

**IN THE CHIEF MAGISTRATE COURT OF RIVERS STATE OF 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 3RD  
DAY OF JULY, 2024**

**RMC/SCC/14/2024**

***BETWEEN***

**MR. EGBUJIE UGO KENNEDY - CLAIMANT**

**VS.**

**MR. OBIORA CYRIL UMUNNA - DEFENDANT**

Matter for Judgment.

Parties absent.

Agochi Amadi Esq appearing with Lord Ikonwa Esq for the claimant, no appearance for the defendant.

**JUDGMENT**

The Claimant claims as follows:

The claimant gave a friendly loan of N1,130,000.00 (One Million, One Hundred and Thirty Thousand Naira) to the defendant from 3<sup>rd</sup> January, 2024 to 3<sup>rd</sup> April, 2024. The defendant has refused to re-pay the loan despite repeated demands. The claimant has spent money in his efforts to make the defendant pay the money but to no avail till date.

**Facts**

On the 30<sup>th</sup> April, 2024, the claimant's counsel, Agochi Amadi, Esq. appearing with Lord Ikonwa, Esq., applied for an order of substituted service to serve the defendant with the Court's processes via his WhatsApp number: 08033102354 and pasting at his address. A plea of not liable was entered thereafter for the defendant by the claimant's counsel, Agochi Amadi, Esq. after the Court continued proof of service, before me dated 10<sup>th</sup> May, 2024.

Cw1 gave evidence led by the claimant's counsel, Agochi Amadi on the 15<sup>th</sup> May, 2024.

He gave his name as Egbujie Kennedy, living at No. 10 Allen John Avenue, Elingbu, an Architect, builder.

He informed the Court he knows the defendant, who is his friend, he sells computer accessories, the defendant met him for a loan of N1,130,000.00 promising to pay him back on the 3<sup>rd</sup> February, 2024, he gave the loan to him, the defendant gave him a cheque of the same figure, the defendant also wrote to him pleading that he should extend the time for three months and the claimant replied that he should pay, that was not their agreement.

The claimant paid N150,000.00 as legal fees, letters to the claimant and the defendant's counsel were both admitted in evidence as Exhibits A and B, he prayed the Court to order him to pay him the loan of N1,130,000.00 and the legal fee of N150,000.00, damages of N300,000.00. The Sterling Bank cheque given to the claimant by the defendant is before me as Exhibit C, the loan agreement before me as Exhibit D. The loan is from 3<sup>rd</sup> January, 2024 to 3<sup>rd</sup> April, 2024.

The Court ordered the claimant to serve the defendant with a hearing notice at the conclusion of the claimant's evidence.

The Court foreclosed the defendant from cross-examination of cw1 due to his absence in line with the rules of Court, 2007, the claimant closed his case.

The defendant was foreclosed from defending this suit on the 22<sup>nd</sup> May, 2024, due to the absence of the defendant. The claimant's counsel, Agochi Amadi, Esq. on the 31<sup>st</sup> June, 2024 adopted his final written address, dated 29<sup>th</sup> May, 2024, filed 30<sup>th</sup> May, 2024.

From the written address of the claimant's counsel, two issues were formulated for consideration;

1. Whether by Exhibit D (The Friendly Loan Agreement), the Defendant is not indebted to the Claimant?
2. Whether from the unchallenged evidence of the Claimant, the claimant has proved his case and is entitled to his claims against the defendant?

Wherefore he submitted therein as follows;

That by the Exhibits before this Honourable Court, the Defendant is indebted to the Claimant, for avoidance of doubt, see clauses 1-5 of the friendly loan.

From the contents of Exhibit D in clauses 1-5 reproduced above, it is beyond doubt that there exists a contract between the parties in this suit which the Defendant has defaulted, thereby been indebted to the Claimant.

Whether from the unchallenged evidence of the Claimant the Claimants have proved their case and are entitled to their claims against the defendant?

He contends that the Claimant has proved his case by the unchallenged evidence before this Honourable Court and urged this Court to grant the claims of the Claimant.

The law is that unchallenged evidence is deemed admitted and the Court is bound to act on it. Referring this Court to Consolidated Resources Ltd. vs. Abofar Ventures (Nig.) Ltd. (2007) 6 NWLR (Pt 1030) 221, Oladipo vs. Moba Local Government Area (2010) 5 NWLR (Pt. 1186) 177.

The law is that a claim for special damages must be proved strictly by the Claimant. Citing OTERI HOLDING LTD vs. H.B.CO. LTD (2021) 1 NWLR (pt. 1756) 29 CA; REGD TRUSTEES. A.C.C. vs. REGD TRSUTEES GCCC (2012) 16 NWLR (pt. 1801) 105 SC.

We submit that the Claimant has in proof of his case tendered documents admitted as A, B, C and D. Exhibit A is the defendant's letter to the Claimant for extension of period of payment. Exhibit B is the reply to the defendant's letter. Exhibit C is the postdated cheque of N1,130, 000 (One Million One Hundred and Thirty Thousand Naira) ONLY. Exhibit D is the friendly loan Agreement between the Claimant and the defendant evidencing the receipt of N1,130,000 (One Million, One Hundred and Thirty Thousand Naira) only by the defendant from the claimant, which has not been repaid till date.

The Claimant in his oral evidence claimed against the defendant for special and general-damages as follows:

1. The sum of N150,000.00 (One Hundred and Fifty Thousand Naira) only, which I paid to my lawyer as his legal fees.
2. The sum of N300,000.00 (Three Hundred Thousand Naira) only.

It is a common knowledge and judicially noticed that fees are paid to lawyers to file and represent parties in Court. The law is that facts of common knowledge and judicially noticed need not be proved. We refer this Court to sections 122 (1) (2) (a) and 124(1) of the Evidence Act, 2011. We humbly urge this Court to hold that the claim for payment of N150,000.00 (One Hundred and Fifty Thousand Naira) only by the Claimant to his lawyer to prosecute this case is of common knowledge and judicially noticed by this Court. We urge the Court to grant same.

In J.O.P INVESTMENT (NIG) LTD vs. IBETO CEMENTCO LTD (2023) 17 NWLR (PT. 1914), ratio 3 and 4, the Court of Appeal held that '*General Damages is a kind of damage that the law presumes to flow from the wrong*

*complained of. They are the type that the Court will award in the circumstances of the case and without any yardstick to assess, except the expectation of a reasonable man. General Damages is such as the law will presume to be natural or probable consequences of the defendant's act and need not be specifically pleaded. It arises by inference of law and need not be proved by evidence and may be averred generally'.*

From the circumstances and facts of this case, it is an unchallenged fact that the Claimant has suffered injuries, inconveniences due to the action of the Defendant, which naturally entitles the Claimant to damages. The fact that if the defendant had paid this money at the stipulated date, the Claimant would have used the money for other profitable businesses that would have yielded profit to the Claimant and other inconveniences and legal injuries the Claimant incurred as a result of the breach by the Defendant, entitles the Claimant to the general damages claimed.

### **Issue for determination**

Whether the claimant has proved his entitlement to his claims for the repayment of his loan and for damages of N300,000.00(three hundred thousand naira)?

### **COURT**

The claimant in proof of his claims against the defendant tendered four Exhibits.

1. Exhibit A; the letter from the defendant's solicitors to the claimant dated 27<sup>th</sup> March, 2024, informing the claimant of the ill-health of the defendant, requesting that the claimant should stand down the loan for another three months, to enable the defendant recover and complete the payment of his debt.
2. Exhibit B; the letter from the claimant's attorney to the defendant's solicitor, dated 6<sup>th</sup> April, 2024, in response to Exhibit A, rejecting the request for the three months' loan repayment extension, intimating him of resorting to legal action against the defendant wherein he refuses to comply with the loan agreement.
3. Exhibit C; the Sterling Bank cheque given to the claimant by the defendant dated 3<sup>rd</sup> April, 2024 of N1,130,000.00, signed by them and their respective witnesses.

From the commencement of this suit till the day the claimant's counsel adopted his final written address, the defendant never appeared before this Court to defend this suit for him, he did not challenge or controvert the evidence of the claimant, the Court ordered a hearing notice to be served on the defendant,

Proof of service of the hearing notice is before me dated 15<sup>th</sup> May, 2024, served by the Court bailiff, Gospel Utorue via the defendant's phone number.

It is trite law that service of the originating summons serves as adequate notice of the suit filed against the defendant. The defendant was adequately served via his WhatsApp number, Proof of service before me.

It is a trite principle of law that he who asserts must prove, see Section 131(1) of the Evidence Act, 2011, where this was given statutory sanction. See also section 132 of the Evidence Act, 2011.

The standard of proof as is trite is discharged on the balance of probability or preponderance of evidence. See section 134 of the Evidence Act, 2011 as rightly put across by the claimant's counsel in her final written address.

The defendant having collected a loan from the claimant of N1,130,000.00, which he has failed and refused to pay back, the loan being from 3<sup>rd</sup> January, 2024 to the day for the repayment having since expired. See Exhibit D.

Documents tendered as Exhibits do not embark on falsehood like some mental beings, see *Olujinle Vs. Adeagbo* (1988)2 NWLR (Pt. 75) 238 and *BFI Group Corporation Vs. Bureau of Public Enterprises*.

Once documentary evidence supports oral evidence, oral evidence becomes more credible, as documentary evidence always serves as a hanger from which to assess oral testimony. See *Kimdey Vs. Military Governor of Gongola State* (1988) 5 SCNJ 28.

The aggrieved party can sue the defaulting party for breach of contract, where a valid contract has been entered into by both parties; a legal right has to be established.

In the case of *Dodo Vs. Salanke* (2006) 9 NWLR, Pp. 472-473, Para H-B, per Alagoa, JCA commented on the bindingness of contents of document on a party who signs same. Where a person signs documents, he authenticates his full agreement to their contents and must be bound by their terms.

See *Allied Bank (Nig.) Ltd. vs. Akubeze* (1997) 6 NWLR (Pt. 509)375 referred to. Pp. 472-473, paras H-B. The Court held in this case that the defendants are bound by the documents signed by them as seen in Exhibits A and B, and they must execute the terms of the investment agreement; Exhibit B, which they failed to do so and so were rightly sued by the claimant.

A contract is an agreement between two or more parties, which creates reciprocal legal obligation or obligations to do or not to do a particular thing. For a valid contract to be formed there must be mutuality of purpose and intention.

The refusal on the part of the defendant to pay back the loan is indeed a breach of contract. A breach of contract occurs when one of the parties in breach has acted contrary to the terms of the contract. See *F. B. N. Plc. Vs. Immason & Sons (Nig.) Ltd.*, (2014) All FNLR (Pt. 724) P. 344.

The defendant was never in Court to challenge, controvert or discredit the evidence of the claimant, neither was he in Court to enter a defence to this suit. The Court in compliance with O11 rule 16(1) rules of Court 2007, foreclosed the defendant from cross examination of the claimant and from defending this suit.

Consequently, where as in the instant case, only one party calls evidence, minimum proof is required of him in other for his claims to succeed; see *Monkom & Ors. Vs. Odili* (2010) All FWLR (Pt. 536) 22 at 30 paras. F-G.

In the case of *Obimiami Brick & Stone (Nig.) Ltd. Vs. ACB Ltd.* (1992)3 NWLR (Pt. 229) page 260, the Supreme Court of Nigeria held:

*“No Court has a right to force a party to give evidence, after both parties to a dispute had been duly notified of the hearing date and a party for no justifiable reason decided to, so to say, opt out of the proceedings, the case presented by the other party, once it’s not discredited in any legal way should be the case to be considered on its merit. The intention of the other party why he refused to take part is not the business of Court”.*

Damages are monies claimed by or ordered to be paid to a person as compensation for loss or injury. In other words, damages are the sum of money which a person wronged is entitled to receive from the wrongdoer as compensation for the wrong. General damages are damages that the law presume follow from the type of wrong complained of and do not need to be specifically claimed. *Iyere Vs. Bendel Feed & Flour Mills Ltd.* (2008) 12 SCM (Pt. 1)66; *Yalaju-Amaye Vs. A.R.E.C. Ltd.* (1990) 4 NWLR (Pt. 145) 422 referred to P. 71, paras B-C.

General damages need not be specifically pleaded. It arises from inference of law and need not be proved by evidence. It suffices once generally averred in the pleadings. They are presumed by law to be the direct and probable consequence of the act of the defendant complained of. Unlike special damages, it is generally incapable of substantially exact calculation. *Yalaju-Amaye Vs. Associated Registered Engineering Contractors* (1990) 6 SC 157; *Incar (Nig.) Ltd. Vs. Benson Transport Ltd.* (1975) 3 SC 117 referred to P. 72, paras. F-G.

*SPDC Ltd. Vs. Nnabueze* (2014) AFWLR (pt. 724) pg. 117 at 138 paras. E-G when it sated as follows:

“Damages arising from a breach in paying money due to a plaintiff at the time it was due, is the interest on the amount due. The reason is that such interest will place the plaintiff on the financial strength he would have been if he was paid as at when due in a situation arising from commercial matters, party holding on to the fund of another, for so long without justification ought to pay compensation for so doing. In the instant case where the defendant withheld the plaintiff’s money for contract executed, the interest claimed thereon by the plaintiff was rightly awarded by the trial Court”.

In Exhibit D, the loan agreement, it was stated therein on page one (1) that in the event, the borrower (defendant) fails to repay the loan as agreed, the lender (claimant) is indemnified by the borrower (defendant) of any financial loss or expenses, the lender (claimant) incurred in recovery his money.


By virtue of the above, the defendant shall indemnify the claimant for all financial expenses incurred in recovery of his loan to the defendant.

This Court consequently grants the claim for N300,000.00 (Three Hundred Thousand Naira) for damages and N150,000.00 (One Hundred and Fifty Thousand Naira).

The defendant had ample opportunity to defend this suit against him but failed to dispute, controvert or challenged evidence of the claimant. The time stipulated having expired for the repayment of the loan, the loan being from 3<sup>rd</sup> January, 2024 to 3<sup>rd</sup> April, 2024 having since elapsed, see Exhibit D, the Court accordingly, enters judgement in favour of the claimant and orders as follows;

1. That the defendant is hereby ordered to repay the claimant, the loan of N1,130,000.00 (One Million, One Hundred and Thirty Thousand Naira), which said sum was given as a loan by the claimant to the defendant.
2. That the defendant should pay the sum of N300,000.00 (Three Hundred Thousand Naira) as damages to the claimant.
3. That it is finally ordered, the defendant should pay the sum of N150,000.00 (One Hundred and Fifty Thousand Naira) for legal fees incurred by the claimant.

This is the judgment of the Court.

  
**MRS BARIYAAH .H. ABE**  
*Chief Magistrate*  
**3rd July, 2024.**

