

IN THE DISTRICT COURT OF FCT  
HOLDEN AT DUTSE ALHAJI, ABUJA  
BEFORE HIS WORSHIP HON: MUHAMMED TAHIR  
OMEIZA ABDULMUMINI

SMALL CLAIMS

SCC/DUT//2024

BETWEEN

SUSAN C OKORIE..... CLAIMANT

(TRADING UNDER THE NAME AND STYLE OF

CAPRICONINANAA CHAMBERS)

AND

1. MADU FLORENCE NKECHI..... DEFENDANTS
2. LILIAN OGUNMODEDE

20/2/2024

JUDGMENT

This is a Judgment on Liquidated money demand brought pursuant to Article 1 of the Federal Capital Territory Practice Direction on Small Claims Court 2022.

The Claimant is a financier who is into the business of lending money to people for the purpose of financing their business, to this end, upon the request of the defendant, the claimant lend the defendant sum of N3,200,000(Three Million Two Hundred Thousand Naira), the said sum was given to the defendant in three instalments, N1,000,000.00 (One Million Naira) was paid through her FCMB account on the 26<sup>th</sup> November 2018, another N1,000,000.00(One Million Naira)through same account was paid on

MUHAMMED TAHIR  
JUDGE  
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the 15<sup>th</sup> May 2019 and finally a cash of N1,200,000.00 (One Million Two Hundred Thousand )on the 15<sup>th</sup> May 2019.

The terms of repayment as agreed in the transaction agreement dated 15<sup>th</sup> May 2019, is that the total sum of N3,200,000(Three Million Two Hundred Thousand Naira) will be repaid in 6month from the date of the agreement, it was also agreed that the defendant will pay every month starting from May 2019, the sum of N200,000 (Two Hundred Thousand Naira) into the Claimant's account for the said period of 6 months. The caveat however is that upon default in paying the total sum within the stipulated time of 6months, the defendant will be liable to the payment of N200, 000.00 (Two Hundred Thousand Naira) every month as penalty, until the sum is finally liquidated.

The defendant in pursuance to the agreement paid the sum N200, 000.00 (Two Hundred Thousand Naira) for 6months i.e from June 2019 to November 2019, he however defaulted in the complete and full payment of the total sum as agreed, the Claimant further contend that the N1, 000,000.00(One Million Naira), the defendant paid at a later date was the default fee in accordance to their agreement and not part of the balance of the Two Million Naira of the capital sum.

The 1<sup>st</sup> defendant having defaulted in the full payment of the loan, she also failed to pay the continuing obligation of N200,000(Two Hundred Thousand Naira) despite several demands, hence the institution of this action against the 1<sup>st</sup> defendant the borrower and the 2<sup>nd</sup> defendant the surety to the 1<sup>st</sup> defendant.

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The Claimant adopted her Witness Statement on Oath on the 7<sup>th</sup> day of February 2024 and thereafter tender the following documents in evidence.

- Transaction agreement dated 15<sup>th</sup> May 2019 between capriconinanaa Chambers and Mrs Madu Florence Nkechi (Exhibit PW1A)
- Sterling Bank account statement of Capriconinanaa Chambers for the period of 1<sup>st</sup> November 2018 to 30<sup>th</sup> November 2018, the period of 01/05/2019 to 30<sup>th</sup> November 2019 and the period of 01/01/2020 to 30<sup>th</sup> November 2020 (Exhibit PW1B, PW1C and PW1D)
- First city Mounument Bank cheque in the name of Capriconinanaa Chambers for the sum of N3,200,000.00(Three Million Two Hundred Thousand Naira) dated 15-05-2021 (Exhibit PW1E)
- A Demand letter addressed to Madu Florence Nkechi dated 25<sup>th</sup> December 2023 (Exhibit PW1F)
- Certificate of compliances dated 15<sup>th</sup> December 2023 and 25<sup>th</sup> December 2023 (Exhibit PW1G & PW1H)

The originating processes of this suit including hearing Notices including hearing Notices was served on the defendants in pursuance to Article 6 paragraph 4,5,6 and 7 of the Federal Capital Territory Practice Direction in small on Claims Court 2022.

The defendants despite service of the originating summons did not deem it fit to enter appearance in defence of the claims against them, leaving the case of the claimant unchallenged and uncontroverted.

Article 9 of the Small Claims Practice Direction, states.

**CIT**  
**CERTIFIED TRUE**  
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*“when the claim is called for hearing and the Claimant appears but the defendant does not appear, provided there is proof of service, the District Court Judge shall proceed with the hearing of the claim and enter Judgment as far as the Claimant can prove his Claim”*

I am satisfied in view of the records before me that the defendants are aware of this suit, see Affidavit of service of Theophilus Adams dated 30<sup>th</sup> January 2024, 12 February 2024 and 14<sup>th</sup> February 2024 respectively, the absence of the defendants is only a logical conclusion that the defendant have no defence to the claims against them.

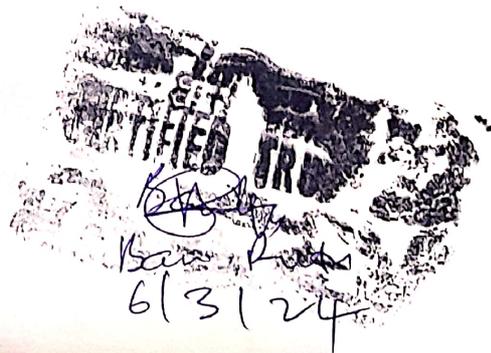
On the consequence of an unchallenged evidence, the supreme court in UNITY LIFE & FIRE INSURANCE CO. LTD V I.B.W.A LTD (2001) NWLR (PT 773)610 held;

*“where evidence giving by a party in any proceeding was not challenged by the opposing party who had the opportunity to do so, it is always open to the trial court seized of the proceedings to act on such unchallenged evidence.*

Irrespective of the position of the law, If the claimant should succeed in her claim, it wouldn't only be because the defendant was absent throughout proceedings, the Claimant would have succeeded on the strength of the credible evidence before the court particularly the Transaction Agreement (Exhibit PWIA) and a Letter of Demand (Exhibit PWIF).

The transaction agreement is quite revealing of the parties right, duties and obligations.

Paragraph 1 and 2 of the transaction agreement states

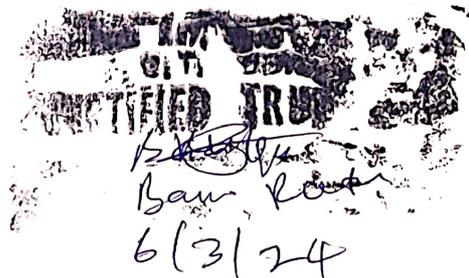
  
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*“The Lender is the owner of N3,200,000(Three Million Two Hundred Thousand Naira) only in person of Barr Okorie Susan Chizomam, principal of the above Chambers”*

*“The Lender has agreed to lend N3,200,000(Three Million Two Hundred Thousand Naira) to the borrower Madu Florence Nkechi to make use of the money and return same to the lender within Six months starting from 15<sup>th</sup> May 2019- 15<sup>th</sup> October 2019 on the ground that (N200,000.00) Two Hundred Thousand Naira only will be paid monthly into the Lender’s account and failure to complete the payment within 6 (Six) months as agreed that the said N200,000.00 (Two Hundred Thousand Naira) monthly will continue to run every month until the transaction is terminated”*

These words are clear and unambiguous and I am bound to accord it its literal interpretation and must honored it in good faith, especially as there is no evidence led to show that it was reached by fraud. The Court of Appeal in WILLIAMS VS WILLIAMS & ORS(2014) LPELR 22642(CA) AND ZENITH BANK PLC V EGBE (2003)10 NWLR (@ 727), held that an agreement voluntarily entered by parties such as in this case, must of necessity be honoured in good faith, in the absence of fraud or mistake, the court does not engage itself in the art of writing and re-writing agreement for parties, it must therefore, when the words in the agreement are clear, precise and unambiguous without much ado expound those words in their ordinarily and natural sense in order to give a true and genuine effect to the intention of the parties.

The demand letter Exhibit PW1E is a prerequisite for a successful claim of a simple debt recovery under the small claims court the said Exhibit PW1E is credible, it is not challenged and I hereby hold same to be true.

  
Barr. Susan Chizomam  
6/3/24

One may be tempted to ask at this stage the level of involvement of the 2<sup>nd</sup> defendant. The 2<sup>nd</sup> defendant by the transaction agreement surety or put herself out as a guarantor for the 1<sup>st</sup> defendant. It is trite that a surety is bound by the written agreement he has entered into. See *NWANKWO V EDC SUA* (2007) 5 NWLR (PART 1027)377 @ 410 PARA F-G SC

A simple definition of a surety is a person who takes responsibility for another's performance of an undertaking, for example their appearing in court or paying debt.

From the above definition, a surety is technically a debtor because where the principal debtor fails to pay a debt, the surety will automatically be called upon to pay the loan so suretied.

The 2<sup>nd</sup> defendant is as responsible to the claimant as it is the 1<sup>st</sup> defendant, she too is bound by the transaction agreement and I so hold.

It is in view of all that I have stated, that I hold that the claimant discharged the evidential burden place on her upon minimal proof and she is entitled to Judgment. I hereby order as follows:

1. That the 1<sup>st</sup> and 2<sup>nd</sup> defendant jointly or severally pay the claimant the sum of N2,000,000.00 (Two Million Naira) being the sum owed the claimant.
2. I award in pursuance to order 26 of the District Court Rules, cost of action of N40,000 (Forty Thousand Naira)

REPRESENTATION

SHAFAADI ISAH for the claimant



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Defendant absent

Defendant not represented

HON: MUHAMMED TAHIR OMEIZA ABDULMUNIM

