

**IN THE SMALL CLAIMS COURT OF RIVERS STATE OF
NIGERIA**

**IN THE PORT HARCOURT MAGISTERIAL DISTRICT
HOLDEN AT PORT HARCOURT**

**ON MONDAY THE 31ST DAY OF JULY, 2023
BEFORE HIS WORSHIP A. O. AMADI-NNA, ESQ
CHIEF MAGISTRATE GD.1**

**SUIT NO.
PMC/SCC/79/2023**

BETWEEN

IBANGA NDIANA-ABASI EMMANUEL

VS

MR. JUDE OBIOHA & ANOR

Claimant present.

Defendants absent.

S. O. Amadi appear for the claimant.

JUDGEMENT

The claimant's claim against the defendant is for the sum of N2,992,000.00 (Two Million Nine Hundred and Ninety Two Thousand Naira) being outstanding balance of the loan the defendant collected from the claimant which he has failed to pay till date.

A plea of not liable was entered for the defendant.

In proof of his case the claimant gave evidence as CW1 and tendered 3 exhibits, Exhibits "A", "B" and "C" and did not call any other witness.

CW1 Ibanga Ndiana Abasi Samuel said that sometime in July 2022 the defendants came to his house and asked for a loan of N2,800,000.00

(Two Million Eight Hundred Thousand Naira) to enable them continue with their trade. They promised to pay his 16.6% of the N2,800,000.00 monthly for a period of 3 months to amount to N3,995,000.00 (Three Million, Nine Hundred and Ninety Five Thousand Naira) for the interest and the capital. Further that after the first 3 months they could not make any payment to him. That however on the 5th month they started making some payment and they have so far paid N2,125,000.00 (Two Million One Hundred and Twenty Five Thousand Naira). They promised to pay the balance amounting to N1,870,000.00 before the 31st day of January, 2023.

They agreed that if they failed to pay the balance, a 15% monthly interest will be reading on this balance. He tendered the agreement titled outstanding loan balance as Exhibit "A". He further said that up till now they have not paid the balance. Also that before they took the loan they handed over to him a Deed of Conveyance as security for the loan. He tendered a photocopy of the Deed of Conveyance as Exhibit "B" while the affidavit of loss of the original Deed of Conveyance was tendered as Exhibit "C". Further that the defendants have sold of the property on the Deed of Conveyance and are no longer living there.

On the 20th day of July 2023 when the matter came up for cross examination of CW1, the defendants were not in court to cross examine CW1 and were foreclosed from cross examining CW1.

The claimants counsel then informed the court that they have closed their case.

That case was then adjourned to the 26th day of July 2023 for defence.

On the 26th day of July 2023 when the matter came up for defence the defendant were not in court to defend the case and they were foreclosed from defending this case. Claimants counsel then informed the court that they were waiving their right to address the court and that Judgment be entered based on their evidence before the court.

I have reviewed the evidence of CW1, the claimant. I have also taken into consideration all the Exhibits "A" "B" and "C" tendered before this court.

The issue that arise for determination is "whether the claimant has proved his claims to be entitled to judgment".

The claimant CW1 has given evidence of how the defendants obtained from him a loan of N2,800,000.00 to enable them continue with their trade. He has also given evidence of how the defendant promised to pay 16% of the N2,800,000.00 monthly for a period of 3 months to amount to N3,995,000.00 for the interest and capital. He further gave evidence that the defendants have so far paid the sum of N125,000.00 after which they promised to pay the balance of N1,870,000.00 before the 31st day of January 2023. He further has also said that they agreed that if they don't pay the balance before

that day a 15% monthly interest will be reading on the balance. CW1 has also tendered Exhibits "A1, the agreement titled outstanding loan balance, Exhibit "B" a photocopy of the Deed of Conveyance and Exhibit "C" affidavit of loss of original Deed of Conveyance.

The defendants did not defend this suit and did not appear before this court.

An undefended case requires a minimum of proof. When evidence is not challenged the court ought to accept such evidence as proof of the issue in contest. See the case of **FOLARIN & ANOR V. SHALOUB (1994) 3 NWLR (Part 333) page 413 at 443 paras B-H**. Also see **OKUPE V IFEMACHI (1974) 3SC Page 97 at 103**.

I hereby hold that the claimant has proved his claim on the preponderance of evidence to be entitled to Judgment.

Court:

1. The defendant is to pay to the claimant the sum of N2,992,000.00 (Two Million Nine Hundred and Ninety Two Thousand Naira) being outstanding balance of the loan the defendant collected from the claimant which he has failed to pay till date.

Signed:
A. O. Amadi-Nna, Esq.
Chief Magistrate GD.1
31/7/2023

