

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 6TH DAY OF MARCH 2025
AT THE SMALL CLAIMS COURT 4 PORT HARCOURT

SUIT NO: PMC/SCC/05/2025

BETWEEN

LOPEZ ABIODUN EMMANUEL----- CLAIMANT

AND

INDUSTRIAL AND GENERAL INSURANCE PLC----- DEFENDANT

PARTIES: Absent

APPEARANCES: P.G.Jaja Esq. for the claimant.

No representation for defendant.

JUDGEMENT

By a claim dated 08/1/2025, the claimant's claim against the defendant are as follows:

1. N1, 319, 308.00 being amount for insurance matured sum
2. N300, 000.00 for cost of litigation.
3. N700, 000.00 as damages

PLEA

By the affidavit of service availed this court, the defendant was served the originating process in this suit personally on the 13th of January 2025 at 4:09pm. On the 27th of January 2025, a plea of not liable was entered for and on behalf of the absent defendant and case was adjourned for hearing.

SUMMARY OF EVIDENCE

The claimant in proof of his case called a lone witness, the claimant himself and tendered five exhibits marked Exhibit A - E.

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 himself is that he instituted this suit to get his claim from the contract between him and the defendant. That in the year 2014, he entered into a policy with the defendants to make a premium payment of N10, 000.00. That after 10 years elapsed, he will get his claim. He also inquired to know if there was any issue if he defaults in payment but was told No, as long as he completes his payment for the 10 years, he will get his claim. That on the 9th of July 2024, he got his certificate for full maturity discharge payment. That he filled in his account statement for the money to be paid. The said document was admitted as exhibit A. That from then till now he has not gotten his payment and he had to engage a lawyer who wrote to the defendants and they acknowledged the debt and said they were working towards making the payment. Said demand letter was admitted as Exhibit B and response admitted as Exhibit C. Receipt of payment to the lawyer was admitted as Exhibit D. The Policy contract was admitted as Exhibit E. CW1 concluded by urging the court to help him get his claim.

The defendant never appeared either by themselves or through a counsel to defend this suit hence they were foreclosed from cross examining the CW1 and from defending this suit. Case was adjourned to the 24/2/2025 for adoption of final address.

In the claimant's final address settled by his lawyer P.G. Jaja Esq, a lone issue was raised for determination to wit:

Whether the claimant has proved his claim to be entitled to judgement of the Honourable Court.

Counsel answered in the affirmative and in support, relied on the provisions of **SECTION 50 (1) OF THE INSURANCE ACT 2004 AND THE CASE OF AJAOKUTA STEEL CO. LTD V. CORP.INS.LTD (2004) 16 NWLR (PT. 899) 369** which makes payment and receipt of an insurance premium, a condition precedent to a valid contract of Insurance. That in this case, Exhibit E and A reveal that the claimant has proved before the court that a contract of insurance was formed between the claimant and the defendant and the law is trite that when an offer to insure is accepted, there is a binding contract upon the insured and the contract a contract of insurance. Counsel also posited that parties are bound by the terms of their contract as seen in the case of **U.N.I.C LTD V. FADICO INDUSTRIES NIGERIA LIMITED (2000) 4 NWLR (PT.653) 406 PP 415 PARA C**. That in the instant suit, there is no doubt that the claimant and the defendant intended the terms and conditions contained in Exhibit E to govern their contractual relationship. That there is no doubt that the claimant paid to the defendant the monthly premium of N10, 000.00 accruing to the claim of N1, 319, 308.00 at the maturity date and that by Exhibit C, the defendant admitted their indebtedness to the claimant. Counsel also posited that failure to file their defence by Article 7 (4) of the Rivers state Small Claims court practice direction 2024, the defendant may be held to have admitted the claim and that by the pronouncement of the Supreme Court in the case of **ANTONIO OIL COMPANY LIMITED V. AMCON (2024) 15 NWLR (1961) 215 PARAS B-D**, once a defendant admits indebtedness or receipt of a loan, the burden as to repayment or as to reasons for non-payment is on the defendant. In conclusion, counsel urged the court to grant the claim for the matured sum of N1, 319,308.00, N700, 000.00 as cost of damages incurred and N300, 000.00 as cost of litigation.

RESOLVE

In determination of this suit, I will adopt a lone issue to wit.

Whether the claimant has proved his case to be entitled to judgement

As already stated that the defendant refused to make an appearance, that failure 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 (1C) (1D) OF THE RIVERS STATE SMALL CLAIMS COURT PRACTICE DIRECTION 2024** 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.

By way of evidence, the claimant has alleged that there exist a contract between himself and the defendant and in proof of same, has tendered the Insurance policy plan (Exhibit E) showing the commencement date and the maturity date of the said policy. The defendant has also alleged the said contract has been breached necessitating the demand letter to the defendant (Exhibit B). The defendant even though absent, did reply Exhibit B via Exhibit C acknowledging that the claimant has a claim with them and promised to pay. 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. In the instant case, the claimant via his testimony and exhibits has been able to show that there exist a valid contract between him and the defendant and this court has no choice than to be bound by those terms as the law is trite that when an offer to insure is accepted, there is a binding contract upon the insured and

the contract a contract of insurance. Per Exhibit E and Exhibit A, the first claim of the claimant succeeds to that extend.

On the second claim of cost of litigation of N300, 000.00. The position of the law is that it is an established principle that costs follow the events in litigation and as such, a successful party is entitled to costs unless there are special reasons why he should be deprived of his entitlement: The law is, however also settled that costs are not meant to be a bonus to a successful party. It is also not meant to be as punitive measures. In making the award, the Court must exercise the discretion conferred on it judiciously and judicially. As the main aim of awarding cost is to relieve the successful party of his costs of the litigation he was unjustly put into by the unsuccessful party. Per Exhibit D tendered by the claimant, cost of N300, 000.00 is awarded as prayed.

The third claim of N700, 000.00 as damages. The principles guiding the award of damages in tort are different from those guiding the award of damages in contract. The object of tort damages is to put the plaintiff in that position he would have been in if the tort has not been committed whereas, the object of contract damages is to put the plaintiff in the position he would have been in if the contract had been satisfactorily performed. See **AGBANELO V. UNION BANK OF NIGERIA LTD (2000) 4 SC (PT. 1) 233 AT 245**. From the first and second claim of the claimant already granted, the claimant has been put in the position he would have been in if the contract has been satisfactorily performed hence this relief fails.

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

1. The defendant is ordered to pay the claimant the sum of N1, 319, 308.00 being amount for insurance matured sum
2. The defendant is ordered to pay the claimant the sum of N300, 000.00 as cost.