

**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
AT THE SMALL CLAIMS COURT 4 PORT HARCOURT**

SUIT NO: PMC/SCC/56/2024

BETWEEN

GENERATION CAPITAL LIMITED

CLAIMANT

AND

- 1. EGBO MARYJANE UJUNWA**
- 2. MR. CHIMEZIE CHIDUBEM ODOEMENAM**
- 3. ADEBAYO ADESOKE JULIET**



DEFENDANTS

PARTIES:

APPEARANCES:

JUDGEMENT

By a claim dated 4/3/2024, the claimant's claim against the defendants are as follows:

1. N2, 844, 374.92
2. N500, 000.00

PLEA

By the affidavit of service availed this court, the Defendants were served the originating process in this suit by pasting. On the 16/4/2024, by an application by the defence counsel, a plea of not liable was entered for and on behalf of the absent defendants. Case was adjourned to the 22/4/2024 for report of settlement.

Upon the failure of parties to settle, case was adjourned to the 29/4/2024 for hearing.

SUMMARY OF EVIDENCE

The claimant in proof of his case called a lone witness and tendered seven exhibits marked exhibit A - G.

The relevant facts from the case of the claimant as presented by one David Ohanuna, the claimant's credit officer is that he works for the claimant and their credit officer. That he knows the defendants. That the 1st defendant is the borrower

and the 2nd and 3rd defendant her guarantors. That sometime in March 2023, the defendant appealed for a loan of N3, 000, 000.00 from the claimant. That after meeting up the requirement for the loan which includes providing two guarantors and a property as collateral, the loan was disbursed to the 1st defendant on the 29/3/2023. That the said loan was to run for a 6 months tenure and the interest per month is 5% which the 1st defendant was to pay back N3, 900, 000.00 at the end of the 6 months. That the 1st defendant only paid N1, 950, 000.00 before the maturity date on the 13/9/2023 and after that stopped paying. That efforts were made to reach her and her guarantors to continue making her payment but she said she had business issues and as part of the company's policy, they were invited to the office but they refused to show up. That after several months of non-payment, they asked their lawyer to write a final demand letter to her on the 8/1/2024. That she got the letter but refused to pay. The loan form filled by the 1st defendant was tendered and admitted as Exhibit A. Guarantors form of 2nd and 3rd defendant was admitted as Exhibit B. CW1 further stated that the loan to the 1st defendant was a business loan and the 1st defendant was given an offer letter before the loan was disbursed. The said offer letter was admitted as Exhibit C. the demand letter to the defendants was admitted as Exhibit D. Per his first claim, the CW1 States that the initial interest for the loan was 5% and after the maturity date, the interest was to be calculated at 7% per month. The claimant's money lender certifications were admitted as Exhibits E1, E2, E3 and E4 respectively. Deed of conveyance deposited by the claimant was admitted as Exhibit F. claimant's account statement was admitted as Exhibit G.

The defendants for their defence called a lone witness, the 1st defendant and no exhibit was tendered.

The defendant's case as presented by the defendant himself, is that he knows the Claimant. That he did a loan agreement with the Claimant, the principal sum is N3, 000,000.00, that there was interest on the loan, she has paid back N1,950,000 and is owing the sum of N1,050,000. It's the Defendant's further evidence that she only knows of the 5% interest on the loan, that she did not discuss any default with the Claimant and also not owing any default; that she signed an agreement with the Claimant but she didn't go through the agreement before signing same.

During cross examination of the defendant, the account statement of the claimant was tendered as Exhibit E and F respectively.

At the close of evidential hearing, the Claimant waived his right of final address and the Defendant was foreclosed from filling a final written address.

RESOLVE

In determination of this suit, I shall raise a sole issue for determination to wit:

1. Whether the Claimant is entitled to his claims.

On Issue one, it is trite law that the standard of proof in any civil suit is on the balance of probabilities. **SEE SECTION 134 OF THE EVIDENCE ACT 2011.** The proof on balance of probability implies that the case of both parties will be placed on an imaginary scale of justice and the side of the scale which is heavier and tilt down will be on top in the case. The balance of probability also implies the balance of truth. In the instant case, a summary of the Claimant's case is that the 1st defendant applied for a loan of N3, 000, 000.00 from the claimant via Exhibit A, after the Defendant meet with the requirement for the loan which includes providing two guarantors (the 2nd and 3rd Defendants) as seen in Exhibits B1 and B2 and a property as collateral as in Exhibit F, the loan was disbursed to the 1st defendant on the 29/3/2023 as seen in the bank statement of account tendered as Exhibit G. The said loan was to run for a 6 months tenure and the interest per month is 5% which the 1st defendant was to pay back N3, 900, 000.00 at the end of the 6 months, as seen in the loan offer letter admitted in evidence and marked as Exhibit C. The 1st defendant only paid N1, 950, 000.00 before the maturity date on the 13/9/2023 and after that, she stopped payment; every effort made to reach the 1st Defendant and her guarantors (2nd and 3rd Defendants), to continue the repayment of the sum owed failed, the Defendants were invited to the Claimant's office but they failed to show up. After several months of non-payment, the Claimants wrote a final demand letter to the Defendant on the 8/1/2024, the Defendant received the letter but refused to comply with same. The initial interest on the loan was 5% and after the maturity date, the interest was to be calculated at 7% per month.

The Claimants 1st claim is for the sum of N2, 844, 374.92; during the evidential hearing, the Claimant testifying as CW1 stated that initially, the interest for the loan was 5% per month and after the maturity date, the interest was to be calculated at 7% per month, hence the sum claimed. The transaction between the parties is a business loan with terms agreed and signed by parties as shown in Exhibit C. The position of the law is clear that parties are bound by their agreement. Thus, where parties have agreed on a certain way of doing something, same cannot be varied except with the consent of both parties. See: Mekwunye V. W.A.E.C (2020) 6 NWLR (Pt.1719) 1 SC. I have carefully read through the lines of Exhibit C to find whether or not the parties agreed that the loan interest be calculated at 7% per month after the maturity date, I am unable to find where the parties agreed on terms as stated by the Claimant in Exhibit C. The law is settled that where parties have voluntarily

entered into an agreement, they are bound by the terms thereof and a Court will not allow anything to be read into the agreement, which is not contained therein. See NKAZI V. STANBIC IBTC BANK (2018) LPELR-49153(CA) (Pp. 15-16 paras. E).

The law is simple that he who asserts must prove. When a person is bound to prove the existence of facts, it is said that the burden of proof lies on that person. **SEE SECTIONS 131 AND 132 OF THE EVIDENCE ACT 2011.** The Claimant had a burden to prove his entitlement to the sum of N2, 844, 374.92, the Claimant however failed to prove how he is entitled to the sum N2, 844, 374.92.

The 1st Defendant testifying as DW1 stated that the principal sum of the loan is N3,000,000.00, that there was interest on the loan, she has paid back N1,950,000 and is owing the sum of N1,050,000, it is a settled law that facts admitted need no further proof. See NAIGE VS AHAMAD & ANOR (2019) LPELR-48136 (CA). In consideration of the admitted sum, I find the Claimant is entitled to N1,050,000 and I so hold.

On the second claim of N500, 000.00. The Claimant did not state how he is entitled to the instant claim, no evidence was led in proof of this claim. It is the Law that where no evidence is led to establish a claim made before the Court, such claims will be dismissed for want of evidence. See ATAGBOR V OKPO & ORS (2013) LPELR-20207 (CA) (PP. 12 PARAS. B). I find the instant claim has been abandoned, same is dismissed for want of evidence and I so hold; the Law however is that Cost do follow event and a successful party is entitled to cost. See LAYINKA & ANOTHER VS. MAKINDE & ORS (2002) LPELR-1770 (SC). In consideration of the circumstance of this case, the successful Claimant, it is my considered view that the Claimant is entitled to cost and I so hold.

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

1. N1,050,000
2. N200,000.00 as cost.

This is my order.