

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 13TH DAY OF MARCH 2025
AT THE SMALL CLAIMS COURT 4 PORT HARCOURT

SUIT NO: PMC/SCC/336/CS/2024

BETWEEN

GENERATION CAPITAL LTD ----- CLAIMANT

AND

JOHNMILLER FRANCIS DAMWA

MILLERS WORLDWIDE SOLUTIONS LTD

AJIOLA LARRY GOODWILL

DEFENDANTS

PARTIES: Absent

APPEARANCES: B.M. Anele Esq. for claimant

No representation for defendant.

JUDGEMENT

By a summons dated 3/12/2024, the claimant's claim against the defendants are as follows:

1. N1, 458, 800.00 for loan owed and interest
2. N400, 000.00 as cost

PLEA

By the affidavit of service availed this court, the 2nd Defendant was served the originating process in this suit by pasting while the 1st and 3rd defendant were served via whatsapp. On the 29/01/2025, a plea of not liable was entered for and on behalf of the absent defendants. Case was adjourned to the 10/2/2025 for hearing.

SUMMARY OF EVIDENCE

The claimant in proof of their case called a lone witness and tendered four exhibits marked exhibit A - D.

The relevant facts from the case of the claimant as presented by one Ignatius Uzodiaku, the claimant's accountant is that he knows the defendants. That the 1st defendant took a loan from their company via their loan form. That the money was paid via the 2nd defendant and the 3rd defendant his guarantor. That after due diligence, the sum of N1, 000,000.00 was disbursed to the 1st defendant on the 10/7/2024. That the loan tenure was for three months and maturity date was on 10/10/2024. That the 1st defendant did not pay a kobo to the company even after maturity date. That after several months of non-payment even after calls and visitation, a demand letter was sent to the 1st defendant. That at the time of this case, the defendant was owing the sum of N1, 458, 800.00. The loan application form was admitted as Exhibit A. The offer letter was admitted as Exhibit B, account statement of claimant showing payment to 1st defendant was admitted as Exhibit C, letter of demand admitted as Exhibit D. Case was adjourned for cross examination of CW1.

Upon the absence of the defendants even after service of hearing notice, they were foreclosed from cross examining the CW1 and from defending this suit. Case was adjourned for address.

On the 26/2/2025, claimant adopted their written address and case was adjourned for judgement now being read.

In the address settled by the claimant's counsel B.M. Anele Esq. a lone issue was raised for determination to wit:

Whether in the circumstances from the totality of the evidence led at trial, the claimant have made out a case to be entitled to the claims sought before this court?

Counsel answered the above in the affirmative stating that the law is settled that he who asserts must prove as the position of the law remains in all civil cases that the burden of proof lies on he who will fail if no evidence is led and that the standard of proof is on the balance of probabilities. Counsel cited **SECTIONS 131, 132 AND 133 OF THE EVIDENCE ACT 2011 AND CASE OF ODUTOLA & ORS V. COKER 7 ORS (1981) LPELR – 2254**. Counsel stated that in the case at hand, the burden of proof lies on the claimant and that from the facts borne out of the claims of the parties and the evidence led at trial, there is no gainsaying the fact that the claimant's case is hinged majorly on the exhibits A, B to D tendered in court by the CW1. After summarizing the exhibits, counsel states that exhibit C proved that there was indeed loan disbursement to the 1st defendant and this clears the doubt as to whether the 1st defendant actually took a loan from the claimant to the sum claimed and that this evidence was uncontroverted. In conclusion, counsel submitted that the claimant has proven their case and urged the court to enter judgement in their favour.

RESOLVE

In determination of this suit, I shall raise a sole issue for determination to wit:

1. Whether the Claimant is entitled to his claims.

On Issue one, it is trite law that the standard of proof in any civil suit is on the balance of probabilities. **SEE SECTION 134 OF THE EVIDENCE ACT 2011**. The proof on balance of probability implies that the case of both parties will be placed on an imaginary scale of justice and the side of the scale which is heavier and tilt down

will be on top in the case. The balance of probability also implies the balance of truth. In the instant case, a summary of the Claimant's case is that the 1st defendant applied for a loan of N1, 000, 000.00 from the claimant via Exhibit A, after the Defendant met with the requirement for the loan which includes providing a guarantor (the 3rd Defendant), the loan was disbursed to the 1st defendant on the 10/7/2024 as seen in the bank statement of account tendered as Exhibit C. The said loan was to run for a 3 months tenure and the interest per month is 10% which the 1st defendant was to pay back N1, 300, 000.00 at the end of the 3 months, as seen in the loan offer letter admitted in evidence and marked as Exhibit B. The transaction between the parties is a business loan with terms agreed and signed by parties as shown in Exhibit B. The position of the law is clear that parties are bound by their agreement. Thus, where parties have agreed on a certain way of doing something, same cannot be varied except with the consent of both parties. See: **Mekwunye V. W.A.E.C (2020) 6 NWLR (Pt.1719) 1 SC**. The law is settled that where parties have voluntarily entered into an agreement, they are bound by the terms thereof and a Court will not allow anything to be read into the agreement, which is not contained therein. See **NKAZI V. STANBIC IBTC BANK (2018) LPELR-49153(CA) (Pp. 15-16 paras. E)**. I find the Claimant is entitled to the sum of N1, 458, 800.00 as agreed by parties and as claimed by the claimant and I so hold.

On the second claim of N400, 000.00. The Claimant did not state how he is entitled to the instant claim, no evidence was led in proof of this claim. It is the Law that where no evidence is led to establish a claim made before the Court, such claims will be dismissed for want of evidence. See **ATAGBOR V OKPO & ORS (2013) LPELR-20207 (CA) (PP. 12 PARAS. B)**. I find the instant claim has been abandoned, same is dismissed for want of evidence and I so hold; the Law however is that Cost do follow event and a successful party is entitled to cost. See **LAYINKA & ANOTHER VS. MAKINDE & ORS (2002) LPELR-1770 (SC)**. In consideration of the circumstance of this case, the successful Claimant, it is my considered view that the Claimant is entitled to cost and I so hold. Accordingly cost of N300, 000.00 is awarded to the claimant

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

1. The defendant is ordered to pay the N1, 458, 800.00 for loan and interest owed and
2. N300, 000.00 as cost.

3. This is my order.