

IN THE MAGISTRATES' COURT OF RIVERS STATE OF NIGERIA

IN THE PORT HARCOURT MAGISTERIAL DISTRICT

HOLDEN AT SMALL CLAIMS COURT 2, PORT HARCOURT

BEFORE HIS WORSHIP COLLINS G. ALI, ESQ.,¹ TODAY WEDNESDAY, THE 30TH
DAY OF AUGUST, 2023.

SUIT NO.:PMC/SCC/68/2023.

BETWEEN:

NKAMBI JOSEPHINE POSI (MY TIME COOPERATIVE) -- CLAIMANT

AND

AFOLABI SARAFI AKA ANJI ----- DEFENDANT

Case called.

Claimant present.

Defendant absent.

JUDGMENT

The Claimant commenced this case against the Defendant on the 13th June 2023 after serving demand letter and claimed as per her claim attached to the summons as follows:-

1. Debt/Amount Claimed - ₦1,374,575.00
 2. Cost of litigation - ₦100,000.00
 3. Costs - ₦50,000.00
- Total = ₦1,524,575.00

The Defendant was served with the summons and claim by substituted means on the 8th July 2023 in compliance with the Order of this Honourable Court made on the 26th day of June 2023.

The Defence counsel entered conditional appearance and further filed defence and counterclaim on behalf of the Defendant on the 26th July 2023; and stated as follows:

B. Dispute part of the claim as it is a cooperative matter.

The Defendant is not owing the Claimant. It is Mytime Cooperative matter.

¹ LL B, LL M, BL, A. IDRI, Chief Magistrate Grade I, and the Presiding Magistrate, Small Claims Court 02, Port Harcourt, Rivers State.

C. Defendant counterclaims against the Claimant for the sum of **N570,000.00** being uncollected savings and savings in his cooperative card.

Plea of not liable was entered for the Defendant and the case proceeded to trial. The Claimant, Nkambi Josephine Posi who is a member and the manager of Mytime Cooperative testified as CW1 and tendered Defendant's Loan Application approved on 11/03/2020 as Exhibit A, Defendant's Original Vehicle Particulars as Exhibit B, Defendant's Individual Ledger Card as Exhibit C, Defendant's Daily Savings Card as Exhibit D, and Claimant Counsel's Demand Letter dated 11/04/2022 as Exhibit E. On his part, the Defendant testified as DW1 and tendered Reply to Demand Letter dated 25/07/2023 as Exhibit F and Mytime Cooperative Payment Voucher as Exhibit G. The CW1 and DW1 were fully cross examined by counsel on both sides.

At the close of trial, counsel for the parties filed and exchanged final written addresses as ordered by the Court. The Defendant's final written address/preliminary objection is dated and filed on the 16th August 2023 while the Claimant's final written address is dated the 14th August 2023 and filed on the 16th August 2023.

The learned defence counsel raised two issues for determination in the Defendant's final written address/preliminary objection as follows:

- i. Whether the Court has jurisdiction to entertain this matter ab initio?*
- ii. Whether the Claimant suit has merit and whether the court can award the Claimant(s) the reliefs sought?*

On his part the learned Claimant counsel did not formulate any issue for determination but argued generally that this Honourable Court is enjoined to consider the whole evidence of both parties and give its judgment thereon after both parties have concluded their case.

The learned counsel for the Defendant as noted earlier entered appearance for the Defendant in protest and argued during the trial and in his final written address/preliminary objection that the Court lacks jurisdiction to entertain this claim. On this counsel cited the cases of *Madukolum v Nkemdilim [1962] 2 SCNLR 341* and *Ndidi v Akimsumade [2008] 8 NWLR (Pt. 688) 293*. The learned defence counsel

argued that the Claimant lacks the locus standi to institute the case because the subject matter of the case is that of My Time Cooperative.

Jurisdiction is the livewire of adjudication and therefore any decision or order given by a Court without jurisdiction is a nullity. See *Maikano v Gizo [2019] LPELR-47758 (CA)*. In determining whether or not a Court has jurisdiction in a matter, it is the claim of the Claimant as endorsed on the summons that the court should look at and not the defence of the Defendant. See *NASU v Jacob A. & Ors. [2020] LPELR-49951 (CA)*. The claim of the Claimant is for the recovery of loan facility which the Defendant collected but failed to repay as agreed. The Defendant's preliminary objection is hinged on the argument that the suit is not in the name of My Time Cooperative but in the name of the Claimant whom he argued lacks locus standi.

By the evidence before the Court, the Claimant is a member of Mytime Cooperative and the Manager while the Defendant is a member of Mytime Cooperative. The DW1 admitted in his evidence that he took loan of ₦600,000.00 from the cooperative and that it was the Claimant who gave him the money which he claimed had been fully repaid. The Claimant as a member of Mytime Cooperative and much more, being the Manager of the Cooperative can sue in her name particularly where in the instant case, it has not been shown that Mytime Cooperative is a limited liability company. The fact that My Time Cooperative is not a limited liability company is more strengthened by Exhibit E, wherein it is expressed that My Time Cooperative is registered and carrying on business in the name and style of My Time Cooperative Investment. The objection lacks merit and is hereby overruled.

There is evidence that the Defendant applied for loan of ₦1,000,000.00 on the 23/01/2020 but the sum of ₦600,000.00 was approved for him by the Cooperative on the 11/03/2020. Defendant admitted that he accessed the loan of ₦600,000.00 but subsequently contradicted himself by stating that he was granted ₦330,000.00 as the principal loan and ₦270,000.00 as interest on the loan. The Defendant's Individual ledger (Exhibit C) shows that upon the lapse of the loan facility as at March 2021, the Defendant had unrepaid balance of ₦556,300.00 out of the ₦600,000.00 loan he

accessed on the 11/03/2023. This unrepaid sum of ₦556,300.00 by the loan tenor should attract a default charge of 23% which the Claimant may have added to get the total sum of ₦1,374,575.00 claim as the head claim in this suit. The agreement by the parties on 23% default charge is contrary to law and therefore cannot be enforced by this Court. Eventhough the law is that parties agreed interest rate is enforceable, See *Olalomi v Nig. Ind. Dev. Bank [2009] 7 MJSC 136 at 167 para. A*; the Court cannot enforce an illegal contract.

By the proviso to section 13 (1) Moneylenders Law, Cap. 87 LRSN 1999, parties in a loan contract can agree on default charge of simple interest not exceeding the rate charged on the principal sum. I find that the 23% default charge in the loan contract agreement is excessive and above the 5% agreed on the principal sum which is within what the law allows. I hold that the Claimant is entitled to 5% default charge per month on the outstanding sum of ₦556,300.00 from 1st July 2020 to 31st March 2021 which is when interest was paused on the individual ledger (Exhibit C). In the circumstance, the default charge of 5% per month on ₦556,300.00 from 1st July 2020 to 31st March 2021 should be ₦250,335.00 thereby making up a total of ₦806,635.00. I also hold that the Claimant is entitled to cost of litigation which I assess at ₦100,000.00 only.

Judgment is hereby entered for the Claimant as follows:

1. The Defendant is Ordered to pay the sum of ₦806,635.00 (Eight Hundred and Six Thousand, Six Hundred and Thirty-Five Naira) only as outstanding debt to the Claimant forthwith.
2. The Defendant is Ordered to pay the sum of ₦100,000.00 (One Hundred Thousand Naira) only as cost of litigation to the Claimant forthwith.



C. G. Ali, Esq.
Chief Magistrate Grade 1
30/08/2023

LEGAL REPRESENTATIONS:

1. V. I. Nwanyanwu, Esq. for the Claimant.
2. Defendant not represented.

