

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.,¹ TODAY TEUSDAY, THE 21ST
DAY OF MAY, 2024.

SUIT NO. :PMC/SCC/70/2024.

BETWEEN:

MR. CHINEDU BEDFORD EZEObI ----- CLAIMANT

AND

CHIEF NTE RAWLINGS ETE ----- DEFENDANT

Case called.

Parties absent

JUDGMENT

The Claimant, a businessman and dealer on electronics and furnitures in Port Harcourt, Rivers State commenced this suit against the Defendant on the 21st day of March, 2024 for failure of the Defendant to pay for goods purchased in the Claimant's shop. The Claimant served the Defendant with mandatory demand letter on the 29th day of February, 2024 before filing the suit. The Claimant therefore claims against the Defendant as per his claim attached to the summons as follows:

1. Debt / Amount	- ₦4,839,500.00
2. Costs of litigation	- ₦160,000.00
TOTAL	= <u>₦4,999,500.00</u>

Upon the claim been filed, the Defendant was served with the originating processes by substituted means on the 16th day of April, 2024; following the order for substituted service granted by this Honourable Court on the 27th day of March, 2024. The Defendant refused to appear in Court to answer to the claim despite been served with the originating processes.

¹ 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.

A plea of not liable was therefore entered for the Defendant in accordance with the rules of this Court on the 24th day of April, 2024; and the case was adjourned for trial. When the case came up for trial on the 14th day of May, 2024, the Defendant was also absent in Court, and the Claimant was called upon to prove his claim in accordance with Article 8 (2) of the Small Claims Practice Direction, 2023. The Claimant testified as CW1 and tendered three (3) documents which were received in evidence as exhibit and marked Exhibits A, A1 and B respectively. For emphasis, Exhibits A and A1 are duplicate invoices issued to the Defendant by the Claimant for the office furnitures and electronics purchased but not paid for, while the petition to the police against the Defendant for fraud by the Claimant's lawyer is Exhibit B. The claim was not defended by the Defendant as he never appeared in Court on the hearing date despite been aware of the suit.

After the close of trial, the case was adjourned to the 21st day of May, 2024 for judgment. The sole issue for the final determination of this case is thus:

Whether the Claimant has proved his case to be entitled to the reliefs sought?

The oral testimony of the Claimant as CW1 is that the Defendant who is his customer, purchased office furnitures and other items worth ₦4,017,500.00 and ₦822,000.00 respectively to furnish his Law Firm; for which he issued the Defendant with invoices (Exhibits A and A1). The CW1 testified that the Defendant that same day initially asked his boy to go with him to collect cash for the items on Exhibit A1 as he was expecting money; but when the sales boy got to the Defendant's house, the Defendant issued the sales boy a cheque to be cashed immediately but the cheque was returned uncleared. The CW1 testified that when the cheque failed and the Defendant did not pay the money after several demands, he requested the Defendant to allow him retrieve the furnitures and electronics from the Law Firm and resell, but the Defendant told him it was unlawful to go to the law firm and retrieve the items. The CW1 took further step by petitioning the Defendant to the Police but the Defendant refused to honour the Police invitation but rather

petitioned the Police saying they are not debt collector; thereby forcing the Police to hands off the matter. The CW1 testified that he later engaged a lawyer to bring the case to this Court and prayed the Court to help him recover the money or retrieve the items because his business is going down for over one year the Defendant refused to pay the money.

The evidence of the Claimant as I stated earlier is unchallenged and uncontroverted by the Defendant who failed to appear in Court despite been served with the originating processes. The law is now settled that a Court can accept and rely on unchallenged evidence of a party. See the case of *Owners of M/V Gongola Hope & Anor. v Smurfit Cases (Nig) Ltd & Anor.* [2007] LPELR-2849 (SC). The failure of a party to cross examine the adverse party on material evidence implies a tacit acceptance of the evidence as the truth. See the cases of *Gaji v Paye* [2003] LPELR-1300 (SC) and *Oan Overseas Agency Nigeria Ltd. v Bronwen Energy Trading Ltd & 2 Ors.* [2022] LPELR-57306 (SC). In a recovery of debt suit like this one, a cause of action will accrue when a debtor fails to pay his debt after the demand to pay the debt has been made. See *Akinsola & Anor. v Eyinnaya* [2022] LPELR-57284 (CA) (Pp. 27 paras. B). There is unchallenged evidence that the Claimant served the Defendant with a demand letter before instituting this action. I hold that the Claimant is entitled to recover the unpaid debt from the Defendant.

The Claimant prayed the Honourable Court for cost of ₦160,000.00 against the Defendant. Award of cost in civil cases is at the discretion of the Court. A successful party is generally entitled to compensation by way of cost, however the amount of cost is at the discretion of the Court regardless of whether it was pleaded and/or proved. See the cases of *Mekwunye v Emirates Airline* [2019] LPELR-46553 (SC) and *NNPC v Clifco Nig. Ltd.* [2011] LPELR-2022 (SC). I hold that the Claimant is entitled to cost as claimed.

In the final analysis, the lone issue is resolved in favour of the Claimant. Judgment is hereby entered for the Claimant and against the Defendant as follows:

1. The Defendant is hereby ordered to pay the Claimant the sum of ₦4,839,500.00 (Four Million, Eight Hundred and Thirty-Nine Thousand, Five Hundred Naira) only representing unpaid debt forthwith.
2. The Defendant is hereby ordered to pay the Claimant the sum of ₦160,000.00 (One Hundred and Sixty Thousand Naira) only as costs forthwith.



C. G. Ali, Esq.
(Chief Magistrate)
21/05/2024

LEGAL REPRESENTATION:

1. I. E. Amadi, Esq. for the Claimant.
2. U. D. Asue-Iziee, Esq. for the Defendant.

