

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.,¹ TODAY TEUSDAY, THE 21ST
DAY OF MAY, 2024.

SUIT NO.:PMC/SCC/69/2024.

BETWEEN:

MRS. PRISCILLA OGO OKOH

CLAIMANT

AND

MR. FIMBA MADU

DEFENDANT

Case called, Parties absent.

JUDGMENT

This is a debt recovery case commenced by the Claimant, a businesswoman against the Defendant a bank manager and family friend who lured her to give out her proposed business investment fund of ₦5,000,000.00 (Five Million Naira) for another investment purpose; on the understanding that the Claimant would be receiving the sum of ₦300,000.00 (Three Hundred Thousand Naira) monthly as return on the investment with guarantee of the full capital when needed. The Defendant subsequently defaulted on the monthly returns payment as agreed after a few months thereby prompting the Claimant request for her capital.

The Claimant lodged the complaint at the Small Claims Registry, Port Harcourt on the 20th day of March, 2024 after serving the mandatory demand letter on the Defendant on the 5th day of February, 2024 and the Defendant failed to comply. The Claimant therefore claims against the Defendant as per the claim attached to the summons as follows:

Debt/ Amount Claimed - ₦5,000,000.00

TOTAL = ₦5,000,000.00

The Defendant was served with the summons and claim on the 25th day of March, 2024 at his Union Bank, Ikwerre Road, Port Harcourt office. Upon receipt of the summons and claim the Defendant filed Form RSSC 5 on the 26th day of March, 2024 wherein he admitted part of the claim and stated that he had paid the sum of

¹ 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.

₦1,030,000.00 to the Claimant. The Defendant also proposed a quarterly installmental payment of the balance by paying the sum of ₦200,000.00 from August 2024 on the ground that he is currently having financial crisis.

Despite the admission form filed on the 26th day of March, 2024, the Defendant through his counsel pleaded not liable to the claim and the case proceeded to trial after efforts at amicable settlement failed. The Claimant who is recuperating from a spinal surgery testified as CW1 virtually from Anambra State on the 14th day of May, 2024 and was fully cross examined by the learned defence counsel. On his part, the Defendant testified as DW1 on the 15th day of May, 2024 and was equally cross examined by the learned Claimant counsel. At the close of trial on the 15th day of May, 2024, the case was adjourned to the 21st day of May, 2024 for judgment.

After a careful perusal of the claim and oral testimony of the Claimant as CW1 and the Defendant as DW1, the sole issue for determination in my considered opinion is thus:

Whether the Claimant has proved her case to be entitled to the relief sought?

The burden of first proving the 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 being had to any presumption that may arise on the pleadings. See section 133 (1) of the Evidence Act, 2011. The evidence of the CW1 is that sometime in the month of June, 2016 the Defendant's wife Mrs. Chikaodili Madu who is her neighbour and owns a shop near her residence and whom she had previously told of her plan to set up a business; introduced the Defendant to her as her husband and the Manager of Fidelity Bank, Steel Village Branch. The CW1 testified that the Defendant then told her that if she invests the ₦5,000,000.00 he would be paying her ₦300,000.00 interest every month with the option to repay the ₦5,000,000.00 with interest whenever she decides not to continue. The CW1 testified that she informed the Defendant that she is a widow and have nothing to fall back to but the Defendant assured her that nothing would happen and gave her an account number where the ₦5,000,000.00 was paid into. The CW1 testified that

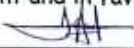
the Defendant paid her the agreed interest of ₦300,000.00 for two months only and started making excuses in the third month when he paid ₦50,000.00 only instead of the agreed ₦300,000.00. The CW1 testified that she requested for the return of her capital based on the default before the Defendant then told her that he gave the money to one man and that the man would give her a land document which she declined. The CW1 testified that she kept asking for her money until the Defendant disappeared to unknown location but told her that he lost his job and is now in Lagos, while the wife also relocated her shop. The CW1 testified that she later sighted the Defendant last year at Union Bank, Mile 1, Port Harcourt and stepped out to call his number but the Defendant told her that he was still in Lagos. The CW1 testified that she reported the matter at the Mile 1, Police where the Defendant was invited and he promised to pay and subsequently repaid only ₦1,030,000.00 in two installments. The CW1 testified that she has waived the interest and wants the Court to help her recover the capital as she needs the money to take care of herself as a widow after a major spinal cord surgery. Under cross examination, the CW1 maintained that she gave out the money on agreement with the Defendant which the Defendant is not denying.

The Defendant who is presently a staff of Union Bank, Mile 1 Ikwerre, Port Harcourt Branch admitted the claim. He testified that the Claimant is a family friend of over 20 years and had revealed to him that she had some money and needed someone who would be giving her small small interest to help her life. The Defendant testified that he later invited the Claimant to his office where she discussed with one Mr. Nnamdi of Technique Nigeria Ltd., and they agreed on monthly interest of ₦300,000.00 on the ₦5,000,000.00. The Defendant testified that the Claimant transferred the said ₦5,000,000.00 to Mr. Nnamdi the next day; and that the ₦300,000.00 monthly interest was paid to the Claimant's account for eight (8) months and he paid her ₦50,000.00 of his own money when she was in need of money to travel. The DW1 testified that by the 9th month, Mr. Nnamdi started defaulting because his company made supplies to one Egyptian Company, WECO Engineering which failed to pay him for pipes supplied and pleaded for time; but the

Claimant refused. The DW1 testified that he accepted to be paying the money small small because of family relationship and been the person who introduced the Claimant to Mr. Nnamdi. The DW1 testified that he offered to be paying ₦50,000.00 every month or ₦150,000.00 quarterly but the Claimant refused. The DW1 testified that he has so far paid a total of ₦1,030,000.00 to the Claimant after the police intervention. Under cross examination by the learned Claimant counsel, the DW1 admitted that as at today he is owing the Claimant the sum of ₦3,970,000.00 after paying the sum of ₦1,030,000.00 only. The DW1 maintained that the Claimant agreed to waive the interest and admitted that he introduced Mr. Nnamdi to the Claimant.

From evidence before the Court, the Claimant acting on the trust and professional advise of the Defendant as a Bank Manager and family friend released the sum of ₦5,000,000.00 to a third party on the agreed ₦300,000.00 monthly return on the investment; which was defaulted few months after the agreement. By the nature of the transaction, it can be said that the Defendant acted as a guarantor for the third party. The Defendant in his evidence admitted that he is owing the Claimant the sum of ₦3,970,000.00 as at today. The law is settled that facts admitted need no further proof. See section 123 of the Evidence Act, 2011. I hold that the Claimant has proved her case and is entitled to recover the admitted sum of ₦3,970,000.00 from the Defendant. The sole 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 hereby ordered to pay the Claimant the sum of ₦3,970,000.00 (Three Million, Nine Hundred and Seventy Thousand Naira) only representing the unpaid debt forthwith.
2. Cost which I assess as ₦50,000.00 (Fifty Thousand Naira) only is also awarded against the Defendant and in favour of the Claimant.


C. G. Ali, Esq.
(Chief Magistrate)
21/05/2024

LEGAL REPRESENTATION:

1. Samuel O. Amadi, Esq. for the Claimant.
2. K. U. Essien, Esq. for the Defendant.

