

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/12553/2024

BETWEEN:

MR JOE ONYEBUENYI

CLAIMANT/RESPONDENT

AND:

MR ANTHONY NWAOBASI (ALIAS TONY)

DEFENDANT/APPLICANT

RULING

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

- 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 Memorandum of Conditional 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 the following reliefs:-

- i. *An Order of this Honourable Court dismissing this instant between Mr Joe Onyebuenyi v. Mr Anthony E. Nwaobasi in its entirety, for being incompetent ab initio and contrary to the provision of section 15(1)(c) of the Moneylenders Act, CAP 525 Laws of the FCT (hereinafter referred to as the Moneylenders Act).*
- ii. *An Order of this Honourable Court dismissing the instant suit between Mr Joe Onyebuenyi v. Mr Anthony E. Nwaobasi in its entirety on the ground that the agreement upon which the Claimant claim is premised is illegal, void and unenforceable loan agreement, having contravened the provision of section 17(1), (2) and (3) of the Moneylenders Act.*
- iii. *And for such further order or orders that this Honourable Court may deem fit to make in the circumstances of this case.*

The application is founded on twelve grounds which in the main revolve around the rate and type of interest which the parties agreed to be imposed on the loan facility the Claimant/Respondent granted the Defendant/Applicant.

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 both Ruling and Judgment.

In the affidavit in support of the Motion on Notice seeking orders of this Court dismissing the suit, the Defendant/Applicant as the deponent thereto averred that he took a loan of ₦20,000,000.00 (Twenty Million Naira only) from the Claimant/Respondent in order to execute some contracts, adding that the Claimant/Respondent took advantage of the opportunity to impose unfavourable terms in the loan agreement. This loan agreement was attached to the affidavit as Exhibit A. Though he claimed he neither perused nor made inputs in the loan agreement, he nonetheless executed same based on the trust he had in the long-term friendship between him and the Claimant/Respondent.

The Defendant/Applicant averred that the interest rate imposed on the loan was 18% per month on a compound basis, adding that he began to make repayments from the 8th of April, 2023. He attached evidence of repayments as **Exhibit B (pages 1, 2 and 4)**. He further stated that he could not make further repayments owing to circumstances beyond his control, adding that the Claimant/Respondent as a result of his default in repayments instituted this suit seeking 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) being the total loan sum comprising the principal and the accumulated interest.

The Defendant/Applicant swore that his lawyers informed him that the agreement was illegal and unenforceable because the terms were against the express provisions of the Moneylenders Act, being the principal legislation governing loan businesses in Nigeria. He therefore urged the Court to dismiss the suit for being illegal and unenforceable.

The Claimant/Respondent did not file a counter-affidavit, choosing, rather, to respond on points of law. He began by highlighting what he considered notable admissions by the Defendant/Applicant. These admissions included the existence of a loan agreement between the parties whose subject is the sum of ₦20,000,000.00 (Twenty Million Naira only), the fact that parties agreed that interest would be imposed on the principal sum, the fact that the Claimant/Respondent was not a moneylender, the fact that the Defendant/Applicant had been in default of the repayment and long-term friendship that had existed between them.

Counsel for the Claimant/Respondent proceeded to formulate a sole issue for determination, to wit: *“Whether considering the circumstances of the instant suit, the Moneylenders Act CAP 525 Laws of the Federal Capital Territory Abuja can be applied to render illegal, void and unenforceable the contract between the parties herein as to be said that the instant suit is incompetent ab initio?”*

Counsel prefaced his submissions with the reproduction of the provisions of section 2 of the Moneylenders Act, which contains the definition of a moneylender. Citing the cases of ***Uzoukwu v. Idika (2022) 3 NWLR (Pt. 1818) 403 at 451, paras F-H, Chidoka & Anor v. Firdst City Finance Co. Ltd (2012) LPELR-9343***

(SC) at 10-22, paras A-A, he maintained that the Claimant/Respondent was not a moneylender within the meaning of the Act, adding that he merely advanced the sum of money to the Defendant/Applicant out of sympathy. He therefore urged the court to dismiss the Motion on Notice seeking an order of dismissal of this suit.

The above is the position of the parties in this Notice of Preliminary Objection. In determining this Notice of Preliminary Objection, the issue before me is quite narrow. This is the issue: ***“Whether the loan agreement between the Claimant/Respondent and the Defendant/Applicant is not illegal, void and unenforceable vis-à-vis the relevant provisions of the Moneylenders Act as to taint this suit with incompetency to justify its dismissal or/and striking out?”***

First, I shall begin the resolution of this sole issue with the definition of a moneylender within the context of the Moneylenders Act. Section 2 of the Moneylenders Act which is the interpretation section says that 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 Jimoh Ajao v. Michael Jenyo Ademola & 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 Defendant/Applicant in paragraph 3 of his affidavit described the Claimant/Respondent as “a businessman and also a legal practitioner”. In paragraph 7, he described him as a “businessman”. By his own admission, he has rebutted the presumption that the Claimant/Respondent is a moneylender within the meaning of the Act. I so hold.

The loan agreement contains a stipulation that the interest rate chargeable on the loan sum is compound interest of 18% per month. Section 15 of the Moneylenders Act contains provisions relating to the rate of interest chargeable on different classes of loans. It provides that:-

“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 the 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.”

Another ground upon which the Defendant/Applicant premised his objection to the competency of the suit is on the rate and type of interest the contained in the loan agreement. He had relied on sections 15(1)(c) and 17 of the Moneylenders Act. 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 which is the type of loan agreement

between the Claimant/Respondent and the Defendant/Applicant 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/Respondent 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/Applicant that the Claimant ought not to impose more than the statutorily provided interest rate on the loan of ₦20,000,000.00 (Twenty Million Naira only). It is for this reason therefore I hold that Clause 3 of the loan agreement 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 loan agreement, 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.”* The effect of this Clause which the parties to this loan agreement voluntarily inserted into the loan agreement is to, in so far as it is possible, grant the court the *vires* to validate any incompetent clause and, where such clause is irremediable, then, to sever that

clause from the contract so that the entire contract is not render invalid and unenforceable.

Though the position of the law as learned Counsel for the Defendant/Applicant 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.”

It is for this reason I resolve the issue I have nominated for resolution in favour of the Claimant/Respondent and against the Defendant/Applicant. In the same vein, I hold that the Preliminary Objection of the Defendant/Applicant encapsulated in the Motion on Notice with Motion Number FCT/HC/M/12553/2024 dated and filed on the 23rd of September, 2024 lacks merit. It is frivolous and vexatious. It is brought *malafide* and is calculated to throw spanners into the wheels of adjudication of this court in so far as this suit is concerned.

Accordingly, the Motion on Notice with Motion Number FCT/HC/M/12553/2024 dated and filed on the 23rd of September, 2024 challenging the competency of this suit and, *a fortiori*, the jurisdiction of this Honourable Court, is hereby dismissed. I make no order as to costs.

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

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