

**IN THE CHIEF MAGISTRATE COURT OF RIVERS STATE, 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 21ST DAY
OF MAY, 2025**

RMC/SCC/03/2025

BETWEEN

MR. FRANCIS WALI (TRADING UNDER THE NAME AND STYLE OF DE FRANKTEX INTEGRATED SERVICES)	}	CLAIMANT
VS.		

MR. CHUKWU DADDY	-	DEFENDANT
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Matter for Judgment

Claimant present in Court, defendant absent and not represented.

JUDGMENT

The Claimant claims against the Defendant as follows:

The sum of N200,000.00 (Two Hundred Thousand Naira) only, owed to him by the defendant, being the loan sum and accrued interests; on the said loan sum.

Facts

The defendant was served with the Court's processes via substituted service with the leave of Court on the 15th May, 2025, order for substituted service dated 6th March, 2025, proof of service before the Court in Form RSSC 6 affidavit of service, upon the application of the claimant.

No counter-claim, defence filed by the defendant.

Cw1 gave evidence on the 27th March, 2025.

The defendant was given a loan of N100,000.00 with interest attached to the loan on the 19th July, 2024 by the claimant, the defendant conceded to the terms of the loan. He agreed to pay in two weeks.

He paid N130,000.00 as part of the accumulated interest, he was served a demand letter.

Exhibits tendered in proof of his claim against the defendant are as follow;

- Loan Request Form, Exhibit A dated 19th July, 2024.
- Undertaking, Exhibit B dated 19th July, 2024 signed by the defendant with undertaking to pay N130,000.00 within two weeks.
- Proof of payment to the defendant by the claimant, Exhibit C, the claimant's bank statement dated 19th July, 2024.
- Demand letter, Exhibit D, demanding N200,000.00.
- Money lender's license issued for the claimant dated 2nd May, 2025, Exhibit E.
- Registration Certificate from CAC of the claimant's business name, Exhibit F.

Balance to be paid by the defendant, N150,000.00 for the loan and balance of accrued interests.

The claimant prayed for damages to be paid for the costs incurred in recovering his loan from the defendant and the balance of the loan.

Cw1 foreclosed from cross-examination by the defence, a hearing notice issued to be served on the defendant.

Defence foreclosed from defending this suit due to his absence.

On the 13th May, 2025, the Court granted leave to the claimant via his counsel, Lord Ikonwa, Esq. to amend the name of the claimant to read Mr. Francis Wali, Trading under the name of Defrantex Integrated Services, the Court ordered that the defendant be served with the amended name via a hearing notice.

Issue for determination

Whether the claimant is entitled to his claims?

COURT

The defendant was never in Court and not represented, despite being served with the ordinary summons and hearing notice, demand letter also.

The claimant in proof of his case against the defendant in line with sections 131 to section 134 of the Evidence Act, 2011, tendered Exhibits A – F.

All these are cogent proof of the claim against the defendant.

Civil cases are decided on the preponderance of evidence and balance of probabilities, see sections 131 to 134 of the Evidence Act, 2011.

The claimant prayed the Court to award damages (general) against the defendant for all the costs incurred in instituting this action against the defendant.

I align with the claim of the claimant; parties had an agreement with regards to the terms and conditions of the loan granted by the claimant to the defendant, which the defendant reneged on, thereby breaching the contract entered with the claimant.

The contract is hereby discharged due to the breach; hitherto the defendant is to pay the claimant damages as a consequence of the breach of contract by not fulfilling the terms of the contract.

This is a case of debt recovery, wherein the claimant loaned the defendant money.

A hearing notice was issued by this Court to be served on the defendant due to the non-appearance of the defendant in the course of the proceedings in this suit. The Courts have emphasized that service of a hearing notice on a defendant is one of the legal ways to ensure that a defendant appears in Court. See *Derma vs. Ecobank Nigeria Ltd.* (2017) All FWLR (pt. 887) P. 130.

In *P.N. Emerah & Sons (Nig.) Ltd. vs. Dunu* (1998) (pt. 564) NWLR pg. 96, the Court held that where a party is not served with a hearing notice, any judgment given against him or her will be a nullity, giving without jurisdiction and liable to be set aside on appeal. Per Oguntade 97, para A.

Also see *Scott Empnokpor vs. Ukarbe* (1975) 2 SC 41.

The claimant in proof of his claims tendered Exhibits A to F, as aforementioned. Documentary evidence is trite is the hanger upon which the credibility of oral evidence is assessed.

See section 131 of the Evidence Act, 2011, he who asserts must prove.

See also section 134 of the Evidence Act 2011 and *Emeka vs. Chuba Ikpeazu & Ors* (2017) 15 NWLR (pt. 1583) 345.

A contractual relationship has been established between both parties, see especially Exhibits A, B, C and D. Despite the agreement signed by both parties, the defendant breached the terms of the contract. Both parties are bound by the terms of this agreement (contract) and cannot resile from same.

By virtue of Exhibits A to D, a valid enforceable contract had been entered by both parties and where a breach as in the instant case has occurred, the contract was automatically rescinded.

A demand letter, Exh D, was sent to the defendant demanding for the payment of the said loan and accrued interests from the defendant, which the defendant failed to comply with.

The Court held that in *Adedej vs. Obajimi* (2018) 16 NWLR (pt. 1644) 146, para H – B, Per Bage JSC, that a valid contract may be discharged by performance, express agreement, doctrine of frustration, by breach.

The defendant has fraudulently breached the contract validly entered with the claimant and so the contract has been discharged by this Court.

The elements of a binding contract, albeit; offer, acceptance, consideration, capacity to contract and capacity to create a legal relationship are all present in the contract between the two parties, the consideration being the sum of N200,000.00 paid by the claimant to the defendant.

See *Eyiboh vs. Mujaddadi* (2022) NWLR (pt. 1830) 381.

The Court relying on the Exhibits before the Court, Exhibits A – F respectively and the unchallenged evidence of the claimant, which the Court finds cogent and reliable, albeit finds the default on the part of the defendant as an actionable breach of contract.

The defendant failed to file a defence to this suit or respond to the claim of the claimant, thus entitling the claimant to judgment in his favour, see Article 6 of the Small Claims Court Practice Direction (2023) of Rivers State.

Article 8(2) of the SCC Practice Direction 2023, Rivers State, empowers the Court to enter judgment for the claimant where he has proved his claim upon the non appearance of the defendant.

The defendant in my view has admitted the claim of the claimant against him (see Article 6(3) of the SCC Practice Direction, 2023.

See; *7up Bottling Company Limited vs. V. Abiola & Sons Bottling Company Ltd.* (2006) 6 NSCQCR 905 (2001) 13 NWLR (pt. 730) 469.

Okoebor vs. Police Council (2003) 12 NWLR (pt. 834) 444 at 473.

Ogboda vs. Adulugba (1971) 1 All NLR 68.

The claimant is under an obligation to succeed on the strength of his case, the Court is satisfied that the claimant has proved his claim against the defendant especially on the strength of Exhibits A to F respectively.

The Court hereby holds that the claimant is entitled to general damages, if the defendant had paid his loan, the claimant will not need to be in Court. See *SPDC Ltd. vs. Nnabueze* (2014) FWLR (pt. 724) pg. 117 at 138, paragraphs E – G, here The Court held that damages arising from a breach in paying money due to the plaintiff at the time it was due is the interest on the amount due, which will place the claimant on the financial strength he ought to be on if the money was paid as at when due.

See also *Inter Messenger Nig. Ltd. vs. Engineer David Nwachukwu* (2004) 119 LRLN 4331 at 4335.

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

1. That the defendant should pay the claimant the sum of N150,000.00 (One Hundred and Fifty Thousand Naira) only, being the capital sum of the loan and the balance of the interests accrued on the loan left unpaid by the defendant.
2. That the defendant should pay the claimant the sum of N500,000.00 (Five Hundred Thousand Naira) only, for general damages and costs incurred by the claimant in recovering the loan granted to the defendant with accrued interests.
3. That these payments should be made forthwith.

This is the Court's judgment.

MRS BARIYAAH .H. ABE
Chief Magistrate
21st May, 2025.

