

**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 THURSDAY THE 30<sup>TH</sup> DAY OF MAY  
2019**

**SUIT NO MEN/137/2019**

**NWAEDE FELIX IKECHUKWU**

**PLAINTIFF**

**VS**

**LETS PARTNER WITH YOU LIMITED**

**DEFENDANT**

**JUDGEMENT**

By his summons to obtain judgment by default summons dated January 23, 2019 and filed on the same date, the Plaintiff is claiming from the Defendant as follows:

- (a) The sum of N400,000.00 (Four 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 23, 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 23, 2019 with annexures marked exhibits A – F.

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

"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 20, 2019. The plaintiff served on the defendant the summons on April 8, 2019 and the affidavit of service dated April 8, 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 firm 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 29, 2019. The matter was thereafter adjourned for judgment on May 8, 2019.

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

The plaintiff is claiming the sum of N400,000.00 (Four Hundred Thousand Naira) only being the total principal contribution of the plaintiff to the investment scheme of the defendant. Exhibits A - E attached to the affidavit in support of the application before the court shows proof that the said sums were contributed by the plaintiff; furthermore, there is no evidence before the court that the defendant remitted the said sum back to the plaintiff. The plaintiff is also relying on the

provisions of Clause 1 in exhibits A-E to prove the existence of an investment agreement and the amount invested by the plaintiff. The said proviso contains the sum of N20,000.00 (Twenty Thousand Naira); N30,000.00 (Thirty Thousand Naira); N100,000.00 (One Hundred Thousand Naira); N200,000.00 (Two Hundred Thousand Naira) and N50,000.00 (Fifty Thousand Naira) only. I therefore hold that the plaintiff is entitled to the sum of N400,000.00 (Four Hundred Thousand Naira) only being the total contribution of the plaintiff.

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

1. The defendant is hereby ordered to pay the sum of N400,000.00 (Four 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: B.C Madu appeared for the plaintiff as Plaintiff Counsel.

This is the judgement of the Court.

J.O UGWU  
ASSISTANT CHIEF REGISTRAR

30/05/2019

SGD  
K.O EZE  
CHIEF MAG 2  
ENUGU NORTH

*Certification of 3 photos  
@ \$50 = per photo  
= \$150*

*pd on C.M. 0619195  
03/10/2019*