

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

BEFORE HIS LORDSHIP: HON. JUSTICE SALISU GARBA
COURT CLERKS: FIDELIS T. AAYONGO & OTHERS
COURT NUMBER: HIGH COURT TWO (2)
CASE NUMBER: FCT/HC/CV/2729/15
DATE: 17TH JULY, 2020

BETWEEN:

HON. (DR.) OLAIFA IBRAHIM ADENIYI - PLAINTIFF

AND

1. ODE A.O. }
2. VISCOUNT MULTIPURPOSE COOPERATION SOCIETY LTD. } DEFENDANTS

Claimant in court while the Defendants absent.

J.A. Adula holding the brief of M.D. Awolabi for the Claimant.

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

The Defendants are aware of today's date as hearing notice was served on them.

Court – From the proof of service before the court, the Defendants were served with hearing notice against today's date on the 13/7/2020 via substitute means.

In the circumstance, I hold that the Defendants are aware of today's date but they elect not to be in court.

This is the judgment in this suit.

J U D G M E N T

By a writ of summons dated 9/9/2015 and statement of claim. The Claimant claim against the Defendants jointly and severally as follows:

- (a) A Declaration that the Plaintiff is the bona-fide owner of Toyota Camry, 2012 Model, Registration No. LSR 747 AP and that the Defendants do not have the power to keep same in lien.
- (b) A Declaration that the Plaintiff is not indebted to the Defendants thereby lacking the power to auction the property of the Plaintiff being Toyota Camry, 2012 Model, Registration No. LSR 747 AP and any purported auction of same to any person(s) whatsoever is null and void.
- (c) An Order of this Honourable Court directing the Defendants to refund the sum of N2,000,000.00 (Two Million Naira) to the Plaintiff being the amount paid to the Defendant over the amount owed and due amount due being N5,000,000.00 (Five Million Naira), amount paid by the Plaintiff to the Defendants being N7,000,000.00 (Seven Million Naira).
- (d) An Order of this Honourable Court directing the Defendants to return the Plaintiff's Toyota Camry, 2012 Model, Registration No. LSR 747 AP to him forthwith.
- (e) An Order of this Honourable Court directing the Defendants to write a letter of apology to the Plaintiff for the ill-treatment, exploitation, psychological torture and

threats the Plaintiff has been exposed to by virtue of the Defendants unprofessional and unethical actions/inactions in relation to the transaction herein.

- (f) An Order of this Honourable Court directing the Defendants to pay to the Plaintiff the sum of N50,000,000.00 (Fifty Million Naira) as general damages.
- (g) An Order of this Honourable Court directing the Defendants to pay the Plaintiff the sum of N1,000,000.00 (One Million Naira) for cost of this action.

In prove of the above claim, the Claimant filed a 26-paragraph Amended Statement of Claim and called sole witness.

The Claimant himself testified as the sole witness PW1. In his evidence-in-chief, the PW1 adopted a 21-paragraph Witness Statement on Oath dated 9/9/2015 as his evidence; the said PW1's evidence is accordingly reproduced as follows:

1. "That I am the Plaintiff in this suit and by virtue of which facts herein are within my knowledge.
2. That I sought credit assistance from the 1st Defendant sometime in February, 2014 to execute some pending financial obligations against some credit expectations from 3rd party commitment to me.
3. That I was advanced N4,000,000.00 (Four Million Naira) cash by the 1st Defendant with the understanding that I would issue a post-dated cheque of N5,000,000.00 (Five Million Naira) thereon as final payment of the afore-mentioned N4,000,000.00.

4. That I issued an undated cheque of N5,000,000.00 (Five Million Naira) against the credit expectations from the 3rd party commitments with the understanding that the cheque will be dated by the 1st Defendant upon being informed of the fulfillment of the said commitment by the 3rd party.
5. That the 1st Defendant equally requested that I deposit (as security) my Toyota Camry, 2012 Model, Registration No. LSR 747 AP valued N7,000,000.00 (Seven Million Naira) with insurance cover and the original particulars which I deposited with the 1st Defendant same February, 2014.
6. That I had an understanding with the 1st Defendant that I would call him (1st Defendant) to present the cheque immediately the account is funded by the 3rd party mentioned in paragraphs 3 & 4 above and that the 1st Defendant should equally call me before presentation of the cheque.
7. That the 1st Defendant called to speak with me few days to day he presented the cheque and I told him (1st Defendant) that the account was yet to be funded, but promised to send some cash (as part payment) to the 1st Defendant through other sources.
8. That I requested the 1st Defendant to provide me with the account details into which he wanted the money paid and 1st Defendant accordingly sent to me, the following accounts details via SMS: Diamond Viscount MCs Resources Ltd – 0034428794 and Viscount Multipurpose Cooperative Society – 0122442295.

9. That against my advice/instruction, 1st Defendant presented the above mentioned cheque when the account was not funded surreptitiously and ostensibly to use the cheque as bait to exploit me.
10. That I have since paid up the value of the said cheque to the Defendants via the accounts provided by the 1st Defendant as captured in paragraph 8 above.
11. That rather than return the cheque to me as I have severally demanded, the 1st Defendant retains same and continues to use it as an instrument of threat, intimidation and cesspit pipe to siphon money unduly from me. This he has been doing by sending to me series of unpleasant text messages.
12. That through the use of threat arising from the aforementioned cheque, the 1st Defendant has succeeded in forcing me to pay the total sum of N7,000,000.00 (Seven Million Naira) which is N2,000,000.00 (Two Million Naira) above the amount owed and the value of the said cheque – N5,000,000.00 (Five Million Naira).
13. That in furtherance of the afore-mentioned threat, the Defendants wrote me a letter dated 25th August, 2014 which letter contained demand for the sum of N9,000,000.00 (Nine Million Naira), threat to auction my car for N3,300,000 (Three Million, Three Hundred Thousand Naira), and threat to use the above-mentioned cheque as basis to force out money from me.

14. That the Defendants acknowledged (in the said letter of 25th August, 2014) receipt of N3,000,000.00 (Three Million Naira) from me between February and August 2014.
15. That, till this material time, the Defendants are keeping in lien my Toyota Camry, 2012 Model, Registration No. LSR 747 AP despite collecting from me the sum of N2,000,000.00 (Two Million Naira) over and above the amount due and owed N5,000,000 (Five Million Naira) the 1st Defendant.
16. That when the threat ceases to abate after overpayment to the defendants of the sum of N2,000,000.00 (Two Million Naira), I approached my Solicitors in the law firm of M.D. OWOLABI & CO and instructed them to intervene on my behalf.
17. That my Solicitors wrote a letter to the Defendants dated 5th June, 2015 wherein they demanded on my behalf and pursuant to my instruction, return of my Toyota Camry, 2012 Model car, Registration No. LSR 747 AP, refund of the overpayment of N2,000,000 (Two Million Naira) and an apology for the undeserving treatment meted out to me.
18. That the Defendants, responded to the said letter via a letter dated 11th June, 2015 wherein he made recourse to insults and invectives rather than deny or sanction the contents of my Solicitor's letter.
19. That despite the intervention of my Solicitors through their letter of 5th June, 2015, the 1st Defendant has refused to cease his use of threat and intimidation by sending text messages to me up till 20th July, 2015 wherein he has

consistently made undeserving demands from me for more money.

20. That despite notice of demand for refund of overpayment of the amount owed by me and due to the 1st Defendant, the defendants have refused, neglected and ignored to refund to me the N2,000,000.00 (Two Million Naira) paid over the amount owed and/or return my Toyota Camry 2012 Model car, Registration No. LSR 747 AP purportedly held in lien for the money which has been paid back".

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

1. Certificate dated 4/9/2015 – Exhibit A.
2. 10 copies of Text Messages – Exhibit B1 – B10.
3. A letter dated 25/6/14 – Exhibit C.
4. Letter dated 17/6/15 – Exhibit D.
5. Letter dated 19/6/15 – Exhibit E.

Under cross-examination of the PW1 by the Defence Counsel, the PW1 stated that it is true he requested for N5 Million as loan for immediate business needs but he was given N4 Million in cash. The 1st Defendant said they were removing the sum of N1 Million interest upfront. That the PW1 signed for N5 Million but he was given N4 Million. The PW1 stated further that he deposited his Toyota Camry car as collateral to the loan. He did not transfer the ownership of the said car to the Defendants and he never gave the Defendants the authority to sell the car. The Claimant also stated that an interest of 20% percent was charged to the

loan granted him. That the interest was not charge per month. The 20% of N5 Million is N1 Million. There was no agreement that the Claimant will pay interest beyond N1 Million on the loan.

The PW1 further stated that by August, 2014, he had paid the sum of N3 Million and he paid the remaining additional N4 Million after then. The payments were made in the accounts provided by the Defendants.

The witness stated that he will be surprise if the account of the 1st Defendant is produce that will show that he paid N5 Million instead of N7 Million.

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

In defence of this case, the Defendants filed a 32-paragraph Joint Statement of Defence dated 2/11/2015 and also called a sole witness.

D I C Ijiewere Ehimen the in-house counsel of the 2nd Defendant testified as the DW1. In his evidence-in-chief, he adopted a 57-paragraph witness statement on oath dated 27/3/2017 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 the 2nd Defendant granted credit facilities/loan to the Claimant in the tune of N5 Million; that the Claimant willfully offered to issue the Defendants with a post-dated cheque of N5 Million only and assured the Defendants of

the unfailing possibility of crediting their account with the said amount.

That the Claimant deposited the car in question as collateral for the said credit facility willingly without being forced to deposit the said car as security.

The DW1 further stated that the interest chargeable on the said sum of N5 Million is placed at the rate of 20% (i.e. N1 Million) every 30 days.

That the interest in the said credit facility has continued to rise and accumulate and stands at the sum of N25 Million as at 6/10/2015. That out of the total indebtedness of N25 Million, the Claimant had only paid the sum of N5 Million leaving the sum of N20 Million as the outstanding and unpaid balance.

The witness further stated that the Defendants were in lawful possession of the Toyota Camry car which they held as security for the said credit facility. That the said car has since been sold to a willing and ready buyer pursuant to the Defendant's right to do so.

That the Claimant is not entitled to any of the unfounded reliefs sought same being a failed effort at gold-digging. Court is urged to dismiss this case.

In the cause of DW1's evidence, the following documents were admitted as exhibits:

1. Copy of Transfer of Ownership dated 14/2/14 and Authority to Sell dated 14/2/14 – Exhibit F1 and F2.
2. Copy of the Credit Request Form dated 13/2/14 – Exhibit G.
3. Copy of the Disbursement Form dated 14/2/14 – Exhibit H.
4. Statement of Account dated 6/10/15 – Exhibit I.
5. Application for Loan of N5 Million – Exhibit J.
6. Copy of Ecobank Cheque dated 14/3/14 – Exhibit K.

Under cross-examination of DW1 by the Claimant's counsel, the DW1 stated that all that transpired between the Claimant and the Defendants he was not there but they have the full account.

That the loan given to the Claimant by the 2nd Defendant, the car of the Claimant was taken as collateral. The loan was guaranteed by a grant.

The DW1 further stated that the Claimant gave a post-dated cheque of N5 Million as a pre-condition for granting the loan. If one presented the cheque and got a value of it, the Defendants will only ask for interest of one month as the cheque was for the capital.

That the reason for receiving the car is for the 2nd Defendant to liquidate the loan in the event the Claimant failed to repay the loan. That the 2nd Defendant received only N5 Million from the Claimant. And that the Claimant's car was also sold for N3 Million after the Claimant was unable to liquidate the loan.

No re-examination, DW1 was discharged.

The Defendant was foreclosed from calling their subpoenaed witness after several opportunities was given to them to so do.

It is pertinent to state here that the Defendant's counsel last appeared before this court in this case on 18/10/18 and since then the Defendants and counsel has failed to appear even after several hearing notices served on them.

The Claimant's counsel filed a final written address dated 17/2/2020 wherein counsel formulated two issues for determination:

1. Whether the Claimant has not discharged himself of the burden placed upon him by law in this case to entitle him to the reliefs sought on the face of the writ of summons?
2. Whether having regard to the evidence adduced at the trial of this case, the Defendants could be said to have proved requirements which entitles them to the reliefs sought in their counter claim.

On Issue 1, it is the submission of counsel to the Claimant, that the Claimant has discharged himself of the legal burden of proof in this case to entitle him to the grant of all the reliefs sought on the face of his writ of summons.

It is submitted that the evidence of DWI under cross-examination goes to the root of the Claimant's case as they clear all hurdles and solve all puzzles consciously created around the Claimant's case by the Defendants. In other words, they lay bare the intention and agreement of the parties to the loan as per

repayment. That the Claimant's Toyota Camry, 2012 Model car which was valued by the Defendants at N7 Million as capable of being used to liquidate the loan in the event that the Claimant defaults.

It is further submitted that there is no evidence before the court to ascertain the actual amount the Claimant's car was purportedly sold by the Defendants assuming it was truly sold.

It is the contention that if the Defendants had not intended unfair dealings with the Claimant, the defendants ought to have resorted to the collateral to liquidate the loan in accordance with the agreement of parties the moment default is recorded.

It is the submission that the Claimant asked for a loan of N5 Million. If he had been given the exact N5 Million, he would have paid back N6 Million since 20% interest on N5 Million is N1 Million but because the interest had been deducted upfront, he was made to sign a cheque of N5 Million as full and final payment of the loan.

It is trite law that when the intention of parties to a transaction is plainly discernable, the court is duty bound to give effect to that which they freely entered into or agreed upon without reading extraneous meaning into their intention. See *AJAGBE v IDOWU* (2011) 37 WRN 1 at 19.

It is further submitted that since the evidence before the court has shown that the Claimant is not a registered member of the 2nd Defendant, it will be safe to submit that all the rules and statutory

provisions applicable under the Cooperative Society Act Cap 488 Law of FCT are not binding on the Claimant. It is also submitted that the 1st Defendant who is not a registered or licensed financial institution cannot legally charge interest on the financial assistance rendered to the Claimant as that will violate Section 2 and 5 of the Money Lenders Act. Court is urged to enter judgment for the Claimant.

Issue 2, on this issue I am of the considered view that it is an issue for the counter claim.

It is worthy of note that upon being served with the Claimant's final written address, the Defendants in their wisdom elected not to file any final written address, we are then left with only the final written address of the Claimant.

I have carefully considered the processes filed, evidence of PW1, DW1 and submission of learned counsel to the Claimant M.D. Owolabi Esq., I am in one with counsel that the sole issue that calls for determination is whether the Claimant has not discharged himself of the burden placed upon him by law in this case to entitle him to the reliefs sought on the face of the writ of summons?

It is trite law that he who assert must prove. See Section 133 of the Evidence Act.

It is the evidence of the Claimant that he approached the Defendants for financial assistance to the tune of N5 Million for immediate business need; but was given N4 Million cash with the

understanding that the Defendants were deducting the sum of N1 Million representing 20% interest upfront.

It is the contention of the Defendants that the interest of 20% was to run on monthly basis. However, in line with the Disbursement Form (Exhibit H) it is clear that the payment of 20% interest was to run upfront and back and not on monthly basis.

The DW1 under cross-examination corroborated the above stated fact in Exhibit H when he stated as follows:

“If one presented the cheque and got a value of it, we will only ask for interest of one month”

It is also in evidence that the Claimant issued a post-dated cheque of N5 Million to be cashed by the 2nd Defendant upon funding the account as final payment of the loan and interest. That the Claimant and the 1st Defendant had an understanding that the PW1 would call the 1st Defendant to present the cheque immediately the account is funded, but against the PW1's advice/instruction, the 1st Defendant presented the cheque when the account was not funded.

It is also the evidence of the Claimant that he has since paid up the value of the said cheque to the Defendants via the accounts details provided by the 1st Defendant i.e. Diamond Viscount MCs Resources Limited – 0034428794 and Viscount Multipurpose Co-operative Society – 0122442295/

The DW1 under cross-examination further corroborated the above fact when he stated thus:

“The 2nd Defendant received only N5 Million from the Plaintiff; the money was paid into the accounts of the 2nd Defendant”

It is without doubt that going by the “Disbursement Form” Exhibit H the intention of the parties that the total amount of the Loan/Credit Facility is N5 Million on an interest of 20% payment upfront.

It is trite law that when the intention of parties to a transaction is plainly discernable, the court is duty bound to give effect to that which they freely entered into or agreed upon without reading extraneous meaning into their intention. See the Supreme Court case of AJAGBE v IDOWU (2011) 37 WRN, Pg 1 at 19 Line 30 – 35.

It is also not in dispute that the Claimant deposited his Toyota Camry, 2012 Model, Registration No. LSR 747 AP as collateral for the said Credit Facility.

It is the evidence of the DW1 that the said car has been sold for the sum of N3 Million; that by Exhibit F1 and F2 the car will be sold after 60 days.

A cursory look at Exhibit F1 (Transfer of Ownership) before ownership is transferred it must be authorized by the 2nd Defendant and also by Exhibit F2 (Authority to Sell) before the Claimant's car will be sold it must be authorized for sale by the 2nd Defendant.

It is without doubt that a close perusal at the said Exhibits shows clearly that there was no authorization for transfer of ownership and authority to sell by the 2nd Defendant.

The DW1 also corroborated the above fact when he stated under cross-examination thus:

“The last column of Exhibits F1 and F2 are blank”

From the foregoing, it is clear that the Defendants had no authority to transfer ownership and or sell the Claimant's car.

I must also state here that there is no credible evidence and/or sufficient material that the Claimant's car was sold to a willing and ready buyer as claimed by the DW1 in paragraph 24 of his statement on oath.

The question that begs for answer is who is the willing and ready buyer that purchased the car. It is also of note that the receipt for the purported sale of the car was never presented to this court.

Not finding answer to the above question raises doubt that the said car has been sold, which led credence to the evidence of PW1 under cross-examination when he stated as follows:

“I was told through a letter that the car had been sold but I later discovered that my cousin David Lawale who introduced me to Mr. Ode (1st Defendant); that the car was in the possession of the 1st Defendant”

This piece of evidence was never contradicted in any material way by the Defendants.

It is also not in doubt that by Exhibit G the Credit Request Form David Lawale stood as guarantor for the Claimant. The last paragraph of the said Exhibit G reads as follows:

“I David Lawale willingly accept to pay the guaranteed amount should and when default”

And same was duly signed by him on 13/2/2014.

In this trial there is no iota of evidence before this court that the guarantor was ever approached for the repayment of the loan facility and he renege on same.

It is also not in doubt that the Claimant have paid the sum of N5 Million given to him as credit facility by the 2nd Defendant. This was also admitted by the DW1 under cross-examination to the effect that the 2nd Defendant received only N5 Million from the Claimant.

The Claimant on his own part contended that he paid to the Defendant the sum of N7 Million but failed to provide sufficient and credible evidence for the said payment.

In conclusion, I am of the considered view that the Claimant has adduced credible evidence to warrant the judgment of this court in his favour.

Accordingly, judgment is hereby entered in favour of the Claimant against the Defendants jointly and severally as follows:

1. That the Claimant is the bona-fide owner of Toyota Camry, 2012 Model, Registration No. LSR 747 AP and that the Defendants do not have the power to keep same in lien.
2. That the Claimant is not indebted to the Defendants; haven paid the credit facility granted to him by the Defendants.
3. The Defendants are ordered to return the Claimant's Toyota Camry, 2012 Model, Registration No. LSR 747 AP to him forthwith.
4. The sum of N4,000. 00 is assessed as cost of this action.

(Sgd)
JUSTICE SALISU GARBA
(PRESIDING JUDGE)
17/07/2020

Claimant's Counsel – We are very grateful for the judgment.

(Sgd)
JUSTICE SALISU GARBA
(PRESIDING JUDGE)
17/07/2020

JUDGMENT IN THE COUNTER CLAIM

The Defendants/Counter Claimant filed a counter claim against the Claimant/Defendant to the counter claim, and claims as follows:

1. A Declaration that the Claimant's failure, neglect and blatant refusal to repay the credit facility granted to him by the Defendant/Counter Claimants and the accumulated interest, is a breach of contract and violation of the terms and conditions governing the credit facility.
2. A Declaration that the Defendants/Counter Claimants are entitled to the sum of N20 Million only being the outstanding and unpaid balance of the said credit facility and a cumulated interests thereon due to them as at the date of this counter claim.
3. An Order directing the Claimant/Defendant to the Counter claim to pay to the Defendants/Counter Claimants the sum of N20 Million only being the outstanding and unpaid balance of the said credit facility and accumulated interests thereon due to the Defendants/Counter Claimants as at the date of this counter claim.
4. An Order that the Claimant shall pay to the Defendants/Counter Claimants the interests that shall invariably accumulate on the said credit facility during pendency of this suit, up to and including the date of delivering of judgment.

5. An Order directing the Defendants to the counter claim to pay the sum of N10 Million only to the Defendants/Counter Claimants as general damages.
6. An Order directing the Claimant to pay the sum of N10 Million to the Defendants/Counter Claimants as special damages.
7. An Order directing the Defendants to counter claim to pay the sum of N2 Million only to the counter claimants as cost of this suit as per their solicitor's receipt of payment of the said amount in pursuance of this suit.
8. 10% post-judgment interest on the entire judgment sum till same is fully and finally liquidated.

In prove of this counter claim, the Defendants/Counter Claimants filed a 23-paragraph counter claim dated 2/11/2015 and called a sole witness.

D I C Ijewere Ehimen testified as DW1. In his evidence-in-chief, he adopted a 57-paragraph witness statement on oath particularly paragraphs 32 to 57 dated 27/5/2017 as his evidence to the counter claim; the said DW1's statement on oath is accordingly adopted as forming part of this judgment.

The Claimant/Defendant to the counter claim filed a 4-paragraph Defence to Counter Claim and also testified as DW1. In his evidence-in-chief, the Defendant to the counter claim adopted a 4-paragraph statement on oath dated 11/5/2017 as his evidence; the said DW1's statement on oath is accordingly adopted as forming part of this judgment.

I am of the firm view that in the light of the judgment just delivered in the substantive suit, it would amount to an academic exercise and an exercise in futility to delve into the substance of this counter claim, on the ground that the issues of the counter-claim has been resolve in favour of the Claimant/Defendant to the Counter Claim in the substantive suit.

Furthermore, it is trite law that this court has the power to look into its record. And from the record of the court, it is clear that the appropriate filing fees for the sum claimed in the counter claim has not been paid going by Order 65 Rule 1 and Item 1 part 1 of the First Schedule of the Rules of this Court 2018.

In the instant case, the amount paid by the counter claimant as filing fees is N500 which cannot be the appropriate filing fee for a counter claim of over N20 Million.

In conclusion, I hold the considered view that there is no substance in the counter claim, it is accordingly dismissed.

(Sgd)
JUSTICE SALISU GARBA
(PRESIDING JUDGE)
17/07/2020

Claimant's Counsel – We are very grateful for the judgment.

(Sgd)
JUSTICE SALISU GARBA
(PRESIDING JUDGE)
17/07/2020