowed in the transfer transaction which she did. That after one month, she called him and asked for the money and he said that he will pay later and that at the time, they were dating.

That after a year, he sold the car and he refused to send the money to her and instead sent the money to his mother. That her uncle and her Aunty invited him and he refused and that the police invited him and he denied. That after some pressure, he agreed to be paying N20,000 per month. That she did not agree, that sometimes he will send 10,000 and at other times she will send 20,000. That the last amount he sent was N40,000. The CW1 identifies the receipt of the payments received and same is sought to be tendered in evidence and is tendered and marked as Exhibit A, B, C, D and E and also tendered Exhibit F which is the bank statement of CW1 respectively.

At the close of the evidence of CW1, the defendant was absent and there was no explanation as to his absence and on sighting the proof of evidence, the defendant was foreclosed from cross-examining the CW1 and the matter was adjourned for judgment.

However on the 25<sup>th</sup> of September, 2023, the defendant counsel appears and applied that the matter be reopened for cross-examination because he was sick. The said application for reopening was granted and the matter was adjourned to the 27<sup>th</sup> September, 2023 for cross examination of CW1.

Testifying further, the CW1 testified that what she actually transferred was N1160,000. That the 160,000 is the money she was paying back to the defendant because he helped her pay her landlord. Statement from the Parties bank filed on the 29<sup>th</sup> day of August 2023 is admitted in evidence and is marked as Exhibit G

During the cross examination of CW1 on the 27<sup>th</sup> of September, 2023 she stated that herself and the defendant were lovers and the relationship lasted for about 2-3 years. That she was always giving the defendant and he never gave her. That on her mum's burial day, he came with his mother and she gave him the material and he never paid for it and never bought drinks for her mother's burial. That the former Governor Amaechi buried her mother and the defendant could not have bought drinks for her mum's burial. That apart from the money, the defendant took her gold chain and promised to pay but never paid back. That the defendant also came to her tailoring shop and took seven materials and promised to pay but never paid back. That the only thing she knows that she gifted the defendant was kitchen utensils and chair and stabiliser and TV. That she later took back the TV and the stabilizer because she needed it in the shop. That she didn't gift him the items that she took back

That when the defendant refused to pay back the money, she summoned him before her uncle and the wife and he agreed before them, that he borrowed the money and he agreed

to be paying N20,000 every month. That she was not very comfortable with the installmental payment and she told him that she is not in support. That she is not out to punish him because he did not marry her, That she has moved on and has a family and a baby.

On the 31<sup>st</sup> of October, 2023 the CW2, one Chief Edwin Dike (JP) and traditional ruler and a farmer resident at new Heaven Estate Eneka adopts his written deposition on oath dated 4<sup>th</sup> of October, 2023 wherein he stated that that the Claimant is like a step daughter to me and is seen as such in my family because he maintained a closed family relationship with the Claimant's Late parents. That I have knowledge of the friendship that existed between the Claimant and the Defendant and the facts leading to this Claim. That as a Father to the Claimant. She considered it necessary sometime in 16th February, 2022 to call and know the stand of the Defendant in the relationship he is having with the Claimant. That the Defendant honored his invitation the Defendant berated the Claimant in my presence and whole heartedly told me that he cannot make the Claimant his wife. That it was upon that conversation with the Defendant that made me to call the Claimant and advise her not to put much trust on the Defendant, whom I have find out they have no future together. That there and then, the Claimant informed him that she has just lend the Defendant the sum of ONE MILLION NAIRA (N1,000,000.00) only sometime in November, 2020, being money the Defendant borrowed to buy a Car from a distress seller and that she would want to recover the said sum from the Defendant.

That he invited the Defendant the second time in March, 2022. mostly to find out how he intends to pay this ONE MILLION NAIRA (N1,000,000.00) only, he borrowed from the Claimant. That the Defendant also honored my invitation and acknowledged owing the Claimant to the tune of the said amount and promised and pleaded to pay back the said amount on installmental payment. That on the date agreed by Defendant to come and have an Agreement/undertaken with the Claimant for that instalmental payment, the Defendant refused and neglected to turn-up as he promised, that made him to advise the Claimant to look for any lawful means of getting her money back.

That he was reliably informed by the Claimant that Defendant after refusing to turn-up for that agreement, have only paid the paltry sum of N110,000.00 (ONE HUNDRED AND TEN THOUSAND NAIRA) only, through the medium of electronic fund transfer and neglect to pay up the remaining balance of N890,000.00 (EIGHT HUNDRED AND NINETY THOUSAND NAIA) only and that the fund transfer receipts of the paid sum is on record before this court.

That she encouraged the Claimant to resort to court and any lawful means, when all informal mode employed to settle and make the Defendant pay her back the borrowed Amount proved futile and as the Defendant went further boasting that he will pay back the

money in piecemeal, such that the borrowed money will not be useful again to the Claimant. That I know in all honesty, that the Claimant borrowed the sum of ONE MILLION NAIRA (N1,000,000.00) only, from the Claimant and have only paid the paltry sum of N 110,000.00 (ONE HUNDRED AND TEN THOUSAND NAIRA) only and yet to pay the balance of N890,000.00 (EIGHT HUNDRED AND NINETY THOUSAND NAIRA), wherein the Claimant has approached this court to recover same.

During the cross examination of CW2 on the 31<sup>st</sup> day of October, 2023, he stated that he is aware that there is an oral agreement between the parties. That it is not correct that he wanted the defendant to sign an undertaking that he is owing N4 Million. That he wanted the defendant to say he will pay the money which he accepted before him and that he will come the next day and after that she did not see him again. That he witnessed the agreement because the defendant accepted before him that he was owing the Claimant one Million Naira. That it is not true that they are after punishing the defendant for not marrying her daughter because she is happily married. At the close of the evidence of CW2, the matter was adjourned for defence.

On the 17<sup>th</sup> day of October, 2023, the defendant who is also the DW1 testified that he knows the defendant and made a witness written deposition on oath which he adopts in evidence. In the witness deposition, he stated that The Claimant is his Ex-Lover. That he met the Claimant sometime in 2018, shortly after, we started dating and they assisted each other in diverse ways. That whilst they were dating, the Claimant's mother passed on. For this reason, they had to travel to the Claimant's village in botem, Tai Local Government Area of Rivers State on several occasions for the funeral arrangement and they did these trips in the Claimant's brother's car which he drove, since the claimant wasn't used to driving long distances. That on one of the occasions they visited the Claimant's village, the Claimant expressed her displeasure over the frequent use of her brother's car that considering her status as her late mother's only daughter it doesn't make sense that he, the defendant didn't have a car.

That consequent upon the above, the Claimant suggested that they got a car but he told the Claimant that he couldn't afford one at the time, but the Claimant insisted saying she was going to be making a lot of money from her late mother's funeral and that she could give him some money to make up for a car. The Claimant also, suggested that the car could also be used for E-hailing so as to enable them put monies aside for the family we were planning to build, since they had both planned to do life together.

That sometime after the funeral of the Claimant's mother, the Claimant came to him saying she was willing to give me the sum of One Million Naira (1,000,000 000) only in order to assist me get a Car and subsequently I went in search of a car. That in a bid to show love to me, improve my mobility and to enable me be of better service to her whilst

the relationship flourished, the Claimant voluntarily gifted me the sum of One Million Naira (1,000,000.00) to assist me in purchasing a car.

That at no point did I and the Claimant enter into any agreement, whether written or oral that the said one Million Naira (1,000,000.00) was a loan. That I purchased the car and upon the purchase, the car was always used to Service the Claimant's needs and that of her business. That about a year after, the vehicle became really problematic and the Claimant suggested that I sell the car, which I did.

That before, during and after the vehicle was sold whilst the relationship lasted, the Claimant never asked for a refund/repayment. That sometime in 2022, their relationship hit the rocks as a result of too many issues caused by the Claimant. That the Claimant made several attempts to revive our relationship but all to no avail, since he had made up his mind not to continue with the relationship.

That his refusal to continue the relationship was his greatest undoing as the Claimant came to retrieve every item she had gifted him during the lifetime of our very rosy relationship. That the Claimant also went to my mother's house to retrieve the items she had gifted her. That after the Claimant had successfully retrieved all the items she gifted myself and my mother, the Claimant started harassing me for the One Million Naira (1,000,000.000) she had voluntarily gifted me to purchase the car saying that same was a loan.

That he refused to heed to her claims as the money given to me for the vehicle was a gift. That upon my refusal to bulge, the Claimant went to my mother to also embarrass her claiming that her family was quite influential and that she would go any length to punish me since ,he was no longer interested in the love affair with the Claimant.

That after so much embarrassment caused by the Claimant to me and my family and in order to save my already battered reputation and that of my family caused by the Claimant he agreed to pay the Claimant the said amount in installments; Twenty thousand Naira (N20,000) in the first month and Ten thousand Naira (N10,000) subsequently since my salary is small and insufficient to clear the entire amount at once.

That whilst I was making payments as agreed with the Claimant, the Claimant was still going about embarrassing me and my family. That the Claimant tried to use some influential people to make him sign an agreement stating that the money was a loan. That the Claimant also set the Nigerian Police Force in motion against me as they came to arrest him and subsequently invited him.. That I contacted my lawyers to write to the Claimant to ask her to cease and desist from the incessant harassment and false allegations of indebtedness against me. The said letter us admitted in evidence and is marked as Exhibit H.

During the cross-examination of DW1, he stated that he has paid N130,000 and not N110,000 so far to the Claimant. That though the One Million Naira was not a loan but because of the continuous harassment by the Claimant. That they actually had a verbal agreement on how he will refund the money That the police came to his house to harass him and his lawyer wrote to them

At the close of the evidence of the DW1, there was no re-examination and the defendant counsel closed the case of the defendants and the matter was adjourned for judgment.

A total of fourteen (8) exhibits were tendered in evidence in the course of the trial.

That said, I will proceed to consider the case of the parties in the light of the relevant laws. I have noted the essence of the claim and have also taken cognizance of the evidence before the court. I have read all the exhibits and the issues before the Court is quite narrow and that is whether the 1 million Naira that was given by the Claimant to the defendant was given as a loan or a gift.

It is now trite that he who asserts must prove. In trying to prove that the aforesaid 1 Million Naira is a loan , the CW1 stated in her evidence that on the 17th of November, 2021, the defendant came to her office and knelt down and told her that another person will buy the car and that she asked him for an agreement and he said that he will make an agreement later but right now she should just insert the word borrowed in the transfer transaction and that she did describe the transaction as borrowed before she effected the transfer of the fund. To corroborate this piece of evidence ,the defendant tendered Exhibit F which is the statement of the CW1. A look at the statement of the CW1 on the 17<sup>th</sup> of November, 2020 showed the transfer of N1,160,000 sent to the defendant and clearly inscribed as Borrowing Frank Amadi Chukwudi of FCMB.

To further corroborate her assertion that the 1 million was given as a loan, the CW1 called the CW2, her uncle who is like a father to her and who testified that he invited the Defendant the second time in March, 2022. mostly to find out how he intends to pay this ONE MILLION NAIRA (N1,000,000.00) only, he borrowed from the Claimant. That the Defendant also honored my invitation and acknowledged owing the Claimant to the tune of the said amount and promised and pleaded to pay back the said amount on installmental payment. That on the date agreed by Defendant to come and have an Agreement/undertaken with the Claimant for that instalmental payment, the Defendant refused and neglected to turn-up as he promised, that made him to advise the Claimant to look for any lawful means of getting her money back.

On the combined strength of the evidence of CW1 and CW2 and the corroboration of their evidences by Exhibit F particularly on the transaction of 17<sup>th</sup> November, 2020, this Court hereby holds that the Claimant have satisfactorily discharged the evidential burden of

proving that whether the 1 million Naira that was given by the Claimant to the defendant is a gift or a loan.

Out of the One Million Naira, the defendant asserts that he has paid N130,000, While the Claimant asserts that the defendant paid only N110,000 and attached Exhibit A-E as evidence to corroborate the fact that N110,000 only was paid. The defendant did not tender any payment proof to show tha he made payment for an extra N20,000. In the light of the defendants inability to back up his assertions with evidence , this Court hereby holds that the defendant has Paid the sum of N110,000 as shown in Exhibits A –E before the Court. Hence the loan of One Million Naira minus One Hundred And Ten Thousand Naira will be equals to the sum of Eight Hndred And Ninety Thousand as the outstanding debt that is unpaid by the defendant.

On the Claim of N400,000 as cost of general damages. It is quite obvious that the defendant had tied down the Claimant's money since 2020. This is 3 years later and the Claimant must have suffered some hardship resulting therefrom. The claim for general damages succeeds.

Furthermore, the claim for cost of litigation fails as the claim for cost of litigation is in the class of special damages and must be strictly proven.

**IT IS THUS ADGUDGED** that the Defendant to pay the Claimant the sum of N890, 000 (Eight Hundred And Ninety Thousand) representing balance of money borrowed to the defendant by the Claimant

**IT IS FURTHER ADGUDGED** that the Defendant to pay to the Claimant the sum of N200,000 as general damages

**AND IT IS ORDERED** that the defendant to pay the Claimant, the aforesaid sum of N1,090,000,00( One Million And Ninety Thousand Naira) representing money that was borrowed to the defendant by the Claimant and general damages on or before the 30<sup>th</sup> day of October, 2023

**TAKE NOTICE** –That if payment is not made as above ordered, a warrant or warrants may issue requiring an officer of the court to levy the sum above mentioned, to the Claimant together with further costs.

GIFT G. AMADI, ESQ.  
CHIEF MAGISTRATE  
G.D.I.  
SIGN.....DATE.....

**G. CHINYERE AMADI. ESQ.**  
**CHIEF MAGISTRATE G.D.I**