

**IN THE HIGH COURT OF JUSTICE OF THE F.C.T.**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT ZUBA, ABUJA**

**ON TUESDAY THE 27<sup>TH</sup> DAY OF JUNE, 2023**

**BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA**

**JUDGE**

**SUIT NO.: FCT/HC/CV/132/2018**

**BETWEEN:**

**MRS. CAROLINE OBIKEZIE                      -----                      CLAIMANT**  
**(Carrying on Business as**  
**MAH-KING COSMETICS)**

**AND**

**PEACE MICROFINANCE BANK LIMITED       -----       DEFENDANT**

## **JUDGMENT**

In this Suit filed on the 24<sup>th</sup> day of September, 2018 the Claimant, Mrs. Caroline Obiekezie is claiming the following Reliefs against the Defendant, Peace Microfinance Bank Limited:

- (1) A Declaration that having collected or having the right to collect indemnity from Insurance firm with which the burnt goods were insured in favour of the Defendant ought to waive**

**repayment of the sum of One Million, Seven Hundred and Fifty Thousand Naira (₦1, 750,000.00) which was the outstanding part of the said loan as at 25<sup>th</sup> December, 2017 when the insured goods were destroyed by fire and the overdraft of Five Hundred Thousand Naira (₦500, 000.00) and all interests and charges thereon.**

- (2) A Declaration that the continued computation and levying of charges on the Claimant's account with the Defendant in respect of the loan and overdraft in question when the Defendant ought to have waived repayment of same is illegal, null and void.**
- (3) A Declaration that having collected or having the right to collect indemnity from the Insurance firm with which the burnt goods were insured in favour of the Defendant and still levying interests and charges on the Claimant's account in respect of the loan and overdraft when repayment of same ought to be waived is a breach of the contract between the Claimant and the Defendant.**
- (4) An Order of the Court directing the Defendant to waive repayment of the Three Million Naira (₦3, 000,000.00) loan given to the Claimant on**

**or about 22<sup>nd</sup> July, 2017 and all charges thereon and the overdraft of Five Hundred Thousand Naira (₦500, 000.00) given to the Claimant by the Defendant and all charges thereon; OR ALTERNATIVELY**

- (5) An Order of the Court directing the Defendant to waive repayment of the sum of One Million, Seven Hundred and Fifty Thousand Naira (₦1, 750,000.00) which was the outstanding part of the said loan as at 25<sup>th</sup> December, 2017 when the insured goods were destroyed by fire and the over draft of Five Hundred Thousand Naira (₦500, 000.00) and all interests and charges thereon.**
  
- (6) An Order of the Court directing the Defendant to immediately reverse and refund to the Claimant all repayments of principal and interest on the loan of Three Million Naira (₦3, 000,000.00) given to the Claimant by the Defendant and the overdraft of Five Hundred Thousand Naira (₦500, 000.00); OR ALTERNATIVELY**
  
- (7) An Order of the Court directing the Defendant to reverse and refund to the Claimant all repayments of principal and interest on the sum of One Million, Seven Hundred and Fifty**

**Thousand Naira (₦1, 750,000.00) which was the outstanding part of the said loan in question as at 25<sup>th</sup> December, 2017 when the insured goods were destroyed by fire and the over draft of Five Hundred Thousand Naira (₦500, 000.00) and all interests and charges thereon.**

**(8) An Order of Perpetual Injunction restraining the Defendant by itself, agents, assigns, staff, officers, receivers or privies howsoever designated from alienating, tampering with, entering on or in any way dealing with the landed property, to wit: the two (2) Plots of land pledged by the Claimant as collateral for the loan and overdraft given to the Claimant by the Defendant.**

**(9) The sum of Twenty Million Naira (₦20, 000,000.00) as General Damages for breach of contract and the undue hardship, stress and pressure to which the Defendant has subjected the Claimant.**

In this Suit the Claimant – Mrs. Caroline Obiekezie, a customer of the Defendant – Peace Microfinance Bank Limited, took a loan and overdraft from the Defendant between July and August 2017 in order to boost her business. One of the conditions is that she pays 1%

interest on the loan for insurance against Fire and Burglary. She did with the hope that where there is any incidence of fire or burglary that the Insurance will cover same.

On the 25<sup>th</sup> December, 2017 her shop was involved on the fire that gutted in the Bwari Market where her shop was located. All her goods were lost in the fire incident. She ran to the Defendant and made a report, expecting that the insurance company will bear the loss of the fire incident. But to her shock it was not so. She tried to let the Defendant see reason as per the payment of the 1% interest for Insurance cover for indemnity. Rather than help the Claimant recover the loss from the Insurance or the Defendant, the Defendant made and confused the Claimant to collect more loan and overdraft. The Claimant hope that the Defendant will not collect and have waived the remaining balance of the former loan and the overdraft proved abortive and dashed. The Defendant continued to insist on the Claimant repaying both the old loan, overdraft and the new loan.

Angry, disappointed and betrayed, the Claimant initially demanded the Defendant to waive the old loan and overdraft. They refused. He engaged his Counsel to write to the Defendant to demand and express her displeasure and disappointment. The Defendant refused to waive said outstanding of the loan and reverse the interests and charges thereon and do the right thing by collecting the appropriate indemnity from the Insurance Company.

Aggrieved the Claimant instituted this action claiming the Reliefs as already read out.

At trial the Claimant called 2 Witnesses. She testified as PW1 and called another person who testified as PW2. She tendered documents. The Defendant called a Witness and tendered documents too.

In the Final Written Address the Claimant adopt the same issue which the Defendant has raised which is:

**“Whether the Claimant has proved her case as required by law to be entitled to the Reliefs sought?”**

In answering the question the Claimant raised another 3 questions which are:

- (1) Whether the Claimant has proved the Defendant’s obligation to take a Fire and Burglary Insurance Policy in respect of the Loan and overdraft with the Defendant.”**
- (2) Whether the Claimant has proved that the Insurance policy taken by the Defendant in respect of the loan and overdraft was for Fire and Burglary Insurance policies.**
- (3) Whether the Defendant, being entitled to collect indemnity from the Insurance firm which it insured the Claimant’s loan and**

**overdraft, it can still turn round and demand or collect the outstanding part of the loan and overdraft from the Claimant.**

**On Issue No. 1**, she submitted that as per paragraphs 7 & 8 of the Witness Statement on Oath of the PW1 and her testimony that by the loan and overdraft that she was requested by the Defendant to pay the 1% interest for Insurance fee for Fire and Burglary in respect of the said loan and overdraft. That the Bwari Branch Manager of the Defendant at the Bank informed her that the said 1% was taken by the Defendant for that purpose and nothing more. That the submission of the Defendant that the Claimants paid for Life Insurance Policy instead of Fire and Burglary Insurance Policy is wrong and not true.

On the letter of offer for additional loan – **EXH 3** in which the Defendant Counsel claimed that the terms of Initial Loan formed part of the New Loan and covers or specified Life Insurance instead of Fire and Burglary Insurance. That contrary to the submission of the Defendant Counsel the said **EXH 3** has specified vividly in the column for Insurance thus:

**“Insurance: 1% (life) to be deducted upfront.”**

In page 2 it read on the column for Insurance thus:

**“Fire and Burglary Insurance (0.8) of stock cover of goods in favour of Peace Microfinance Bank Limited.”**

That **“(life)”** as contained above cannot constitute or mean Life Insurance as it too vague in a situation where it was specifically stated that the Insurance was for Fire and Burglary as shown in the 2<sup>nd</sup> page of **EXH 3**.

That the management of the Defendant had persuaded her on the Fire and Burglary Insurance even before the letter of offer of **EXH 3**.

That if the Defendant meant Life Insurance they could have stated so clearly. That EXH 3 cannot operate in law as admission of estoppel to stop the Claimant from insisting on what the Defendant had obligated as regards the Fire and Burglary Insurance Policy which would avail the representation of the Defendant and the contemplated intervention. That the Defendant did not controvert PW1’s evidence in paragraphs 7 & 8 of her Witness Statement on Oath. Nothing in the Oath of DW1 rebutted or denied the Claimant’s averment in paragraph 7 & 8 of her Oath as regards the payment of the Fire and Burglary Insurance as persuaded by the Defendant. That the evidence of the PW1 shows the true intention and purpose of the said contract on issue of Insurance. He referred to the case of:

**Nigeria Bank for Commerce and Industry V. Integrated Gas Nigeria Limited**

**(2005) 9 WRN 1 @ 32**

That the Defendant was under obligation to take out Fire and Burglary Insurance Policy which will ensure the Insurance Intervention contemplated in the case of fire and burglary incident. That equity looks at intent rather than the form.

That the DW1 also explained the intent and purpose of the contract from his evidence of which during Cross-examination sufficiently established the Defendant's obligation to take Fire and Burglary Insurance Policy as shown in paragraphs 6 – 9 of PW2 Oath. She was never Cross-examined on those aspects of her evidence. DW1 did not deny the facts contained therein. That the DW1 stated that the Defendant usually make clone on Insurance Company in respect of customer loan and deducts the fee from customer's account. That it takes the Policy and subsequently gives Insurance Certificate to the customer. That customers like the Claimant only pays Insurance fee charged by the Defendant and the fee is an Internal Deduction by the Defendant from the customer's account. That the Defendant carries out the rest of the process without interference of the customer.

That the above confirmed that in the whole procedure the Defendant was obligated to take the Fire and Burglary Insurance Policy in this case. They urged Court to so hold.

That by the Loan Agreement the Defendant was to take the Policy and deduct the fees from the Claimant's accounts. That the Defendant has the responsibility to do the Fire and Burglary Insurance Policy as agreed with the Claimant. He urged Court to hold that the Claimant had proved the Defendant's obligation to take Fire and Burglary Policy in respect of the Claimant's loan and resolve the question in favour of the Claimant.

**On question No. 2**, whether the Policy taken was in respect of the loan. That equity looks at intent and not the form. They referred to the submission of the DW1 under Cross-examination. The same policy as shown in testimony of PW2. That the Defendant failed to deliberately state the kind of Insurance Policy it took. That it did not tender any document to support that in this case. They referred to **S. 149 of the Evidence Act** and the case of:

**Akindipe V. State**

**(2012) NSCOR (PT. 2) 511 @ 540**

That the fact in the PW1 Witness Statement on Oath in paragraph 8 is not controverted as per the said Policy on Fire and Burglary. They urged Court to so hold as the evidence remains admitted by the Defendant. He relied on the case of:

**Oniwole V. Co-op. Bank PLC**

**(2005) 13 WRN CA**

He urged the Court to answer question No. 2 in the affirmative and hold that the policy taken in this case is Fire and Burglary Insurance Policy.

**On Issue No. 3**, whether the Defendant being entitled to collect indemnity from Insurance Firm as it informed the Claimant in the Loan and Overdraft, whether the Defendant can turn around and collect and/or demand the outstanding part of the loan and overdraft from the Claimant, they submitted that where there is an Insurance Policy and the risk insured against occurs that the Insurance Firm will bear the loss and the insured will be absolved from bearing the risk.

That it was the contemplation of the parties in the Insurance Policy on Fire and Burglary, that if the risk occurs, that the Insurance Firm will bear the loss and that the Claimant will not be required to pay the outstanding part of the loan as at the date of occurrence of the insured risk. He referred to **paragraphs 7 & 8** of the PW1 Witness Statement on Oath.

That the management persuaded the Claimant to do the Fire and Burglary Insurance Policy which the Claimant paid for. That it was the Defendant that was supposed to collect the indemnity from the Insurance Firm in case of Fire or Burglary incident. That **S. 70 of the Insurance Act** the Defendant is supposed, as the ultimate beneficiary under the policy, to receive and collect appropriate indemnity from the Insurance Firm. He

referred to **S. 70 (1) & 69 of the Insurance Act**. The Defendant did not state that its claim for indemnity was turned down or that Insurance Firm denied responsibility or liability. He urged the Court to hold that:

**“it is wrong, illegal unconscionable and against the intent of the contract for the Defendant being entitled to collect indemnity from Insurance Firm with which it insured the Claimant’s loan and overdraft to still turn around and demand or collect the outstanding part of the loan and overdraft from the Claimant.”**

That the Defendant is estopped from turning around to demand the outstanding balance of the loan and overdraft. That action of the Defendant in that regard is a breach of contract by the Defendant to have done so. So also the demand for payment of interest and default charges on the Claimant’s account. That the Defendant did not deny those facts.

That the Claimant proved her case and is entitled to her claims against the Defendant. That it is error on part of the Defendant to submit that the Claimant did not prove her case because she did. He urged Court to so hold and grant the Claimant’s Reliefs as sought.

On their part the Defendant called a Witness and filed their Final Written Address on the 5<sup>th</sup> of July, 2021. The main submission and contention is that the Insurance Policy the Claimant has is based on Life Insurance and

not on Fire and Burglary. They premised on the “life” as appeared in the Agreement – EXH 3 page 1 where it states thus:

**“Insurance: 1% life to be deducted upfront.”**

**“Fire and Burglary (0.8) of stock on goods in favour of Peace Microfinance Bank Limited.”**

The Defendant did not tender any document. In their Written Address the Defendant raised an Issue for determination which is:

**“Whether the Claimant has proved her case as required by law to be entitled to the Reliefs sought.”**

The Defendant Counsel submitted on behalf of the Defendant that she has not proved her case and is not entitled to the Reliefs sought. That the Claimant failed to discharge the burden as required by law. He referred to the case of:

**Agbi V. Ogbeh**  
**(2006) 11 NWLR (PT. 990) 65 SC**

That the parties are bound by the contract they have entered into. That it is bound by the contract of the parties. He referred to the cases of:

**Lamie V. DPMS Ltd**  
**(2005) 18 NWLR (PT. 958) 483 SC**

**Aiki V. Idowu**

**(2006) 9 NWLR (PT. 984) 50 SC**

**Dalek V. OMPADEC**

**(2007) 7 NWLR (PT. 1033) 402**

That the Claimant borrowed Three Million Naira (₦3,000,000.00). That the Letter of Offer for loan of Three Million Naira (₦3,000,000.00) is same as letter of Five Million, Three Hundred and Fifty Thousand Naira (₦5,350,000.00) recapitalization.

That all that the Claimant admitted need no proof. That the Claimant paid only for Life Insurance which is different from Fire and Burglary. He referred to the case of:

**Buhari V. Obasanjo**

**(2005) 2 NWLR (PT. 910) 241 CA**

That the Claimant failed to support her averment of overcharging with any evidence and therefore it is deemed abandoned. That the testimony of PW2 is hearsay evidence and inadmissible. That the Claimant failed to prove her case and not entitled to the grant of any Relief sought in this Suit. He urged the Court to dismiss the Claimant's Suit with substantive cost as it is a ploy by the Claimant to avoid carrying out her contractual obligation under the contract of the loan.

The Defendant also filed a Reply on Point of Law. The Defendant submitted that the Claimant failed to prove her case to be entitled to the Reliefs sought. That parties

are bound by the contract they have entered into, which in this case is the Offer Letter for the Loan Agreement signed by the parties. That in the Agreement, the 1% deducted upfront is for Life Insurance. That in case of Burglary and Fire Insurances it is for 0.8% of the stock cover on the goods in favour of the Defendant. That that is the intention of the parties as expressed in the Agreement of the Loan.

That the Court has no right to go outside the document – Agreement, to find the intention of the parties. They referred to the case of:

**Nneji V. Zakhem Construction Nigeria Limited  
(2006) 12 NWLR (PT. 994) 297**

That the issue of Fire and Burglary Insurance was stated separately in the Agreement. That it is the responsibility of the Claimant to do and for such as the Defendant only gives the money and not buy the stock for the Claimant. That the Defendant did not withhold any evidence and was never put on notice to produce any document – the Insurance Certificate. That the evidence of PW2 is hearsay. That the documents tendered were the documents issued to PW2 after the fire incident. So also the Offer Letter tendered is for 2018 which letter gave rise to the Certificate. That the document was given after the Defendant realized that they never insured their stock as required by the Agreement and decided to do so when the customer came for refinancing.

They submitted that the Claimant failed to prove her case and they urged the Court to dismiss her Suit with substantial cost.

## **COURT**

Having summarized the stands of each party for and against this Court holds that the Claimant has proved her case as required by law and in the Agreement of the parties to be entitled to the Reliefs sought. The Claimant has also proved the obligation of the Defendant to take the Fire and Burglary Insurance Policy as agreed in respect of the loan and overdraft with the Defendant. So this Court holds.

Again, this Court also holds that the Claimant has proved with the testimonies of her Witnesses and the documents tendered that the Insurance Policy taken by the Defendant in respect of both the loan and the overdraft was for Fire and Burglary. This Court equally holds that in this case and as in the Standard Insurance Policy on Fire and Burglary the Defendant cannot turn around to demand or collect outstanding part of the loan and overdraft after being indemnified by the Insurance Firm from the Claimant.

The reasoning of the Court on the above is set hereunder. Agreement is Agreement.

To start with, EXH 1 which is on overdraft to restock for duration of 30 days is not in doubt. The various amount

in issue for the loan and the recapitalization is not in doubt.

The Claimant had averred that she entered into Loan Agreement with the Defendant and that the Agreement for loan to stock up her shop was covered by Insurance Policy payable in advance and that she paid that **Thirty Thousand Naira (N30, 000.00)** as surcharged by the Defendant in the loan. Though she did not attach the Agreement which was gutted by the fire incident of 25<sup>th</sup> December, 2017. She attached and exhibited Agreement of PW2 who tendered the similar loan in which there was 1% Insurance Fee deducted upfront. The Defendant challenged the document but did not present any document of such nature to prove the claim of the Claimant wrong. This Court in the absence of such document from the Defendant holds that the document – EXH 7 & 8 suffices to establish the claim of the Claimant in that regard. It is evidently clear that from the said Exhibit that there was an Insurance Policy for Fire and Burglary for the said loan of Three Million Naira (N3, 000,000.00). That Insurance Fee was paid upfront too. There was no such thing as to Life Insurance as the Defendant claim. Besides, it is strange that for a transaction for loan to stock a shop that the Claimant in this case who is the borrower will be made to pay Life Insurance Fee where the money in issue is loan for stocking of her shop and overdraft too. It is no

secret that Life Insurance Scheme is on class of its own and not lumped up with Fire and Burglary issue where the loan is only to help the Claimant to purchase wares for her shop.

Again, in the 2 Exhibits – **EXH 7 & 8**, which is the standard Loan Agreement like the one given to the Claimant, there is no issue of separate payment of Life Insurance and ordinary Insurance for the loan given for purchase of wares.

Also the Defendant did not deny deducting upfront the said 1% Insurance fee. That confirmed that there is an Insurance cover already in place by virtue of the kind of loan agreement entered into with the Claimant. The Defendant was not able to contradict the submission of the Claimant in that regard. There is no document before the Court aside from EXH 3 tendered by the Claimant – PW1 to show that the recapitalization involves a separate Insurance on Life Insurance aside from the 1% Insurance Fee paid for the loan. Besides, the recapitalization and restructuring – **EXH 3** amount – Five Million, Three Hundred and Fifty Thousand Naira (₦5, 350,000.00) includes the previous loan on the Three Million Naira (₦3, 000,000.00) and the Five Hundred Thousand Naira (₦500, 000.00) overdraft given for stocking up with which the Claimant purchased goods that was gutted by fire.

It is evidently clear as established by the Claimant – PW1 that there was Insurance already paid on the loan. The Defendant did not deny that. They confirmed as established by the Claimant that the Claimant paid the Thirty Thousand Naira (₦30, 000.00) Insurance Fee and that such Insurance is payable to them upfront. So since the Insurance Fee was actually paid for Fire and Burglary as shown in testimony of PW1 & PW2 and in EXH 7 & 8, the Claimant is entitled to be indemnified as the goods were gutted by fire incidence of 25<sup>th</sup> December, 2017 and the incident is what was covered by the said Insurance Fees paid upfront by the Claimant to the Defendant. Since the Defendant have Insurance cover to that effect they should not charge the Claimant the second time for the same Insurance and the Claimant should be compensated as it were. The Defendant having collected the indemnity or having right to collect the indemnity from Insurance firm, the Defendant ought and should waive repayment of **Three Million Naira (₦3, 000,000.00)** and the overdraft and all the other sundry charges thereon. So this Court holds.

In the alternative, the Defendant ought and should waive the repayment of the outstanding balance of **One Million, Seven Hundred and Fifty Thousand Naira (₦1, 750,000.00)** which is part of the said loan as at 25<sup>th</sup> December, 2017 when the fire incident happened and the insured goods were destroyed by fire.

This Court holds that continued levying of charges on the Claimant's Account in respect of loan and overdraft is wrong, illegal, null and void. So also levying interest and charges on the Account of the Claimant in respect of the loan and overdraft by the Defendant is a breach of contract since the payment ought to be waived. So this Court holds.

Since the said goods were insured, this Court Order the Defendant to waive repayment of the outstanding sum of One Million, Seven Hundred and Fifty Thousand Naira (₦1, 750,000.00) being outstanding part of the loan as at 25<sup>th</sup> December, 2017 when the insured goods were destroyed by fire incident of 25<sup>th</sup> December, 2017. The Defendant is also to waive the repayment of Five Hundred Thousand Naira (₦500, 000.00) overdraft as well as all interest and charges thereon.

The Defendant is also to reverse and refund the Claimant all repayments of principal and interest on the said sum of One Million, Seven Hundred and Fifty Thousand Naira (₦1, 750,000.00) and the Five Hundred Thousand Naira (₦500, 000.00) overdraft and all interest and charges paid thereon.

The Defendant is hereby perpetually restrained by itself, its privies, agents, assigns, staff, officers and all others howsoever described from alienating, tampering with, entering on or in any way dealing with the landed property pledged as collateral for the said loan and

overdraft given to it by the Claimant for the said loan. Ubi jus ibi remedium.

The Defendant is to pay to the Claimant the sum of Two Hundred Thousand Naira as damages for the breach of contract and for undue hardship she had suffered as well as for stress she went through and the pressure the Defendant subjected her to.

The Claimant had established her claims and the Court entered Judgment in her favour and grants her Reliefs as set up above.

**This is the Judgment of this Court.**

**Delivered today the \_\_\_ day of \_\_\_\_\_ 2023 by  
me.**

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**K.N. OGBONNAYA**  
HON. JUDGE