

IN THE MAGISTRATE COURT OF RIVERS STATE OF NIGERIA
IN THE PORT HARCOURT MAGISTERIAL DISTRICT
HOLDEN AT PORT HARCOURT

RESUMED ON WEDNESDAY THE 7TH DAY OF FEBRUARY, 2024
BEFORE HIS WORSHIP S. S. IBANICHUKA, ESQ SENIOR MAGT GD. I
SITTING AT SENIOR MAGISTRATE COURT 6 PORT HARCOURT

SUIT NO: PMC/SCC/269/23

KEYSTONE OASIS RESOURCES (NIG) LTD
VS.
MR. FRANK CLEMENT

The parties present in court. B. K. Nwangwe appears for the Claimant J.P. Amadi appears for the Defendant.

JUDGMENT

The claimant claims against the defendant as per form RSSC 2 and form RSSC 3 of this court for the sum of N3,000,000 (Three Million Naira only). The defendant pleaded not liable to the claims of the claimant. In prove of his case the Claimant (represented by its Director) called one witness and tendered "Exhibits A- F", the CW1 was cross examined by the defendant's counsel and the claimant closed his case. The defendant in defence of this suit also called a sole witness. The defendant on record, no documents were tendered through DW1, DW1 was cross examined and the Defendant closed his case. The case was adjourned for final written address, the parties through their respective counsels filed and exchanged final written addresses. The defendant counsel in adopting his counsel final written address dated and filed the 24-1-204 raised one issues for determination, counsel argued that the Defendant does not owe the claimant the sum of N3,000,000 (Three Million Naira), the Defendant counsel however admitted that the defendant owes the claimant the sum of N380,000.00 (Three Hundred and Eighty Thousand Naira) only, being the principal sum and interest of the loan for a Ninety day period as shown on the face of the agreement "Exhibit A". He urged the court to grant the defendant the relief payment of the sum of N380,000.00 (Three Hundred and Eighty Thousand Naira). The claimant counsel adopted his final written address dated the 17-01-24 the claimant's counsel raised two issues for determination in this case and urged the court to deliver judgment in terms of the claim of the claimant for the sum of N3,000,000.00 (Three Million Naira) only and general damage in the sum of N1,000,000.00 (One Million Naira) in favour of the claimant. The summary the facts of this case is that sometime in May 2019 the Defendant entered into a loan agreement with the claimant for the sum of N200,000.00 (Two Hundred Thousand Naira) only, repayable on 30% interest at the end of one month, the security for the loan is a parcel of land which the claimant should have an absolute lien, reserved the right to sale the collateral security if repayment is not made as at when due which is a period of Ninety days. The above stated facts are not in issue between the parties in this suit. What however is in issue is the identity of the land used as collateral for the said loan. After considering the facts of this case and the issue for determination raised by the counsels for the Defendant and the Claimant, this court raised a lone issue for determination in this suit to wit: "*Whether the Claimant has placed enough materials before this court to be entitled to the reliefs sought?*." In order to succeed in a civil case the law requires the claimant to prove his case on a preponderance of evidence, see the case of **BALOGUN V. LABIRAN (1988) 3 NWLR (PT. 80) PAGE 66,**

PARAGRAPHS A. PER OPUTA JSC. See also **FBN PLC V. OLYANGI (2000) 6 NWLR (PART 661) PAGE 497 at Paragraph E.** Before going into the issue for determination, it is pertinent to resolve the conflict as to what the land used as collateral for the loan is. The Defendant in his evidence on the 15-01-2024 testified that before he was given the loan by the claimant he showed the claimant three different lands for purposes of using one of the lands as collateral, that subsequently he and the claimant picked the parcel of land known as Ohia Igbodo Okporo Rumuosi as the land to be used as collateral for the loan, however, under the fire of cross examination by the claimant's counsel, the DW1 was made to read the loan agreement between the parties, with particular reference to the portion that states the name of collateral security and the DW1 read it as "one plot of land approximately 50 x 100 which is situated at Ali-Rumubianwo Okporo". The position of the land is that a document speaks for itself and one is not allowed to read into the text what is not contained therein. See **AMED V. CENTAL BANK OF NIGERIA (2013) 11 NWLR (PART 1365) 352 AT 374, PARAGRAPHS A-C.** Accordingly the identity of the land used as collateral for the loan subject matter of this suit as contained in "Exhibit A" the loan agreement cannot be varied by oral evidence of the DW1. See **S.128 Evidence (Amendment) Act 2023,** Consequently the land used as collateral for the loan between the parties is Ali-Rumuohianwo Okporo as stated in "Exhibit A". The defendant has also satisfied on the same 15-01-2024 that as at the time he executed the loan agreement "Exhibit A" before this court that there was no collateral property stated in the loan agreement yet, under cross examination on the same date, the defendant admitted to signing the loan agreement by his own consent. Where no issue of fraud, intimidation, illegality want of due execution or misrepresentation was raised, proved and decided upon the court will not accept oral evidence to contradict a written document. See the case of **B.O.N. LTD V. AKINTOYE (1999) 12 NWLR (PART 631) 392 AT 404.**

The claimant and the Defendant are in agreement as to the fact that a loan agreement was actually entered into by them, facts admitted need no further proof. See **Section 123 of the Evidence (Amendment) Act 2023.** This brings this judgment to another issue in conflict which is that the claimant did testify before the court that he gave a loan of N200,000.00 (Two Hundred Thousand Naira) only to the Defendant, while the defendant testified that the loan sum transferred to him was N180,000.00 (One Hundred and Eighty Thousand Naira) while he requested for N200,000.00 (Two Hundred Thousand Naira) loan. Under cross examination the DW1 admitted that he did not pay the administrative cost of N20,000.00 (Twenty Thousand Naira) for the loan in advance, same was deducted from the loan sum of N200,000.00 (Two Hundred Thousand Naira) when he was advanced the loan. This to my mind is an obvious admittance by the Defendant and this is also confirmed in paragraph 3.1 of the Defendants counsels final written address then he submitted that the principal loan sum and interest after Ninety days is N380,000.00 (three Hundred and Eighty Thousand Naira). The controversies resolved so far are (1) the issue of the identity of the land and the issue of and how much was collected as loan. What the court is left to consider is the aspect of whether the interest on the loan of N200,000.00 (Two Hundred Thousand Naira) continued to run from 15-06-19 till this suit was filed on 12-12-2023 at the rate of 30% per month. This is the basis upon which the claimants claim shall be tested. The law is that in civil cases the burden of prove is generally on the claimant and until this burden is discharged by the claimant to the satisfaction of the court this burden does not shift. See the case of **BALOGUN V. LABIRAN (Supra).** To ascertain whether the Claimant has placed enough evidence before this court to tilt the preponderance of evidence in his favour this court shall put side by side the loan agreement "Exhibit A' before this court and the evidence of the Claimant in this

proceeding. The claimants claim states that the loan is for the sum of N3,000,000.00 representing the principal sum of the loan and 30% interest rate till this suit was filed. The loan agreement Exhibit 'A' before this court clearly states that the loan is payable on 30% interest at the end of one month. This said document further down states that the claimant shall have an absolute lien, exercise the right to sale the collateral security if repayment is not made as at when due, Ninety days.

The interpretation of the foregoing without equivocation is that by the agreement, if the loan is unpaid by the Defendant it will be payable on 30% at end of every month for Ninety days, at the end of Ninety days the collateral property goes under lien of the claimant and he reserves the right to dispose of same. The claimant has in his oral evidence before while being cross examined by the Defendant's counsel denied the fact that the loan is for a period of Ninety days before the collateral is forfeited. On this score the law still remains that oral evidence cannot take the place or contradict the contents of a written document Exhibit A, in this case. The claimant became entitled to have a lien on the collateral property at the expiration of Ninety days but the claimant has maintained all through the proceedings that the collateral property now established as the property on the face of Exhibit 'A' has been sold. A fact which the Defendant denies. The law is trite that he who asserts the existence of certain facts to prove same. See **AMADI V. AMADI (2017) 7 NWLR (PART 1563) SC.** The claimant alleged that the Defendant has sold his land but did not state who the land was sold to and did not lay any evidence as to how he came about the fact that the land used as collateral by the Defendant has been sold. By the agreement "Exhibit A" before this court the claimant ought to exercise his right to lien over the said property used as collateral after Ninety days upon failure to replay the loan which should be sometime in August 2019. But by the claimants testimony before this court on 11-01-24, is that to his surprise he found out that the defendant has sold the property used as collateral for the loan around last year or year before last. This statement is indicative of the fact that the claimant did not proceed to exercise his right to lien over the land in accordance with the loan agreement after Ninety days but waited until recently to do so, hence his purported discovery that land has been sold last after or year before last. I am of the firm view that the claimant did not exercise his right to lien over the land as at when due and has not been able to prove to the satisfaction of this court that the land used as collateral for the loan has been disposed of.

The defendant admits that the claimant is only entitled to the sum N380,000.00 being and representing the principal sum of the loan of the sum of N200,000.00 (Two Hundred Thousand Naira) and interest at 30% for Ninety days, facts admitted need no further prove. See **CBN V. DINNEH (2010) 17 NWLR (PT 1221) PAGE 125, 162 AT PARAGRAPH C-D.** the combined effect of the length and breath of this judgment is that the claimant has not been able to prove his claim before this court on a balance of probabilities or on a preponderance of evidence. However this court is by its rules enjoined in all cases and matters to make any order which it considers necessary for doing justice whether such order has been expressly asked for by the party entitled to the benefit of the order or not, see **Order 15 Rule 3** of the Rules of this Court. Accordingly this court hereby orders that the claimant is entitled to the sum admitted by the Defendant as his liability in this suit. It is hereby adjusted as following:

1. That the claimants claim as per his summons before this court fails and same is dismissed.