

IN THE SMALL CLAIMS COURT OF RIVERS STATE OF NIGERIA
IN THE PORT HARCOURT MAGISTERIAL DISTRICT
HOLDEN AT PORT HARCOURT

ON WEDNESDAY THE 31ST DAY OF MAY, 2023
BEFORE HIS WORSHIP A. O. AMADI-NNA, ESQ
CHIEF MAGISTRATE GD.1

SUIT NO. PMC/SCC/06/2023

BETWEEN

JOHNSON EKOWO

VS

MR. IFEANYI EJIMS

Parties absent

M. W. Jumbo appear for the claimant.

JUDGMENT

The claimant's claim against the defendant is for (i) the sum of N3,480,000.00 (Three Million Four Hundred and Eighty Thousand Naira) which the defendant is indebted to the claimant. ii 15% interest until Judgment is delivered.

iii. The sum of N5,000,000.00 (Five Million Naira) for general damages.

A plea of not liable was entered for the defendant.

In proof of his case the claimant gave evidence as CW1 by adopting his written deposition dated and filed 17th day of April 2023 on the 17th day of April 2023 as his evidence in this case before this court.

In his deposition CW1 stated that on the 20th day of June, 2022 the defendant collected the sum of N725,000.00 (Seven Hundred and Twenty Five Thousand Naira) from him with the understanding that he would refund or pay him back the money in 3 months time. That the 3 months time lapsed or expired on 20th September 2022 and the defendant failed, refused or neglected to pay him back the money. The defendant undertook to pay him 15% monthly interest of the capital sum if he failed to return the money in 3 months time as he promised. That the 20th September 2022 when the 3 months expired till date is now 7 months.

That on the 8th day of July 2022 the defendant collected another N725,000.00 (Seven Hundred and Twenty Five Thousand Naira) from him with the same understanding that he would refund or pay back the money in 3 months time. The 3 months lapsed or expired on the 8th day of October 2022 and the defendant has failed, refused or neglected to pay him back the money. The defendant undertook to pay him 15% monthly interest of the capital sum if he failed to return the money in 3 months time as he promised. That the 8th October, 2022 when the 3 months expired till date is now 6 months. He further stated that on the 5th day of August 2022 the defendant further collected money from him again at the same amount of N725,000.00 with the same understanding that he would refund or pay back in 3 months time. The 3 months time lapsed on the 5th of November 2022 and the defendant failed, refused or neglected to pay him back the money. That the defendant undertook to pay him 15% monthly interest of the capital sum if he failed to return the money in 3 months time as promised. That the 5th day of November 2022 when the 3 months expired till date is now 5 months. He further said that the capital sum the defendant collected from him totalled N2,175,000.00 while the interest totalled N1,957,500.00 and the capital sum plus interest equals N4,132,500.00. He also said that he served the defendant a demand letter dated 16th February 2023 which the defendant neglected to comply with. That the sum on the demand letter was calculated in the month of February 2023 and that the total outstanding debt of the defendant as at today is N4,132,500.

He further said that he has incurred cost in pursuit of this debt from the defendant. He spent about N20,000.00 to file and engage Bailif to serve the court processes. That the defendant has breached the agreement and that he should pay him general damages of N1,000,000.00. Further that the defendant brought a witness who witnessed the undertaking and the witnesses name is Samuel Chinwoh.

He tendered the undertakings or agreements as Exhibits “A1”-“A3” and the letter of demand as Exhibit “A4”.

When the matter came up on the 15th day of May 2023 for cross examination of CW1, the defendant was not in court to cross examine CW1 and was foreclosed from cross examining CW1. The claimant then informed the court that he has closed his case and the matter was adjourned for defence.

On the 17th day of May 2023 when the matter came up for defence the defendant was not in court to defend the case and was foreclosed from defending this suit. The claimant adopted his final written address dated 20th and filed 22nd day of May 2023 as the final address for the claimant in this suit.

In his address, the claimant raised a lone issue for determination before this court, that is;

“whether the claimant has complied and proved his case as required by law in civil case and small claims to entitle him to his claim”.

Counsel states that both parties had a simple contract and a simple understanding but the defendant failed and breached the contract. Submits that the claimant is entitled to remedies where the defendant breaches the contract or agreement freely and willingly without any form of fraud. Counsel referred to the case of **AGU vs. GENERAL OIL LTD (2015) 62 (PT. 2) NSCQR 672.**

That it is in evidence that the total sum payable by the defendant as at the time the evidence was given by CW1 was a total sum of N4,132,500.00. Further that the claimant has complied with the requirement of the Rivers State Small Claims Court Practice Direction as provided in Article 2(i) (e) of 2023 by issuing and serving a Demand letter on the defendant before commencing this action of issuing and serving summons. That CW1 had adopted his depositions on oath as exhibits “A1” - “A4” before this court. Further that the defendant was earlier

represented by a lawyer who refused to cross examine CW1 but rather opted for settlement which was a mere ploy to delay the matter. That the defendant was foreclosed from cross examining CW1 and also later foreclosed from defending this case, hence this final written address.

Submits that unchallenged evidence is admitted as the true evidence. Counsel referred to the cases of **ARUM vs NWOBODO (2013) 54 (Pt 2) NSCQR 866**, **ALHAJI USMAND BUA vs BASHIRU DAUDA (2003) 13 NWLR (Pt. 838) 657**.

I have reviewed the evidence of the claimant, CW1. I have also taken into consideration the written submissions of counsel and all the exhibits tendered.

The lone issue that arise for determination is “whether the claimant has proved his claim on the preponderance of evidence to be entitled to his claim”.

CW1 the claimant has given evidence through written deposition of how the defendant collected from him the sum of N725,000.00, three times and was to pay within 3 months and failure to comply within 3 months the defendant would pay interest of 15% for every defaulting month. He has also given evidence that the total sum payable by the defendant as at the time of giving evidence was N4,132,500.00. CW1 has also tendered in evidence Exhibits “A1-“A3”, undertakings or agreements and “A4” the demand letter he served on the defendant as provided by the Rivers State Small Claims Court Practice Direction Article 2(1) of 2023. The defendant did not defend this suit.

The defendant’s counsel only appeared before this court once and abandoned the case while the defendant never appeared before this court. Uncontroverted evidence is deemed admitted. Also when evidence is unchallenged the court ought to accept such evidence in proof of the issue in contest. See the case of **FOLURUNSHO & ANOR vs SHALOUB (1994) 3 NWLR (PT. 333) Page 413 at 433 paras B-H**. Also see **OKUPE vs**

**IFEMACHI (1974) 35C page 97 at 103. ALAGBE vs ABIMBOLA (1978) 2 SC
Page 39 at 40.**

I hereby hold that the claimant has proved his claim on the preponderance of evidence to be entitled to Judgment.

Accordingly Judgment is hereby entered in favour of the claimant in the following terms:-

Court:

1. The defendant is to pay to the claimant the sum of N4,132,500 (Four Million One Hundred and Thirty Two Thousand, Five Hundred Naira) as the total debt owed by the defendant to the claimant as at April 2023.
2. The defendant to the claimant is to pay to the claimant the sum of N300,000.00 as general damages.
3. The defendant is to pay to the claimant the sum of N20,000.00 as cost.

Signed:

A. O. Amadi-Nna, Esq.
Chief Magistrate GD.II
31/5/2023

