

**IN THE SMALL CLAIMS COURT OF RIVERS STATE OF NIGERIA**  
**IN THE PORT HARCOURT MAGISTERIAL DISTRICT**  
**HOLDEN AT PORT HARCOURT**

**SUIT NO: PMC/SCC/273/2024**

**BETWEEN**

**NEW TOMORROW PECULIAR CONCEPT**

**CLAIMANT**

**AND**

**BUKKY ELIZABETH AYANI  
STELLA OGOCHUKWU ANIERE**

**DEFENDANTS**

**PARTIES:** Claimant present. Defendant absent

**APPEARANCES:** D.D Vurasi for the Claimant. No Legal representation for the Defendant

**JUDGMENT**

The Claimant brought this action via an Ordinary Summons against the Defendant on the 18th day of October, 2024, claiming the relief below:

Debt/Amount Claimed - N233,000.00  
Fees - None  
Costs - N100,000.00  
Total - N333,000.00

Upon the filing of the matter in court, an Ordinary Summons attached with the complaint form and claim was served personally on the 1st Defendant on the 29th of October, 2024 and subsequently via pasting on the 2nd Defendant through the 1st Defendant via pasting, by Order of Court, on the 9th day of November, 2024, at Igbo-Etche, Rivers State. The Affidavit of Service is also before the Court. The Defendants were absent and not represented in court on the 19/11/2024 when the matter came up for further mention, despite being served with the originating processes in this suit and upon confirmation of service, a plea of not liable was entered for the absent Defendants and evidence of Claimant's witness one (CW1) taken.

Ms. Ogbunkwu Amaka, testified under oath as CW1 on the 19th day of November, 2024 and thereafter tendered Six (6) Exhibits marked as follows: The Loan Application Form 001 with the name of Stella Ogochukwu Aniere with Account Number 1776788600, with the birth date of 09/03/1985, ID number 1559484271 as Exhibit A; the Application letter for personal loan by Stella Ogochukwu Aniere, dated 19/09/2023 as Exhibit A1; the New Tomorrow Peculiar Guarantor's Access ent Form with the defendant's name of Stella Ogochukwu, dated 13/09/2023 as Exhibit A2; the NIMC with number 61042693922 with the name of Ayani Bukky Elizabeth as Exhibit A3; the New Tomorrow Passbook with the name of Stella Ogochukwu with a issuing date of 3rd October, 2024 as Exhibit A4 while the Demand letter addressed to Bukky Elizabeth Ayani, dated 20th September, 2024 as Exhibit A5.

The brief unchallenged evidence of the Claimant CW1 is that she is the Branch manager of the Claimant and knows the defendants on record. That in September of 2023, the 2nd defendant Ogochukwu came to their company to access a loan of N2,000,000.00 (Two Million Naira). That before the company gives out any loan, the client must produce two guarantors as collateral to the loan, so that if the client does not pay back the loan, the guarantor will pay. That the guarantor will also provide their passport photo and National Identification Number (NIN), which madam Stella, the 2nd defendant did. That the 2 defendant came to their company with one other person called Felix Ogeigwulam on the 3rd of October, 2023 to apply for a loan for the 1st defendant's business

and a loan of N2,000,000.00 (Two Million Naira) was approved. That it was agreed that the defendant will pay back the sum of One Million Two Hundred and Forty Thousand Naira (N1,240,000) for every One Million Naira (N1,000,000.00) collected, with a monthly repayment of Two Hundred and Sixteen Thousand Seven Hundred Naira (N216,700.00). That the 2nd defendant paid the first and second month and stopped, though started paying in piecemeal again after a while. That when the repayment stopped, they went after both guarantors, that is the 1st defendant and one Mr. Felix Ogeigwulam and both were unconcerned about the repayment of the loan. That so far, the company has been paid back the sum of One Million Ten Thousand Naira (N1,010,000.00), remaining a balance of Two Hundred and Thirty Thousand Naira (N230,000.00). That they are in court to recover the said sum of Two Hundred and Thirty Thousand Naira.

The Defendants were absent and not represented in court when the matter came up for cross-examination and they were foreclosed from cross-examining the CW1 and CW1 was discharged and matter adjourned for defence. However, on the 28/01/2025 when the matter came up for defence, the Claimant's counsel informed the court that they wish to recalled the CW1 to tender some vital documents which were inadvertently omitted and same was granted. The CW1 was recalled in the interest of justice and the CW1 tendered Exhibits A, A1 to A5 and matter adjourned for her cross-examination. The Defendants were not in court on the 05/02/2025 to cross-examine the CW1 and the CW1 was further discharged and matter adjourned for either defence or foreclosure. The Defendants were still absent in court on the 19/02/2025 when the matter came up for defence, despite being served with the Summons and the hearing notice as ordered and was foreclosed from defending the suit. The Claimant's Counsel D. D. Vurasi, who appeared with Q . N Anala Okere, on the 19th day of February, 2024, told the court of their intention to waive their right to filing of final written address since the matter was undefended and urged the court to grant the Claimant's relief on the strength of the evidence already led and same was granted and judgment reserved.

From the above, the only issue that calls for determination is whether the Claimant has been able to prove its case on the preponderance of evidence and on the balance of probabilities to be entitled to the relief sought.

Now, in civil cases, the burden of first proving existence or non-existence of a fact lies on the party against whom the judgment of the court would be given if no evidence were produced on either side, regard been had to any presumption that may arise on the pleadings. See Section 133 (1) and (2) of the Evidence Act, 2011 (as amended). See also *Mrs. Funmilayo Mubo Adeniran & ORS V. Mr. Sikiru Adio & Anor* (2024) 16 NWLR (Pt. 1964) pg. 351, (SC). As stated above, the only claim of the Claimant is for payment in the sum of N333 (Three Hundred and Thirty Three Thousand Naira), being and representing the outstanding balance or indebtedness of the Defendants to the Claimant for the N1,000,000.00 (One Million Naira) the Defendants borrowed from the Claimant, together with the accrued interest, which the Defendant has refused to pay back despite repeated demands. The law is now 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 has been made. See *Akinsola & Anor. V Eyinnaya* (2022) LPELR-57284 (CA). See also Article 2 (1) (d) of the *Rivers State Small Claims Court Practice Direction, 2024*, which makes the service or issuance of demand letter a condition precedent to the commencement of an action against the Defendant.

In the instant case, there is a letter before the court titled: "Demand for the immediate payment of the sum of Two Hundred and Thirty Thousand Naira N230,100.00) Exhibit A5, dated 20th September, 2024, showing that a formal demand for the loan was made and same served on the Defendant, thereby satisfying the condition precedent for the commencement of this suit. From the various Exhibits before the court especially the Claimant's Passbook Exhibit A4, it is very clear and not in dispute that the sum of N1,240,000.00 (One Million Two Hundred and Forty Thousand Naira) was disbursed by the Claimant to the 2nd Defendant, Stella Ogochukwu Aniere, on the 3rd day of October, 2023 as captured on pages 2 and 3 of the said Exhibit A4. The said Exhibit A4 also shows the various amount so far paid by the 2nd Defendant and equally shows an outstanding balance of N233,000.00 (Two Hundred and Thirty Three Thousand Naira) yet to be paid However, despite such disbursement, the 2nd Defendant has failed or refused to perform her own side of the bargain by paying back the outstanding balance of N233,000.00 (Two Hundred and Thirty Three Thousand Naira) for the loan she collected and as captured in Exhibit A5, which the parties freely executed.

The law is trite that where parties have entered into a contract or an agreement, they are bound by the provisions of the contract or agreement. This is because a party cannot ordinarily resile from a contract or agreement just because he later found that the conditions of the contract or agreement are not favourable to him. See *Arjay Ltd & Ors V. A.M.S Ltd (2003) LPELR-555 (SC)*,

The 1st Defendant, having breached or vitiated the contract by unilaterally resiling from the contract through their act of non-performance, has a moral duty to refund or pay back to the Claimant the outstanding balance of N233,000.00 (Two Hundred and Thirty Three Thousand Naira) for the loan they collected for the improvement of the 2nd Defendant's business, as captured in Exhibit A5. There is no evidence before the court showing or suggesting that the Defendants have repaid the outstanding loan sum due them. The Defendants therefore, having not denied or challenged the above evidence of the CW1 with any credible evidence, is deemed to have admitted same and the law is trite that facts not challenged or controverted are deemed admitted and the court can act on same. See *NACEN V. BAP (2011) 11 NWLR (Pt. 1257) pg 193*. Consequently and in the absence of any credible evidence to the contrary, this court is therefore left with no option than to rely on the uncontroverted evidence of the Claimant.

The law is trite that Courts exists to do substantial justice to parties before it and works with credible evidence and it is the court's view therefore that the Claimant has been able to prove his case with credible evidence and on the preponderance of evidence to be entitled to the relief sought. Premise on the above, the Claimant is therefore entitled to the outstanding balance loan sum of N233 (Five Million Naira) together with cost of N50,000.00 (Fifty Thousand Naira) only and I so hold.

Accordingly, it is hereby ordered that;

**The 1st Defendant shall pay to the Claimant the balance sum of N283,000.00 (Two Hundred and Eighty Three Thousand Naira) only, being and as representing the outstanding indebtedness of the Defendants to the Claimant.**

**This is the Judgment of this court. I make no further Orders.**

**Dated this 28th day of February, 2025**

**LEZIGA C. MITEE (MRS)  
CHIEF MAGISTRATE II, MAGISTRATE COURT 10**

