

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

ON MONDAY THE 15TH DAY OF MAY, 2023
BEFORE HIS WORSHIP A. O. AMADI-NNA, ESQ
CHIEF MAGISTRATE GD.1

SUIT NO. PMC/SCC/17/2023

BETWEEN

NKAMBI JOSEPHINE POSI

VS

JOSEPH EZE & ANOR

Parties absent.

P. U. Amadi appear for the claimant.

JUDGMENT

The claimant's claim against the defendant is for "the sum of N1,300,000.00 (One Million Three Hundred Thousand Naira) only which the defendant collected from the claimant as loan.

2. The sum of N50,000.00 (Fifty Thousand Naira) as cost.

In proof of his case the claimant was the only witness who gave evidence as CW1 in support of this and tendered 2 exhibits. Exhibits "A1" and "A2" while the defendant for his defence gave evidence as DW1 and was the only witness in his defence and did not tender any exhibit.

The claimant's case is as follows:-

CW1, Nkambi Joseph Posi said she manages and runs Mytime Cooperative as the General Manager. That the 1st defendant collected a loan from Mytime Cooperative while the 2nd defendant is the Guarantor. The 1st defendant applied for N1,000,000.00 loan and N1,000,000.00 was given to him. That by the time this case was filed the 1st defendant was with a balance loan of N1, 132,820.00. She tendered a loan application form and a loan form as Exhibits "A1" and "A2" respectively. She further said

that the 1st defendant has not repaid the loan and prayed the court to help them recover the loan.

The defendants did not cross examined in the witness.

This is the case for the claimant.

DW1, Joseph Eze the 1st defendant said in 2018 the claimants agents came to his shop and introduced their Cooperative to him and offered to give him loan at 30 percent interest and asked him to come and register with them. He went and registered with them in 2018. In 2019, they gave him a loan of N350,000.00. By then he has saved the sum of N130,000.00 with them. He used this loan to buy a car and gave it out on hire purchase. They further gave him loan up to 4 times and he paid off all of them. He now sold his car and gave them the money and they used the money to up grade his savings to N330,000.00 which now qualified him for a loan of N1.1 Million. He was now given N550,000.00 instead of over N800,000 since they had to deduct his debt. He used the money to buy a car which was given him problems. He went to them again and they gave him N100,000.00 which could not solve the problem. He now sold the car and gave them N100,000.00. He pleaded with them to be paying them N30,000.00 per month but they refused and he was sued to court.

Under cross examination DW1 said he was owing the claimant the sum of N950,000.00 prior to the current loan and he is still owing N950,000.00. That he was not the one that wrote Exhibit "A2" and the signature in Exhibit "A2" is not his.

This is the case for the defence.

On the 10th day of May 2023 the claimant's counsel adopted the claimant's final written address dated 2nd and filed 10th day of May 2023 as the final address for the claimant in this case.

In his address claimant's counsel submits that the defendants have substantially admitted the claims of the claimant in that:

1. They have admitted that he applied for a loan from the claimant.

2. The claimant granted his request and gave him the loan although he denied that he was given N1,100,000.00.
3. That prior to collecting the loan from the claimant, the 1st defendant was indebted to the claimant.
4. The 1st defendant used part of the loan to settle his previous indebtedness to the claimant.
5. That he defaulted in the payment of the loan.

Counsel submits following the decision in **Ebeinwe v State** (2011) FWLR (part 1246) page 402 at 416, 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 CW1 the claimant and DW1 the defendant. I have also taken into consideration Exhibits "A1" and "A2" tendered by CW1 and the written submissions of counsel.

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

CW1 the claimant has given evidence of how the DW1 the 1st defendant was given a loan of N1,000,000.00 (One Million Naira) with the 2nd defendant as his guarantor and tendered Exhibits "A1" and "A2" respectively. She has also given evidence that the 1st defendant has not repaid the loan.

DW1, the 1st defendant who was not represented by counsel has given evidence both in evidence in chief and cross examination admitting that he is owing the claimant the sum of N950,000.00 from the loans he took from the claimant's Cooperative. DW1 has not denied that he has defaulted in paying back the loan he collected from the claimant. Evidence that is neither challenged nor rebutted remains good and credible which the court is enjoined to rely upon and ascribe probative value to it. See **EBEINWE v STATE** (supra).

Accordingly from the foregoing it is my view 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 on the following term(s):-

Court:

1. The defendants are to pay to the claimant the sum of N1,300,000.00 (One Million Three Hundred Thousand Naira) which the defendant collected from the claimant as loan.
2. The defendants are to pay to the claimant the sum of N30,000.00 as cost.

Signed:

A. O. Amadi-Nna, Esq.

Chief Magistrate GD.II

15/5/2023