

**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 11TH DAY  
OF SEPTEMBER, 2024**

**RMC/SCC/18/2024**

*Between*

**TONY CHUKWU** - **CLAIMANT**

**VS**

**MRS. MARY ACHA** - **DEFENDANT**

Matter for Judgment

Claimant in Court, Defendant absent

Agochi Amadi Esq for the claimant, no appearance for the defendant.

The claimant filed this suit under the Small Claims, claiming against the defendant; unpaid debt of accumulated salaries owed by the defendant as at April, 2024 at N1,940,000.00 (One Million, Nine Hundred and Forty Thousand Naira) only. All efforts to get the debt paid remained impossible (in vain).

## **Facts**

Form RSSC 2, the complaint form, Form RSSC 3, the summons and Form RSSC 6, the affidavit of service deposed to by the Court bailiff, Livinus Akere on the 7<sup>th</sup> June, 2024 are all before the Court, evidencing proper service executed on the defendant.

The defendant from the above was clearly notified of this suit especially by Form RSSC 3, the summons and duly served by the Court bailiff. See Form RSSC 6, but failed to file a defence or counter claim to this suit. In the absence of which the Court heard the evidence of the claimant only, foreclosed him from cross-examination by the defendant, in accordance with O11 rule 16(1) rules of Court, 2007, and also foreclosed the defence from defending this suit. The defendant failed to appear despite being served with a proper summons and complaint form. As a result, the Court heard only the evidence of the claimant to its conclusion and adjourned for judgment. The defendant was served on the 7<sup>th</sup> June, 2024 at 9:55am by the Court bailiff personally, the claimant acted as a pointer.

The case of the claimant is as follows;

The claimant on the 4<sup>th</sup> July, 2024 entered a plea of not liable against the defendant due to her absence.

On the 10<sup>th</sup> July, 2024, the claimant's counsel, Agochi Amadi, Esq. led the claimant in evidence. He testified on oath as follows;

That he knows the defendant, he is a teacher at the defendant's school, the defendant owes him arrears of salaries totaling N1,940,000.00, owed to him while teaching at Ave Maria International Academy, East-West Road, Port Harcourt. He was employed on the 8<sup>th</sup> August, 2021, on the salary of N120,000.00 monthly, the August salary was only N75,000.00 not N120,000.00, continued till December, 2021, he made enquires and the proprietress told him that he will get his money when the students have paid their fees, which is their usual policy.

In January, 2022, the August, 2021 to January, 2022 arrears were cleared. From February, 2022 to December, 2022, the part payment continued. In January, 2023, his salary owed accrued to N620,000.00.

See Exhibit A for the breakdown, he was told that the school collected a loan from the bank, and he will be paid after they had restored the payment with the bank.

From January, 2023 to June, 2023, he was owed N501,000.00.

He was occupying the school accommodation then, the proprietress promised to pay. He threatened to report to the Human Rights Commission, she then called a management meeting to intercede and pay for his accommodation outside the school.

In July, 2023, she paid N250,000.00 out of the N501,000.00, for January to June, 2023. He wrote to her on the 21<sup>st</sup> June, 2023, the letter was admitted as Exhibit B; original with the school.

Exhibit C – Letter of appointment from the defendant's school.

Defendant's lawyer's letter admitted as Exhibit D.

Claimant's lawyer's letter admitted as Exhibit E.

Claimant's bank statement – Exhibit F showing proof of payments to him by the school.

Prayed the Court in conclusion to grant his claims, he was foreclosed from cross-examination by the defendant who was absent and not represented.

The claimant's counsel closed his case and the Court adjourned for defence.

The defendant was foreclosed from defending this suit, due to her unexplained absence from Court. The claimant's counsel waived his right to address the Court, which the Court conceded to and adjourned for judgment.

### **Issue for determination**

Whether the claimant is entitled to his claim, given the defendant's failure to appear and contest the claim of the claimant?

### **COURT**

The facts of this case have been laid out above, the claimant, a staff of the school where the defendant is the proprietress of the school, has failed to pay the claimant his outstanding salaries from January to June, 2023, where part payment was made being N250,000.00 out of N501,000.00 owed to the claimant.

From July, 2023 till date (September, 2024) the defendant has not been paid and so filed this suit for recovery of the debt; arrears of salaries owed to the claimant by the defendant.

If the defendant had any defence, she would have been able to refute his claims or accept them. She was duly served with the summons; see the affidavit of service before me dated 7<sup>th</sup> July, 2024, summons dated 28<sup>th</sup> May, 2024.

It is trite law, that civil cases are decided on the preponderance of evidence and on the balance of possibilities.

The claimant in proof of his case tendered the following Exhibits;

Exhibit A – a breakdown of salaries owed to the claimant by Ave Maria International Academy, totaling N1,940,000.00, for February, 2022 to April, 2024, including one month's salary in lieu, i.e. May, 2024.

From his evidence, the school paid him only part payment of his salary from February, 2022 to December, 2022, see Exhibit A, balance outstanding N620,000.00.

January, 2023 to June, 2023 he was owed N501,000.00 out of which the defendant paid N250,000.00.

From January, 2024 to April, 2024, she owed N480,000.00, one month salary in lieu i.e. 4<sup>th</sup> May, 2024 will be N120,000.00.

Total owed will be N650,000.00 (February, 2022 to December, 2022) from Exhibit A.

From Exhibit A, N501,000.00 was paid for January, 2023 to June, 2023.

Though he said N250,000.00, but the Court will rely on Exhibit A, documentary evidence being the hanger for oral evidence, once documentary evidence supports oral evidence, the case of the witness will be more reliable/credible.

It is trite law that where there is a discrepancy between oral evidence and documentary evidence, documentary evidence will override oral evidence, so the Court will rely on Exhibit A over the evidence of the claimant.

The claimant by virtue of Exhibit A has proved his entitlement to his claim for N1,940,000.00.

Exhibit B, the letter from the claimant to the defendant dated 21<sup>st</sup> June, 2023, requesting for the payment of his outstanding salary for January to June, 2023 at N501,000.00. also asking for the money (arrears) to enable him get secure accommodation for him and his family, due to the fact that he was asked to leave the school accommodation by July 31.

A second letter of demand for unpaid salary is also attached dated 6<sup>th</sup> July, 2023. A letter dated 17<sup>th</sup> July, 2023 is further attached, reminding the school of his salary balance of N250,000.00, the sum of N250,000.00 already paid to him.

Exhibit C – His letter of appointment from the school dated 8<sup>th</sup> August, 2021 with salary at N120,000.00, see paragraph 4, appointment as teacher.

Exhibit D – letter of dismissal for cross misconduct terminating the claimant's appointment with the school, dated 28<sup>th</sup> August, 2023, written by the school's solicitor.

Exhibit E – letter from the claimant's solicitor in response to Exhibit D, dated 30<sup>th</sup> August, 2022, stated therein that his unlawful termination was because the defendant was avoiding payments of outstanding arrears of salaries to the claimant.

Further complaints of locking the claimant's family out of the house, disconnecting their electricity and water supply were also complained of.

Exhibit F – claimant's bank statements from 2<sup>nd</sup> September, 2021 to August 28, 2021; showing monies paid by the defendant's school to the claimant over the years aforementioned.

From Exhibit E, the attached outstanding salary arrears owed to the claimant by Ave Maria International Academy is N855,000.00.

This sum was not paid by the defendant's school to the claimant, there is no evidence of such payment to the claimant, the defendant never challenged, rebut, controvert or discredit the evidence of the claimant, she was never in Court despite being served with the complaint form and the Court's summons.

The defendant's school cannot unlawfully summarily dismiss the claimant without paying all outstanding salaries to the claimant.

If they had paid the arrears as at 28<sup>th</sup> August, 2023, which accrued, they would have paid only N855,000.00 and not N1,940,000.00 as prayed for the claimant.

This is a Court of justice and the Court will not tolerate such injustice being meted to the claimant, every worker is entitled to his wages, the defendant also cruelly treated the claimant by asking him to vacate the premises with his family while still owing him salaries and disconnecting their light and water.

The claimant can sue or bring a civil suit against the defendant for locking his family out of the house and disconnecting their electricity and water. That was cruel and inhuman. The claimant and his family were entitled to peaceful possession of their premises.

The claimant still remained in the employment of the defendant due to their refusal to pay him his arrears of salary.

Upon the preponderance of evidence by the claimant, the Court is authorized to enter judgment on the claimant's behalf in his support. See Exhibits A to F especially Exhibit A.

See also sections 131 to 135 of the Evidence Act, 2011 with regards to the burden of proof. See section 134 of the Evidence Act, 2011 which provides for the standard of proof in civil cases.

The burden of proof shall be discharged on the balance of probabilities in all civil proceedings. Section 131 of the Evidence Act, "he who asserts must prove". See the claimant's Exhibits A to F respectively.

Unchallenged evidence is acceptable no matter how minimal the evidence is before the Court, see *Monkom & Ors. vs. Odili* (2010) All FWLR (pt. 536) 22 at 30; see O11 rule 16(1) rules of Court, 2007.

It is not the duty of the Court to look for the defendant to defend the case for her. It is trite law that facts not denied are deemed to be admitted. See *Salzgitter Stahl(GMBH) vs. Tunji Dosunmu Industries Ltd.* (2010) 45. The Court is not a Father Christmas, it cannot go on a frolic of its own, looking for the defendant to defend this suit.

The claimant has to the Court's satisfaction proved his entitlement to his claim. I want to reiterate that the refusal of the defendant's school to pay the claimant his outstanding salaries, entitles him to claim the outstanding salaries till the month of May, 2024 when he filed this case against the defendant.

See Mobil Oil Producing Nig. Ltd. vs. Monokpo (No. 2) (2001) FWLR (pt. 78) 7210. See Ogolo vs. Fubara (2003) 11 NWLR (pt. 198) SC 1.

In the case of A.C.E. Ltd. vs. Cole (supra), the Court held that “evaluation of relevant and material evidence before the Court and the ascription of probative value to such evidence are the primary functions of the Court, who assessed and heard the witnesses while they testified”.

It is the duty of a trial Court to evaluate the evidence by it and ascribe probative value to it and attach weight to such evidence be it oral or documentary evidence. Once documentary evidence supports oral evidence, such evidence becomes more credible, documentary evidence serves as a hanger from which to assess oral testimony. See Ukeje vs. Ukeje (2014) KLR pg. 1641 E. It is upon this that the Court places reliance upon all the Exhibits in proof of the claimant’s claim against the defendant.

The Court in *A.C.E LTD vs. COLE (2016) ALL FWLR (pt. 861) RATIO 4 @ PAGE 1207* states thus:

"Parties to a contract are bound by its terms. The express terms of any contract governs all aspect of the relationship between the parties. A Court of law must always respect the sanctity of the agreement reached by the parties. It must not make a contract for them or re-write the one they have already made for themselves.

The defendant is bound by the contract entered into with the claimant to pay his wages fully and as at when due. The Appointment letter given to the claimant confirms his status as a teacher at the school and so must be fully paid his salaries.

In *ANTHONY ODUNUKWE vs. THE ADMINISTRATOR GENERAL EAST CENTRAL STATE (1978) 1 SC 25 at 35*, the Court held that;

It is settled law that he who asserts must prove what he claims and where he has wholly failed to prove his claim, the defendant is entitled to an order in his favour dismissing the plaintiff's claim.

Also in *STERLING BANK PLC V FALOLA (2015) ALL FWLR (PT. 774) 1 CA. At 24 para 8-C*, the court of Appeal held thus;

The burden of proof is the duty to offer evidence in proof of a party's assertion.

In *AKINTOLA vs. SOLANA (1986) 3 NWLR (PT 24) 598 (1986) 4SC 14*, the Court held inter alia that;

Evidence is nothing but proof legally presented at the trial on the issue.

The Court hereby finds that the claimant has to the Court’s satisfaction proved his entitlement to his claim, on the balance of probability and preponderance of evidence (See Exhibits A to F), as required in civil cases. The evidence submitted is credible,

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

1. That the defendant pays the claimant, the sum of N1,940,000.00 (One Million, Nine Hundred and Forty Thousand Naira) only, being the arrears of unpaid salaries owed the claimant by the defendant, while the claimant was a teacher at the defendant's school; Ave Maria International Academy.
2. That this payment should be made forthwith.

This is the judgment of the Court.

**MRS. BARIYAAH. H. ABE**  
**Chief Magistrate**  
**11th September, 2024.**

