

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 WEDNESDAY, THE

24TH DAY OF JANUARY, 2023.

SUIT NO.:PMC/SCC/179/2023.

BETWEEN:

MR. UCHENNA UJA

CLAIMANT

AND

1. FRISON INVESTMENT NIGERIA LIMITED

1ST DEFENDANT

2. MR. FRIDAY EMETO

2ND DEFENDANT

Case called.

Parties absent.

JUDGMENT

The Claimant commenced this suit against the Defendants on the 3rd October, 2023 after serving them with mandatory demand letter and claims as per the claim attached to the summons dated and filed on the 3rd October, 2023 as follows:

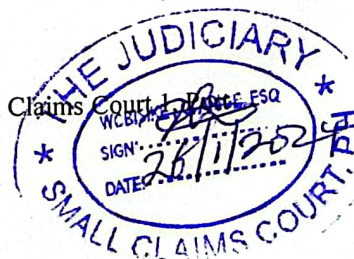
Amount Claimed	-	₦3,450,000.00
Costs	-	₦900,000.00
TOTAL	-	₦4,350,000.00

The Claimant also claimed 20% pre-judgment interest from 09/02/2023 and 20% post judgment interest.

The Defendants were served with the summons and complaint form by substituted means on the 7th day of November, 2023. Plea of not liable was entered for the Defendants on the 8th November, 2023 and the case was adjourned for trial.

The Claimant testified as CW1 on the 13th December, 2023 and tendered Access Bank Cheque dated 10/03/2023 as Exhibit A, FCMB Transaction Slip dated 12/12/2023 as Exhibit B, Legal Fees letter dated 30/08/2023 as Exhibit C and

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



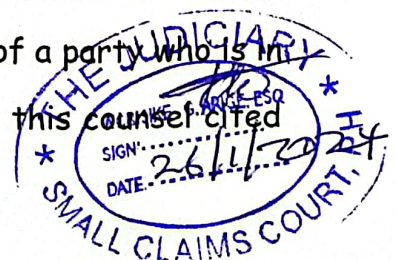
Demand Letter dated 01/09/2023 as Exhibit D. The CW1 was also cross examined by the defence counsel.

The Defendants failed to file defence nor utilize the option of oral defence given to them by the Honourable Court when the case came up for defence. The Defendants were consequently foreclosed from defence and address on the 16th January, 2024; and the case adjourned to the 24th January, 2024 for judgment.

The learned Claimant counsel S. L. O Agbo, Esq. distilled a lone issue for determination in the Claimant's final written address dated and filed on the 10th January, 2024 thus:

Is the Claimant entitled to the reliefs sought?

The learned Claimant Counsel expressed that the Claimant abandons the claim for costs of ₦900,000.00 and leaves the issue of costs to the discretion of the Honourable Court. Also the Claimant applied to amend the reliefs for pre and post judgment interests from 20% to 15% per month to bring the claims in line with the evidence led by the CW1. In support of this application, learned Claimant counsel cited the cases of *Amosun v INEC & Ors. [2010] LPELR-4943 (CA)* and *Mamman v Salaudeen [2005] LPELR-1833 (SC)*. Arguing the substantive issue, the learned Claimant counsel submitted that the law is trite that proof of civil cases is on preponderance of evidence or balance of probabilities. On this counsel cited section 134 of the Evidence Act, 2011. The learned Claimant counsel contended that the CW1 gave a graphic account of how the Defendants approached him as a friend for the sum of ₦3million with a promise to pay 15% monthly returns; but since he did not have the money at the material time he collected the money from a third party to assist the Defendants and the defendants in return issued him a cheque in sum of ₦3,450,000.00 to cover the principal sum and interest for one month. Counsel argued that the Defendants filed no defence despite the overwhelming testimony of the CW1. Counsel relying on Article 6(3) of the RSSCC PD 2023, argued that failure of a Defendant to file a defence implies that he may have admitted the claims. Counsel argued that the Court should not exercise its discretion in favour of a party who is in disobedience of the Rules and Practice Direction of the Court. On this counsel cited



the case of *Ogunpehin v Nucleus Ventures [2019] LPELR-48772 (SC)*. Counsel submitted further that the Courts have repeatedly admonished that where a party is found to have withheld monies due to another, interest ought to be awarded as a natural consequence thereof irrespective of whether or not there is agreement as to interest. On this counsel cited the cases of *Cappa & D'Alberto (Nig) Plc v NDIC [2021] LPELR-53379 (SC)* and *Union Bank of Nigeria v Awmar Properties Ltd [2018] LPELR-44376 (SC)*. Counsel finally prayed the Court to grant the Claimant's claims.

After a careful perusal of the case of the Claimant and evidence before the Honourable Court, the sole Issue for determination is thus:

Whether the Claimant has proved his case to be entitled to the reliefs sought?

The law is that he who asserts must prove his assertion to be entitled to his claim. See section 131 (1) of the Evidence Act, 2011 and the case of *F.B.N Plc v Yegwa [2023] 4 NWLR (Pt.) 323, 338 para. E*. The Claimant testified as CW1 that earlier in January 2023, he secured the sum of ₦3million with 15% interest for one (1) month for the Defendants from a third party on the request of the Defendants. The Defendants in turn gave the Claimant a post-dated cheque for the sum of ₦3,450,000.00 covering the principal and interest for the one (1) month but failed to repay the money on the due date. The Defendants later paid the sum of ₦450,000.00 as interest for three (3) months without repaying the principal sum and interest thereafter till date. Under cross examination the CW1 maintained that the Defendants agreed to pay 15% interest on the principal sum and had paid for three months leaving the principal sum unpaid till date despite demands. The Defendants failed to file defence and did not also testify orally. The implication is that the Claimant's claim is unchallenged. The law is now settled that unchallenged evidence is deemed admitted and the Courts are enjoined to accept and act on such unchallenged evidence. See the case of *Owners of M/V Gongola Hope & Anor. v Smurfit Cases (Nig) Ltd & Anor. [2007] LPELR-2849 (SC)*. The Defendants in this case are shown to have received the sum of ₦3million from the Claimant for business purposes but



have failed to repay the money with interest as agreed. The Supreme Court has held that the basis of an award of interest is that the defendant has kept the plaintiff out of his money and the defendant has had the use of it to himself. See *Union Bank of Nigeria v Awmar Properties Ltd (supra)*. However, whilst I concede that the Claimant is entitled to 15% pre-judgment interest as agreed and partly complied with by the Defendants, this Honourable Court by virtue of Order 15 Rule 5 (3) MCCPR 2007 can only grant 10% post-judgment interest. I shall grant only the post-judgment interest in view of the circumstances of this case wherein the Claimant assisted the Defendants to secure a soft loan. I hold that the Claimant has proved his case and is largely entitled to the reliefs sought.

The lone issue is resolved in favour of the Claimant and judgment is hereby entered against the Defendants as follows:

1. The Defendants are ordered to pay the sum of ₦3,450,000.00 (Three Million, Four Hundred and Fifty Thousand Naira) only as outstanding debt to the Claimant forthwith.
2. The Defendants are ordered to pay the sum of ₦200,000.00 (Two Hundred Thousand Naira) only as cost to the Claimant forthwith.
3. The Defendants are also ordered to pay the Claimant 10% post-judgment interest per month from today till the judgment sum is fully liquidated.



C. G. Ali, Esq.
Chief Magistrate Grade 1
24/01/2024

LEGAL REPRESENTATION:

1. S. L. O. Agbo, Esq. for the Claimant.
2. J. U. Eze, Esq. for the Defendants.

