

IN THE MAGISTRATE COURT OF RIVERS STATE OF NIGERIA
IN THE PORT HARCOURT MAGISTERIAL DISTRICT
HOLDEN AT THE SMALL CLAIMS COURT 02 PORT HARCOURT
BEFORE HIS WORSHIP, BLESSINGS VIC-JUMBO, ESQ.
SITTING THIS THURSDAY, THE 15TH DAY OF JUNE, 2023.
SUIT NO: PMC/SCC/18/2023

BETWEEN:

PRINCE ERUANI SAMSON

v.

DR. GABRIEL IKECHUKWU AWUJA

PARTIES: Both Present

APPEARANCES: Self-Representing

JUDGEMENT

This action was commenced by the Claimant on record vide the filing of FORMS RSSC 2 (Complaint Form) & 3 (Summons) whereof he claims against the Defendant the cumulative sum of N2, 550,000.00 (Two Million Five Hundred and Fifty Thousand Naira) representing Principal Loan sum of N200,000.00 (Two Hundred Thousand Naira) and accrued interests. He further claimed Costs of N50,000.00 (Fifty Thousand Naira). Upon the service of the Complaint and Summons on the Defendant, he responded by filing FORM RSSC 5 admitting indebtedness of only N250,000.00 (Two Hundred and Fifty Thousand Naira) which he offered to pay over a period of 10 (ten) months at N10,000.00 (Ten Thousand Naira) monthly. On the 17/04/2023 when the matter came up, in line with Article 9 (1) of the RIVERS STATE SMALL CLAIMS COURT PRACTICE DIRECTION 2023, parties were allowed to explore out-of-settlement. Settlement failed and Pre-trial hearing took place on the 26/04/2023 in compliance with Article 9 (3) of the PRACTICE DIRECTION. Subsequently, the Claimant testified in proof of his case as CW1 and called one Mr. Emmanuel Amadi as CW2. The CW1 tendered a Cheque leaflet, Loan Application Form and Statement of Account and they were admitted and marked as Exhibits A, B and C respectively. The Claimant witnesses were fully examined and discharged. The Defendant testified in his defence and did not call any further witness. At the close of evidence parties addressed court orally and Judgement was reserved.

The summary of the case of the Claimant is that the Defendant took a loan of N200,000.00 from him on the 10/02/2022 with an agreement to repay N250,000.00 for a period not exceeding one month and to pay 3.5% daily default interest thereafter. The relationship was documented. Unfortunately, the Defendant has not repaid the loan or any interest until the Claimant approached the court and till date. The Defendant admitted taking the loan and consenting to the agreement as to interests including the

3.5% daily default interest. The Defendant is however of the opinion that he had a subsequent gentleman agreement with the Claimant to waive the counting of interests.

ISSUES FOR DETERMINATION

After carefully considering the totality of the case as presented, the issues that call for determination are:

1. whether the court can enforce the contract mutually entered by the parties.
2. whether in the light of the evidence before the court the claimant is entitled to judgement.

I shall consider them together as we progress.

ANALYSIS OF THE EVIDENCE

The facts of this case are very straightforward as not much is contested. Both parties are in agreement about the following facts:

- a) The Claimant carries on the business of money lending as he gives out loan and receives interest therefrom.
- b) Defendant took a loan facility from the Claimant on the 10/02/2022.
- c) The Defendant filled out the Loan Application Form (Exhibit B)
- d) The Loan collected was N200,000.00 and the Defendant was to repay N250,000.00 on or before 04/03/2022 and not the 29% interest as stated on Exhibit B.
- e) The Defendant agreed to pay 3.5% daily default fee if he fails to repay the N250,000.00 by the 04/03/2022.
- f) The Claimant has made several demands for repayment.
- g) The Defendant has not repaid the loan and has paid no interest whatsoever since 10/02/2022.
- h) The transaction is documented.

The only area in contention is that of the gentleman agreement to waive interest which the Claimant said he indeed made when he was in desperate need of funds but that when the Defendant did not take advantage of the offer to pay him at least N50,000.00, the offer lapsed. The other point of disagreement is that the Claimant was encouraged to raise the loan for the Defendant through a third party who also advanced the money on monthly interest basis.

FINDINGS AND DECISION OF COURT

It is trite law that the standard of proof is minimal where the evidence of the Claimant is uncontroverted. See AJERO & ANOR v. UGORJI & ORS (1999) LPELR-295(SC) 24. I have carefully considered the case of the claimant and from the cross examination of CW1, adoption of the evidence of CW2 and evidence of DW1, the Defendant never really controverted the evidence of the loan and raised no defense to the claim. The Claimant credibly proved that he gave loan of N200,000.00 to the Defendant and they bound themselves by a contract to pay interest on the loan, first from 10/02/2022 to 04/03/2022 and then thereafter. The Defendant under cross examination on the 08/06/2023 admitted that he drafted the clause as to 3.5% daily default fee and signed it without any duress. The Defendant also admitted that since 10/02/2022 he has not paid a dime to the Claimant in an attempt to repay the loan though he agreed to offset the loan within one month. In the circumstance, it is not in dispute and it is firmly established that both parties entered into a written contract as constituted in Exhibit B. Now, it is the settled position of the law that parties are bound by the terms of the contract they mutually

spelled out. See HENSHAW v. FIDELITY BANK PLC (2020) LPELR-51384(CA) p. 17. The courts are not allowed to rewrite the contract for the parties. Also, oral evidence cannot ordinarily be used to vary the express written terms of a contract. See ATIBA IYALAMU SAVINGS & LOANS LTD v. SUBERU & ANOR (2018) LPELR-44069(SC) p. 32. Therefore, the Defendant cannot move the court to accept his evidence that there was a subsequent oral agreement after the making of Exhibit B to waive the further counting of interest. To that extent, the contract between the Claimant and the Defendant is for the Defendant to pay N250,000.00 not later than 04/03/2022 for the loan of N200,000.00 he received from the Claimant and thereafter, to pay 3.5% daily default interest. There being no evidence of fraud or duress, that contract binds the parties on the principle of sanctity of contract. See OKORONKWO v. ORJI (2019) LPELR-46515(CA) 30-31; A.G. FERRERO & CO LTD v. HENKEL CHEMICALS (NIG.) LTD (2011) LPELR-12(SC) 17F. Issue 1 is therefore resolved in favour of the Claimant.

However, the Claimant in the course of his evidence presented himself as a person who does loan business in the name of Samskillloan Integrated Services Limited. That fact is further buttressed on Exhibit B. Yet, all through his evidence the Claimant never tendered his Moneylenders License and he has none which is in breach of Sections 2 (1) & 3 (b) (d) of the MONEYLENDER'S LAW CAP 87, LAWS OF RIVERS STATE OF NIGERIA, 1999. The Claimant is therefore carrying on his Moneylending business in violation of the law.

Consequent upon the fact of the Claimant carrying on business unlawfully, can the contract emanating from such an unlawful act be enforced by the court? It is established that the courts do not enforce and encourage illegality. See PALMAROL NIGERIA LIMITED & ANOR v. ASUAN (2019) LPELR-47260(CA) 21-23; CORPORATE IDEAL INSURANCE LIMITED v. AJAOKUTA STEEL COMPANY LIMITED & ORS (2014) LPELR-22255(SC) 39 BC. Yet, in MAX BLOSSOM LTD v. VICTOR & ORS (2019) LPELR-47090(CA) the Court of Appeal held very strongly that a person who has taken benefit from a contract cannot resile from his obligation on the premise that the contract is illegal. In fact, in ORURUO v. EKE (2019) LPELR-47710(CA) 26-27 the court's reasoning went thus:

The question I ask myself is that even if the said contract between the parties was illegal, can the Appellant having benefited immensely from same be allowed to cry foul and make heavy weather relying on Section 15 of the Local Government (Market) Bye Law which prohibits subletting of stalls by any tenant of the Local Government? My answer is in the negative. No one can be allowed in good conscience and in equity to benefit from his own wrong and claim that a contract is illegal after taking benefit therefrom...

See also, MTN NIGERIA COMMUNICATION LIMITED v. CORPORATE COMMUNICATION INVESTMENT LIMITED (2019) LPELR-47042(SC).

It is however noteworthy that it is not the defence of the Defendant that the contract is illegal but the court owes a duty to do justice and explore the law rightly. The Defendant is only concerned about the continuity of the counting of interest.

In the light of the decisions above, the court will have to balance the equities: the parties voluntarily entered into a contract which should ordinarily be enforced as the Defendant has

already taken benefit but the claimant transacted without the warmth of the law and in flagrant abuse of the law seeks to have interest of 3.5% daily in contravention of Sections 11 (1) (c), 12 & 13 MONEYLENDERS LAW CAP 87 LAWS OF RIVERS STATE, 1999. To the extent of the contravention of the law, issue two is resolved only in part for the Claimant on the premise that this court is both a court of law and equity and here equity has come in aid of the Claimant.

The Defendant having taken benefit of the loan for his business transaction as he stated on Exhibit B, shall fulfil his obligation to the Claimant. It is recalled that during his final address, the Defendant had offered to pay back the sum of N500,000.00 to the Claimant in full repayment of the loan of N200,000.00 taken since 10/02/2022 and the interest while the Claimant in his viva voce reconsidered his claim and pegged it at N1,500,000.00.

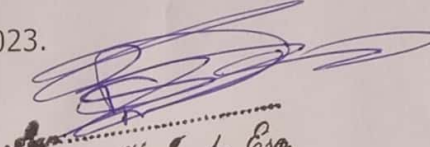
In the overall interest of justice, the Claimant will not take full benefit for unlawfully carrying on moneylending business without a license. Even so, the Defendant cannot avoid his liability after taking benefit.

Conclusively, Judgement is entered for the Claimant. It is ordered that the Defendant pay to the Claimant the sum of N500,000.00 as total and final payment for the loan and interest. The said sum attracts 15% post judgement interest.

I make no further orders.

This is the judgement of this court.

DATED THIS 15TH DAY OF JUNE, 2023.


Blessings Vic-Jumbo, Esq.
(Chief Magistrate)
BLESSINGS VIC-JUMBO, ESQ.
(CHIEF MAGISTRATE)

