

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA – ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE. H. MU’AZU

SUIT NO: FCT/HC/CV/2981/2021

DELIVERED ON THE 06/06/2024

BETWEEN:

MR. CHRIS NDIBE.....CLAIMANT

AND

1. MRS. EMMANUELLA DUNIYA ODEH

2. AMAECHI EMODI

}
}.....DEFENDANTS

JUDGMENT

The Claimant instituted this case against the Defendants under the undefended list procedure by a Writ of Summons dated the 9th day of November, 2021 and sought for the following reliefs:

- (1) *A Declaration of this Honourable Court that the 1st Defendant’s Act of issuing dud cheques to the Claimant through the 2nd Defendant is wrongful and a clear act of fraud.*
- (2) *An Order of this Honourable Court directing the 1st Defendant to pay to the Claimant the sum of Thirty Three Million, Five Hundred Thousand Naira (₦33,500,000.00) being the debt owed to the Claimant by the Defendant.*

(3) *10% post Judgment Court interest per annum on the aforesaid sum pursuant to the Rules of this Hon. Court from the date of Judgment until the entire Judgment is fully liquidated.*

(4) *Cost of litigation*

Upon service, the 1st Defendant filed a Notice of intention to defend the action and the Court delivered a ruling on the 06/06/2022 wherein the suit was transferred to general cause list.

The Claimant filed a 12 paragraph Statement of Claim dated the 08/07/2022. The 1st Defendant on her part filed a Statement of Defence on the 14/10/2022. At the close of exchange of pleadings, the suit proceeded into hearing. PW1 testified on the 21/02/2023.

The case of the Claimant as distilled from the witness statement on oath of PW1 (Claimant himself) is as thus;

That sometime in the month of January, 2021, he engaged in some financial transaction with the 1st Defendant through the 2nd Defendant which same resulted in the 1st Defendant being indebted to the Claimant to the tune of **₦33,500,000.00**.

It is the case of the Claimant that he made several demands for repayment but the 1st Defendant issued him with cheques in order to liquidate the said debt and on the presentation of the cheques, they were dishonoured. PW1 tendered the cheques in

evidence as **Exhibit P1 A – F** and the demands Notice as **Exhibit P2**.

PW1 was cross-examined and discharged. The 1st Defendant who filed a Statement of Defence has failed/neglected to testify before the Court, consequently, and upon application, her right was foreclosed.

Parties then filed their Final Written addresses to pave the way for this Judgment.

The Claimant has distilled a sole issue for determination, to wit;

Whether the Claimant has adduced credible and reliable evidence in this case and therefore entitled to the relief claimed by the Claimant.

Learned Counsel argued the above issue succinctly in urging the Court to grant the reliefs sought.

On the part of the 1st Defendant, learned Counsel formulated a sole issue, to wit:

Whether from the peculiar facts of this case, the Claimant has established a genuine case against the 1st Defendant to be entitled to the relief sought.

Learned Counsel argued the above issue citing cases in urging the Court to dismiss this case.

It is worthy to note from the outset that the Defendant herein has failed to lead evidence in support of the Statement of defence filed. Though, Learned Counsel cross-examined the only witness of the Claimant, no witness was called by the defence.

The law is settled to the effect that where there is an absence of defence to a Plaintiff's case, and or where evidence given by a party to any proceedings was not challenged by the opposite party who had the opportunity to do so, it is always open to the Court seized of the proceeding to act on the evidence before it. **MUSA & ANOR VS. IBRAHIM (2007) 2 LPELR CA/K/251/2022.**

I must observe again that relief one sought by the Claimant before me is a declaratory relief. It is trite law that a party seeking a declaratory relief must satisfy the Court that he is entitled to the exercise of the Court's discretion in his favour by adducing cogent and positive evidence in proof of his claim. He must rely on the strength of his case and not on the weakness of the defence. Per **BADA J.C.A in OLADIMEJI & ORS. VS. AJAYI (2022) LPELR CA/AE/69/2010 (P.23 para F – G).**

In order to succeed in this case, the law requires that the Claimant proves his case on the balance of probabilities. **IBRAHIM SAKATI VS. JABULE BAKO & ANOR (2015) ALL FWLR (PT. 800) P. 1182 at P 1208 para C.**

The Claimant in proving his case testified on behalf of himself as the PWI and adopted his Statement on Oath filed on the 6th of September, 2022. The Claimant, as the PWI stated at paragraphs 7, 8, 9, 10, 11, 12, 13 and 14 of his said Statement on Oath that he engaged in some financial transactions with the 1st Defendant through the 2nd Defendant in the month of January, 2021 and that the transactions resulted in the 1st Defendant owing him the sum of Thirty Three Million, Five Hundred Thousand Naira (~~₦~~**₦33, 500, 000.00**). The Claimant also stated in the said paragraphs of his Statement on Oath that the Defendants have since refused and failed to pay him the said money even though he has severally demanded for the money from the Defendants. The Claimant, as the PWI also testified that the he engaged has Solicitors to write a letter to the Defendant to demand for payment of the said money and that the 1st Defendant issued same Cheques to him in order to liquidate the debt owed him but that on presentation of the Cheques for payment at the 1st Defendant's bank the Cheques were returned unpaid due to lack of funds in the 1st Defendant's bank account.

In support of the Claimant's case counsel submitted that the evidence of the Claimant is credible and reliable and having not been challenged or controverted the Court is enjoined to accept the evidence and rely on it in granting the reliefs sought by the Claimant in this case.

The Defendants on their part cross-examined PW1 on the transaction in issue before the Court but failed to lead evidence

in their defence as earlier stated. The following ensued during cross-examination to wit;

Question: The transaction has to do with loan, is that correct?

Answer: Yes

Question: The said loan was between the 1st Defendant and your Company Calcon Global Resources Ltd is that correct.

Answer: Yes

Question: Your Company is not a money lender

Answer: Yes

Question: Is your Company a party in this suit?

Answer: No they gave money in the name of the Company

Question: The total sum of ₦33,500,000.00 is including interest

Answer: Yes as agreed by her

Question: The 1st Defendant has ever made payment to you in respect of this loan?

Answer: There are payments (sic) from her as interest

It is trite law that evidence elicited under cross-examination can only advance the case of a party who has pleaded facts in line with the evidence. **NIGERIA LABOUR CONGRESS & ORS VS. AJIYA INTERGRATED SERVICES LTD & ANOR (2020) LPELR 14247 CA.** Having abandoned its pleadings this evidence cannot avail the 1st Defendant I line with the decision in **NIGERIA LABOUR CONGRESS supra.**

It is the argument of the 1st defendant that since neither the Claimant nor his company Calcom Global Resources Ltd are registered money lenders the alleged transaction leading to filing of this suit is illegal and therefore does not cloth the claimant with capacity to enforce same. Counsel relied on the decision in **NNAMDI VS. NDULUE & ORS. (2017) LPELR 43597 (CA Pp 35 – 36.**

RESOLUTION

I have carefully read and considered all the processes before the court and I am of the view that two issues are up for determination, to wit:

- 1. Whether the transaction leading to the Claim of ₦33m by the Claimant is illegal and therefore not enforceable.**
- 2. Whether the Claimant has made out a case to entitle him to the reliefs claimed.**

On the 1st issue, it is the contention of the 1st Defendant that the transaction was illegal the claimant not being a licensed money lender in line with the Money Lenders law of the FCT. On their part, counsel for the Claimant argued that the Claimant did not at anytime while giving his evidence in chief or during cross-examination by the 1st Defendant's Counsel testified that he is a money lender. That the idea of the Claimant being a money lender is that of the 1st Defendant's Counsel.

The question to ask at this point is whether the provision of the money lenders Act applies to the transaction in question.

Who therefore is a Money Lender?

A money lender is generally understood to be a person who provides financial assistance to individuals as a business, or for the purpose of making profit. But as is to be revealed, a moneylender means much more than that. In the case of **Eboni Finance and Securities Ltd. v Wole-Ojo Technical Services Ltd. & 2 Ors (1996) 7 NWLR (Pt 461) pg 464 at 478**, the Court of Appeal held, *inter alia*, that:

The definition of a money lender under the law is wide. It encompasses every person whose business is that of money lending and any person who lends money on interest or who lends a sum of money in consideration of a larger sum being repaid.

Section 2 of the Money lenders Act, CAP 525 Laws of FCT Vol. 3, 2007 provides thus:

Moneylender includes every person whose business is that of money lending or who carries on or advertises or announces himself or holds himself out in any way as carrying on that business, whether or not he also possesses or owns property or money derived from sources other than the lending of money and whether or not he carries on the businesses as a principal or as an agent.

The purport of the above definitions of a Money lender is that for a person to become a legitimate money lender entitled to absolute legal remedy, the individual/corporate body must

obtain the Money Lenders License to practice money lending in a particular state in Nigeria.

However, there are three categories of persons that cannot be called money lenders within the meaning of the Money Lenders Law even if they lend money to someone and these are: a banker, an insurer and a person who does not have for his primary object the lending of money.

It follows therefore that a person will not be designated as a money lender even though he is involved in money lending, in so far as he is a banker or an insurer or the primary object of his business is not money lending. In **Ibrahim v Bakori (2009) LPELR-8681 CA** it was held that a person who lends money to a friend to resuscitate his ailing business should not be termed a money lender. See also **Chidoka v FCFC Ltd. (2013 5 NWLR (Pt. 1346) 144** and **Max Blossom Ltd v. Victor & Ors (2019) LPELR-47090(CA)** where the Appellant loaned N10 Million to the Respondents to be repaid with N7.5 Million interest. The Respondents argued that the Appellant was not a licensed money lender therefore the loan agreement was illegal and the money irrecoverable. The court disagreed with them and held that the agreement was enforceable and lawful. In his concurring judgment, Sanga JCA said,

"My learned brother dexterously and delicately dissected the convoluted reasoning by the respondents who after benefitting from a loan transaction turn round to castigate the said transaction by saying it was illegal ab initio. My learned brother in the lead judgment rightly observed on

page 20 that 'the respondents in this appeal are only trying to be clever by half..'In other words, they want to use the instrumentality of the law to aid their nefarious activity which is akin to the proverbial saying of eating their cake and having it at the same time. This Court cannot be a party to such an arrangement wherein the respondents derived benefit from the transaction, only to turn round on being called upon to pay to argue that the transaction did not meet the requirements of the money lenders Law of Rivers State.

See also **Lubcon Ltd v. Classmate Technologies Co. Ltd (2019) LPELR-47414(CA)**.

Here, in line with the above authorities, it is my finding that the Claimant, though not a licensed money lender, can enforce the terms of the loan agreement been a simple loan contract. I so hold.

On issue number two i.e. whether the Claimant has proved his entitlement to the claim, the Claimant has led evidence in support of his claim while the Defendants failed to lead evidence in their defence. The Claimant by his testimony and content of **exhibit P1 (a) – (f) and P2** proved the indebtedness of the 1st Defendant to him. In all it is my finding that the Claimant has adduced credible, reliable and controverted evidence to prove his case on the preponderance of evidence, as required by law and is therefore entitled to some of the reliefs he is claiming in this suit. Having resolved both issues in favour of the Claimant, I hereby enter judgment for the Claimant in suit no. **CV/2981/2021** and make the following Orders:

- (1) *An Order of this Honourable Court directing the 1st Defendant to pay to the Claimant the sum of Thirty Three Million, Five Hundred Thousand Naira (₦33,500,000.00) being the debt owed to the Claimant by the Defendant is hereby granted*

- (2) *10% post Judgment Court interest per annum on the aforesaid sum pursuant to the Rules of this Hon. Court from the date of Judgment until the entire Judgment is fully liquidated is hereby granted*

I make no order as to cost.

SIGNED:
HON. JUDGE
06/06/2023.

Appearance:

*Kanayo Okafor, Esq, for the 1st Defendant
Claimant and 2nd Defendant are absent and not represented*