

**IN THE CHIEF MAGISTRATES COURT OF ENUGU STATE OF
NIGERIA**
IN THE ENUGU NORTH MAGISTERIAL DISTRICT
HOLDEN AT ENUGU
BEFORE HIS WORSHIP, EDITH NGOZI AGBO, CHIEF
MAGISTRATE GD II ON WEDNESDAY, THE 6TH DAY OF AUGUST,
2018

SUIT NO. MEN/ 114 /2018

BETWEEN

- | | | |
|---|---|------------|
| 1. MRS. FLORENCE AGBO
2. LADY OBY NWOKEABIA
3. MRS. NGOZI ONYEKWERE | } | PLAINTIFFS |
|---|---|------------|
- (Suing for and on behalf of themselves
and the members of the Women's
Organization of St. Bartholomew's
Anglican Church, Asata, Enugu)

AND

LET'S PARTNER WITH YOU LTD.DEFENDANT.
O.S Udenwagu Esq with the brief of Chuma Oguejiofor Esq for the
plaintiff.

The defendant has never appeared for once in this matter and was
never also represented.

JUDGMENT.

This suit is undefended, and the three plaintiffs suing for and on behalf
of themselves and the members of the Women's Organization of St.
Bartholomew's Anglican Church, Asata, Enugu are claiming the
following reliefs;-

- (A) An order of the court compelling the Defendant to
refund/pay back to the Plaintiffs the capital sum of ₦3,
000,000.00 (Three Million Naira Only) being the sum they
invested into the Defendant's business.


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- (B) A further order compelling the defendant to pay to the plaintiffs the profit sum of ₦4, 200, 000. 00 (Four Million, Two Hundred Thousand only) due for payment for the months of August 2015 - September, 2016 and 10% interest on the Judgment sum until same is liquidated.

Mrs. Florence Agbo, the first plaintiff on record in this case and the President of the Women's Organisation of St. Bartholomew's Anglican Church Asata, Enugu in her evidence in chief testified that the plaintiffs on record in this case are representatives of the members of the Women's Wing of St. Bartholomew's Anglican Church Asata, Enugu. That she and the other two plaintiffs were given an authorization letter by the Women's Organization to institute this matter.


She tendered the letter dated 27th of October, 2016 which was admitted as evidence and marked Exhibit P1.

That the Defendant is an incorporated entity under CAMA, LFN 2004, and does sundry businesses and had made out to them (the plaintiffs) that she carries on Importation business, retail of goods etc.

That she had moved them to invest in her business, undertaking to pay them 10% of their capital investment in the business monthly with liberty to recall the capital at will in so far as they first had issued and served on the said defendant a notice of two months of their intention to terminate the contract and be refunded of their capital investment.

That within the period of May 2014 – October 2015, the Defendant had received from them various sums of money on 2 installments amounting cumulatively to the sum of ₦3 million being their investment into the Defendant's business. The 1st installment was the sum of N 1, 000,000.00 (One Million Naira Only) made on 14/5/2014 and the 2nd installment of N 2,000,000.00 (Two Million Naira Only) made on 10/7/2015.

The 2 contract/agreement papers evidencing those agreements between them and the defendant dated 14th of May, 2014 and 10th


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May, 2015 were tendered as evidence, and were admitted and marked together Exhibit P2.

That they, in compliance with the aforesaid agreements had written to the office of the Defendant and duly notified her of their intention to terminate the contract; and recall our capital investment of ₦3 million. The clearance/termination of investment letter written on behalf of the Women Organization to the Defendant was equally tendered in evidence and marked Exhibit P3.

That the said defendant had received the notification/termination letter from them, and had promised- based on the cordial relationship between her and the church-to pay back to them the capital sum with immediate effect but has failed to do so till date.

That the defendant did not also pay to them the due 10% monthly interest on their capital investments from the month of August 2015 – the month of September 2016 (14 whole months).

That incidentally, they had started getting worrisome reports from people that the Defendant had veered off into the very delicate banking business without CBN license, the defendant has failed to refund/repay even a kobo of the said sum to them.

They prayed the court to grant them their reliefs.

According to the court bailiff, the defendant was served with the writ of summons by dropping same inside the compound at NO. 1 Maternity Avenue, Asata Enugu. He filed an affidavit of service of that service dated 1st of March, 2018.

The court also caused the court bailiff to serve the defendant hearing notices of which the affidavit of service dated 14th of June, 2018 and 10th of July, 2018 were filed before this court.

At the close of the undefended proceedings the learned plaintiff counsel addressed the court as follows;-

The 1st Plaintiff in proof of the Plaintiffs' case had testified- in- chief on 20/6/2018 and gave evidence as PW1, She had adopted her witness's deposition on oath dated 20/6/2018 wherein was contained all her evidence before the court.


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The PW1 had further identified an authorization letter issued to her and the other plaintiffs by St. Bartholomews Anglican Church Women's Organisation to prosecute this matter on their behalf. The same letter was admitted in evidence by this court and marked **Exhibit "P1"**.

She had also identified the two contract /agreement papers evidencing the agreements between the Plaintiffs and the Defendant. The two contract/agreement papers were admitted in evidence by this court and marked **Exhibit "P2"**.

In further proof of the Plaintiffs' case, PW1 had further identified the notification/termination letter she had written to the defendant on behalf of the Plaintiffs, in compliance with paragraph 6 of their contract/agreement papers and same was admitted in evidence by this court and marked **Exhibit P3**.

From the foregoing, the evidence of PW1 which is unchallenged and uncontroverted establishes the fact that there was an investment agreement between the Plaintiffs and the defendant, that the plaintiffs deposited the said total sum of N3, 000, 000.00 (Three Million Naira Only) into the defendant's business and that the defendant is still indebted to them to the tune of N3, 000, 000.00 (Three Million Naira Only)=being the capital sum they invested into the business and the sum of N4,200, 000.00 (Four Million, Two Hundred Thousand Naira Only) due to them for the months of August 2015 - September, 2016 as profit.

There are plethora of cases on law that unchallenged or uncontroverted evidence will be deemed admitted and the court can rely on same. I refer the court to the case of **OKIKE VS LPDC (2005) 15 NWLR, (PART 949) 7, 471 S.C.** It has also been held by the Apex court in the case of **CHIEF SUNDAY OGUNYADE V. SOLOMON OLUYEMI OSHUNKEYE & ANOR, S.C. 364** thus:

"When evidence called by a witness is unchallenged, the court is at liberty to accept such evidence in proof of the issue in contest....."


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unchallenged and uncontroverted evidence ought to be accepted by the courts as establishing the facts therein contained”.

It is also trite that what is required to constitute a fair trial is that a fair and equal opportunity is given to the parties to correct or contradict any information upon which a decision might be reached. See the case of **BABA VS NCATC (1991) 5NWLR (PART 192) 388.**

The defendant was served with the originating processes in this suit which includes the summons, claim, but the defendant chose not to appear to defend this suit. In the interest of justice, the said defendant was issued and served with several hearing notices, both when the matter was pending before your learned brother, His Worship Asogwa (Mrs.) in whose court the matter was commenced before he declined jurisdiction and when the matter was transferred to this court. This court had ordered for a hearing notice to be issued on the defendant when this matter came over to this court, therefore starting *De Novo*. Same was issued and the proofs of all the hearing notices are in the court's file; the documents speak for themselves. The defendant was well aware of the case against her but chose not to defend this suit. The defendant deliberately decided to opt out of the trial when from all indications she had adequate information about the hearing date or dates. Indeed the matter was adjourned several times to give the defendant ample opportunity to appear and defend this case which she failed to do.

The Defendant's absence or non-appearance to defend this case goes to show that she has admitted to the case of the plaintiffs and the court is duty bound to deliver judgment in favour of the plaintiffs having proven their case. **ORDER IX RULE 15 OF THE MAGISTRATE COURT RULES VOLUME V (CAP. 113) REVISED LAWS OF ENUGU STATE OF NIGERIA 2004**, empowers the Honourable court to give judgment to the plaintiff in the absence of any defence by the Defendant.


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The said **ORDER IX RULE 15 OF THE MAGISTRATE COURT RULES VOLUME V (CAP. 113) REVISED LAWS OF ENUGU STATE OF NIGERIA 2004** provides thus:

“if on the day of hearing or at any continuation or adjournment of the court or cause the plaintiff appears and the defendant does not appear or sufficiently excuse his absence but neglects to answer when called in court the magistrate may, on due proof of service of the summons, and upon his being satisfied for the defendant to have appeared had he wished so to do, proceed to the hearing and determination of the cause on the part of the plaintiff only, and the judgment thereon shall be as valid as if both parties had appeared”.

I therefore respectively urge the court relying on the above case to admit the evidence of the plaintiffs' sole witness which is unchallenged or uncontroverted and deliver judgment in favour of the plaintiffs as per their claim.

The submissions of the learned plaintiff counsel is well take particularly the provisions of Order 6 Rule 15 Of The Magistrate Court Rules which empowers the court to proceed hear the claim of the plaintiff if the defendant fails to appear to defend himself.

In line with the submissions of the learned plaintiff counsel on the effect of unchallenged and uncontroverted evidence of a party, the Appeal Court held in the case of UBA PLC v. PATKAN VENTURES LTD (2017) LPELR-42392(CA) that

"The case of OBINECHE V. AKUSOBI (2010) 12 NWLR 383 held that the unchallenged and uncontroverted evidence is good material to be received and acted upon by a Court."

It is obvious from the circumstances of this suit that it is unchallenged/undefended since the court made remarkable effort to


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make the defendant appear before it to answer the plaintiff without result.

Be that as it may, as was decided in the recent case of *AGBONENI v. ALAKIU* (2018) LPELR-44807(CA), the law remains that evidence even if unchallenged and uncontroverted still has to be evaluated to see if it is credible enough to sustain the claim.

In instant case the plaintiff tendered two agreements entered into between them and the defendant. The document was duly signed by the parties. In fact all the transactions between the parties were evidenced in writing and it is a well known principle of law that documentary evidence is the best evidence of its contents.

In *G, BUREAU OF LANDS, KWARA STATE & ANOR v. ALABI & ANOR* (2018) LPELR-44487(CA), the principle there is state thus-

"It is therefore trite that, when a document is duly pleaded and admitted in evidence, that document becomes the best evidence of its contents and therefore speaks for itself, and the Court cannot disregard it. See *Emeje vs. Positive* (2010) 1 NWLR (pt. 1174) 48 @ 56, *Atanda vs. Ifelagba* (2003) 17 NWLR (pt. 849) 274.

It is also trite that oral evidence will not be allowed to discredit the contents of a document except where fraud is pleaded.

In *UBA v. OSOK* (2016) LPELR-40110(CA), the Court of Appeal held -

"It is now firmly settled that documentary evidence is the best evidence. It is the best proof of the contents of such document and no oral evidence will be allowed to discredit the contents thereof except where fraud is pleaded. See *Skye Bank Plc. v. Chief Moses Bolanle Akinpelu* (2009) LPELR - 1049 (Sc);


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So on the basis of the above principle of law, even if oral evidence was given in instant case it may still be difficult to dislodge the evidential value of the contents of these documents.

Consequently, on the strength of the above cited authorities, I hereby deliver judgment in favour of the plaintiffs as per their claim as follows-

- i. That the Defendant shall forthwith, refund/pay back to the Plaintiffs the capital sum of ₦3, 000,000.00 (Three Million Naira Only) being the sum they invested into the Defendant's business.
- ii. The defendant shall forthwith pay to the plaintiffs the profit sum of ₦4, 200, 000. 00 (Four Million, Two Hundred Thousand only) due for payment for the months of August 2015 - September, 2016
- iii. And that the defendant shall also pay the plaintiff 10% interest on the Judgment sum until same is liquidated.

Check and Found correct by 1/20/2015 when
[Signature]

SIGNED
E.N.AGBO, ESQ
CHIEF MAGISTRATE GD.II.

Certification 27/10/20
₦350.00

Person CRN 0505908
10/03/2020

[Signature]
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CHIEF MAGISTRATE'S COURT
ENUGU
DATE 10/03/2020