IN THE HIGH COURT OF THE FCT, ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDING AT APO, ABUJA
ON TUESDAY, THE 28TH DAY OF JANUARY, 2025
BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINI MUSA
JUDGE

SUIT NO: FCT/HC/CV/2628/2024
MOTION NO.: FCT/HC/M/8744/2024

BETWEEN:

MR JOE ONYEBUENYI **CLAIMANT**

AND:

MR ANTHONY NWAOBASI (ALIAS TONY) **DEFENDANT**

RULING/JUDGMENT

RULING

By a Writ of Summons dated the 14th of May, 2024but filed on the 29th of May, 2024, the Claimant instituted this action seeking the following reliefs against the Defendant:-

a. *A sum of ₦152,779,896.15K being the principal loan sum and the accrued interest from the 5th day of December, 2022 till the 5th day of May, 2024 on a compound interest basis;*
b. *A sum of money representing 18% interest on the outstanding sum due and payable to the Claimant per month and to be calculated on the compounding interest basis from the 5th day of June, 2024 till Judgment is delivered in this suit;*
c. *The sum of money representing 18% interest on the Judgment sum per month until the Judgment sum is paid;*
d. *A sum of ₦10,000,000.00 only being the cost of prosecuting this suit.*

The Writ of Summons was accompanied by other originating processes. These are the Statement of Claim, the Certificate of Pre-Action Counselling, the Claimant's List of Witnesses, the Claimant's List of Documents and the frontloaded documents.

The Claimant also filed on the same date the Writ of Summons was filed, alongside the Writ of Summons, a Motion on Notice dated the 14th day of May, 2024 with Motion Number FCT/HC/M/8744/2024. The Motion on Notice seeks the following reliefs from this Honourable Court:

a. *An Order of this Honourable Court entering/delivering a summary Judgment in the substantive suit in favour of the Claimant;*
b. *And for such further or other order(s) as this Honourable Court shall deem necessary to make in the circumstances of this suit.*

The Motion on Notice was accompanied with the affidavit in support of the application as well as with the written address in compliance with the Rules of this Court. Attached as exhibits to the affidavit in support of the application are documents which have been frontloaded in the Writ of Summons.

The Motion on Notice and the Writ of Summons were served on the Defendant on the 8th of July,2024. On the 23rd of September, 2024, the Defendant filed his Conditional Memorandum of Appearance in the suit, his Statement of Defence in answer to the Writ of Summons, his Counter-Affidavit in answer to the Claimant's Motion on Notice for Summary Judgment as well as a Motion on Notice with Motion Number FCT/HC/M/12553/2024 seeking in the main orders of this Honourable Court dismissing the suit of the Claimant for being incompetent. He also filed a

Motion on Notice, on the same date, with Motion Number FCT/HC/M/12552/2024 seeking in the main orders of this Honourable regularizing the processes of the Defendant which were filed out of time. All these processes were dated the same date they were filed, to wit, on the 23rd of September, 2024 and served on the Claimant *via* his Counsel on the same date, that is, 23rd of September, 2024. On the 25th of September, 2024, the Claimant filed his Response on Points of Law to the Defendant/Applicant's Motion on Notice dated and filed on the 23rd of September, 2024 wherein the Defendant seeks orders of this Court dismissing the suit of the Claimant.

On the 7th of November, 2024, the parties adopted all their processes in the substantive suit and all the interlocutory applications. The Court thereupon adjourned for Ruling/Judgment.

The case of the Claimant as made out in the Statement of Claim revolves around a loan agreement he had with the Defendant. According to the Claimant, the Defendant had approached him to advance him the sum of ₦20,000,000.00 (Twenty Million Naira only). Not being a money lender, the Claimant averred that he demurred. Following the Defendant's persistence, however, he succumbed and asked the Defendant to prepare the loan agreement and insert the terms the Defendant believed would be convenient for him. To this end, therefore, the parties agreed that the Claimant would advance the sum of ₦20,000,000.00 (Twenty Million Naira only) to the Defendant. It was also agreed that the term of the loan would be from the 5th of December, 2022 to the 4th of December, 2023. The parties further agreed that an interest at the rate of 18% of the loan sum would be

chargeable and payable on the loan sum every month. The parties further agreed that should the Defendant default in paying the interest for any month as agreed, the interest would be added to the principal loan and carried forward to the next month and so on until the terminal date of 4th of December, 2023.

It was the case of the Claimant that the Defendant paid the agreed sum of ₦3,600,000.00 (Three Million, Six Hundred Thousand Naira only) on the 5th of January, 2023 when the first interest on the loan sum became payable. He averred that the Defendant defaulted in the payment of the agreed monthly interest of 18% on the loan for the subsequent months beginning from February, 2023 to the 4th of December, when the loan agreement ought to terminate, except for the month of May, 2023 when the Defendant paid the sum of ₦3,600,000.00 (Three Million, Six Hundred Thousand Naira only) and the month of August , 2023 when the Defendant made a payment of ₦6,000,000.00 (Six Million Naira only) being parts of the already accumulated interest. He added that the Defendant refused or failed to remit both the principal sum and the accumulated interest on the loan sum on the 4th of December, 2023, being the terminal date of the loan sum. The Claimant averred that the Defendant continued to be in default of the loan agreement and had refused to repay the principal sum as well as the accumulated interest pursuant to the terms of the loan agreement the parties voluntarily executed.

Because of the failure or refusal of the Defendant to repay the principal loan sum as well as the interest thereon despite the Claimant's oral demand for same, the Claimant retained the services of a firm of solicitors who formally demanded the repayment of the principal loan sum and the accumulated interest thereon. This

demand was made *vide* a letter of demand dated the 20th of February, 2024 and served on the Defendant on the 16th of April, 2024. Notwithstanding this written demand from the firm of solicitors, the Defendant continued to be in default, thereby necessitating this suit and occasioning the Claimant, according to the Claimant, an expense of ₦10,000,000.00 (Ten Million Naira only) in legal fees.

As is consistent with proceedings under the Summary Judgment proceedings as provided for under Order 11 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules, 2018, the pleadings in the Statement of Claim were replicated in the affidavit in support of the Motion on Notice for an order of court for summary judgment. The documents which have been pleaded in the Statement of Claim and frontloaded with the other originating processes were attached to the affidavit in support of the Motion on Notice as exhibits. Thus, the loan agreement was attached as **Exhibit JO1**, the letter of demand from the law firm of Chjioke, Obinna& Associates was attached as **Exhibit JO2** and a copy of the receipt of the sum of ₦10,000,000.00 (Ten Million Naira only issued to the Claimant by the law firm is attached as **Exhibit JO3**.

In the Written Address in support of the Motion on Notice for summary judgment, learned Counsel for the Claimant formulated this sole issue: "*Whether considering the reliefs sought in this application in the light of the facts deposed to in the support affidavit vis-à-vis the annexed documents, the relief sought in this application can be granted*."

In his submissions on the said sole issue, learned Counsel referred the Court to the provisions of Order 11 Rule 1 of the Rules of this Court and highlighted the three

conditions that must exist in an application for summary judgment. This he stated to be that the claimant believed that there was no defence to his claim, that the claimant had filed his originating process, the statement of claim, the exhibits and the deposition of his witnesses, and that he had also filed an application for summary judgment. He maintained that the present Claimant had satisfied these requirements.

Learned Counsel placed emphasis on **Exhibits JO1 and JO2**, adding that the fact of the Defendant's indebtedness to the Claimant could not be contested as the documents spoke for themselves. He added that it would be a waste of judicial time for the Court to embark on full hearing of this suit. He further implored the Court to consider the defence, if any, in granting the application for summary judgment so that the Defendant would not complained that his defence was not considered. He urged the Court to consider the affidavit in support of the application for summary judgment as the said affidavit encapsulated the entire transaction between the Claimant and the Defendant.

For all his arguments on the said lone issue, learned Counsel cited and relied on ***Carling Int'l (Nig) Ltd v. Keystone Bank Ltd (2017) 8 NWLR (Pt. 1571) 345 at 363-364, paras C-A, UBN Pc v. Gap Consultants Ltd (2017) 11 NWLR (Pt. 1577) 357 and Okoro v. Okoro (2018) 16 NWLR (Pt. 1646) 506 at 516-517, paras G-A***.

I have stated earlier that the Defendant filed his processes in response to the suit of the Claimant. These processes include the Defendant's Statement of Defence and his Counter-Affidavit to the Motion on Notice for summary Judgment. In the said 37-paragraph Counter-Affidavit deposed to by the Defendant himself, the Defendant

confirmed that he indeed borrowed ₦20,000,000.00 (Twenty Million Naira only) from the Claimant sometime in 2022 though he denied that he agreed to pay a compound interest percentage on the loan sum, adding that what he conceded to was the payment of a reasonable and fair interest on the loan sum payable on the 5th day of every month beginning from the 5th day of January, 2023. He maintained that the term of the loan was the payment of the principal loan sum and not one year as claimed by the Claimant.

It was the contention of the Defendant though the loan agreement was reduced into writing and duly executed by both parties, he did not peruse the loan agreement and therefore did not make any input in the loan agreement, believing that the terms would be fair and favourable since he was dealing with a friend. He insisted that he was not liable for the expenses the Claimant might have incurred in the enforcement of the loan agreement.

The Defendant further averred that he paid the sum of ₦1,650,000.00 (One Million, Six Hundred and Fifty Thousand Naira only) to the Claimant from his Heritage Bank account on the 8th of April, 2023, though he claimed he could not provide the receipt for the payment. He also claimed that he paid the sum of ₦6,000,000.00 (Six Million Naira only) to the Claimant on the 13th of July, 2023 from his Guaranty Trust Bank account. He attached the statement of account as **Exhibit OBASI (page 1)**. He further averred that he paid the sum of ₦1,000,000.00 (One Million Naira only) to the Claimant from his Guaranty Trust Bank account on the 28th of September, 2023. The statement of account to this effect he attached as **Exhibit OBASI (page 2)**. On the 4th of October, 2023, he paid another sum of ₦1,000,000.00 (one Million Naira

only) from his Guaranty Trust Bank to the Claimant and provided evidence of this payment as **Exhibit OBASI (page 4)**. The Defendant averred that he had paid ₦9,650,000.00 (Nine Million, Six Hundred and Fifty Thousand Naira only) to the Claimant, leaving the sum of ₦10,350,000.00 (Ten Million, Three Hundred and Fifty Thousand Naira only) unpaid out of the total loan sum of ₦20,000,000.00 (Twenty Million Naira only).

He swore that the reason he had been unable to pay off the loan and the statutorily prescribed interest was as a result of impecuniousness. He agreed that the Claimant did demand for the repayment of the loan sum orally before engaging the services of a legal practitioner to demand formally for the repayment of the sum of ₦146,673,081.51 (One Hundred and Forty-Six Million, Six Hundred and Seventy-Three Thousand, Eighty-One Naira, Fifty-One Kobo. He averred the Claimant should bear the cost of litigation, as the contract was illegal, void and unenforceable.

In the Written Address in support of the Counter-Affidavit, learned Counsel submitted the following three issues for determination: "*(1) Whether or not the Claimant is a moneylender under the Moneylenders Act; (2) Whether or not the Claimant is entitled to benefit from his illegality in a contract which renders the said contract/loan agreement illegal, void and unenforceable; and (3) Whether or not the Claimant's suit is time-barred*."

Arguing Issues (1) and (2) jointly, learned Counsel for the Defendant submitted that the Claimant is a moneylender within the meaning of section 4 of the Moneylenders Act and was therefore bound by the operations of the Act. Because the Claimant

was bound by the operations of the Moneylenders Act, learned Counsel contended that the loan agreement was illegal and therefore unenforceable having breached sections 13(4)(d), 15(1)(c) and 16 of the Moneylenders Act. He further argued that the loan agreement did not comply with the form and content of loan agreement as provided for in the Moneylenders Act. He maintained that the court would not lend its support to a person who was involved in illegality as he who came to equity must come with clean hands. Relying on the cases of ***Eboni Finance and Security Ltd v. Wole-Ojo Technical Services Ltd & 2 Others (1996) 7 NWLR (Pt. 461) 464 at 466, Nwankwo v. Nzeribe (2004) 13NWLR (Pt. 890) 422, Okonkwo v. Okoro (1962) 6 ENLR 74, Ojikutu v. Agbonmagbe Bank Ltd (1996) 2 ALR Comm.433, Enekwe v. IMB Nig. Ltd (2006) 19 NWLR (Pt. 1013) 146 at 181 paras A-B, Balogun v. Obisanya& Anor (1956) 1 FSC 22, Julius Berger (Nig.) Plc v. T.R.C.B. Ltd. (2019) 5 NWLR (Pt. 1665) 219, Passco Ind. Ltd. V. Unity Bank Plc (2021) 7 NWLR (Pt. 1775) 224***, he urged the Court to resolve the two issues in favour of the Defendant.

In his submissions on the third issue, learned Counsel for the Defendant quoted the provisions of section 32 of the Moneylenders Act and submitted that the present action of the Claimant was statute-barred, having being commenced outside the twelve months statutorily provided for under the Act. He cited the cases of ***PDP v. CPC (2011) 17 NWLR (Pt. 1277) 485 and Anozie v. AG FRN (2008) 10 NWLR (Pt. 1095) 278*** in urging the Court to decline jurisdiction on the ground that the suit of the Claimant was incompetent.

Counsel further distinguished the case of ***Carling Int'l (Nig.) Ltd v. Keystone Bank Ltd (supra)*** cited by Counsel from the instant case on the ground that in the present case, there was a dispute as to material facts. He therefore urged the Court to resolve the third issue in favour of the Defendant.

In resolving the dispute before me, I hereby formulate the following sole issue: "***Whether upon a consideration of the facts and circumstances of this case it is not appropriate to hear and determine this suit under the Summary Judgment Procedure?***"

The *terminus a quo* in the determination of this issue is a consideration of the provisions of Order 11 of the Rules of this Court 2018. This Order provides as follows:-

1. ***Where a claimant believes that there is no defence to his claim, he shall file with his originating process the statement of claim, the exhibits, the depositions of his witnesses and an application for summary judgment which application shall be supported by an affidavit stating the grounds for his belief and a written brief in support of the application.***

2. ***A claimant shall deliver to the registrar as many copies of the processes and documents as referred to in Rule 1 of this Order for the use of the court and service on the defendants.***

3. ***Service of processes and documents referred to in Rule 1 of this Order shall be effected in the manner provided under Order 7.***

4. ***Where a party served with the processes and documents referred to in Rule 1 of this Order intends to defend the suit he shall, not later than the time prescribed for defence, file:***

   (a) His statement of defence;

   (b) Depositions of his witnesses;

   (c) The exhibits to be used in his defence;

   (d) Counter affidavit; and

   (e) A written brief in reply to the application for summary judgment.

5. ***(1) Where it appears to the court that a defendant has a good defence and ought to be permitted to defend the claim he may be granted leave to defend.***

(2) Where it appears to the court that the defendant has no good defence the court may enter judgment for a claimant.

(3) Where it appears to the court that the defendant has a good defence to part of the claim, the court may enter judgment for that part of the claim and grant leave to defend that part to which there is a defence.

6. ***Where there are several defendants and it appears to the court that any of the defendants has a good defence and ought to be permitted to defend the claim and other defendants have no good defence and ought not to be permitted to defend the former may be permitted to defend and the court shall enter judgment against the latter.***

7. ***Where provision is made for written briefs under this rule, each party shall be at liberty to advance before the court oral submission to expatiate his written brief.***

The remit of the Summary Judgment Procedure has been pronounced upon in a number of judicial authorities. See ***National Bank of Nigeria Ltd. v. Savol West Africa Ltd. (1994) 3 NWLR (Pt. 333) 435 C.A. at 461 – 462, paras H – A;Lewis v. U.B.A. Plc (2006) 1 NWLR (Pt. 962) 546 C.A. at 567, paras C – D; Nnabude v. G. N. Godiscoy (WA) Ltd. (2010) 15 NWLR (Pt. 1216) 365 C.A. at 379, para G; Resort Savings Loans Ltd. v. Skye Bank Plc (2015) 17 NWLR (Pt. 1488) 225 C.A. at 239, paras D – E; Nig. Breweries Plc v. National Union of Food Beverages and Tobacco Employees (2020) 7 NWLR (Pt. 1724) 499 C.A. at 525, paras C – E.*** In***Matab Oil & Gas Ltd. & Anor v. Fundquest Financial Services Ltd. & Anor (2020) 17 NWLR (Pt. 1752) 1 C.A. at Pp. 16-17, paras. F-A***, the Court held that

"***The provision of Order 11 of the High Court of Lagos State (Civil Procedure) Rules 2012, summary judgment procedure is a procedure whereby the court gives judgment in favour of a party without a full trial. In a summary judgment procedure, pleadings, hearing of witnesses and addresses are usually by-passed. The judgment is usually based on the writ of summons and the statement of claim. The purpose of a summary judgment is to save time and cost where the defendant obviously has no defence to the action. It is for disposing, with dispatch, virtually uncontested cases. The procedure is for plain and straightforward cases, not the devious and crafty***."

It must be understood that while the Summary Judgment Procedure provided for under Order 11 of the Rules of this Court is similar to the Undefended List Procedure provided for under Order 35 of the Rules of this Court in the sense that both procedures are resorted to when the Claimant believes that the Defendant has no good defence to their suit, both procedures are, nonetheless, remarkably different. While the Undefended List Procedure is suited for actions for liquidated money demand where the Claimant believes that the Defendant does not have any defenceon the merit, the summary judgment is apt for all categories of suits where the Claimant believes that the Defendant does not have a good defence to his suit. In other words, while the Undefended List Procedure is strictly for liquidated money demand, the province of the subject matter jurisdiction of summary judgment procedure is not closed. See ***Ibrahim v. Gwandu (2005) 5 NWLR (Pt. 1451) 1 C.A. at 27, paras F – G; N. P. A. v. A. I. Co. (2010) 3 NWLR (Pt. 1182) 487 C.A. at 499, paras F – G; Grand Systems Petroleum Ltd. v. Access Bank Plc (2015) 3 NWLR (Pt. 1446) 317 C.A. at 352, para G***.

The Claimant in this suit has brought this suit seeking the reliefs I have set out earlier in this Ruling. The facts, too, I have set out above. The Defendant, expectedly, has denied liability to the entire sum claimed in the Writ of Summons and iterated in the Statement of Claim, to wit, the sum of ₦152,779,896.15K (One Hundred and Fifty-Two Million, Seven Hundred and Seventy-Nine Thousand, Eight Hundred and Ninety-Six Naira, Fifteen Kobo). He has conceded to only the sum of ₦10,350,000.00 (Ten Million, Three Hundred and Fifty Thousand Naira only) as the only sum due to the Claimant from him. He has also raised certain legal defences

such as the illegality and, a fortiori, unenforceability of the said loan agreement for not being in compliance with the provisions of the Moneylenders Act.

In order to determine whether this suit can be determined under the summary judgment procedure, it is important to streamline the controversy between the parties. What is the actual dispute between the parties? The gravamen of the Claimant's claims revolves around the sum of ₦20,000,000.00 (Twenty Million Naira only) which the Claimant lent to the Defendant some time in 2022.Both the Claimant and the Defendant are agreed that the Claimant indeed lent the sum of ₦20,000,000.00 (Twenty Million Naira only) to the Defendant. See paragraph 15 of the Statement of Claim and paragraph 16 of the affidavit in support of the Motion on Notice for summary Judgment. The Defendant in fact acknowledged that he did indeed receive the sum of ₦20,000,000.00 (Twenty Million Naira only) from the Claimant. See paragraphs 2 and 13 of the Statement of Defence and paragraph 6 of the Defendant's Counter-Affidavit to the Motion on Notice for summary judgment.

Both parties are in agreement that the Defendant made some repayments to the Claimant. In paragraph 16 of the Statement of Claim and paragraph 17 of the affidavit in support of the Motion on Notice for summary judgment, the Claimant averred that the Defendant repaid the sum of ₦3,600,000.00 (Three Million, Six Hundred Thousand Naira only). He also averred at paragraph 22 of the Statement of Claim and paragraph 23 of the affidavit in support of the Motion on Notice for summary Judgment that the Defendant paid another sum of N3,600,000.00 (Three Million, Six Hundred Thousand Naira only) as part of his efforts towards liquidating the accumulated sum. The Claimant further averredat paragraph 25 of the

Statement of Claim and paragraph 26 of the affidavit in support of the Motion on Notice for summary Judgment that the Defendant paid the sum of N6,000,000.00 (Six Million Naira only) towards liquidating the loan.

In the Defendant's defence, he admitted he made the following payments: One Million, Six Hundred and Fifty Thousand Naira only (₦1,650,000.00), Six Million Naira only (₦6,000,000.00), One Million Naira only (₦1,000,000.00), and another ₦1,000,000.00 (One Million Naira only). See paragraphs 14, 17, 19, and 21 of the Statement of Defence and paragraphs 18, 21, 23 and 24 of the Counter-Affidavit in opposition to the Motion on Notice for summary judgment.

Thus, both parties are agreed there is a loan agreement between the Claimant and the Defendant and that the loan sum is ₦20,000,000.00 (Twenty Million Naira only). This material fact is not in dispute. The only point of disagreement between the parties is the nature of interest to be emplaced on the principal loan sum, the rate of the interest and the term of the loan. The Claimant claims that he and the Defendant agreed on 18% monthly compound interest. He attached **Exhibit JO1**, that is, the loan agreement, in support of his assertions in this regard. Clause 3 of the loan agreement actually contains this stipulation.

The Defendant, on the other hand, contended that the parties only agreed on a reasonable and fair interest rate. He did not provide documentary evidence to this effect but only claimed that the Claimant did not avail him with a copy of the loan agreement. This is notwithstanding the fact that he executed the said loan agreement. In his Written Address, however, the Defendant contended that the only interest rate that should be applied to the transaction was 48% interest per annum

which is applicable to unsecured loans as in the instant case pursuant to the provisions of section 15(1)(c) of the Moneylenders Act.

The Defendant has through his formulation of Issue One in his Written Address in support of his Counter-Affidavit and his submissions on same urged the Court to hold that the Claimant is a moneylender within the meaning of the Moneylenders Act. Section 2 of the Moneylenders Act is the interpretation section. The section says a moneylender

"***includes a person whose business is that of moneylending 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 business as a principal or as an agent; but does not include –***

(a) A society registered under the Co-operative Societies Act; or

(b) A body corporate, incorporated or empowered by special enactment to lend money in accordance with that enactment; or

(c) A person bona fide carrying on the business of banking or insurance or bona fide carrying on a business, not having for its primary object the lending of money, in the course of which and for the purposes whereof he lends money; or

(d) Any pawnbroker licensed under the Pawnbrokers Act where the loan is made in accordance with the provisions of the Pawnbrokers Act and does not exceed the sum of forty naira;"

Section 4 of the Act provides that "***Except as excerpted in paragraphs (a), (b), (c) and (d) of the definition of "moneylender" in section 2 of this Act, a person who lends money at interest or who lends a sum of money in consideration of a larger sum being repaid shall be presumed to be a moneylender until the contrary be proved.***"

It is important to state that the presumption raised in section 4 of the Moneylenders Act is a rebuttable presumption of fact. Once, as the Defendant has done in this case and considering the implication of section 4 and the facts of the instance, a lender is presumed to be moneylender, it is for the lender to adduce evidence to the contrary that they are not a moneylender.In the case of ***Ibrahim JimohAjao v. Michael JenyoAdemola&Ors (2004) LPELR-5717(CA)***, the Court of Appeal, in examining sections 2 and 3 of the Moneylenders Law Cap. 103 Laws of Kwara State, 1994 held that though the mere fact that a person charges interest on the money lent does not make the person a moneylender within the meaning of the Moneylenders Law, any person, however, who lends money at interest or who lends a sum of money in consideration of a larger sum being repaid shall be presumed to be a moneylender until the contrary be proved. Since it is a rebuttable presumption, the onus of proving that a person who lends money is not a moneylender within the meaning of the Moneylenders Act is on the person who lends. See ***Veritas Insurance Co. Ltd. v. Citi Trust Invest. Ltd. (1993) 3 NWLR (Pt. 281) 349***; ***Eboni Finance and Securities Ltd. v. Wole-Ojo Technical Services Ltd. (1996) 7 NWLR (Pt. 461) 464***.

The Claimant has averred in paragraph 1 of his Statement of Claim that he is "a businessman whose business cuts across hospitality business amongst others." In paragraph 5 of the Statement of Claim and in paragraph 6 of the affidavit in support of the Motion on Notice for summary judgment, the Claimant averred, in response to the Defendant's request for a "*soft and friendly loan of N20,000,000.00 (Twenty Million Naira)*" that "*Not being a moneylender and not willing to let such a huge sum of money out of his business, I declined the request by the Defendant for the said soft and friendly loan of N20,000,000.00 (Twenty Million Naira) only*". It is instructive to note that the Defendant admitted these averments as seen in paragraphs 1 and 3 of his Statement of Defence. In fact, in paragraph 7 of the Counter-Affidavit in opposition to the Motion on Notice for summary judgment, the Defendant averred that "*the Claimant being a business man seized that opportunity and conceded to part with the loan sum subject to the terms of the loan agreement executed by the parties*."

I, therefore, refuse to answer the first question the Defendant has framed, to wit, whether the Claimant is a moneylender within the meaning of the Moneylenders Act in the affirmative, the Claimant and even the Defendant himself having rebutted that presumption that he is a moneylender.

That is not, however, to justify the compound interest of 18% per month the parties implicated in their loan agreement. According to the provisions of section 15 of the Moneylenders Act,

"***The interest which may be charged on loans, whether by a moneylender or by a person other than a moneylender shall not exceed the respective rates specified hereunder, that is –***

(a) On loans secured by a charge on a freehold property or Government bonds or insurance policy or the debentures or shares of a company or by a bill of sale in respect of any goods or by the assignment of any personal rights legally enforceable, or by the indemnity or personal guarantee of a third party, simple interest at the rate of fifteen percent per annum for the first one thousand naira or part thereof and at the rate of twelve and a half percent per annum on an amount in excess of one thousand naira;

(b) On loans secured by a second charge on any of the real or personal property or rights referred to in paragraph (a) of this subsection, simple interest at th rate of seventeen-and-a-half percent per annum for the first one thousand naira or part thereof and at the rate of fifteen percent per annum on an amount in excess of one thousand naira;

(c) ***On unsecured loans simple interest at the rate of forty-eight percent per annum.***"

Section 15(1) is significant because it encapsulates money lent "***by a moneylender or by a person other than a moneylender***". Furthermore, this section stipulates the interest rate chargeable "***by a moneylender or by a person other than a moneylender***" under different circumstances. As captured above, on loans secured by a charge on a freehold property, etc, the interest rate is simple interest at the

rate of 15% per annum for the first one thousand Naira or part thereof and at the rate of $12^{1/2}$% per annum on an amount in excess of one thousand Naira. On loans secured by a second charge on any real or personal property, the applicable interest rate is simple interest at the rate of $17^{1/2}$% per annum for the first one thousand Naira or part thereof and at the rate of 15% per annum on an amount in excess of one thousand Naira. On the other hand, the interest rate applicable to unsecured loans is simple interest at the rate of 45% per annum. In other words, though not a moneylender within the meaning of the Act, the Claimant is bound by the provisions of the Act. Thus, the stipulations in paragraph (c) of subsection (1) of section 15 of the Act applies to him. I agree with the learned Counsel for the Defendant that the Claimant ought not to impose more than the statutorily provided interest rate on the loan of N20,000,000.00 (Twenty Million Naira only). It is for this reason therefore I hold that Clause 3 of Exhibit JO1 which imposes a compound monthly interest rate of 18% on the loan sum is at variance with the provisions of section 15(1)(c) of the Moneylenders Act and accordingly illegal. I so hold.

However, by virtue of Clause 8 of **Exhibit JO1**, the illegality of Clause 3 cannot void the entire loan agreement. Clause 8 provides that "*The clauses and paragraphs contained in this Agreement are intended to be read and construed independently of each other. If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, it is the parties' intent that such provision be reduced in scope by the court only to the extent deemed necessary by that court to render the provision reasonable and enforceable and the remainder of the provisions of this Agreement will in no way be affected, impaired or invalidated as a result*."

It is settled that it is not the role of the courts to rewrite a contract for the parties, especially, where the parties voluntarily and consciously entered into the contract and agreed on the terms and executed the contract as proof of the concretization of the agreed terms. See***Nimanteks Associates v. Marco Const. Co. Ltd. (1991) 2 NWLR (Pt. 174) 411 C.A. at 427,paras F – G***. In ***Fidelity Bank Plc v. M. C. Ind. Ltd. (2022) 7 NWLR (Pt. 1829) 351 S.C. at 373, paras F-G***, the Court held that"***When parties enter into a contract, they are bound by the terms set out therein. It is not the business of the court to re-write a contract for the parties. Thus, whatsoever sum was agreed by the parties as their consideration shall stand. It is not within the province of the court to query same, as such would amount to dictating the terms of the contract of the parties.***"

The above dicta represent the state of the law on bindingness of the terms of a contract on the parties thereto, and the limitations imposed on the courts in respect thereto. However, by virtue of Clause 8 of **Exhibit JO1**, this Court is empowered, in so far as it is possible,to bring a clause therein into conformity with the extant law. Where it is impossible so to do, the doctrine of severability can apply to expurgate that illegal clause from the contract while the remaining clauses are saved from the paint of invalidity, illegality and unenforceability. The Moneylenders Act is the extant applicable law. It is therefore the duty of this court, pursuant to the provisions of Clause 8 of **Exhibit JO1** and section 15(1)(c) of the Moneylenders Act to bring **Exhibit JO1** in conformity with the applicable law. I so hold.**Exhibit JO1** is therefore legal and enforceable. I so hold.

Parties are bound by their agreement. See ***Graceland Services & Logistics Ltd. v. AMCON (2023) 15 NWLR (Pt. 1907) 345 CA at381, paras. G-H*** where the Court of Appeal held that ***"If parties enter into an agreement, they are bound by its terms. Neither the parties nor the court is allowed to read into the agreement terms which are not agreed upon by the parties."***Similarly, in ***Antonio Oil Co. Ltd. v. Access Bank Plc (2020) 17 NWLR (Pt. 1752) 99 C.A. at 119, paras B-D***, the court held that "***Parties are bound by the terms and condition contained in their agreement - pactasuntservanda- and the court will not read into any contract such terms on which there is no agreement***." The Claimant and the Defendant are bound by the contents of Exhibit JO1. I therefore take a dim view of the protestations of the Defendant in paragraph 15of the Counter-Affidavit in opposition to the Motion on Notice for summary judgment that he did not peruse Exhibit JO1. This argument is of no moment. In ***Wechie v. Okwuworlu (2015) 11 NWLR (Pt. 1469) 95 C.A. at 120-121, paras. G-B***, the court states succinctly that "***The essence of signing terms of settlement by the parties is that the party signing it is bound, and it is wholly immaterial whether he has read the document or not.***"The protestations of the Defendant in this regard therefore loses its virility particularly when it is juxtaposed against his averments in paragraphs 7 and 14 of the Counter-Affidavit in opposition to the Motion on Notice for summary judgment and paragraphs 10 and 11 of the Statement of Defence that he and the Claimant executed **Exhibit JO1**.

It remains to be considered whether the suit of the Claimant is statute-barred. According to the Defendant, the suit of the Claimant is statute-barred because the provisions of section 32 of the Act stipulates that suits must be commenced before

the expiration of twelve months from the date on which the cause of action accrues. Curiously, learned Counsel did not quote the entire provision of that section. I shall proceed anon to reproduce the contents of section 32 of the Moneylenders Act.

Section 32:

"***No proceedings shall lie for the recovery by a moneylender or any money lent by him after the commencement of this Act or of any interest in respect thereof, or for the enforcement of any agreement made or security taken after the commencement of this Act in respect of any loan made by him, unless the proceedings are commenced before the expiration of twelve months from the date on which the cause of action accrued so however that –***

(a) If during the period of twelve months aforesaid or at any time within any subsequent period during which proceedings may by virtue of this paragraph be brought, the debtor acknowledges in writing the amount due and gives a written undertaking to the moneylender to pay that amount, proceedings for the recovery of the amount due may be brought at any time within a period of twelve months from the date of the acknowledgement and undertaking;

(b) The time limited by the foregoing provisions of this section for the commencement of proceedings shall not begin to run in respect of any payments from time to time becoming due to a moneylender under a contract for the loan of money until a cause of action accrues in respect of the last payment becoming due under the contract;

(c) If at the date on which the cause of action accrues or on which an acknowledgement and undertaking as aforesaid is given by the debtor, the person entitled to take the proceedings is non compos mentis, the time limited by the foregoing provisions of this section for the commencement of proceedings shall not begin to run until that person ceases to be non compos mentis or dies, whichever first occurs; and

(d) ***If at the date on which the cause of action accrues or on which any such acknowledgement and undertaking as aforesaid is given by the debtor, the debtor is not within Nigeria, the time limited by the foregoing provisions of this section for the commencement of proceedings shall not begin to run until that person returns to Nigeria.***"

In other words, the twelve months stipulated in section 32 shall begin to run in the case of paragraph (a) from the date of written acknowledgement by the debtor of his debt and his written undertaking to pay same; in the case of paragraph (b) from the date when the last payment is due under a contract for loan where the repayment is split into periodic payments; in the case of paragraph (c), from the date when the creditor recovers from their state of *noncompos mentis*, or mental illness, or from the date when the creditor dies, whichever one comes first; and in the case of paragraph (d) from the date when the debtor who was outside Nigeria when the cause of action accrues, returns to Nigeria.

Learned Counsel for the Defendant cavalierly and glibly submitted in his Written Address that the exceptions above do not apply to the instant case. he failed, however, to tell the Court how and why they do not apply. More importantly, he did

not tell the Court how he arrived at his conclusion that the suit of the Claimant is statute-barred. He did not share with us his flash of epiphany that imbued him with the knowledge of the cutoff point in time the cause of action accrued and from which he began to compute the time for the purposes of limitation.

First, this Court has held earlier in this Judgment that the Claimant is not a moneylender within the meaning of the Moneylenders Act. Unlike section 15(1) which deals with interest chargeable on loans expressly delineates the scope of its operation to cover "***moneylender or by a person other than a moneylender***", section 32 specifically refers to "a moneylender". The law is settled that where the words used in a statute are clear, lucid and unambiguous, they should be given their ordinary meanings. See ***F.B.N. Plc v. Maiwada (2013) 6 NWLR (Pt. 1348) 444 S.C. at 483, paras D-F*** where the court held that "***Generally, where the words of a statute are clear and unambiguous, the court should give them their ordinary literal interpretation. This is often referred to as the literal rule. It is the most elementary rule of construction. And literal construction has been defined as the interpretation of a document or statute according to the words alone. A literal construction adheres closely to the words employed without making differences for extrinsic circumstances.***"

In any case, even if this court is to agree with the Defendant that the Claimant is a moneylender, the provisos in paragraph (a) and (b) will certainly apply. In the case of paragraph (a), though there is no written acknowledgement and undertaking from the Defendant of his indebtedness and promise to pay, there is however a letter of demand from the solicitors of the Claimant to the Defendant demanding for the

payment of the principal sum and accrued interest. This document is attached to the affidavit in support of the Motion on Notice for summary judgment as **Exhibit JO2**. The Defendant acknowledged receipt of this correspondence on the 16th of April, 2024, though he did not reply the letter. In ***Thompecotan& Sons Nigeria Limited v. Jos South Local Government Council (2021) 4 NWLR (Pt. 1766) 277 C.A. at 289, paras A – B***, the Court held that "***The failure by a party to reply a business letter which by its contents requires a response amounts to an admission of what is contained therein.***" Similarly, in ***Kabo Air Ltd. v. Mumi Bureau De Change Ltd. (2020) 4 NWLR (Pt. 1715) 488 C.A. at 506 paras G – H***, the Court held that "***The law allows an inference to be drawn that the failure or refusal of a person to reply to a demand letter amounts to admission of liability. However, it is not conclusive***."

So, for the purpose of section 32(a) of the Act, the cause of action accrued from the 16th of April, 2024 when the demand for the payment of the loan sum and the accumulated interest was made. Time therefore begins to run from that date. This suit was filed on the 29th of May, 2024, that is, one month and thirteen days after the letter of demand had been served on the Defendant. I do not see how the suit is incompetent.

In the case of section 32(b), it is obvious, from Clause 1 of **Exhibit JO1** that the term of the loan agreement is one year, beginning from 5th of December, 2022 and terminating on the 4th of December, 2023. The 4th of December, 2023 was the date the last payment under the loan agreement became due. This suit was filed on the

29th of May, 2024, that is a period of five months, three weeks and one day from the date the last payment became due. Again, I do not see how the suit is incompetent.

What I see here is a desperate Defendant muddling up the waters of this case, conjuring up imaginary and unnecessary disputations and contriving needless controversies in order to give the impression that this suit is not appropriate for summary judgment disposal. This Court will not indulge him. As I have stated earlier, both the Claimant and the Defendant are agreed that the Claimant lent to the Defendant, and the Defendant borrowed the sum of ₦20,000,000.00 (Twenty Million Naira only) from the Claimant. Both are agreed that interest would be charged on the principal loan sum, though they differ on the rate of interest chargeable. But, that is a small issue which section 15(1)(c) has resolved. I therefore hold that the Claimant is entitled to summary judgment pursuant to the provisions of Order 11 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules, 2018.

It is my considered view, and I so hold, that upon a dispassionate evaluation of the evidence before me as disclosed in the affidavit evidence and the documentary exhibits annexed thereto, there is nothing new this Court will be expected to unearth in a full-blown trial. The depositions in the affidavit in support of the application for summary judgment and the Counter-Affidavit in opposition thereto and the exhibits attached thereto support the existence of a loan agreement. In fact, the fact that the Defendant had actually started repaying the loan sum is a conclusive evidence of admission of his liability to the Claimant.

The Defendant's contention that the loan agreement is illegal and invalid and therefore unenforceable goes to no issue. He has taken benefit under the loan agreement. He cannot be heard at this stage when he is required to perform his obligations thereunder to complain that the agreement is unenforceable.

Though the position of the law as learned Counsel for the Defendant has clinically expostulated is that an agreement to lend money which is contrary to the provisions of the Moneylenders Act is unenforceable for being illegal, and I agree with him, it is now settled law that a party who willingly enters into a contract they know is illegal and even benefited from the contract cannot turn around to claim unenforceability of the same contract when they are called upon to perform their obligations under the said contract. See ***Max Blossom Limited v. Mr. Maxwell T. Victor &Ors (2019) LPELR-47090(CA); African International Bank Ltd. v. Integrated Dimensional System Ltd. (2012) 17 NWLR (Pt. 1328), pg. 1 at 43-44 paras. H-A; Artra Industries Ltd. v. Nigerian Bank for Commerce and Industries (1997) 1 NWLR (Pt. 483), pg 574 at 593, paras. F-H; Chanchangi Airline (Nig.) Ltd. vs. A.P. Plc. (2015) 4 NWLR (Pt. 1449), pg. 256, 274-275, paras. F-H*** among other cases to this effect.

He who comes to equity must come with clean hands. This is in tandem with the Supreme Court's decision in ***Ibrahim v. Osim (1988) 3 NWLR (Pt. 82), pg. 257, 279, paras. A-B***, where the apex Court held as follows: "***If it is an illegal transaction, the Appellant by his conduct in all the Courts below and in this Court, is praying that his crime be condoned with all the benefits that accrued to him by way of financial gains and to let it end there. That will not only be***

unjust but will also not be equitable. No person shall, after reaping benefit from a transaction of which he is a party, be heard to say such a transaction is illegal or void or voidable when it comes to him to fulfill his obligation under the transaction so far the other party has done all he pledged to do under it."

For the above reasons, therefore, the specific relief sought in the Motion on Notice with Motion Number M/8744/2022 dated the 14th of May, 2024 and filed on the 29th of May, 2024, to wit, "*An Order of this Honourable Court entering/delivering a summary judgment in the substantive suit in favour of the Claimant*" is hereby granted as prayed.

JUDGMENT

In view of the foregoing reasoning of this Court as set out in the Ruling above, this Court hereby finds that the Defendant has no good defense to the suit of the Claimant. There is no reason, therefore, for this Court to go into a full-blown trial in this suit. The facts and evidence before this Court are enough to enable this Court determine this suit under the Summary Judgment Procedure. The position of the law on the interest rate chargeable is also clear and unambiguous. This Court, having set aside Clause 1 of **Exhibit JO1** which stipulates compound monthly interest and, pursuant to Clause 8 of **Exhibit JO1**, replaced same with the provisions of section 15(1)(c) which emplaces a simple interest rate of 48% per annum on unsecured loans in the class of the loan governed by **Exhibit JO1**, will proceed to compute the amount payable to the Claimant.

The loan agreement was executed on the 5th of December, 2022. The agreed commencement date for repayment was 5th January, 2023. The term of the loan was one year. However, by virtue of Clause 3 of **Exhibit JO1**, the loan was agreed to be deemed terminated whenever the borrower repays the principal sum and all the interest outstanding as at the date of the full and final liquidation of the loan. At the time this suit was instituted, the Defendant was still in default of the repayment of the loan. There is no evidence by way of further affidavit, or further counter-affidavit that since the date this suit was filed, the Defendant has liquidated the entire loan sum and the accumulated interest. That means as at today, the 28th of January, 2025, the loan has been active for a period of two years, three weeks and two days.

Using the simple interest rate of 48% per annum as stipulated by section 15(1)(c) of the Moneylenders Act and the formula: Interest = Principal x Rate x Time.

Given: Principal (P) = ₦20,000,000.00

Rate (R) = 48% /year = 48/100 = 0.48

First, we need to convert the time to years:

2 years = 2 years

3 weeks = 3/52 =0.058 years (since there are approximately 52 weeks in a year)

2 days = 2/365 = 0.005 years (since there are 365 days in a year)

Total time (T) = 2 + 0.058 + 0.005 = 2.063 years

Now, we can calculate the interest:

Interest ₦20,000,000 x 0.48 x 2.063 = ₦19,814,400.00.

So, the interest payable on the ₦20,000,000.00 which is the principal sum is ₦19,814,400.00 (Nineteen Million, Eight Hundred and Fourteen Thousand Naira, Four Hundred Naira only). When this accrued interest is added to the principal loan sum of ₦20,000,000.00 (Twenty Million Naira), the total sum comprising the principal loan sum and the accrued interest as at today, the 28th of January, 2025 is ₦39,814,400.00 (Thirty-Nine Million, Eight Hundred and Fourteen Thousand, Four Hundred Naira).

I observe that there is a discrepancy between the amount the Claimant claims the Defendant has refunded and the amount the Defendant claims he has refunded. While the total amount the Claimant claims the Defendant has refunded is ₦13,200,000.00 (Thirteen Million, Two Hundred Thousand Naira only), the Defendant claims he has refunded thus far to the Claimant the sum of ₦9,650,000.00 (Nine Million, Six Hundred and Fifty Thousand Naira only). Because the averment of the Claimant in this regard constitutes an admission against interest pursuant to the provisions of section 22 of the Evidence Act, 2011, considering that this suit was instituted by him against the Defendant for the recovery of the unpaid principal and the accumulated sum, this Court will believe his version of the amount said to have been paid by the Defendant towards liquidating the loan sum. In view of this therefore, when the sum of ₦13,200,000.00 (Thirteen Million, Two Hundred Thousand Naira only) already paid by the Defendant to the Claimant towards liquidating the loan is removed from the total amount due to the Claimant from the Defendant, that is, ₦39,814,400.00 (Thirty-Nine Million, Eight Hundred and Fourteen Thousand, Four Hundred), the total

amount payable to the Claimant by the Defendant will be₦26,614,400.00 (Twenty-Six Million, Six Hundred and Fourteen Thousand, Four Hundred Naira only).

Accordingly, Judgment is hereby entered in favour of the Claimant and against the Defendant on the following terms:-

a. **THAT THE DEFENDANT IS HEREBY ORDERED TO PAY to the Claimant the sum of ₦26,614,400.00 (Twenty-Six Million, Six Hundred and Fourteen Thousand, Four Hundred Naira only)being the outstanding total sum left out of the total loan sum of ₦39,814,400.00 (Thirty-Nine Million, Eight Hundred and Fourteen Thousand, Four Hundred Naira) comprising the principal sum of ₦20,000,000.00 (Twenty Million Naira) only and the accumulated interest of ₦19,814,400.00 (Nineteen Million, Eight Hundred and Fourteen Thousand, Four Hundred Naira only) on the principal sum computed at the simple interest rate of 48% per annum as provided for under section 15 (1) (c) of the Moneylenders Act beginning from the 5th of January, 2023 to today, the 28th day of January, 2025 and due to the Claimant after the deduction of the sum of ₦13,200,000.00 (Thirteen Million, Two Hundred Thousand Naira only) which the Claimant admitted the Defendant has paid him so far in liquidation of the said loan.**
b. **THAT Relief Number 2 as claimed in the Writ of Summons and the Statement of Claim is hereby refused.**
c. **THAT Relief Number 3 as claimed in the Writ of Summons and the Statement of Claim is hereby refused. In its place, this Court hereby**

makes an Order awarding a post-Judgment interest of 10% per annum on the entire Judgment sum beginning from the date of Judgment until the entire Judgment sum is fully liquidated.

d. **THAT the sum of ₦1,000,000.00 (One Million Naira) only is hereby awarded by this Court in favour of the Claimant and against the Defendant as the cost of this action.**

This is the Judgment of this Court delivered today, the 28th day of January, 2025.

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HON. JUSTICE A. H. MUSA
JUDGE
28/01/2025

APPEARANCES:
FOR THE CLAIMANT
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FOR THE DEFENDANT:
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