

**IN THE HIGH COURT OF THE FEDERAL  
CAPITAL TERRITORY, ABUJA  
HOLDEN AT ABUJA**

**ON WEDNESDAY, 20<sup>TH</sup> MAY, 2020**

**BEFORE HON. JUSTICE SYLVANUS C. ORIJ**

**SUIT NO. FCT/HC/CV/2312/2016**

**BETWEEN**

**ACCESS BANK PLC.**

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**PLAINTIFF**

**AND**

**SENATOR SALIHU HUSSAIN EGYE**

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**DEFENDANT**

**JUDGMENT**

The plaintiff [claimant] instituted this suit on 8/8/2016 in the undefended list. When the suit came up for hearing on 31/1/2017, the Court, upon considering the affidavits of the parties, transferred the suit to the general cause list for plenary trial. The parties subsequently filed their respective pleadings. The plaintiff filed its amended statement of claim on 28/9/2017. The defendant's amended statement of defence was filed on 2/3/2018.

In the amended statement of claim, the plaintiff claims:

An order compelling the defendant to immediately pay the sum of:

- a. N103,761,423.62 [one hundred and three million, seven hundred and sixty one thousand, four hundred and twenty three Naira and sixty two Kobo] being the Principal Loan unsettled for the 1<sup>st</sup> Personal Loan.
- b. N34,697,277.65 [thirty four million, six hundred and ninety seven thousand, two hundred and seventy seven Naira, sixty five Kobo] being the Principal Loan unsettled for the 2<sup>nd</sup> Personal Loan.
- c. N49,524,978.43 [forty nine million, five hundred and twenty four thousand, nine hundred and seventy eight Naira and forty three Kobo] being the Principal Loan repayment due from the month of April, 2016 till the 31<sup>st</sup> of January, 2017 including the interests on the Principal Loans and Penal interest for the unpaid due Principal Loan Repayment.
- d. The Principal Loan Repayment due from the 1<sup>st</sup> of February, 2017, interest on the Personal Loans and Penal interest for the unpaid due Principal Loan Repayment till the Judgment date.
- e. The Principal Loan Repayment due, interest on the Personal Loans due and Penal interest on the unpaid Principal Loan Repayment from the date of Judgment till final Liquidation of same.
- f. Cost of prosecuting the action.
- g. For such further order or other orders as this Honourable Court may deem fit to make in the circumstance of this case.

In proof of its case, the plaintiff called Kingsley ChukwuemekaIwuagwu, its staff, as the PW1. He adopted his statement on oath filed on 28/9/2017 as his evidence and tendered Exhibits A1, A2, B1, B2, C1, C2, D1, D2, E, F, G, H1, H2, J, K, L1 & L2. The PW1 was cross examined.

The defendant testified as DW1. He adopted his statement on oath filed on 2/3/2018 as his evidence. The defendant tendered Exhibits M & N. The DW1 was cross examined.

**Evidence of the Plaintiff:**

The evidence of PW1 is that the defendant is a customer of the plaintiff and operates a Current Account No. 0696053339 and a former Senator of the Federal Republic of Nigeria. By offer letter dated 6/5/2015 [Exhibit B1], the plaintiff offered the defendant a personal loan for the sum of N150 million. On 8/5/2015, defendant signed a memorandum of acceptance. The plaintiff by way of security for the loan demanded and received a letter of domiciliation of the defendant's salaries and allowances with it as part of the conditions precedent to draw down. As requested by plaintiff, the defendant submitted to it a duly executed personal loan application form [Exhibit A1], a direct debit mandate dated 7/6/2015 [Exhibit C1] and a letter of lien/set-off dated 5/6/2015 [Exhibit L1]. By letter dated 17/6/2015 [Exhibit D1], the defendant requested for a draw down and on 19/6/2015, the plaintiff disbursed N150 million into the defendant's account.

By a letter of offer dated 12/8/2015 [Exhibit B2], the plaintiff offered the defendant another personal loan of N50 million; the defendant signed a memorandum of acceptance on the same day. As requested by the plaintiff, the defendant submitted to it a duly executed personal loan application form dated 13/8/2015 [Exhibit A2], a direct debit mandate [Exhibit C2], a letter of lien/set-off dated 12/8/2015 [Exhibit L2] and his letter dated 13/8/2015 [Exhibit D2] authorizing the Director of Finance of his employers to domicile all salaries, allowances, severances and other benefits to the plaintiff throughout the tenor of the facility. On 14/8/2015, the plaintiff disbursed the sum of N50 million into the defendant's account. In March, 2016, by which time the defendant had ceased to be in the National Assembly, he breached the terms of the loan by his failure to adhere to the repayment plan. This action terminated the offer letters.

The defendant utilized the facilities and has failed to pay back. The defendant had two repayment schedules for the two personal loans [Exhibits H1 & H2], which stipulated the amount to be paid every month as principal loan repayment. In April, 2016, the defendant defaulted in the repayment schedule and thereby breached the terms of the offer letters. As at 26/7/2016, the defendant's indebtedness to the plaintiff was the sum of N200,029,305.49. The PW1 narrated the efforts made by the Law Firm of Emeka Etiaba, SAN, the plaintiff's Debt Recovery Agents, to recover the debt. The defendant later met the plaintiff and pledged a property situate at Workers village in Lafia, Nasarawa State. The defendant's letter titled: *Proposition for Settlement of Loan*

*Facility from Access Bank* is Exhibit F. The defendant added a Valuation Report [Exhibit J], which valued the property at N170 million in lieu of the debt. The plaintiff independently valued the property and its value was N60,667,000.00, which was not sufficient as collateral for the facilities granted.

Kingsley ChukwuemekaIwuagwu [PW1] further stated that after the filing of this suit, the defendant made some payments into his [defendant] account. These are: [i] N250,000.00 on 7/10/2016; [ii] N150,000.00 on 4/11/2016; [iii] N500,000.00 on 6/12/2016; [iv] N1 million on 21/12/2016; and [v] N5 million on 27/1/2017. As at 8/2/2017, the plaintiff received from its credit department the sums of N103,761,423.62, N34,697,277.65 and N49,524,978.43 respectively claimed in reliefs [a], [b] & [c] as the debt owed by the defendant. The defendant's statement of account in the plaintiff is Exhibit G. The defendant has failed to pay his indebtedness despite demands to do so.

During cross examination, PW1 stated that from the first page of the offer letters [Exhibits B1 & B2], the tenor of the facilities has not elapsed. However, the fourth page of the offer letters makes provisions for event of default. The proximate cause of the cancellation of the facilities was that there was a change in circumstances; the defendant lost his seat in the Senate and he started defaulting in repayment of the loan facilities. The letters of offer made provision for change of circumstance. N24,000,000.00 has been paid on the two accounts. The statement of account [Exhibit G] lumped the two loans and the interests on the loans together. PW1 explained that every account has one

bank statement. Loans come with different loan references; he stated the reference codes of the two facilities. All principal and interest repayment on these loans in this account come with their reference codes.

The PW1 further stated under cross examination that the plaintiff is in receipt of the original right of occupancy of defendant's property known as Mohaus Apartments, Lafia. The plaintiff requested the defendant for the original certificate of occupancy of the said property to enable it do a legal mortgage on it; but the defendant has not produced same. By accepting the original right of occupancy of the property, the plaintiff's intention was to substitute the collateral for the loan but the valuation it received on the property was lower than the amount owed. Besides, defendant refused to give the plaintiff the certificate of occupancy over the property.

**Evidence of the Defendant:**

The evidence of the defendant is that he operates a Current Account No. 0696053339 with the plaintiff. In 2015, the plaintiff offered him loans of N150 million and N50 million upon winning his election as Senator. The collateral for both loans is his salaries and allowances accruable to him as a Senator. He never submitted the letters of lien/set off dated "5<sup>th</sup> June 2016" and "12<sup>th</sup> August 2015". All the correspondences he wrote were in National Assembly letter-head papers. By the offer of loan dated 6/5/2015, the tenor of the loan granted to him was 44 months from 19/6/2015 when the loan was disbursed into his account and not exceeding January, 2019. The collateral for the loan

agreement is his salary/remuneration account, which became extinguished by virtue of the Judgment of the Court of Appeal dated 10/12/2015 [Exhibit M] nullifying his election, thereby frustrating his loan contract with the plaintiff.

The second loan contract of N50 million stated the tenor of the loan to be 41 months from the date the loan was offered, subject to maturity not exceeding January 2019. The collateral for the loan is his emolument account with the National Assembly which became extinguished by the Judgment of the Court of Appeal that removed him as a Senator. The tenor of the loan contracts still subsists and the plaintiff's decision to call-off the loan and sue him on the same interest rate and capital is unfair, prejudicial and offends the principle of equity and justice. The defendant said he "*shall rely on the defence of frustration of contract as the sole reason for the vitiation of the terms of this loan Agreement*"; and that this suit is "*hasty and premature.*"

Senator Salihu Hussain Egwe further stated that he was inclined to preserve the contract when it got frustrated. He offered the plaintiff a valuation report of his property known as Mohaus Apartment, Workers village Quarters, Lafia, Nasarawa State as collateral to substitute the extinguished collateral, which the plaintiff refused to accept. If the Bank had accepted the collateral, the loan contract would have been preserved despite the intervening act and would have continued until the due date for termination in January 2019. The plaintiff lumped the two loans together and presented a bank statement that does not show the loan account separate from his

account. The statement of account is vague and does not show the true extent of his indebtedness. He is charged the sum of N500,000.00 monthly during the subsistence of the loan agreements, which is apparently excessive of the offer letters.

The defendant also stated that the plaintiff never served on him any letter calling off the loan; and there is no repayment schedule stated in the offer letters. The loan agreements have become frustrated and can no longer be claimed legitimately as all obligations are extinguished by the intervening act. He had made some payments discharging part of the loans. He appointed Mr. Joseph Soheme, an international financial consultant, whose report dated 21/4/2017 shows the debt due to the plaintiff to be N180,704,612.78 as at 18/1/2017. The said report is Exhibit N. Plaintiff's valuation of his property is unreliable and deliberately undervalued.

When the defendant was cross examined, he stated that there is no document to the effect that if he is removed from office as a Senator, he will not repay the loan; but there was an intervening act that made it impossible for him to pay. He has made some repayments since the Court of Appeal removed him from the Senate.

**Issues for determination:**

The defendant's final address was filed on 31/1/2020 by A. A. Ikongbeh Esq. while the plaintiff's final address was filed on 20/2/2020 by Joy Etiaba Esq. On



25/2/2020, N. A. IdakwoEsq. filed the defendant's reply on points of law. On 2/3/2020, Joy EtiabaEsq. adopted the plaintiff's final address. The defence counsel was absent; the Court deemed the final address of the defendant and his reply on points of law as adopted pursuant to Order 33 rule 4 of the Rules of the Court, 2018.

A. A. IkongbehEsq. formulated these two issues for determination:

1. Whether the Court of Appeal Judgment nullifying the defendant's victory as a Senator, and thereby extinguishing the only collateral to the loan contracts, amounts to frustration of the loan contracts and absolves the defendant of liability in this suit.
2. Whether the Court can vary the terms of the loan agreements between the plaintiff and the defendant to determine the liability of the defendant.

Joy EtiabaEsq. distilled four issues for determination. These are:

1. Having regard to the pleadings and evidence led in the suit, whether the defendant is not indebted to the claimant as per the Writ of Summons.
2. Having regard to the terms and conditions of the loans granted the defendant by the claimant, whether the loss of the defendant's

Senatorial seat renders him non-liaible to the indebtedness owed by the claimant frustration [sic].

3. Having regard to Exhibit M, whether the defendant did not misrepresent himself to the claimant during the defendant's application for the personal loan.
4. Having regard to the amount being owed by the defendant, whether the claimant will not have failed in its duty of care to its Depositors if the defendant does not pay back the sums loaned to him.

In the light of the case presented by the parties and the submissions of both learned counsel, there are two issues for determination. These are:

1. Whether the loss of the defendant's seat in the Senate of the Federal Republic of Nigeria by virtue of the Judgment of the Court of Appeal dated 10/12/2015 [Exhibit M] discharged him from the contractual obligation to repay the loans he obtained from the plaintiff.
2. Whether the plaintiff is entitled to its reliefs against the defendant.

## **ISSUE 1**

*Whether the loss of the defendant's seat in the Senate of the Federal Republic of Nigeria by virtue of the Judgment of the Court of Appeal dated 10/12/2015 [Exhibit M] discharged him from the contractual obligation to repay the loans he obtained from the plaintiff.*

It is not in dispute that the plaintiff granted loan facilities of N150 million and N50 million to the defendant based on his applications for personal loans; Exhibits A1 & A2. The terms of the loan facilities for N150 million and N50 million are in the offer letters dated 6/5/2015 and 12/8/2015 [Exhibits B1 & B2], which were accepted by the defendant. The plaintiff disbursed these sums to the defendant and he utilized the funds.

At the time the defendant applied for the facilities and same were granted, he was a Senator of the Federal Republic of Nigeria. As stated in Exhibits B1 & B2, the Repayment Source of the loan facilities was: *“Salaries and allowances accruable to the borrower”* and the Collateral/Support for the loans reads: *“The facility shall be secured with the domiciliation of Salary, Quarterly Allowances and all other remuneration with Access Bank Plc.”* By the Judgment of the Court of Appeal dated 10/12/2015 [Exhibit M], the defendant's election was nullified and he lost his position or seat as a Senator.

The tenor of the loan of N150 million was *“44 months subject to final maturity not exceeding January 2019”* while the tenor of the loan of N50 million was *“41 months subject to final maturity not exceeding January 2019”*. However, some of the terms and conditions of the loan facilities in Exhibits B1 & B2 read:

*The Lender reserves the right to withhold further disbursement, recall or cancel the facility for reasons of default or non-compliance with the Covenants hereunder and the occurrence of any or all of the following events:*

3. *If the Borrower shall commit any breach or fail to observe or perform the other obligations on its part as contained in this offer letter or fails to keep to the agreed repayment terms consistently for two quarters or more.*
  
7. *If any interest due on the facility is not paid on the date thereof, same shall immediately be added to the principal sum outstanding and shall accordingly attract interest at the rate herein stated.*
  
- 10 *All outstanding amounts under this loan shall upon default attract a 1% flat monthly charge.*

Exhibits B1 & B2 also contain clauses under “*Events of Default*”. These include:

*Notwithstanding anything herein before contained, the facility or balance thereof and other monies herein covenanted to be paid whether by way of interest or otherwise shall become immediately due and payable on the demand being made in respect of such on the occurrence of any of the following events:*

1. *If the Borrower shall fail to pay any sum outstanding as and when due.*
  
2. *If the Borrower commits any breach or fails to observe or perform the other obligations on his/her part contained in this offer letter.*
  
3. *If the Borrower stops or suspends or is deemed to be unable to pay his/her debts or admits in writing his/her inability to discharge his/her obligations as they fall due.*

8. *If there should in the opinion of the Bank be a material adverse change in the financial condition of the Borrower.*

The plaintiff's case is that in March, 2016, by which time the defendant had ceased to be in the National Assembly, he breached the terms of the loan by his failure to adhere to the repayment plan. This action terminated the loan agreements.

In his defence, the defendant stated that the collateral for the loan agreements is his salary/remuneration account. The said collateral became extinguished by virtue of the Judgment of the Court of Appeal, which nullified his election thereby frustrating the loan contracts he had with the plaintiff. The defendant therefore relied on the defence of frustration of the loan agreements.

Learned counsel for the defendant posited that parties to an agreement are ordinarily bound by the terms of the agreement; but a frustrated contract is not enforceable. It was argued that the loan contracts became frustrated when the defendant lost his status as a Senator and incidentally the sole collateral to the two loan contracts. Thus, the defendant's obligation in the loan contracts was fundamentally affected by the unforeseen event of his losing his seat. The frustration of the loan contracts when the defendant ceased to be a Senator informed the immediate recall of the loan by the plaintiff. He referred to the evidence of PW1 under cross examination that the proximate cause of the cancellation of the loan was that there was a change in circumstance.

A. A. Ikongbeh Esq. further argued that when the loan contracts were entered into, the defendant had the capability to perform his obligation which is tied to his remuneration and allowances from the National Assembly domiciled with the plaintiff. The clear intention of the parties is to deduct the loan sums at source from the defendant's remuneration account. He submitted that the obligation of the defendant is affected by an extraneous event which was not contemplated when the contract was entered into, thereby frustrating the loan contracts. Learned defence counsel relied on **N.B.C.I. v. Standard [Nig.] Engineering Co. Ltd. [2002] 8 NWLR [Pt. 768] 104** for the principle that where a contract is frustrated, further performance is excused if and only if –

- i. The frustration occurred before the breach of contract.
- ii. The frustration is without the fault of either party.
- iii. The frustration is due to a fundamental change beyond the control and original contemplation of the parties.

Mr. Ikongbeh submitted that the above conditions are present in this case as there is no evidence to negate that the loan contracts were frustrated and the extinguished collateral to the loans is not contemplated in the agreement. The change in the defendant's position made it impossible for him to perform his obligation. He emphasized that from 10/12/2015 [i.e. the date of the Judgment of the Court of Appeal], the defendant's obligation on the contracts became frustrated. He concluded that the sum of N24 million paid by the defendant as

admitted by PW1 absolves him from all other obligations under the loan contracts.

On the other hand, learned plaintiff's counsel relied on **Mazin Engineering Ltd. v. Tower Aluminium [1993] 5 NWLR [Pt. 295] 526** for the principle that frustration does not occur where: [i] the intervening circumstance is one which the law would not regard as so fundamental as to destroy the basis of the agreement; [ii] the terms of the agreement show that the parties contemplated the possibility of such an intervening circumstance arising; and [iii] one of the parties had deliberately brought about the supervening event by his own choice. It was argued that by the clauses and terms in Exhibits B1 & B2, which were accepted by the defendant, both parties contemplated the possibility of such intervening circumstances arising.

Joy Etiaba Esq. also pointed out that from the Judgment of the Court of Appeal [Exhibit M], the defendant's seat as a Senator was challenged in the Election Petition filed on 19/4/2015 before he took the loans on 6/5/2015 and 12/8/2015. Thus, the collateral presented by the defendant to the plaintiff was a subject of litigation. The defendant did not disclose that information to the plaintiff as the collateral he provided [i.e. his remuneration and allowances to be domiciled with the plaintiff] would not have met the conditions precedent to draw down. Counsel argued that the defendant had an obligation to disclose all material facts to the plaintiff, which he failed or neglected to do.

The plaintiff's counsel further submitted that since the defendant knew that the said collateral he presented to the plaintiff was a subject of litigation, the possibility of him losing his seat was within his contemplation. Therefore, the intervening circumstance, i.e. the loss of the defendant's seat as a Senator, did not spring a surprise on him. Learned counsel called the attention of the Court to the principle that he who comes to equity must come with clean hands; citing the case of Witchie v. Okwuorlu [2015] 11 NWLR [Pt. 1469] 95. Joy Etiaba Esq. concluded that the defence of frustration must fail as the defendant failed to prove that the intervening circumstance was beyond his contemplation.

In Nwaolisah v. Nwabufoh [2011] LPELR-2115 [SC], it was restated that frustration occurs wherever the law recognizes that without default of either party, a contractual obligation has become incapable of being performed because the circumstances in which performance is called for would render it radically different from what was undertaken by the contract. It was further held that the events which have been listed by the courts to constitute frustration are:

- i. Subsequent legal changes or statutory impossibility;
- ii. Outbreak of war;
- iii. Destruction of the subject matter of the contract or literal impossibility;
- iv. Government acquisition of the subject matter of the contract; and



- v. Cancellation by an unexpected event like where the other party to a contract for personal service dies or where either party is permanently incapacitated by ill-health, imprisonment etc., from rendering the service he has undertaken.

In Okereke & Anor. v. Aba North LGA [2014] LPELR-23770 [CA], it was held that the import or meaning of frustration of contract is the prevention or hindering of the attainment of a goal and when a contract becomes incapable of being performed by unforeseen circumstances. In Gold Link Insurance Co. Ltd. v. PTF [2008] LPELR-4211 [CA], it was held that for the doctrine of frustration to avail a party, he must show that he is willing and capable of performing his own obligation under the contract but was prevented from doing so by circumstances beyond his contemplation and control.

I have carefully considered the above principles and the facts of the case before me. One significant fact, as argued by Joy Etiaba Esq., is that the defendant's position as a Senator was in contest at the Election Tribunal as at the date he sought and obtained the loan facilities from the plaintiff. As shown in Exhibit M, the Election Petition to challenge the defendant's victory at the senatorial election was filed on 19/4/2015. He did not disclose this material fact to the plaintiff. He offered his salaries and remunerations as a Senator as the collateral for the loan facilities.

The Court agrees with the learned plaintiff's counsel that the loss of the defendant's seat as a Senator at the Election Tribunal was a possibility and this was within his contemplation when he obtained the loan facilities. Since the defendant contemplated the intervening circumstance [i.e. the loss of his position as a Senator], he cannot rely on the doctrine of frustration of contract as a basis for refusing or neglecting to repay the loan facilities.

It is also worthy of note that in **N.B.I.C. v. Standard [Nig.] Engineering Co. Ltd. [supra]**, it was held that for an intervening circumstance to lead to the frustration of a contract, it must be one which must be so fundamental as to destroy the basis of the agreement. I hold the view that the fact that the defendant lost his seat as a Senator - which adversely affected the collateral for the loan facilities - is not so fundamental as to destroy the basis of the loan agreements. It is trite law that a debtor who obtained a loan from a bank has a duty and obligation to repay the loan. In **FCMB v. Rophine [Nig.] Ltd. & Anor. [2017] LPELR-42704 [CA]**, the Court held:

*In the case of Afri Bank vs. Alade [2000] 13 NWLR [685] 591, it was held that a debtor who benefited from a loan or overdraft from a bank has both the moral and legal duty and obligation, express or implied, to repay it as and when due. ... Since the Respondents did not dispute benefiting from the facility granted to them by the Appellant and did not make or prove that they have fully repaid the facility as and when due, they owe both the legal and moral obligation and duty to repay or pay what they owe the Appellant ...*

The defence counsel is correct that when the defendant lost his position as a Senator of the Federal Republic of Nigeria, his salaries and remuneration in that office - which he used as collateral for the loan facilities - no longer accrued to him or was "*extinguished*". However, I am of the respectful opinion that this fact will not discharge him from the moral and legal duty and obligation to repay the money he borrowed from the plaintiff.

It is pertinent to also point out that by the terms and conditions of the loan facilities in Exhibits B1 & B2, which I have earlier quoted, the parties agreed that if the defendant "*shall fail to pay any sum outstanding as and when due*", the amount will "*become immediately due and payable on the demand being made in respect of such ...*" It is settled law that parties are bound by the terms of their contract and in determining the rights and obligations of the parties to a contract, the court must respect the sanctity of contract made by them. See the case of **Idufueko v. Pfizer Products Ltd. [2014] LPELR-22999 [SC]**. In the instant case, by the terms and conditions of the loan facilities in Exhibits B1 & B2, the defendant is bound to repay the outstanding balance of the loan facilities he obtained from the plaintiff.

Let me also remark that from the evidence of the parties, the defence of frustration now put forward by the defendant is an after-thought because after the decision of the Court of Appeal on 10/12/2015, he made some payments to the plaintiff and he made effort to provide his property at Workers' village in Lafia, Nasarawa State as collateral for the loan facilities.

From these acts, it is clear that the defendant knew that the loss of his seat in the Senate did not discharge him from the obligation to repay his debt.

The decision of the Court on Issue No. 1 is that the loss of the defendant's seat in the Senate of the Federal Republic of Nigeria on 10/12/2015 by virtue of the Judgment of the Court of Appeal [Exhibit M] did not discharge him from the contractual obligation to repay the loans he obtained from the plaintiff.

## ISSUE 2

*Whether the plaintiff is entitled to its reliefs against the defendant.*

Learned counsel for the plaintiff stated that Exhibits B1, B2, G, H1 & H2, which are respectively the offer letters, statement of account and the repayment schedules, show the sums claimed by the plaintiff. In paragraph 1.0 of the reply on points of law, the defence counsel stated that *"our pleadings have settled the issue of indebtedness but vehemently deny liability therein because the transaction was frustrated by the removal of the Defendant as a Senator ..."* However, in paragraph 9.0 thereof, the defence counsel argued that the plaintiff failed to discharge the duty of proving interest on the loan facilities.

The offer letter for N150 million [Exhibit B1] stipulated that the *"interest rate for the facility shall be 18% per annum, which shall be subject to review from time to time in line with prevailing money market conditions."* The offer letter for N50 million [Exhibit B2] stipulated that the *"interest rate for the facility shall be 17%*

*per annum, which shall be subject to review from time to time in line with prevailing money market conditions.*" Exhibits B1 & B2 stipulated other charges or fees. The plaintiff also tendered the defendant's statement of account [Exhibit G] to show the credit and debit entries/records in the account. Exhibit G has a debit balance of N49,524,978.43 as at 8/2/2017. The plaintiff also tendered the repayment schedules for the loan facilities of N150 million and N50 million [Exhibits H1 & H2].

In paragraph 12 of the statement of defence, it is averred that the bank statement is *"vague and does not show the true extent of the Defendant's indebtedness. The Defendant requested loan account details and repayment schedule by letter dated February 06, 2017, which was not given to the Defendant by Plaintiff. The said letter is pleaded."* The defendant did not tender the letter pleaded in this paragraph and did not point out how the statement of account failed to show the extent of his indebtedness. Besides, the documents/records relied on by the plaintiff in proof of the sums in reliefs [a], [b] & [c] were attached to the amended statement of claim filed on 28/9/2017. The defendant saw these documents/records before he filed his statement of defence on 2/3/2018. The defendant did not challenge or controvert any of the entries or records in Exhibits G, H1 & H2 in his statement of defence and/or his evidence.

The sums claimed in reliefs [a], [b] & [c] are respectively N103,761,423.62, N34,697,277.65 and N49,524,978.43, which amount to **N187,983,679.70**. In paragraph 20 of the statement of defence, the defendant averred that: *"he*

*appointed Mr. Joseph Soheme, a financial consultant whose report dated 21<sup>st</sup> April 2017 showing the debt due to the Plaintiff to be N180,704,612.78 as at 18<sup>th</sup> January 2017. ...”* The defendant tendered his letter to the plaintiff dated 26/1/2017 titled: *Appointment of Financial Consultant: Current Account No. 0696053339* together with the report of Joseph Soheme as Exhibit N.

Joy Etiaba Esq. submitted that an expert, such as the maker of Exhibit N, must be called as a witness and subjected to cross examination as to his qualifications, experience and the credibility of his opinion to enable the court determine whether his evidence has evidential value or not. It is improper for the Court to rely on the written opinion of an expert who is not called to testify in court because it amounts to a denial of fair hearing to the opposing party. The case of **Attorney General of the Federation v. Abubakar [2007] 10 NWLR [Pt. 1041] 1** was cited to support the submission that the report of Mr. Joseph Soheme [Exhibit N] has no probative value.

In **Attorney General of the Federation v. Abubakar [supra]**, it was held that an expert must be called as a witness and be subjected to cross examination to enable the court determine whether his testimony is of any evidential value or worth. It is improper for a court to rely on the written opinion of an expert who was not called to testify in court because it will amount to a denial of fair hearing to the opposing party in the suit. See also the case of **Obinna Osuoha v. The State [2010] 16 NWLR [Pt. 1219] 364**. Since Joseph Soheme was not

called as a witness, the Court will not rely on his report to determine the defendant's outstanding indebtedness on the loan facilities.

Finally, the defendant averred that the plaintiff's suit is "*hasty and premature*" based on the tenor of the loan facilities as stated in Exhibits B1 & B2, which I had earlier quoted. I agree with learned plaintiff's counsel that from the terms and conditions of the loan facilities, the plaintiff has a right to recall or cancel the loan facilities as the defendant breached the repayment terms. Based on the said terms, I hold that the plaintiff's suit is not hasty or premature.

The decision of the Court on Issue No. 2 is that the plaintiff is entitled to its reliefs [a], [b], [c] & [d] save that: [i] the sum claimed in relief [c] is from April 2016 to 8/2/2017; and [ii] the claim in relief [d] will be from 9/2/2017 till the date of judgment.

In respect of relief [e], I am of the considered view that the interest payable by the defendant from the date of judgment shall be in accordance with the interest rate as stipulated in Order 39 rule 4 of the Rules of the Court, 2018. The said Order 39 rule 4 provides that the Court "*may order interest at a rate not less than 10% per annum to be paid upon any judgment.*" In respect of relief [e], I hold that the interest payable by the defendant from the date of judgment till liquidation of the judgment sums shall be 10% per annum.

## **CONCLUSION**

I enter judgment for the plaintiff against the defendant as follows:

1. An order for the payment of N103,761,423.62 being the Principal Loan unsettled for the 1<sup>st</sup> Personal Loan.
2. An order for the payment of N34,697,277.65 being the Principal Loan unsettled for the 2<sup>nd</sup> Personal Loan.
3. An order for the payment of N49,524,978.43 being the Principal Loan repayment due from the month of April, 2016 till the 8<sup>th</sup> day of February, 2017 including the interests on the Principal Loans and Penal interest for the unpaid due Principal Loan Repayment.
4. An order for the payment of the Principal Loan Repayment due from the 9<sup>th</sup> day of February, 2017, interest on the Personal Loans and Penal interest for the unpaid due Principal Loan Repayment till today [20<sup>th</sup> day of May, 2020].
5. Interest on the above judgment sums at the rate of 10% per annum from 21<sup>st</sup> day of May, 2020 until the judgment sums are paid.
6. Cost of N100,000.00.

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**HON. JUSTICE S. C. ORIJI  
(JUDGE)**



*Appearance of counsel:*

1. Joy EtiabaEsq. for the claimant; with Nancy Shikaan Esq.
2. N. A. IdakwoEsq. for the defendant.