

**IN THE MAGISTRATE COURT OF RIVER STATE OF NIGERIA**  
**IN THE PORT HARCOURT MAGISTERIAL DISTRICT**  
**HOLDEN AT PORT HARCOURT**  
**BEFORE HIS WORSHIP S. S. IBANICHUKA, ESQ**  
**HOLDEN AT SMALL CLAIM'S COURT 6 PORT HARCOURT**

**PMC/SCC/191/2024**

**03 CAPITAL NIGERIA LIMITED**                      **CLAIMANT**

**AND**

**1. ONWUKWE NNENNA NANCY**  
**(TRADING UNDER THE NAME AND STYLE**  
**OF SEVEN POINT KITCHEN)**                      **DEFENDANTS**

**2. ABURIME DAMIEL OKHUALAGBE**

**JUDGEMENT**

The Claimant instituted this action against the Defendants via form RSSC 3 of this court filed on 17-7-24 claiming for the following:

- i. The sum of **₦ 1,034,831,71 (One Million, Thirty Four Thousand, Eight Hundred and Thirty One Naira, Seventy One Kobo)** only being and representing debt due and unpaid by the Defendants to the Claimant.
- ii. **₦500,000.00 (Five Hundred Thousand Naira)** as Damages
- iii. **₦500,000.00 (Five Hundred Thousand Naira)** as cost of litigation.

In proof of its case, the Claimant called a sole witness (CW1), on 22-8-24 CW1 adopted her witness deposition on Oath filed on 17-7-24 wherein she relied on Exhibits A to H respectively, at the close of evidence of CW1 the defendants did not appear and were not represented by counsel(s), the Claimants counsel applied and the defendants were foreclosed from Cross examining the CW1.

The 1<sup>st</sup> Defendant at a latter stage in the proceedings appeared and was also represented by counsel, on 16-10-24 she entered her defence against the claims of the claimant before this court, the 1<sup>st</sup> Defendant called a sole witness and relied on Exhibit J, during Cross examination Exhibits K and K1 were tendered through DW1. The 2<sup>nd</sup> Defendant never appeared and was never represented by counsel in this case despite proof of service of the originating processes in this suit on the 2<sup>nd</sup> defendant and a hearing notice, consequently the 2<sup>nd</sup> defendant was foreclosed from defending this suit.

The summary of the facts of this case are that, the Claimant is a Limited Liability Company registered under the Laws of the Federal Republic of Nigeria. That the 1<sup>st</sup> Defendant is an Entrepreneur, that sometime in September 2021 the 1<sup>st</sup> Defendant approached the Claimant for a loan and on 16-9-2021 the claimant approved the loan on a credit limit of **₦500,000.00 (Five Hundred Thousand Naira)** which the 1<sup>st</sup> defendant accepted, collected the credit and utilized same. That the 1<sup>st</sup> defendant refused to repay the loan, as a result of which the claimant wrote a demand letter to the 1<sup>st</sup> defendant. The 2<sup>nd</sup> defendant on record is being sued in this suit

because he is the guarantor of the 1<sup>st</sup> defendant in the said loan transaction and that the claimant also wrote a demand letter to the 2<sup>nd</sup> defendant but that the 1<sup>st</sup> and 2<sup>nd</sup> defendants refused to respond to the letter, they refused to pay the sum due to the claimant and that the said sum due to the claimant including interest on the capital now stands at ₦ 1,034,831,71 (One Million, Thirty Four Thousand, Eight Hundred and Thirty One Naira, Seventy One Kobo). hence this suit.

However, the 1<sup>st</sup> Defendant in her Defence denied all the claims of the claimant.

At the close of the case of the claimant and the 1<sup>st</sup> Defendant, no final written addresses were filed by the parties.

This court raised a sole issue for determination in this case to wit: *“Whether the Claimant has placed enough materials before the court for the court to grant the claimants reliefs before this court”?*

In a Civil case such as this the standard of prove is on a preponderance of evidence. See: **Section 134 of the Evidence (Amendment) Act 2023.**

The claim of the claimant before this court is as stated above, the Claimants sole witness was not cross examined by the defendants, the claimant relied on Exhibits B,C and E to show that the 1<sup>st</sup> defendant was granted loan of ₦500,000.00 (Five Hundred Thousand Naira) and the 2<sup>nd</sup> defendant stood as her guarantor for the loan, wherein he guaranteed to indemnify the claimant if the 1<sup>st</sup> defendant defaults in repayment of the loan. Exhibit C was relied on to show that the loan tenure is to be for Nine months, while exhibits F & G are demand letters to the 1<sup>st</sup> and 2<sup>nd</sup> defendants respectively, stating that the loan was at the time of writing the demand letter due for over Nine months. All the evidence led by CW1 and the exhibits tendered through CW1 were not challenged. Unchallenged evidence are deemed admitted see: **Section 123 Evidence (Amendment) Act, 2023** and the case of **CBN V. DINNEH (2010) 17 NWLR (PT. 1221) PAGE 125, 162 at paragraphs C-D.**

In defence, the 1<sup>st</sup> defendant in her Evidence in Chief on 16-10-24 admitted to receiving a loan of ₦500,000.00 (Five Hundred Thousand Naira) from the claimant.

The law is that facts admitted need no proof . see : **Section 123 of the Evidence (Amendment) Act 2023.**

The 1<sup>st</sup> Defendant however denied any knowledge of the interest rate. .

The 1<sup>st</sup> defendant on same day in her evidence went on to deny having any knowledge of the interest rate and in her evidence stated that the claimant arrived at the interest rate unilaterally, it is trite law that evidential burden of proof shifts or oscillates consistently as the scale of evidence preponderates. See the case of **APOSTLE PETER EKWEOZOR & ORS V. REGISTERED TRUSTEES OF THE SAVIOR APOSTOLIC CHURCH OF NIGERIA (2020) LPLER – 49568 (SC)**

In the circumstance the burden of proving the existence of the fact that the parties arrived at the interest rate together rests on the claimant and the claimant is not able to discharge this

burden. I have carefully considered the evidence adduced by the claimant in support of its claim and I find no where in the documents signed by the parties where the interest rate is stated and no evidence was led in specific mention of the interest rate and that parties to the contract agreed on same before the contract was taken. Upon the claimants failure to proof this fact this score is resolved against the claimant. .

The claimant also claimed for the sum of ₦500,000.00 (Five Hundred Thousand Naira) as damages and ₦500,000.00 (Five Hundred Thousand Naira) as cost of this litigation. In paragraph 15 the claimants witness deposition on Oath, the CwI stated that the claimant briefed a lawyer for this suit and thereby incurring more expenses, this fact was not disputed by the defendants and as such same is deemed admitted. See **CBN V. DINNEH (Supra)**

However, no evidence was led in proof of prayer two for damages and same is deemed abandoned.

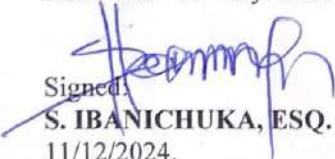
The evidence before this court shows that the 2<sup>nd</sup> defendant is the guarantor to the 1<sup>st</sup> defendant in the loan agreement and the claimant also claims against the 2<sup>nd</sup> defendant in this suit, the records of the court shows that the 2<sup>nd</sup> defendant never appeared in this suit and was never represented by counsel despite being served with the originating processes in this suit and a hearing notice. The law is that where a claimant leads evidence in prove of his case and the defendant leads no evidence in contraindication the claimant shall be entitled to his claim against such defendant in deserving circumstances. See: Section 123 Evidence (Amendment) Act, 2023

From the entirety of the evidence before me, I find that the claimant has been able to proof his case in part.

Accordingly it is adjudged that the claimant is entitled against the 1<sup>st</sup> and 2<sup>nd</sup> defendants jointly as follows:

1. **₦500,000.00 (Five Hundred Thousand Naira)** only being and representing the principal loan sum the 1<sup>st</sup> defendant took from the claimant and has failed to repay for which the 2<sup>nd</sup> defendant stood as guarantor.
2. The sum of **₦500,000.00 (Five Hundred Thousand Naira)** as cost.

Dated this 11<sup>th</sup> day of December, 2024

Signed:   
S. IBANICHUKA, ESQ.  
11/12/2024.

SAMUEL S. IBANICHUKA, ESQ.  
(SENIOR MAGISTRATE)  
SIGN:  DATE: 11-12-24

