IN THE MAGISTRATE'S COURT OF ENUGU STATE OF NIGERIA
IN THE ENUGU NORTH MAGISTERIAL DISTRICT
HOLDEN AT ENUGU

BEFORE HIS WORSHIP K. O EZE, CHIEF MAGISTRATE GD. 2 ON WEDNESDAY THE 15th DAY OF MAY 2019

SUIT NO MEN/79/2019

EGBO PROMISE CHIJINDU **PLAINTIFF.**

VS

LETS PARTNER WITH YOU LIMITED **DEFENDANT**

JUDGEMENT

By her summons to obtain judgment by default summons dated January 16, 2019 and filed on the same date, the Plaintiff is claiming from the Defendant as follows:

(a) The sum of N300,000.00 (Three Hundred Thousand Naira) only being the liquidated amount owed by the defendant to the plaintiff.

The defendant was absent and not represented throughout the proceedings. They were served with the court processes, summons to obtain judgment by default and the affidavit of service filed in the court file. The defendant failed to file a notice of intention to defend in accordance with Magistrate Court Rules.

Based on the claim of the plaintiff as well as the facts of the case and applicable laws, the court is faced with the issue of whether the Plaintiff has proved his case to be entitled to Judgement. The Court also has to be mindful as to whether or not the plaintiff has proved his case in compliance with the relevant laws.

The Plaintiff filed a motion ex-parte dated and filed on January 16, 2019 seeking the leave of Court to issue default summons at the instance of the plaintiff against the defendant in terms of the claim. The motion was supported by a seven paragraph affidavit deposed to by the plaintiff. The plaintiff also filed a ten paragraph affidavit in support of claim on the default summons sworn on January 16, 2019 with annexures marked exhibits A & B.

Order VII of the Magistrate Court Rules CAP 113, Revised Laws of Enugu State 2004 provides for default summons and the procedure to be adopted by a plaintiff. Rule (1) (3) states and I quote

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"A summon in the form or to the effect given in form 21 in the first schedule shall not be issued, without leave of the Magistrate, where the amount claimed exceeds forty naira, unless the action is for the price, value or hire of goods which, or some part of which were sold and delivered or let on hire to the defendant to be used or dealt with in the way of his trade or profession or calling". Rule 3 further states "where the defendant shall have given notice of defence the Magistrate shall, upon an affidavit disclosing a legal defence or defence upon the merit and satisfactorily explaining the defendant's neglect, allow the defendant to defend upon such terms as he may think just".

The plaintiff sought and was granted leave to issue summons via the court order dated February 28, 2019. The plaintiff served on the defendant the summons on March 22, 2019 and the affidavit of service dated March 22, 2019 was duly filed in court.

Order VI of the Magistrate Court Rules CAP 113, Revised Laws of Enugu State 2004 provides for service of process and the mode of service to be adopted by a plaintiff. Rule (3) (1) states and I quote "subject to the provisions of the law and of these rules, service of a summons shall be effected by delivering the summons together with a copy of the plaint annexed thereto –

(b) if on a form or corporation – (v) by leaving the same at the principal place of business in the state of the firm or corporation.

(3) the provisions of this rule shall, with the necessary modifications as to document, apply to any process of whatever description.

There is proof that the defendant has been duly served. The rules provide that if the defendant fail to within 16 days after the service of the summons, inclusive of the day of the service, give notice in writing, signed by the defendant or their counsel to the registrar of the court from which the summons was issued of their intention to defend, the plaintiff may, after 16 days and within two months from the date of the service, upon proof of its service or of an order for leave to proceed as if personal service had been effected, have judgment entered up against the defendant for the amount of his claim and costs. The procedure as outlined by the Rules was strictly followed by the plaintiff and the 16 (Sixteen) days elapsed on April 12, 2019. The matter was thereafter adjourned for judgment on April 24, 2019.

The court will then dwell on the merit of the plaintiff's case.

The plaintiff is claiming the sum of N300,000.00 (Three Hundred Thousand Naira) only being the total principal contribution of the plaintiff to the investment scheme of the defendant. Exhibits A and B attached to the affidavit is support of the application before the court shows proof that the said sum was contributed by the plaintiff; furthermore, there is no evidence before the court

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that the defendant remitted the said sum back to the plaintiff. The plaintiff is also relying on the provisions of Clause 1 in exhibit A to prove the existence of an investment agreement and the amount invested by the plaintiff. The said proviso contains the sum of N300,000.00 (Three Hundred Thousand Naira). I therefore hold that the plaintiff is entitled to the sum of N300,000.00 (Three Hundred Thousand Naira) only.

Flowing from above, I hereby make this declaration and the following order:

1. The defendant is hereby ordered to pay the sum of N300,000.00 (Three Hundred Thousand Naira) only to the plaintiff being the principal contribution of the plaintiff on or before May 31, 2019.

Parties: The Plaintiff is absent.

Appearances: Ugochi Ohajekwe appeared for the plaintiff as Plaintiff Counsel.

This is the judgment of the Court.

J. O UGWU
ASSISTANT CHIEF REGISTRAR

15/05/2019

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CHIEF MAGISTRATE'S COURT
ENUGU
DATE 10/6/2019