

**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
SITTING ON THE 26TH DAY OF FEBRUARY 2023
AT THE SMALL CLAIMS COURT 5 PORT HARCOURT**

SUIT NO: PMC/SCC/170/CS/2023

BETWEEN

MRS DARLING FABIA DONIBO ----- CLAIMANT

AND

MR PRINCE VICTOR ----- DEFENDANT

PARTIES:

APPEARANCES:

JUDGEMENT

By a claim dated 21/09/2023, the claimant's claim against the defendant are as follows:

1. Debt of N1, 200, 000.00
2. N400, 000.00 as cost.
3. 15% prejudgement interest
4. 10% post judgement interest

PLEA

By the affidavit of service availed this court, the defendant was served the originating process in this suit by substituted means by sending the summons and particulars of claim to the defendant's whatsapp number on the 20th of October 2023 at 8:09am. On the 14th of December 2023, a plea of not liable was entered for and on behalf of the absent defendant.

SUMMARY OF EVIDENCE

The claimant in proof of her case called a lone witness, the claimant herself and tendered two exhibits marked exhibit A and B.

The defendant never appeared to defend this suit hence no evidence was entered for the defendant.

The relevant facts from the case of the claimant as presented by the claimant herself is that sometime in April 2021, the defendant who is a manger of a micro finance bank Vicrich introduced her to a business with the promise that the bank's interest is affordable and if she makes an investment of N1, 000,000.00 it will yield an extra interest of N200, 000.00 per year. That she invested the sum of N1, 000,000.00, her pension money. That she sent the money to the defendant's account for a period of 1 year. That they entered into an agreement and the defendant promised to pay her half of the interest in 3 months which is N100, 000.00. That since then till now the defendant refused to pay her both the capital and interest hence her filing this suit. That she spent money coming to court as she had to hire a lawyer. The said electronic transfer to the defendant was admitted as Exhibit A. The agreement between both parties was admitted as Exhibit B. Case was adjourned to the 18/12/2023 for cross examination of CW1.

The defendant never appeared either by himself or through a counsel to defend this suit even after service of hearing notice hence he was foreclosed from cross examining the CW1 and from defending this suit.

The claimant on the 21/2/2024 adopted their written address and case was adjourned for judgement now being read.

In the claimant's written address, a lone issue was raised for determination to wit:

Whether having regards to the facts and evidence led, the claimant has proved her case.

Claimant stated that it is on record that the defendant did not defend the suit thus did not challenge or controvert any of the evidence of the claimant. That the defendant is thus deemed in law to have admitted the case. Counsel cited the case of **NIGERIAN ARMY V. WARRANT OFFICER YAKUB (2013) 2 SC (1) 117** where the Supreme court held that when there is unchallenged evidence before a court, the court should accept same and act on it. With reference to reliefs ii and iv, the sum of N400, 000.00 claimed as cost in connection with the prosecution of this suit and 10% post judgement interest, counsel pointed the court to Article 16(3) of the small claims practice direction 2023 that permits the application of the magistrate court civil procedure rules where no provision is made in the practice direction on a particular subject. That the courts have the power to award post judgement interest whether or not it was claimed by the successful party.

For the award of 15% pre judgement interest, counsel cited the case of **PETGAS RESOURCES Ltd v. LOUIS MBANEFO (2007) 6 NWLR (PT. 1031) 545 AT 562 PARAS F-H** stating that the court has the power to award same.

RESOLVE

In determination of this suit, I will adopt the lone issue raised by the claimant.

Whether having regards to the facts and evidence led, the claimant has proved her case.

As already stated, the failure of the defendant to make an appearance means that the entire evidence adduced by the claimant is unchallenged. The law is trite that a Court is at liberty to accept and act on unchallenged and uncontroverted evidence. See the case of **OFORLETE V. STATE (2000) 12 NWLR (PT. 681)415**. The court in the case of **ADELEKE V. IYANDA (2001) 13 NWLR PART 729 PAGE 1 AT 23-24 PARA H-A** held that where the claimant has adduced admissible evidence which is satisfactory in the context of the case, and none available from the defendant, the case will be decided upon a minimum of proof as this makes the burden lighter.

From the case file, the claimant has complied with the provisions of **ARTICLE 2 AND 3 OF THE RIVERS STATE SMALL CLAIMS COURT PRACTICE DIRECTION 2023** for the fact that this is a liquidated money demand not exceeding Five million (N5M), the defendant was served with a demand letter, there is a complaint form, there is an affidavit of service of the summons of court on the defendant.

On the first claim of the claimant, by way of evidence, the claimant has tendered the receipt which she used in making payment to the defendant (Exhibit A). The agreement between parties was also exhibited as Exhibit B. In **BABATUNDE & ANOR VS. BANK OF THE NORTH LTD & ORS (2011) LPELR-8249 (SC)** the Supreme Court per Adekeye, JSC stated this principle thus: "The law is that written contract agreement freely entered into by the parties is binding on them. A Court of law is equally bound by the terms of any written contract entered into by the parties. Per Exhibit B, the first claim of the claimant succeeds.

On the second claim of cost of N400, 000.00. Cost follows event and a successful party is entitled to the cost of prosecuting or defending the action either wholly or partly unless he misconducts himself in such a manner that deprives him of such an award. See the case of **UBANI-UKOMA VS. SEVEN-UP BOTTLING CO. & ANOR (2022) LPELR-58497 (SC)**. Cost is at the discretion of the court and in the absence of the actual expenses incurred by the claimant, cost of N400, 000.00 is awarded.

On the third claim of 15% pre judgment interest. In the case of **SKYMIT MOTORS LTD V. UBA PLC (2012) LPELR-7903 (CA)**, it was held that although the court is at liberty to grant post judgment interest on the judgement sum without much ado, but a party seeking for pre judgement interest must plead and lead evidence to prove same. Having gone through the investment agreement and the evidence led by the claimant, 15% pre judgement interest is granted on the investment sum of N1, 000, 000.00 per year from 1/1/2022 to 1/1/2024.

On the fourth claim of 10% post judgement interest. Unfortunately the magistrate court rules do not acknowledge the award of post judgement interest. It is totally

at the discretion of the court but that discretion unfortunately will not be exercised in favour of the claimant as cost has already been awarded.

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

1. The defendant is ordered to pay the claimant the sum of N1, 200, 000.00 being debt owed the claimant.
2. The sum of N400, 000.00 is awarded as cost in favour of the claimant.
3. 15% pre judgement interest is awarded on the investment sum of N1, 000, 00.00 per year from 1/1/2022 to 1/1/2024