IN THE SMALL CLAIMS COURT OF RIVERS STATE OF NIGERIA

IN THE PORT HARCOURT MAGISTERIAL DISTRICT

HOLDEN AT PORT HARCOURT

CLAIM NO: PMC/SCC/373/2026

BETWEEN

BARR. ACP (RETD.) MARK IGBA
(SUING THROUGH HIS LAWFUL ATTORNEY, BARR. INNOCENT UGWUOKE) **CLAIMANT**

AND

ENGR. STEPHEN NWENENDA NYEGWA **DEFENDANT**

Claimant is represented by the lawful Attorney.

Appearances- I.I. Ugwuoke appears for the Claimant.

JUDGEMENT

The Claimant in FORM RSSC 2 filed the 24/07/2026 is praying the Court for the following:

1. The sum of N5,000,000.00 only, being and representing the unpaid loan

The Defendant as shown in the affidavit of service, was served on 14/08/2026 and O.B. Njogo the Claimant's counsel, entered a plea of not liable for the Defendant.

The Claimant testified solely, tendered five exhibits and closed its case on 03/09/2026. The Claimant waived its right to file a final written address.

The Defendant was served the processes of this Court, including a hearing notice but neither put up appearance nor defended this suit.

THE CLAIM

The Claimant vide its lawful attorney who is the CW1 filed a deposition of 23 paragraphs on 27/08/2026. It is his evidence that the Claimant donated a power of attorney to the CW1 due to the Claimant's ill health which has affected his eye sight. The Defendant in need of money, had met the Claimant to buy his property and parties made a sale agreement. The parties did not go ahead with the sale before the Defendant visited the Claimant about 7th April 2022 for a friendly loan of N2,500,000.00 to enable the Defendant execute a contract in Niger Delta. The agreed interest rate was 15% monthly. The loan was to last for three months. The Defendant shortly after, breached the agreement as he later stopped paying the agreed interest. The interest for the 52 months is N19,500,000. The Defendant is yet to return the capital and

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the accrued interest and has not even paid up to N5,000,000. Sometime in 2025, the Defendant took Claimant and his brother to a portion of land in Iriebe to take a portion from the land as final settlement of the loan. The Defendant misrepresented that he owned the land, as the community members fully armed, chased away the Claimant, Defendant and the surveyor's assistant from the land, stating that the land was the subject of litigation between two communities and not the Defendant. The Claimant petitioned the Defendant and another to the Police but the Defendant did not honour the invitation. Letters of demand were written and the Defendant also failed to pay up what he owes.

THE COURT

This Court has raised one issue for determination, thus:

Whether the Claimant has proved its case to be entitled to the judgement of this Court.

In **HARUNA III & ORS v. KARAYE & ORS (2026) LPELR-83910(SC) (Pp 40 - 43 Paras A - F),** the apex Court held as follows:

"The provisions of the Evidence Act, 2011 (as amended), prescribe who between the parties in a civil suit has the burden to prove the existence or non-existence of facts which he asserts in a civil suit. By virtue of Sections 131, 132, and 133 of the Evidence Act, 2011, whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts shall prove that those facts which he asserts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person. The burden of proof in a proceeding lies on that person who would fail if no evidence at all were given on either side. In civil cases, the burden of first proving the existence or non-existence of a fact lies on the party against whom the judgment of Court would be given if no evidence were produced on either side, regard being had to any presumption that may arise in the proceedings. Adeyemi v. A.P.C (2024) 4 NWLR (Pt. 1927) 63, Tarzoor v. loraer (2016) 3 NWLR (Pt. 1500) 463, Dagaci of Dere v. Dagaci of Ebwa (2006) 7 NWLR (Pt. 979) 382, Eweje v. O.M Oil Ind. Ltd. (2021) 4 NWLR (Pt. 1765) 117, Nsude v. Nichodemus (2025) 4 NWLR (1982) 253. Section 133 of the Evidence Act makes it very clear that in civil cases, the burden of proof is not static. Rather, it shifts from one side to the other until all the issues in the pleadings have been dealt with. In other words, where a plaintiff has discharged the evidential burden put on him, the burden shifts to the defendant to call evidence either in proof or rebuttal of the evidence adduced by the plaintiff. Iteogu v. L.P.D.C (2009) 17 NWLR (Pt. 1171) 614, N.N.P.C v. Samfadek Sons Ltd (2018) 7 NWLR (Pt. 1617) 1, GT Invest Ltd. v. WittBush Ltd (2011) 8 NWLR (Pt. 1250) 500, Obe v. Abubakar (2023) 13 NWLR (Pt. 1901) 381, Itauma v. Akpe-Ime (2000) 12 NWLR (Pt. 680) 156.

?The burden of proof lies on the party who alleges and not the party who denies. The burden of proving a fact rests on the party who asserts the affirmative of the issue and not on the party who denies it, for a negative is usually incapable of proof. There is generally no duty on a

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party to prove the negative. Omisore v. Aregbesola (2015)15 NWLR (Pt. 1482) 205, Imonikhe v. Unity Bank Plc (2013) 12 NWLR (Pt. 1262) 624. An allegation is affirmative when it asserts the existence of facts. It is negative when it asserts the non-existence of facts.Adeyemi v. APC (supra).

Burden of proof in civil cases has two distinct meanings. The legal burden is the burden of proof as a matter of law and the pleadings and is defined as the burden to establish a case. The legal burden is always stable or static. The evidential burden is the obligation of adducing evidence to prove or disprove a particular fact or issue and it shifts from one party to another depending on the state of the pleadings of the parties at each turn. While the burden of proof in the sense of establishing the case initially lies on the plaintiff, the proof or rebuttal of issues which arise in the course of the proceedings may shift from the plaintiff to the defendant and vice versa as the case progresses. Nduul v. Wayo (2018) 16 NWLR (Pt. 1646) 548, Nwavu v. Okoye (2008) 7 NWLR (Pt. 1086) 342, Odom v. P.D.P (2015) 6 NWLR (Pt. 1456) 527. When a party wishes the Court to believe any fact, then the burden of proof as to that fact rests on that party. The party bearing the legal burden of proof must first make out a prima facie case in his favour. This means that he has to adduce enough evidence, which if believed, may reasonably justify a finding that the facts he seeks to prove exist. If the Court disbelieves his evidence then the burden is not discharged. However, in making out such a case, he has discharged the evidential burden cast on him because he has tendered the evidence basically necessary for the establishment of his case.

It then becomes necessary for his opponent to call contrary evidence to challenge the case set up by the party. By the necessity to adduce this contrary evidence, the evidential burden is shifted to the opponent. In other words, where a party bearing evidential burden has discharged it by adducing the requisite evidence on particular fact, then his opponent comes under evidential burden either to disprove the fact or neutralize the evidence by proving other facts. Daudu v. F.R.N (2018) 10 NWLR (Pt. 1626) 169, Obe v. Abubakar (2023) 13 NWLR (Pt. 1901) 381, Ibezim v. Elebeke (2022) 4 NWLR (Pt. 1819) 1, Umera v. I.N.R.C (2022) 10 NWLR (Pt. 1838) 349." Per MOHAMMED LAWAL GARBA, JSC (Pp 40 - 43 Paras A - F)"

The Claimant in the instant suit is laying claims to the sum of N5,000,000 being the outstanding friendly loan advanced. As shown in exhibit C1, the Claimant donated a power of attorney to the lawful attorney on 10/07/2026.

The evidence of the Claimant's lawful attorney vide its written deposition is that, the Claimant lent to the Defendant the sum of N5,000, 000 to be paid with an interest of 15% monthly. The parties agreed that the loan shall be for three months only.

Exhibit C2 a-d is a sale agreement. Exhibit C2 a-d is a confused document. It reads thus:

Clause 2- *The purchaser has accepted the offer but, on the consideration, that the seller shall sell his property lying and situate at pipeline Omoduru Rumuagholu in Obio/Akpor Local Government Area of Rivers State for the sum of N2,500,000 only.*

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Clause 3 reads: *The seller has further accepted to pay an interest of N15% per month and the duration shall last for three months from the date of execution of this contract.*

Clause 4 reads: *The seller has further executed a post-dated cheque of Fidelity bank to the sum of N3, 625,000. 00, only to cover both the principal sum sold and the interest for the three months.*

Is this a loan or a sale agreement. Whichever it is, falls short of what message it purports to covey. The CW1 attempted to explain his way out of it in paragraphs 8 and 9 of its deposition but failed woefully as the document speaks for itself, albeit, in diverse and confused tongues.

Though admitted, exhibit C2 lacks probative value and none shall be ascribed to it.

Exhibit C3 a-b is a letter of demand dated June 17, 2026. It lends credence to the evidence as led by the Claimant.

This Court is not in doubt that all the elements of a valid contract are present and active in the instant case, of which the Defendant has breached.

In the case of **AG RIVER STATE v. AG AKWA IBOM STATE (2011) 8 NWLR (Pt.1248) 31**, the Supreme Court staunchly held that:

"Where parties have entered into a contract or an agreement voluntarily and there is nothing to show same was obtained by fraud, mistake, deception, or misrepresentation they are bound by the provisions or terms of the contract or agreement. This is because a party cannot ordinarily resile from a contract or agreement just because he later found that the conditions of the contract or agreement are not favourable to him... Moreover, a Court of law must respect the sanctity of agreement reached by parties, where they are in consensus ad iden as regards the terms and conditions freely and voluntarily agreed upon by them und expressed in written form."

As was enunciated by the Court in **IBAMA v. SHELL (2005) 10 SC.74 PP 75- 76**, in determining the rights and obligations of the parties to a contract, the court must respect the sanctity of contract made by them. They are bound by the terms thereof; and the court will not allow a term on which there is no agreement to be read into it.

By virtue of the case of **ARJAY v. AMS LTD (2003) 7 NWLR (Pt. 820) 577**, the whole essence of the doctrine of sanctity of contract or agreement is that the court is bound to construe the terms of the contract and the terms only in the event of an action arising therefrom. Hence, a party cannot midstream want to alter the terms of an agreement.

The inability of the Defendant to perform the central obligations created amounts to a fundamental breach. It is germane to state that the term *fundamental breach is used to denote a performance totally different from that which the contract contemplated...* - **INTERNATIONAL MESSENGERS NIGERIA LTD v PEGOFOR INDUSTRIES LIMITED [2005] Legalpedia (SC) 81711.**

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The Defendant clearly breached the terms of the contract entered into between parties, as led in evidence.

A letter of demand as in FORM RSSC1 was purportedly delivered to the Defendant as led in evidence. However, there is nothing on its face to show delivery as the details of the supposed recipient is conspicuously absent on the face of the document.

Nevertheless, FORM RSSC1 is a surplusage as the Defendant was served a letter of demand on 17/06/2026 but neither responded nor challenged its contents.

It is settled that in a suit for recovery of debt, a cause of action will accrue when a debtor fails to pay his debt after a demand to pay the debt has been made. See the cases of **UNION BANK OF NIGERIA LTD. VS. OKI (1999) 8 NWLR (PT.614) 255; AMEDE VS. UNITED BANK FOR AFRICA PLC (2008) 8 NWLR (PT.1090) 623; AKAT (NIG.) LTD. & ANOR. v. UNITY BANK (2016) LPELR-40198 (CA).**

In **BEVERLY DEVELOPMENT & REALTIES LTD. VS. TEC ENGINEERING CO. (NIG.) LTD. (2020) LPELR-52023 (CA),** the Court Per ABIRU, JCA, held as follows: "It is settled law that where a creditor writes letters of demand to a debtor requesting settlement of debt and the amount of the debt is contained in each letter and the debtor does not query the respective figures written in the letters as the debt due, the debtor will be deemed to have impliedly admitted the quoted figures as the amount of debt due." See also **O.M. NWOYE & SONS COMPANY LTD. VS. CO-OPERATIVE AND COMMERCE BANK (NIG.) PLC (1993) 8 NWLR (PT.310) 210; NAGEBU CO. (NIG.) LTD. VS. UNITY BANK PLC (2014) 7 NWLR (PT.1405) 42; TILLEY GYADO & CO. (NIG.) LTD. VS. ACCESS BANK PLC (2019) 6 NWLR (PT.1669) 399.**

The loud silence of the Defendant is construed as an admission of the contents of the demand letters. I find and so hold.

At the close of the Claimant's case, the Defendant was issued a hearing notice which was electronically served, as shown in the proof of service. He neither showed up nor did he represent himself in a manner authorized by law. This act by the Defendant left the evidence as put forward by the Claimant, unchallenged.

It is a settled principle of law that an unchallenged evidence is deemed admitted and the Court is enjoined to act on it. This principle was re-echoed by the apex Court in **GEOFFREY OFOZOBA IJOMAH V. OFOMA MOLOKWU (2025-03) LEGALPEDIA 51694 (SC)** as it held thus:

"The law is settled by unending case law that evidence not challenged or denied, if credible must be accepted and acted upon as establishing the facts stated therein." – **Per Emmanuel Akomaye Agim, J.S.C.**

The burden placed on a Claimant where the Defendant did not defend, is to be discharged not on a balance of probabilities, but on a minimal proof.

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From the totality of the evidence placed before me and from the foregoing evaluation, I find that the Claimant has by credible, cogent and verifiable evidence, discharged the burden placed on it. Judgement be and is hereby entered in favour of the Claimant. It is consequently adjudged that the Defendant pay to the Claimant:

1. The sum of N5,000,000.00 only, being the outstanding loan owed the Claimant

This order is to be complied with, not later than 14 days from the date of this judgement.

SIGNED

ANUGBUM, OBIARERI. N, ESQ.

CHIEF MAGISTRATE I

SMALL CLAIMS COURT IV

23rd September, 2026.



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