

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

BEFORE HIS WORSHIP, I.M MAMAH ESQ, CHIEF MAGISTRATE GRADE II ON  
WEDNSDAY, THE 8<sup>TH</sup> DAY OF NOVEMBER, 2017  
IN SUIT: NO MEN/279/2017

**BETWEEN:**

*NWEKE DONATUS SUNDAY*) \_\_\_\_\_ **PLAINTIFF**

*Vs*

*LET'S PARTNER WITH YOU LTD*) \_\_\_\_\_ **DEFENDANT**  
*CHIEF PATRICK NWOKIKE*)


***Judgment***

By a claim dated 27<sup>th</sup> day of April, 2017 and filed on 28<sup>th</sup> day of April, 2017 the plaintiff claims as follows;

- 1. An order mandating the defendants to release/pay back to the plaintiff the sum of N1, 000,000.00 (One Million Naira) invested into the defendants business.*
- 2. The sum of N500, 000.00 damages for the breach of agreement.*
- 3. Ten percent (10%) monthly interest on the plaintiff's money for the months of February, 2016 to December, 2016.*
- 4. 10% interest on the judgment sum till the sum is liquidated.*

At the commencement of this suit the plaintiff counsel informed the court that the writ/claim has been served on the defendants in accordance with an order of substituted service, made on 16<sup>th</sup> day of May, 2017. During hearing the plaintiff testified as P.W.1

He is Nweke Donatus Sunday and lives at No 3 Bishop Onyebor Street, GRA. He is a public servant. He testified that he knew the defendants, the 1<sup>st</sup> defendant is

  
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Let's Partner With You Ltd registered under the law while the 2<sup>nd</sup> defendant is the managing director, Patrick Nwokike. The witness told the court that he invested N1, 000, 000.00 in the said company on January, 2016 to yield interest of 10% per month. He further stated that on February, 2016 the defendant's paid N83, 000.00 representing 10% interest of the amount invested. However on March 14<sup>th</sup> 2016 they sent a text message to him pleading that the interest is less than 10% per cent and later on the same March, 2016 they paid N4, 000.00 now making it 10%. He said that he kept on going to them but they did not paid March and April. The contract was reduced into writing. The original copy is with him and he told the court that he can recognize it. It is tendered as exhibit "A".

He further said that after all effort the defendant couldn't pay him from March, 2016 to October, 2016 in line with the contract agreement. The P.W.1 informed the court that he wrote a termination letter to the defendants cancelling the agreement. The letter was delivered through courier service. The letter and receipt of delivery are tendered and admitted as Exhibit "B" & C.

He further told the court that ever since he sent the letter to the defendants that the defendants have refused to pay him. He finally told the court that he needed his investment to re-invest it on another business that will give him money daily.

At the conclusion of evidence neither the defendant nor his counsel was presence to cross examine the witness notwithstanding the service of hearing notices and other processes on him. In consequences thereof, the counsel sought and obtained leave of court and foreclosed the defendant. Thereafter the suit was adjourned for defence to open and continuation of hearing. On the next adjourned date, the defendant's neglected and failed to appear and defend the claim and on plaintiff counsel's application the court ordered parties to file and exchange their written addresses.

The plaintiff filed theirs while the defendant failed and neglected to do so. The plaintiff counsel adopted plaintiff's final written address, dated and filed on 19<sup>th</sup> day of July, 2017 wherein the counsel formulated two issues for determination of this suit.

1. *Whether the defendants were given fair hearing arguments*
2. *Whether the plaintiff has proved his case.*

The court has considered the said written address as filed by the plaintiff counsel, but for the reason of want of time the court have decided not to reproduce all the arguments canvassed by the plaintiff counsel. There is a tough assurance that I will make use of it in resolving the issues raised for determination of this suit. In the circumstance I hereby adopt all the issues raised by the plaintiff counsel for the determination of this judgment.

I wish to state clearly that the plaintiff's evidence before the court was neither challenged nor controverted. The law is settled that where evidence is unchallenged and uncontroverted the court is entitled to regard such facts as established. It is further settled that where plaintiff claim remains unchallenged and uncontroverted the consequences are that the court will accept the available evidence as true and act on it. Furthermore the law enjoined the courts to accept and give full weight and value to unchallenged and uncontroverted evidence. Be that as it may, there are numerous authorities on what constitute substantial compliance to entitle the plaintiff to the above named reliefs sought.

In argument as to whether fair hearing were given to the defendants in this suit. The counsel submitted that writ/claim was served on the defendants which proofs are in court file. He further submitted that hearing notices was ordered and served on the defendant. The counsel referred the court to the *cases of Audu Vs INEC (No2) (2010) 13 NWLR 456 CA PG 533 Para C*. I have considered the argument

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of counsel on this issue and equally reviewed court's case file. I am of the firm view that the defendants are aware of the pendency of this but have neglected/refused not to do the needful. I therefore adopt the submissions of the counsel and accordingly resolved this issue in favour of the plaintiff. I find justification in this direction on the case of *Audu Vs INEC (supra)*

On argument as to whether the plaintiff has proved his case before the court. The counsel referred the court to the case of *Military Governor of Lagos State Vs Adeyiga (2012) 5NWLR (Pt 11293) (9)291*. The court during hearing admitted the following documentary exhibits namely:

1. **Exhibits "A"** the contract agreement dated 4<sup>th</sup> day of January, 2016, signed by the plaintiff and the defendants and a bank deposit slip, dated same date.
2. **Exhibits "B"** the notice of termination of agreement dated 4<sup>th</sup> day of January, 2016.
3. **Exhibits C**, the waybill receipt of Courier Plus dated 20<sup>th</sup> day of October, 2016

These exhibits were received in evidence without any objection from the defence in which case the court is entitled to look at same and attach any value as it think fit. I have analyzed the totality of evidence adduced by the plaintiff. I am satisfied that hearing notices were issued and served on the defendant. Therefore the defendant was given ample time and opportunity to defend the suit. I therefore hold the view that the defendant is aware of the pendency of this suit, but had deliberately refused to do the needful. It is obvious that judicial process does not allow cases to last forever. In other words there must be an end to litigation. Judicial processes do not recognize the popular adage which says that "a man's hair cannot be shaved in his absent. I am fortified by the Practice Direction, 2015 which has set time standard in an undefended civil cases.

Therefore, it is my finding that the plaintiff has established on the preponderance of evidence that the defendant has denied the plaintiff his investment/benefits

without a reasonable cause. It is also my general finding that the plaintiff has satisfied all the requirements of law and entitle to judgment.

However in writing this judgment I have observed the inconsistency in the plaintiff's evidence with regards to prayer (c) of his claim and I shall reproduce same for clarity thus:

*Ten percent (10%) monthly interest on the plaintiff's money for the months of February, 2016 to December, 2016*

*The P.W.1 (i.e. the plaintiff himself) during evidence in chief stated thus:*

*The witness told the court that he investment N1, 000,000.00 on January, 2016 to attract interest of 10% per month. He further said that on February, 2016 the defendant's paid N83, 000.00 representing 10% interest of the amount invested and on March 14<sup>th</sup> 2016 they sent a text message to him pleading that the interest is less than 10% per cent and subsequently on the same March, 2016 they paid N4, 000.00 now making it 10%. He said that he kept on going to them but they did not paid March and April.*

In the whole and in consequences thereof, I hereby invoke Order 9 Rule 15 of the Magistrate Court Rules of Enugu State, 2004 and grant reliefs

- 1. An order mandating the defendants to release/pay back to the plaintiff the sum of N1, 000,000.00 (One Million Naira) invested into the defendants business.*
- 2. The sum of N 500,000.00 damages for the breach of agreement.*

Orders are made accordingly.

I.M Mamah Esq.

Chief Magistrate, GD II

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*10/03/2020*

CHIEF MAGISTRATE'S COURT  
ENUGU  
DATE *15/03/20*

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