

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

ON MONDAY, 21ST SEPTEMBER, 2020

BEFORE HON. JUSTICE SYLVANUS C. ORIJI

SUIT NO. FCT/HC/CV/881/2016

BETWEEN

CHIOMA MIRABEL ANYADUBA --- PLAINTIFF

AND

**1. CHUKWUEMEKA AGOROM }
2. OLUWATAYO FASHOGBON } DEFENDANTS**

JUDGMENT

The plaintiff instituted this action on 5/2/2016 under the undefended list. The first claim of the plaintiff was an order mandating the defendants to pay her the sum of N5 million being the total principal sum she granted to the 1st defendant as loan and same was guaranteed by 2nd defendant. The plaintiff also claimed N500,000 per month from 3/7/2015 till judgment being 10% interest per month on the principal sum of N5 million. The third claim was 10% interest per month on the judgment sum until the judgment sum is fully paid. The matter was before *His Lordship, Hon. Justice M. M. Dodo [now Retired]*.

After considering the affidavits of the parties, His Lordship entered judgment for the plaintiff against 1st defendant on 3/5/2016 for the admitted sum of N3 million and 10% interest. The remaining part of the claims was transferred to the general cause list for trial. The parties were directed to file and serve their pleadings.

The pleadings in this case are: [i] the plaintiff's statement of claim filed on 17/6/2016; [ii] the 1st defendant's statement of defence filed on 1/7/2016; [iii] the 2nd defendant's statement of defence and counter claim filed on 29/6/2016; and [iv] the plaintiff's reply to the 1st & 2nd defendants' statements of defence and defence to 2nd defendant's counter claim filed on 19/9/2016.

In paragraph 15 of the statement of claim, the plaintiff claims the following reliefs against the defendants jointly and severally:

1. An order mandating the defendants to pay to the plaintiff the sum of N2,000,000.00 [Two Million Naira] only being the outstanding sum that makes up the total principal sum of N5,000,000.00 the plaintiff granted the 1st defendant and same was guaranteed by the 2nd defendant.
2. An award of N200,000.00 [Two Hundred Thousand Naira] per month to the plaintiff, commencing from 3rd July 2015 till judgment is delivered, being 10% interest per month on the outstanding sum of N2,000,000.00 granted the 1st defendant.

3. An award of 10% interest per month on the judgment sum being post-judgment interest on the total judgment sum until all the judgment sums are fully liquidated.

In paragraph 4 of his counter claim, the 2nd defendant claims these reliefs against the plaintiff:

1. A declaration that the letter of undertaking dated 14th October, 2015 having been made under duress is invalid and of no legal effect.
2. A declaration that the 2nd defendant was wrongfully joined in this suit by the plaintiff.
3. The sum of N350,000.00 [Three Hundred and Fifty Thousand Naira] only which the 2nd defendant paid to his lawyers for his representation in this matter as cost of his defence.

In proof of her case, plaintiff called 3 witnesses: Mrs. Christiana ChikaodiliAnyaduba [PW1], ObiomaAnyaduba [PW2] and the plaintiff [PW3]. The 1st defendant testified in his defence and 2nd defendant testified in his defence.

Case of the Plaintiff:

Evidence of the Plaintiff, Chioma Mirabel Anyaduba [PW3]:

The plaintiff stated that the 1st defendant is the managing director of The Uphill Grind Ltd.; he is the childhood friend of her brother [Mr.AnyadubaObioma]. The 1st defendant solicited for the sum of N5 million from her in order to facilitate his businesses and promised to pay 10% monthly interest on the amount and to pay back the principal sum upon demand. The 1st defendant brought the 2nd defendant to her who assured her that in the event of failure by the 1st defendant to pay as proposed, he will pay her whatever amount was outstanding in the transaction. She accepted to assist the 1st defendant on the above terms but on instalmental advancement of the principal sum as she did not have the bulk sum of N5 million to give to the 1st defendant at once. This was accepted by all the parties.

On 9/2/2015, she gave her brother [ObiomaAnyaduba] the sum of N500,000 to pay into the 1st defendant's account number 2080718747 in Zenith Bank but he paid in N300,000 into the account on that day and gave N200,000 cash to the 1st defendant. She also asked her friend [Prince ChineduOgbuefi] and her mother [Mrs. Christy Anyaduba] to pay the sums of N1 million and N500,000 on 24/3/2015 and 25/5/2015 respectively into the 1st defendant's Diamond Bank account number 0047522360 by the account name: *The Uphill Grind Limited*. They paid the monies in furtherance of the understanding/agreement she had with the defendants. The above payments are in addition to the N3 million she paid to the 1st defendant in her name, which had been admitted and judgment entered on 3/5/2016.

The plaintiff further testified that her brother, her friend and her mother acted as her agents in paying the said sums of money into the 1st defendant's account. The parties to this suit drew up two separate agreements to cover the sum of N3 million. No written agreement was drawn up to cover the N2 million, but it was agreed that all the amounts given to the 1st defendant be treated in the same terms as the ones that were written. At all times prior to the filing of this suit, the defendants have always accepted that she paid a total of N5 million to the 1st defendant and that explains why in two letters of undertaking to repay, the defendants referred to a total of N5 million as the money collected from her by the 1st defendant. In spite of the letters of undertaking and pleas from the defendants to be given more time to pay her, they have failed or refused to pay her.

The plaintiff [PW3] tendered the Letter of Undertaking dated 14/10/2015 signed by the 1st defendant and also by the 2nd defendant as Surety as Exhibit A; and the Application for Undertaking dated 8/12/2015 signed by the 1st defendant as Exhibit B.

When the plaintiff was cross examined by counsel for the 1st defendant, she stated that Exhibits A & B were made in her house. There was no agreement for the N2 million because the monies that made up the N2 million were paid in her absence. She is not a registered money lender.

During cross examination of the plaintiff by counsel for the 2nd defendant, she stated that she met the 2nd defendant the first day he came to her house with 1st defendant to ask for the money. He said he would have given 1st defendant the money if he had it. The 2nd defendant gave her his card on that day. Her mother was aware that the defendants were in the house [where she lives with her mother and siblings] on the day they came and the purpose of their coming. She is not aware that: [i] the 1st defendant was arrested on 14/10/2015 by Policemen from Force CID Headquarters, Area 10, Abuja based on her petition arising from the alleged loan transaction; [ii] the 2nd defendant went to the Police on that day to take the 1st defendant on bail; [iii] the writing of the Undertaking [Exhibit A] by the 1st defendant was a condition by the Police for his bail. It is not true that the 2nd defendant signed [Exhibit A] as surety for the bail of the 1st defendant.

In the course of cross examination of the plaintiff, the 2nd defendant's counsel tendered the two loan agreements respectively dated 16/4/2015 [for N1 million] and 3/6/2015 [for N2 million] between the 1st defendant and plaintiff as Exhibits C & D. The plaintiff confirmed that the name of the 2nd defendant was not mentioned in Exhibits C & D; but maintained that she had business with the 2nd defendant.

Mrs. Christiana Chikaodili Anyaduba [PW1]:

The evidence of PW1, the plaintiff's mother, is substantially the same as the evidence of the plaintiff. PW1 confirmed that on 25/5/2015, the plaintiff asked

her to pay N500,000 into the 1st defendant's account number 0047522360 in Diamond Bank in the name of The Uphill Grind Ltd. She [PW1] paid in the money on the said date in furtherance of the understanding or agreement between the plaintiff and the defendants. She acted as agent for the plaintiff in paying the said money into 1st defendant's account. When the defendants failed to repay the money collected from the plaintiff, she called 1st defendant and the plaintiff. The 1st defendant admitted in the presence of her son that he collected N5 million from the plaintiff and that the monies were collected on the same terms as the written agreement between them; the 1st defendant said he needed time to repay same.

During cross examination of PW1 by the 1st defendant's counsel, she stated that she is not aware that the 1st defendant brought the 2nd defendant to the plaintiff and the 2nd defendant assured the plaintiff that if the 1st defendant failed to pay, he will pay whatever is outstanding on the transaction. PW1 said she was not there when the 1st defendant wrote the undertaking to pay N5 million to the plaintiff.

When PW1 was further cross examined by the 2nd defendant's counsel, she stated that she does not know the 2nd defendant.

Obioma Anyaduba [PW2]:

The evidence of PW2, the plaintiff's brother, is that the 1st defendant is his childhood friend. His evidence is substantially the same as the evidence of

the plaintiff. PW2 confirmed that on 9/2/2015, the plaintiff gave him the sum of N500,000 to pay into the 1st defendant's account number 2080718747 in Zenith Bank. The 1st defendant asked him to pay the sum of N300,000 into the said account on that day and give him N200,000 cash because he needed the cash urgently. He obliged the 1st defendant. He acted as the plaintiff's agent in paying the said sum of money to the 1st defendant in furtherance of the understanding or agreement between the plaintiff and the defendants.

Obioma Anyaduba further testified that she knows that the plaintiff also asked her friend [Prince Chinedu Ogbuefi] and his mother [Mrs. Christy Anyaduba] to pay in N1 million and N500,000 on 24/3/2015 and 25/5/2015 respectively into the 1st defendant's account number 0047522360 in Diamond Bank in the name of The Uphill Grind Ltd. They paid in the said sums of money in furtherance of the understanding or agreement between the plaintiff and the 1st defendant. When the defendants failed to repay the money collected from the plaintiff, he called the 1st defendant and he admitted that he collected the sum of N5 million from the plaintiff and that the monies were collected on the same terms as the written agreement between them. The 1st defendant said he needed time to repay same. His mother also spoke with 1st defendant in his [PW2] presence and 1st defendant repeated what he told him [PW2].

During cross examination by learned counsel for the 1st defendant, the PW2 stated that he was not privy to the agreement between the plaintiff and the 1st defendant. He was not privy to the undertaking that was made by the 1st

defendant to the plaintiff. When PW2 was cross examined by learned counsel for the 2nd defendant, he confirmed that he had never met the 2nd defendant.

Case of the 1st Defendant [DW1]:

His evidence is that he only collected the sum of N3 million from the plaintiff; he received N1 million on 16/4/2015 and N2 million on 3/6/2015. He only promised to pay the plaintiff 10% monthly interest on the N3 million. He did not take the 2nd defendant to the plaintiff to guarantee payment of any outstanding sum from the alleged transaction between him and the plaintiff. Plaintiff never instructed anybody including ObiomaAnyaduba to lodge any money into his account or to give him the sum of N200,000. He marketed The Uphill Grind Ltd. to Mrs. Christy Anyaduba and Prince Ogbuefi and they decided to invest in The Uphill Grind Ltd. Mrs. Christy Anyaduba and Prince Ogbuefi respectively paid N500,000.00 and N1 million into the account of The Uphill Grind Ltd.

The 1st defendant further stated that the plaintiff did not agree to advance any other sum of money to him outside the amount indicated in the agreements executed on 16/4/2015 and 3/6/2015. They never agreed orally or in writing that the agreements would govern payment of any other sum. The letters of undertaking to repay were prepared at the Federal Criminal Investigation Department of the Nigeria Police Force and same were signed under duress and threats from the officers of the said Department.

In paragraph 22[a]-[r] of his statement on oath, the 1st defendant stated the particulars of duress. He narrated how he was arrested by the officers of the Nigeria Police Force on 12/10/2015 based on the complaint lodged by the plaintiff against him. He told the officers that the plaintiff advanced N3 million to him but the officerstortured, harassed and forced him to write the undertaking to pay the plaintiff N5 million. He was mandated to call his friend, the 2nd defendant, to stand as surety with regards to the undertaking. The signing of the letters of undertaking under duress led to the institution of *Suit No. FHC/ABJ/CS/832/2015* againstthe Nigeria Police Force and its officers on 13/10/2015.The Judgment of *Hon. Justice A. R. Mohammed* in that suit dated 30/6/2016 is Exhibit E.

During cross examination of DW1 by counsel for the 2nd defendant, he stated that it is not true that he obtained loan from the plaintiff in her family house. He never went to the plaintiff's family house with the 2nd defendant. The 2nd defendant never guaranteed the repayment of any loan, which he [DW1] obtained from the plaintiff. As a condition for his release on bail, the Police at Force CID Headquarters, Area 10, Abuja compelled him to write a letter of undertaking dated 14/10/2015 and insisted that the 2nd defendant should sign the undertaking as his surety.

During cross examination of DW1 by the plaintiff's counsel, he stated that he signed his affidavit in support of the originating motion for enforcement of his fundamental right on 13/10/2015. He signed the affidavit at the High

Court; he was not under Police escort to the High Court. He did not know of any intimate relationship between the plaintiff and Prince ChineduOgbuefi. Prince ChineduOgbuefi that he knows is married with 2 kids and is based outside the country. None of the 3 persons [i.e. Mrs. Christy Anyaduba, ObiomaAnyaduba and Prince Ogbuefi] has made a separate demand on him for payment of any sum.

Case of the 2ndDefendant [DW2]:

The 2nd defendant testified that the 1st defendant is his friend. He knew the plaintiff on 14/10/2015 when the 1st defendant was arrested and detained at Police Force CID Headquarters, Area 10, Abuja at the instance of the plaintiff and he went to stand as the 1st defendant's surety to obtain his bail. He was never involved in any solicitation, negotiation or taking of loan of any sum by the 1st defendant from the plaintiff. He neither stood as the 1st defendant's guarantor nor surety for the purpose of obtaining loan from the plaintiff nor did he assure the plaintiff that he will repay any loan if the 1st defendant failed to pay.

OluwatayoFashagbonnarrated that when he went to the Police on 14/10/2015 for the bail of the 1st defendant, and after signing the bail bond and fulfilling the other bail conditions, the Police acting at the instance of the plaintiff refused to release the 1st defendant. The Police dictated the content of the letter of undertaking dated 14/10/2015 to the 1st defendant. The Police forced the 1st defendant to write and sign same or he would not be released from

detention. The Police insisted that for the 1st defendant to be released, he [DW2] must sign on the letter of undertaking as the 1st defendant's surety. He was forced to sign the letter of undertaking as the 1st defendant's surety.

In proof of his counter claim, the 2nd defendant stated that he had nothing to do with the loan transaction between the plaintiff and the 1st defendant and he was unjustifiably drawn into the suit by the plaintiff. In defence of this suit, he has been forced to incur the cost of N350,000 as fee for his lawyers. He tendered the Schedule of Fee for the defence of this case dated 9/5/2016 as Exhibit E; and the receipts dated 11/5/2016 and 7/3/2019 as Exhibits G & H respectively.

When the 2nd defendant was cross examined by counsel for the 1st defendant, he stated that he gave his complimentary card to the plaintiff on 14/10/2015 at Police Force CID, Area 10, Abujawhen he was called to sign a bail bond forthe 1st defendant.He explained that after signing the bail bond, he attached his complimentary card to the bail bond and gave a copy of his card to the plaintiff and a female lady Inspector [the IPO] to confirm that he had an office they can identify him with.

When the DW2 was cross examined by the plaintiff's counsel, he stated that he had nothing to do with Exhibit B [Application for Undertaking]dated 8/12/2015. He was not aware that the 1st defendant filed a fundamental right suit on 13/10/2015.

Issues for determination:

At the end of the trial, the learned counsel for the parties filed their final addresses. BoonyameenBabajideLawalEsq. filed the 1st defendant's final address on 17/2/2020. The 2nd defendant's final address was filed on 18/2/2020 by Godwin N. ChigbuEsq. On 19/3/2020, Victor EdemEsq. filed plaintiff's final address. On 11/5/2020, BoonyameenBabajideLawalEsq. filed the 1st defendant's reply on points of law. Learned counsel for the parties adopted their respective final addresses on 22/6/2020.

Mr.BoonyameenBabajideLawal, learned counsel for the 1st defendant, formulated these two issues for determination:

1. Whether the plaintiff had the *locus standi* to institute the instant suit against the 1st and 2nd defendants for the recovery of the sum in dispute.
2. Whether the plaintiff is entitled to the reliefs sought in the statement of claim.

Learned counsel for the 2nd defendant, Godwin N. ChigbuEsq. distilled two issues for determination, to wit:

1. Whether the claimant has proved her case against the 2nd defendant.
2. Whether the 2nd defendant has proved his entitlement to the reliefs claimed in his counter claim.

For his part, Victor Edem Esq. posed these three issues for resolution:

1. Whether the plaintiff has the *locus standi* to institute this suit against the defendants.
2. Whether the plaintiff has proved her case and is entitled to the reliefs sought against the defendants.
3. Whether the 2nd defendant is entitled to the declaratory reliefs sought.

From the case presented by the parties, the Court is of the considered opinion that five [5] issues call for resolution in this action. These are:

1. Whether the plaintiff has *locus standi* to institute this action to claim the sum of N2 million, being the total sum paid by Mrs. Christy Anyaduba, Obioma Anyaduba and Prince Chinedu Ogbuefi.
2. Whether The Uphill Grind Ltd. is a necessary party in this suit.
3. Whether the plaintiff is entitled to her claims against the 1st defendant.
4. Is the plaintiff entitled to her claims against the 2nd defendant?
5. Whether the 2nd defendant has proved his counter claims against the plaintiff.

ISSUES 1 & 2

Whether the plaintiff has locus standi to institute this action to claim the sum of N2 million, being the total sum paid by Mrs. Christy Anyaduba, ObiomaAnyaduba and Prince ChineduOgbuefi.

Whether The Uphill Grind Ltd. is a necessary party in this suit.

In respect of Issue No. 1, learned counsel for the 1st defendant stated that it is not in dispute that the sum of N2 million claimed by the plaintiff was not paid or given to the 1st defendant or The Uphill Grind Ltd. by the plaintiff. There is no evidence that the sums of money paid by Mr. Anyaduba Obioma, Mrs. Christy Anyaduba and Prince Chinedu Ogbuefi, which amounted to N2 million belong to the plaintiff. According to Mr. Lawal, the question that comes to mind is *“the propriety or otherwise of the instant suit instituted by the Plaintiff for independent contracts the 1st defendant had with other parties.”*

The 1st defendant's counsel submitted that by the principle of privity of contract, where there is a contract between two or more parties, it cannot be enforced by a third party. He referred to **Borishade v. N.B.N. Ltd. [2007] 1 NWLR [Pt. 1015] 249** and other cases in support of the submission that the principle of privity of contract applies even where the contract appears to have been made for the benefit of a third party or even purports to give him the right to sue. It was therefore submitted that assuming the contract for the total sum of N2 million was made for the benefit of the plaintiff, she is still not the proper person to institute this suit.

After arguing in paragraph 5.2 of his final address that the plaintiff cannot institute this action for “*independent contracts the 1st defendant had with other parties*”, Mr. Lawal submitted in paragraph 5.5 thereof that “*the claim for the disputed sum can only be made by the parties who entered into the contract with Uphill Grind Limited.*”

On Issue No. 2, Mr. Lawal argued in paragraphs 5.7-5.18 of the 1st defendant’s final address that The Uphill Grind Ltd. has legal personality distinct from its members. From the plaintiff’s evidence, the sum of N2 million was deposited in the bank account of The Uphill Grind Ltd. by her purported agents. The disputed sum was paid as an investment in the company. It was submitted that the disputed sum which was paid to The Uphill Grind Ltd. ought to be recovered from the company. Therefore, the proper and necessary party is The Uphill Grind Ltd. or the company ought to have been joined in the suit as a necessary party.

In paragraph 5.19 of his final address, Boonyameen Babajide Lawal Esq. concluded with respect to Issues 1 & 2 that the plaintiff lacks *locus standi* to sue for the outstanding sum; and since The Uphill Grind Ltd. is not a defendant in the suit, proper parties are not before the Court. He urged me to hold that the Court lacks jurisdiction to entertain the suit and as such the plaintiff is not entitled to any of the reliefs sought.

On the other hand, the arguments of learned plaintiff's counsel on Issues 1 & 2 are that *locus standi* is determined on the basis of the pleadings of the plaintiff and not the statement of defence. The testimonies of PW1 & PW2, which are in line with the plaintiff's pleadings, are that the N500,000 which they each paid to the 1st defendant at different times were given to them by the plaintiff and paid to 1st defendant on her behalf. He submitted that the 1st defendant failed to prove the allegation that he had separate contracts with the persons who acted on behalf of the plaintiff. The 1st defendant also failed to prove his allegation that The Uphill Grind Ltd. is the proper party to be sued for the said sums as he did not produce any document to show that the plaintiff or anyone else had a contract with The Uphill Grind Ltd.

Victor Edem Esq. referred to paragraph 7 of the 1st defendant's affidavit in support of the notice of intention to defend the suit filed on 28/4/2016 where he stated that:

Contrary to paragraph 7 of the Affidavit, the plaintiff never advanced an additional sum of N2,000,000.00 [...] to me. I collected the aforementioned sum of money from the plaintiff's close associates. Particulars of the sums of money collected from the plaintiff's associates are hereby detailed as follows:

- i. The plaintiff's mum [Mrs. Christy Anyaduba] advanced the sum of N500,000.00 [...] to the 1st defendant on 25th May 2015.*
- ii. The plaintiff's brother [Mr. Anyaduba Obioma] advanced the sum of N500,000.00 [...] to the 1st defendant.*

iii. *The plaintiff's friend [Prince Chinedu Ogbuefi] advanced the sum of N1,000,000.00 [...] to the 1st defendant.*

The plaintiff's counsel contended that the evidence of the 1st defendant where he denied Anyaduba Obioma and alleged that Mrs. Christy Anyaduba and Prince Chinedu Ogbuefi independently invested in The Uphill Grind Ltd. materially contradict his previous affidavit evidence. He referred to **Suberuv. State [2010] 8 NWLR [Pt. 1197] 586** to support the principle that a party cannot approbate and reprobate at the same time. It was submitted that the 1st defendant cannot be allowed to say in one breath that the N2 million was paid to him and in another breath state that the said sum was paid to The Uphill Grind Ltd. Mr. Edem concluded that the plaintiff has the requisite *locus standi* to institute this suit; and the Court has jurisdiction to determine the suit on the basis of the claims and parties before it.

The term *locus standi* means the right, legal capacity or competence of a party to institute proceedings in a court of law for redress. In determining whether or not a plaintiff has *locus standi* to institute an action, the Court is enjoined to examine only the averments in the statement of claim. See **C. N. Ekwuogor Investment [Nig.] Ltd. v. Asco Investment Ltd. [2011] 13 NWLR [Pt. 1265] 565** and **Tabansi & Anor. v. Okoye & Ors. [2014] LPELR-41104 [CA]**.

In paragraphs 3, 7, 8, & 10 of her statement of claim, the plaintiff averred that the 1st defendant solicited for the sum of N5 million from her in order to

facilitate his businesses and promised to pay 10% monthly interest on the amount and to pay back the principal sum upon demand. She narrated how her brother [AnyadubaObioma], her mother [Mrs. Christy Anyaduba] and her friend [Prince ChineduOgbuefi] paid N500,000, N500,000 and N1 million respectively to 1st defendant on her behalf and as her agents in furtherance of her agreement or understanding with the 1st defendant.

In paragraph 5 of the statement of claim, the plaintiff stated the assurance given to her by the 2nd defendant to repay the amount which may be unpaid on the loan transaction if the 1st defendant fails in his obligation. From these averments, I hold that the plaintiff, having averred that the respective sums of money paid by her brother, her friend and her mother to the 1st defendant belong to her and that they acted as her agent, has *locus standi* or the legal capacity to institute this action to seek redress against the defendants. I also hold that the doctrine of privity of contract does not apply to this case.

With respect to Issue No. 2, plaintiff's counsel is correct that the 1st defendant stated in paragraph 7 of his affidavit in support of the notice of intention to defend the suit filed on 28/4/2016 that the plaintiff's "close associates" [i.e. her mother, brother and friend] paid the sums of N500,000, N500,000 and N1 million respectively to him. Throughout the said affidavit and his further affidavit filed on 29/4/2016, the 1st defendant did not mention The Uphill Grind Ltd. I agree with Mr. Victor Edem that the assertion that these monies were paid to The Uphill Grind Ltd. is an after-thought. A party, like the 1st

defendant, cannot approbate and reprobate on the same issue or fact. See SCOA [Nig.] Plc. v. Taan&Ors [2018] LPELR-44545 [CA].

There is no evidence to support 1st defendant's assertion that the plaintiff's brother, her friend and her mother paid the respective sums of money for any investment in, or transaction with, The Uphill Grind Ltd. I hold the respectful view that the mere fact that the plaintiff's friend and her mother paid the respective sums of money into the account of The Uphill Grind Ltd., without more, is not proof that they entered into any contract with The Uphill Grind Ltd. In this regard, let me allude to Exhibits C & D, which were the loan agreements between the 1st defendant and the plaintiff respectively for the sums of N1 million and N2 million. Even though the letter headed paper of The Uphill Grind Ltd. was used for Exhibits C & D, the loan agreements were between the 1st defendant and the plaintiff.

From the foregoing, I am not persuaded by the argument of learned counsel for the 1st defendant that the plaintiff ought to have sued The Uphill Grind Ltd. or that the company is a necessary party in this suit.

The decision of the Court on Issues 1 & 2 is that the plaintiff has *locus standi* to institute this action; and that Uphill Grind Ltd. is not a necessary party in this suit. Therefore, the Court has jurisdiction to entertain this suit as presently constituted.

ISSUE 3

Whether the plaintiff is entitled to her claims against the 1st defendant.

The first claim of the plaintiff is the sum of N2 million. I have already stated the plaintiff's evidence upon which this claim is based. In paragraph 7 of his statement of defence, the defendant averred that the plaintiff did not give AnyadubaObioma the sum of N300,000 to deposit in his account or the sum of N200,000 cash to give to him. In paragraph 9, he averred that he "*marketed Uphill Grind Limited to Mrs. Christy Anyaduba and one Prince Ogbuefi and they independently decided to invest in Uphill Grind Limited*"; and they respectively paid N500,000 and N1 million to the account of The Uphill Grind Ltd.

I have already found that from the plaintiff's evidence and the 1st defendant's depositions in his affidavit in support of his notice of intention to defend the suit filed on 28/4/2016, the sums of money paid by AnyadubaObioma, Mrs. Christy Anyaduba and Prince ChineduOgbuefi were paid to 1st defendant and not for the purpose of any investment in The Uphill Grind Ltd.

It remains to consider whether the plaintiff has proved that Mr. AnyadubaObioma, Mrs. Christy Anyaduba and Prince ChineduOgbuefi acted as her agents when they paid the respective sums of money to the 1st defendant. In their testimonies, the PW1 & PW2 confirmed the evidence of the plaintiff that they paid the sums of N500,000 each to the 1st defendant on her behalf and as her agent. PW2 [AnyadubaObioma] also

confirmed the evidence of the plaintiff that her friend [Prince ChineduOgbuefi] paid the sum of N1 million to the 1st defendant on her behalf and as her agent. The testimonies of the plaintiff and her witnesses were not discredited by the defendants. I believe the evidence of PW1 & PW2 that they paid the sums of N500,000 each to the 1st defendant on behalf of the plaintiff in furtherance of the transaction between her and the 1st defendant. Besides, they have never demanded the payment of these sums from the 1st defendant.

I am aware that Prince ChineduOgbuefi did not testify; the evidence of the 1st defendant is that Prince Ogbuefi is outside the country. The fact has been established from the 1st defendant's affidavit filed on 28/4/2016 that Prince ChineduOgbuefi is the plaintiff's close associate and her friend. 1st defendant did not present any evidence to show that he had an independent transaction with Prince ChineduOgbuefi. Moreover, 1st defendant has not shown that Prince Ogbuefi has ever made any demand for the repayment of the sum of N1 million from him; or that he has repaid the said sum of money to Prince Ogbuefi; or that Prince Ogbuefi gave him the sum of N1 million as a gift.

The law is trite that a court can make deductions and draw reasonable inferences from proved facts to arrive at a just and reasonable conclusion. See **Ajulo & Anor. v. Joshua [2015] LPELR-25808 [CA]** and **Nyavo v. Zading [2018] LPELR-44086 [CA]**. From the evidence of the plaintiff and PW2 and the other established facts in this case, the Court can draw a reasonable inference

to hold that Prince ChineduOgbuefi paid the sum of N1 million to the 1st defendant on behalf of the plaintiff and as her agent. I so hold.

The decision of the Court is that the plaintiff has proved that the total sum of N2 million was paid to the 1st defendant by PW1, PW2 and Prince ChineduOgbuefi on behalf of the plaintiff and as her agents.

In paragraphs 5.21-5.33 of 1st defendant's final address, Mr.Lawal canvassed arguments to the effect that the plaintiff is not entitled to the reliefs sought because she is not a licenced moneylender under the Moneylenders Act. The purported money lending contract entered into with the 1st& 2nd defendants is illegal *ab initio*. The 1st defendant's counsel referred to sections 5[1] & 6[b][i] of the Moneylenders Act, Cap. 525 Laws of the Federation of Nigeria [Abuja] 1990, which provide:

Section 5[1]:

A moneylender, whether carrying on business alone or as partner in a firm, shall take out annually in respect of every address at which he carries on his business as a moneylender, a licence [in this Act referred to a "moneylender's licence"], which shall expire on the 31st day of December next after it is granted, and there shall be charged for a moneylender's licence a fee of fifty naira.

Section 6[b] provides that if a person “*carries on business as a moneylender without being in possession of a valid moneylender’s licence authorizing him so to do*”, he commits an offence and is for each offence liable on conviction –

“[i]f other than a body corporate, to a fine of two hundred naira and in the event of a second or subsequent conviction to imprisonment for three months or a fine of two hundred naira or both.”

Learned counsel for the 1st defendant submitted that where a person is not licenced under the Moneylender’s Act, it will be illegal for such a person to be involved in the business of money lending. The plaintiff did not present any evidence to show that she is a registered money lender under the said Act. Counsel also argued that the plaintiff illegally charged interest rate on a loan sum at the rate of 10% per month contrary to section 15[1][c] of the Act, which stipulates “*simple interest of forty-eight per cent per annum*” on unsecured loans. He submitted that the law of justice and equity prevents the plaintiff from benefitting from the illegal money lending contract purportedly entered into with the defendants.

Mr. Lawal also referred to section 13[1][a] of the Act, which reads:

No contract by a borrower or his agent for the repayment or securing of money lent to the borrower or to an agent on his behalf by a moneylender or for the payment by the borrower or by an agent on his behalf of interest on money so

lent and no security given by the borrower or by that agent in respect of that contract shall be enforceable, unless –

[a] a memorandum in writing of the contract is made and signed by the parties to the contract or their respective agents, or in the case of a loan to a firm, by a partner in or an agent of the firm.

Mr. Lawal contended that by this provision, only a loan contract in writing shall be enforceable. There is no written agreement for the disputed sum except the purported undertakings which were made under duress and cannot be interpreted as contracts. It was submitted that the loan agreement for the sum of N2 million in this suit, being an oral one, is unenforceable.

On the other hand, learned counsel for the plaintiff referred to **Edgelow v. MacElwee [1918] 1 K.B. 205** to support the view that a man does not become a moneylender by reason of occasional loans to relations, acquaintances or friends, whether interest be charged or not nor does a man become a money lender because he may upon one or several isolated occasions lend money to a stranger. He argued that the obligation to take up licence as money lender under the Moneylenders Act applies only to persons who are into money lending as their regular business. He also referred to the cases of **Ojikutu v. Agbonmagbe Bank Ltd. [1966] NCLR 246** and **Chidoka v. First City Finance Co. Ltd. [2013] All FWLR [Pt. 659] 1024.**

Mr. Victor Edem further contended that the Moneylenders Act did not render every loan, with or without interest charged, unless that given by licenced money lenders, void. It only penalizes those in the regular business of money lending without licence who carry on such trade as their primary business. He submitted that plaintiff is not a moneylender by virtue of the definition of a moneylender in section 2 of the Act.

Now, section 2 of the Moneylenders Act defines a “*moneylender*” thus:

Moneylender includes a person whose business is that of moneylending or who carries on or advertises or announces himself or holds himself out in any way, as carrying on that business, whether or not he also possesses or owns property or money derived from sources other than the lending of money and whether or not he carries on the business as a principal or as an agent. ...

The above definition is clear and unambiguous. In **Chidoka v. First City Finance Co. Ltd. [supra]; [2013] 5 NWLR [Pt. 1346] 144**, the Supreme Court held that a person engaged in other businesses, who out of sympathy or pressure lends money to his friend to resuscitate his ailing business, should not by any stretch of imagination be termed money lender under the Moneylenders Law. The law is intended to apply only to persons who are really carrying on the business not to persons who lend money as incidental business or to a few friends. In this case, there is no evidence that the plaintiff carries on the business of moneylending or that she advertises or announces or holds herself out in any way as carrying on moneylending business.

In the 1st defendant's reply on points of law, Mr. Lawal referred to section 4 of the Moneylenders Act, which provides:

"... a person who lends money at interest or who lends a sum of money in consideration of a larger sum being repaid shall be presumed to be a moneylender until the contrary is proved."

He argued that the plaintiff has failed to present any evidence to show that she has any other business other than money lending. According to counsel, evidence of two or more successive money lending transactions, as in the case of the plaintiff, can no longer be said to be occasional loans to friends, relatives and acquaintances. The implication of the above is that the plaintiff is implied to be a money lender under the Act, and as she has failed to prove the contrary, she is bound by the provisions of the Act.

There is no doubt that the presumption in section 4 of the Moneylenders Act is rebuttable where there is evidence to the contrary. In the statement on oath of the plaintiff, she stated that she is a *"Business Lady."* The defendants did not cross examine her on this issue. To my mind, this unchallenged evidence has rebutted the presumption that the plaintiff is a moneylender. I take the view that the plaintiff is not a moneylender under the Moneylenders Act; and the provisions of section 5[1], 6[b][i] & 13[1][a] of the Moneylenders Act are not applicable to this case.

The other issue raised by the pleadings of the parties and the submissions of learned counsel is whether the Court can rely on 1st defendant's Undertaking dated 14/10/2015 [Exhibit A] and the undertaking dated 8/12/2015 [Exhibit B] in support of the plaintiff's claim of N2 million. Having found that the plaintiff is entitled to the sum of N2 million paid to the 1st defendant by PW1, PW2 and Prince Ogbuefi, it will serve no useful purpose to consider this issue. The issue will be considered under Issue 4 as it relates to 2nd defendant.

The decision of the Court is that the plaintiff has proved that the total sum of N2 million was paid to the 1st defendant by PW1, PW2 and Prince ChineduOgbuefi on her behalf. Therefore, the plaintiff is entitled to a refund of the sum of N2 million from the 1st defendant.

The plaintiff's second claim is N200,000 per month from 3/7/2015 till judgment is delivered being 10% interest per month on the N2 million. This is a claim for pre-judgment interest, which must be proved by the plaintiff by credible evidence. The plaintiff's evidence is that there were two agreements to cover the sum of N3 million which she paid to the 1st defendant personally. There was no written agreement to cover the sum of N2 million but *"it was agreed that all the amount given to the 1st Defendant be treated in the same terms as the ones that were written."* The defendant denied this assertion.

Exhibit C is the loan agreement for N1 million while Exhibit D is the loan agreement for N2 million. The Court cannot add to or vary the agreement of

parties. See Dangote Farms Ltd. v. Plexux Cotton Ltd. [2018] LPELR-46581 [CA]. Thus, the Court cannot add to or vary the content of Exhibits C & D to include payment of interest on the sum of N2 million in issue in this case. Without further ado, I hold that the plaintiff failed to adduce any credible evidence to prove this claim. This claim for pre-judgment interest fails.

The third claim of the plaintiff is 10% interest per month on the judgment sum being post-judgment interest until the judgment sum is paid. In the case of Berende v. Usman [2005] 14 NWLR [Pt. 944] 1, it was held that post-action or post-judgment interest is grounded in the rules of court. By Order 39 rule 4 of the Rules of the Court, 2018, the Court has power to grant post-judgment interest “*at a rate not less than 10% per annum to be paid upon any judgment.*” I grant post-judgment interest on the sum N2 million at the rate of 10% per annum from today [21/9/2020] until the judgment sum is paid.

ISSUE 4

Is the plaintiff entitled to her claims against the 2nd defendant?

The plaintiff’s claims against 1st defendant are also against the 2nd defendant. In paragraph 5 of her statement of claim, the plaintiff averred that the 1st defendant brought the 2nd defendant to her and the 2nd defendant assured her that “*in the event where the 1st Defendant fails to pay as proposed, he will pay the Plaintiff whatever amount was outstanding from the transaction.*” In the reply to the 2nd defendant’s statement of defence, the plaintiff averred that “*it was the*

representation by the 2nd defendant to repay the money to her that made her advance the money to the 1st defendant."The defence of the 2nd defendant is that he was *"never involved in any solicitation, negotiation, acceptance or taking of any loan ... by the 1st defendant from the Plaintiff."* He averred that he met the plaintiff for the first time on 14/10/2015 at the Police Force Headquarters, Abuja.

The plaintiff, PW1 & PW2 gave evidence in support of her pleading. The 2nd defendant gave evidence in support of his pleading, which was corroborated by the evidence of 1st defendant. During cross examination, the PW1 [Mrs. Christy Anyaduba] retracted her evidence in this regard and admitted that she did not know the 2nd defendant. The PW2 [ObiomaAnyaduba] admitted under cross examination that he had never met the 2nd defendant.

As rightly stated by learned counsel for the 2nd defendant, Exhibits C & D executed by the 1st defendant and the plaintiff for the total sum of N3 million never mentioned or made reference to the 2nd defendant and did not provide for a guarantor or surety of the said loan. Godwin N. ChigbuEsq. submitted that in normal human transactions, if the 2nd defendant was in any way involved in the loan transaction between the plaintiff and the 1st defendant, Exhibits C & D would have reflected same. I agree with the reasoning of Mr.Chigbu. I hold that the plaintiff failed to adduce any credible evidence to prove that the 2nd defendant gave any assurance to her that he would repay the loan if the 1st defendant fails to repay same.

It remains to consider whether the Court can rely on the 1st defendant's Letter of Undertaking dated 14/10/2015 [Exhibit A], which post-dates the transaction between the plaintiff and the 1st defendant, to hold that the 2nd defendant is liable to the plaintiff as guarantor [or surety] for the repayment of the loan of N2 million. Exhibit A reads:

I, AgoromChukwuemeka ... hereby undertake to pay Miss Chioma Mirabel Anyaduba ... which I had a business transaction of N5,000,000 [five million Naira only] that got bad.

Am using this opportunity to assure her that between today which is 14th of October 2015 and 4th of November 2015, I will make N3,000,000 [three million Naira only] available to her and pay the balance as soon as possible and failure to comply to this Understanding I should be held responsible.

Thanks for your cooperation.

The 2nd defendant also signed the Undertaking under the following words: "*FashogbonOluwatayo hereby surety EmekaAgorom*".

In paragraph 15 of his statement of defence, the 1st defendant averred that the letters of undertaking to repay were prepared at the Federal Criminal Investigation Department of the Nigeria Police Force and same were signed under duress and threats from the officers of the Police. 1st defendant pleaded the particulars of duress. In paragraphs 9-15 of his statement of defence, the 2nd defendant stated how he signed the bail bond for the bail of 1st defendant.

Thereafter, the Police refused to release the 1st defendant and insisted that he [the 2nd defendant] must sign on the said letter as the 1st defendant's surety. He had to sign Exhibit A under duress. The defendants gave evidence in line with their respective pleadings.

In paragraph 5 of plaintiff's reply to the defendant's statements of defence, she averred that she is "*unaware of any dealings with the defendants at any station or department of the Nigeria Police Force. The defendants approached her on their own free will and induced her into parting with the total sum of N5,000,000 [...] and also executed the letters of undertaking to repay the money ...*" The plaintiff denied the particulars of duress pleaded by the 1st defendant in paragraph 15 of his statement of defence. In paragraphs 11 & 12 thereof, the plaintiff averred that there was no time they met at the Police Force CID Headquarters or any Police station over the subject matter of this suit.

The plaintiff did not file a statement on oath in support of the averments in her said reply pleadings. In other words, the plaintiff did not adduce any evidence in support of her averment that she did not report the 1st defendant to the Police and that the Letter of Undertaking was not made at the Police Force Headquarters, Abuja. The law is well established that any averment in a pleading which is not supported by evidence is deemed abandoned. See the case of Ofem & Ors. v. Usang [2017] LPELR-43606 [CA]. Thus, the plaintiff's said averments are deemed abandoned. The effect is that the plaintiff did not

deny the defendant's evidence that Exhibit A was made under duress at the Police Force Headquarters, Abuja.

I have considered the argument of the plaintiff's counsel that the Judgment in *Suit No. FHC/ABJ/CS/832/2015* filed by the 1st defendant [as applicant], which 1st defendant tendered as Exhibit E to prove the allegation of duress rather disproves it. He pointed out that the 1st defendant's grievance in that suit was mainly against one Ta'anLongkwang and when he referred to the plaintiff's report to the Police against him, he said he was only "*detained for four [4] hours and released to go home.*" Mr. Victor Edem submitted that the claim by the defendants that Exhibits A & B were made under duress is an after-thought.

I note that *Suit No. FHC/ABJ/CS/832/2015* was filed on 13/10/2015 before the making of the Letter of Undertaking, Exhibit A. I agree that Exhibit E has nothing to do with Exhibit A but the fact remains that the plaintiff did not rebut the evidence of the defendants that Exhibit A was made at the Police Force Headquarters, Abuja. I hasten to add that the use of the word "*Surety*" in Exhibit A lends support or credence to the defendants' evidence that the Undertaking was made at the Police station. I hold that Exhibit A was made under duress as it was made under the watchful eyes of the Police based on the plaintiff's complaint against the 1st defendant to the Police.

Now, can the Court rely on Exhibit A to hold that the 2nd defendant is liable for the plaintiff's claim of N2 million in his capacity as guarantor or surety?

The answer is in the negative based on the decision of the Court of Appeal in the case of Omman v. Ekpe [2000] 1 NWLR [Pt. 641] 365 cited by learned counsel for the 2nd defendant. In that case, *His Lordship, Ignatius Chukwudi Pats-Acholonu, J.C.A. [as he then was]* held at *page 364, A-B:*

“Any document that seeks to establish the existence of a contractual relationship which takes place under the very watchful eyes of the Police to whom a purely civil matter is brought to its attention to enforce or put a fear of God into the other side will certainly not be enforced as there is no consensus and is voidable. ...”

From all that I have said, I agree with the 2nd defendant’s counsel that the plaintiff failed to prove on a balance of probabilities or preponderance of evidence that 2nd defendant acted as surety or guarantor for the repayment of the sum of N2 million she advanced to the 1st defendant.

ISSUE 5

Whether the 2nd defendant has proved his counter claims against the plaintiff.

In relief 1 of the counter claim, the 2nd defendant seeks a declaration that the letter of undertaking dated 14/10/2015 having been made under duress is invalid. In the light of the decision of the Court under Issue 4, I hold that this relief has merit and is granted.

In relief 2, the plaintiff prays the Court to declare that the 2nd defendant was wrongly joined in this suit by the plaintiff. My humble opinion is that the fact that the Court has found that the plaintiff failed to prove her case against the 2nd defendant will not be a basis for granting a declaration that 2nd defendant was wrongly sued. This relief fails.

The 2nd defendant, in relief 3, claims the sum of N350,000 which he paid to his lawyers to represent him in this matter. 2nd defendant tendered Exhibits F, G & H in support of this claim. Mr. Godwin N. Chigbudid contend that a defendant wrongfully sued is entitled to compensation by way of cost. He referred to **Akindele v. Abiodun [2010] All FWLR [Pt. 518] 894** in support. Mr. Chigbu stated that the plaintiff's counsel did not cross examine the 2nd defendant on his evidence relating to the fee he agreed with his counsel. On the authority of the case of **Daggash v. Bulama [2004] 14 NWLR [Pt. 892] 144**, the evidence of the 2nd defendant is deemed admitted.

For his part, learned plaintiff's counsel referred to the decision in **Guinness Nig. Plc. v. Nwoke [2000] 15 NWLR [Pt. 689] 135**, where it was held that it is unethical and an affront to public policy for a litigant to pass on the burden of his solicitor's fee to his opponent in a suit. He also referred to **A.C.B Ltd. v. Ihekwoaba [2003] 16 NWLR [Pt. 846] 249**. Mr. Victor Edem urged the Court to dismiss the claim for N350,000 as professional fee which the 2nd defendant paid to his lawyer.

As rightly stated by the plaintiff's counsel, the case of Guinness Nig. Plc. v. Nwoke[supra] is authority for the principle that it is unethical and an affront to public policy for a litigant to pass on the burden of his solicitor's fee to his opponent in a suit.

The point must however be made that the Court has the discretionary power to award cost in favour of a successful party in litigation.

CONCLUSION

I enter judgment for the plaintiff against the 1st defendant for the sum of N2 million. The 1st defendant shall pay interest on the sum of N2 million at the rate of 10% per annum from today [21/9/2020] until the judgment sum is paid. I award cost of N100,000.00 to the plaintiff against the 1st defendant.

The counter claim of the 2nd defendant against the plaintiff succeeds in part. I grant a declaration that the Letter of Undertaking dated 14/10/2015 having been made under duress is invalid and of no effect whatsoever. I award cost of N60,000.00 to the 2nd defendant payable by the plaintiff.

HON. JUSTICE S. C. ORIJI
[JUDGE]

Appearance of counsel:

1. Victor EdemEsq. for the claimant.
2. BoonyameenBabajideLawalEsq. for the 1st defendant.
3. Godwin N. ChigbuEsq. For the 2nd defendant.