

**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 27TH DAY OF MARCH 2025
AT THE SMALL CLAIMS COURT 4 PORT HARCOURT**

SUIT NO: PMC/SCC/19/2025

BETWEEN

WEHERE SUNNY ELIBANESU ----- CLAIMANT

AND

MBA TRADING & CAPITAL INVESTMENT LTD----- DEFENDANT

PARTIES:

APPEARANCES:

JUDGEMENT

By a summons dated 20/1/2025, the claimant's claim against the defendant are as follows:

1. N500, 000.00 plus 15% interest per month till date

PLEA

By the affidavit of service availed this court, the defendant was served the originating process in this suit by substituted means by pasting at the last known address of the defendant on the 14th of February 2025 at 2pm. On the 18th of February 2025, a plea of not liable was entered for and on behalf of the absent defendant.

SUMMARY OF EVIDENCE

The claimant in proof of his case called a lone witness, the claimant's attorney and tendered five exhibits marked Exhibits A to 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's attorney appearing as CW1. In the written deposition of the CW1, it is his evidence that he was given a power of attorney by the claimant to prosecute this case for him. Said letter was admitted as Exhibit A. That the claimant entered into a contract of investment with the defendant in the sum of N500, 000.00 on the 20/03/2020 for an interest of 15% per month upon which the defendant issued a receipt. That the parties both executed a written agreement that the contract should elapse after 6 months. That within those 6 months, the claimant was paid the sum of N75, 000.00 from the 21/04/2020 to 17/9/2020. That the contract agreement provided for a roll over which the claimant invested another sum of N800, 000.00 on the 22/9/2020. After the rollover, the claimant was paid the sum of N195, 000.00 on the 22/10/2020. That the defendant is owing the claimant the sum of N1, 300,000.00 with the interest rate of 15% from 23/10/2020 until judgement is delivered. Receipt from defendant to claimant as admitted as Exhibit B, investment contract between claimant and defendant was admitted as Exhibit C, business agreement between parties was admitted as Exhibit D and the account statement of the claimant was admitted as Exhibit E. case was adjourned for cross examination of CW1.

The defendant never appeared either by an agent or through a counsel to defend this suit hence was foreclosed from cross examining the CW1 and from defending this suit.

On the 25/3/2025, claimant adopted their final address and case was adjourned for judgement now being read.

In the claimant's final address settled by his counsel B.E. Wosu Esq. a lone issue was raised for determination to wit:

Whether the claimant has proved his claim upon preponderance of evidence and the defendant failed to defend the action against it?

The claimant answered the above in the affirmative urged the court to so hold. The claimant submitted that the claimant has by evidence stated that he reinvested the money he initially invested making it N1, 300,000.00 and his reward was N195,000.00 per month but the last time the claimant reaped the reward was on the 22nd of October 2020 and thereafter the defendant vanished into thin air. Counsel submitted that documents when admitted guides the court to determine a matter. Counsel cited the case of **AREMU V CHUKWU (2012) 3 NWLR (1288) CA 587 PP 623 PARAS A-B**. Counsel also argued that the evidence of the claimant was neither challenged nor controverted and where a defendant neglects and refuses to defend an action and fail to put in or call witnesses, the claimant is deemed to have proved his claims. In conclusion, counsel urged the court to grant the reliefs of the claimant.

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, the failure of the defendant 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.

On the claim of the claimant, by way of evidence, the claimant has tendered the agreement between parties which was admitted as Exhibit C and D and also tendered the receipt by the defendant to the claimant as Exhibit B and his account statement showing payments between the parties as Exhibit E.

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. Per Exhibit B, C, D and E, the claimant has been able to prove on the balance of probabilities that the defendant is owing him the sum of N1, 300, 000.00 with 15% interest per month from November 2020 till today calculated to a total of N11, 440,000.00. Unfortunately, this is the small claims court and can only entertain claims of N5, 000, 000.00 and below.

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

1. The defendant is ordered to pay the claimant the sum of N5, 000, 000.00 being the principal sum and interest