

**IN THE MAGISTRATE COURT OF RIVERS STATE OF NIGERIA
IN THE PORT HARCOURT MAGISTERIAL DIVISION
HOLDEN AT PORT HARCOURT
BEFORE HIS WORSHIP NNEKA E. EZE-OBUZOR
SITTING ON THE 13TH DAY OF MAY 2024
AT THE SMALL CLAIMS COURT 4 PORT HARCOURT**

SUIT NO: PMC/SCC/52/CS/2024

BETWEEN

OKECHUKWU STEVEN NYECHE ----- CLAIMANT

AND

OGIDI WARIBOKO----- DEFENDANT

PARTIES: Claimant present. Defendant present.

APPEARANCES: No representation for parties

JUDGEMENT

By a claim dated 4/03/2024, the claimant's claims against the defendant are as follows:

1. N1, 090, 000.00 being amount loaned the defendant with interest
2. N100, 000.00 as cost

PLEA

By the affidavit of service availed this court, the defendant was served the originating process in this suit by substituted means by pasting at the address of the defendant at Believers Avenue, Egbelu, Port Harcourt on the 28/03/2024 at 11:08am. On the 16/4/2024, a plea of not liable was entered for and on behalf of the absent defendant. Case was adjourned to the 23/4/2024 for hearing

SUMMARY OF EVIDENCE

The claimant in proof of his case called a lone witness, the claimant himself and tendered an exhibit marked exhibit A.

The defendant never appeared to defend this suit hence no evidence was entered for the defendant.

The relevant facts from the case of the claimant as presented by the claimant himself is that on the 24/4/2021, he loaned the defendant the sum of N100,000.00 with an interest of 30% monthly. That since then till now the defendant has refused to pay him. That the defendant saw the service on him and informed him that he has seen it and will be coming to court but has refused to court. CW1 informed the court that when he gave the defendant the loan, he entered into an agreement with him. The said agreement was tendered as Exhibit A. CW1 concluded by urging the court to grant his claims. Case was adjourned to the 6/5/2024 for cross examination of CW1.

The defendant never appeared either by herself or through a counsel to defend this suit even after service of hearing notice hence he was foreclosed from cross examining the CW1 and from defending this suit.

The claimant waived his right to address hence case was adjourned for judgement now being read.

RESOLVE

In determination of this suit, I will adopt a lone issue to wit.

Whether the claimant has proved his case to be entitled to judgement

As already stated, the failure of the defendant to make an appearance means that the entire evidence adduced by the claimant is unchallenged. The law is trite that

a Court is at liberty to accept and act on unchallenged and uncontroverted evidence. See the case of **OFORLETE V. STATE (2000) 12 NWLR (PT. 681)415**. The court in the case of **ADELEKE V. IYANDA (2001) 13 NWLR PART 729 PAGE 1 AT 23-24 PARA H-A** held that where the claimant has adduced admissible evidence which is satisfactory in the context of the case, and none available from the defendant, the case will be decided upon a minimum of proof as this makes the burden lighter.

From the case file, the claimant has complied with the provisions of **ARTICLE 2 AND 3 OF THE RIVERS STATE SMALL CLAIMS COURT PRACTICE DIRECTION 2023** for the fact that this is a liquidated money demand not exceeding Five million (N5M), the defendant was served with a demand letter, there is a complaint form, there is an affidavit of service of the summons of court on the defendant.

On the first claim of the claimant, by way of evidence, the claimant has tendered the agreement between parties which was admitted as Exhibit A. In **BABATUNDE & ANOR VS. BANK OF THE NORTH LTD & ORS (2011) LPELR-8249 (SC)** the Supreme Court per Adekeye, JSC stated this principle thus: "The law is that written contract agreement freely entered into by the parties is binding on them. A Court of law is equally bound by the terms of any written contract entered into by the parties. Per Exhibit A, the first claim of the claimant succeeds.

On the second claim of cost of N100, 000.00. Cost follows event and a party who succeeds in a case is entitled to cost to ameliorate the expenses he incurred while prosecuting the case. Cost as claimed is granted as prayed.

In conclusion, judgement is entered for the claimant as follows:

1. The defendant is ordered to pay the claimant the sum of N1, 090, 000.00 being the loan amount with accrued interest from April 2021 to February 2024.
2. The defendant is ordered to pay the claimant the sum of N100, 000.00 as cost.