

**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 6<sup>TH</sup> DAY OF FEBRUARY 2024  
AT THE SMALL CLAIMS COURT 4 PORT HARCOURT**

**SUIT NO: PMC/SCC/228/2023**

**BETWEEN**

**MARTHA JOHN ----- CLAIMANT**

**AND**

**OGONNA ONUM ----- DEFENDANT**

**PARTIES:** Absent

**APPEARANCES:** E.N. Uzoegbunam Esq. for claimant

No representation for defendant.

**JUDGEMENT**

By a claim dated 03/11/2023, the claimant's claim against the defendant are as follows:

1. N5000, 000.00 being amount owed the claimant.
2. N100, 000.00 as cost of litigation.
3. N100, 000.00 as damages.

## **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 door of the defendant on the 24<sup>th</sup> of November 2023 at 4:30pm. On the 28<sup>th</sup> of November 2023, a plea of not liable was entered for and on behalf of the absent defendant. Case was adjourned to the 11<sup>th</sup> of December 2023 for report of settlement/hearing on the application of defence counsel.

## **SUMMARY OF EVIDENCE**

The claimant in proof of her case called a lone witness, the claimant herself and tendered two exhibits marked exhibits A and B.

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 herself is that the defendant is her co business woman and met her that she needed money to invest in her business that the claimant should loan her some money. That they agreed that the loan will be given on interest basis. That the defendant was given a loan of N400, 000.00. That she paid her interest for two months and stopped paying. That she asked the defendant to return the capital since she cannot pay but she kept promising and failing. That she eventually met a lawyer who charged her the sum of N100, 000.00 to serve the defendant a demand letter. The contract agreement between the claimant and defendant was admitted as exhibit A. Professional fee paid for this suit was admitted as Exhibit B. case was adjourned to 18<sup>th</sup> December 2023 for cross examination of CW1.

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

The claimant waived their right to address and asked that judgement be entered as per their claims.

## **RESOLVE**

In determination of this suit, I will raise a lone issue

### ***Whether the claimant is entitled to her claims***

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 contract agreement between herself and the defendant evidencing the debt owed.

On the second claim, **ORDER 16 RULE 1(1) OF THE MAGISTRATE COURTS CIVIL PROCEDURE RULES 2007** provides that in fixing the amount of costs, the principle to be observed is that the party who is right, is to be indemnified for the expenses to which he has been necessarily put in the proceedings as well as compensated for his time and effort in coming to court. Costs are not awarded to penalize a party who is ordered to pay them, nor are costs awarded as windfall to a successful party. Costs are meant to indemnify the winning party for his out of pocket expenses representing the actual and true/fair expenses incurred by the litigation. Upon the evidence of CW1 and Exhibit B, cost of N100, 000.00 is awarded in favour of the claimant.

On the third claim for damages, it is trite law that the amount of damages awarded by the trial court is based on the evidence before the court. Where there is no evidence to support the claim for damages, the claim would be dismissed. The essence of the award of damages is to give compensation to the claimant for the loss of injury which he has suffered i.e. to restore the claimant to a position as

if the contract has been performed. I daresay the award of cost to the claimant for prosecuting this case covers for this and I am of the opinion that granting this said relief will amount to double compensation. Hence this relief is accordingly refused.

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

1. The defendant is ordered to pay the claimant the sum of N400, 000.00 being money owed the claimant.
2. The sum of N100,000.00 is awarded as cost of prosecuting this suit