

IN THE MAGISTRATES' COURT OF RIVERS STATE OF NIGERIA

IN THE PORT HARCOURT MAGISTERIAL DISTRICT

HOLDEN AT SMALL CLAIMS COURT 1, PORT HARCOURT

BEFORE HIS WORSHIP COLLINS G. ALI, ESQ.,¹ TODAY TUESDAY, THE 20TH

DAY OF FEBRUARY, 2024.

SUIT NO.:PMC/SCC/218/2023.

BETWEEN:

JOY JOHNBULL

CLAIMANT

AND

BLESSING HARRY

DEFENDANT

Case called.

Claimant present, Defendant absent.

JUDGMENT

This is a debt recovery claim filed by the Claimant against the Defendant on the 2nd November, 2023 after serving the Defendant with mandatory demand letter on the 30th August, 2023. By the Claimant's complaint form and the summons issued on the 2nd November, 2023; the Claimant claims against the Defendant as follows:-

Debt/Amount Claimed	-	<u>₦180,000.00</u>
Costs (Expenses/Litigation)	-	<u>₦200,000.00</u>
TOTAL	=	<u>₦380,000.00</u>

The originating processes were served on the Defendant on the 12th December, 2023 following the Order of this Honourable Court for substituted service granted on the 6th December, 2023. The Defendant failed to appear in Court despite been served with the originating processes thereby prompting the entry of plea of not liable on her behalf on the 20th December 2023; and the case adjourned for trial.

During the trial, the Claimant, a trader at Afikpo Market, Mile 1 Diobu, Port Harcourt testified as CW1 in proof of her claims on the on the 10th and 24th January 2024. The CW1 told the Court that the Defendant was part of a contribution scheme

¹ LL B, LL M, BL, A. IDRI, Chief Magistrate Grade I, and the Presiding Magistrate, Small Claims Court 1, Port Harcourt, Rivers State.

done in their business place to support each other. The contribution according to the CW1 was to last for about six (6) months but started on the 19th December 2022. Under the contribution arrangement, each member or participant pays ₦2,000.00 daily but have the option of doing double or more slots. The Defendant was said to have subscribed to double slots and had contributed ₦16,000.00 only as at 26th December, 2022 when she requested and was granted the sum of ₦159,000.00 to support her business. The Defendant requested and was granted a second sum of ₦159,000.00 on the 17th January 2023 making up a total of ₦318,000.00 under the scheme but stopped her daily contribution on the 25th February, 2023. The Defendant according to the evidence of CW1 made a total contribution of ₦138,000.00 from her double slots of ₦2,000.00 daily as at the time she stopped making her daily contributions on the 25th February, 2023. The CW1 testified that the Defendant has an unpaid sum of ₦180,000.00 to refund out of the sum of ₦318,000.00 advanced to her under the daily contribution scheme; but have since refused to pay despite repeated demands. The CW1 was not cross examined by the Defendant who also did not defend the suit.

At the close of trial, the Claimant counsel Karibo Douglas, Esq. filed final written address dated 6th February, 2024 on behalf of the Claimant. After a careful consideration of the Claimant's claim and final written address, the sole issue for determination in this case is thus:

Whether the Claimant is entitled to her claims before the Court?

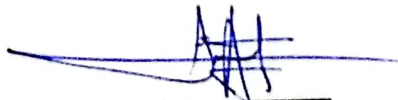
The evidence of the Claimant on the money given to the Defendant is not backed up by documentary evidence but based on oral agreement as submitted by the learned Claimant counsel. Such oral agreement if not challenged by a superior evidence is binding as submitted by the learned Claimant counsel. The law is that the fact that an agreement is not in writing but made orally does not make it unenforceable. An oral agreement is backed by the same force of law as a written agreement. See the case of *Greif (Van Ceer) Containers Plc v Onson Plastics & Industries Ltd [2014] LPELR-24122 (CA)*. The Defendant from the evidence of the Claimant made a total contribution of ₦138,000.00 which was not sufficient to

offset the sum of ₦318,000.00 she accessed under their mutual daily contribution scheme at Afikpo Market, Mile 1 Diobu, Port Harcourt on the 26th December, 2022 and 17th January, 2023 respectively. The Defendant has refused to repay the balance of ₦180,000.00 till date despite repeated demands including the letter of demand served on her through her mother on the 30th August, 2023.

The law as argued by the learned claimant counsel and rightly too is that where evidence given by a party is not contradicted by the adverse party, it is deemed admitted. I hold that the Claimant has proved her case and is entitled to the reliefs sought. However, on the issue of cost which is ancillary claim and within the discretion of the Court; I shall award cost which I assess at ₦150,000.00 only. The sole issue is resolved in favour of the Claimant and against the Defendant.

Judgment is accordingly entered for the Claimant as follows:

1. The Defendant is hereby ordered to pay the Claimant forthwith, the sum of ₦180,000.00 (One Hundred and Eighty Thousand Naira) only representing unrepaid debt.
2. The Defendant is hereby ordered to pay the Claimant forthwith, the sum of ₦150,000.00 (One Hundred and Fifty Thousand Naira) only as costs for expenses and legal fees.



C. G. Ali, Esq.
(Chief Magistrate)
20/02/2024

LEGAL REPRESENTATION:

1. Karibo Douglas, Esq. for the Claimant.
2. Defendant not represented.

