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IN THE MAGISTRATE COURT, DELTA STATE OF NIGERIA (SMALL CLAIMS)

IN THE EFFURUN MAGISTERIAL DISTRICT
HOLDEN AT EFFURUN

BEFORE HIS WORSHIP: T.R. EWHERIDO (MRS) CHIEF MAGISTRATE
GRADE II, ON MONDAY 24th DAY OF JUNE, 2024.

BETWEEN:

SUIT NO: SCC/E/3/2024

MR. JAMES OMEKUDO

.....

PLAINTIFF

AND

ROSE OJO

.....

DEFENDANT

JUDGMENT

Plaintiff Claims against the Defendant:

1. **AN ORDER** of this Honourable Court directing the Defendant to pay to the Plaintiff the sum of Three Million Naira (N3,000,000.00) only, being the Defendant's indebtedness to the Plaintiff
2. **AN ORDER** of this Honourable Court directing the Defendant to pay to the Plaintiff the sum of N200, 000.00 (Two Hundred Thousand Naira) only, being exemplary damages.
3. **AN ORDER** of court directing the Defendant to pay to the Plaintiff the sum of N200, 000 (Two Hundred Thousand Naira) only, being cost incurred in recovery of the said loan sums

And for any other orders this Honourable Court may deem fit to make in the circumstances of this suit.

In proof of his case thereof Plaintiff, hereinafter called PW1, testified in person and called no other witness. His evidence, briefly is this: on the 25th of August, 2020, one of his loan clients, Lucky Takpotore introduced the Defendant to him.

Thus a loan agreement was created. PW1 also asked for a collateral for which the Defendant issued a cheque and a deed of her property. The cheque was issued by her guarantor.

However, on failure to pay back the said loan by the Defendant, the PW1 went to cash the cheque but it returned unpaid.

PW1 authorized his Counsel to write a petition to the Area Command, for which the Defendant was arrested. The Defendant went to the High Court for breach of fundamental human rights but the case was struck out.

A demand notice was then issued to the Defendant. The Defendant still refused to make payment. There was a response to the demand notice by the Defendant. At this point the guarantor and the defendant had unresolved problem. The Defendant and PW1 then made a new agreement and payment schedule prepared by the Defendant's counsel but the Defendant however failed to make payment. Plaintiff tendered the following documents which were admitted as Exhibits.

Exhibit "A": Loan agreement between Plaintiff & the Defendant dated 25th August, 2022.

Exhibit "B": the First Bank of Nigeria cheque issued by the Guarantor to the Plaintiff on the 27th of June, 2023.

Exhibit "C": Money Lenders Certificate.

Exhibit "D": Agreement between Plaintiff and Defendant dated 4th November, 2023

Exhibit "E": Demand Notice issued to the Defendant dated 24th January, 2024.

Exhibit "F": Response to the demand notice dated 11th February 2024.

At the close of Plaintiff's case, the Defendant did not come to Court to defend his action, despite proofs of service and a hearing notice was issued on the

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22nd of April 2024. Upon Application by learned counsel to the Plaintiff, the defendant was foreclosed from cross examination and Defence on the 23rd of April 2024.

Thus learned counsel to the Plaintiff J.A. Otorudu addressed this Honourable Court on the 29th of April, 2024.

He submitted that the Defendant failed to file his defence in accordance with the Practice Direction on Small Claims. Counsel submitted further that Plaintiff has proved his case on the balance of probabilities and is entitled to the reliefs before this Honourable Court. Also, flowing from Exhibit D, Plaintiff put the Defendant on notice that failure to fulfil her obligation will result in Plaintiff asking for general and exemplary damages, and cost incurred in the recovery of the said sum and that Plaintiff has shown he is entitled to the said sum.

Counsel relied on section 6 of the Practice Direction on Small Claims 2023 and *Egharevba vs Osagie* (2009) LPELR - 10448C.

In the instant case, Plaintiff led evidence and tendered Exhibits as listed herein. The Defendant did not defend his action.

The Defendant however, brought a motion on motion dated and filed on the 21st of March, 2024, praying for an order striking out or dismissing the suit for lack of jurisdiction or in the alternative, an order setting aside the order of Court on the 14th of May, foreclosing the Defendant. And an order to recall the witnesses called by Plaintiff.

By a ruling dated 14th June 2024, this Honourable Court set aside the order of foreclosure made on the 23rd of April 2024 and recalled the PW1 (who is the only witness)

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However on the 21st of June, 2024, The Defendant was absent from Court and the court adjourned the matter to the 24th of June, 2024. The Defendant was again absent.

Learned Counsel to the Plaintiff applied for foreclosure which was granted by this Honourable Court.


Therefore in the absence of any defence, the Plaintiff's case is therefore said to be unchallenged and uncontroverted and the Plaintiff is said to have discharged the burden placed on him on the preponderance of evidence and is entitled to judgment. This Honourable Court will therefore accept and act on the unchallenged Evidence as led, in proof of Plaintiff's case.

See the case of Iyeri vs Bendel Field and Flower Mill's Limited (2008) vol 7-12 s.c. Page 151

It is hereby ordered as follows:

- I. The Defendant is to pay the Plaintiff the sum of N3, 000,000 (Three Million Naira) being the Defendant's indebtedness to the Plaintiff.
- II. I hereby order the defendant to pay the plaintiff the sum of N100, 000 only, being exemplary damages
- iii. Cost of N100, 000 cost in this suit.




T.R. EWHERIDO (MRS)
CHIEF MAGISTRATE
GD II