

IN THE MAGISTRATES' COURT OF RIVERS STATE OF NIGERIA
IN THE PORT HARCOURT MAGISTERIAL DISTRICT
HOLDEN AT SMALL CLAIMS COURT 3, PORT HARCOURT
BEFORE HIS WORSHIP COLLINS G. ALI ESQ.,¹ TODAY WEDNESDAY,
THE 19TH DAY OF APRIL, 2023.

SUIT NO.:PMC/SCC/02/2023.

BETWEEN:

PRINCE SAMSON ERUANI ----- CLAIMANT

AND

JOSHUA UZOMA IGBOANUSI ----- DEFENDANT

Case called.

Parties present.

JUDGMENT

This is a debt recovery case commenced by the Claimant against the Defendant on the 6th day of March 2023 after serving demand notice and filing of the complaint form as required under the Rivers State Small Claims Practice Direction 2023. The Claimant through his company gave the Defendant a business loan of ₦200,000.00 with interest which was to be repaid within three months from 13/10/2021. The Defendant defaulted in the repayment of the loan with accrued interest. The Claimant therefore claimed against the Defendant as per the summons and particulars of claim as follows:-

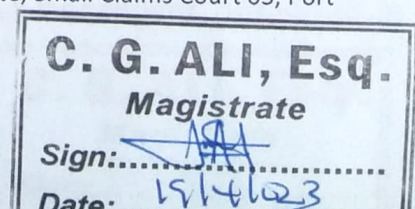
1. Unpaid loan and interest = ₦380,000.00
 2. Cost of litigation = ₦190,000.00
- Total = ₦570,000.00

The Defendant was served and he entered appearance and pleaded not liable to the claim on the 16th March 2023. The Defendant filed his answer and counterclaim on the 21st March 2023 wherein he denied his indebtedness and counterclaimed the sum of ₦200,000.00 against the Claimant for damages and inconveniences over unlawful arrest and assault by the Claimant.

The Claimant testified as CW1 and tendered documents which were received in evidence as exhibits as follows:-

1. Defendant's Loan Application Form - Exhibit A

¹ LL B, LL M, BL, A. IDRI, Chief Magistrate Grade II, and the Presiding Magistrate, Small Claims Court 03, Port Harcourt, Rivers State.



2. 8 relevant pages of the loan repayment record from 9th September 2022 to 30th November 2022 - **Exhibits B, B1-B7.**

The Defendant testified as DW1 and called one Mr. Brendant Sunday who testified as DW2 and also tendered two document which were received in evidence as exhibits as follows:-

1. Defendant's Daily Savings Booklet issued by the Claimant - **Exhibit J1.**
2. Defendant's Loan Repayment Booklet issued by the Claimant - **Exhibit J2.**

At the close of trial on the 13/04/2023, the case was adjourned to the 14/04/2023 for final address. On the 14/04/2023, the learned counsel for the Defendant I. R. Ogbowu Esq. addressed the Court orally on behalf of the Defendant. The learned defence counsel argued that the Claimant lacks the capacity to sue, that the defendant is not indebted to the Claimant in any way, that the Claimant not been a licensed moneylender cannot charge interest above statutorily approved limit; and that the undertaking at the police cannot be enforced. Counsel cited the case of *Osifo v Okogbo Community Bank Ltd [2007] All FWLR (Pt. 372) 1803* and sections 11 (1) of the Moneylenders Law. The Claimant Prince Samson Eruani personally addressed the Court orally arguing that the Defendant and DW2 admitted that the Defendant is indebted to him. The Claimant urged the Court to enter judgment in his favour and ask the Defendant to pay him. The case was thereafter adjourned for judgment.

From the evidence of the Claimant, a businessman and director of Samskill Loan Services Ltd.; his company is into daily savings and loan services for customers who must have 20% savings. The Defendant a shuttle bus driver was granted business loan of ₦200,000.00 to fix his vehicle on the 13/10/2021. The loan was for 3 months with 9.5% interest per month making it ₦276,000.00 for the 3 months. The parties agreed on weekly repayment of ₦17,500.00 and 25% default fee on the interest and principal per week. The Defendant stopped repayment on 22/12/2022 when the balance of the loan stood at ₦137,500.00 and all effort by the Claimant to get him to repay the balance failed. The accrued interest, principal and default fee for 8 months as at August 2022 had risen to ₦626,000.00 but after negotiations, the parties agreed on ₦500,000.00 out of which the Defendant paid ₦120,000.00 leaving a balance of ₦380,000.00 unpaid.

The Defendant admitted he took loan of ₦200,000.00 from the Claimant but that they agreed the repayment will be within 4 months with interest of ₦76,000.00. Defendant said he discovered that his savings and repayments for October, November and December 2021 had covered the ₦200,000.00 loan but evidence states otherwise. The Defendant said the Claimant claimed he was owing him ₦500,000.00 which is not true but that he paid a total of ₦350,000.00. Under cross examination, the Defendant admitted he signed agreement on payment of 25% default fee on the loan and not interest.

From the evidence before the Court, the parties agreed on the loan and on the terms contained in the loan agreement **Exhibit A.** The Defendant defaulted in



the repayment of the principal and interest and therefore liable to pay default fee as agreed. Parties are bound by their agreement. See *A-G Rivers State v A-G Akwa Ibom State & Ors.* [2011] LPELR-633 (SC).

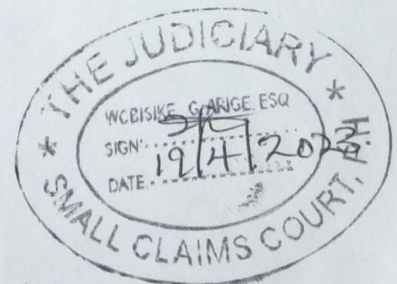
A company is in law a person distinct from its promoters and directors. However, a director of a company is in the eye of the law an agent of the company for which he acts. See *Oriebosi v Andy Sam Investment Co. Ltd.* [2014] LPELR-23607 (CA). The Claimant as the director of the company is the alter ego and directing mind of the company and therefore has the capacity to sue on behalf of the company. The Claimant company is registered with CAC as a company with object of savings and loan, and therefore falls under the exception in section 31 (b) of the Moneylenders Law Cap. 87 LRSN 1999. I hold that the Claimant's Samskill Loan Services Ltd. can grant loan with interest. 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. By the proviso to section 13(1) Moneylenders Law, 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 25% default fee in the contract is excessive and above the 9.5% agreed on the principal sum which is within what the law allows. I find also that the 15.5% excess default fee from 25% had been taken care of when the Claimant slashed the accrued total sum of ₦626,000.00 as at August 2022 down to ₦500,000.00. I hold that the Claimant has proved his claim. The Defendant's counterclaim is vexatious and lacking in merit; it is accordingly dismissed.

Judgment is entered for the Claimant as follows:-

1. The Defendant is hereby ordered to pay the sum of ₦380,000.00 (Three Hundred and Eighty Thousand Naira) only as unpaid loan and interest to the Claimant forthwith.
2. The Defendant is ordered to pay cost which I assess at ₦50,000.00 (Fifty Thousand Naira) only to the Claimant forthwith.

C. G. ALI, Esq.
Magistrate
Sign: 
Date: 19/04/2023

C. G. Ali Esq.
Chief Magistrate Grade II
19/04/2023



LEGAL REPRESENTATION:

1. I. R. Ogbowu Esq. for the Defendant.
2. Claimant not represented by counsel.