

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.,<sup>1</sup> TODAY THURSDAY, THE  
30<sup>TH</sup> DAY OF JANUARY, 2025.

SUIT NO.: PMC/SCC/181/2024

**BETWEEN:**

MR. ANSAH OKEY WALI

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CLAIMANT

AND

MR. JOSEPH NACHAMADA

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DEFENDANT

Case called.

Parties absent.

**JUDGMENT**

The Claimant commenced this suit against the Defendant on the 2<sup>nd</sup> day of July, 2024 and claims as per the complaint form and claim attached to the ordinary summons as follows -

Debt/Amount Claimed	-	₦3,000,000.00
Legal fees	-	₦800,000.00
Costs as Damages	-	<u>₦1,200,000.00</u>
<b>TOTAL</b>	<b>=</b>	<b><u>₦5,000,000.00</u></b>

Upon filing the claim, an ordinary summons was issued for service on the Defendant personally. The Defendant was served the ordinary summons and attached claim personally on the 8<sup>th</sup> day of July, 2024. The Defendant appeared in Court and filed FORM RSSC 5 on the 15<sup>th</sup> day of July, 2024. The Defendant set up a defence in the defence form as follows -

*I have a defence because (1) The claimant sued wrong party (2) The investment the Claimant invested on was discharged by frustration.*

The learned Defendant counsel B. E. Egwu, Esq. entered plea of not liable for the Defendant on the 17<sup>th</sup> day of July, 2024 and the parties were granted leave to attempt amicable settlement at the Rivers State Multi-Door Courthouse.

<sup>1</sup> 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.

On the 30<sup>th</sup> day of August, 2024 the Rivers State Multi-Door Courthouse via its Director's Report with reference number RS/JUD/RSMDC/D/115/24 returned the case file to the Court for continuation of trial due to the failure of the Defendant to appear for ADR hearing after completion of Submission Form 2 despite several telephone calls to him by the RSMDC. Whilst this Honourable Court was on its annual leave in September, 2024, the Chief Registrar, High Court, Port Harcourt via a letter with reference number RS/JUD/CR 1/Vol. IX/021/24 dated the 13<sup>th</sup> September, 2024 forwarded the case file to this Court for the continuation and determination of same.

The Claimant on the directive of the Court and in compliance with extant rules filed a written deposition on oath on the 14<sup>th</sup> January, 2025 and served same on the Defendant through his lawyer B. E. Egwu, Esq. The Claimant Mr. Ansa Okoye Waki as CW1, adopted his written deposition on the 16<sup>th</sup> January, 2025 and also tendered seven (7) document in evidence as EXHIBITS A, B, C, D, E, F and G respectively. The CW1 was fully cross examined by the learned Defence counsel and the case was adjourned for definite defence in view of the time wasted at the RSMDC. The Defendant and his counsel further failed to show up in Court on the 23<sup>rd</sup> January, 2025 when the case came up for definite defence. The Court therefore in compliance with Article 9 (2) of the Small Claims P.D 2024 foreclosed the Defendant from defence and adjourned the case for judgment. It is important to state at this point that the Defendant failed to give evidence in support of the defence, which is now deemed abandoned.

After a careful examination of the Claimant's claim and the evidence before the Honourable Court, the sole issue for the determination of this case is thus:

*Whether the Claimant has proved his 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

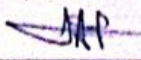
produced on either side, regard being had to any presumption that may arise on the pleadings. See section 133 (1) of the Evidence Act, 2011. The evidence of the Claimant as CW1 on the 23<sup>rd</sup> January, 2025 as captured in his deposition on oath is that the Defendant approached him for a friendly loan of ₦5,000,000.00 through a mutual friend one Mr. Davidson Esilogu in September, 2022 which was granted to the Claimant on the 5<sup>th</sup> October, 2022 via a bank transfer as shown in Exhibit B. It is the evidence of the Claimant that the Defendant agreed to repay the money and undertook to pay additional ₦2,000,000.00 as damages in the event of default as the money he lend to the Defendant was meant to complete a joint land purchase at Rumuekini with his elder brother. The Defendant eventually defaulted on the agreed repayment date which caused the Claimant to lose the land purchase and the money deposited thereof. The Defendant managed to repay the sum of ₦2,000,000.00 to the Claimant within April, 2023 as shown in Exhibit D and has since refused to repay the balance of ₦3,000,000.00 despite repeated demands through phone calls and the Letter of Demand issued through the Small Claims Registry.

The evidence of the Claimant remained unchallenged and uncontroverted during cross examination by the learned defence counsel. The Defendant also failed to defend the claims despite given opportunity by the Court to defend same. 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 [2008] 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 Claimant made several demands to no avail. Efforts at amicable settlement even at the Rivers State Multi-Door Courthouse as ordered by this Honourable Court was frustrated by the refusal of the Defendant to attend ADR hearing dates as noted by the Director, Rivers State Multi-Door Courthouse in his report dated 30<sup>th</sup> August, 2024 and forwarded to this Honourable Court. The

unchallenged evidence before the Court is that the Defendant was granted a friendly loan by the Claimant. 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). In the instant case, the parties agreed on damages in the event of default to repay the friendly loan as and when due. 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 case of *Best (Nig.) Ltd. v Blackwood Hodge (Nig.) Ltd. & Ors.* [2011] All FWLR (Pt. 573) 1955 at 1959 ratio 7. 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 Eyinnaya* [2022] LPELR-57284 (CA). I hold that the Claimant has proved his case and is entitled to the reliefs sought. The lone 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 ₦3,000,000.00 (Three Million Naira) only representing the unpaid debt owed the Claimant.
2. The Defendant is ORDERED to pay the Claimant forthwith the sum of ₦800,000.00 (Eight Hundred Thousand Naira) only as legal fees.
3. The Defendant is also ORDERED to pay the Claimant forthwith, the sum of ₦1,200,000.00 (One Million, Two Hundred Thousand Naira) only as damages.

  
C. G. Ali, Esq.  
(Chief Magistrate)  
30/01/2025

**LEGAL REPRESENTATION:**

1. E. A. Awa, Esq. Holding the brief of A. A. Wejinya, Esq. for the Claimant.
2. Defendant Counsel absent.

