IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI, ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE D. Z. SENCHI

COURT CLERKS: T. P. SALLAH & ORS

COURT NUMBER: HIGH COURT NO. 11

DATE: 4/02/2021 **FCT/HC/CV/2613/2017**

BETWEEN:-

ALH. ABDULRAUF ABDULFATAI …… PLAINTIFF

AND

HILLTRUST GLOBAL INVESTMENT LIMITED……DEFENDANT

JUDGMENT

The instant suit was commenced by the Plaintiff against the Defendantby a writ of summons and statement of claim filed on 7th August, 2017. The Plaintiff seeks the following reliefs against the Defendant:-

a. A declaration that the loan transaction between the Plaintiff and the Defendant is illegal, null and void.
b. A declaration that the interest rate of Thirty (30%) Percent Flat Per Month, Ten (10%) Percent Flat after Month of Repayment, Fifteen (15%) Percent if Cheques are returned and (5%) Percent on amount which interest shall be serviced, charged by the Defendant on the loan facility granted to the Plaintiff is illegal, null and void and contrary to the provision of the Money Lenders Act.
   Alternatively;
c. A declaration that the Defendant is not entitled to any interest other than Fifteen (15%) Percent Per Annum on the loan facility of N5,000,000.00 (Five Million Naira) only granted to the Plaintiff.

d. An Order of Court directing the Defendant to refund and return to the Plaintiff the sum of N5,250,000.00 (Five Million, Two Hundred and Fifty Thousand Naira Only) being illegal and excess interest and charges made against the Plaintiff.
e. A declaration that the Plaintiff has fully and completely liquidated the loan facility of N5,000,000.00 (Five Million Naira) only owed to the Defendant as debt.
f. An Order of Court directing the Defendant to return and handover all original title documents in respect of Plot No. 1105, Dawaki Extension Layout, FCT, Abuja (covered by a letter of Grant of Approval dated 19th February, 2007 issued by the Federal Capital Territory Administration) used as security and collateral for the loan facility granted to the Plaintiffs.
g. General damages in the sum of N10,000,000.00 (Ten Million Naira) only.

Upon being served with the originating processes, the Defendantentered appearance and filed its statement of defence on 15th January,2018. Then at paragraph 17 of the statement of defence, the Defendant pleaded as follows:-

17. Whereof the Defendantclaims as follows;
a. A declaration that the loan transaction between the Plaintiff and the Defendant is legal and binding.
b. A declaration that 10% flat at any point of liquidation after month of payment, 15% if cheques are returned dud and 5% on amount which interest is to be serviced agreed by the Plaintiff and the Defendant on the loan facility is legal and binding.
c. General damages in the sum of N5,000,000.00 (Five Million Naira) only.

Pleading having been duly filed and exchanged between the parties, on the 9th May,2018, the Plaintiff commenced trial. The Plaintiff himself testified in support of his claim as PW1 while one EmmanualOnofua testified as DW1 in support of

the Defendant's defence. Both witnesses adopted their written statements on oath as their respective testimonies in this case.The following documents were tendered through them and admitted in evidence by this Court at trial;

1. Exhibit 1:- Letter to A.A. Abdulfatai& Co. dated 15th April,2016.
2. Exhibit 2:- Letter dated 6th June,2016 by Messrs Mohammed Lukman& Co.
3. Exhibit 3:- Hilltrust Application Form dated 23rd April,2015.
4. Exhibit 4:- GuarantyTrust bank Statement of Account dated 12th March,2018 with attached Skye Bank Plc Statement.
5. Exhibit 5:- Hilltrust Offer of N5,000,000.00 Personal Loan dated 23rd April,2015.
6. Exhibit 6:- Handwritten Application for N5,000,000.00 Loan dated 23rd April,2015.
7. Exhibit 7:- Forfeiture Form written by Plaintiff and dated 6th July,2015.
8. Exhibit 8:- Plaintiff's handwritten letter dated 2nd June,2015.
9. Exhibit 9:- Guaranty Trust bank Cheque in favour of Hilltrust Global Investment dated 22nd September,2015.
10. Exhibit 10:- Justin& Associates' letter dated 15th April,2016 titled 'Loan Default and Forfeiture of Property'.
11. Exhibit 11:- CTC of Form CAC7 'Particulars of Persons Who are First Directors of the Company' ofHilltrust Global Investment Limited.
12. Exhibit 11A:- CTC of Memorandum and Articles of Association ofHilltrust Global Investment Limited.
13. Exhibit 11B:- Certificate of Incorporation of Hilltrust Global Investment Ltd.
14. Exhibit 12:- Affiliation Certificate of Hilltrust Global Investment Ltd.
15. Exhibit 12A:- SCUML Certificate of Registration ofHilltrust Global Investment Limited.

16. Exhibit 13:- Counterpart of Hilltrust Offer of N5,000,000.00 Personal Loan dated 23rd April, 2015.
17. Exhibit 14:- Power of Attorney donated by AbdulfataiAbdulrauf toHilltrust Global Investment Limited.
18. Exhibit 14A:- Deed of Assignment between AbdulfataiAbdulrauf andHilltrust Global Investment Limited.
19. Exhibit 15:- 'Form B' Moneylenders Certificate.
20. Exhibit 15A:- 'Form C' Moneylenders Licence.
21. Exhibit 16:- CTC of Statement of Share Capital of HilltrustGlobal Investment Limited.

At the close of trial, final written address was ordered to be filed and exchanged between the parties. The Defendant by the order of this Court granted on 9th July,2020 filed its final written address out of time while the Plaintiff did not file any final written address.
In his address, Counsel to the Defendant formulated three issues for determination to wit:-

a. Whether from the totality of pleadings and evidence adduced, the Plaintiff has made out a case against the Defendant, entitling him to the reliefs he seeks before the Honourable Court.
b. Whether in view of the facts and circumstances of this case, the loan agreement between the Plaintiff and the Defendant does not contribute a valid agreement, or whether it amounts to an illegal transaction as claimed by the Defendant.
c. Whether failure of the Plaintiff to repay the loan and the interest thereto on the agreed date does not constitute a breach of agreement hence entitling the Defendant damages and whether parties are not bound by the terms of agreement they willingly entered into.

I hereby adopt the above issues. I however intend to address all the issues together to avoid unnecessary repetition.

The brief facts and evidence of the Plaintiff's case is thatthe Defendant is a duly registered company which carries on the business of moneylending in Abuja. That on 23rd Aprl,2015 he accepted a loan facility offer of the sum of N5,000,000.00 (Five Million Naira) from the Defendant vide a letter of offeradmitted in evidence at the trial as Exhibit 5. That the terms and conditions of Exhibit 5 are as follows:-

> *"Interest:30% FLAT*
> *Please Note That Late Repayment Fee:*
> - *10% Flat at any point of liquidation hence is after month of payment.*
> - *15% will be charged if the Applicant's cheque returned dud cheques.*
> - *5% will be charged on an amount which only interest is to be services.*
> - *Interest can only be serviced once."*

The Plaintiff testified that he accepted the said conditions and the Defendant consequently disbursed the loan sum of N5,000,000.00 to him which was expected to be liquidated within one month i.e. by 24th May,2017. That he paid the sums of N3,000,000.00 , N2,000,000.00, N2,000,000.00 , N1,000,000.00 and N3,000,000.00 into the Defendant's account No. 013917258 on 16th July,2015, 22nd July,2015, 30th December,2015, 2nd February,2016 and 28th April,2016 respectively. Exhibit 4arebank statements admitted in evidence in proof thereof. That altogether, the Plaintiff paid a total sum of N11,000,000.00 to the Defendant instead of the sum of N5,750,000.00 including both principal sum and interest. That notwithstanding this, the Defendant wrote a letter dated 15th April,2016 (Exhibit 1) through its solicitors to the Plaintiff informing him of his indebtedness of N18,500,000.00 and threatening to take steps to forfeit the Plaintiff's Plot No. 1105, Dawaki Extension Layout, Dawaki, Abuja which he had used as collateral for the loan (having

deposited his original title documents with the Defendant). It is the Plaintiff's case that the Defendant is not entitled to carry on moneylending business or charge rates of interest set out in Exhibit 5. That the Plaintiffwrote Exhibit 2 dated 6th June,2016 demanding account and receipt of all payments made to the Defendant in respect of the loan and further wrote informing it that the loan facility of N5 Million had been fully liquidated in excess of N5,125,000.00. The Plaintiff testified that at the time the loan was granted to him by the Defendant, he was not aware that the Defendant was not empowered to carry on moneylending business as a limited liability company or charge interest above the regulated rate as contained in Exhibit 5. According to the Plaintiff, the interest charged by the Defendant on the loan as well as its refusal to issue receipts of all the Plaintiff's payments to it is illegal, null and void as it is in contravention of the Money Lenders Act applicable in the FCT. That all the Plaintiff's entreaties to the Defendant to return all his original title documents and refund him the excess payments have been rebuffed by the Defendant who has insisted on the payment of N18,500,000.00 as accumulated debt.

Under cross-examination by the Defendant's Counsel, the Plaintiff admitted that he went to the Defendant and applied for the loan through a written application admitted in evidence as Exhibit 6. He said he was a surveyor by profession and well learned. That the loan was for 30 days within which he was to repay N6,000,000.00 although the dates of issuance and expiry are the same i.e. 24th May,2015. He stated that he paid back the loan after 30 days. That he wrote a letter of forfeiture (Exhibit 7) under duress as same was dictated to him by people who came to his office. The Plaintiff admitted writing Exhibit 8 dated 2nd June,2015 authorising the Defendant to sell his property. He denied the fact that he issued a dud cheque or that the contract was terminated so he wasn't to make any further

payment. He however did issue a blank cheque to the Defendant.

In its statement of defence, the Defendant admitted engaging in the business of moneylending as well as the loan transaction with the Plaintiff. It however denied liability for the Plaintiff's claim. In support of its statement of defence, DW1 the Managing Director of the Defendantadopted his witness statement on oath deposed to by him on16th June,2018 as his oral testimony in this caseas I said earlier.He testified on behalf of the Defendant that it was the Plaintiff that approached the Defendant vide an application (Exhibit 6) on 23rdApril,2015 for a loan facility of N5,000,000.00 granted by the Defendant upon agreed terms and conditions one of which was that the repayment of both principal and interest will be within one month. That it had been explained to the Plaintiff that the Defendant had incorporated itself with the Corporate Affairs Commission with object to lend money and had also applied to necessary agencies for necessary documents for this purpose and as such had the power to lend money. That the Plaintiff thus agreed with this and went ahead with the loan pursuant to which the sum was disbursed to the Plaintiff. Exhibits 11, 11A, 11B, 12 and 12B were all tendered through DW1 and admitted in evidence at trial. It is DW1's testimony that the Plaintiff's property situate at Plot No. 1105, Dawaki Extension Layout, of Kubwa Expressway, FCT-Abuja was used as collateral for the loan and a Deed of Assignment and Power of Attorney were thus executed in the Defendant's favour. Exhibits 14 and 14A were admitted in evidence as the said documents. That the Plaintiff further made a handwritten letter dated 2nd June,2015 (Exhibit 8) authorising the sale of his said property, should he default, as well as a letter of undertaking of forfeiture dated 6th July,2015 (Exhibit 7).That the Plaintiff issued a dud cheque of N6,500,000.00 to the Defendant.

It is the Defendant's defence that the Plaintiff did not repay the loan facility of both principal and interest on the due date as agreed. The Defendant thus wrote Exhibit 10 through its solicitor to the Plaintiff but the Plaintiff paid sums of monies into the Defendant's account without its consent despite the fact that the due date had passed and had written forfeiture undertaking and authority to sell the property. DW1 testified that it asked the Plaintiff to stop payment and collect back the monies it paid. That the Plaintiff should pay the sum of N48,000,000.00 if calculation of percentages based on late payment were to be made. It is the Defendant's defence that the Plaintiff breached the terms and conditions of the loan transaction.

After a summary of the facts and evidence of the Plaintiff's case as well as that of the Defendant, as I said before the Plaintiff'sCounsel did not file any written address. Thus, arguing his issues for determination, learned Counsel to the Defendantsubmitted in his final address that it is elementary principle of law that he who alleges must prove. He relied on provisions of the Evidence Act 2011 as well as a plethora of decided cases including ***AIYETORO COMM. TRADING CO. LTD. V. N.A.C.B LTD (2003) 12 NWLR (PT. 834) P. 346.***Counsel contended that the Plaintiff having agitated that the loan agreement in this case is illegal, null and void, the claim of illegal contract must be pleaded and proved by evidence. Referring this Court to Exhibits 3, 5 and 6, the Defendant's Counsel posited that there was a loan of N5,000,000.00 to be repaid within 30 days with interest but the Plaintiff failed to repay same within that period and thus forfeited his property having agreed to do so. He submitted that it is the usual practice in money lending business for individuals to obtain certificate and license before such individual (on behalf of a firm) is authorised by law to lend money with interest. Referring this Court to Exhibits 11, 11A, 11B, 12, 12A, 15 and 15A Counsel submitted that the Defendant has shown that it has met with the requirements to operate as a money lender. He contended that having

consented to the loan agreement and the terms on interest, the Plaintiff cannot now resile from same having benefitted therefrom. He cited the case of ***DENNIS NWOYE OKAFOR V. ANTHONY IGWITO & 2 ORS (1997) 11 NWLR (PT. 527) P*. 36**. He contended that the Plaintiff has not approached this Court with clean hands and to grant his reliefs will be to perpetuate inequity.It is Counsel's further submission that it is evident that the loan agreement of parties was initiated in good faith and nothing in it reveals any intention of parties to promote something illegal or contrary to public policy. Learned Counsel contends that parties are bound by their agreement willingly entered into and the only function of the Court is to interpret the agreement and give effect to the terms, nothing more. According to Counsel, time was of the essence of the loan agreement which the Plaintiff failed to repay thereby breaching the agreement. He relied on a plethora of judicial authorities. He urged this Court to hold that the loan agreement between parties was valid and the Plaintiff was in breach of same. In conclusion learned Counsel urged this Court to dismiss the Plaintiff's case and grant the Defendant's reliefs.

In the resolution of the issues before this Court, firstly, the Defendant's Counsel made mention of a counter-claim by the Defendant in his final address.

Now **Order 17 Rule 6 of the High Court of the FCT, Abuja (Civil Procedure) Rules 2018**, it provides as follows:-

> *"6. Where any Defendantseeks to rely upon any ground as supporting a right of set-off or counter claim, he shall in his defence state specifically that he does so by way of supporting a right of set off or counterclaim."*

And interpreting similar provisions as the above, the Court of Appeal held in the case of ***UDOFEL LTD & ANOR V. SKYE BANK PLC (2014) LPELR-22742(CA)*** that the proper way to raise a valid counter-claim in a statement of defence is to *specifically* state so in his statement of defence and indicate the title of the counter-claim therein. See also the case of ***BENIN RUBBER PRODUCERS CO-OPERATIVE MARKETING UNION LTD V. OJO & ANOR (1997) LPELR-772(SC)*** where the apex Court held as follows:-

> *"Accordingly, where a Defendant seeks to rely upon any facts as supporting a right of set-off or counter- claim, he must in his Statement of Defence state specifically that he does so by way of set-off or counter-claim. He shall proceed therein to give particulars of such set-off or counter-claim. The recognized practice is to separate the facts relied upon to sustain the counter-claim as much as possible from the remaining part of the Statement of Defence and to arrange them in numbered paragraphs with the word "Counter-Claim" prefixed to it as a heading, so as to distinguish it from what is pleaded simply as a matter of defence to the Plaintiff's claim."*

In the instant case, the Defendantdid not specifically plead in its statement of defence that it seeks to counter-claim against the Plaintiff. Neither did it indicate the heading 'Counter Claim' anywhere in the statement of defence. The Defendantmerely concluded the paragraphs of its statement of defence by seeking reliefs in paragraph 17. This was exactly the same procedure adopted in the case of ***OKONKWO V. COOPERATIVE & COMMERCE BANK (NIG) PLC & ORS (2003) LPELR-2484(SC)*** which procedure Tobi JSC (of blessed memory) had held does not qualify as a counter-claim.

Consequently, I hold the view that the Defendant does not have a valid counter-claim before this Court in this suit and I so hold. As a Defendantwho has not counter-claimed cannot competently ask for reliefs against the Plaintiff, the reliefs sought by the Defendant in its statement of defence must be dismissed and they are accordingly dismissed.

By the first and second reliefs of the statement of claim, the Plaintiff seeks declaration that the loan agreement between it and the Defendantas well as the interest thereunder are illegal, null and void being contrary to provisions of the Money Lenders Act.

It is established position of the law that the general burden of proof in civil cases lies on the party against whom judgment would be entered if no evidence was adduced by either party. See the case of ***EZINWA V. AGU (2004) 3 NWLR PT. 861 P. 431***.
In otherwords, the onus probandi rests on the person as he is the one who would fail if no evidence is led at all. This doctrine of burden of proof is encapsulated in the latin maxim eiquiaffirmat non ei quinegatincumbitprobatio, meaning that the burden of proof lies on one who alleges and not on him who denies. See the cases of ***ARASE V ARASE (1981) 5 SC 33 at 37, UMEOJIAKO V EZENAMUO, (1990) 1 SCNJ 181 at 189 and MAXIMUM INSURANCE CO LTD V OWONIYI, (1994) 3 NWLR (pt. 331) page 178 at 192.***

The Plaintiff who is seeking declaratory reliefs must equally succeed on the strength of his own case and not on the weakness of the defence. See the case of ***MRS. OLORUNSHOLA GRACE & ORS V. OMOLOLA HOSPITAL & ANOR (2014) LPELR-22777(CA) and OGBONNA V A.G IMO STATE, (1992) I NWLR (PT220) page 647 At 698.***

The evidence before this Court(particularly Exhibit 5) firmly establishes that the Plaintiff and the Defendant entered into a loan agreement on 23rdApril, 2015 whereby the Defendant was to loan the Plaintiffthe sum of N5,000,000.00 for a month at an interest of 30% flat with 3% processing fee payable upfront.

It is the Plaintiff's case that the Defendant is not entitled to carry on moneylending business or charge rates of interest set out in Exhibit 5 as the Defendant was not empowered to carry on moneylending business or charge such interest under the Money Lenders Act of the FCT.

Now, under the provisions of the Moneylenders Act CAP. 525, Laws of the FCT-Abuja, a body corporate (company) could be a moneylender, and a moneylender includes a person whose business is that of moneylending or carries on such business. See Section 2 of the Moneylenders Act. See the case of ***CHEVROM (NIG*) LTD V MR. LUKE EZEIGHA,(2012)LPELR 9477 (CA)Section 4** further makes provision for the presumption of persons who lend money at interest to be presumed to be moneylenders until contrary is proved. In the instant case, it seems not to be in dispute that the Defendant-company carries on the business of moneylending within the jurisdiction of this Court and entered into the loan agreement with the Plaintiff at an interest.The Defendant is therefore a 'moneylender' within the meaning ascribed to the word under the Moneylenders Act.

Under Section 5 of the Moneylenders Act, a moneylender such as the Defendant is under obligation to obtain a moneylender's licence yearly. By virtue of Section 7, a moneylender's licence shall not be granted unless a moneylender's certificate has first been granted. Under Regulation 5 of the Moneylenders Regulations (which is a subsidiary legislation made pursuant to the Moneylenders Act), the appropriate authority to grant both the

moneylenders licence and certificate is a magistrate or the administrative officer in charge of a magistrate division.

In support of its defence that it is authorised to carry on the business of moneylending, the Defendant tendered a number of documents which were admitted in evidence. Exhibits 15 and 15A are of special note. Exhibit 15 is a Moneylenders Certificate granted by one Taribo Z. Jim, Magistrate of the High Court of FCT, to Emmanuel Onufuacarrying on business as Hilltrust Global Investment Ltd (the Defendant-company). Exhibit 15A on the other hand is a moneylenders licence purported to come into force on 19th August,2016 to expire on 19th August,2017.

I have looked at Form C in the Schedule to the Moneylenders Regulations. It is clear that a moneylenders licence is expected to be signed by the Magistrate or Administrative Officer in charge of the magistrate division granting such licence. Exhibit 15A tendered by the Defendant is NOT signed by anyone at all speak less of the appropriate authority. The law is that probative weight ought not to be accorded to the unsigned Exhibit 15A. See the cases of ***OMEGABANK (NIG.) PLC V. O.B.C. LTD. (2002) 16 NWLR (PT. 794) P. 483*** *and****FASEHUN V. A.-G. FEDERATION (2006) 6 NWLR (PT. 975) P. 141****.* In the circumstances, Exhibit 15A is worthless and cannot be relied upon as proof of grant of licence by the appropriate authorities to the Defendant to carry on business of moneylending.

Even if Exhibit 15A, which is unsigned, can somehow be relied on as grant of moneylenders licence, it purports to be valid for the period between 19th August, 2016 to 19th August,2017 only. Now by virtue of Section 5(1) of the Moneylenders Act, a moneylender's licence is required to be obtained annually. In other words, a grant of moneylenders licence is only valid for a year. It is not in dispute in this case that the parties entered into their loan agreement in

April, 2015. There is no valid moneylenders licence before this Court authorising the Defendant to carry on the business of moneylending at the time it entered into the loan agreement (Exhibit 5) with the Plaintiff. In other words, the Defendant has not been able to rebut the Plaintiff's case that it is not entitled under the law to carry on moneylending business or charge interest as per Exhibit 5.

The general principle of the law is that no Court will be friendly with or countenance illegality and such an illegal contract will not be upheld and enforced by the Court. See the case of ***NEKPENEKPEN V. EGBEMHONKHAYE (2014) LPELR-22335(CA)***. Having been entered into in breach of the law without the proper authority and licence, should the loan agreement between parties in the instant case (Exhibit 5) be declared null and void in the circumstances?

Now, the facts before this Court show that the Plaintiff wilfully entered into the loan agreement Exhibit 5 with the Defendant. Evidence establishes that it was the Plaintiff that first approached the Defendant with a request for a loan vide an application for N5 Million loan (Exhibit 6). It is trite that in every loan transaction, there must exist the originating process i.e. the application for loan which must be made by the borrower to the lender. See the case of ***OBIDIGWE V. KAY KAY CONSTRUCTION LTD (2014) LPELR-24561(CA)***.

The Defendant's evidence before this Court, which incidentally the Plaintiff did not impeach, is that the Defendant made the Plaintiff aware that it had applied to the authorities for necessary documents for it to engage in moneylending and the Plaintiff wilfully decided to go ahead with the loan agreement anyway. It is pertinent to note here that the Plaintiff admitted under cross examination that he is learned. In other words, the Plaintiff took the decisions he took to enter into the loan agreement knowing that the Defendant had not yet obtained all necessary documentation

to enable it engage in moneylending such as the loan agreement Exhibit 5.

The undisputed fact before this Court is that the sum of N5 Million was disbursed to the Plaintiff by the Defendant pursuant to the loan agreement Exhibit 5. On what a loan contract is, the Court of Appeal in the case of ***FCMB PLC V. BENBOK LTD (2014) LPELR-23505*(CA)**; held thus:-

> *"In Halsbury's Laws of England, Fourth Edition, Re-issue, page 13 paragraph 16, citing Blackburn Building Society vs. Cunliffe Brooks & Co. (1882) 22 Ch.D. 61 affd. jule nom: Cunliffe Brooks & Co. vs. Blackburn and District Building Society (1884) 9 App. Cas. 857 (HL) Cuthbert vs. Roberts, Lubback& Co. (1909) 2 Ch. CA, it was held that:*
>
> *"A loan contract is an agreement by which one party ("the lender") agrees to pay money to another ("the borrower"), or to a third party at the borrower's request, on terms that the borrower will repay the money together with any agreed interest. For the agreement to constitute a loan, the payment must be made with a view to giving the borrower financial accommodation."*

It appears that the purpose of the loan contract (Exhibit 5) between parties had already been realised for the Plaintiff, to wit the agreed loan sum of N5 Million had been paid to him and he had benefitted some financial accommodation.

The law is trite that a debtor who benefited from a loan has both the moral and legal duty and obligation, express or implied, to repay it as at when due. See the cases *of* ***FCMB V. ROPHINE (NIG) LTD & ANOR (2017) LPELR-42704(CA)*** *and* ***AFRIBANK V. ALADE (2000) 13 NWLR PT. 685 P. 591****.*

By virtue of Exhibit 5, the Plaintiff was obliged to pay back the loan with a specific percentage of interest.

The Plaintiff has however now turned around to contend that the loan agreement, under which he had already benefitted, and the terms thereof (specifically the rates of interest) is illegal, null and void and wants this Court to invalidate same as not being in compliance with provisions of the Moneylenders Act. It would appear, from the first and second reliefs of the statement of claim, that the Plaintiff wants to be discharged from the contract without showing this Court that he has actually performed his obligations thereunder.

The Plaintiff, who had reason to know that the Defendant did not have authority under the law to enter into a loan agreement (moneylending), and who wilfully entered into the loan agreement and has benefitted from same, cannot now be heard to say that the loan agreement (Exhibit 5) and the terms thereof are illegal and unenforceable under the Moneylenders Act. It would be most unfair and unjust to allow him to do so in the circumstances. This is based on the equitable principle that a Plaintiff who himself participated in wrongdoing may not recover damages resulting from the wrongdoing. That is the attitude of Courts to parties *in pari delicto*.

Emphasizing this point, the Court of Appeal held in the case of ***NEKPENEKPEN V. EGBEMHONKHAYE (SUPRA*)**that the respondent in that case, being aware that the appellant was not a licenced moneylender and yet went and obtained a loan from an unlicensed moneylender, was privy to an illegality which he has taken benefit of and cannot turn round to resilefrom it.

Further to the foregoing, the case of ***MAX BLOSSOM LTD V. VICTOR & ORS (2019) LPELR-47090(CA)*** is on all fours with the instant case. In that case the appellant had

executed a loan agreement of a tenor of four months with the 2nd respondent to the tune of N10,000,000.00 and guaranteed with the 1st respondent's landed property. At the trial, the respondents contended that the transaction was one of money lending and the appellant, being a money lender, was in breach of the Rivers State Moneylenders Law of 1999, which in effect rendered the said transaction void and unenforceable. In his judgment, the trial judge upheld the Respondents' defence that the loan transaction was illegal and unenforceable having not complied with the relevant provisions of the Moneylenders Law and dismissed the appellant's claim.Aggrieved by this decision, the Appellant appealed to the Court of Appeal. Upholding the appeal, the Court of Appeal held that a party who has benefitted from a contract cannotresile from his obligation under such contract on the pretext of illegality. It held as follows:-

> *"Being satisfied myself that the respondents took the loan from the appellant pursuant to Exhibit 'B' and fully utilized it, it is wrong of them to turn around now and contend that the said loan is not recoverable because the appellant did not comply with the provisions of the Moneylenders Law of Rivers State. In so far as the respondents executed Exhibit 'B' voluntarily by signing same irrespective of the purported noncompliance with the Moneylenders Law and consequently benefitted from it, they cannot at payback time, turn around to castigate the transaction. More so, when the 2nd respondent's solicitor wrote the letter (Exhibit B2), dated 18th November, 2010 to the appellant expressly admitting their indebtedness founded on the loan agreement and consequent upon which he requested for a six month moratorium to enable them meet up with the terms of the agreement."*

In the case of ***SIPIKIN V. RIRUWAI (2014) LPELR-41098(CA*)** the appellant had approached the Respondent for a finance loan of N9,000,000.00 which the respondent granted to be paid back with interest of N3,750,000.00 within three months. The agreement was reduced into writing and signed by parties. The sum was disbursed to the appellant but he defaulted in paying back within the agreed time. The appellant kept asking for extensions and only paid back N100,000.00 out of the due N12,750,000 principal and interest. The Respondent subsequently commenced an action for recovery of the loan sum but the Appellant's defence inter alia was that the Respondent was not a licensed money lender and was not entitled to charge such interests on the loan. On the issue of whether a party who has benefitted from a contract can resile from his obligation under such contract on the pretext of illegality, the Court of Appeal held as follows:-

> *"It must be stated that the attempt by the Appellant to resile from his obligations to the Respondent on the ground of illegality of contract and on reliance on semantics after having collected the sum of N9 Million from the Respondent and after giving written undertakings to repay the sum with an additional sum of N3,750,000.00 is not only unconscionable but downright despicable. It is because of people like the Appellant that the Courts developed the principle that it is inequitable for a person who has benefited from an agreement to turn around and say that the agreement is void and unenforceable, the Court would not uphold such a contention."*

Pursuant to all the forgoing, I hold the view that the Plaintiffin the instant case cannot be heard to contend that the loan agreement (Exhibit 5) between him and the Defendant(and the terms thereof) pursuant to which he was

given a loan of N5,000,000.00 by the Defendant, is void and unenforceable on the pretext that it is in breach of provisions of the Moneylenders Act and I so hold. Such a claim must be rejected by this Court. Thus, the first and second reliefs of the statement of claim which are based on such claim must thus be refused and the two reliefs are accordingly dismissed.

The Plaintiff however seeks alternative reliefs.

By the third relief of the statement of claim, the Plaintiff seeks a declaration that the Defendant is not entitled to any interest other than 15%per annum on the N5,000,000.00loan granted to him.

It is trite that in adducing evidence on what the interest rate should be, either the party claiming or disputing a particular interest rate must prove beyond mere assertion, what the actual interest rate is. See the case of ***IZEHI PROCUREMENT LTD & ORS. V. RICELAND INTERNATIONAL LTD & ANOR (2012) LPELR-14238(CA).***Thus, in the case of ***SAB ALLIED VENTURES LTD V. FIDELITY BANK & ORS (2019) LPELR-47210(CA)*** the Court of Appeal held:-

> *"On the claim of excessive interest rate, the law is still the same that he who asserts must prove it by credible admissible evidence of the highest probative value."*

The Plaintiff must therefore show by adducing cogent and credible evidence to the satisfaction of this Court that the interest rate in this particular case is 15% as sought to be declared by him.

I do not believe the Plaintiff has successfully discharged this onus on him. There actually is nothing in the Plaintiff's evidence to show why the Defendant should only be entitled to 15% per annum as interest rate under the loan

agreement (Exhibit 5) with the Plaintiff. There is no mention in the Plaintiff's evidence of this rate or why the Defendant should only be entitled to this.

Going by the loan agreement between parties (Exhibit 5), the Defendant is entitled to 30% flat on the loan sum of N5,000,000.00 and other charges in the event of default in repayment by the Plaintiff.

The Plaintiff did not exactly plead this in his statement of claim, but for avoidance of doubt, **Section 15(a) of the Moneylenders Act** provides that the rate of interest chargeable on loans by a moneylender shall not exceed 15% per annum.

I must however opine that having wilfully entered into the loan agreement (Exhibit 5), agreed to the terms thereunder (particularly on interest rates and charges) and further taken benefit of consideration furnished by the Defendant thereunder, the Plaintiff cannot now insist on provisions of the Moneylenders Act pegging the rate of such interest. In the case of ***IDONIBOYE-OBU V. N.N.P.C. (2003) 2 NWLR (PT. 805) P. 589*** the Supreme Court held that a party who has opened his heart, mind and eye to enter into an agreement is clearly bound by the terms of the agreement and he cannot seek for better terms midstream or when the agreement is a subject of litigation, when things are no longer at ease. It was further held that although a party may seek for better terms, the Court is bound by the original terms of the agreement and will interpret them in the interest of justice.

Consequently, I hold the view thatthe Plaintiff is bound by the terms of Exhibit 5, particularly the interest rate of 30% flat on the loan sum of N5,000,000.00 and I so hold. The third relief of the statement of claim therefore fails and it is accordingly dismissed.

By the 4th and 5th reliefsof the statement of claim, the Plaintiff seeks a declaration that the Plaintiff had liquidated theN5,000,000.00 loan and an order directing the Defendant to refund N5,250,000 being excess interest paid.

Now under Exhibit 5, parties agreed that the loan sum of N5,000,000,00 will be repaid with interest of 30% flat within one month. 30% of N5,000,000.00 is N1,500,000.00 Hence, the Plaintiff was obliged to pay the sum of N6,500,000.00 comprising of both the principal sum of N5,000,000.00 and 30% interest within one month. This is made unequivocally clear where it is stated thus in Exhibit 5;

"REPAYMENT: 24th May,2015 N6,500,000.00"

It is not in dispute that the Plaintiff did not repay the said sum within the period stipulated by Exhibit 5 i.e. by 24th May,2015. The Plaintiff thus was in breach of the terms of Exhibit 5.

However, the undisputed fact before this Court is that the Plaintiff did pay back a total sum of N11,000,000.00 Million to the Defendant in a series of instalments through the Defendant's bank account between 16th July,2015 and 28th April,2016. Exhibit 4 establishes this fact and the Defendant appears also to have admitted this fact.

The Defendant for its part says that it tried to stop the Plaintiff from making those payments and asked him to collect back the monies so paid as the Plaintiff had already committed his landed property to the Defendant in the event of his default in repayment. I find the Defendant's conduct appalling and very disturbing. It reeks of an underlying sinister motive!

It is not in dispute that the Plaintiff's landed property i.e.Plot No. 1105, Dawaki Extension Layout, FCT, Abuja was used as collateral for the loan. It is not in dispute that the Plaintiff

had thus deposited his original title documents with the Defendant and had executed Power of Attorney and Deed of Assignment (Exhibits 14 and 14B) in favour of the Defendant. It would appear that by attempting to reject the Plaintiff's repayment of the loan, the Defendant is attempting to clog the Plaintiff's right to redeem the loan and reclaim his title documents.

It is settled position of the law that the deposit of title deeds as security for a loan creates an equitable mortgage and an important feature of mortgages, whether legal or equitable is that 'once a mortgage, always a mortgage and nothing but a mortgage.'See the cases of ***YARO v. AREWA CONSTRUCTION LIMITED (2007) LPELR-3516(SC)*** *and* ***STANDARD MANUFACTURING COMPANY LTD & ANOR V. STERLING BANK PLC (2015) LPELR-24741(CA)***. Consequently, the pledgor's right of redemption cannot be clogged in any way by the pledgee, such as using subterfuges to delay or postpone the pledgor's right to redeem; nor is lapse of time a bar to the exercise of the right of redemption. See the case of ***OKOIKO & ANOR V. ESEDALUE & ANOR.(1974) LPELR-2460(SC)***.

In the case of ***MOHAMMED V. ABDULKADIR (2007) LPELR-8994(CA)***the Court of Appeal held that:-

> *"A lot of decided cases abound showing that right to redeem cannot be taken away even by an expressed consent by parties that the mortgage is not to be redeemed or that the right is to be continued to a particular time or to a particular description of persons. The right continues unless and until the mortgagor's title is extinguished or his interest is destroyed by sale of the property either through execution of Court order or of a power in the mortgage deed as in this case. See* **EJIMEME V. OKONKWO**(**1994) 8 NWLR (Pt.362) 266."**

Now there is nothing before this Court to show that the Defendant has already sold the Plaintiff's property pledged to him as security for the loan. The Plaintiff has set out in meticulous detail how he paid the sum of N11,000,000.00 to the Defendant. The Defendant does not deny the payment. Although the said payment was admittedly made after the loan advanced under Exhibit 5 to the Plaintiff had become due and he had defaulted in paying same, there is absolutely nothing that can prevent the Plaintiff from paying back the loan for the purpose of redeeming his pledged property. Not minding the fact that he did not pay back within the agreed time and not minding thatPlaintiff had executed documents of transfer of title in favour of the Defendant. The Plaintiff is entitled in law to redeem the loan. The payment of N11,000,000.00 to liquidate the loan is thus valid contrary to the Defendant's suggestion and this Honourable Court will not fold its arm and allow the Defendant to use the Plaintiff as cash cow as well as withheld his pledged land title documents. The way the law protects the Defendant so also the Plaintiff. Having said this it is not in dispute that the Defendant wrote Exhibit 1 dated 15th April,2016 (through its solicitor) to the Plaintiff demanding payment of a sum of N18,500,000.00 as loan and accrued interest payable by the Plaintiff under Exhibit 5. It is not clear exactly how the Defendant arrived at this figure. The terms of Exhibit 5 are however very clear and the sum payable by the Plaintiff to the Defendant thereunder can easily be arrived at by simple calculation applying the terms to the proven circumstances.

I have said earlier that according to the terms of Exhibit 5, the sum of N6.5 Million comprising of the principal loan of N5,000,000.00and 30% flat interest became due and payable on 24th May,2015. The sum was not paid then. Exhibit 5 seems to have envisaged this as it provides thus in the event of such default:-

"PLEASE NOTE THAT LATE REPAYMENT FEE:

- *10% flat at any point of liquidation hence is after month of payment.*
- *15% will be charged if the applicant's cheque returned (DUD CHEQUE).*
- *5% will be charged on an amount which only interest is to be serviced.*
- *Interest can only be serviced once."*

From the above, the Plaintiff was liable to pay 10% **flat** of the loan sum having failed to pay back within the stipulated period i.e. by 24th May,2015. 10% of N5,000,000.00 is N500,000.00 and the Plaintiff is liable for this amount in addition to the due sum of N6,500,000.00. For avoidance of doubt, I must point out that the rate is expressed as chargeable as a **flat** rate as opposed to being chargeable periodically e.g. per annum.

Under Exhibit 5, the Plaintiff would also be liable to pay 15% of the loan sum *if his cheque gets returned* i.e. a situation of issuing dud cheques.

The Defendant alleged and testified that the Plaintiff issued a dud cheque (Exhibit 9) of N6,500,000.00 to the Defendant. Exhibit 9 was admitted as the said cheque.

Under cross-examination however, the Plaintiff stated that he did not issue a dud cheque as what he gave the Defendant was a blank cheque. This piece of evidence appears to be in substantial consonance with the requirement of the loan agreement between parties i.e. Exhibit 5 which provides for guarantor's blank cheque at the *'SECURITY SUPPORT'* clause.And it must be noted however that the issuance of dud cheque is a criminal offence. See ***FAJEMIROKUN V. COMMERCIAL BANK NIGERIA LTD. & ANOR. (2009) LPELR*-1231(SC)**. The standard of proof required where an allegation of commission of a crime by a party to a proceeding is made and is directly in issue in any proceedings, civil or criminal, is proof beyond reasonable

doubt. See ***PDP V. INEC & ORS (2014) LPELR-23808(SC)***. The Defendant in this case did not even provide factual details of its allegation of issuance of dud cheque by the Plaintiff i.e. under what circumstances the Plaintiff was supposed to have issued the dud cheque and what exactly happened. All the Defendant did was to dump Exhibit 9 on this Court. Thus I hold the view that theDefendant's evidence has fallen short of proof beyond reasonable doubt of the criminal allegation of issuance of dud cheques made against the Plaintiff. And hence the Defendant failed to prove the said allegationand I so hold. Further I hold the view that the clause of Exhibit 5 entitling the Defendant to charge 15% if the Plaintiff's cheque is returned as dud cheque is inapplicable and thus, such a charge has not been shown to have arisen in the circumstances of this case and I so hold.

Finally, upon default of payment of the interest payable, Exhibit 5 entitles the Defendant to charge 5% of the interest payable. I have already mentioned that the sum payable as interest on the principal loan under Exhibit 5 is the sum of N1.5 Million. Consequently, and mathematically,5% of this sum of N1,500,000.00 amounts to N75,000.00 Thus I hold the view that the Defendant is entitled to the sum of N75,000.00 being the 5% of N1,500,000.00 interest and I so hold.

Now the addition of all these sums i.e. N6,500,000.00 (as principal and interest), N500,000 (as 10% of the loan sum on default) and N75,000.00 (as 5% on payable interest on default) comes to a total sum of N7,075,000.00 for which the Plaintiff is liable to pay the Defendant after default under the terms of Exhibit 5. The Plaintiff in this case paid a total sum of N11,000,000.00 to the Defendant. Thus, therefore I hold the view that thePlaintiffhas fully liquidated his liability to the Defendant under Exhibit 5 in excess of the sum of N3,925,000.00 and I so hold.

Consequent to the foregoing, I hold the view that the Plaintiff is entitled to the declaration sought under the fifth relief of the statement of claim which is that he has fully liquidated the loan facility granted to him by the Defendant under Exhibit 5 and I so hold. Accordingly the Plaintiff's 5th relief of his statement of claim is hereby granted as prayed

The Plaintiff is also entitled to a refund of the sum of N3,925,000.00 paid to the Defendant in excess of the sum he is liable to pay to the Defendant under Exhibit 5. This is the lesser sum to which the Plaintiff is entitled to as refund under the fourth relief of the statement of claim and not the sum of N5,250,000.00 claimed in that relief. Accordingly, the Defendant is hereby ordered to forthwith pay to the Plaintiff the sum of N3,925,000.00 being excess sum.

Having earlier found that there can be no clog to the Plaintiff's right to equity of redemption and having also found that he had fully liquidated the loan granted to him under Exhibit 5, the Plaintiff is entitled to recover his original land title documents deposited with the Defendant with which he pledged his landed property as security for the loan. In other words, the Plaintiff is entitled to the sixth relief of the statement of claim and accordingly, the Defendant is hereby ordered to release to the Plaintiff the land title documents immediately.

By the seventh relief of the statement of claim the Plaintiff seeks general damages of N10,000,000.00. In the instant case, the Plaintiff himself had defaulted in his obligations which he owed the Defendant under the loan agreement Exhibit 5. The Defendant might have its own faults and by the chain of events, both the Plaintiff and the Defendantare culpable. Even though he might be the successful party in this suit, he cannot be entitled to general damages against the Defendant in the peculiar circumstances of this case. It would be unconscionable and would amount to injustice to

hold otherwise and hence, I hold the view thatthe seventh relief for general damages be refused and it is dismissed.

In conclusion, the Plaintiff's claim succeeds in part. Reliefs **a**, **b**, **c** and **g** of the Statement of Claim are refused and are hereby dismissed.

Reliefs **d**, **e** and **f** succeed. And that is the judgment of this Honourable Court.

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HON. JUSTICE D.Z. SENCHI
(PRESIDING JUDGE)
4/02/2021

Parties:- Absent.
A.A. Ovive:- For the Plaintiff.
Edmond C. Ben:- For the Defendant.

Sign
Judge
4/02/2021