

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 13 ABUJA
BEFORE HIS LORDSHIP: HON JUSTICE A. S. ADEPOJU
ON THE 28TH OF JANUARY, 2022

SUIT NO: FCT/ HC/CV/1628/20

BETWEEN:

UNIFUND MICROFINANCE BANK LTD-----CLAIMANT

AND

NWAIZUGBE CHINEMELU ANDREW-----DEFENDANT

E. A. NWAGU for the Claimant.

Defendants have not been represented in this suit.

JUDGEMENT

In paragraph 14 of the Statement of Claim dated 22nd day of May 2020, the claimant states as follows:

“Whereof the claimant claims against the defendant as follows:

- a. Payment of the sum of **~~N19, 782, 123.76~~ (Nineteen Million Seven Hundred and Eighty Two Thousand, One Hundred and Twenty Three Naira Seventy Six Kobo)** only, being the total balance of the loan given to Jibrin El-Khalid Nig. Ltd and its accrued interests from 13th August, 2014 to 11th May 2020 guarantee to repaid by the defendant.*
- b. Payment of 0.3% interest of the sum of **~~N19, 782, 123.76~~ (Nineteen Million Seven Hundred and Eighty Two Thousand, One Hundred and Twenty Three Naira Seventy Six Kobo)** only daily,*

from 12th May, 2020 till judgement is entered, being the agreed default interest payable daily on the outstanding principal and interest after due date of repayment.”

*c. Payment of the sum of **₦1,500,000 (One Million Five Hundred Thousand)** only, being the amount paid by the claimant to its counsel to institute and prosecute this matter.*

d. Payment of post-judgement interest of 20% per annum on the judgement sum until judgement is liquidated by the defendant.”

In the witness statement on oath which was filed and adopted by the claimant's witness on the 20th of January 2022, the claimant is said to be a microfinance bank with registered office at Block C Suit 9 and 10 POWA Shopping Complex, Nyanaya, Abuja, while the defendant is a legal practitioner and the Managing Partner with Andrew & Morgan (Attorney at Law) at No. 28 Kitwe Street Wuse Zone 4 Abuja. The defendant was said to have guaranteed the repayment of loan granted to one Mr. John Idowu in the name of its company Jibrin El-Khalid Nig Limited. The said loan was approved and the sum of **₦2,000,000 (Two Million Naira)** was disbursed to Jibrin El-Khalid Nig Limited via its offer letter dated 13th June 2014. The said loan was to be repaid within 60 days starting from 13th June to 13th August 2014 at the agreed interest rate of 5.5% per month and default charge of 0.3% daily on the outstanding principal and interest after the due date of repayment as evidence in the offer letter and the repayment schedule endorsed by **Mr. Apologun John Idowu** acknowledging acceptance of the loan. The

defendant guaranteed the repayment of the loan and the accruing interest by duly filing and signing the loan guarantee form of the claimant. The defendant also issued his GTBank cheque No. 00000012 and deposited the original title document of his ownership of a land namely offer of statutory Right of Occupancy of Plot 2325 Cadastral Zone E23 Kyami FCT bearing the name of Muhammad Umar Gani, Deed of Assignment and Power of Attorney executed between him and Muhammad Umar and Irrevocable Power of Attorney in favour of the Claimant as instrument of transfer of the property to the Claimant in the event of default in repayment of the loan and the accruable interests or any balance thereof.

That the 60 days period within which Jibrin El-Khalid Nig Limited and or the defendant were to fully repay the principal loan sum ~~N~~**2,000,000 (Two Million Naira)** and agreed interest of ~~N~~**220,000 (Two Hundred and Twenty Thousand Naira) only** on the loan has elapsed since 13th August 2014 but Jibrin El-Khalid Nig Limited was only able to repay the sum of ~~N~~**800,000 (Eight Hundred Thousand Naira)** only on the 13th May 2015 and has since refused, failed and or neglected to repay the balance despite repeated demands. The Claimant later presented the defendant's GTBank cheque No. 00000012 to the bank for clearance but the cheque was declared dud because there was no sufficient fund with the defendant's bank account.

The witness further stated that Jibrin El-Khalid Nig Limited and or the defendant are still in default of the repayment of the balance, the

principal loan sum and its accrued interest till date while the balance of the principal sum and the interest yet to be paid up by Jibrin El-Khalid Nig Limited and or the defendant as at 11th May, 2020 accrued to the tune of **₦19,782,123.76 (Nineteen Million Seven Hundred and Eighty Two Thousand One Hundred and Twenty Three Naira Seventy Six Kobo)** only. The detailed analysis of the unpaid balance are as contained in paragraph 12a-e of the adopted witness statement on oath. And upon the failure or refusal to pay the said balance the claimant instructed its counsel to file the instant suit against the defendant on an agreed legal fee of **₦1,500,000 (One Million Five Hundred Thousand Naira)**.

The frontloaded documentary evidence by the claimant's witness in proof of the claim are;

1. An Irrevocable Power of Attorney between one Muhammad Umar Gani and Mr. Chinemelu Nwaizugbe (the guarantor) – Exhibit A1.
2. Offer of Statutory Right of Occupancy in the name of Muhammad Umar Gani – Exhibit A2.
3. Deed of Assignment executed in favour of Mr. Chinemelu Nwaizugbe by Muhammed Umar Gani) – Exhibit A3.
4. Unifund Microfinance Bank Offer Letter – Exhibit A4.
5. Unifund Microfinance Bank Repayment Schedule – Exhibit A5.
6. Unifund Microfinance Bank Loan Guarantee Form – Exhibit A6.

7. Loan Application Form – Exhibit A7.
8. Photocopy of National Identity Card of John Idowu Apologun – Exhibit A8.
9. Loan Event – Exhibit A9.
10. Photocopy of International Passport of Nwaizugbe Chinemelu Andrew – Exhibit A10.
11. A dishonoured GTBank Cheque issued by Nwaizugbe Chinemelu Andrew – Exhibit A11.
12. Application for loan dated 11th June 2014 by Apologun John Idowu, Director Jibrin El-Khalid Nig. Ltd – Exhibit A12.
13. The receipt of payment of legal fee issued by I. A. Nwala & Co to the Claimant – Exhibit A13.

The plaintiff closed its case with the evidence of its sole witness. It is on record that the defendant was served with the originating process by pasting at his last known address at Block B5, Flat 2, Zone 1, Games Village, Abuja with the Order for substituted service granted on 16th February, 2021. The affidavit of service was also deposed to by one Ogban Atimbang reveals that defendant was on the 3rd of August 2021 served with the writ of summons, hearing notice by pasting. In the same vein, on the 14th October 2021 a hearing notice was also pasted at the above address of the defendant by the process server at about 3:15pm for the defendant to appear on 20th January 2022 at 9:00am.

However despite the service of the originating process and the hearing notices the defendant failed and neglected to appear in court and did not file any statement of defence either. On the effect of failure to appear or file a defence to an originating process, the provision of Order 10 Rule 2 and 3 of the High Court of the Federal Capital Territory Civil Procedure Rules 2018 provides:

Rule 2: “Where any defendant fails to appear a claimant may proceed upon proof of service of the originating process under the appropriate provision of these rules.”

Rule 3: “Where the claim of the originating process is liquidated demand and a defendant fails to appear, a claimant may apply to the court for the judgement on the claim on the originating process or such lesser sum and interest as the court may order.”

Similarly Order 15 Rule 2 provides that:

“A defendant shall file his statement of defence, set-off or counter-claim if any not later than twenty one (21) days after service on him of the originating process and accompanying document. And in default of filing his pleadings, by the provision of Order 21 Rule 1, if the claim is only for a debt liquidated demand and the defendant does not within the time allowed for the purpose file a defence, the claimant may at the expiration of such time apply for final judgement for the amount claimed with cost.”

The affidavit of service deposed to by the process server of this court showed that the defendant was served with the originating process and hearing notices in accordance with the Order of Court for substituted service. It is settled law that where evidence given by a party to a proceeding is not challenged by the other side who had the opportunity to do so, it is deemed admitted and the court is open to act on such unchallenged evidence before it. See **PASCUTTO VS ADEENTRO NIG LTD (1997) 11 (PT. 529), 467 OR (1997) LPELR 2904 (SC) PG 31 PARAS B – F** and **MA BAMIJIE V OTTO (2016) LPELR 26058 (SC) P. 18 PARAS B – F.**

Having carefully gone through the claim of the plaintiff and the adopted witness statement on oath with the Exhibits attached, I am of the view that the defendant having failed to enter appearance and file a defence to the plaintiff's claim, this court in this instance would be right to accept the evidence presented by the plaintiff. See **UDO & ORS V ESSTEN & ORS (2014) LPELR 22684 (CA) PG 12, PARAS B – G** and **CHABASAYA V ANWASI (2010) AFWLR (PT. 528) 839 @ 851 H6.** Based on the adopted witness statement of the Claimant the attached documents (Exhibits) I am of the considered view that the defendant does not possibly have any defence to the claim of the plaintiff. The evidence of the plaintiff were neither denied nor controverted by the defendant. The law is trite that facts not denied are deemed admitted See **EFET V INEC (2011) 7 NWLR 423.** See also **UNIBIZ NIG LTD V COMMERCIAL BANK (CREDIT LYINNAIS NIG LTD) (2005) LPELR 3381 SC P.11 PAR C – D** Per Tobi JSC where he held:

“It is elementary law that what is not denied is presumed to be admitted.”

On the liability of a guarantor, the defendant is bound by terms and conditions contained in Exhibit A6, the loan guarantee form executed by him on behalf of the Principal **Jibrin El’Khalid Nigeria Ltd** on the 11th of June 2014. See **GAJIMI V FBN PLC (2018) LPELR 43996 CA** where the Court of Appeal held that:

“A creditor is entitled to proceed against a guarantor immediately the debtor or borrower becomes unable to pay his outstanding debt. The guarantor is bound by the written agreement he entered into. See NWAKWO & ANOR V ECUMENICAL DEVELOPMENT COPORATIVE SOCIETY (2007) LPELR 2108 SC PG 40 – 41.”

See also **FBN V M. O. NWADIALU & SONS LTD & ORS (2015) LPELR 24760 (CA)**.

The evidence of the sole witness for the claimant, **Mr. Atodo S. Aku** and the content of Exhibit A6 show that there was a contract of guarantee executed by the defendant to secure the loan or debt of **Jibrin El-Khalid Nig Ltd** from the claimant. As earlier stated, the evidence of the claimant witness was not challenged. It is therefore my considered view that with the failure of the principal debtor to repay the loan, the liability of the defendant as a guarantor crystallizes. Claimant is therefore right to have proceeded against the defendant. Similarly where judgement is obtained against principal debtor, the

claimant can execute the payment of judgement debt against a guarantor. See **SKYE BANK NIG V SEPH INVESTMENT LTD & ORS (2016) LPELR 40296 CA** where **Owoade JCA** held that:

*“In the first instance where the payment of judgement debt against a judgement debtor is guaranteed, once the original debtor fails to pay the judgement debt, the guarantor or as many as there are become judgement debtors and the judgement creditor has a discretion to proceed against any of them to execute judgement without having to proceed against the judgement debtor. See **MUCAS HOSPITAL LTD V FASUJI (2004) 8 NWLR (PT. 874) 67.** ”*

See **FGN & ANOR V INTERSTELLA COMMUNICATIONS LTD & ORS (2014) LPELR 23295 CA.**

In the light of the foregoing, I hold the humble view that the claimant’s claim against the defendant as per the items a – c endorsed on the writ succeeds.

The claimant is asking for 20% post judgement interest per annum on the judgement sum until the judgement is liquidated. This claim is contrary to the provision of Order 39 Rule 4 of the High Court Civil Procedure Rules. Unless it is expressly agreed by the parties that at the time of contract that a post judgement interest be charged, a party who seeks an interest outside what is provided for by the rules of court must prove same.

Order 39 Rule 4 states that the court at the time of making any judgement or order at any time afterwards may direct the time within which the payment is to be made or act is to be done, reckoned from the date of the judgement or order, or from some other point of time, as the court may deem fit, and may order interest at a rate not less than 10% per annum to be paid upon any judgement from the foregoing, the defendant is to pay 10% per annum on the judgement sum until it is fully liquidated.

SIGN

**HON. JUDGE
28/1/2022**