

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 26TH
OF JANUARY, 2023

SUIT NO. PMC /SCC/92/2023

MR. AUSTIN NKORO
(Suing through his attorney
Henry Ohia Chuku)

} **CLAIMANT**

AND

IYERRIFAMA GODWILL JAJA

} **DEFENDANT**

JUDGMENT

This is the final judgment in this suit wherein the claim before the court, dated and filed on the 7th of November, 2023 is for:

1. An order of this Court compelling the defendant to pay the Claimant, the sum of N3, 500,000 representing money obtained as loan from the Claimant.
2. One Million Naira as general damages
3. N500,000 as cost of litigation

In proof of their case, the Claimant called one witness and the defendant also called one witness.

On the 8th January, 2024, an application to enter plea of not liable for the Claimant was granted and the matter was set down for hearing.

On the 19th of January, 2024, the Claimant testified as CW1 and stated that he is the attorney to the Claimant and also a witness in the loan agreement between the parties before the Court and that at the expiration of the date for the repayment of the loan and accrued interest, the defendant refused to pay and after several phone demands, the Claimant got a lawyer who wrote to the defendant demanding for the repayment of the loan and the accrued interest. That at the expiration of the time given in the demand notice, the claimant filed the matter in Court. That the claimant is entitled to all his claim before the Court. The said loan agreement, the demand letter and the Power of Attorney was identified in evidence and is marked as Exhibit A, B and C respectively.

In conclusion, the CW1 stated that he wants the Court to grant his claim as on the face of the claim before the Court.

At the end of the evidence of CW1, in the light of the affidavit of service before the Court dated the 12th day of January, 2024, the defendant was foreclosed from cross examining the CW1 and from defence and the matter was adjourned for judgment.

However, on the 26th day of January, 2024, vide a motion on Notice filed on the 23rd day of January, 2023, the defendant prayed the Court to inter alia extend the time within which to extend the time for the defendant to file his statement of defence. The Claimant/Respondent counsel objects to the application on the grounds that the Small Claims practice Court as under the Small Claims practice direction employs is a special procedure, which gives the defendant only 5 days to file a statement of defence.

In granting the said motion for extension of time and overruling the objection of the defendant's counsel, the Court held that the defendant is out of time for just one day and that there should be a shift towards substantial justice.

On the same date, the defence opens her case and fielded the DW1, the defendant, Mr. Iyerifama Godwill Jaja who testified adopts his witness written deposition on oath and states that sometime in October, 2023, the Claimant's friend came to his house and indicated interest in his business. That after Mr. Ezekwesiri Isiguzo's negotiation with the Claimant and agreed with him for a lona of three million to pay three million, Five hundred thousand Naira only in two installments. That contrary to the Claimant's claim, the total value of the money he received from his friend is One Million, Forty Four Thousand Naira only. That in line with their understanding, he will refund the Claimant friend, a total sum of One Million Forty Thousand Naira only out of the N5,000,000 (Five Million Naira only) That all efforts, made by him towards getting the Claimant see the injustice in his action against him yielded no result and that is why the Claimant brought this suit against him. That he is not indebted to the Claimant to the tune of N5,000,000.00 (Five Million Naira) only as claimed but to the tune of N1,544,000.00 (One Million Fort Four Thousand Naira only from Mr. Ezekwesiri Isiguzo, That he is not a party to any loan transaction between the Claimant and Mr. Ezekwesiri Isiguzo. That it is the outright refusal of the Claimant to reconcile the figures with Mr Ezekwesiri Isiguzo and me based on the duration that resulted in the delay in the liquidation of this debt that Mr Ezekwesiri Isiguzo is owing till date.

That he is not liable to the Claimant claim for damages and or cost.

During the cross-examination of the CW2, he stated that the money he was given is N1,544,000.00 but now he is seeing 3,5 million Naira, That the name on the demand letter did not give him money, it was Mr Eze that gave him money. That he also told Eze thaht he will refund 1,544,000 back to Eze. The DW1 identifies Exhibit A as the loan agreement that he signed but states that he does not know the name of the person he signed Exhibit A, the loan agreement with.

At the end of the evidence of DW1, the defence announces the close of their case and the matter was adjourned for judgment.

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 have also taken cognizance of the evidence before the court. I have couched a lone issue for determination and that is:

Whether The Claimant Has Discharged The Burden Of Proving His Claim Before The Court.

The law is now trite that he who asserts must prove

The Claimant have asserted that the defendant borrowed the sum of three million Naira with three million Naira with an interest of Five Hundred thousand Naira at the end of the first month and that at the expiration of the first month, they demanded from the defendant to repay the loan by Exhibit B which he said that the defendant received and refused to pay.

To prove this assertion, the Claimant called the CW1, Mr Henry Oha Chukwu, the attorney to Claimant, who tendered the loan agreement and the demand letter and the Power of Attorney as Exhibits A, B and C respectively.

I have taken a close look at the loan agreement, Exhibit A the agreement clearly states in Paragraphs 1-3 the terms stated in evidence by the CW1 that the defendant borrowed the sum of three million Naira with an interest of Five Hundred thousand Naira at the end of the first month and that in default of repayment of the loan with accumulated interest in one month, the lender will be allowed to charge 30% interest of the principal sum unpaid with effect from 11th October, 2023.

Exhibit B further corroborates these fact to the extent that in the said Exhibit B, which was written one month after the loan agreement, the Claimant was demanding the sum of N3 million Naira plus 500,000 as the interest on the first month.

Furthermore, this loan agreement, Exhibit A was identified by the defendant as the loan agreement he signed but he funnily added that he does not know the person that he signed the Exhibit A with.

Further in denying the claim, the defendant have stated that he received the tune of N1,544,000.00 (One Million Five Hundred and Forty Four Thousand Naira) only from one Mr. Ezekwesiri Isiguzo. That in line with their understanding, he will refund the Clamant friend, a total sum N1, 544,000.00 (One Million Five Hundred and Forty Four Thousand Naira). The defendant stated this without any shred of corroboration either in documentary or otherwise. It is important to state here that even the said Mr. Ezekwesiri Isiguzo was the defendant's witness to the loan transaction as in Exhibit A.

It is the stance of this Court, that the Claimant have established her claim on the strength of the loan agreement, Exhibit A (which speaks for itself) corroborated by Exhibit B and the oral evidence of the CW1 which was uncontroverted in evidence.

On these clear evidence before the court, the court will hold that the claimant has, on the preponderance of evidence discharged the burden of proving that he is entitled to an order of this Court compelling the defendant to pay the Claimant, the sum of N3, 500,000 representing money obtained as loan from the Claimant.

On the Claim for general damages: The correct assessment for general damages remains an award that compensates the injured party and restores it to the position it would have been had the breach or injury not occurred. As a result, the assessment of damages is based purely on damages flowing naturally from the breach. *Stephen Okongwu V NNPC* (1989) 4 NWLR (Pt 115) 296 @ 306h-307a; *GFK Investment Ltd V Nigeria Telecommunications Plc* (2009) 15 NWLR (Pt 1164) 344; @ 384D-E.

The award is quantified by what in the opinion of a reasonable person is considered adequate loss or inconvenience which flows naturally, as generally presumed by law, from the act or conduct of the Defendant. It does not depend upon calculation made and figure arrived at from specific items. See *Odulaja v Haddad* (1973) 11 SC 357; (1973) 11 S.C. (Reprint) 216; *Lar v Stirling Astaldi Limited* (1977) 11-12 SC 53; (1977) 11-12 SC (Reprint) 106 and *Osuji v Isiocha* (1989) 6 S.C. (Part II) 158; (1989) 3 NWLR (Part 111) 623

From Exhibit A, it can be seen that the defendant has tied down the Claimant's principal and subsequent percentage interest which the Claimant is not even claiming interest after October 2023. The Claimant is only claiming interest for the first default and the other interest accrued since November 2023 were not claimed by the Claimant. The CW1 have testified that at the expiration of the date for the repayment of the loan and accrued interest, the defendant refused to pay and after several phone demands, the Claimant got a lawyer who wrote to the defendant demanding for the repayment of the loan and the accrued interest. It is obvious that the Claimant have suffered some emotional and financial harm.

On the 3rd claim for cost of litigation; that claim head fails because the claim for cost of litigation is classified as special damage and requires strict proof. There is nothing before the Court to show for that cost head

IT IS THUS ADJUDGED that the Defendant to pay the Claimant the sum of N3, 500,000(Three Million, five hundred Thousand representing money obtained as loan from the Claimant, Principal and first month interest inclusive)

IT IS FURTHER ADJUDGED that the defendant do pay to the Claimant, the sum of N300, 000 as general damages.

AND IT IS ORDERED that the defendant to pay the Claimant, the aforesaid sum of N3, 500,000 and N300,000 representing the loan sum and accrued first one month interest on one hand and general damages on another hand.

AND IT IS FURTHER ORDERED that the defendant do pay to the Registrar of this court, the total sum of N3,800,000 (Three Million, Eight Hundred Thousand Naira only representing the total sum on the loan(inclusive of interest) and the award for general damages.

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.



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