

**IN THE MAGISTRATE COURT OF RIVERS STATE OF NIGERIA**  
**IN THE PORT HARCOURT MAGISTERIAL DISTRICT**  
**HOLDEN AT PORT HARCOURT**  
**RESUMED ON THURSDAY THE 21<sup>ST</sup> DAY OF SEPTEMBER, 2023**  
**BEFORE HIS WORSHIP A. O. AMADI-NNA, ESQ.**  
**SITTING AT CHIEF MAGISTRATE COURT 10, PORT HARCOURT**

**PMC/SCC/80/2023**

**BETWEEN:**

**OSIAH CHUKWULADI ESQ.**

**V**

**UCHECHUKWU EGBILA**

Defendant present.

Claimant absent.

E. N. Okpala appear for the Defendant.

Matter is for Judgement.

**JUDGEMENT**

The claimant claims against the Defendant as follows;

1. The sum of N900,000.00 as the principal amount he gave to the Defendant.
2. The sum of N200,000.00 as damages.
3. Total claim N1,100,000.00.

In proof of his claim the Claimant was the sole witness and gave evidence as CW1 and tendered one exhibit – Exhibit “A” while the Defendant in his defence was the sole witness and gave evidence as DW1 and did not tender any exhibit.

CW1 Osiah Chukwuladi said some time in January 2021, the defendant came to him that he needed some amount of money to execute a project awarded to him by the Akwa Ibom State Government and that he was going to pay back the sum of N900,000.00 upon the completion of the said project and that if he does not successfully execute the project he will give him back the sum of N300,000.00 with 10% interest by the month of February 2021. That where he fails to pay him back the money with the said time there will be a monthly interest of 10% accrued to it until the full and final payment is made to him.

They then entered into an agreement which he tendered as Exhibit "A". Further that after sending the Defendant the money he was not comfortable as to whether the Defendant will be able to keep to the terms of the agreement so he asked the Defendant to send him back his money so that they can complete the transaction but the Defendant said he will be able to keep to the terms of the agreement. The Defendant told him not to worry that if at the end of the month the contract does not work out, he will give him back his capital and the 10% interest on his capital and he agreed with this.

That since then till now the Defendant has refused or reneged on the terms of the agreement and has not given him any interest or capital whatsoever in spite of incessant demands he has made on the Defendant but rather the Defendant has been making failed promises. Further that upon the institution of this matter in court the Defendant sent him the sum of N50,000.00.

He prayed the court to enforce the terms of the agreement.

Under cross examination CW1 said a copy of the loan agreement was given to the Defendant. That the agreement is handwritten. That he advanced to the Defendant the sum of N300,000.00 as loan by transfer and the payment was made twice. That the first instalment was N200,000.00 while the second instalment was N100,000.00. Further that he is claiming the sum of N900,000.00 and the cost of litigation. That the N600,000.00 on top of the N300,000.00 advanced to the Defendant is not an interest but the amount the Defendant promised he was going to pay him.

That he did not charge the Defendant any interest on this loan. That 10% is the monthly charge from March 2021 until the date he will make the full and final payment of the N900,000.00.

Further that the Defendant has paid him the sum of N50,000.00 at the pendency of this matter. That the defendant said he was taking the loan because he wanted to go for a contract in Akwa Ibom State and they told him to bring some money before they will give him the

contract. He further said that he does not know whether the Defendant was able to do the contract and that Pastor Obinna Ubawanne was his witness in this transaction though he didn't sign the agreement but was very much aware of the transaction. That he is not a money lender and does not have any licence from any Government Authority or institution to grant loan neither does he have any licence to charge interest on loan.

He denied charging the Defendant N600,000.00 above the amount he took on loan because he was desperate to get money to execute the contract. That the defendant told him that the contract he advanced him the loan for was frustrated.

This is the case for the Claimant. I now go to the case for the Defendant.

DW1, Ukachukwu Egbula said in January 2021 he approached the Claimant to assist him with money for a project at Ibiano Local Government Area of Akwa Ibom State; a housing unit of 100 units at N7.8 Million per unit, a total of N780 Million. A friend contacted him that he will give him the job in his company's name and that it will cost him N500,000.00 for them to put in his company's name. He approached the Claimant as a friend and the Claimant agreed to give him the sum of N300,000.00 only and that he will give him, the Claimant, the sum of N600,000.00 as a proceed from the contract making it a total of N900,000.00. That the Claimant said the sum of N600,000.00 was interest for the business. He agreed to pay the Claimant the amount and the Claimant said he will be one of the facilitators of the job. He agreed that if the bank mobilizes him for the job he will give the Claimant the sum of N900,000.00 first. The Claimant then said that if the bank mobilize him to site, he will give him interest on the N300,000.00 he gave him. They also agreed that if the contract did not work he will give back to the claimant the N300,000.00 the Claimant gave him. He further said that the Claimant wrote the agreement and gave it to him in the night and he signed it even though he cannot see

very clearly in the night. That when he went to Akwa Ibom State, the contract was not given to him as agreed but subcontracted to him which he told the claimant. That he did not eventually carryout the contract or the sub-contract which was frustrated. Further that he has given the claimant the sum of N50,000.00 in repayment of the loan and N250,000.00 is remaining as balance and he will pay this balance. Also that he told the claimant that he will pay him the sum of N5,000.00 per month due to the situation he has found himself.

Under cross examination, DW1 said some parts of Exhibit "A" the loan agreement are strange to him. That he was supposed to pay the money with interest as agreed but Exhibit "A" is not what was agreed with the Claimant. That they agreed that if the contract works and the money is released he will give the claimant the sum of N900,000.00 and that if the money is released and he did not give the Claimant the N900,000.00 he will give him 10% of that N300,000.00 and if the business does not work at all he will return back the N300,000.00. He further said that the Claimant did not give him a copy of the agreement they signed. That it is not stated in the agreement they signed that he will give back the Claimant the principal sum with 10 percent interest by March 2021 if he didn't make use of the money. Further that he was to reimburse the Claimant in March 2021 if the business thrives.

Under re-examination DW1 said he has paid back the Claimant N50,000.00 remaining N250,000.00 left to be paid. This is the case for the defendant.

Counsel for the parties adopt their final written addresses before this court on the 20<sup>th</sup> day of September 2023 as the final argument for the parties in this case.

The Defendant's final written address is dated 30<sup>th</sup> and filed 31<sup>st</sup> day of August 2023 while the Claimant's final written address is dated and filed the 4<sup>th</sup> day of September 2023.

In his address Defendant's counsel raised two issues for determination, that is 1. "Whether the Claimant has proved to the court that he is entitled to the claims before the court". 2. Whether the Claimant is entitled by law to charge interest on the loan he granted to the Defendant".

Submits that the Claimant has failed totally to prove to the Court that he is entitled to be granted the claims. That the Claimant did not tender before the court any instrument, document or licence granting him the right or power to charge interest on loan.

Submits that it is only banks, finance companies and money lenders that are by law entitled to charge interest on loans. They granted to their customers because they are license to practice or operate to charge interest on loans they granted to their customers because they are licenced to practice or by the law establishing or enabling them in that regard. Counsel refer to Money Lenders Law Cap 87 Laws of Rivers State; section 31 which defines a Money Lender. Also refer to section 11(1) of same law and states that this court cannot countenance such claims put forward by the Claimant in view of the provisions of the Money Lenders Law.

On issue 2, Counsel submits that Exhibit "A" is a photocopy and counsel failed to lay any foundation as to the whereabouts of the original copy. Counsel refer to sections 85, 86 and 88 of the Evidence Act 2011 and states that it is only the primary evidence of a document that is admissible in law. Further that CW1 under cross examination on 31/8/2023 and DW1 in his evidence in chief admitted that the contract for which the loan was advanced was a frustrated contract which did not produce any benefit for the parties.

That a frustrated contract discharges the parties to the contract from any obligation. Counsel refer to pages 565 to 570 of the Nigerian Law of Contract, 2<sup>nd</sup> Edition by Itsey sagey.

In his address Claimant's counsel raised one issue for determination;

Whether the Claimant has proved his case on the balance / preponderance of evidence to entitle this Honourable Court to award Judgement in his favour.

Claimant's counsel answers this in the affirmative and states that CW1 the Claimant in the course of evidence in chief tendered an agreement entered into by both parties in proof of his claims and the agreement contains terms and conditions of their transaction. That this was not contradicted by the Defendant and neither were the facts therein contradicted. Submits that uncontradicted evidence is deemed admitted and ought to be relied upon by the Court. Counsel refer to *Amaechi v. INEC* (2008) All FWLR (part 407) 1 SC.

Counsel referred to the Supreme Court case of *C.B.N V. Interstellar communications ltd.* (2018) All FWLR (part 930) 442 Sc at pages 533 paragraphs F – G where per Ogunbiyi postulated that parties to an agreement are bound by the terms of their agreement and the only grounds for such an agreement can be set aside or interfered with by the courts are on grounds of fraud, misrepresentation, mistake and undue influence and where non exist, such an agreement cannot be set aside by the Courts; neither would the courts interfere with the terms of such an agreement.

Counsel states that the argument by the defendant's counsel that the Claimant is not a money lender as defined in the Rivers State Money Lenders Law Cap 87, 1999 and so is not entitled to interest is misconceived because the Claimant never said he is a money lender and has never held himself out as a money lender.

That however it is not only money lenders that are entitled to interest or profit for contracts entered into and therefore that the Money lenders Law of Rivers State cited by the Defendant's Counsel does not apply here and does not apply in every financial transaction.

On issue 2 raised by the Defendant's Counsel, claimant's counsel refer the court to the record of proceedings of this court evidence in Chief of CW1 where in he tendered the original copy of Exhibit "A"

before applying to substitute same with photocopy. That the claimant was not in court when Exhibit "A" was admitted.

I have reviewed the evidence of the Claimant, CW1 and that of the Defendant, DW1. I have also taken into consideration Exhibit "A".

The issue that arise for determination before this Court is "Whether the Claimant has approved to the Court that he is entitled to the claims before this Court?"

CW1 the Claimant has given evidence of how the Defendant came to him for some amount of money to assist him to execute a project awarded to him wherein they entered into an agreement and he gave the defendant the sum of N300,000.00 and they entered into an agreement Exhibit "A". The evidence before the court shows that the agreement was willingly entered into by the parties. However the claimant did not tender before the court any document or licence to show that he is a money lender since in Exhibit "A' the agreement they entered into, the Defendant is to pay interest to the Claimant. Under section 11(1) of the money lender's Law Cap 87, Laws of Rivers State, 1999, interest cannot be charged over and above the permissible limits. It shall not exceed the respective rates specified. The claimant charged interest over and above the permissible limits allowed by the Money Lender's Law. This court cannot support this interest charged by the Claimant which will be in contravention of section 12 of the money lenders law. Moreover the claimant has admitted that he does not have any licence from any government institution to grant loan or charge interest on loan.

The Defendant DW1 has also given evidence that the contract was frustrated which the claimant CW1 also told this court under cross examination that the contract was frustrated. Therefore the contract having been frustrated the Defendant is discharged by the Doctrine of Frustration.

Accordingly from the foregoing I hereby hold that the Claimant has not proved to the Court that he is entitled to his claims before this court.

However because the Claimant genuinely lent money to the Defendant though not as a money lender.

I hereby make the following orders,

**COURT:**

1. The Defendant is to pay the claimant the sum of N300,000.00 being the principal sum less the N50,000.00 which the Defendant has already paid to the Claimant making it the sum of N250,000.00 which the Defendant is to pay to the Claimant.
2. The Defendant is to pay this sum of N250,000.00 within 30 days.

Signed:

**A. O. AMADI-NNA, ESQ.**

(Chief Magistrate Gd. 1)

21/9/2023

**IN THE MAGISTRATE COURT OF RIVERS STATE OF NIGERIA**  
**IN THE PORT HARCOURT MAGISTERIAL DISTRICT**  
**HOLDEN AT PORT HARCOURT**  
**RESUMED ON MONDAY THE 25<sup>TH</sup> DAY OF SEPTEMBER, 2023**  
**BEFORE HIS WORSHIP A. O. AMADI-NNA, ESQ.**  
**SITTING AT CHIEF MAGISTRATE COURT 10, PORT HARCOURT**

**PMC/SCC/85/2023**

**BETWEEN:**

**MR. MICHAEL EJIOITO**

**V**

**MR. GODSAVEUS ONUMAJURU**

Claimant present.

Defendant absent.

E. Obodo appear for the Claimant.

**JUDGEMENT**

The claimant claims against the Defendant for;

1. Arrears of rent for 7 months at N210,000.00.
2. The sum of N250,000.00 for legal fees.
3. The sum of N340,000.00 as cost of damages to property.

Total claim N800,000.00.

A plea of not liable was entered for the Defendant.

In proof of his case the claimant called one witness who gave evidence as CW1 and tendered one exhibit. Exhibit "A" while the Defendant did not defend this suit.

CW1 Henry Victor said the Claimant donated a Power of Attorney to him to appear on his behalf and he tendered the Power of Attorney as Exhibit "A".

He further said that the Defendant is a tenant to the Claimant. That in the second week of January this year the Defendant asked him to go and collect his shop at No. 25 Kolokuma Street, Borokiri that he is no longer interested in occupying it. That the Defendant owes the sum of N240,000.00 as arrears of rent for 8 months. He also said the

Defendant converted a 3 room shop to one shop thus damaging and destroying the walls.

Further that the cost of the damage is N340,000.00. That the defendant locked up the shop and moved out after he asked him to fix it. He prayed the cost to compel the defendant to pay him the cost of litigation.

The defendant was not in court to cross examine CW1 when the matter came up for cross examination on the 30<sup>th</sup> day of August, 2023 and was foreclosed from cross examining CW2.

This is the case for the Claimant.

The matter came up for defence on the 19<sup>th</sup> day of September 2023, the Claimant was not in court to defend this suit and was foreclosed from defending this suit. Claimant's counsel then informed the court that they were waiving their right to address the court and urged the court to enter Judgement based on the uncontroverted evidence of the Claimant's witness CW1.

I have reviewed the evidence of CW1. I have also taken into consideration Exhibit "A" tendered by CW1.

CW1 has given evidence that he was donated a Power of Attorney by the Claimant to manage the Property at No. 25 Kolokuma Street, Borokiri, Port Harcourt and tendered the Power of Attorney as Exhibit "A". He has also given evidence that the Defendant was the Claimants tenant at the said property where he converted a 3 bedroom shop into a one room shop.

He has further given evidence that the defendant in converting this 3 room shop to a one room shop damaged and destroyed the walls costing N340,000.00. He also give evidence that the Defendant owes arrears of rent for 8 months being the sum of N240,000.00.

CW1 also gave evidence that the Defendant locked and abandoned the shop.

The defendant did not defend this suit and never appeared before this Court. An undefended case requires a minimum of proof.

Uncontroverted evidence is deemed admitted and when evidence is deemed admitted such evidence in proof of the issue in contest.

See the case of FOLURUNSHO V. SHALOUB (1994) 3 NWLR (Part 333) Page 413 at 433 paras B – H.

Further evidence that is not challenged nor rebutted remains good and credible evidence which the court is enjoined to rely upon and ascribe probative value – see the case of EBEINWE V. STATE (2011) 7 NWLR (part 1246) Page 402 at 416.

Accordingly from the foregoing I hereby hold that the Claimant has proved his case on the preponderance of evidence to be entitled to his claim.

Judgment is hereby entered in favour of the Claimant against the Defendant in the following terms.

**COURT:**

1. The Defendant is to pay to the Claimant the sum of N210,000.00 (Two Hundred and Ten Thousand Naira) as arrears of rent.
2. The Defendant is to pay to the Claimant the sum of N200,000.00 (Two Hundred Thousand Naira) as cost.

Signed:

**A. O. AMADI-NNA, ESQ.**  
(Chief Magistrate Gd. 1)  
25/9/2023