

**IN THE CHIEF MAGISTRATE COURT OF RIVERS STATE OF NIGERIA  
IN THE RUMUODOMAYA MAGISTERIAL DISTRICT  
HOLDEN AT RUMUODOMAYA**

**BEFORE HIS WORSHIP B.H. ABE (MRS) ESQ., SITTING AT THE CHIEF  
MAGISTRATE COURT 1 RUMUODOMAYA ON TUESDAY THE 9TH DAY  
OF JULY, 2024**

**RMC/SCC/15/2024**

***BETWEEN***

**MRS SUZY .N. TREASURE FRANKLIN - CLAIMANT**

**VS.**

**MR NICHOLAS ONYENWEUWA & ANOTHER - DEFENDANTS**

Matter for Judgment.

Parties absent

O.M.Ugwuegbu, Esq., holding the brief of C.C. Lawrence Esq., for the claimant, no appearance for the defendants.

**JUDGMENT**

The Claimant claims as follows:

1. N2,000,000.00 (Two Million Naira) only, borrowed from the claimant by the defendants, being the loan sum.
2. N120,000.00 (One Hundred and Twenty Thousand Naira) only, agreed interest from 31<sup>st</sup> August 2023 to 13<sup>th</sup> October 2023 for 43days.
3. N120,000.00 (One Hundred and Twenty Thousand Naira) only, as interest for 43days from 14<sup>th</sup> October, 2023 to 25<sup>th</sup> November, 2023
4. N400,000.00 (Four Hundred Thousand Naira) only, as legal fees.
5. N300,000.00 (Three Hundred Thousand Naira) only, for general damages.
6. 10% interest on the judgment debt from 14<sup>th</sup> October, 2023 till the judgment debt is fully liquidated.

**Facts**

The Claimant commenced this action by filing a Letter of Demand; Form RSSC 1, a complaint from; Form RSSC 2 and the Summons; RSSC 3.

Cw1, commenced her evidence on the 30/4/24, E.D. Geroge Esq., appeared for the Claimant, a plea of not liable was entered for the Defendants by the Claimant's Counsel.

CW1 gave his name as Chinonso Lawrence, a legal practitioner, the Claimant donated a Power of Attorney to CW1 to represent her, the Power of Attorney is before me as Exhibit A, the Defendants in 2023 met with the Claimant to loan the Defendants N2,000,000.00 (Two million Naira only), the interest was 6% of the N2,000,000.00 (Two million Naira) to give N120,000.00 (One hundred and twenty thousand naira only) from 31/8/23 to 13/10/23. The loan agreement is before me as Exhibit B.

The Defendants presented a Deed of Conveyance as collateral to the Claimant as a means of security for the loan, the Deed was admitted in evidence as Exhibit C.

They both agreed that the Defendants will pay all the fees incurred by the Claimant, where the Defendants do not repay the loan sum as at when due. After 4/10/23, the Claimant contacted the Defendants, all demands made by the claimant were fruitless.

The Defendants were served with a letter of demand before me as Exhibit D dated 4/11/23, several efforts were made to get the Defendants to pay in installments to the Claimant to defray the debt, all efforts were fruitless, the interest was also not paid by the Defendants.

Form 001 the Demand letter, was served on the Defendants from the Court, before me as Exhibit E. The professional fee of N400,000.00 (Four hundred thousand naira only), the receipt thereof is before me as Exhibit F.

In conclusion, Cw1 prayed the Court for the Defendants to repay the N2,000,000.00 (Two million naira only) loan, the 6% interest from 31/8/23 till date, which runs every 43days to give N120,000.00 (One hundred and twenty thousand naira only), Legal fees of N400,000.00 (Four hundred thousand naira only), and damages of N300,000.00 (Three hundred thousand naira only), post judgment sum of 10%.

Cw1 was foreclosed afterwards from cross-examination by the Defendants due to his absence, the Claimant's counsel closed her case. The Court ordered the Defendants to be served with a hearing Notice.

The defence J.U. Eze holding the brief of B.I.O Egwu informed the Court on the 8/5/24 that they were just briefed, prayed the Court for an adjournment which the Court conceded to.

The defence was foreclosed on the 15/5/24, due to his absence from entering his defence, the Court adjourned for adoption of final written address. B.I.O Egwu appeared for the Defendants on the 23/5/24, prayed the Court for leave to settle out of Court, the Court granted same.

On the 21/6/24, the Claimant's counsel, Chinonso Lawrence Esq., informed the Court that the settlement had broken down between both parties, the Court vacated its leave for out of Court settlement and the Claimant's counsel adopted his final written address, dated 20/5/24, served on the Defendants on the 20<sup>th</sup> May, 2014. Endorsement and return before the Court.

*Whereupon he submitted thus; Issue for determination by the claimant's counsel;*

*Whether by the evidence adduced by the claimant during trial which was unchallenged and uncontroverted, the claimant is entitled to judgment?*

Your Worship, the CWI during his examination in chief tendered documents, which showed contractual relationship between the claimant and defendants which is Exhibit B dated 31st August, 2023 for which the defendant voluntarily released Exhibit C as a security for the loan showing that all elements of valid contract exist between the parties. The CWI also tendered Exhibits D and E in demand for payment of the loan sum for which the defendant never complied to.

It is of essence to state that we rely on all the contractual terms on pages 2 and 3 of Exhibit B. In support of Exhibit F as regards general damage, special damage and professional fees we rely on especially paragraph (b) on page 3 of Exhibit B which reads thus:

*"THE LENDER shall. take whatever action that is legally appropriate to recover the loan and all the costs incurred for the recovery shall be borne by THE BORROWER. "*

Your Worship, claimant's statement in her Small Claims Complaint Form as in Form RSSC2 was not challenged by the defendants during the course of the trial. The position of the law is that claims not denied or traversed by the defence are presumed admitted. We place reliance on the case of SALZGITTER STAHL (GMBH) V. TUNJI DOSUNMU INDUSTRIES LTD. (2010) 45 (PT2) NSCQR 1085 @ 1109, PER C. M CHUKWUMA-ENEH, JSC.

The claimant called one witness, and adduced evidence to substantiate facts in her Particulars of Claim. The defendants were aware of this action and proceedings all the while but elected not to come and defend the suit. The position of the law is that where evidence given by a party to any proceedings was not challenged by the other party v ho had opportunity to do so, it is always open to the court seised of the matter to act on such unchallenged evidence

before it. See the following authorities: OMOREGBE V. LAWSON (1980) 3-4 SC, 108. ODULAJA V. HADDAD (1973) 11 SC, 35. MOBIL PRODUCING NIG. UNLTD V. MONOKPO (NO.2) (2001) FWLR (PT 78) 1210.

We therefore pray this court to rely on all our oral and documentary evidence. It is noteworthy that the defendants did not appear in court to controvert the evidence adduced by the claimant and they did not file their defence, admission or Counter-Claim.

Your Worship, it is trite that when evidence is unchallenged the court ought to accept such evidence in proof of the issue in contest. We rely on the authority of KOSILE V. FOLARIN (1989) 3 NWLR (PT 107) 1.

In conclusion of our argument in favour of the claimant above, and the facts contained in the claimant's statement in her Small Claims Complaint Form coupled with the unequivocal and unchallenged pieces of evidence adduced, we strongly urge the court to enter judgment for the claimant.

### **Issue for Determination**

Whether the Claimant has proved her entitlement to all her claims?

### **COURT**

The Claimant in proof of her case tendered Exhibits A to F.

1. Exhibit A- the Power of Attorney donated to the Claimant's attorney to represent her in this suit.
2. Exhibit B – the loan Agreement dated 31/8/23, signed by both parties and their witnesses.
3. Exhibit C – the Defendant's Deed of conveyance; collateral for the loan.
4. Exhibit D – the letter of demand dated 4/11/23, by the Claimant's Attorney to the Defendants, demanding for the repayment of the loan sum of N2,000,000.00 (Two million naira), requesting that the loan sum be paid before 13/11/23 including all the accrued interests.
5. Exhibit E – the demand letter from this Court dated 27/11/23.
6. Exhibit F – Legal fees receipt of N400,000.00 (Four hundred thousand naira).

The above exhibits tendered clearly prove the Claimant's claim against the Defendants. The Defendants never appeared before this Court to challenge or controvert the evidence of the Claimant. The defence appeared twice, albeit to introduce himself and pray for leave to settle out of Court. The Defendants never challenged or disputed the evidence of the Claimant, Cw1 was never cross-examined and the Defendants never entered his defence. The defendants were

given ample opportunity to so do but failed to. It is not the duty of the Court to force or compel them to defend this suit filed against them.

The Defendants have acted in clear breach of the contract entered into by both parties. They both agreed that the Defendants will repay the loan sum of N2,000,000.00 (Two million naira only) after 43 days, from 31/8/23 to 13/10/23, to enable the first defendant relocate his pharmaceutical shop, See Exhibit B page 2, clause 4. The Defendant's land was used as a collateral, security for the loan, see Exhibit B, page 3, clause 1.

The interest on the loan was agreed at 6%, in the sum of N2,120,000.00 (Two million, one hundred and twenty thousand naira only), payable by the first defendant on the 13/10/23 and 10% on the Judgment sum till the judgment debt is fully liquidated. See page 3, clause C, of Exhibit B.

The loan agreement further states that the lender upon default by the borrower (Defendant) exercising authority to sell the land (Exhibit C) and take any legal action legally appropriate to recover the loan and all costs incurred from the loan recovery shall be borne by the borrower (Defendant), see page 3, clause A and B of Exhibit B. It is the duty of the Court to interpret the terms of an agreement and not to write one for both parties.

The Claimant has filed this suit, for breach of the loan agreement between both parties, due to the refusal of the Defendants to pay back the loan sum with accrued interests, despite being served with two demand letters, see Exhibits D and E respectively.

The Claimant's entitlement to 10% interest on the judgment sum, N400,000.00 legal fees and general damages including the 6% interest on the loan sum after 43 days were agreed by both parties as contained in the loan agreement, Exhibit B, the Court will on this premise will grant the claimant's entitlement to the claims aforementioned.

If the defendants hitherto had any defence, their counsel who appeared twice would have made it known to the Court, the Court in the absence of any evidence to the contrary, will rely on the evidence of the claimant, both the oral evidence given through cw1 and the documentary evidence; Exhibits A to F, we all know, documentary evidence is the hanger for oral evidence, goes to buttress the oral evidence given by a witness. The documents do speak for themselves and the Court is satisfied that the claimant has proved her entitlement to all her claims.

Damages will be awarded in favour of the claimant against the defendants, due to the period the defendants kept the claimant out of the use of her money. Parties are bound by their signed agreements. See *Dodo vs. Salanke* (2006) 9 NWLR (pt. 473).

Consequently, the Court hereby enters judgment in favour of the claimant and orders as follows;

1. That the defendants pay the loan sum of N2,000,000.00 (Two Million Naira) forthwith to the claimant, which the loaned to the defendants.
2. That the defendants pay the accrued interest of N120,000.00 (One Hundred and Twenty Naira only) for 43days, at 6% of the loan sum from 31<sup>st</sup> August, 2023 to 13<sup>th</sup> October, 2023.
3. That the defendants pay the legal fee of the claimant at N400,000.00 (Four Hundred Thousand Naira only).
4. That the defendants pay the sum of N300,000.00 (Three Hundred Thousand Naira only) for general damages awarded to the claimant.
5. That the defendants pay 10% interest on the judgment sum from 14<sup>th</sup> October, 2023 till the judgment sum is fully liquidated.

This is the judgment of the Court.

**MRS BARIYAAH .H. ABE**  
**Chief Magistrate**  
**9<sup>th</sup> July, 2024.**

