

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT JABI-ABUJA**

**SUIT NO: CV/1927/2019**

**BEFORE HIS LORDSHIP: HON. JUSTICE BABANGIDA HASSAN**

**BETWEEN:**

- |                                    |                     |
|------------------------------------|---------------------|
| <b>1. ENGR OPARA PETER AKUJOBI</b> | <b>- PLAINTIFF</b>  |
| <b>AND</b>                         |                     |
| <b>2. MR. OLORUNFEMI AKINTOLA</b>  | <b>- DEFENDANTS</b> |

**JUDGEMENT**

Appearances:

The plaintiff filed this writ of summons dated the 11<sup>th</sup> December, 2018 with no. CV/546/18 and claims jointly and severally against the defendants as follows:

- i. On 1<sup>st</sup> loan of N5,000,000= a total sum of N34,633,333.00 being the outstanding payment due to the plaintiff from the defendant as principal and the agreed/accrued interest therein between 23<sup>rd</sup> July, 2012 – 31<sup>st</sup> day of October, 2018.
- ii. On 2<sup>nd</sup> loan of N25,000,000= (a) a total sum of N93,327,778.00 being the outstanding payment due to the plaintiff from the defendant as principal and the agreed/accrued interest between 14<sup>th</sup> September, 2012 – 31<sup>st</sup> day of October, 2018.

(b) Alternatively, an order of forfeiture of the 1<sup>st</sup> defendant's property to the plaintiff with Certificate of Occupancy no. NS 5639 measuring about 2701.59 sqm comprising of 4 units 2 bedroom flats situate, lying and being at Maraba, Nasarawa State pledged as collateral for N25 million loan obtained from the plaintiff.

- iii. On 3<sup>rd</sup> loan of N10,000,000, a total sum of N53,844,440.00 being the outstanding indebtedness of the defendant due to the plaintiff from the defendants as principal and the agreed/accrued interest thereon between 7<sup>th</sup> November, 2012 – 31<sup>st</sup> day of October, 2018.
- iv. On 4<sup>th</sup> loan of N10,000,000.00, a total sum of N58,311,108.00 being the outstanding indebtedness of the defendant due to the plaintiff as principal and the agreed/accrued interest thereon between 17<sup>th</sup> April 2013 to 1<sup>st</sup> day of October, 2018.
- v. An order of mandatory injunction restraining the 1<sup>st</sup> defendant from disposing his assets, movable or immovable particularly the one located at No. 32, Benue Crescent, Suncity Estate, Abuja by way of sale, transfer or creation of 3<sup>rd</sup> party interest howsoever until judgment debt is fully liquidated.
- vi. Cost of this action assessed at N10 million Naira.

The writ was accompanied by the following documents:

Statement of claim, witness statement on oaths, certificate of pre-action counseling, list of witnesses, and copies of the following:

- a. Agreement between the plaintiff and the 1<sup>st</sup> defendant with respect to the loan of N5,000,000= dated the 23<sup>rd</sup> day of July, 2012;
- b. Statement of account of Hello Pearlson Nig. Ltd from 1<sup>st</sup> July, 2012 to 31<sup>st</sup> July, 2012;
- c. Agreement made between the plaintiff and the 1<sup>st</sup> defendant dated the 14<sup>th</sup> day of September 2012 on the loan of N25,000,000;
- d. Photocopies of cheques all dated the 17<sup>th</sup> September, 2012 in the sum of N9,500,000=, N9,500,000= and N6,000,000= bearing the name of the 1<sup>st</sup> defendant issued by the plaintiff;
- e. Photocopy of the certificate of Occupancy with no. NS 5639 bearing the name of one Dr. Tom Ajayi Miachi;
- f. Agreement made between the plaintiff and the 1<sup>st</sup> defendant with respect to loan of N10,000,000= dated 7<sup>th</sup> November, 2012;

- g. Photocopy of Oceanic Bank cheque dated the 7<sup>th</sup> November, 2012 in the sum of N10,000,000= bearing the name of the 1<sup>st</sup> defendant issued by Pitas & Partners Ltd;
- h. Agreement made between the plaintiff and the 1<sup>st</sup> defendant with respect to N10,000,000= loan dated the 17<sup>th</sup> April, 2013;
- i. Photocopy of Oceanic Bank cheques bearing the name of the 1<sup>st</sup> defendant in the sum of N6,000,000= and N4,000,000= all dated 17<sup>th</sup> April, 2013;
- j. Fidelity Bank cheque dated the 30<sup>th</sup> day of April, 2015 bearing the name of the plaintiff issued by DBAO travel services Ltd in the sum of N35, 000,0000= with an inscription "amount not valid for clearance", and
- k. Financial analysis on loan disbursement prepared by Vay Benson & Co, Chattered Accountants dated the 19<sup>th</sup> day of November, 2018.

The writ of summons and all the accompanying documents were served on the defendants by serving on the 2<sup>nd</sup> defendant's office manager by name Aderemi Felix through the court order dated the 26<sup>th</sup> day of March, 2019.

The plaintiff averred that sometimes in 2012 the 1<sup>st</sup> defendant (then the branch manager of Oceanic bank Nigeria Ltd, Gwarimpa branch, Abuja) approached him with a business proposal to permit him (the 1<sup>st</sup> defendant) trade with his (the plaintiff) money in their custody and general interest for him (the plaintiff) had no immediate use of it. That further that to that; the plaintiff informed the 1<sup>st</sup> defendant that he was saving the money to commence the development of the land allocated to him since 1998 with intention of commencing work on same in January, 2014.

It is averred that in respect to that, the 1<sup>st</sup> defendant assured the plaintiff that he (the 1<sup>st</sup> defendant) could generate good interest for the plaintiff before January, 2014 and the principal with the accrued interest thereon would be returned to the account on or before the end of December, 2013.

The plaintiff averred that he thereafter agreed to give out the sum of N5,000,000= (Five Million Naira) as loan on 23<sup>rd</sup> July 2012 to the 1<sup>st</sup> defendant with the agreement that interest of N500,000= (Five

Hundred Million Thousand) shall be paid every 23<sup>rd</sup> of each month until the agreement is terminated.

The plaintiff averred that as at 23<sup>rd</sup> November, 2013, the 1<sup>st</sup> defendant paid 16 months interest on the loan in the sum of N8,000,000= (Eight Million Naira only) but thereafter refused to service the loan inclusive of the principal sum till date thereby leaving the outstanding payment due to the plaintiff in the sum of **N34,633,333.00 as at 31<sup>st</sup> October, 2018.**

The plaintiff averred that the 2<sup>nd</sup> tranche of the loan in the sum of N25,000,000:00 (Twenty Five Million Naira) was advanced to the 1<sup>st</sup> defendant on 14<sup>th</sup> September, 2012 with a tenor of 3 months and the agreed interest was put at N3,500,000= (Three Million Five Hundred Thousand Naira) Only), and that the said loan was secured with the Certificate of Occupancy no. NS 5639 measuring about 2701.59<sup>2m</sup> of a landed property in Maraba with 4 units of 2 bedroom flats. That the 1<sup>st</sup> defendant only paid the total sum of N17,500,000= (Seventeen Million, Five Hundred Naira only) interest on the 2<sup>nd</sup> tranche of the loan thereby leaving outstanding payment of N93,327,778.00 (Ninety Three Million, Three Hundred and Twenty-Seven Thousand, Seven Hundred and Seventy-Eight Naira) due to the plaintiff as at 31<sup>st</sup> October, 2018.

The plaintiff averred that the 3<sup>rd</sup> tranche of the loan advanced to the 1<sup>st</sup> defendant by the plaintiff was in the sum of N10,000,000= on the 7<sup>th</sup> November, 2012 with the agreement that N2,000,000= interest payable every three months until the agreement is terminated. That the total sum of N4,000,000= was paid by the 1<sup>st</sup> defendant as at 7<sup>th</sup> May, 2013 on the 3<sup>rd</sup> tranche of the loan thereby leaving the total sum of N53, 844,440= due to the plaintiff as at 31<sup>st</sup> October, 2018.

The plaintiff averred that the 4<sup>th</sup> tranche of the loan in the sum of N10,000,000= was advanced to the 1<sup>st</sup> defendant on 17<sup>th</sup> April, 2013 with the agreed interest rate of N2,000,000= every three months until agreement is terminated, that the 1<sup>st</sup> defendant only paid the interest of N4,000,000= as at 17<sup>th</sup> October, 2013 and the total outstanding payment due at 31<sup>st</sup> December, 2018 is to the tune of N50,311,108:00

The plaintiff averred that the principal and the accrued interest is in the sum of N232,116, 659=00k.

In the course of the trial, the plaintiff put in two witnesses, that is himself and one Benson Ugwu.

The PW1 adopted his Witness Statement on Oath as an evidence in this case on the 28<sup>th</sup> day of May, 2019, and documents were also tendered. The court in its ruling dated the 30<sup>th</sup> day of October, 2019 admitted the documents and marked them as Exh. A1-A9.

The counsel to the plaintiff applied before the court for the defendant to be foreclosed, having regard to their absence since the inception of the case, however, the court refused such an application and ordered that hearing notices be served upon the defendants to enable them appear before the court to cross examine the PW1, and the matter was adjourned to 26<sup>th</sup> day of November, 2019.

The counsel to the plaintiff filed a motion *ex parte* to enable the hearing notice by a substituted means, and then the court granted such a relief dated the 16<sup>th</sup> day of January, 2020, and the matter was adjourned to 20<sup>th</sup> day of February, 2020.

On the next return date, the defendant, in spite of being served with the hearing notices, could not put up appearance, and the counsel to the plaintiff applied that their right to cross examine be foreclosed and the court granted such a relief in which the defendants were foreclosed of their right to cross examine the PW1.

The plaintiff put in the 2<sup>nd</sup> witness, the PW2, on the 8<sup>th</sup> day of October, 2020, and in spite of the fact that the defendants were served with the hearing notice, they could not put up appearance. The PW2 adopted his Witness Statement on Oath, and tendered a document "Exh. A10". A date was taken to enable the defendant appear before the court to cross examine the PW2, and on the next returned date, being the 16<sup>th</sup> of November, the defendants, in spite of being served with hearing notices, still could not put up appearance, and the counsel to the plaintiff applied that their right to cross examine the PW2 be foreclosed, and then, the court granted such a relief, and the case was adjourned for defence.

On the next adjourned date, being the 17<sup>th</sup> day of December, 2020, the defendants in spite of being served with hearing notice, could not put up appearance and the counsel to the plaintiff applied that they should be foreclosed of their right to put a defence, and this was granted by the court.

On the 8<sup>th</sup> day of March, 2021 the defendants in spite of being served with hearing notices, could not put up appearance to adopt

their final written address even if it was filed, the defendant could not file their final written address, and the counsel to the plaintiff adopted his final written address in satisfaction of the requirement of the Federal Republic of Nigeria 1999 (as amended).

In his final written address, the counsel to the plaintiff submitted that the intention of the parties has been reduced into an agreement duly signed by both of them, the court is enjoined to interpret these agreements in accordance with the intention of the parties as the court cannot make an agreement for them, and he cited the case of **Calabar Cement Co. Ltd v. Daniel (1991) 4 NWLR (Pt. 88) 750 at 761**. He submitted that the defendants have to challenge the contents of the agreement entered between them and more so the defendants could not put in a defence to the claim, and therefore urged the court to accept the unchallenged and uncontroverted evidence of the plaintiff, and he cited the case of **Yakubu v. M.W.T.A.S (2005 All FWLR (Pt. 267) 1388 at 1431** to the effect that an unchallenged and uncontroverted evidence, it has been stated in a string of authorities, that apart from the trial court accepting and acting on it, the onus of proof is normally discharged on a minimal of proof this is because, in such a situation, there is nothing to put in the other side of the proverbial or imaginary scale of balance, as against the evidence given by or on behalf of the plaintiff, and he also cited the case of **Nzeribe v. Dawe Engineering Co Ltd (1997) 8 NWLR (Pt. 361) 24 at 139 and Durosaro v. Ayorinde (2005) All FWLR (Pt. 260) 167 at 182** to the effect that where relevant admissible and credible evidence stands unchallenged, uncontradicted, the court has no alternative but to accept it and act on it to establish a matter in issue, and he cited the cases of **B.B.A. OIL v. Achoru (1990) 6 NWLR PT. 156.254 And Onuregbe v. Lawani, (1980) 3-4 SC 108 at 17**. The counsel submitted that the parties in the case are bound by their agreement voluntarily entered into and the plaintiff is justified in the claim of interest pursuant to the agreement between him and the 1<sup>st</sup> defendant, and he cited the case of **P.O Ltd v. GTB Plc (2016) All FWLR (Pt. 841) 1450 at 1459**. The counsel submitted that the interest charged by the plaintiff in this case is in consonance with the agreement entered into with the 1<sup>st</sup> defendant and the court will readily award same in the form of pre-judgment interest, and he cited the cases of **Idakula v. Richards (2000) FWLR (Pt. 14) CA 2439 at 2450 and Yakubu v.**

**M.W.T.A.S. (supra).** The counsel cited the case of **San Abacha For Peace & Unity v. U.B.A. Plc (2010) All FWLR (Pt. 522)1668 at 1674.**

The counsel drew the attention of the court to the collateral pledged by the defendants in the form of Certificate of Occupancy no. NS 5639 comprising of 4 units of 2 bedroom flats situate at Maraba, Nasarawa State, and he emphasized on the position of law on a secured debt and cited the case of **Diamond Bank Plc v. Opara (2019) All FWLR (Pt. 992) 351** to the effect that a secured debt has collateral to reduce the risk associated with lending, such as mortgage, if the borrower default on payment, the bank seizes the mortgaged properties, sells it and uses the proceeds realized to pay back the debt as the mortgaged property is liable to forfeiture.

The counsel drew the attention of the court to the position of the 2<sup>nd</sup> defendant in this case and he reproduced paragraph 3 of the statement of claim to the effect that the 1<sup>st</sup> defendant is the alter-ego of the 2<sup>nd</sup> defendant which is a limited liability company incorporated in Nigeria, and the 1<sup>st</sup> defendant being the alter-ego, and in his bid to settle part of his indebtedness to the plaintiff issued Fidelity Bank cheque in the name of the 2<sup>nd</sup> defendant in favour of the plaintiff in which the sum of N35,000,000= cheques was returned unpaid, and to him therefore, paragraphs 3 and 16 of the statement of claim and paragraphs 5 and 18 of the Witness Statement on Oath emphasized on.

The counsel urged the court to grant the reliefs sought.

Let me at this juncture formulate the issue for determination with a view to resolve in one way or the other to wit:

**“Whether or not the plaintiff has by preponderance of evidence proved the reliefs sought?”**

The plaintiff in this case put on evidence, and it is the duty of this court to evaluate the evidence and to assign probative value thereto. See the case of **Chitra Knitting and Weaving Manufacturing Company Limited v. G. O. Akingbade (2016) All FWLR (pt 857) 507 at 526 paras. E – F.**

It is in evidence of the PWI, that the plaintiff gave to the 1<sup>st</sup> defendant a loan of N5,000,000= with an interest payable in every 23<sup>rd</sup> of each month until agreement is terminated and that the loan is secured with a landed property with Certificate of Occupancy with no. NS 5639 measuring about 2701.59m<sup>2</sup> in Mararaba with 4 units of 2 bedroom flats. The PWI told the court that only paid the sum of

N8,000,000= but refused to pay the principal sum and the balance of the interest, all to the sum of N34,633,333.00=.

**The plaintiff relied on “EXH. A1” which reads:**

**Agreement Between Engr. Okpara Peter Akujobi and Olorunfemi Akintola in Respect of N5,000,000.00= Loan.**

**I, Olorunfemi Akintola, hereby collect the sum of N5,000,000.00 (Five Million Naira only) from Engr. Opara Peter Akujobi, to pay an interest of N500,000= (Five Hundred Thousand Naira only) every 23<sup>rd</sup> of each month until agreement is terminated.**

**The loan is to be served with a landed property.**

**Signed**

**Olorunfemi Akintola**

**Signed**

**Engr. Opara Peter Akujobi**

The PWI has not been cross-examined by the defendants as they could not put up appearance inspite of being served with Hearing Notice. See the case of **Junaidu v. State (2016) All FWLR pt 850) p. 1057 at pp. 1089-1090 paras. H – D** where the Court of Appeal Kaduna Division held that the right of a party to cross-examine the witness presented by his adversary is one of the legal rules formulated to ensure that justice is done to all the parties to a cause or matter in a trial, it is considered to be of fundamental competence in the trial process and any attempt by a trial court to deny or circumscribe the right of a party to cross-examine his adversary's witness in any manner whatsoever, is turned upon by the appellate court and treated as a breach of fair hearing. In the instant case, and in order not to deny the right of the defendants to cross-examine the PWI, the court invited the defendants to enable them cross-examine the witnesses called by the plaintiff by serving them with hearing notices and which they opted not to appear before the court.

It is not the duty of a trial court to wait for a party who is duely served with the processes of court and fails to show up. The court is free to begin hearing on any matter when it is satisfied that the



parties to the case were duly served with hearing notice. When a party in a legal trial is served with a hearing notice, but decides to be absent, the obvious and reasonable conclusion is that he does not intend to contest the case or he has chickened out. Where a party to a suit has been awarded a reasonable opportunity of being heard and in the manner prescribed under the law and for no satisfactory explanation, it fails or neglects to attend the sitting of the court or boycotts same, that party cannot thereafter be heard to complain about lack of fair hearing. See the case of **Ndulue v. Ibeh (2016) All FWLR (pt 822) p. 1684**. See also the case of **Ezechukwu v. Onwuka (2016) All FWLR (pt 844) p. 153 at pp. 165 – 166**. In the instant case, the defendants were duly served with the originating processes, and subsequently with Hearing Notices and could not take any step to attend to the proceedings or even to file any process in defence, certainly this court will presume that they have chickened out of the case, and to this, I therefore, so hold. See the case of **Haruna v. Isah (2016) All FWLR (pt 818) p. 927 at p. 960 paras. F – G** to the effect that where a witness of a party is not questioned under cross-examination on his testimony as material facts and on the documents he tendered in his examination in chief, the testimony of the witness and the genuine of the document will be believed and any subsequent suggestion otherwise by the other party will be treated as an afterthought. In the instant case and based upon the circumstance, I have to accept the evidence of the PWI in this case and the evidence of the PWI is hereby accepted in proof of the debt of N5,000,000= with interest.

It is also the duty of this court to examine the document put forward before it. See the case of **Ezechukwu v. Onwuka (supra)** it is at this point I have to examine the agreement marked "EXH. A1" which needs:

**I, Olurunfemi Akintola, hereby collect the sum of N5,000,000.00= (Five Million Naira only) from Engr. Opara Peter Akujobi, to pay an interest of N500,000.00 (Five Hundred Thousand Naira only) every 23<sup>rd</sup> of each month until agreement is terminated.**

**The loan is to be secured with a landed property .**

**Signed**

**Olurunfemi Akintola**

**Signed**

**Engr. Opara Peter Akunjobi**

Thus, in interpreting the above agreement entered between the two parties recourse has to be had to their intention, and it has to be interpreted literally once the terms are clear and unambiguous. See the case of **Adedebi v. Obajimi (2019) All FWLR (pt 1013) p. 928 at 955 paras. B – C**. In the instant case, the above quoted agreement can be construed to mean that the 1<sup>st</sup> defendant has borrowed the sum of N5,000,000= from the claimant on the interest of N500,000 payable every 23<sup>rd</sup> of each month until the agreement is terminated. The word 'terminated' is believed to mean "discharge of the agreement." So agreement can be terminated by performance, by express agreement, by the doctrine of frustration, or by breach. It is also in the agreement that the loan is to be secured with a landed property.

In construing the last paragraph of the agreement, it means the loan is to be secured by depositing landed property. Also in construing the above paragraph of the agreement it means the loan will be secured by landed property, which means it is yet to be secured.

By the relief sought, the claimant claims the sum of N34,633,333.00 being the outstanding payment due to him from the defendants as principal and the agreed interest between the 23<sup>rd</sup> day of July, 2012, that was the date the agreement was entered until the agreement is terminated that was 31<sup>st</sup> day of October, 2018. In essence, according to the claimant, the agreement terminated on the 31<sup>st</sup> day of October, 2018. However, to my mind, the computation of time for the payment of interest would have started on the 23<sup>rd</sup> of August, 2012 making it one month, as against the 23<sup>rd</sup> day of July, 2012 when the agreement was entered. So the sum of N500,000= monthly interest will be multiplied by the number of months from the 23<sup>rd</sup> day of July, 2012 to 31<sup>st</sup> day of October, 2018, that is to say, there would be a balance of five months in 2012, then twelve months in 2013, 2014 , 2015, 2016, 2017 and ten months in 2018, and so N500,000.00 x 75 months will give. The sum of N37,500,000=, and this

amount would be added with the principal sum of N5,000,000.00k and the total will be the sum of N42,500,000.00k.

The claimant averred that the defendant paid for 16 months interest on the loan in the sum of N8,000,000.00. Therefore, when the sum of N8,000,000.00 is taken away from the sum of N42,500,000.00k, the balance could be the sum of N34,500,000.00k only.

Thus, from the above calculation and analyses, it can be inferred that the balance remaining unpaid by the defendant to the claimant is in the sum of N34,500,000= only as per EXH. A1, and to this, I therefore so hold.

**EXH. "A2" reads:**

**Agreement Between Engr. Peter Akujobi Opara and Akintola Olorunfemi.**

**This Agreement is made this 14<sup>th</sup> day of September, 2012 between Engr. Peter Akujobi Opara referred to as the lender of N25,000,000.00k (Twenty Five Million Naira only) and Akintola Oloranfemi referred to as the borrower.**

**Whereas:**

**The borrower is desires of borrowing the sum of N25,000,000.00 and the lender agree to borrow the said sum to the borrower paying there as on interest of N3,500,000.00.**

**Now, this agreement witness as follows:**

**That in consideration of the interest sum of N3,500,000.00, the lender hereby lends the sum of N25,000,000.00 to the borrower with a tenor of 3 months the loan is secured with the C of O of a landed property in Mararaba with 4 units of 2 bedrooms.**

**Signed**

**Engr. Opara Peter Akujobi**

**Signed**

**Akintola Olorunfemi**

The above agreement too has to be interpreted literally as the terms are so clear and unambiguous. By the above agreement, it can be construed to mean that the 1<sup>st</sup> defendant borrowed the sum of N25,000,000.00k for the period of three months, and the loan is secured by with the C of O of landed property in Mararaba with 4 units of 2 bedrooms, that is to say, the principal sum and the interest could be paid at the expiration of three months.

In computing the tenor of the loan, it would start to run from the 14<sup>th</sup> day of October, 2012 and to terminate on the 14<sup>th</sup> of December, 2012. In this agreement, period upon which the loan would run, that is to say, for the defendant to pay the principal and the interest, is only three months as against the claim of the claimant that the period would run from the 14<sup>th</sup> September, 2012 to 31<sup>st</sup> day of October, 2018. If this is the correct computation, then N3,500,000.00 interest plus the sum of N25,000,000.00k principal sum will give the sum of N28,500,000.00k only. It is in paragraph 10 of the statement of claim that the defendant paid the sum of N17,500,000.00. therefore, N28,500,000.00 minus N17,500,000.00k will give the balance of N11,000,000= as against the claim of the claimant to the sum of N93,327,778.00. The claimant is only entitled to the sum of N11,000,000.00 on the 2<sup>nd</sup> tranche of loan in the sum of N25,000,000= with an interest of N3,500,000.00 for a tenor of three months, and to this, I therefore, so hold.

**EXH. "A7" reads:**

**Agreement Between Engr. Opara Peter Akunjobi and Olorunfemi Akintola in respect of N10,000,000.00 loan.**

**I, Olorunfemi Akintola hereby collect the sum of N10,000,000.00 (Ten Million Naira only) from Engr. Opara Peter Akujobi, to pay an interest of N2,000,000.00 (Two Million Naira only) every 3 months until agreement is terminated.**

**The loan is to be secured with a landed property.**

**Signed**

**Olorunfemi Akintola**

**Signed**

**Engr. Opara Peter Akunjobi**

By the above agreement, it can be construed to mean that the defendant collected the sum of N10,000,000.00 loan from the claimant on an interest of N2,000,000.00 payable to the claimant every three months until the agreement is terminated, that is to say, until when the contract is performed. The claimant claims in his statement of claims the sum of N53,844,440.00 and this is for the period from the 7<sup>th</sup> day of September, 2012 -31<sup>st</sup> day of October, 2018.

In computing, the period starts to count for the payment of interest of N2,000,000.00 from 17<sup>th</sup> July 2013 to 31<sup>st</sup> December, 2018, that is to say, from 17<sup>th</sup> of April, 2013 to 17<sup>th</sup> of July, 2013 constitute the three months as construed in the agreement and therefore the payment of interest of N2,000,000.00 quarterly will be multiplied by twenty three installments. The period between the 17<sup>th</sup> July, 2013 to 31<sup>st</sup> October, 2018 are claimed by the claimant, the sum of N2,000,000.00 times 23 installment will give N46,000,000= plus the principal sum of N10,000,000 will give the balance of N56,000,000.00. In paragraph 14 of the statement of claim the claimant averred that the defendant has paid the sum of N4,000,000.00 as at 17<sup>th</sup> October, 2013. Therefore, the sum of N56,000,000.00 minus the sum of N4,000,000.00 will give the sum of 52,000,000.00 and the claimant will only be entitled to N52,000,000.00 only representing the principal and the interest, and to this, I therefore so hold .

**EXH. A6 reads:**

**07/11/12**

**Agreement Between Engr. Opara Peter Akunjobi and Olurunfemi Akintola in respect of N10,000,000.00 loan.**

**I, Olurunfemi Akintola hereby collect the sum of N10,000,000.00 (Ten Million Naira only) from Engr. Opara Peter Akunjobi to pay an interest of N2,000,000.00 (Two Million Naira only) every 3 months until agreement is terminated.**

**The loan is to be secured with a landed property .**

**Signed**

**Olurunfemi Akintola**

**Signed**

**Engr. Opara Peter Akunjobi**

The above agreement can be construed to mean that the defendant has collected the sum of N10,000,000.00 as loan from the claimant on an interest of N2,000,000.00 payable to the claimant every three months until the agreement is terminated, that is to say until the contract is performed. The loan is yet to be secured with a landed property.

Thus, as analysed above, the period of three months could start to count on the 7<sup>th</sup> day of February, 2013, that is to say from the 7<sup>th</sup> day of November, 2012 to the 7<sup>th</sup> day of February, 2013 will constitute a quarter or the period of three months. Therefore, the sum of N2,000,000.00 interest per three months from the 7<sup>th</sup> day of February, 2013 to 7<sup>th</sup> of August, 2018 will give N2,000,000.00 times 23 installments will give the sum of N46,000,000.00. the next quarter from the 7<sup>th</sup> August, 2018 to 7<sup>th</sup> October, 2018 is not up to a quarter as it is less with one months, because the claimant only claims from the 7<sup>th</sup> November, 2012 to 31<sup>st</sup> October, 2018. So, in the last quarter, the claimant will only be entitled to two months. The sum of N2,000,000.00 quarterly minus N666,666.66 will give the sum of N1,333,333.34. The sum of N46,000,000.00 for twenty three installments plus the sum of N1,333,333.34 will give the balance of N47,333,333.34k. The balance will therefore be the sum of N47,333,333.34K as against the sum of N53,844,440.00. The claimant averred in paragraph12 of the statement of claim that the defendant has paid the sum of N4,000,000= as at the 7<sup>th</sup> of May, 2013. The sum of N4,000,000.00 will be subtracted from the sum of N47,333,333.34, and the balance will be the sum of N43,333,333.34 only payable to the claimant by the defendant.

Put together all the principal sum and the interest payable to the claimant by the defendant is in the sum as follows:

1. N34,500,000.00 (Thirty Four Million, Five Hundred Thousand Naira)
2. N11,000,000= (Eleven Million Naira).
3. N52,000,000.00 (Fifty Two Million Naira)
4. N43,333,333.34 (Forty Three Million Three Hundred and Thirty Three Naira, Thirty Four Kobo).

The total is in the sum of N140,833,333.34k (One Hundred and Forty Million, Eight Hundred and Thirty-Three and Thirty Three Naira, Thirty-Four Kobo).

Based upon the above analyses and consideration, the evidence of the PW2 being an expert is not necessary, this is because the expert evidence is within the knowledge of the court. See the case of **Abubakar v. INEC (2019) All FWLR (pt 1010) p. 221 at 395 paras. B – D** where the presidential Election Petition Tribunal, Court of Appeal, Abuja held that expert evidence on matters which reasonably fall within the knowledge of the judge or tribunal may not be called. In the instant case, the evidence of the PW2 is hereby discountenanced.

On the whole, I have come to the conclusion that the claimant has by evidence, proved the reliefs sought.

The claimant in paragraph 16 of the statement of claim and in paragraph 18 of the witness statement on oath of PW1 stated that the 1<sup>st</sup> defendant in a bid to settle the outstanding indebtedness in which he issued the Fidelity Bank Plc cheque of 30<sup>th</sup> of April, 2015 for the sum of N35,000,000.00 (Thirty Five Million Naira) in the name of the 2<sup>nd</sup> defendant which the said cheque was returned unpaid. By the above, it can be inferred that the only reason the claimant made against the 2<sup>nd</sup> defendant as a party to this case is because the 1<sup>st</sup> defendant issued a Fidelity Bank Cheque dated 30<sup>th</sup> day of April, 2015 for the sum of N35,000,000= in the name of the 2<sup>nd</sup> defendant and which the said cheque was returned unpaid. See the case of **K. S. Okeaya – Inch ESP v. Quality Finance Ltd & Anor (2016) ALL FWLR P. 1634 at 1644**. It was held by the Court of Appeal, Benin Division that a party made a defendant in a suit against whom no cause of action is disclosed is not a proper party and will be entitled to have his name struck out. In the instant case, the question which this court needs to find an answer is that: whether the averment in paragraph 18 is enough for this court to hold that there is a cause of action against the 2<sup>nd</sup> defendant? Let me refer to the case of **Idachaba v. Kona (2008) All FWLR (pt 425) p. 1751 at 1761 paras. C – D** where the Court of Appeal, Abuja Division held that a pleading can be said to disclose no cause of action where it is such that nobody can understand which claim it is required to meet. In the instant case, the

only thing the 2<sup>nd</sup> defendant did was alleged to have done was the issuance of the cheque in its own name. in the circumstances no factual situation which will enable the court to proceed in its enquiry against the 2<sup>nd</sup> defendant see the case of **Eketu v. Anuku (2011) All FWLR (pt 561) p. 1561 at 1576 paras. D – E** where the Court of Appeal Port Harcourt Division held that the only reason which makes it necessary to make in person a party to an action is so that he should be bound by the result of the action and the question to be settled must be a question in the action which cannot be effectually and completely settled unless he is a party. In the instant case, the agreement were purely made between the claimant and the defendant and no more. The appropriate thing to do is to strike out the name of the 2<sup>nd</sup> defendant as no cause of action is disclosed against it. See the case of **Okeaya Innuh v. Quality Enince Ltd (supra)**. The name of the 2<sup>nd</sup> defendant is hereby struck out accordingly.

On the relief in paragraph (v), the claimant has not been able to disclose facts linking the property known as no. 32, Benue Crescent, Suncity Estate, Abuja, and therefore, I am not inclined to grant same. See the case of **Agbogu v. Okoye (2008) All FWLR (pt 414) p. 1501 at 1527 para C** where the Court of Appeal Jos Division held that the right of injunction enure from a pre-existing cause of action.

On the relief sought as to cost of action, I refer to the case of **Divine Ideas Ltd v. Umoru (2007) All FWLR (pt 380) p. 1482 at 1509 paras. A – D** where the Court of Appeal, Abuja Division held that cost of action or solicitor's fees are in the realm of special damages which must be specially pleaded and strictly proved.

Thus, I have painstakingly perused and looked at the statement of claim, and I have not found any where the claimant pleaded or stated as to how he arrived in claiming such figure of N10,000,000= cost of action. More so, I have gone through the witness statement on oath of the claimant and have not seen where it is deposed to the fact as to how the claimant arrived at that figure of N10,000,000= expended in the course of the trial.

In the circumstance I am not inclined to grant such a relief.



The 1<sup>st</sup> defendant is hereby found liable to the tune of N140,833,333.34k.

The 1<sup>st</sup> defendant is hereby ordered to pay to the claimant the sum of N140,833,333.34k (One Hundred and Forty Million, Eight Hundred and Thirty Three Thousand, Three Hundred and Thirty-Three Naira Thirty-Four Kobo) with immediate effect.

Signed  
Hon. Judge  
15/07/2021

Appearances:

The plaintiff is in court.

Waheed Gbamosi Esq appeared for the plaintiff.

CT-PC: Has the Hearing notice been served upon the defendant?

PC-CT: Yes, he has been duly served.

CT-PC: For the fact that there was strike being embarked by the Judicial Staff Union in Nigeria the judgment was not delivered on the 8<sup>th</sup> day of March, 2021, can you address the court whether you have suffered any miscarriage as a result of that?

PC-CT: There is no miscarriage of justice suffered either by me or my client. Originally it was stated for 2<sup>nd</sup> day of June, 2021 and not March, 2021.

Signed  
Hon. Judge  
15/07/2021