

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT MAITAMA – ABUJA**

<b>BEFORE HIS LORDSHIP:</b>	<b>JUSTICE SALISU GARBA</b>
<b>COURT CLERKS:</b>	<b>FIDELIS T. AAYONGO &amp; OTHERS</b>
<b>COURT NUMBER:</b>	<b>HIGH COURT TWO (2)</b>
<b>CASE NUMBER:</b>	<b>FCT/HC/CV/0354/2017</b>
<b>DATE:</b>	<b>14<sup>TH</sup> JUNE, 2019</b>

**BETWEEN:**

**ICAD THRUST LIMITED** - **PLAINTIFF**

**AND**

<b>1. UCHENNA OBIEZE</b>	)	
<b>2. UCHESON DIVINE WISDOM LIMITED</b>	)	<b>DEFENDANTS</b>

1<sup>st</sup> Defendant representing the 2<sup>nd</sup> Defendant in court while the Claimant absent.

1<sup>st</sup> Defendant's Counsel –Our counsel is on his way to the court.  
Court – Court time is 9:00 a.m. and it is now 9:08. The matter is for judgment and this is the decision.

## **J U D G M E N T**

The Plaintiff instituted this case under the Undefended List Procedure by a writ of summons dated 6/12/17. Subsequently the suit was transferred to the General Cause List and the Plaintiff by its statement of claim jointly and severally claims against the Defendants as follows:

1. The sum of N3,000,000.00 (Three Million Naira) only being a Soft Loan sum advanced to the Defendants through the account name of Uche Chukwu Obieze in Zenith Bank of

- Nigeria Plc being monies had and received upon an agreement of loan sum to be paid back within three months.
2. The sum of N3,630,000.00 (Three Million, Six Hundred and Thirty Thousand Naira) being interest incurred by the Defendants at the rate of 10% upon agreement of parties on the loan sum advanced to the Defendants since 25<sup>th</sup> August 2016 till November 2017 and still accruable till final liquidation.
  3. The sum of N500,000.00 (Five Hundred Thousand Naira) being cost of legal services for this suit.
  4. An Order of court directing the Defendants to refund the Plaintiff her principal sum and accruable interest immediately.

In prove of this claim, the Plaintiff filed a 16-paragraph statements of claim dated 19/6/2016, 17-paragraph Plaintiff's reply to 1<sup>st</sup> and 2<sup>nd</sup> Defendants Joint Statement of Defence; the said reply is dated 17/9/2018 and called a sole witness.

Kevin Nnadi the General Manager of the Plaintiff testified as PW1. In his evidence-in-chief, he adopted a 19-paragraph witness statement on oath dated 21/6/18 as part of his evidence.

The gist of the PW1's evidence is that on 25/8/16, the 1<sup>st</sup> Defendant approached the Plaintiff for a soft loan of N3 Million vide an application dated 25/7/16. That the Plaintiff did advance the loan to the Defendant by cash deposit in the 1<sup>st</sup> Defendant's account with Zenith Bank Plc. That the said loan was agreed amongst parties to be satisfied at the expiration of 3 months of

which the loan was advanced and that the said loan was to attract an interest of 10% monthly till final liquidation.

The PW1 further stated that the Defendants have refused to pay back the loan with the accrued interest, despite all attempts made by the Plaintiff including serving the Defendants Demand Letter. That the entirety of the sum been owed the Plaintiff by the Defendants is to the tune of N6,630,000.00 the principal sum and interest inclusive.

The PW1 further stated that the Plaintiff briefed the law office of Edeh Uchenna C & Co to help recover its monies from the Defendants. And the law firm charged the sum of N500,000.00 to issue the Defendants the Demand Notice and institute this action.

In the cause of PW1's evidence, the following documents were admitted in evidence as Exhibits.

1. Application for Loan Facility dated 25/8/16 – Exhibit A.
2. Agreement Form – Exhibit B.
3. Two (2) Zenith Bank Deposit Slips – Exhibit C1 and C2.
4. Zenith Bank Cheque dated 23/11/16 – Exhibit D.
5. Demand Notice dated 2/11/17 – Exhibit E.
6. Edeh Uchenna & Co Receipt – Exhibit F.

The PW1 further adopted a 17-paragraph Witness Statement on Oath in support of the reply to 1<sup>st</sup> and 2<sup>nd</sup> Defendants Joint Statement of Defence; the said PW1's statement on oath is dated 20/9/2018. The said PW1's statement on oath is adopted as forming part of this judgment.

The following documents were also admitted in evidence:

1. The Statement of Account of Great Dick Vine Limited with Diamond Bank Plc – Exhibit G.
2. The Money Lenders Licence and Money Lenders Certificate – Exhibits H and I respectively.

Under cross-examination of PW1 by the Defence Counsel, the PW1 stated that he never gave physical cash to the Defendants. That the Defendant wrote an application to Plaintiff for a loan on 25/8/16 and same was approved by the Plaintiff and the sum of N3 Million was paid into the Defendant's account.

The witness also stated that prior to 25/8/16, the Plaintiff have been transacting with the Defendants by granting the Defendant's loan with interest. That at the time the Plaintiff granted loan to the Defendants, registration of the Plaintiff as a Money Lender was in process and it was completed in 2018. That when the issue of Dud cheque was reported to the Police, the Police recovered the sum of N100,000.00 from the Defendant for the Plaintiff.

No re-examination, PW1 was discharged and that was the case for the Plaintiff.

In defence of this case, the Defendants filed a Joint Statement of Defence of 29-paragraph dated 11/7/2018 and called a sole witness.

Uchenna Obieze the 1<sup>st</sup> Defendant testified as the DW1. In his evidence-in-chief, he adopted a 27-paragraph witness statement

on oath dated 12/7/2018 as his evidence; the said DW1's statement on oath is accordingly adopted as forming part of this judgment.

The gist of the DW1's evidence is that after several transactions with the Plaintiff through one Mrs. Uchenna Mimi the Plaintiff alter ego, he applied for a loan facility of the sum of N3 Million from the Plaintiff on 25/08/16 wherein the Plaintiff approved and paid only N2 Million into the Defendant's Zenith Bank Account No. 1005029979. That apart from the loan application, the DW1 wrote on the 25/8/16 to the Plaintiff and blank cheque he handed over to Mrs. Uchenna Mimi, there is no agreement between parties in respect of the 25/8/16 transaction.

The 1<sup>st</sup> Defendant further stated that he had made a total payment of N2,000,000.00 including the N100,000.00 paid to the Plaintiff through the police when Plaintiff lodged a complaint against the 1<sup>st</sup> Defendant with the police.

That the Plaintiff is not entitled to any of the reliefs claimed. Court is urged to dismiss the Plaintiff's claim.

In the cause of DW1's evidence-in-chief following the documents were admitted in evidence:

1. Uchechukwu Obieze Saving Statement of Account No. 20003834679 with Zenith Bank Plc – Exhibit J.
2. Uchechukwu Obieze Current Account No. 10005029979 with Zenith Bank Plc – Exhibit K.
3. Claimant's letter dated 21/3/2017 – Exhibit L.

4. Odeh Daniel & Associates letter dated 28/3/18 – Exhibit M.

Under cross-examination of DW1 by the Claimant's counsel, the DW1 stated that he knew the Plaintiff through Madam Mimi Uchenna. That he always pay Mimi the interest on the loan granted up front. That it was the 2<sup>nd</sup> to the last loan that brought parties to court. The 2<sup>nd</sup> loan was for N1.5 Million. The sum of N1 Million was paid in DW1's Current Account and the balance of N500,000.00 was paid into his Saving Account.

The witness further stated that the loan of N2 Million was granted to him on 25/8/16; he paid interest in respect of the N1.5 Million and N2 Million to the claimant up front. That when he was been given a loan he will give Mimi an open cheque; he will only sign the cheque without filling it. That 1<sup>st</sup> Defendant stated that he had paid all the sums he owe the Claimant. That he did not transact with the Claimant through Great Dick Vine Limited. That he used to pay back the loan through Great Dick Vine Limited.

That he made application for a loan of N3 Million and he was given N2 Million. He has paid the money he collected from the Claimant.

Under cross-examination, the DW1 stated that the transaction for N1.5 Million and N2 Million were separate transactions.

DW1 was accordingly discharged and that is the case for the defence.

The Defendant's counsel filed 18-page final written address dated 20/3/19 wherein counsel formulated the following issues for determination:

1. Whether the Plaintiff has stated enough facts before this Honourable Court to be entitled to relief on its statement of claim.
2. Whether the Plaintiff can hold out itself as a certified money lender during the transactions with the Defendants to claim further interest from the Defendants, after payment of the principal sum loaned.
3. Whether the Plaintiff can hold the Defendant liable for its solicitor's fees.
4. Whether the Plaintiff is entitled to the reliefs sought in the statement of claim.

On Issue 1, it is the submission that the Defendants in their pleadings and testimony of DW1 particularly Exhibits J and K, showed that the money loaned to the Defendants have been duly and fully paid back.

It is submitted that there is no single trace of how the Plaintiff gave the purported N3,000,000.00 to the Defendants.

It is the submission that the testimony of the PW1 are full of contradictions. Court is urged not to rely on it. See case of C.D.C. (NIG) LTD v SCOA LTD (2007) 6 NWLR (Pt 1030) 300.

That the Plaintiff have failed to prove his reliefs. Court is urged to dismiss the Plaintiff's case. See FAGUNWA & ANOR. v ADIBI & ORS.

Instead the Defendant have demonstrated and showed how they repaid the money loaned to them by the Plaintiff, are no longer indebted to the Plaintiff. Court is referred to Exhibit J (Page 9, 11, 12, 15 and 16) and Exhibit K.

On Issue 2, it is the submission that the Plaintiff cannot hold itself out as a satisfied money lender during the period of transaction with the Defendants in 2016 to claim further interest on money loaned to the Defendant. See EBONI FINANCE & SECURITIES LTD v WOLE-OJO TECHNICAL SERVICES LTD & 2 ORS; Section 2 of the Money Lenders Act, Cap 525 Laws of FCT Vol. 3 2007.

It is submitted that the alleged Loan Agreement stands on illegality and the court cannot rewrite the Loan Agreement of the parties by severing the arm of the agreement tainted with illegality since the Plaintiff was not a Certified Money Lender at the time of the several transactions with the Defendants and as such not entitled to interest from the defendant. See Section 2 to 15 of the Money Lenders Act.

By Exhibits H and I, the Plaintiff was granted licence on 23<sup>rd</sup> January 2018 after this case was instituted in 2017.

It is submitted that an illegal agreement cannot be legalized by any court. See ABUDALAI OYINDAMOLA KODIRI's case.

On Issue 3, it is submitted that the Apex court have held that solicitor's fees are outlandish and should not be allowed as it did not arise as a result of damage suffered in the course of any

transaction between the parties. See GUINNESS NIG PLC v NWOKE (2000) 15 NWLR (Pt 689) 135 at 150.

On Issue 4, it is submitted that the Defendant have demonstrated that the Plaintiff has failed to establish all claim. Court is urged to dismiss the Plaintiff's suit. See NAS LTD v UBA PLC (2005) 14 NWLR (Pt 945) 421.

The Plaintiff's counsel filed a final written address dated 5<sup>th</sup> April 2019 and filed on 9/4/19 wherein counsel formulated the following issues for determination:

1. Whether or not from the correspondence of evidence adduced the Plaintiff is entitled to its claims.
2. Whether or not from the evidence arranged before this Honourable Court parties are bound by the Loan Agreement.
3. Whether or not having regards to instant facts to this suit could Exhibits H. & I. be rendered invalid?

On Issue 1, it is the submission that it is not in dispute, and it was established at the trial that there was a loan contract between the parties herein. Court is referred to evidence of PW1 and DW1.

It is the contention that the transactions between the parties has always been in written. The Defendant is blowing hot and cold at the same time. When the DW1 stated that the previous transactions between the parties was in written while this present one was not in written. The DW1 is not a witness of truth. See C.D.C. (NIG) LTD v SCOA LTD (2007) 6 NWLR (Pt 1030) 300. Court is

urged to draw an inference from the practice of this transaction amongst parties in this suit from previous transactions. See OMEGA BANK (NIG) PLC v O.B.C. LTD (2005) 8 NWLR (Pt 928) 547.

On the issue of illegality as raised by the Defendant; it is submitted that a defence of efface illegality must be pleaded and proved for it to avail a party. See BEN E. CHIDOKA & ANOR v FIRST CITY FINANCE COMPANY LTD (2012) 7 SCNJ 452. In the instant case the Defendant never pleaded and prove same.

On whether the Plaintiff is entitled to recover the loan sum and accrued interest rate, it is submitted that an agreement is an agreement and the court is duty bound to only construe the intentions of the parties in the agreement. See BFI GROUP COR. V P.E. (2012) 7 SCNJ 405.

It is the submission that the Defendants having not fully discharged his own part of the contractual obligation automatically has occasioned breach of contract of which the Plaintiff have fully performed its obligations. Consequently, the conduct of the Defendants attracts remedies for a breach of contract and therefore the Plaintiff is entitled to damages as per its claim. See HADLEY v BAYENDALE (1854) 9 EXCH. 341; OLAGUNJU v RAJI (1986) 5 NWLR (Pt 42) 408.

On Issue 2, it is the submission that parties are bound by their valid agreement. That it is an established law that contract can also emerge from series of correspondence between two persons, but of must be apparent, when the correspondence exchanged are

read together, that parties have come to an agreement. See UDEAGU v BENUE CEMENT CO. PLC (2006) 2 NWLR (Pt 905) 600.

It is submitted that Exhibit A suffice within the immediate circumstance as a correspondence that still suggest a contract amongst the parties.

It is the contention that upon the evidence of the defence from Exhibit J and K, all the Defendants have paid were all interest rate in line with the existing loan agreement entered by parties and have since refused to pay back the initial sum.

On Issue 3, it is submitted that the Pw1 in his evidence did mentioned that the process for money lenders licence was commenced long before the loan was granted to the defendants which was evidenced by Exhibit H & I.

The defence did not in any way controvert the evidence of the PW1 on the above issue. It remains unchallenged and uncontovered evidence of a party, a court ought to rely on it as the truth. See GOV. OF ZAMFARA STATE & ORS v ALH. SULEIMAN MOH'D GYALANGE & ORS (2012) 4 SCNJ 1. Court is urged to enter judgment for the Plaintiff.

The Defendant's counsel filed a 5-page reply on points of law dated 10/4/2019 wherein counsel submitted that the 1<sup>st</sup> Defendant denied the Loan Agreement alleged by the Plaintiff, through oral evidence. Court is referred to paragraph 3 and 22 of the Defendants' joint statement of defence.

It is submitted that the Plaintiff failed to establish before the court or show the court how the Plaintiff made available the alleged N3,000,000.00 loan disbursement to the Defendants after the Defendant's application for the said loan dated the 25/8/2016.

On the issue of whether the defendants issued a cheque to the Plaintiff as claimed by the Plaintiff, it is submitted that the DW1 told the court that he did not issue any cheque to the Plaintiff.

On whether the Defendants have shown that they have repaid all the money loaned to them by the Plaintiff, it is submitted that the defendant have established that all the money the Plaintiff loaned to the Defendants have been fully repaid back to the Plaintiff. Court is referred to Exhibits J, K and M.

It is submitted that the Plaintiff cannot hold itself out as a certified money lender during the period of transaction with the Defendants in 2016 to claim further interest on money loaned to the Defendants. This is because Exhibit H and I (Money Lenders Certificate and Money Lenders Licence) shows that the Plaintiff became a registered Money Lender on 23/1/2018 almost two years after the transaction with the Defendants. Court is urged to hold that the transaction between the parties is founded on illegality as it offends the Money Lenders Act. Court is urged to dismiss the Plaintiff's suit.

I have carefully considered the processes filed, evidence of PW1, DW1 and the submission of learned counsel on both sides; I am of

the considered view that the sole issue for determination is whether or not from the correspondence of evidence adduced the claimant is entitled to its claims.

The law is settled that he who assert must prove. It is the claim and evidence of the claimant that the 1<sup>st</sup> Defendant did approach the claimant for a soft loan of N3,000,000.00 only vide an application that was admitted in evidence as Exhibit A dated 25/08/2016 and not 25/7/2016 as claimed by the claimant. The Claimant through the PW1 stated that the said sum of N3 Million was advanced to the 1<sup>st</sup> Defendant Account domiciled with Zenith bank Plc. However, from the evidence available to court, the only sum advance to the Defendants on the 25/8/16 via Exhibit C1 is the sum of N2,000,000.00 only and not N3,000,000.00 as claimed by the claimant.

It is also the testimony of PW1 that an agreement was executed for the soft loan and same was admitted as Exhibit B; thus the Defendant had denied entering into.

I have carefully looked at and compared the 1<sup>st</sup> Defendant's signature on Exhibit A and that on Exhibit B and come to a conclusion that the two signatures are not similar or not made by the same person. Accordingly I hold the considered view that the 1<sup>st</sup> Defendant is not the maker of Exhibit B the purported loan agreement between the parties.

Now I must point out here that there are material contradiction in the evidence of PW1. For instance in paragraph 3 of the

statement of claim it was averred that the 1<sup>st</sup> Defendant did approach the Plaintiff for a soft loan of N3,000,000.00 vide an application dated 25/7/2016, while the application for the said loan (Exhibit A) is dated 25/8/16.

Again the PW1 testified on oath that on 25/8/2016 the sum of N3,000,000.00 was advanced to the Defendant but going by Exhibit C2 the sum of N2,000,000.00 only was advanced to the Defendants and not N3,000,000.00.

By Exhibit E the Demand Notice, it is the position of the claimant that the Defendants sometime in August 2016 by a Loan Application dated 28/8/2016 applied for a loan of N3,000,000.00. There is no evidence before this court that the Defendant did ever applied for loan on 28/8/2016.

In the light of the above contradiction, I find it difficult to be in one with the claimant.

The Defendants in their pleadings, statement on oath, oral testimony and tendered Exhibits J and K, showed that the money loaned to the Defendants have been duly and fully paid back. Exhibit J (Page 9, 11, 12, 15 and 16) and Exhibit K (Page 9, 11, 12, 15 and 16) respectively showed how the loan was repaid to the Claimant through its alter-ego.

The DW1 also stated that shortly after the matter was transferred from the Undefended list to the general cause list, he was arrested by the claimant over the same claim, detained for six days at Area 10 FCIID on the allegation of the claimant. The DW1 further

stated that after comparing figures between him and the claimant, the men of the Nigeria Police compelled him to pay N100,000.00 to the claimant as the final outstanding balance between parties, wherewith he paid the claimant and he was released.

This piece of evidence was never challenged nor controverted by the claimant in any material way; instead the PW1 under cross-examination corroborated this fact by stating as follows:

***“The Police recovered the sum of N100,000.00 from the Defendant for the Plaintiff”***

More fatal to the case of the claimant, Exhibit D (Zenith Bank Cheque) which the claimant claimed was issued to it by the Defendant in paragraph 13 of PW1's statement on oath.

However, under cross-examination of PW1, he reprobated by stating that the beneficiary of Exhibit D is Great Divine Limited.

It is clear that on the face of Exhibit D, it was issued to Great Dock Vine Limited a different entity from the claimant.

It is trite law that any witness whether an adult or child who has no regard for truth should not be believed. See SAMBO v STATE (1993) LPELR – 3000 (SC).

It is worthy of note that the credibility of the 1<sup>st</sup> Defendant's witness (DW1), Exhibits J, K, L and M coupled with the pleadings of the Defendant shows clearly before this court that the Defendant had repaid the loaned money back to the claimant.

It is trite law that where there is evidence to support a claim, as here, which remains unchallenged, uncontroverted by the other party, the court is bound to accept the evidence in support of the claim. See INCAR NIGERIA LTD v ADEGBOYE (1985) 2 NWLR (Pt 8) 453 at 460.

In the instant case, the Defendant copiously stated in paragraphs 14, 15, 16, 17, 18, 19, 20 and 28 of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants statement of defence, and paragraphs 13, 14, 15, 16, 17, 18, 19 and 25 of the DW1 statement on oath, on how the said loan money was paid back.

It is instructive to note that the said averment and testimony was never in any material way challenged nor controverted by the claimant.

In paragraph 5.0 of the Claimant's final written address, learned counsel contended that the PW1 in his evidence did mention that the process for money lenders licence was commenced long before the loan was granted to the defendant which was evidenced by Exhibit H and I.

However, the Claimant failed to proffer credible evidence as to when it commenced the said process. The claimant ought t have tendered its application form for issuance of licence or better call a witness from the issuing authority to ascertain the fact that it commenced the process long before the loan was granted to the defendants.

For want of doubt the closing paragraph of Exhibit H is reproduced thus:

***“This licence shall come into force on the 23<sup>rd</sup> Day of January 2018 and shall expire on the 23<sup>rd</sup> Day of January 2019”***

In the light of the above it is clear as crystal that as at the time the claimant granted the loan to the Defendants it was not licenced.

Accordingly, the claimant cannot hold itself out as a certified money lender during the period of transaction with the Defendants in 2016 to claim further interest in money loaned to the Defendant, I so hold.

In conclusion, I hold the considered view that the claimant have failed to establish all her claims as outlined in her statement of claim to warrant judgment in her favour. This case ought to be dismissed and it is hereby dismissed.

**(Sgd)**  
**JUSTICE SALISU GARBA**  
**(PRESIDING JUDGE)**  
**14/06/2019**

Edeh Uchenna Chukwuebuka for the Plaintiff.

Plaintiff's counsel – I am sorry for coming in late.

Onoja Daniel for the Defendants.

Defendant's counsel – I apologise for coming in late. We thank the court for the judgment.

**(Sgd)**  
**JUSTICE SALISU GARBA**  
**(PRESIDING JUDGE)**  
**14/06/2019**