

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

SUIT NO: PMC/SCC/178/2024

BETWEEN

GOLDEN CHIMAB STANDARD LINK LIMITED

CLAIMANT

AND

IKE MICHEAL MGBEIKE

DEFENDANT

PARTIES: Claimant present. Defendant absent

APPEARANCES: T.O Zadok for the Claimant. No Legal representation for the Defendant

JUDGMENT

The Claimant brought this action via an Ordinary Summons against the Defendant on the 1st day of July, 2024, claiming the relief below:

Debt/Amount Claimed - N5,000,000.00
Fees - None
Costs - None
Total - N5,000,000.00

Upon the filing of the matter in court, an Ordinary Summons attached with the complaint form and claim was served on the Defendant by substituted means via pasting on the Defendant at the gate of Elijah Avenue, Nkpotu, Rumuigbo, Port Harcourt and same pasted on the 6th day of November, 2024, in line with the Order of Court. The Affidavit of Service is also before the Court. The Defendant was absent and not represented in court on the 21/11/2024 when the matter came up for further mention despite being served with the originating processes in this suit and upon confirmation of service, a plea of not liable was entered for the absent Defendant. The Court thereafter directed that Written Deposition be filed and matter adjourned for adoption.

Mr. Mabia Chigozie, testified under oath as CW1 on the 3rd day of December, 2024, adopted his Written Deposition on oath and tendered Five (5) Exhibits marked as follows: The Demand Notice dated the 19th day of February, 2024 as Exhibit A; The Money Lenders Regulation Form of Certificate, dated 14th October, 2020, as Exhibit A1; The Loan Agreement made the 8th day of February, 2020 as Exhibit A2; The First Bank Statement of Account in the name, Mabia Chigozie for the period of 7th February, 2020 to 7th February, 2020 as Exhibit A3; The Deed of Conveyance made the 26th day of October, 2000 between Mr. Emmanuel Nathan James And Mr. Ike Michael Mgbeke as Exhibit B.

The brief unchallenged evidence of the Claimant CW1 as stated in his deposition is that he is the Managing Director and the alter ego of the Claimant. That he is a licensed Money Lender and the Defendant took a loan of N1,000,000.00 (One Million Naira) from his company as captured in the Loan Agreement (Exhibit A2). That it was agreed by both parties that there would be 30% interest on the loan per month and he paid the N1,000,000.00 (One Million Naira) to the Defendant through the Claimant's account domiciled with First Bank as captured in Exhibit A3. That as security for the loan, the Defendant gave him the original copy of his property at Obia-Ogbo,

Rumudike, Alakahia, in Obio Akpor Local Government Area, Rivers State (Exhibit B). That when the loan became due for repayment, he started making calls to the Defendant demanding for payment but the Defendant kept making unfulfilled promises, which necessitated serving him the Final Demand Notice on the 19th day of February, 2024. That by their loan Agreement, the Defendant was supposed to pay back the accrued interest and the principal sum to the Claimant within two months, which said period expired on the 6th of April, 2020. That according to the loan Agreement, where the Defendant fails to pay any months' interest before the 5th of the next month, an additional interest of 30% is to continue to accrue on the principal and the accrued interest. That as at 19th of February, 2024, the accrued interest on the loan was Thirteen Million Two Hundred Thousand Naira (N13,200,000.00) and Defendant had paid only One Million Four Hundred and Fifty Thousand Naira (N1,450,000.00). That though the Defendant is still indebted to the Claimant in the sum of Eleven Million Seven Hundred and Fifty Naira (N11,750,000.00), what he is claiming before the court is the sum of Five Million Naira remaining as he has decided to abandon the excess to bring the claim within the jurisdiction of this court.

The Defendant was absent and not represented in court when the matter came up for cross-examination and he was foreclosed from cross-examining the CW1 and CW1 and CW1 was discharged and matter adjourned for defence. The Defendant was still absent in court on the 21/01/2025 when matter came up for defence despite being served with the Summons and the hearing notice and was foreclosed from defending the suit. The Claimant's Counsel T. O Zadok, on the 3rd of December, 2024, told the court of his intention to waive his right to filing of final written address and urged the court to grant the Claimant's relief on the strength of the evidence already led and same was granted and judgment reserved.

From the above, the only issue that calls for determination is whether the Claimant has been able to prove its case on the preponderance of evidence and on the balance of probabilities to be entitled to the relief sought.

Now, in civil cases, the burden of first proving 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 been had to any presumption that may arise on the pleadings. See Section 133 (1) and (2) of the Evidence Act, 2011 (as amended). See also Mrs. Fumilayo Mubo Adeniran & ORS V. Mr. Sikiru Adio & Anor (2024) 16 NWLR (Pt. 1984) pg. 351, (SC). As stated above, the only claim of the Claimant is for payment in the sum of N5,000,000.00 (Five Million Naira), being and representing the outstanding balance or indebtedness of the Defendant to the Claimant for the N1,000,000.00 (One Million Naira) Defendant borrowed from the Claimant together with the accrued interest for which the Defendant has refused to pay back despite repeated demands. The law is now settled that a cause of action in a suit for recovery of debt accrues when a debtor fails to pay his debt after a demand to pay has been made. See Akinsola & Anor. V Eymwaya (2022) LPELR-57284 (CA). See also Article 2 (1) (d) of the Rivers State Small Claims Court Practice Direction, 2024, which makes the service or issuance of demand letter a condition precedent to the commencement of an action against the Defendant.

In this case, there is a letter before the court titled: Final Demand Notice, dated 19th February, 2024 (Exhibit A), showing that the Defendant was served with the said formal demand notice on the 19/02/2020, thereby satisfying the condition precedent for the commencement of this suit. From the various Exhibits before the court especially Exhibit A3, it is very clear and not in dispute that the sum of N1,000,000.00 (One Million Naira) was transferred through the CW1's account domiciled with First Bank of Nigeria Plc to the Defendant's account, on the 7th day of February, 2020, as captured on page 22 of the said Exhibit A3. However, despite such transfer, the Defendant has failed or refused to perform his own side of the bargain by paying back the loan he collected as he agreed to and as captured in the Loan Agreement (Exhibit A2) which the parties freely executed.

In the case of Arjay Ltd & Ors V. A.M.S Ltd (2003) LPELR-666 (SC), it was held by the apex court thus:

** It is elementary that where parties have entered into a contract or an agreement, they are bound by the provisions of the contract or agreement. This is because a party cannot ordinarily rescind from a contract or agreement just because he later found that the*

conditions of the contract or agreement are not favourable to him. This is the whole essence of the doctrine of sanctity of contract."

The Defendant, having breached or vitiated the contract by unilaterally resiling from the contract through his act of non-performance, has a moral duty to refund or pay back to the Claimant the outstanding loan sum of N5,000,000.00 (Five Million Naira). There is no evidence before the court showing or suggesting that the Defendant has repaid the outstanding loan sum due him. The Defendant therefore, having not denied or challenged the above evidence of the CW1 with any credible evidence, is deemed to have admitted same and the law is trite that facts not challenged or controverted are deemed admitted and the court can act on same. See *NACEN V. BAP (2011) 11 NWLR (Pt. 1257) pg 193*. Consequently and in the absence of any credible evidence to the contrary, this court is therefore left with no option than to rely on the uncontroverted evidence of the Claimant.

The law is trite that Courts exists to do substantial justice to parties before it and works with credible evidence and it is the court's view therefore that the Claimant has been able to prove his case with credible evidence and on the preponderance of evidence to be entitled to the relief sought. Premise on the above, the Claimant is therefore entitled to the repayment of the Loan sum of N5,000,000.00 (Five Million Naira) and I so hold.

Accordingly, it is hereby ordered that;

The Defendant shall refund or pay the Claimant the sum of N5,000,000.00 (Five Million Naira), being and as representing the outstanding indebtedness of the Defendant to the Claimant.

This is the Judgment of this court. I make no further Orders.

**LEZIGA C. MITEE (MRS)
CHIEF MAGISTRATE II, MAGISTRATE COURT 10**

Dated this 28th day of January, 2025

