

IN THE MAGISTRATES' COURT OF RIVERS STATE
IN THE PORT HARCOURT MAGISTERIAL DISTRICT
HOLDEN AT PORTHARCOURT BEFORE HIS WORSHIP, G.C.AMADI ESQ.
SITTING AT CHIEF MAGISTRATE COURT 8, ON THE 14TH OCTOBER, 2024

SUIT NO. PMC /SCC/228/2024

THE INCORPORATED TRUSTEES OF ZIGBE ETHICS INITIATIVE - CLAIMANT

AND

- 1. LEMMY UCHE ELUMEZUE**
- 2. OKWARA OBUBA AKI**

} DEFENDANTS

JUDGMENT

This is the final judgment in this suit wherein the claim before the court, dated and filed on the 9th September, 2024 is for:

1. An order of this Court compelling the defendants to refund the Claimant the sum of N325,000 and N468,000 being outstanding sum accrued and interest respectively
2. An order of this Court compelling the defendant to pay the Claimant the sum of N1,000,000(One Million Naira) as general damages
3. An order of this Court compelling the defendant to pay the Claimant the sum of N300,000 as cost

In proof of his case, the Claimant called one witness and the defendant never appeared in this matter.

On the 30th September, 2024; an application to enter plea of not liable for the defendant by the defendant counsel was granted and hearing notice was ordered to be served on the defendant and the matter was set down for hearing.

On the 7th day of October, 2024, the Claimant was present and the defendant was absent. On this date, the CW1, one Okechukwu Ogbonna adopted his evidence on oath wherein he deposed that he lives at Rumudara, Port Harcourt, Rivers State and that he is the claimant's manager and has the consent of the claimant by virtue of which he is conversant of the case. That the claimant is a company duly incorporated under the laws of the of the Federal Republic of Nigeria case with its head office at Km 6 E/West Road, Rumudara,



Port Harcourt, Rivers State. That the 1st defendant is a businessman running his wholesale drinks business at No. 6 Oria Street, beside Cherubim Church, Rumuokwuta, Port Harcourt,

That the 2nd defendant is a businessman carrying on his business at No. 50 Psychiatric Hospital Road, Port Harcourt, Rivers State, within the jurisdiction of this Honourable court.

That on the 22nd day of April, 2022, the 1st defendant borrowed the sum of N 400,000.00 from the claimant at an agreed interest of 7% per month for which, the 2nd defendant stood as guarantor to the 1st defendant. That the 2nd defendant as guarantor, undertook to be held liable to the claimant for the payment of any outstanding sum arising from breach of the terms of the loan by the 1st defendant

That by the terms of the loan agreement between the claimant and the defendants, the defendants were to repay the loan and the accrued interest to the claimant within a period of Four (4) months, that is, between 23rd April, 2022 to 22nd August, 2022 at the interest rate of 7% per month, thereby making the interest for each month to be the sum of N 28,000.00

That it was further agreed between the claimant and the defendants that, the repayment shall be by daily installments of N 5,000.00 to the claimant. As agreed, the defendants were to repay a total sum of N 5 12,000 to the claimant, which covers the principal

sum of N 400,000.00, and the 7% monthly agreed interest, which amounts to the sum of N 112,000.00 for the Four (4) months period, to be repaid on or before the 22nd day of August, 2022. That however, notwithstanding the agreement between the claimant and the defendants, the defendants at the expiration of the loan on 22nd August, 2022, only repaid a total sum of N 187,000.00 to the claimant, inclusive of the 1st defendant's savings of N 1 12,000.00 with the claimant thereby, leaving an outstanding principal balance of N 325,000.00 as at 22nd August, 2022.

That between the 22nd day of August, 2022 when the loan term expired till the date of filing this suit, is over Twenty-Four (24) months and by the agreement between the claimant and the defendants, where the defendants fail to fully repay the loan and the agreed interest on or before expiration of the loan on 22nd August 2022, the claimant is to charge 6% interest per month on the outstanding balance until the defendants liquidate or pay up all the outstanding

That going by the agreement above, the 6% monthly interest on the outstanding sum of N325,000.00, which is the outstanding sum after expiration of the loan on 21st August, 2022, amounts to N19,500,100. Thus, the 6% monthly interest on the outstanding sum of 325,000.00, for Twenty-Four months (i.e between 22nd August, 2022 to 22nd August, 2024) will amount to an accrued interest of N468,000.00. That when the accrued interest of N468,000 is added to the outstanding principal sum of N325,000, it will amount to the sum of N793,000.00.

That at the moment, the defendants have disappeared into the thin air without repaying the outstanding sum to the claimant, and have blocked the claimant from reaching them via their telephone numbers and that following the default of the defendants to pay up the outstanding balance and the accrued interest in line with the agreement between the claimant and the defendants, the claimant through their solicitor, O C. Udensi, Esq of



Surelex Partners on 26th day of April, 2024, wrote letters of demand to the defendants, and that the defendants have refused to pay the outstanding sum of N793,000. and that he knows of a fact that the defendants are persons of means who are very capable to offset the outstanding balance, but have deliberately refused to do so. That the last time I met the 1st defendant in Enugu and tried to catch him, he was into bolt business.

The refusal of the defendants who are doing very well in their respective businesses to repay the loan to the claimant, has constrained the claimant to spend over the sum of N 300,000.00 in paying their solicitor for the prosecution of this suit thereby, causing the claimant to incur huge financial loss and loss of other business opportunities.

That the defendants at present, are indebted to the claimant to the tune of N 793,000.00, which breakdown are as follows;

a. The sum of N 325,000.00 being the outstanding principal sum after expiration of the loan on 22nd August, 2022

b. The sum of N 468,000.00 being the accrued interest on the outstanding sum for Twenty-Four (24) months at the interest of 6% per month

The CWI identifies loan agreement form signed by the 1st defendant with the claimant, the loan guarantee forms executed by the 2nd defendant, letters of demand served on the defendants and receipt of payment for the prosecution of this suit and the Claimant's counsel applies to tender same in evidence and in the absence of any objection the loan agreement form signed by the 1st defendant with the claimant, the loan guarantee forms executed by the 2nd defendant, two(2) letters of demand served on the defendants and receipt of payment for the prosecution of this suit were admitted in evidence and are marked as Exhibits A'B'C'D and E respectively.

At the close of the evidence of CWI, the Claimant announced the close of their case. Prior to that, after sighting the hearing notices dated 30th September, 2024 and affidavit of service dated 30th September, 2024 and in line with Article 9 of the Small Claims Court Practice Direction, 2024; the Court having satisfied herself that the defendants have been served and have failed or refused or neglected to appear and defend the claim against him, were foreclosed from cross examining the CWI and thereafter from defending the claim and the matter was adjourned for judgment.

A total of five (5) exhibits were tendered in evidence in the course of the trial.

That said, I will proceed to consider the case of the parties in the light of the relevant laws. I have noted the essence of the claim have also taken cognizance of the evidence before the court. I have read all the exhibits and I have couched a lone issue for determination and that is whether the Claimant has discharged the burden of proving his claim before the Court.

Suffice is to say that before the court adjourned the matter for hearing and heard the matter, the court always satisfied itself that:

1. The processes have been duly served on the defendant



2. That the time before the date of service and the date of hearing was sufficient for the defendant to have appeared had he intended to do so.

From the evidence of the Claimant and the claim before the Court, the CWI's case is that That the 2nd defendant is a businessman carrying on his business at No. 50 Psychiatric Hospital Road, Port Harcourt, Rivers State, within the jurisdiction of this Honourable court.

That on the 22nd day of April, 2022, the 1st defendant borrowed the sum of N 400,000.00 from the claimant at an agreed interest of 7% per month for which, the 2nd defendant stood as guarantor to the 1st defendant. That the 2nd defendant as guarantor, undertook to be held liable to the claimant for the payment of any outstanding sum arising from breach of the terms of the loan by the 1st defendant

That by the terms of the loan agreement between the claimant and the defendants, the defendants were to repay the loan and the accrued interest to the claimant within a period of Four (4) months, that is, between 23rd April, 2022 to 22nd August, 2022 at the interest rate of 7% per month, thereby making the interest for each month to be the sum of N 28,000.00

That it was further agreed between the claimant and the defendants that, the repayment shall be by daily installments of N 5,000.00 to the claimant. As agreed, the defendants were to repay a total sum of N 5 12,000 to the claimant, which covers the principal sum of N 400,000.00, and the 7% monthly agreed interest, which amounts to the sum of N 112,000.00 for the Four (4) months period, to be repaid on or before the 22nd day of August, 2022. That however, notwithstanding the agreement between the claimant and the defendants, the defendants at the expiration of the loan on 22nd August, 2022, only repaid a total sum of N 187,000.00 to the claimant, inclusive of the 1st defendant's savings of N 1 12,000.00 with the claimant thereby, leaving an outstanding principal balance of N 325,000.00 as at 22nd August, 2022. That between the 22nd day of August, 2022 when the loan term expired till the date of filing this suit, is over Twenty-Four (24) months and by the agreement between the claimant and the defendants, where the defendants fail to fully repay the loan and the agreed interest on or before expiration of the loan on 22nd August 2022, the claimant is to charge 6% interest per month on the outstanding balance until the defendants liquidate or pay up all the outstanding. That going by the agreement above, the 6% monthly interest on the outstanding sum of N325,000.00, which is the outstanding sum after expiration of the loan on 21st August, 2022, amounts to N19,500,100. Thus, the 6% monthly interest on the outstanding sum of 325,000.00, for Twenty-Four months (i.e between 22nd August, 2022 to 22nd August, 2024) will amount to an accrued interest of N468,000.00. That when the accrued interest of N468,000 is added to the outstanding principal sum of N325,000, it will amount to the sum of N793,000.00.

To buttress this assertion, the CWI tendered Exhibits A-E before the Court.

Suffice is to note at this point that none of the facts stated by the claimant's witness was controverted in evidence or denied by the defendant and so will be deemed by this court as admitted. The law is that facts admitted need not be proved by evidence. Please refer to the case of Ayoke V. Bello (1992)10 NWLR (Pt 218) pg 380 Ratio 2; O.A.A Cooperative



Society Vs. NACP Ltd (1999) 2NWLR (Pt 590) Pg 234, Ratio 4 to the effect that what is not denied is deemed admitted and what is admitted need not be proved.

On the Claim for General Damages: The correct assessment for general damages remains an award that compensates the injured party and restores it to the position it would have been had the breach or injury not occurred. As a result, the assessment of damages is based purely on damages flowing naturally from the breach. Stephen Okongwu V NNPC (1989) 4 NWLR (Pt 115) 296 @ 306h-307a; GFK Investment Ltd V Nigeria Telecommunications Plc (2009) 15 NWLR (Pt 1164) 344; @ 384D-E.

The award is quantified by what in the opinion of a reasonable person is considered adequate loss or inconvenience which flows naturally, as generally presumed by law, from the act or conduct of the Defendant. It does not depend upon calculation made and figure arrived at from specific items. See Odulaja v Haddad (1973) 11 SC 357; (1973) 11 S.C. (Reprint) 216; Lar v Stirling Astaldi Limited (1977) 11-12 SC 53; (1977) 11-12 SC (Reprint) 106 and Osuji v Isiocha (1989) 6 S.C. (Part II) 158; (1989) 3 NWLR (Part 111) 623

The Claimant have testified that he has gone through psychological and emotional trauma because The refusal of the defendants who are doing very well in their respective businesses to repay the loan to the claimant, has constrained the claimant to spend over the sum of N 300,000.00 in paying their solicitor for the prosecution of this suit thereby, causing the claimant to incur huge financial loss and loss of other business opportunities.

On the basis of the above, the claim for general damages succeeds

On the undisputed and clear evidence before the court, the court will hold that the claimant has discharged the burden of proving that he is entitled to his claim before the Court as against the 1st and 2nd defendants.

IT IS THUS ADJUDGED that the 1st and 2nd defendants to refund the claimant, the sum of N325,000(Three Hundred And Twenty Five Thousand Naira and N468,000 (Four Hundred And Sixty Eight Thousand Naira only) to the total of N793,000 (Seven Hundred And Ninety Three Thousand) being outstanding principal sum accrued and interest respectively.

AND, IT IS FURTHER ADJUDGED that the 1st and 2nd defendants to pay the Claimant, the sum of N800,000 (Eight Hundred Thousand Naira) as general damages flowing from the unquantifiable inconveniences of holding down the Claimant's money and the unnecessary expenses accrued in trying to recover same.

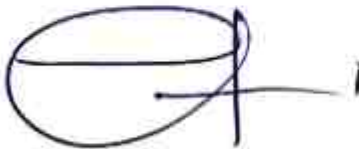
AND IT IS ORDERED that the 1st and the 2nd defendants to pay the Claimant, the aforesaid sum of N793,000 (Seven Hundred And Ninety Three Thousand) N800.000, (Eight Hundred Thousand Naira) with immediate effect being refund of outstanding



Principal sum accrued and interest and general damages cumulating to the total sum of N1,593,000(One Million, Five Hundred and Ninety Three Thousand Naira Only)

AND IT IS FURTHER ORDERED that the defendants do pay to the claimant the total sum of N1,593,000(One Million, Five Hundred and Ninety Three Thousand Naira Only) above mentioned.

TAKE NOTICE –That if payment is not made as above ordered, a warrant or warrants may issue requiring an officer of the court to levy the sum above mentioned, to the Claimant together with further costs.



**G.CHINYERE AMADI. ESQ.
CHIEF MAGISTRATE G.D.I**

