

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 SMALL CLAIMS COURT AT CHIEF MAGISTRATE COURT 14, ON THE 16<sup>TH</sup> OF  
AUGUST 2023

SUIT NO. PMC /SCC/78/2023

1. OKIRIGWE DANIEL

AND

1. BARR. CHIKA ALERUCHI WOBO

2. MRS. NWOGU CHIOMA

} CLAIMANTS

} DEFENDANTS

JUDGMENT

This is the final judgment in this suit wherein the claim before the court, dated and filed on the 2023 is for:

1. N2,800.000 (Two Million, Eight Hundred Thousand Naira) only as money owed the Claimant by the defendant
2. N500,000 (Five Hundred Thousand Naira) as general damages

In proof of his case, the Claimant called one witness and the defendant called two witnesses.

On the 12<sup>th</sup> day of July, 2023, the Claimant was present and the defendant were absent. An application to enter plea of not liable for the defendant by the Claimant Counsel was granted and the matter was set down for hearing.

On the 31<sup>st</sup> of July, 2023, the CW1, One Okirigwe Daniel testified that he registered a loan company to give loan to traders and he employed a marketer called called Josphine Oluwa to source for clients for the Company which she did. That sometime in September, 2019 she introduced one Mrs Chioma, the 2<sup>nd</sup> defendant to him and Mrs Chioma, the 2<sup>nd</sup> defendant

and that the 2<sup>nd</sup> defendant agreed to source for the customers she will bring within the Mile 4 District in Port Harcourt because her mother have a maternity home there and some persons selling baby items in her mother's maternity home will want to obtain loans to support their business which loan, he granted them through the 2<sup>nd</sup> defendant and they agreed that his staff, Josephine Eluwa will be collecting the loan from her.

That unknown to him, the 2<sup>nd</sup> defendant and his staff Josephine Eluwa conspired to forge the loan form and sourced for passport photographs from persons that do not have businesses around the business district.

That when he realized the conspiracy, he involved the police and later transferred to the State CID and the 2<sup>nd</sup> defendant refused to honor the invitation at State CID and though



her lawyer filed a motion on fundamental Human Right at the High Court and after 6months, he got an Order,

That the 2<sup>nd</sup> defendant took 2,800,000 ( Two Million And Eight Hundred Thousand Naira ) from him and have agreed to pay installmentally.

That she tried to make the 1<sup>st</sup> installment of N500,000 and said that his lawyer, Barrister Chika Wobo who is the 2<sup>nd</sup> defendant lawyer gave him two dude cheques of N500,000 each and said he has eaten the money given to me by his client, the 1<sup>st</sup> defendant.

That since 2021, he has been pleading for the 1<sup>st</sup> defendant to give him the N500,000 given to him by the 2<sup>nd</sup> defendant and for the 2<sup>nd</sup> defendant to complete the money, she stole from him. That the 1<sup>st</sup> defendant vowed that he is a lawyer and he will never get the money.

In conclusion, the Claimant prays the Court for the prayers as on his claim before the Court.

At this point, the Claimant applies to tender Access bank cheque dated 4<sup>th</sup> of January, 2021 and same is admitted in evidence and another dated 2<sup>nd</sup> of November, 2020 is also admitted in evidence and both are marked as Exhibits 'A' and 'B'.

Continuing his evidence in Chief on the 18<sup>th</sup> of July, 2023, the CW1 applies to tender two phone conversations in a CD ROM between the 1<sup>st</sup> and 2<sup>nd</sup> defendant. The defendant counsel is not objecting. CD ROM is admitted in evidence as Exhibit C.

During the Cross examination of the CW1 on same date, he stated that there was a document presented at the disbanded SARS and the stated amount on the document is N2.8 million Naira. That there was no condition that he should return the receipt for the payment of the N150,000 for the judgment sum as a condition to refund back his money.

That there was an agreement at the disbanded SARS. That the 2<sup>nd</sup> defendant undertakes to pay the sum of N2.8 million Naira and that is the reason why the 1<sup>st</sup> defendant gave him the cheque. That the 1<sup>st</sup> defendant informed him that the 2<sup>nd</sup> defendant gave him N500,000 for him. That on the date written on the cheque he went to the bank but no money.

That the 1<sup>st</sup> agreement was that he should not agree for the disbanded SARS officers to transfer the matter back to the State CID.

That the 2<sup>nd</sup> agreement was that the 2<sup>nd</sup> defendant will pay the collateral sum of the capital of N2.8 million.

The 3<sup>rd</sup> agreement was that the 2<sup>nd</sup> defendant will pay, and the 1<sup>st</sup> defendant gave him two (2) cheques, one is N500,000 and another N500,000. Exhibit A and B respectively. The 1<sup>st</sup> cheque was for October and the 2<sup>nd</sup> was for January as it was agreed that it was for quarterly (Every 3 Months) That the 1<sup>st</sup> defendant informed him that the 2<sup>nd</sup> defendant gave him N500,000 for him.

on the 24<sup>th</sup> day of July, 2023, The defence opened their case and the DW1, who is also the 1<sup>st</sup> defendant applies to adopt his witness deposition before the Court and the prayer was granted by the Court and the DW1 also applies to tender a clip of the NBA proceedings and the Court held that the Clip was not referenced in the written deposition before the Court and the NBA settlement from which the audio emanated is an out of Court



entitlement and should be without prejudice. On his written deposition on oath before the court, the DW1 testified that he never issued a cheque as a business payment debt to pay refund the Claimant but that rather his cheque was issued as it was clear that the disbanded SARS introduced a Caveat for admitting Mrs. Queen Nworgu to bail by as her mother and surety including his client, Engr. Hachikaru Nwogu to sign a cheque of a stipulated and mandatory amount in ponder to allow the bail and that since both of them don't operate a current account, he opted to issue the account to (SARS) with a promise to produce the money before the dated cheque

That the first batch payment of N500,000 in satisfaction of the N2,800,000 was sent to his access bank account Number 0045147285 on the 30<sup>th</sup> day of October, 2021 before the due date on the Cheque.

That it was agreed that the Claimant should come to his office to pick up the money and also to submit the Court deposit receipt but that the Claimant instead started threatening his client that he will arrest them if they refused to prevail on him to pay the money.

That after the threats, he was instructed by his Clients not to release the money to the Claimant until he submits the receipt for the payment of the N150,000 .

That the Claimant further rushed to the bank and connived with bank officials and presented his cheque and he was debited (N263,000)Two Hundred And Sixty Three Thousand) which made him write to the EFCC on the 18<sup>th</sup> of November, 2022 and all efforts to track the Claimant proved abortive by the Anti Corruption Agency and that immediately after the transaction, he relieved requesta debit loan alert that he borrowed N200,000 and for that reason, he closed all transactions with the bank till today.

That the next thing he heard from a squadron of SCID police officers led by Inspector Ike Nworgu storming his office ,beating him up and he refused to follow them and the NBA Human Rights were on their way to rescue him when the defendants took off.

That he has sent the sum of N100,000 as part payment and promised the Claimant to return the N400,000 in due time

During the cross-examination of DW1 on same date, he testified that he did not give the Claimant the N500,000 because the agreement they had at the defunct SARS was that the payment of the N500,000 was subject to the fulfillment of a condition precedent which is the making available of the N150,000 Court judgment sum that was awarded against the 1<sup>st</sup> defendant and paid to the Claimant.

Continuing,the DW1 stated that he never told the Claimant that his son is currently ill and needs medical attention abroad.

On the 31<sup>st</sup> of July 2023, the DW2, one Helen Okerie being the mother of the 2nd defendant stated that she is a retired civil servant who lives at Mile 4, No.20 by Nyeche Street, Chief Amadi. That she knows the Claimant, that he traced her house of residence and informed her that her daughter being, the 2<sup>nd</sup> Defendant borrowed money from him, that she is not aware of the duration of the borrowing or even the money and she wasn't aware until the Claimant came to her. That the Claimant threatened her that he is going to



arrest her until a certain day when he directed SARS through the contact of the person she always call and brought them to her house where they arrested her, reason being that she stole a Samsung phone.

That they took her and detained her from morning until Afternoon, that somebody called her daughter being the 2<sup>ND</sup> defendant and reported that her mother has being arrested and detained. That it was when the 2<sup>nd</sup> defendant that came and told her to come out and that they used her daughter to replace her. That she was told that it was the Claimant that arrested her and that her daughter the 2<sup>nd</sup> Defendant has refused to pay the claimant the money which she borrowed from him.

That she was told to pay the sum of one hundred and fifty thousand Naira (N150,000.00) and that she went to borrow the money from her pastor which she is yet to refund because the 2<sup>nd</sup> defendant has refused to come to court. That she involved the Barrister being the 1<sup>st</sup> Defendant and that she gave the 1<sup>st</sup> Defendant the money to give to the claimant and he signed and the 1<sup>st</sup> defendant insisted on a receipt and we agreed to pay the claimant the sum of Five Hundred Thousand Naira (N500,000.00) for which he accepted.

That she was surprised when she was served a paper to appear in court because they have not paid him his money. That she asked the 1<sup>st</sup> Defendant to give the Claimant his money but he told her that the claimant has not brought back the receipt and that the 2<sup>nd</sup> Defendant has being waiting for the Claimant to bring back the receipt to get his money, meanwhile, the claimant has been coming to her house to disturb her which always results in her B.P. rising.

That on a certain day, she was served a paper to come to court with her daughter but that she has looked for her to no avail, till date. That the Claimant caught the 2<sup>nd</sup> Defendant on the road and took her to the Police Station where she paid the sum of Two Hundred Thousand Naira at the Police Station but that the Claimant denied, that later, the 2<sup>nd</sup> Defendants husband paid the sum of One Hundred Thousand Naira (N100,000.00), although, not at the station.

The counsel for the DW1 sought to tender the same in Evidence but was opposed by the Claimant on the ground, that the Court cannot ascertain the source of the payment teller. The Court in upholding the objection of the Defendant counsel held that the said receipt does not have a bank name or a bank stamp and so the Court cannot ascertain the source of the issuing authority and the said receipt was marked as NOT ADMITTED.

The DW1 further stated that the Claimant is looking for his personal interest, she affirmed that there was an undertaking signed at the police (SARS) and that Chioma is to pay the sum of Five Hundred Thousand Naira (N500,000,00) back to the Claimant. That at SARS, there was a bank cheque of Five Hundred Thousand Naira issued which was supposed to be cashed at the counter by the claimant, that she paid Two Hundred Thousand Naira (N200,000.00) into the Claimants account and that the 2<sup>nd</sup> Defendants Husband paid the sum of Three Hundred Thousand Niara (N300,000.00).

That she was told that she has the complete money to give to the Claimant when she asked him to come and collect his money after which we went to the court at Choba. That her daughter did not come to court the 2<sup>nd</sup> time because she is scared and that the DW1 reported the matter to her Lawyer.

During the Cross-examination of the DW2 on the same date, she stated that she is in court because she was served paper to reach her daughter. That the agreement was at the station. That she was requested to pay the sum of Five Hundred Thousand Naira (N500,000.00), that she is not aware that two Cheques was given to the Claimant, that she is aware of the cheque of Five Hundred Thousand Naira (N500,000.00) and that she signed as a surety for her daughter at SARS. That she is not aware that the Cheque of Five Hundred Thousand Naira (N500,000.00) has not been given to the claimant and that she is just hearing of it.

At the close of the evidence of the DW2, there was no re-examination and the defendant counsel closes the case of the defendants and the matter was adjourned for judgment.

A total of three (3) 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 and 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.

The 1<sup>st</sup> defendant position is that he was given N500,000 to give to the Claimant with a caveat that the money be paid based on a condition precedent that the N150,000 paid to the Claimant in satisfaction of a judgment sum arising from the suit between the parties must be receipted for and said receipt given to the 1st defendant before the N500,000 will be paid. That he wrote a cheque for the defendant. That the defendant presented his cheque without reverting to him and he was debited (N263,000) Two Hundred and Sixty-Three Thousand which made him write to the EFCC on the 18th of November, 2022. That later during the NBA settlement, he sent the sum of N100,000 as part payment of the N500,000 and promised the Claimant to return the outstanding N400,000 in due time.

He who asserts must prove and if the 1<sup>st</sup> defendant is stating that the cheque was presented by the defendant and he was debited (N263,000) Two Hundred and Sixty-Three Thousand) which made him write to the EFCC on the 18th of November, 2022, first where is the defendant's statement of account to evidence this debit of N263,000 and why was the letter to the EFCC not exhibited before the Court?

Furthermore, the 1<sup>st</sup> defendant had stated that he was given N500,000 to give to the Claimant with a caveat that the money be paid based on a condition precedent that the N150,000 paid to the Claimant in satisfaction of a judgment sum arising from the suit between the parties must be receipted for and said receipt given to the 1st defendant before the N500,000 will be paid. Again, the Claimant have denied the existence of this caveat.

Where is the proof of this assertion of the Caveat to the payment to the Claimant's money, He who asserts must prove. The 1<sup>st</sup> defendant have failed to prove that there is a condition attached to the payment of the N500,000 as in Exhibit **A** and **B** before the Court.



The DW2 on the other hand, is of the position that apart from the N500,000 which they gave to the 2<sup>nd</sup> defendant to give to the Claimant. That they also paid the sum of N200,000 at the police and later the 2<sup>nd</sup> Defendant's husband later transferred the sum of N100,000 to the Claimant. So, in total the 2<sup>nd</sup> defendant through the DW2 is of the stance that in liquidating the sum of N2.8 million Naira that a total of N300,000 excluding the N500,000 (Given to the 1<sup>st</sup> defendant to give to the 2<sup>nd</sup> defendant) was transferred to the Claimant.

Again the question to the DW2 is: where is the evidence of the alleged payment of the N200,000 to the Police? Was the money paid to the police or the Claimant? Again apart from the Teller/Receipt which source cannot be ascertained and which was marked as Not Admitted there is also nothing before the Court to evidence the payment of the alleged 100,000 transfer from the 2<sup>nd</sup> defendant's husband to the Claimant. There is also nothing before the Court to evidence the payment of N200,000 to the Police in favour of the Claimant.

The general principle of law is that he who asserts must prove coined from the old maxim *incumbit probatio qui dicit non qui negat* which means that the burden of proving as fact rest on the party who asserts the affirmative of the issue and not upon the party who denies it, for a negative is usually incapable of proof. See *Omisore v. Aregbesola* (2015) 15 NWLR (Pt. 1482) p. 217. See also section 131 (1) of the evidence Act, 2011.

The burden of proof is the task of establishing before the court the claim of a party. Thus, the Claimant has accomplished through cogent and compelling evidence.

The Claimant in proof of his case has asserted that the 2nd defendant and his staff Josephine Eluwa conspired to forge the loan form and sourced for passport photographs from persons that do not have businesses around the business district. That the 2nd defendant took 2,800,000 ( Two Million And Eight Hundred Thousand Naira) of his money in the guise of giving loans to business owners around the district.

It is important to note that neither the DW1 nor the DW2 were part of the third party loan transaction It is also more important to note that neither the DW1 nor the DW2 made any attempts to deny the alleged owed sum of N2,8 Million by the 2nd defendant. 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.

From the above analysis, it is evident that the Claimant have discharged the burden of proving his claim before the Court via Exhibit A and B before the Court and his unchallenged oral evidence. The CW1's evidence was unshaken in evidence as to the 2,8 Million Naira owed him by the 2nd defendant as neither the DW1 nor the DW2 were part of the loan transaction that culminated in the debt of the N2.8 Millon.



I therefore hold that the burden of prove has been discharged by the Claimant, therefore he is entitled to recover the 2.8 Million Naira owed him by the 2<sup>nd</sup> defendant out of which N500,000 have been paid by the 2nd defendant and the DW1 to the 1<sup>st</sup> defendant to pay to the Claimant as corroborated by the Exhibit A and B and the evidence of DW2 before the Court as follows: that she is aware of the cheque of Five Hundred Thousand Naira (N500,000.00) and that she signed as a surety for her daughter at SARS. That she is not aware that the Cheque of Five Hundred Thousand Naira (N500,000.00) has not been given to the Claimant and that she is just hearing of it.

### **On The Issue of General Damages**

The Claimant in his form RSSC 3 before the Court have asked for the sum of N500,000 as damages and have testified that since 2019, the 2<sup>nd</sup> defendant took his N2.8 Million and that since 2021, out of the N2.8 Million, the 1<sup>st</sup> defendant have refused to pay him N500,000 , that the 2<sup>nd</sup> defendant and the DW1 instructed him to give to him. That since 2021, he has been pleading for the 1st defendant to give him the N500,000 given to him by the 2nd defendant and for the 2nd defendant to complete the money, she stole from him. That the 1st defendant vowed that he is a lawyer and he will never get the money. That he has suffered emotional and financial hardships since 2019.

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. This can be seen in *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 Defendants. 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

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 for general damages before the Court.

IT IS THUS ADGUDGED that the 1<sup>st</sup> Defendant to pay the Claimant the sum of N500,000 (Five Hundred Thousand Naira) being the sum of N500,000 sum issued in cheque to the Claimant by the 1st defendant on behalf of the 2nd defendant in part liquidation of the sum of N2.8 Million.

AND IT IS FURTHER ADJUDGED that the 2<sup>nd</sup> Defendant to pay the Claimant, the outstanding sum of N2.3 million Naira which is the original owed sum of N2,8 million less

the N500,000 sum issued in cheque to the Claimant by the 1<sup>st</sup> defendant on behalf of the 2<sup>nd</sup> defendant as general damages.

AND IT IS ALSO ADJUDGED that the 1st defendants pay to the Claimant the sum of Two Hundred Thousand Naira (N200,000) and the 2nd defendant to pay to the Claimant, the sum of Three Hundred Thousand Naira (N300,000), totaling the sum of Five Hundred Thousand(N500,000) above mentioned as general damages.

AND IT IS ORDERED that the 1st defendant to pay to the Claimant, sum of N500,000 (Five Hundred Thousand Naira) representing sum issued in cheque to the Claimant by the 1st defendant on behalf of the 2nd defendant in part liquidation of the sum of N2.8 Million.

AND IT IS ALSO ORDERED that the 2nd defendant pay to the Claimant, the sum of N2.3 million which is the original owed sum of N2,8 million less the N500,000 sum issued in cheque to the Claimant by the 1st defendant on behalf of the 2nd defendant.

AND IT IS FURTHER ORDERED that the 1<sup>st</sup> defendants pay to the Claimant, the sum of Two Hundred Thousand Naira (N200,000) and the 2<sup>nd</sup> defendant to pay to the Claimant, the sum of Three Hundred Thousand Naira (N300,000), totaling the sum of Five Hundred Thousand(N500,000) above mentioned as general damages.

AND IT ALSO ORDERED that the defendants are to pay to the Registrar of this court the total sum of N3.300,000(Three Million, Three Hundred Thousand Naira) as the sum owed to the Claimant by the 1<sup>st</sup> and 2<sup>nd</sup> defendant including general damages.

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.

**GIFT C. AMADI, ESQ.**  
**CHIEF MAGISTRATE**  
**G.D. II**

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