

IN THE MAGISTRATES' COURT OF RIVERS STATE
IN THE PORT HARCOURT MAGISTERIAL DISTRICT
HOLDEN AT PORTHARCOURT BEFORE HIS WORSHIP. G.C.AMADI ESQ.
SITTING AT SMALL CLAIMS COURT AT CHIEF MAGISTRATE COURT 8, ON THE 12th
APRIL 2024.

SUIT NO. PMC /SCC/43/2024

**BARR.IKENNA P.NDUBUEZE (Suing through his Attorney :
VICTOR U.UZOCHUKWU ESQ)**

} **CLAIMANT**

AND

**1.MR.EMENI MICHEALOGENERUKEWE
(Also known as Ogheneruwe Emeni or Oghenerukewe Emeni)**
2. RECIPARIAN CAKES BAKES N SWT

} **DEFENDANTS**

JUDGMENT

This is the final judgment in this suit wherein the claim before the court, dated and filed on the 26th February, 2024 is for:

i The sum of N2,500,000(Two Million, Five Hundred Thousand Naira)only being the money owed to the Claimant by the defendants.

ii The sum of #500,000(Five Hundred Thousand Naira) as damages for loss of Jobs, inconveniences suffered, loss of time and loss of money.

In proof of their case, the Claimant called one witness and the defendant never appeared in this matter.

On the 5th March, 2024, an application to enter plea of not liable for the Claimant was granted and the matter was set down for hearing.

On the 4th April 2024, the CW1, one Victor Uzochukwu testified that he is the lawful attorney to the Claimant on record and that he was issued a power of attorney to represent him. That on the 26th of June, 2023, the defendant approached him for financial assistance of which the 1st defendant requested for the sum of N2,000,000(Two Million Naira) for his business, the 2nd Defendant .That the 1st defendant is the owner and manages the 2nd defendant. That on the agreement that the 1st defendant will pay N2,500,000(Two Million Five Hundred Thousand Naira) within five months from the date of the payment; he parted with the 2 million Naira to the defendants.

- That the Claimant made the following transfers to the 1st defendant: The sum of N500,000 on the 26/6/2023; the sum of N1,000,000 on the 27/6/2023 and the sum of N500,000 on the 28/6/2023. All totaling the sum of N2,000,000

That the 1st defendant issued a Polaris bank cheque for N2.5 Million, payable to the claimant within the agreed 5 months. That however, after the agreed 5 months expired, the claimant took the cheque to the bank and he was told that there is no fund in the account of the defendant.

That despite repeated demands, that the defendants have refused to pay and that the defendants were served with a demand letter through the bailiff of court and despite the demand, the defendant refused to pay.

The CW1 identifies the Power of Attorney, the online banking transaction receipts and the Polaris Bank cheque. The Claimant counsel applies for the document to be tendered in evidence and they were admitted in evidence and marked as Exhibits A, B1, B2, B3, and Exhibits C respectively.

At the end of the evidence of CW1, in the light of the affidavit of service before the Court dated the 12th day of January, 2024, the defendant was foreclosed from cross examining the CW1 and from defence and the matter was adjourned for judgment.

That said, I will proceed to consider the case of the parties in the light of the relevant laws. I have noted the essence of the claim and have also taken cognizance of the evidence before the court. I have couched a lone issue for determination and that is:

Whether The Claimant Have Discharged The Burden of Proving His Claim Before The Court.

Suffice is to say that before the court adjourned the matter for hearing and heard the matter, the court always satisfied itself that:

1. The processes have been duly served on the defendant
2. That the time before the date of service and the date of hearing was sufficient for the defendant to have appeared had he intended to do so.

It is also important to note at this point that none of the facts stated by the Claimant's witness above was controverted in evidence or denied by the defendant and so will be deemed by this court as admitted. The law is that facts admitted need not be proved by evidence. Please refer to the case of Ayoke V. Bello (1992) 10 NWLR (Pt 218) pg 380 Ratio 2; O.A.A Cooperative Society Vs. NACP Ltd (1999) 2NWLR (Pt 590) Pg 234, Ratio 4 to the effect that what is not denied is deemed admitted and what is admitted need not be proved.

On the undisputed and clear evidence before the court, the court will hold that the claimant has discharged the burden of proving that she is entitled to his 1st Claim before the Court.

On the Claim for general damages: The correct assessment for general damages remains an award that compensates the injured party and restores it to the position it would have been had the breach or injury not occurred. As a result, the assessment of damages is based purely on damages flowing naturally from the breach. *Stephen Okongwu V NNPC* (1989) 4 NWLR (Pt 115) 296 @ 306h-307a; *GFK Investment Ltd V Nigeria Telecommunications Plc* (2009) 15 NWLR (Pt 1164) 344; @ 384D-E.

The award is quantified by what in the opinion of a reasonable person is considered adequate loss or inconvenience which flows naturally, as generally presumed by law, from the act or conduct of the Defendant. It does not depend upon calculation made and figure arrived at from specific items. See *Odulaja v Haddad* (1973) 11 SC 357; (1973) 11 S.C. (Reprint) 216; *Lar v Stirling Astaldi Limited* (1977) 11-12 SC 53; (1977) 11-12 SC (Reprint) 106 and *Osuji v Isiocha* (1989) 6 S.C. (Part II) 158; (1989) 3 NWLR (Part 111) 623

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It is obvious from the unchallenged testimony of the CW1, that he has suffered some inconveniences arising from the refusal of the defendant to pay back the loaned sum of N2 million Naira since June 2023.

IT IS THUS ADJUDGED that the Defendant to pay the Claimant, the sum of N2,500,000 (Two Million, Five Hundred Thousand Naira) only being the money owed to the Claimant by the defendants.

IT IS FURTHER ADJUDGED that the defendant do pay to the Claimant, the sum of **N300,000** as general damages.

AND IT IS ORDERED that the defendant to pay the Claimant, the aforesaid sum of **N2,500,000** and **N500,000** representing being the money owed to the Claimant by the defendants and general damages respectively.

AND IT IS FURTHER ORDERED that the defendant do pay to the Registrar of this court, the total sum of **N3,000,000 (Three Million Naira only)** representing the total sum on the money owed to the Claimant by the defendants and award for general damages respectively.

TAKE NOTICE –That if payment is not made as above ordered, a warrant or warrants may issue requiring an officer of the court to levy the sum above mentioned, to the Claimant together with further costs.

**G.CHINYERE AMADI. ESQ.
CHIEF MAGISTRATE G.D.I**