

IN THE MAGISTRATES' COURT OF RIVERS STATE OF NIGERIA  
IN THE PORT HARCOURT MAGISTERIAL DISTRICT  
HOLDEN AT SMALL CLAIMS COURT 1, PORT HARCOURT  
BEFORE HIS WORSHIP COLLINS G. ALI, ESQ.,<sup>1</sup> TODAY FRIDAY, THE 24<sup>TH</sup>  
DAY OF MAY, 2024.

SUIT NO.:PMC/SCC/67/2024.

BETWEEN:

JOHNSON O. EKOWO

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CLAIMANT

AND

SAMUEL OPARA NNANNAH

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DEFENDANT

Case called.

Parties absent.

JUDGMENT

The Claimant commenced this suit against the Defendant on the 18<sup>th</sup> day of March, 2024 after serving the Defendant with the mandatory demand letter dated 10<sup>th</sup> day of January, 2024 and he refused to repay a friendly loan. The Claimant therefore claims against the Defendant as per the claim attached to the complaint form and summons as follow:

Debt/Amount claimed - ₦5,000,000.00

Following the filing of the claim, ordinary summons with the attached claim and complaint were served on the Defendant by substituted means on the 2<sup>nd</sup> day of April, 2024 . The Defendant failed to appear in Court despite been served thereby necessitating the entry of plea of not liable for him on the 24<sup>th</sup> day of April, 2024 and the case adjourned for hearing.

The Claimant testified in proof of his claim as CW1 by adopting his written statement on oath on the 15<sup>th</sup> day of May, 2024. The Claimant tendered two documents in evidence as Exhibits A and B respectively. The documents are a friendly loan agreement dated 14<sup>th</sup> December, 2019 and a Zenith Bank Plc Counter Cheque No. 2599748 dated 14<sup>th</sup> December, 2019. The CW1 was not cross examined

<sup>1</sup> LL B, LL M, BL, A. IDRI, Chief Magistrate Grade I, and the Presiding Magistrate, Small Claims Court 1, Port Harcourt, sitting at Chief Magistrate Court 7, Port Harcourt, Rivers State.

by the Defendant who equally did not defend suit and was eventually foreclosed. After the close of hearing on the 15<sup>th</sup> day of May, 2024, the case was adjourned for judgment in line with the Small Claims Practice Direction.

I have carefully perused the claim and written deposition of the Claimant in this case. The lone issue for determination in my considered opinion is thus:

***Whether the Claimant is entitled to the relief sought?***

The oral evidence of the Claimant as CW1 is that he granted a friendly loan of ₦1,300,000.00 to the Defendant on the 14<sup>th</sup> December, 2019 which was to be repaid within one month as shown in Exhibit A. The CW1 testified that they agreed that the loan will attract a default fee of 5% on the capital sum monthly and that the Defendant has long breached the agreement and is currently owing him ₦18,000,000.00 from 2019 to date. The CW1 testified that he is abandoning the excess of ₦13,000,000.00 and asked for ₦5,000,000.00 only. The evidence of the Claimant as CW1 is unchallenged and is accordingly deemed as admitted. The law is now settled that parties to a contract are strictly bound by the terms of their agreement and a Court cannot read into the agreement the terms on which the parties have not agreed. See the cases of *Agbareh v Mimra [2008] All FWLR (Pt. 409) 559 at 564 ratio 8*, *UBN Ltd v Ozigi [1994] 3 NWLR (Pt.333) 385 and Best (Nig.) Ltd. v Blackwood Hodge (Nig.) Ltd. & Ors. [2011] All FWLR (Pt. 573) 1955 at 1959 ratio 7*. I hold that the Defendant is bound to fulfill his obligation under the friendly loan agreement (Exhibit A).

A cause of action in a suit for recovery of debt accrues when a debtor fails to pay his debt after a demand to pay the debt has been made. See *Akinsola & Anor. v Eyinnaya [2022] LPELR-57284 (CA)*. In this case, there is evidence of demand for the debt and non-payment by the Defendant. The debt from evidence before the Court is a friendly loan. A friendly loan is not a gift but a lifeline from a friend to a friend which makes no room for usury or interest or penalty. It connotes a lifeline thrown by a friend to a friend to bail him out of trouble and does not contemplate profiting from the gesture financially. See the cases of *Champion Breweries Plc v*

*Specialty Link Ltd & Anor. [2014] LPELR-23621 (CA) and FBN v I.A.S Cargo Airline Nig. Ltd. [2011] LPELR-9827 (CA).* The testimony of the Claimant is that they agreed that the loan would be repaid within one months with 5% monthly default fee which the Defendant has not paid at all. I hold that the Defendant is liable to repay the friendly loan and default fee.

The law is settled that where evidence given by a party on material fact is not contradicted by the adverse party, it is deemed admitted. I hold that the Claimant has proved his case and is entitled to the relief sought. The lone issue is resolved in favour of the Claimant and against the Defendant. Judgment is accordingly entered for the Claimant as follows:

The Defendant is hereby ordered to pay the Claimant forthwith, the sum of **₦5,000,000.00 (Five Million Naira)** only representing unrepaid friendly loan and monthly default fee.



C. G. Ali, Esq.  
(Chief Magistrate)  
24/05/2024

**LEGAL REPRESENTATION:**

1. A. G. Onuoha, Esq. the Claimant.
2. Defendant not represented.

