

IN THE CHIEF MAGISTRATE'S COURT OF DELTA STATE OF NIGERIA
IN THE SMALL CLAIM COURT
HOLDEN AT OLEH
BEFORE HIS WORSHIP O.M. OMONEMU (MRS.) CHIEF MAGISTRATE GRADE 1
(SPECIAL GRADE) ON WEDNESDAY THE 27TH DAY OF NOVEMBER, 2024

SUIT NO: SCC/OLEH/21/2024

OKORO ANTHONY A. - - - - - CLAIMANT

=AND=

1. CHRISTIANA MOSES	}	-	-	-	-	DEFENDANT
2. FAITH AJIRI OGORURE	}	-	-	-	-	
3. MOSES UDHU						
4. AJIRI OGORURE						
5. PETER OKPEDE						

JUDGMENT

The Claimant's claim is dated 25/10/2024 and file on the 28/10/2024. The defendants pleaded not liable. In proof of his case, the claimant led evidence for himself with no witnesses. This is the evidence of the claimant.

Claimant testified on the 19/11/2024. He said his name is Anthony Okoro. He lives in Oleh. He is a businessman and also into money lending. That sometime in January 2022, the defendants approached him for a loan of (N240,000.00) two hundred and forty thousand naira. Claimant said he granted the loan. The loan was for an interest of 20% for a period of five months. Claimant said the 1st defendant appealed that the interest on the loan be reduced form (N48,000.00) forty-eight thousand naira to (N40,000.00) forty thousand naira. This he conceded to. That the loan agreement was reduced into writing by filing a loan bond agreement, loan application form and he granted the loan. The friendly loan agreement and loan application forms were tendered as exhibit A, A1 and A2. Claimant said the 2nd defendant brought the interest sum of (N40,000.00) forty thousand naira for the month of February, 2022. That on the 9/5/2022, the 1st defendant brought the interest sum of (N40,000.00) forty thousand naira for the month of March, 2022. This she paid installmentaly on the 27/4/2022, 7/5/2022 and 9/5/2022. Claimant said these receipts are recorded in his receipt book and signed by the payer. That the receipt book was signed by the 1st and 2nd defendants. Page 3, 8, 11 of the receipt book showing the payments are tendered as exhibit B, B1 and B2. Claimant said in August 2022, the 1st defendant came for an

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[Signature]
J. Igwe
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urgent loan of (N10,000.00) ten thousand naira. This was paid back through one Faith. Claimant said the outstanding loan capital of (N240,000.00) two hundred and forty thousand naira and the interest rate of six months which runs from April 2022 – August 2022 to give (N240,000.00) two hundred and forty thousand naira is yet to be paid by the 1st defendant. Claimant said he has been disturbing the defendants to pay these sums but they prove abortive. He urged court to grant his reliefs.

Under cross-examination by the 1st defendant, claimant said he borrowed the 1st defendant (N240,000.00) two hundred and forty thousand naira and not (N200,000.00) two hundred thousand naira.

The 2nd defendant no question to ask the claimant

After his evidence, claimant closed his case.

At the next adjourned date, the defendants were supposed to enter their defence and close their case but they did not appear in court. A date was therefore taken for judgment.

At the close of the day, these were the exhibits tendered to wit:

1. Loan Agreement form - Exhibit A
2. Loan Application forms - Exhibit A1 and A2
3. Receipt book - Exhibit B, B1, and B2

I have gone through the evidence both oral and documentary of the claimant, A sole issue came up for determination – Burden of Proof in Civil Matters on whom lies.

Before going any further, permit me to clear one grey area. Five defendants were sued to court by the claimant. However after a thorough look at the claim, the claimant withdrew against the 3rd – 5th defendants. Thus the defendants who are presently being sued are the 1st and 2nd defendants.

We go back to the question being asked. Burden of Proof in Civil Matters on whom lies. In civil case the burden of first proving the existence or non-existence of a fact lies on the party against whom judgment of the court would be given if no evidence were produced on either side, regard being had to any presumption that may arise on the pleadings.

SD

The burden of proof shall be discharged on the balance of probabilities in all civil proceedings. I refer to Section 133(1) and Section 134 EVIDENCE ACT 2011 (As Amended 2023). Thus in civil proceedings, the burden is first on the claimant to discharge. Once he is able to discharge such burden, then it shifts to the other side. However at the end of the day, it is based on the preponderance of evidence led.

The claimant told court that he loaned the sum of (N240,000.00) two hundred and forty thousand naira to the 1st defendant. The 2nd defendant being the surty. In proof of this exhibit A, A1 and A2 were tendered. That it was at an interest rate of forty thousand naira. That the 1st and 2nd defendants paid the interest for the month of February 2022 and March 2022. This was recorded in his receipt book which both signed. In proof of this exhibits B, B1 and B2 were tendered it is trite that documentary evidence is the best evidence. In fact, the documents being the best proof of its contents, no oral evidence will be allowed to discredit or contradict the said contents except on the ground of fraud. I refer to Section 128 EVIDENCE ACT 2011 (As Amended 2023). With exhibit A, A1, A2, B, B1 and B2. Claimant has being able to prove his case on the preponderance of evidence led

COURT – It is hereby ordered that the 1st and 2nd defendants shall pay the sum of (N240,000.00) two hundred and forty thousand naira being the capital sum to the claimant.

It is hereby ordered that the 1st and 2nd defendants shall pay to the claimant the sum of (N240,000.00) two hundred and forty thousand naira being the four months interest due for payment since July 2022.

It is hereby ordered that the 1st and 2nd defendants shall pay to the claimant interest value at 10% monthly from the date of the defendant default, August 2022, till when judgment is entered and finally executed.

It is further ordered that the 1st and 2nd defendants shall pay to the claimant the sum of (N200,000.00) two hundred thousand naira as cost of litigation.

It is also ordered that the 1st and 2nd defendants shall be given two months from the date of judgment to comply with the terms of the judgment.

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JUDGE
J. Igha
ACR


O.M. Omonemu (Mrs.)
C.M 1 (Special Grade)
27/11/2024