

**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 27TH DAY OF FEBRUARY 2023
AT THE SMALL CLAIMS COURT 5 PORT HARCOURT**

SUIT NO: PMC/SCC/233/CS/2023

BETWEEN

PASTOR SUNDAY UJONG USANG ----- CLAIMANT

AND

MRS PROMISE MONDAY----- DEFENDANT

PARTIES: Claimant present. Defendant absent.

APPEARANCES: No representation

JUDGEMENT

By a claim dated 13/11/2023, the claimant's claim against the defendant are as follows:

1. N220, 000.00 being amount loaned the defendant
2. N1, 320, 000.00 being accrued interest
3. N200, 000.00 being 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 last known address of the defendant on the 9th of December 2023 at 2pm. On the 13th of December 2023, a plea of not liable was entered for and on behalf of the absent defendant.

SUMMARY OF EVIDENCE

The claimant in proof of his case called a lone witness, the claimant himself and tendered an exhibit marked exhibit A.

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 himself is the defendant came to his house with her guarantor to collect a loan of N220, 000.00 on the 8/3/2021. That the defendant promised to bring the money in 4 months and subsequently every N100, 000.00 she will be paying N20, 000.00. That the defendant only paid for the first month and after then she disappeared. That the interest as agreed accruing from the loan is N1, 320, 000.00 for a total of 30 months. The agreement between both parties was admitted as Exhibit A. Case was adjourned to the 29/1/2024 for cross examination of CW1.

The defendant never appeared either by herself 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 his right to address hence case was adjourned for judgement now being read.

RESOLVE

In determination of this suit, I will adopt a lone issue to wit.

Whether the claimant has proved his case to be entitled to judgement

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 agreement between parties which was admitted as Exhibit A. In **BABATUNDE & ANOR VS. BANK OF THE NORTH LTD & ORS (2011) LPELR-8249 (SC)** the Supreme Court per Adekeye, JSC stated this principle thus: "The law is that written contract agreement freely entered into by the parties is binding on them. A Court of law is equally bound by the terms of any written contract entered into by the parties. Per Exhibit A, the first claim of the claimant succeeds.

On the second claim of cost of N1, 320, 000.00 as accrued interest. Per Exhibit A which is the agreement by parties, the defendant is to pay a monthly interest of N44, 000.00 per month till the capital is paid back. Parties to an agreement are bound by the terms of the agreement and no person not even a Court has power to input into an agreement or contract a term which was not stated therein by the parties. See **CHIEF S. O. AGBAREH & ANOR VS. DR ANTHONY MIMRA & ORS (2008) LPELR-43211 (SC)**. Per the agreement of parties, claim for interest succeeds.

The third claim of N200, 000.00 damages. The principles guiding the award of damages in tort are different from those guiding the award of damages in contract. The object of tort damages is to put the plaintiff in that position he would have been in if the tort has not been committed whereas, the object of

contract damages is to put the plaintiff in the position he would have been in if the contract had been satisfactorily performed. See **AGBANELO V. UNION BANK OF NIGERIA LTD (2000) 4 SC (PT. 1) 233 AT 245**. From the first and second claim of the claimant already granted, the claimant has been put in the position he would have been in if the contract has been satisfactorily performed hence this relief fails.

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

1. The defendant is ordered to pay the claimant the sum of N220, 000.00 being the loan amount.
2. The defendant is ordered to pay the claimant the sum of N1, 320, 000.00 being interest accrued on the loan sum.