

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

**BEFORE HIS LORDSHIP: JUSTICE SALISU GARBA
COURT CLERKS: FIDELIS T. AAYONGO & OTHERS
COURT NUMBER: HIGH COURT TWO (2)
CASE NUMBER: FCT/HC/CV/1874/2018
DATE: 26TH JUNE, 2020**

BETWEEN:

NSEDU BASSEY ONYILE } - **PLAINTIFF**
(Suing through her lawful Attorney,
Inyang Essien)

AND

SENATOR NELSON ASUQUO EFFIONG } - **DEFENDANT**

Parties absent.

Opatola Victor for the Claimant.

Peter I. Akpan for the Defendant appearing with Abdulkarim Shaibu Esq.

Claimant's Counsel – The matter is for judgment and we are ready to take same.

J U D G M E N T

The Claimant instituted this case by a writ of summons under the Undefended List dated 23/5/2018. However, in the wisdom of this court the case was transferred to the general cause list.

And by a Statement of Claim dated 28/8/2019, the Claimant claim against the Defendant as follows:

1. The sum of Ten Thousand Dollars (\$10,000) being the sum of money given by the Claimant to the Defendant as a loan to fund his campaign for the Senatorial Election of Akwa Ibom South Senatorial Zone in 2015; the said sum of money which the Defendant has wantonly and inordinately refused, failed and or neglected to repay despite repeated demands.
2. Monthly interest of 10% on the sum of Ten Thousand Dollars (\$10,000) from August 2015, when it became due, payable and demanded to the day of delivery of judgment in this case.
3. 10% interest on the judgment sum from the day of delivery of judgment till when it is finally liquidated.
4. General/Exemplary damages of Twenty Million Naira (N20,000,000.00).
5. Cost of this litigation.

In prove of the claim against the Defendant, the Claimant filed a 7 paragraph statement of claim dated 28/8/2019 and called a sole witness.

Inyang Essien testified as the sole witness PW1. In his evidence-in-chief he adopted an 8-paragraph witness statement on oath dated 9/9/2018 as his evidence. The

8-paragraph PW1's evidence is accordingly reproduced hereunder as follows:

- 1. "That I am the lawful attorney of the Claimant in this case and suing on her behalf and as such the facts of this case are within my personal knowledge save as otherwise stated.**
- 2. That the Claimant is a Nigerian businesswoman based in the United States of America.**
- 3. That the Claimant is suing through me, her lawful attorney.**
- 4. That the Defendant is, until recently, a Senator of the Federal Republic of Nigeria from Akwa Ibom State.**
- 5. That I am a businessman and the lawful attorney of Nsedu Bassey Onyile by powers donated to me vides a Power of Attorney dated the 7th of may, 2018. The said Power of Attorney is hereby attached and marked Exhibit FBI-1.**
- 6. That the Claimant told me, her lawful attorney on the 30th October, 2016, via phone, at about 11:25 a.m. Nigeria time and I verily believe her:**
 - (i) That she has known the Defendant for more than 10 years. The Defendant is a family friend.**

- (ii) That sometime in February 2015, the Defendant approached the Plaintiff for a soft loan of Ten Thousand Dollars (\$10,000) to fund his campaign to contest for Senate, to represent the people of Akwa Ibom South Senatorial District.**
- (iii) That she obliged the Defendant and sent him the money (the sum of \$10,000) through one Ante E. Okwong on the 18th of March, 2015, through a Bank of America wire transfer which Ante E. Okwong acknowledged.**
- (iv) That the Defendant acknowledged receipt of the money (the sum of \$10,000) and promised to pay back in August 2015.**
- (v) That the request to recover the Ten Thousand Dollars (\$10,000) was made to the Defendant since August 2015.**
- (vi) That the Plaintiff wrote several letters to the Defendant and other persons and institutions like the Senate President, the Archbishop of Methodist Church, Abuja. The said letters are hereby attached and marked Exhibit FBI-1.**

- (vii) That despite all these efforts to recover the money, the Defendant have blatantly refused to refund the money.**
- (viii) That the Defendant rather started threatening to deal with her, making her very scared and afraid to visit Nigeria. Emails showing this threat is hereby attached and marked Exhibit FBI-3.**
- (ix) That it is only the courts that can compel the Defendants to pay the Claimant.**
- (x) This Statement is made in good faith conscientiously believing the facts contained therein to be true and correct in accordance with the Oaths Act”**

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

1. Power of Attorney dated 7/5/2018 Exhibit A1
2. Notary Certificate – Exhibit A2.
3. Letter dated 1/6/17 – Exhibit B.
4. Letter dated 11/6/17 – Exhibit C.
5. Letter dated 6/10/2016 – Exhibit D.
6. Letter dated 25/5/2017 – Exhibit E.

Under cross-examination of PW1 by the Defence Counsel, the PW1 stated that he spoke with the Claimant and the Defendant in respect of this matter.

That he did not know whether the Claimant is a licenced bank in Nigeria. He also did not know whether there is interest attached to the loan or not.

The PW1 further stated that Mr. Ante E. Okwong is a friend to the Claimant and the Defendant. That he (PW1) was not there when Nsedu (the Claimant) gave the Defendant the money.

That he knows that the Defendant is a politician. There are support groups for a politician contesting an election. And that a lot of money was given to a politician during campaign as help and some are loan.

Under re-examination, the PW1 stated that it is Nsedu Onyile that brought the defendant to court. He represented the Claimant in this matter. PW1 was discharged. That is the case for the Claimant.

In defence of the claim against the defendant, the Defendant filed a 32-paragraph statement of defence dated 4/10/2019 and called a sole witness.

The Defendant himself testified as the sole witness DW1. In his evidence-in-chief, the DW1 adopted a 29-paragraph witness statement on oath dated 4/10/2019 as his evidence; the said DW1's statement on oath is accordingly adopted as forming part of this judgement.

The gist of the DW1's evidence is that he is not indebted to the Claimant to the tune of \$10,000 or any other amount whatsoever to which the Claimant is claiming from him as loan repayment.

That after he won primary election to contest for senate in 2015, the Claimant informed him on phone that indigenes of Oron in the United States of America were happy about his victory at the primaries and were willing to contribute a token towards his general election.

After the voluntary contributions made by Oron indigenes in U.S.A. for the Defendant, the Claimant through one Mr. Ante E. Okwong one of Oron Kinsmen who lived in Houston, Texas, U.S.A. visited Nigeria called the Defendant and gave him the contributions made in the tune of N2,000,000.00 (Two Million Naira), that was paid in two installments.

The DW1 further stated that after he won the election, the Claimant called to demand that the Defendant recommend her to the Governor-elect, Mr. Udom Emmanuel for an appointment as a Commissioner in the State Executive. He did recommend the Claimant as requested, the request was turned down on grounds that the Governor had already made commitments to people who worked for his election.

That he told the Claimant to exercise patience for some other opening for her effort in coordinating Oron people to donate towards his campaign funds.

That the Claimant thereafter got upset and demanded that the DW1 refund the money she sent through Mr. Ante E. Okwong to him, that the money was not a donation from Oron people but from her personally.

The DW1 further stated that the Claimant is not entitled to the claims sought in this action.

Under cross-examination of DW1 by the Claimant's counsel, the DW1 stated that he got N2,000,000.00 in two (2) tranches as freewill donations after the primaries and before the general elections.

That the Claimant called him between December 2014 and February 2015 that Oron Indigene in United States of America has contributed some money for him. That he has never requested and apply for a loan.

No re-examination, DW1 was discharged and that is the case for the Defence.

The Defendant's Counsel filed a final written address dated 11/3/2020 wherein counsel formulated two issues for determination:

1. Whether there was a contract of loan between the Claimant and the Defendant.
2. Whether the Claimant has discharged the burden of proof or has placed any credible and relevant evidence before this Honourable court to enable the Honourable Court grant her claim.

On Issue 1 as above, it is the submission of learned counsel to the Defendant that a loan agreement is a contract between a borrower and a lender which governs the mutual promises made by each party. See the case of *OLOWU v BUILDING STOCK LTD* (2018) 1 NWLR (Pt 1601) 343 at PP 398 – 399 Paras H – B.

It is submitted that in the instant case there is nothing to show that there was a contract between the Claimant and the Defendant as the essential elements of a contract are absent. See the case of ONUMINYA v ACCESS BANK PLC (2015) 9 NWLR (Pt 1463) 159 at 179 Para G; BPS CONSTRUCTION & ENGINEERING CO. LTD v F.C.D.A. (2017) 10 NWLR (Pt 1572) 1 at 25 Paras B – C.

It is further submitted that there is no evidence to show the terms of contract created between the Claimant and the Defendant and there is no single evidence presented during trial to establish the existence of a fundamental terms as regarding the purported loan of \$10,000.00.

It is the submission of the Defendant's counsel that assuming without conceding that there was a contract, Section 15 of the Money Lenders Act renders contracts made by unlicensed money lender unenforceable. Court is urged to hold that there was no contract of loan between the Claimant and the Defendant.

On Issue 2, it is the submission of counsel to the Defendant that there is no single document before this Honourable Court to show that there was a loan transaction between the parties herein.

It is trite that a court can only act on the basis of the evidence placed before it. See *N.B.C.I v ALFIJIR* (1993) 4 NWLR (Pt 287) 346 at 357 Para C.

That the Claimant has failed to produce adequate credible evidence in support of her case; hence she has not discharged the burden placed on her by law to establish her claim. See case of *ENEMECHUKWU v OKOYE* (2017) 6 NWLR (Pt 1560) 37 at 61 Paras C – D.

It is the contention of the Defendant's counsel that Exhibit A1 and A2 (the Power of Attorney and Certificate) were not tendered in accordance with the Evidence Act as no proper foundation was laid as to their originals and as such ought not to have been admitted in the first place. Court is referred to Section 87 (b) and 89 of the Evidence Act, 2011. Court is urged to expunge them or not to place any weight on the documents. See *AGAGU v DAWODU* (1990) 7 NWLR (Pt 160) Pg 56 ratio 6.

It is submitted that the evidence of PW1 during cross-examination that he does not have personal knowledge of the matter automatically renders his evidence hearsay since PW1 cannot give evidence on what actually transpired but can only relate what the Claimant told him.

See OJO v GHARORO (2006) All FWLR (Pt 316) 197; FRN v USMAN (2012) 3 SC (Pt 1) 128 † 150.

It is also contended that failure of the Claimant to confront the Defendant with documentary evidence to prove that she indeed granted a loan of \$10,000.00 to the Defendant is fatal to her case as every other steps and actions undertaken by the Claimant in her purported loan grant is null and futile as it is a trite principle of law that you cannot build something on nothing. See MACFOY v U.A.C. LTD (1962) AC 153; CCB v EKPERI 29 NSCQR 192.

It is the submission that the failure to call the only vital witness Mr. Ante E. Okwong who is the person that purportedly gave the \$10,000 to the Defendant is fatal to the Claimant's case. See EDOMINE v THE STATE (1996) 3 NWLR 9Pt 438) 530 at 536 Para G; MILLER v STATE (2005) 8 NWLR (Pt 927) 236 at 277 Paras A – C. Court is urged to resolve all issues in favour of the Defendant and hold that the Claimant has failed to discharge the burden of proof placed on her by law and to dismiss the Claimant's case.

The Claimant's counsel filed a final written address dated 23/3/2020 wherein counsel formulated three (3) issues for determination:

1. Has the Defendant admitted collecting money from the Claimant?
2. Has the Defendant provided evidence to show that the money he admitted collecting from the Claimant is a gift that ought not to be returned?
3. Is it the position of the law that this court should order the Defendant to return the amount of money he has admitted collecting from the Claimant?

On Issue 1, it is the submission of the Claimant's counsel, that the Defendant has admitted collecting money from the Claimant through Ante E. Okwong. Court is referred to paragraphs 14, 15, 16, 17 and 26 of the Statement of Defence and paragraphs 12, 13, 14, 15 and 24 of the Defendant's witness statement on oath.

It is trite law that facts admitted need no further proof. See UCHENNA NWACHUKWU v THE STATE (2002) LPELR – 2084 SC; KAMALU & ORS v UMUNNA & ORS (1997) LPELR – 1657 SC.

On Issue 2, it is the submission that the Defendant claimed that the money he received from the Claimant is a donation from Oron indigenes in the United States. However, no atom or shred of evidence was placed before this court to prove this claim. Court is urged to

hold that the averments in the statement of defence has not been proven and should be deemed abandoned. See GODWIN C. ONOVO & ORS v FERTINAND MBA & ORS (2014) LPELR – 23035 (SC).

It is submitted that the Claimant asserted that she gave the Defendant money; the defendant admitted collecting money from the Claimant thus waiving the need for the Claimant to prove same. The Defendant went ahead to assert that the money was given as a gift, a donation, but failed to prove same. Having failed to prove that the money was given to him as a gift, the court should hold that it is a debt that ought to be returned or repaid. See NIPOST v INSIGHT ENGINEERING COMPANY LTD (2006) LPELR – 8240 (CA).

It is contended that the facts in the pleadings of parties before the court, shows that there is a contract of loan between the Claimant and the Defendant, no matter how imperfect, and the court ought to enforce same.

On Issue 3, it is the submission that the discrepancy that the Claimant gave the Defendant \$10,000 while the Defendant said that he was given Two Million (2,000,000.00) in two instalments by Mr. Ante E. Okwong, goes to strengthen the case of the Claimant rather than

weaken it. The Claimant do not know whether Mr. Ante Okwong changed the currency from Dollar to Naira before giving same to the Defendant. Both parties have agreed that the Claimant sent money to the Defendant and the money was sent through one Mr. Ante Okwong.

It is the submission that the amount of money the Defendant admitted to have received from the Claimant ought to be refunded. See the case of OMEGA MARITIME & ENERGY LTD v PRODUS LTD (2018) LPELR – 44675 (CA).

On the issue of the legality or otherwise of the loan, it is the submission that a party who has benefitted from a contract cannot resile from his obligation under such contract on the pretext of illegality. See the case of IDUNORBA v KEYSTONE BANK LTD & ORS (2018) LPELR – 43840 (CA).

It is submitted that the only place where the illegality of the loan contract was raised and argued was in the Defendant's final written address; the said illegality was not pleaded and neither was evidence led on it. Court is urged to enter judgment in favour of the Claimant.

The Defendant's counsel filed a Reply on Points of Law dated 22/5/2020 wherein counsel submitted that the

defendant never admitted that he collected loan from the Claimant nor neither did he enter into any loan agreement or contract with the Claimant. Court is referred to paragraphs 5, 7, 8 and 9 of the Statement of Defence.

It is submitted that a case of a party can be successfully determined by the court vide the party's pleadings and evidence without the final address. See *AGI v PDP* (2017) 17 NWLR (Pt 1595) 386 at 433 Paras E – G; *ZACCELA v EDOSA* (2018) 6 NWLR (Pt 1616) 528 at 546 – 547 Paras H – B.

It is further submitted that the submission of the learned counsel to the Claimant in the final address is not in line with the fact in issue in the Claimant's statement of claim. The Claim of this suit as found in the statement of claim is for \$10,000 loan allegedly granted by the Claimant to the Defendant. However, the Claimant's final address has failed to address the crux of the matter and point to her evidence adduced during trial to assist this Honourable Court to do justice but rather the Claimant's final address introduced fresh issues. It is trite that counsel cannot introduce fresh issues in the final address. See *OMIYALE v*

WEMA BANK PLC (2017) 13 NWLR (Pt 1582) 300 at 332 – 334 Paras D – A.

It is submitted that a community reading of all the authorities cited by the Claimant in her final written address serves no purpose as they were cited out of context and do not apply in the instant case. Court is urged to enter judgment in favour of the Defendant and dismiss this suit with cost.

I have carefully considered the processes filed, evidence of PW1, DW1 and the submission of learned counsel with respect to their respective final written address, I am in one with the Defendant's counsel that the issues that begs for determination are:

1. Whether there was a contract of loan between the Claimant and the Defendant.
2. Whether the Claimant placed any credible and relevant evidence before this court to enable the court enter judgment for the Claimant.

On Issue 1, it is a general principle of law that he who assert must prove. See Section 131(1) of the Evidence Act and the case of OLOWU v BUILDING STOCK LTD (Supra).

It is without doubt that from the pleading of the Claimant, the crux is that sometime in February 2015, the Defendant approached the Claimant for a soft loan of Ten Thousand Dollars to fund his campaign to contest for senate.

Now, a loan agreement is a contract between a borrower and a lender which governs the mutual promises made by each party.

In the case of BPS CONSTRUCTION & ENGINEERING CO. LTD v F.C.D.A. (Supra) the Supreme Court held inter alia as follows:

“A contract is an agreement between two or more persons which creates an obligation to do or not to do a particular thing. Its essentials are competent parties, subject matter, a legal consideration, mutuality of agreement and mutuality of obligation”.

Also in ONUMINYA v ACCESS BANK PLC (Supra) the Court of Appeal held as follows:

“For a contract of an agreement to exist, there has to be an offer by one party to another and an acceptance by the party to whom the offer is made”

In the instant case is beyond paraventure that there is nothing to show that there was a valid contract between

the parties as the essential elements of a contract are absent.

In paragraphs 5(b) of the statement of claim and 6(j) of the PW1's statement on oath, the Claimant averred that sometime in February 2015, the defendant approached her for a soft loan of Ten Thousand Dollars to fund his campaign to contest for senate. However, the Claimant failed to adduce credible evidence whether oral or documentary to support her assertion. That there existed a loan transaction between her and the Defendant. Also there is no evidence of offer and acceptance as required by law.

In *ONUMINYA v ACCESS BANK PLC* (Supra) the Court of Appeal held that parties must reach a consensus *ad idem* for the contract to be regarded as binding and enforceable.

In the instant case, there is nothing to suggest any agreement for a loan facility of \$10,000 between the Claimant and the Defendant. It then follows that the parties were not *ad idem*.

It is also quick to state that there is no documentary evidence to show the terms of contract created between

the parties with respect to the purported loan of \$10,000. Loans as required by Section 4 of the Statute of Frauds to be written or executed by a Deed. Pursuant to that, Section 16(1) of the Money Lenders Act requires as mandatory precedent to issuance of any loan a memorandum in writing of the contract to be made and signed by the parties and the memorandum delivered to the borrower within seven days of execution.

In the instant case, the Claimant has failed to tender any Deed or Memorandum in writing of the contract made by her and the Defendant.

On Issue 2, it is the contention of the Claimant that she gave the sum of \$10,000 to the Defendant as loan through one Mr. Ante E. Okwong.

The Defendant on the other hand debunked the Claimant's claim by stating that he never had any loan transaction with the Claimant but only received the sum of N2 Million in two tranches of N1 Million each from one Mr. Ante E. Okwong being freewill donation from Oron Indigenes in the United States of America (U.S.A.).

In paragraph 5(c) of the Statement of Claim, the Claimant asserted that she transferred the said \$10,000 to

the Defendant's account through one Mr. Ante E. Okwong but failed to lead an evidence in proof of same.

It is rather curious that Mr. Ante E. Okwong who is the only necessary witness in this matter was not called by the Claimant.

It is trite that a party though not bound to call a host of witnesses or even a particular witness if he can prove his case otherwise, but where as in the instant case there is a vital point in issue and there is a witness whose evidence will settle it one way or the other, the failure to call such a witness is fatal. Accordingly, I hold the firm view that the failure of the claimant to call Mr. Ante E. Okwong who is the one through whom the said \$10,000 was paid to the Defendant, is fatal to the case of the Claimant. Mr. Ante E. Okwong is at the centre of this matter and would have assisted this court in unravelling the truth and arriving at the justice of this matter.

It is the contention of the Claimant in her final address that the Defendant admitted collecting the sum of N2 Million and as such the Defendant should be made to pay same.

I am of the considered view that the position of the Claimant's counsel is a misdirection of the issue at hand. Going by the statement of claim, the issue before this court is that of loan transaction of \$10,000 (Ten Thousand Dollars) allegedly granted by the Claimant to the Defendant as claimed and sought by the Claimant in paragraphs 5(c) and 7(a) of her statement of claim. And the defendant consistently denied receiving a loan facility of \$10,000 or any other amount from the Claimant as loan. See paragraphs 5, 7, 8 and 9 of the Statement of Defence.

As rightly pointed out by the Defendant in paragraph 2.5 of his final address, if the production of Mr. Ante E. Okwong as a witness was such a difficult task as submitted by the Claimant in paragraph 1.1 of her final address, was the production of Statement of Account from bank of America showing the transfer of \$10,000 as claimed by the Claimant in paragraph 5(c) of her Statement of Claim also a difficult task? The answer is NO. The bank Statement showing the said transaction is the easiest and simplest document to obtain and tender in a suit of this nature.

In conclusion, I am of the considered view that the Claimant have failed to adduce credible and compelling evidence to warrant this court enter judgment in her favour. This case is accordingly dismissed for lack of credible evidence.

(Sgd)
JUSTICE SALISU GARBA
(PRESIDING JUDGE)
26/06/2020

Claimant's Counsel – We thank the court for the judgment.

Defendant's Counsel – We thank the court for this well-considered judgment.

(Sgd)
JUSTICE SALISU GARBA
(PRESIDING JUDGE)
26/06/2020