

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT MAITAMA ON THE 13<sup>TH</sup> JULY, 2023**

**BEFORE HIS LORDSHIP, HON. JUSTICE U. P. KEKEMEKE**

**SUIT NO. FCT/HC/CV/1940/20**

**COURT CLERK: JOSEPH BALAMI ISHAKU.**

**BETWEEN:**

**FIRST BANK OF NIGERIA LIMITED.....CLAIMANT**

**AND**

**PINNACLE INTERNATIONAL ACADEMY LIMITED....DEFENDANT**

## **JUDGMENT**

The Claimant's Writ of Summons variously dated but filed on the 17<sup>th</sup> of June, 2019 against the Defendant is as follows:

- (i) The sum of N9,109,669.91k being the balance of the principal and accrued interest (as at 30<sup>th</sup> of May 2019) on the 1<sup>st</sup> loan granted the Defendant by the Claimant.

- (ii) 26% agreed interest per annum from the 31<sup>st</sup> May 2019 till judgment.
- (iii) 10% post judgment interest from the date of judgment until the judgment sum is liquidated.
- (iv) N5 Million exemplary damages.
- (v) Cost of action.

The Defendant was served with the Writ of Summons, Statement of Claim on the 31<sup>st</sup> day of October 2019. It failed, refused and or neglected to enter appearance and or file a Defence. It was further served with hearing notices on 17/08/20, 10<sup>th</sup> of March 2021, 28<sup>th</sup> June 2021 and 29<sup>th</sup> October 2021 but the Defendant still failed to enter appearance.

The Claimant, the First Bank of Nigeria opened its case and AbdullaiBulama, a staff of Claimant gave evidence on its behalf. He stated orally that on the

14/06/2019, he swore to a Witness Statement on Oath. He adopts same as his oral testimony.

In the said Witness Statement, he states that he is the Recovery Officer (North Axis) of the Claimant. That the Claimant in this suit formerly First Bank of Nigeria Plc is a registered financial institution while Defendant is a limited liability company.

That in 2014, the Defendant approached the Claimant at her Zuba branch for a facility request vide a letter dated 25/06/14 seeking what it called a **“First EduFacility”** of N6,800,000 to enable her handle issues as it relates to the school.

The Defendant equally wrote and submitted a Letter of Undertaking dated 26<sup>th</sup> June 2014 whereby the Defendant undertook to exclusively domicile all school fees with the Claimant. It undertook not to

move her account from the Claimant's bank for duration of the loan.

Based on the above, the Claimant granted the Defendant the aforesaid loan on the 4/07/14 with a repayment tenor of 3 months. The Defendant accepted the offer on the 4/07/2014 and undertook to fund her account on or before the due date of each instalment of repayment. The Defendant also signed an exclusive school fees collection agreement on the same date 4/07/14 wherein the Defendant appointed Claimant as the exclusive and sole collecting bank for all the school fees payable by the Defendants pupils during the subsistence of the said facility.

That Defendant draw down the facility and utilized same to her advantage but failed neglected and refused to liquidate the loan at the end of the three month tenor as the school fees that could have repaid the loan and accrued interest were not received on

the loan account. The school fees were diverted by the Defendant contrary to the letter of undertaking.

The Claimant wrote the Defendant by a letter dated 13/11/15. The Defendant admitted indebtedness and requested for an interest waiver on the facility. The Defendant was not entitled to interest waiver but Claimant approved a liberal payment schedule of N5,096,568.21k to be paid over 9 school terms of N506,285.36k per term which payment schedule was to start running from January 2016 to September 2018.

The Claimant emphasized in the said approved payment schedule that the entire outstanding debt plus all accrued interest shall become due and payable if the Defendant fail to pay the whole concessionary amount of N5,696,568.27k within the period specified timeframe as per the payment schedule.

That instead of the Defendant reciprocating the said good gesture, the Defendant failed and blatantly refused to pay same again. That two years and some months after having failed, Defendant wrote Claimant on 10/01/17 admitting indebtedness to the Claimant and proposed to pay N500,000 per term to liquidated the indebtedness which proposal Claimant did not accept insisting that the entire debt be liquidated Eight Months after the said letter and after repeated demands the Defendant wrote on 14/09/17 rendering an unreserved apology for his failure to pay off the loan.

That Defendant has refused to pay despite repeated demands. That on 27/06/18 when loan and interest were still standing at N6,687,685.83k, the Claimant instructed her Solicitors to write a demand letter for payment of the outstanding indebtedness. The said

demand letter is dated 25/07/18 served on the Defendant on 25/07/18.

The Defendant replied by a letter dated 03/08/18 still admitting indebtedness but mischievously made reference to an earlier approved deadline of September 2018 which it had long violated. The Defendant failed to pay the admitted sum of N3 Million or defray the whole indebtedness.

That from 14/09/18 to February 2019 the Defendant paid the paltry sum of N454,000 made in 5 instalments on 14/19/18, 21/09/2018, 28/09/18, 31/10/18 and February 2019.

That as at 30<sup>th</sup> May 2019, the Defendant's indebtedness on the said loan stood at N9,109,669.91k principal and accrued interest. That the loan has been due for payment for the past five years. That Claimant has suffered untold and

unprovoked financial hardship and inconveniences.  
That its business is adversely affected.

Witness claims as per the Writ of Summons and Statement of Claim. The PW1 tendered Exhibits A – A9:

- (1) Letter from Defendant for facility dated 30/06/14.
- (2) Letter of Undertaking.
- (3) Letter of offer of Credit Facility.
- (4) Exclusive school fees collection agreement.
- (5) Letter dated 30/11/15 titled Re: Approval for interest Waiver request.
- (6) Defendant's letter dated 10/01/17 titled ***“Outstanding loan facility: Proposal for payment”***.
- (7) Defendants letter of commitment dated 14/09/17.
- (8) Letter of Demand from Claimant's Solicitor.
- (9) Defendants reply dated 3/08/2018.



In spite of the evidence above Defendant failed, refused and or neglected to cross examine the Claimant's Witness or enter her defence despite the service of Hearing Notices to that effect. The Claimant's Counsel adopted his Final Written Address dated and filed on 21/02/2023 and posited two issues for determination which are in fact one:

- (1) Whether the Claimant has satisfied the requirement of the law as to be entitled to judgment.

Learned Counsel argues that Claimant has satisfied the requirement of the law. That the evidence before the Court is unchallenged and uncontroverted and ought to be accepted as it is deemed admitted.

I have read the evidence as summarized and exhibits considered the Written Address of Claimant's Counsel.

In civil cases such as this the onus of proof is on the Claimant and does not shift until he was proved his claim on the preponderance of evidence and balance of probabilities. It is also the law that a party must prove its case on credible evidence of its witnesses and is not at liberty in law to make a case or rely on the weakness of its opposite party in order to succeed.

***ELIAS VS.OMO-BARE (1982) 5 SC 25.***

I have perused the Exhibits i.e the facility request letter, letter of undertaking, the letter of offer Exhibit A2 which is the star Exhibit, which contains the conditions and the acceptance of the offer the exclusive school fees collection agreement. The letters of admission from the Defendant which are Exhibits A5, A6 & A8.

In a Civil case, the only way to reach a decision as to which party is entitled to judgment is by determining on which side the weight of evidence lay and this could be done by putting the evidence on an imaginary scale and weighing them together to find out to which side the evidence preponderated.

However in this case the Defendant decided not to call any evidence. He has put nothing on his own side of the balance inspite of the evidence called by the Claimant.

The Supreme Court laid the law bare in ***ABDULLAI BABA VS. NIGERIA CIVIL AVIATION TRAINING CENTRE ZARIA (1991) 7 SCNJ 1*** that ***“Whenever in an evidence comes from one side and is unchallenged and uncontradicted. It ought normally to be accepted on the principle that there is nothing to be put on the other side of the balance unless it is of such quality that no***

***reasonable tribunal would have believed it. So when evidence goes one way, the onus of proof is discharged on minimal proof”.***

In the instant case, the evidence is one way traffic. The Claimant has put before the Court cogent and credible evidence bot oral and documentary. I have no reason to doubt them. I therefore accept same. Our financial system needs sanitization. Money in the banks belongs to depositors. They are not free money. A sound financial system requires customers to redeem their loan obligation to banks as and when due.

Refusing to redeem a loan within three months as agreed and further failure to pay back same after five years as in this case is wrecking the banking system. The Claimant has proved his case so as to be entitled to judgment.

Judgment is therefore entered for the Claimant against the Defendant as follows:

- (1) The Defendant shall pay to the Claimant the sum of N9,109,669.91k being balance of the principal and interest as at 30<sup>th</sup> day of May 2019 and 26% interest per annum from 31<sup>st</sup> May 2019 till date.
- (2) 10% post judgment interest from now until judgment sum is liquidated.
- (3) Two (2) Million Naira as exemplary damages.
- (4) N100,000 as cost of action.

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**HON. JUSTICE U.P. KEKEMEKE**  
**(HON. JUDGE)**  
**13/07/2023**