

IN THE MAGISTRATE COURT OF RIVERS STATE OF NIGERIA
IN THE PORT HARCOURT MAGISTERIAL DISTRICT
HOLDEN AT PORT HARCOURT
ON TUESDAY THE 18TH DAY OF JULY, 2023
BEFORE HIS WORSHIP A. O. AMADI-NNA, ESQ
CHIEF MAGISTRATE GD.1

SUIT NO. PMC/SCC/70/2023

BETWEEN

NKAMBI JOSEPH POSI

VS

FAMOKUN SUNDAY ROLAND

Claimant present.

Defendant absent.

V. I. Nwanyanwu appear for the claimant.

JUDGMENT

The claimant claims against the defendant as follows:-

1. The sum of N322,802.00 (Three Hundred and Twenty Two Thousand, Eight Hundred and Two Naira) only being loan collected from Rumuokoro Mytime Cooperative Society Limited which the defendant has refused to pay despite repeated demands.
2. Legal fees of N100,000.00.
3. Cost of N50,000.00.

A plea of not liable was entered for the defendant.

In proof of his case the claimant was the sole witness and gave evidence as CW1 and tendered 3 exhibits, Exhibits "A", "B" and "C" while the defendant did not defend this suit and never appeared before this court.

CW1, Nkambi Josephine Posi said that the defendant is one of the members of the Mytime Cooperative who contracted a loan of N500,000.00 sometime in February 2021 and did not pay as agreed after initially commencing payment and later defaulted.

Further that the defendant in obtaining this loan filled a Cooperative loan form, wrote a hand written application and gave them a picture of his industrial generator to show that he collected a loan from them. She tendered the loan form, a picture of the defendants industrial generator and the defendant's loan application form as Exhibits "A", "B" and "C" respectively. Also that before this suit was filed the defendant was owing the sum of N372,800.00 (Three Hundred and Seventy Two Thousand Eight Hundred Naira) only.

The defendant was not in court on the 4th day of July 2023 when the matter came up for cross examination and was foreclosed from cross examining CW1. The defendant was also foreclosed from defending this suit on the application of the claimant's counsel.

On the 12th day of July 2023 the claimant adopted the claimant's final written address dated 11th and filed 12th day of July 2023 as the final address for the claimant.

In his address claimant's counsel submits that this Honourable Court is enjoined to consider the whole evidence of both parties and give its Judgment thereon after both parties have concluded their case. That the defendant having deliberately refused to appear before the court, the court will determine the matter based on the evidence before it.

Further that the only evidence before this court in the instant case is that of the claimant. Submits that it is the only evidence the court will rely on to decide this case.

Counsel submits that evidence that is neither challenged nor rebutted remains good and credible evidence which the court is enjoined to rely upon and ascribe probative value to it.

I have reviewed the evidence of the claimant, CW1. I have also taken into consideration Exhibits "A", "B" and "C" tendered and the written submissions of the claimant's counsel.

The lone issue that arise for determination is "whether the claimant has proved her case on the preponderance of evidence to be entitled to Judgment".

CW1 the claimant has given evidence of how the defendant obtained a loan of N500,000.00 sometime in February 2021 and after initially commencing payment later defaulted. CW1 has also given evidence that in collecting the loan, the defendant filled a Cooperative loan form, wrote a hand written application and gave them a picture of his industrial generator which she tendered as Exhibits "A", "B" and "C" respectively. The defendant did not cross examine CW1 and did not defend this suit. An undefended case requires a minimum of proof. When uncontradicted evidence is unchallenged, the court ought to accept such evidence in proof of the issue in contest. See the case of **FOLURUNSHO & ANOR V. SHALOUB (1994) 3 NWLR (Pt. 333) page 413 at 433 para B-H.**

Also see **OKUPE V. IFEMACHI (1974) 3SC Page 97 at 103.**
ALAGBE v. ABIMBOLA (1978) 2SC Page 39 at 40.

I hereby hold that the claimant has proved her case on the preponderance of evidence to be entitled to her claim. Judgment is hereby entered in favour of the claimant in the following terms;

COURT:

1. The defendant is to pay to the claimant the sum of N372,802.00 (Three Hundred and Seventy Two Thousand Eight Hundred and Two Naira) only being loan collected from Rumuokoro Mytime Cooperative Society Ltd which the defendant has refused to pay despite repeated demands.
2. The defendant is to pay to the claimant the sum of N100,000.00 as cost.

Signed:
A. O. Amadi-Nna, Esq.
Chief Magistrate GD.1
18/7/2023

