

**IN THE HIGH COURT OF JUSTICE OF THE F.C.T.**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT ZUBA, ABUJA**

**ON FRIDAY THE 4<sup>TH</sup> DAY OF APRIL, 2025**

**BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA**  
**JUDGE**

**SUIT NO.: FCT/HC/CV/7002/2023**

**BETWEEN:**

**UNIFUND MICRO-FINANCE BANK LTD ---- CLAIMANT**

**AND**

**NWOSU VICTOR CHIBUIHE ----- DEFENDANT**

## **JUDGMENT**

The Claimant, a Microfinance Bank, entered into an Agreement with the Defendant who stood as guarantor to the customer of the Bank in a loan amount of **₦3, 000,000.00 (Three Million Naira)** only with interest of 4% payable within three hundred (300) days from date of the loan. The Defendant – company failed to pay up. They were only able to repay about **₦840, 000.00 (Eight Hundred and Forty Thousand Naira)** only. All attempt to recover the money from the company failed. The loan was taken by C.N. Victor Integrated Farm and Agro Biz. Ltd. The present Defendant is the Guarantor. It gave a Cheque – Zenith Bank Cheque No. 00000003 and deposited the documents of title to a property situate at Igbo Quarters by

Islamic School, Filindabo, Dei-Dei, Abuja-FCT. It donated Power of Attorney and signed Deed of Assignment, all in favour of the Claimant, all as collateral for the loan. They failed to repay the loan and the interest which stood at **₦4, 331,120.00 (Four Million, Three Hundred and Thirty One Thousand, One Hundred and Twenty Naira)** from November 10<sup>th</sup>, 2022 to January 31<sup>st</sup>, 2023. In order to recover the said loan the Claimant filed this action seeking the Reliefs to wit:

1. Payment of the sum of ~~₦4~~, 331,120.00 (Four Million, Three Hundred and Thirty One Thousand, One Hundred and Twenty Naira) being the total outstanding principal loan amount and accrued interest on it as at 31<sup>st</sup> January, 2023.
2. Payment of the default interest of 0.133% daily on the total outstanding loan amount and accrued interest from 1<sup>st</sup> February, 2023 till the date of Judgment herein.
3. Payment of 21% Post Judgment interest on the Judgment sum from the date of Judgment herein until same is finally liquidated.
4. Payment of the sum of ~~₦1~~, 000,000.00 (One Million Naira) only being the cost of the legal fees charged by the Claimant's Counsel.

OR ALTERNATIVELY

5. An Order of the Honourable Court that the Defendant having failed, refused and/or neglected as the Guarantor to repay the loan and interest granted to company, C.N. Victor Integrated Farm and Agro Biz. Ltd, by the Claimant herein,

upon the failure, refusal and/or negligence of C.N. Victor Integrated Farm and Agro Biz. Ltd to repay same as agreed, the Claimant is entitled to own and now the owner of the Defendant's property at Igbo Quarters by Islamic School, Filindabo, Dei-Dei, FCT, Abuja, which he used as security/collateral for repayment of the loan and interest herein.

6. An Order directing the Defendant to immediately vacate and deliver up vacant possession to the Claimant which is now entitled to and the owner of the property at Igbo Quarters by Islamic School, Filindabo, Dei-Dei, FCT, Abuja, which he used as security/collateral for repayment of the loan and interest herein as agreed.
7. And such further or other Order(s) as this Honourable Court may deem fit to make in the circumstances of the matter.

All attempt to serve the Defendant personally failed. The Court granted leave to serve the Defendant by substituted means on the 28<sup>th</sup> day of February, 2024. The service was effected as ordered and the Defendant was served all Originating Processes.

On the 29<sup>th</sup> of April, 2024, the Claimant opened its case and called one Witness – Nze Chinaza Sixtus. He testified as PW1 and tendered some documents marked as **EXH 1 – EXH 10**.

The Defendant never filed any document in defence of the Suit. They were later foreclosed and matter adjourned for Adoption of Final Written Addresses, which the Court still left open for the Defendant to exercise their right, but to no avail.

The Claimant raised one Issue for determination in the Final Written Address which is:

**“Whether the Claimant has discharged the requisite burden of proof in this case to be entitled to the Reliefs sought herein against the Defendant.”**

They answered in the Affirmative, that the Claimant had asserted and proved the assertion against the Defendant.

That the Claimant discharged the onus on it. Hence, they are entitled to the Reliefs sought. That they did so through the testimony of PW1 in which the PW1 stated that the Defendant is customer of the Bank and friend of the company which was given the loan. They tendered the documents – Loan Agreement, the Letter of Application for Loan, the Loan Terms so completed, and Offer Letter. They also tendered the Repayment Schedule, the Power of Attorney and Deed of Assignment as well as the dud Zenith Bank Cheque and Loan Statement Account of C.N. Victor Integrated Farm and Agro Biz. Ltd, all in evidence to prove their case. All those documents were not controverted just as the facts were not controverted.

They established that the said property was used as collateral for the loan.

That the Defendant is aware of the present Suit having been served all the Originating documents. That the case of the Claimant is not controverted at all. They referred to the case of:

**Abah V. Jabusco Nig. Ltd  
(2008) 3 NWLR (Pt. 1075) 526**

where the Court held that uncontroverted evidence should be accepted by the Court as the true version of the case and facts therein.

That the Claimant's case has not been controverted in this case. They referred to the case of:

**Egharauba V. Osagie**  
**(2009) 18 NWLR (Pt. 1173) 299**

That the Claimant has established their case in this Suit, hence, Judgment should be entered for the Claimant.

That the Defendant who had the opportunity to challenge the case failed to do so. Hence, the Claimant's case is unchallenged.

That the Claimant discharged the onus in this case, and as such need minimum proof to establish their case in this Suit. They referred to the cases of:

**Consolidated Resources Ltd V. Abotaryan Nig. Ltd**  
**(2009) 6 NWLR (Pt. 1030) 221 @ 231**

**Dr. Orok Ironbar V. Fed. Mortgage Finance Ltd**  
**(2024) 12 NWLR (Pt. 1952) 22 Para 26** where the Court held that:

**“Where the Defendant does not lead any evidence in defence of the Plaintiff's Suit, the Plaintiff is entitled to Judgment upon minimum proof.”**

They urged Court to grant the Reliefs and enter Judgment for the Claimant.

## **COURT**

As already stated, the Defendant did not file any Defence or even enter appearance. He was duly served the Originating Process. The present Defendant is the Alter-ego and Guarantor of the said company that collected the loan. He presented both the documents of title to a landed property and a Cheque as collateral in the Loan Agreement.

Going by the testimony of the PW1 and the 10 documents tendered and admitted in evidence, it is clear that the Claimant established its case on the preponderance of evidence placed before this Court. The Claimant asserted and proved with credible, concrete, water-tight and uncontroverted evidence which was not challenged. They had proved all the facts as raised with credible documentary evidence. It is not in doubt that there was loan facility. The Claimant tendered both the Application for the Loan, the Loan Form duly signed. In the document it shows that the Defendant is one of the Directors of the company that took the loan. It attached another document – Offer of the Approval of the Loan dated 14<sup>th</sup> October, 2022, as well as the document spelling out the amount of loan and the tenure and payment and repayment schedule. That document was received and acknowledged by the Defendant who also signed as the Guarantor.

Again, the Claimant tendered the irrevocable Power of Attorney donated to the Claimant by the Defendant who is the Donor. That document was made on the 4<sup>th</sup> of January, 2022. The content of the document speaks for itself. In it

the Donor agreed to ratify and confirm all things done lawfully by his Attorney under the Power of Attorney. The same Defendant signed the Power of Attorney. It was witnessed by Onyewuenyi Dominic, a Banker.

So also there was the Deed of Assignment as it concerns the property in this case which measures about 30 x 40 sqm which is the collateral for the loan. In it the Assignor, the Defendant, relinquishes his right, interest, title and claim over the property on his own freewill to the Assignee, the Claimant. It was made between the Defendant and the Claimant on the 4<sup>th</sup> day of January, 2022, in the presence of Nwosu Esther. The PW1 witnessed for the Claimant.

The Claimant equally tendered the Cheque – Zenith Bank Cheque issued by the Defendant dated 12<sup>th</sup> April, 2023, for the sum of **₦4, 720,118.00 (Four Million, Seven Hundred and Twenty Thousand, One Hundred and Eighteen Naira)**. The Cheque belongs to the Defendant's company. It was signed by the Defendant who is the Chief Executive Officer (CEO) of the said company – C.N. Victor Integrated Farm and Agro Biz. Ltd. The Claimant also attached the Statement of Account showing all the repayment made by the Defendant which amount to **₦840, 000.00 (Eight Hundred and Forty Thousand Naira)**, a far cry from the main loan and accrued interest.

Also as averred, the Claimant tendered the document, Receipt showing that the company paid **₦600, 000.00 (Six Hundred Thousand Naira)** as part of the Solicitors' Fee for legal service rendered in this case. All these documents

were not challenged by the Defendant. The facts heralding the documents were equally not challenged.

The Court on several occasions and in plethora of cases stated that any unchallenged evidence are deemed as true and the facts thereof are admitted. That Court has no reason not to act on such evidence that unchallenged. The Court had equally stated that it is the duty of the Claimant to establish its case before the Court.

The Claimant in this case had done so. I had proved its case on preponderance of evidence presented before this Court in this case. On all the above see the provision of **S. 131 & S. 133 of the Evidence Act 2011** as well as the following cases:

**Mtsor V. Adeke**

**(2005) All FWLR (Pt. 287) 872 @ 887**

**Ulegede V. Mil. Admin. Of Benue**

**(2001) 2 NWLR (Pt. 696) 73**

**Zenon Petro V. Emsee Shipping Line Ltd**

**(2021) 1 NWLR (Pt. 1758) 553 CA**

Further on uncontroverted evidence being credible and admissible, see the cases of:

**Trade Bank V. Chiami**

**(2003) 13 NWLR (Pt. 836) 158 @ 220**

**INEC V. Ray**

**(2004) 14 NWLR (Pt. 892) 92 @ 131**

**Thompson V. Akingbehin**  
**(2021) 16 NWLR (Pt. 1802) 283 SC**

The failure to challenge and/or deny the facts in the case of the Claimant by the Defendant makes this Court to hold the facts as correct and that it amounts that the Defendant had admitted those facts. See the case of:

**Waziri V. Ali**  
**(2009) 4 NWLR (Pt. 1130) 178 @ 216 – 217**

The Claimant ensuring that the Defendant was served with the Originating Process also proved that fair Hearing was exercised and there is no breach of it in this case notwithstanding that the Defendant failed to file any Defence or enter appearance even after they were given the chance to do so. Since they failed to respond they have waived their right to do so and cannot complain. The Court refers to the cases of:

**Okike V. L.P.D.C**  
**(2005) 15 NWLR (Pt. 949) 471**

**NUB Ltd V. Samba Petro Ltd**  
**(2006) 12 NWLR (Pt. 993) 98 @ 129**

**Newswatch Comm. Ltd V. Attah**  
**(2006) 12 NWLR (Pt. 993) 144 @ 171**

From all the above the Claimant has established its case which is not challenged. It is therefore the view of this Court that the Claimant is entitled to the Reliefs sought in this case. This Court therefore grants the Reliefs to wit:

Relief 1 & 2 granted as prayed.

Relief 3, the Defendant is to pay the Claimant 10% Post Judgment interest on the Judgment sum from date of Judgment until the day it is fully liquidated.

Bo award of cost of legal fees.

Where the Defendant fails to pay the Judgment sum within the next Ninety (90) days, the alternative Order No.5 shall be in place. That is, where the Judgment sum is not paid within the next 90 days, the Claimant shall be entitled to take over the ownership of the property at Igbo Quarters by Islamic School, Filindabo, Dei-Dei, FCT, Abuja, which he used as security/collateral for repayment of the loan and interest therein.

**This is the Judgment of this Court.**

**Delivered today the \_\_\_\_\_ day of \_\_\_\_\_ 2025 by me.**

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**K.N. OGBONNAYA**  
**HON. JUDGE**

**APPEARANCE:**

**CLAIMANT'S COUNSEL:** E.A. NWAGWU, ESQ.

**DEFENDANT'S COUNSEL:** NOT REPRESENTED.