

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

**ON FRIDAY THE 22<sup>ND</sup> DAY OF DECEMBER, 2023**  
**BEFORE HIS WORSHIP A. O. AMADI-NNA, ESQ**  
**CHIEF MAGISTRATE GD.1**

**SUIT NO. PMC/SCC/22/2023**

**BETWEEN**

**MR. ADEYINKA ADEBISI**

**VS**

**MR. ADENIRAN ADEWALE**

Parties absent.

I. Davis Okwuego appear for the claimant.

Matter is for judgement.

**JUDGEMENT**

The claimant claims against the defendant for the sum of N3,000,000.00 (Three Million Naira) only which the claimant gave to the defendant as an interest free loan which the defendant promised to pay back the said sum on or before the 15<sup>th</sup> day of December, 2022 and signed undertaking to that effect but has failed to pay till date.

2. The sum of N500,000.00 as cost.

A plea of not liable was entered for the defendant.

In proof of his case the claimant gave evidence as CW1 and tendered 5 exhibits- Exhibits "A1" - "A5". While the defendant gave evidence in his defence as DW1 and did not tender any exhibit.

The claimant's case is as follows:-

CW1, the claimant said he gave the defendant who came to him to give him a loan, an interest free loan of N3,000,000.00 (Three Million Naira) and the defendant promised to pay him back the said sum on or before the 15<sup>th</sup> day of December 2022 and the defendant entered into an undertaking.

His counsel has also written letters of demand to the defendant but the defendant has refused to pay. He tendered a loan repayment letter of undertaking signed by the parties, a demand letter from his counsel to the defendant dated 6<sup>th</sup> day of February 2023, a final demand letter for payment of loan from claimant's counsel dated 3<sup>rd</sup> day of March 2023, 2 Red Star Express delivery courier as Exhibits "A1"- "A5" respectively.

He further said that he got this soft loan he gave to the defendant from the office. That the auditors in the office kept on demanding that he should pay the loan. That his office has given him an ultimatum to pay back the loan by June ending.

Also that the Federal Inland Revenue Service has surcharged his company 30% of that loan and his company was magnanimous to take care of the 30% surcharged by the Federal Inland Revenue Service. That if the defendant does not pay the loan by the end of June he will be compelled to pay the 30% and if such happens again, he will not have the opportunity of such staff loan again.

Under cross examination CW1, said the defendant did not meet him in person to collect the loan. That the loan undertaking was not signed in his presence. Further that it was not the defendant's inlaw who procured the loan from him. The agreement was between him and the defendant.

Under re examination he said he gave the defendant the loan of N3 Million all at once.

This is the case for the claimant.

I now go to the case for the defence.

DW1 Adeniran Oluwafemi Adewale said sometime in October 2022 he had a financial issue and his co inlaw, Mr. Ayoade Johnson approached him on raising the money for him. He agreed to CW1 the claimant's proposal and CW1 asked him to write an undertaking and gave him a format to write

which he did and signed with his witness. In 2 days the money was transferred to him through the claimant's account number. He was supposed to return the money by December. In early January 2023, the claimant called him but he asked for time to pay. In February 2023 he received a letter from the lawyers of the claimant demanding for the N3 Million on behalf of the claimant. The same lawyer also sent another demand letter. That he has said he doesn't know the claimant and has never met the claimant so the issue of him knowing whether the claimant took loan from his company does not arise.

Further that the said undertaking his in law gave him to write was not signed in the presence of the claimant. He prayed the court to give him the opportunity to pay quarterly the sum of N300,000.00. Also that his co-inlaw who is the husband to his wife's sister did not also sign the undertaking.

Under cross examination, DW1 said that in Exhibit "A1", he said he will pay the loan given to him on the 15<sup>th</sup> day of December 2022. That he has defaulted in paying the said loan. That he transacted the business with someone he knows to be the claimant's friend called Mr. Ayoade, his co-in-law. He further said that he did not intentionally refuse to pay the loan and he has not repaid the loan. He denied refusing to pay the loan to buy time to travel to Canada. That he did not know that the claimant collected loan from his office since he did not know the claimant.

Under re-examination DW1 said he did not know the claimant until he appeared before this court so he didn't know he collected loan from his office to give him as loan.

At the close of the case for the defence, the parties filed their final written address which was adopted before this court on the 5<sup>th</sup> day of October, 2023.

Defendant's counsel final written address is dated the 14<sup>th</sup> and filed the 15<sup>th</sup> day of August 2023.

They also filed a reply on points of law dated 4<sup>th</sup> and filed 7<sup>th</sup> day of September 2023 in response to the claimant's address while the claimants final address is dated 15<sup>th</sup> and filed 29<sup>th</sup> day of August, 2023.

In her address defendant's counsel raised a sole issue for determination before this court as follows:-

“Whether from the pleading and quality of evidence adduced in this matter, the claimant has proved his case to be entitled to the relief sought before this Honourable Court”.

Counsel answered this sole issue in the negative and submits that the law requires the claimant to prove his entitlement to the reliefs sought on the preponderance and balance of probabilities which the claimant has not done. Counsel referred to the case of **Eya v Onuoha (2011) 25 NSCQR 210**. That although the claimant tendered letter of undertaking and demand letters requesting for his money, he never tendered his statement of account to convince the court that the claimant personally transferred the sum of N3,000,000.00 (Three Million Naira) interest free loan to the defendant.

That the claimant has during cross examination said he never met the defendant personally but through one Mr. Johnson Ayoade the defendant pledged to pay by writing an undertaking. Further that the claimant also admitted that he never signed Exhibit “A” the letter of undertaking in the presence of the defendant.

Also that in Exhibit “A1” there was no witness for the claimant who witnessed or signed Exhibit “A1” on behalf of the claimant. That the claimant in his evidence claimed that one Mr. Johnson Ayoada witnessed the undertaking whose name is not seen in the undertaking. Further that

contrary to the evidence of the claimant that he collected N3,000,000.00 loan from his office which they never disclosed and that the company was penalized and charged 30% of the N3,000,000.00 loan the claimant failed to prove and convince the court that the said loan was collected from his office. Further that the claimant never tendered or placed any material evidence to satisfy by the court to prove his claim. Counsel submits that the defendant never approached the claimant personally to procure the N3,000,000.00 interest free loan but approached one Mr. Johnson Ayoade, his co-in law. That the claimant never tendered his statement of account or any document or witness to corroborate his evidence throughout the trial. That the defendant has said he does not know the claimant in person and came to know the claimant for the first time when the claimant came to give evidence as CW1. That there is no way the defendant would know if the claimant took loan from his place of work when they have never met. Further that the claimant when cross examined also stated that the defendant never approached him personally for the N3,000,000.00 interest free loan but that it was one Mr. Johnson Ayoade who approached the claimant for a loan.

In her address claimant's counsel raised a lone issue for determination by this Honourable Court as follows:

“Whether the claimant has proved his claim as required by law to entitle him to the Judgement of the court”.

Counsel submit that the claimant has adduced ample undiscredited, unchallenged, uncontradicted and credible evidence in line with the averments contained in his complainant form/summons dated and filed on 30/3/2023. That the evidence adduced by the claimant was cogent and satisfactory and sufficiently established the claim.

Further that the claimant's evidence was not discredited during cross examination nor was his credibility impugned. He urged the court to act on

such unchallenged evidence. Counsel referred to **Isaac Omoregbe vs. Daniel Lawani (1980) 3-4 SC** and **Nigerian Maritime Services Ltd Vs. Alhaji Bello Afolabi (1978) 25 S 79 at Page 81**. Counsel also states that the defendant in its statement of defence via Form RSCC 5, admitted the claimant's claim of N3,000,000.00 (Three Million Naira) which the essential, principal and material facts upon which claim was based were tendered and admitted in evidence a marked as Exhibits "A1"- "A5". Counsel referred to Form RSCC filed by the defendant where the defendant unequivocally and expressly admitted those facts. That the defendant did not in anyway whatsoever expressly deny the averments in claimant's complainant form/summons dated and filed on 30/3/2023. COunsle refer to section 123 of the Evidence Act and **Eointl Bank v. NULGE Jgo LGC & Anor (2014) LPELR-24171 (CA)** at page 4.

On effect of an admitted facts.

Also referred to **Our Line Ltd vs. SCC/Nig (2009) 7 SCNJ 358** and **Salawu v Yusuf (2007) 5 SCNJ 354**. Counsel submits that admitted facts need no further proof. Counsel referred to section 123 of the Evidence Act 2011.

Also referred to **Akinlagun v Oshoboja (2006) LPELR 3348** at page 33 also at **(2006) 12 NWLR (Pt. 993) 60**.

That in the instant case the defendant having admitted the principal facts relied on by the claimant, the claimant had no obligation to prove them in evidence. Counsel urged the court to accord full weight to the documents relied on by the claimant in evaluating the evidence of the claimant in proof of the claim which were all admitted without any valid objection by the defendant or its counsel. Counsel urged the court to hold that the defendant's action has unjustly deprived the claimant of his interest free loan of N3,000,000.00 (Three Million Naira) which the defendant ought to have paid full since 15<sup>th</sup> December 2022 and to reject the unreasonable and patently absurd payment suggestion of the defendant to the contrary.

Counsel also urged the court to accept and act on the discredited and unchallenged evidence of the claimant and award the claimant the full amount being claimed - the N3,000,000.00 and N500,000.00 for cost there being no good reason why the said sums should not be awarded.

I have reviewed the evidence of CW1 the claimant and that of DW1 the defendant. I have also taken into consideration the written submission of counsel and all the exhibits attached. The issue that arise for determination before this court is “whether the claimant has proved his case on the balance of probability to be entitled to the reliefs sought before this Honourable Court?”.

The claimant in his evidence in chief has told the court how he gave the defendant who came to him a loan of N3,000,000.00 (Three Million Naira) and the defendant promised to pay back the said sum on or before the 15<sup>th</sup> day of December 2022. He has also said the defendant has not paid back the interest free loan despite several written demands to the defendant. He has tendered Exhibit “A1” - “A5) in support of his case. The defendant both in his statement of defence - form RSSCC and his evidence in chief and cross examination admitted collecting the loan of N3,000,000.00 from the claimant through bank transfer from the claimant’s account. That the transaction was facilitated by his co-inlaw Mr. Ayoada Johnson and does not know the claimant and never met the claimant until this matter came to court. He has also said that the issue of knowing whether the claimant took loan from his company does not arise.

The defendant has also said during cross examination that in Exhibit “A” the undertaking he entered into he stated that he will pay back the loan on the 15<sup>th</sup> day of December 2022 and that he had defaulted in paying the loan.

The above evidence of the defendant show that he has admitted to the evidence of the claimant’s witness, CW1. In the case of **DANIEL V. INEC** (2015) ALL FWLR (Pt. 1789) 993 at 1028 para C, it was held that admission

clearly and unequivocally made is best evidence against the person making it. Further facts admitted need no further proof. Exhibits “A1-A5” tendered by the claimant all support his case that he gave loan to the defendant and the defendant entered into an undertaking as to when to pay back the loan. The defendant’s only contention is that he did not know the claimant until the matter came to court and that the person he transacted the business with is the claimants friend Mr. Ayoade also his co-in law and also that he did not know that the claimant collected loan from his office since he did not know the claimant which is true from the totality of evidence before the court but does not exonerate him from being liable.

Accordingly from the foregoing I hereby hold that the claimant has proved his case on the balance of probability to be entitled to the reliefs sought before this Honourable Court.

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 N3,000,000.00 (Three Million Naira) only, which the claimant gave to the defendant as interest free loan which the defendant promised to pay back the said sum on or before the 15<sup>th</sup> day of December, 2022 and signed an undertaking to that effect but has failed to pay till date.
2. The defendant is to pay to the claimant the sum of N200,000.00 as cost.

Signed:  
A. O. Amadi-Nna, Esq.  
Chief Magistrate GD.1  
19/1/2024