

**IN THE CHIEF MAGISTRATE COURT OF RIVERS STATE, NIGERIA
IN THE RUMUODOMAYA MAGISTERIAL DISTRICT
HOLDEN AT RUMUODOMAYA**

**BEFORE HIS WORSHIP B.H. ABE (MRS), ESQ., SITTING AT THE CHIEF
MAGISTRATE COURT 1, RUMUODOMAYA ON WEDNESDAY THE 21ST DAY
OF MAY, 2025**

RMC/SCC/04/2025

BETWEEN

MR. FRANCIS WALI (TRADING UNDER THE NAME AND STYLE OF DE FRANKTEX INTEGRATED SERVICES)	}	CLAIMANT
VS.		
1. MR. PAYMASTER JOHN 2. MRS. COMFORT SOKARI	}	DEFENDANTS

Matter for Judgment

Claimant in Court, defendant absent

Claimant appears in person, defendant not represented.

JUDGMENT

The Claimant claims against the Defendant as follows, the sum of N420,000.00 (Four Hundred and Twenty Thousand Naira) only, from the defendant, being loan with accrued interests granted to the defendant.

Facts

A letter of demand was served on the defendant, Form RSSC 1, at the commencement of this matter demanding for the sum of N420,000.00 from the defendant in payment of the loan with accrued interests obtained by the defendant from the claimant.

The defendant at the commencement of this case pleaded not liable to the claim read to him.

The claimant appeared for himself, the defendant was not represented.

Parties were granted leave afterwards to settle out of Court on the 17th March, 2025, however settlement failed, cw1 gave evidence on the 15th April, 2025 after the Court vacated its leave for out of Court settlement.

The claimant lives at No. 13 NYSC road, Elekahia, Obio/Akpor Local Government Area, Rivers state, a business man working under De Franktex Integrated Services. He gave the defendant a loan of N200,000.00 on the 23rd May, 2025, transaction done at his office, situate at Road 2, behind Delens Hotel, Rumuagholu. He came with Comfort Sokari to obtain the loan after the claimant refused to grant him the loan, she stood as surety to the defendant. The undertaking from her is before the Court as Exhibit A; dated 21st May, 2024.

The loan request Form filled by the defendant dated 22nd May, 2024, Exhibit B.

The signed undertaking by the defendant dated 21st May, 2024; Exhibit C.

The defendant promised to pay in two months with interest attached to the loan.

The money was transferred to his account on the 23rd May, 2024. See Exhibit D; receipt of transfer.

From 23rd May, 2024, the defendant has paid only N310,000.00.

The total interest from May, 2024 to February, 2025 is N540,000.00, balance of N230,000.00 left unpaid plus principal loan sum of N200,000.00 will give N430,000.00. He has called the defendant and the surety to no avail.

A Demand notice was served on him, Exhibit E. The claimant has incurred costs to recover this loan. He prayed the Court to grant his claims in conclusion.

He was foreclosed from cross-examination by the defendant, the Court ordered the defendant to be served with a hearing notice.

The defendant was foreclosed from defending this suit on the 16th April, 2025 due to his absence. The Court adjourned for judgment afterwards.

The judgment was vacated on the 13th May, 2025, the claimant's counsel, Lord Ikonwa, Esq. prayed the Court to amend the name of the claimant to read; Mr. Francis Wali, trading under the name and style of De Franktex Integrated Services, the Court granted same and ordered that the amended name be served on the defendant via a hearing notice.

The claimant on the 19th May, 2025, tendered the certificate of registration of his business name before e as Exhibit F.

His license for money lending before me as Exhibit G.

The defendant was in Court on that day and cross-examined cw1.

Que. - How much have you received from me?

Ans. - N100,000.00 from the N420,000.00, the defendant appealed for more time to pay the debt.

The claimant prayed the Court to grant him damages against the defendant.

The 2nd defendant's name was struck out after the Court verified that she was not served with the ordinary summons of this suit, only the demand notice and hearing notice, the Court bailiff who was in Court acknowledged that he did not serve the 2nd defendant; Livinus Akere.

Case adjourned for judgment.

Issues for determination

Whether the claimant is entitled to his claims?

COURT

The claimant in proof of his claims against the defendant tendered the following Exhibits;

1. Exhibit A- The undertaking by Sokari Boma, the defendant's surety.
2. Exhibit B – The loan request form filled by the defendant.
3. Exhibit C – The undertaking by the defendant.
4. Exhibit D – The loan sum transferred to the account of the defendant on the 23rd May, 2024.
5. Exhibit E – The demand notice served on the defendant
6. Exhibit F – The CAC registration of the claimant's business name.
7. Exhibit G – The claimant's money lender's license.

All these are cogent proof of the claim against the defendant.

Civil cases are decided on the preponderance of evidence and balance of probabilities, see sections 131 to 134 of the Evidence Act, 2011.

The defendant never disputed the evidence of the claimant rather appealed to the claimant for more time to pay his debt. Facts admitted need no further proof; see section 123 of the Evidence Act, 2011.

The claimant prayed the Court to award damages (general) against the defendant for all the costs incurred in instituting this action against the defendant.

I align with the claim of the claimant; parties had an agreement with regards to the terms and conditions of the loan granted by the claimant to the defendant, which the defendant reneged on, thereby breaching the contract entered with the claimant. The contract is hereby discharged due to the breach; hitherto the defendant is to pay the claimant damages as a consequence of the breach of contract by not fulfilling the terms of the contract.

This is a case of debt recovery, wherein the claimant loaned the defendant money.

A hearing notice was issued by this Court to be served on the defendant due to the non-appearance of the defendant in the course of the proceedings in this suit. The Courts have emphasized that service of a hearing notice on a defendant is one of the legal ways to ensure that a defendant appears in Court. See *Derma vs. Ecobank Nigeria Ltd.* (2017) All FWLR (pt. 887) P. 130.

In *P.N. Emerah & Sons (Nig.) Ltd. vs. Dunu* (1998) (pt. 564) NWLR pg. 96, the Court held that where a party is not served with a hearing notice, any judgment given against him or her will be a nullity, giving without jurisdiction and liable to be set aside on appeal. Per Oguntade 97, para A.

Also see *Scott Empnokpor vs. Ukarbe* (1975) 2 SC 41.

The claimant in proof of his claims tendered Exhibits A to G, as aforementioned. Documentary evidence is trite is the hanger upon which the credibility of oral evidence is assessed.

See section 131 of the Evidence Act, 2011, he who asserts must prove.

See also section 134 of the Evidence Act 2011 and *Emeka vs. Chuba Ikpeazu & Ors* (2017) 15 NWLR (pt. 1583) 345.

A contractual relationship has been established between both parties, see Exhibits B, C and D. Despite the agreement signed by both parties, the defendant breached the terms of the contract. Both parties are bound by the terms of this agreement (contract) and cannot resile from same.

By virtue of Exhibits B to D, a valid enforceable contract had been entered by both parties and where a breach as in the instant case has occurred, the contract was automatically rescinded.

A demand letter, Exhibit E, was sent to the defendant demanding for the payment of the said sum of N420,000.00 from the defendant, which the defendant failed to comply with.

The Court held that in *Adedej vs. Obajimi* (2018) 16 NWLR (pt. 1644) 146, para H – B, Per Bage JSC, that a valid contract may be discharged by performance, express agreement, doctrine of frustration, by breach.

The defendant has fraudulently breached the contract validly entered with the claimant and so the contract has been discharged by this Court.

The elements of a binding contract, albeit; offer, acceptance, consideration, capacity to contract and capacity to create a legal relationship are all present in the contract between the two parties, the consideration being the sum of N200,000.00 paid by the claimant to the defendant.

See Eyiboh vs. Mujaddadi (2022) NWLR (pt. 1830) 381.

The Court relying on the Exhibits before the Court, Exhibits A – G respectively and the unchallenged evidence of the claimant, which the Court finds cogent and reliable, also the appeal made by the defendant on the 19/5/25, to the Court to give him more time to pay off his debt, hereby enters judgment in favour of the claimant. The failure of the defendant to pay the sum of N420,000.00 in full to the claimant is an actionable breach of contract.

The defendant failed to file a defence to this suit or respond to the claim of the claimant, thus entitling the claimant to judgment in his favour, see Article 6 of the Small Claims Court Practice Direction (2023) of Rivers State.

Article 8(2) of the SCC Practice Direction 2023, Rivers State, empowers the Court to enter judgment for the claimant where he has proved his claim upon the non appearance of the defendant.

The defendant in my view has admitted the claim of the claimant against him (see Article 6(3) of the SCC Practice Direction, 2023. The defendant's appeal is an admission of the claim against him.

See; 7up Bottling Company Limited vs. V. Abiola & Sons Bottling Company Ltd. (2006) 6 NSCQCR 905 (2001) 13 NWLR (pt. 730) 469.

Okoebor vs. Police Council (2003) 12 NWLR (pt. 834) 444 at 473.

Ogboda vs. Adulugba (1971) 1 All NLR 68.

The claimant is under an obligation to succeed on the strength of his case, the Court is satisfied that the claimant has proved his claim against the defendant especially on the strength of Exhibits A to G respectively.

The Court hereby holds that the claimant is entitled to general damages, if the defendant had paid his loan, the claimant will not need to be in Court. See SPDC Ltd. vs. Nnabueze (2014) FWLR (pt. 724) pg. 117 at 138, paragraphs E – G, here The Court held that damages arising from a breach in paying money due to the plaintiff at the time it was due is the interest on the amount due, which will place the claimant on the financial strength he ought to be on if the money was paid as at when due.

See also Inter Messenger Nig. Ltd. vs. Engineer David Nwachukwu (2004) 119 LRLN 4331 at 4335.

Consequently, the Court hereby enters judgment in favour of the claimant and orders as follows;

1. That the defendant pays the claimant the sum of N320,000.00 (Three Hundred and Twenty Thousand Naira) only, being the balance of the loan sum and the accrued interests on the loan.
2. That the defendant pays the claimant, the sum of N500,000.00 (Five Hundred Thousand Naira) only, as general damages for all the trauma and stress suffered by the claimant, including costs incurred in instituting this suit against the defendant, for the recovery of the capital sum of the loan and accrued interest left unpaid by the defendant.
3. These payments must be made forthwith.

This is the judgment of the Court.

MRS BARIYAAH .H. ABE
Chief Magistrate
21st May, 2025.

