

**BEFORE HIS WORSHIP B.H. ABE (MRS), ESQ., SITTING AT THE CHIEF  
MAGISTRATE COURT 1, RUMUODOMAYA ON THURSDAY THE 3RD DAY OF  
APRIL, 2025**

**RMC/SCC/25A/2024**

***BETWEEN***

**AMAKAI LOGISTICS SOLUTIONS LIMITED - CLAIMANT**  
**(SUING THROUGH ITS LAW ATTORNEY,**  
**I.E. WICHE, ESQ.)**

**VS.**

**MR. ITIEBI ISOKARIARI - DEFENDANT**

## Matter for Judgment

I.E. Wiche, Esq. for the claimant

Defendant Absent and not represented

## JUDGMENT

This matter commenced with the service of the complaint form, Form RSSC 2 and summons RSSC 3 on the defendant. The claimant's claims against the defendant are as follows:

1. The sum of N3,050,000.00 (Three Million and Fifty Thousand Naira only) with profit generated from the business transactions at 5% profit from August, 2024 till the final determination of this case.
2. Professional fee at N400,000.00 (Four Hundred Thousand Naira only); total at N3,450,000.00 (Three Million, Four Hundred and Fifty Thousand Naira only).

## Facts

On the 4<sup>th</sup> December, 2021, the claimant's counsel entered a plea of not liable for the defendant who was absent and not represented. The Court ordered a hearing notice to be served on the defendant.

I. E. Wiche Esq., appeared for the claimant. Affidavit of service before the Court.

The Court granted leave afterwards to both parties to settle out of Court amicably. Though the Court was informed on the 21<sup>st</sup> January, 2025 that parties had not been able to resolve

their issues, albeit settlement had broken down between both parties, the leave granted for out of Court settlement was thus vacated. A second hearing notice was ordered to be served on the defendant.

E.D. George Esq, led cw1 in evidence on the 23<sup>rd</sup> January, 2025, the Court granted the claimant's counsel leave to include suing through its lawful attorney, I. E. Wiche, Esq. to the claimant's name and notify the defendant, via service on the defendant.

Cw1, Wiche .I.E., Esq. informed the Court that he knows the defendant, a business partner who approached the claimant for business support financially, the Business Support Agreement was admitted in evidence as Exhibit A.

The agreement was for N8,000,000.00 to pay back N9,500,000.00, took effect from 27<sup>th</sup> May, 2024 to terminate on the 4<sup>th</sup> July, 2024. The receipt of payment is before me as Exhibit B, the defendant deposited a blank cheque and two copies of deed of conveyance, all admitted in evidence. The blank cheque; Exhibit C, Exhibits D1 and D2 are the two deed of conveyance.

At the time the cheque was to be cashed, the defendant stopped cw1 saying he had no money in the account.

The demand letter written to the defendant, admitted as Exhibit E.

The claimant paid N400,000.00 to institute this action, legal fee receipt before me as Exhibit F.

The defendant is owing the claimant N3,050,000.00. The defendant paid N800,000.00 on the 22<sup>nd</sup> July, 2024 and N5,750,000.00 on the 3<sup>rd</sup> September, (total paid N6,550,000.00), proof of payments admitted in evidence as Exhibits G1 and G2.

The Power of Attorney donated to the attorney admitted as Exhibit H.

Balance to be paid N2,950,000.00 not N3,050,000.00.

At the end of his evidence, he was foreclosed from cross-examination by the defendant on the 28<sup>th</sup> January, 2025 due to his absence, the Court ordered a 3<sup>rd</sup> hearing notice to be served on the defendant, and adjourned for defence.

The defence was foreclosed on the 20<sup>th</sup> February, 2025 from defending this suit due to his consistent non-appearance.

The Claimant's counsel adopted his final written address on the 5<sup>th</sup> March, 2025, the Court thus adjourned for judgment.

The claimant's counsel posited as follows in the final written address;  
The sole issue for determination arising from the fact of this Small Claims before the Honourable Court dated herein: "Whether from the evidence adduced before this Honourable Court, the claimant is entitled to the claim against the defendant"?

He answered in the affirmative in view of the fact that the defendant has failed to comply with the terms and conditions as stated in the Business Support Agreement tendered in evidence as Exhibit A before this Honourable Court. However, before instituting this suit, the defendant willfully refused to pay the outstanding balance sum of N3,050,000.00, which is the subject matter of this suit.

Further submitting thus; however, in the instant case, we graciously submit to the Court that there is a sum of money due by certain and express agreement. The certain amount the claimant contributed to the business of the defendant was the sum of N8,000,000.00 to pay back the sum of N9,500,000.00 with profit and upon several demands by the claimant, the defendant reluctantly paid the sum of N800,000.00 and the sum of N5,750,000.00 and refused to pay the outstanding balance of the sum of N3,050,000/00, which is the subject matter of this suit with its profit.

Your Worship, we further submit that in a claim for recovery of debt, the cause of action accrues when a demand is made and the debtor refused to pay the same.

We refer the Court to case of *Hung vs. E. C. Investment Company Nigeria Limited* (2016) LPELR – 42125.

In the instant case, the claimant tendered in evidence Exhibit E, proving that a demand was caused to the defendant and same was acknowledged before instituting this action, but the defendant willfully refused to comply with the letter.

See also the case of *Ishola vs. S. G. Bank* (1997) 2 NWLR (pt. 488) 405 at 422.

Your Worship, in the interest of justice, the claimant has duly conducted his case and acted in accordance with the rules of this Honourable Court as being directed. The position of law as held in the case of *I. T. I. V. Ltd. vs. O. C. B. Ltd.* (2015) All FWLR (pt. 797) 727 S. C. is that:

“The rules of Court are to be obeyed and complied with. In the event of non-compliance with the rules and it is not explained away, then, unless the non-compliance is a minimal kind, the Court must not grant any indulgence...”.

Your Worship, the legal consequences of failure of the defendant to defend or file any admission or respond to the claim of the claimant, is that once the defendant in an action for money demand or any other action fails to reply to the claimant’s claims and such defendant is not ready or does not want to defend the matter, claimant will be entitled to judgment by the Court.

“Once the defendant in an action under the undefended list fails to deliver the notice of defence and affidavit and is not let in to defend, the plaintiff is entitled to judgment, in particular once the affidavit in support of the application for writ of summons shows that the defendant has no defence to the action.

In the instant case, where the appellant failed to file the required notice of intention to defend, the trial Court rightly granted the reliefs claimed by the respondent”.

See also case of Ben Thomas Hotels Ltd. vs. Sebi Furniture Company Ltd. (1989) 5 NWLR (pt. 123), 532 referred to (p. 740 paras. D-E).

Your Worship, upon careful examination of the provisions of Article 6(1), (2) and (3) of the Rivers State Small Claims Court Practice Direction, 2023, thus the position of the Court, particularly in Article 6(3) is that:

“Where a defendant fails to file a defence to the claim, the defendant may be held to have admitted the claim”.

See also Article 8(2) of the Rivers State Small Claim Court Practice Direction, 2023.

See the cases of Osita I. vs. Nanka Micro-Finance Bank Ltd. (2018) All FWLR (pt. 946), 1083, C. A. and Tilley Gyado & Co. (Nig.) Ltd. vs. Access Bank Plc. (2019) All FWLR (pt. 1016), 359 CA.

Finally, Your Worship, we humbly submit that the amount of indebtedness and the profit generated from the business based on the subject matter of this suit is the claimant's prime concern, therefore, the defendant never challenged same. The debt to be paid by the defendant was never challenged. The debt to be paid by the defendant has been proven by the combined evidence and effect of Exhibits A, B, C, D1, D2, E, F, and G, respectively, thus is that the defendant is actually owing the claimant and has willfully refused to pay the money owed.

We urge the Court to grant the claimant's claims as against the defendant if the Court will be mindful.

Dated 26<sup>th</sup> February, 2025, filed same day.

### **Issues for determination**

Whether the claimant has proved his entitlement to his claims?

### **COURT**

This is a case of debt recovery, wherein the claimant loaned the defendant the sum of N8,000,000.00, to be paid back N9,500,000.00 on the 4<sup>th</sup> July, 2024, commencing from 27<sup>th</sup> May, 2024.

Three hearing notices were issued by this Court to be served on the defendant due to the consistent non-appearance of the defendant throughout 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.

Civil cases are decided on the preponderance of evidence and balance of probabilities, see; 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 Exhibit A; the business support agreement, wherein it was clearly written that the 1<sup>st</sup> party (claimant) is willing to invest in the business of the 2<sup>nd</sup> party (defendant) who shall make returns to the 1<sup>st</sup> party (claimant) according to the amount invested as agreed by the parties. See para. 2 (3 and 4). Para. 4; (2) the 1<sup>st</sup> party is to contribute N8,000,000.00 to which the 2<sup>nd</sup> party acknowledged receiving.

Para. 5 - The 2<sup>nd</sup> party shall pay a total sum of N9,500,000.00 as capital with its profit yielded to the 1<sup>st</sup> party for a period of one month and one week.

Para 6 – Beginning from 27<sup>th</sup> May, 2024 to 4<sup>th</sup> July, 2024. Upon signatory endorsement, the agreement shall be effective and terminate upon completion of the agreed period of one month and one week.

Para. 9(1) – a deposit of postdated cheque with the sum of N9,500,000.00 is to be made to the 1<sup>st</sup> party (claimant).

Para. 9(4) – The agreement shall be binding on the parties etc.

Para. 11 – Both parties are bound by the terms of the agreement.

This was signed by both parties, dated 27<sup>th</sup> May, 2024 in the presence of the claimant's secretary and the defendant's witness.

Despite the agreement signed by both parties, the defendant breached all the terms aforementioned by not allowing the claimant to cash the postdated cheque, because the account was not funded and by not paying the claimant the full sum of N9,500,000.00 as mutually agreed by both parties, the defendant is in breach of the contract.

Both parties are bound by the terms of this agreement (contract) and cannot resile from same, see para 11 of the agreement.

By virtue of Exhibit A; 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.

Exhibit B – Proof of payment of N8,000,000.00 to the defendant.

The defendant was never in Court to deny or admit any of the allegations against him.

Exhibit C – The postdated cheque of N9,500,000.00 as was agreed in para. 9(1) of Exhibit A is before the Court, the claimant did not cash it because the account was not funded with the sum of N9,500,000.00.

A demand notice was written to the defendant dated 12<sup>th</sup> August, 2024, after the expiration of the contract, which expired on the 4<sup>th</sup> July, 2024, demanding for the payment of the said sum of N9,500,000.00 from the defendant, written by the claimant's legal officer, N. A. Elenwa, Esq..

The legal fee receipt of N400,000.00 is also before the Court, Exhibit F.

Exhibits G1 and G2 are both proof of payment of N5,750,000.00 and N800,000.00 to the claimant by the defendant totaling N6,550,000.00 leaving a balance of N2,950,000.00 unpaid, not N3,050,000.00 as claimed by the claimant.

Both Payments were made on the 22<sup>nd</sup> July, 2024 and 3<sup>rd</sup> September, 2024.

Cw1 gave evidence on behalf of the claimant via a power of attorney donated to him, Exhibit H before me; cw1 the company's secretary.

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 be and is hereby discharged by the 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 N8,000,000.00 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 cw1, which the Court finds cogent and reliable, hereby enters judgment in favour of the claimant. The failure of the defendant to pay the sum of N9,500,000.00 in full to the claimant is 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 their 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 claims of the claimant against him (see Article 6(3) of the SCC Practice Direction, 2023. The defendant's silence is an admission of the claims.

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 their case, the Court is satisfied that the claimant has proved their claims against the defendant especially on the strength of Exhibits A to G respectively.

Accordingly, judgment is hereby entered for the claimant and the Court orders as follows;

1. That the defendant pays the claimant the sum of N2,950,000.00 (Two Million, Nine Hundred and Fifty Thousand Naira) only.
2. That the defendant pays the claimant, 5% monthly of the capital sum contributed due to default in payment of N9,500,000.00 (Nine Million, Five Hundred Thousand Naira) from August, 2024 to March, 2025.
3. That the defendant pays the claimant the sum of N400,000.00 (Four Hundred Thousand Naira) as cost incurred by the claimant in instituting this suit against the defendant.
4. These sums should be paid forthwith.

This is the Court's judgment.

  
**MRS BARIYAAH .H. ABE**  
**Chief Magistrate**  
**3rd April, 2025.**

