

IN THE MAGISTRATE COURT OF RIVER STATE OF NIGERIA
IN THE PORT HARCOURT MAGISTERIAL DISTRICT
HOLDEN AT PORT HARCOURT
BEFORE HIS WORSHIP S. S. IBANICHUKA, ESQ
SITTING AT SENIOR MAGISTRATE COURT 6 PORT HARCOURT

SUIT NO: PMC/SCC/273/2023

BETWEEN
HON WISDOM ODUM
(TRADING UNDER THE NAME AND STYLE OF
ADA-WIZZY GLOBAL RESOURCES NIG.LTD)

AND

MR GODWIN JACK

JUDGMENT

This suit was instituted via forms RSSC 2 and 3 of this court on 20-12-23, wherein the Claimant's claims against the defendant is for:

- I. The sum of ₦152,500 (One Hundred and Fifty Two Thousand Five Hundred Naira) only, representing the principal sum and interest of the loan due to the Claimant as at 1-09-2023.
- II. The sum of ₦30,00.00 (Thirty Thousand Naira) only as cost.

The defendant did not file form RSSC 5 of this court in defence of this suit but was represented by counsel. In prove of his case the claimant called a sole witness, (CW1) being the claimant himself and he tendered Exhibits A-E, namely money lenders licence, loan agreement forms (as exhibits B & C), the Defendants Fidelity bank cheque leaf and a hand written record respectively. The CW1 was cross examined and the claimant closed his case on 27/02/04. In Defence of this suit the Defendant called a sole witness DW1, the Defendant himself. The Dw1 was also cross examined and the Defendant closed his case on 7/03/24 consequently the matter was adjourned for adoption of final written addresses. On 14-3-2024 when the matter came up for adoption of final written addresses the Claimant and his Counsel were absent in court while the Defendant and his counsel were present in court, in the circumstance the claimants counsel does not have a final written address before this court. The Defendants Counsel adopted his final written address dated the 8-3-2024 and filed on the 11-03-24 wherein he raised two issues for determination and relied on the case of Madukolu v Nkemdilim (1962) 2 SCNLR 341 , pg 466-467 , paras G-C, and argued that the claimant has failed to fulfill all the condition precedent before instituting this action, he prayed the court to dismiss the claim of the claimant with a cost of ₦100,000.00 (One Hundred Thousand Naira).

The simple summery of the facts of this case are that sometime in the year 2021 the defendant took loans from the claimant in the sum of ₦20,000,00 (Twenty Thousand

Naira) and ₦10,000,00 (Ten Thousand Naira) respectively for an agreed interest rate of 25% (percent) per month and that the Defendant has not paid any part of the principal sum of the loan or the interest till date hence this suit.

I shall adopt the two issues for determination raised by the Defendant's counsel in his final written address while also raising a lone issue for determination, accordingly the issues for determination are:

1. *"Whether the claimant has the locus standi to institute this action against the Defendant given that the contract was entered between "Adawizy Global Resources Nig Ltd." and the Defendant on record"?*
2. *"Whether the failure of the claimant to carry out his business in conformity with the extant law does not make his cause of action unenforceable?"*
3. *Whether the claimant has placed enough evidence before this court to discharged the onus of proof on him to be entitled to judgment as per his reliefs before this Court?"*

Issue 1:

"Whether the claimant has the locus standi to institute this action against the Defendant given that the contract was entered between "Adawizy Global Resources Nig Ltd." and the Defendant on record"?

Locus standi simply means "the standing to sue" or "the competence to sue" see *Ariwolo v Olowookere* (2011) NSCQR 66 at p. 88 and p. 102. The summery of the defendants counsels argument on this score is that the claimant does not have the competence, ability or power to institute this action based on the fact that on the face of the contract agreement the contract was entered between "Adawizy Global Resources Nig Ltd." and the Defendant on record, defendants counsel argued that the company is different from the individual and he relied on the cases of *Witt & busch Ltd v Goodwill & Trust Inv. Ltd*. I have considered the above cases and they do not apply to the instant case as the issue here is not ownership of company property but the capacity to sue on behalf of the company, the law is that the nature of a company is such that a company is an abstraction. It therefore acts through living persons... those whose acts binds the company are their alter-ego- those persons who because of their positions are the directing mind and will of the company, the very ego and cooperate personality of the company. See *Kate Enterprises ltd v Daewoo (Nig) Ltd* (1985) 2 NWLR (Pt 5) 116 **Ratio 2.** on the face of the originating process in this suit it clearly shows that this suit is instituted by Hon.Wisdom Odum, trading in the name and style of Adawizy Global Resources Nig Ltd as the claimant, for further emphasis on this a look at the flip side of Exhibit "B" clearly states in the hand writing of the Defendant " this is to certify that I Godwin Jack have this day 29/10/2021 received the sum of ₦30,000.00 from Odum Wisdom Company". the law is that parties are bound by the terms of their agreements, See *A. G. RIVERS STATE V. AG ALWA IBOM STATE* (2011) NWLR (PT. 1248)

31 AT 81. The handwritten brief statement of the defendant on Exhibit "B" is a clear admission from the Defendant that he acknowledges Hon. Wisdom Odum as the alter ego or one and the same person with Adawizy Global Resources Nig Ltd. This fact was never denied by the defendant through DW1 and so the attempt by the Defendants counsel to state otherwise by way of final written address fails as address of counsel no matter how succinctly and brilliantly coached cannot take the place of evidence needed to prove a case. See **ALIKHA & ANOR V. ELECHI & ORS (2017) LPELR-7823 (SC)**. accordingly this score is resolved against the defendant.

ISSUE 2

"Whether the failure of the claimant to carry out his business in conformity with the extant law does not make his cause of action unenforceable?"

I have carefully considered all the points raised and argued by the defendants counsel on this score and relying on the relevant sections and the purported breach thereof of the Money Lenders Law Cap 87, Laws of Rivers State of Nigeria, 1999 and I sincerely commend the industry of the defendants counsel. As stated earlier in this judgement the defendant did not deny any material fact in the claim of the claimant before this court and the issue of the propriety or otherwise of the claimants practice as a licensed money lender was never raised as a defence in this suit as the defendant never filed the mandatory form RSSC 5 in defence of this suit neither was evidence led by the defendant on the score. The law remains that address of counsel can never take the place of evidence. See **ALIKHA & ANOR V. ELECHI & ORS (Supra)**.

The law is trite that a contract that is *ex-facie* not illegal or offend public policy will be enforced by the courts :

See **UBN v Odusote Bookstores Ltd (1995) 9 NWLR (Pt 421) 551, Ogwulu v Coop. Bank of E n Ltd (1994) 8 NWLR (Pt 365) 685.**

The claimants claim before this court is stated out in the introductory aspect of this judgement, its simply for recovery of the principal sum and interest of the loan he gave to the defendant. There is definitely nothing apparent or evident from the face of the claim to show any act of illegality, the claimants claims are therefore legal and enforceable, this score is also resolved against the defendant.

Issue 3.

"Whether the claimant has placed enough evidence before this court to discharged the onus of proof on him to be entitled to judgment as per his reliefs before this Court?"

It is noteworthy that the Defendant as DW1 never denied the claims of the claimant before this court as per the form RSSC 2 and 3 and the evidence of the claimant through CW1 before this court, In civil cases the standard of proof required of the claimant is a proof on preponderance of evidence, see: **Section 134 of the Evidence (Amendment) Act, 2023**. In arriving at a just determination of this case I shall consider all the documents tendered before this court in cause of the proceeding and the evidence led by

all the witnesses which forms the courts record. it is trite to do so because are bound by their agreement. See **ACCESS BANK PLC V. K. C. INTERNATIONAL LTD (2018) LPELR – 43668 (AC)** and This court is also bound by its records of proceedings on any matter and takes notice of their contents in arriving at a just decision. See: **AGBAREH V. MIMRA (2008) 2 NWLR (PT. 1071, 378) (SC)**.

This is a case of contract of money lending where the claimants claim that what bounds him and the Defendant in this case are Exhibits “B”, “C” and “D” the loan agreements and the Defendants cheque (issued to the claimant in an attempt to repay the loan) respectively and Exhibit “E”. The defendant denies executing the documents, the law is that he who alleges the existence of any fact must prove same . see **AMADI V. AMADI (2017) 7 NWLR (PART 1563) S.C.**. The case of **B. O. N. LTD V. AKINYOYE (1991) 12 NWLR (PART 631) 392 at 404** is instructive to the effect that where an issue of fraud, intimidation, illegality, want of due execution or misrepresentation has not been proved the court will not accept oral evidence to contradict a written document. The burden of proving that the Defendant did not sign the documents rests on the defendant who alleges so and he has failed to discharge same. It is also resolved that the document that bounds parties in this suit are Exhibits B to E as the oral evidence of DW1 or argument of his counsel cannot be used to contradict same . the defendant under cross examination on 7-3-24 admitted all the facts. The law is that facts admitted need in further proof. See **Section 123 of the Evidence (Amendment) Act 2023**. Accordingly this score is resolved against the defendant. Consequentially it is adjudged as follows:

1. That the claimant is entitled to the sum of ₦152,500 (One Hundred and Fifty Two Thousand Five Hundred Naira) only, representing the principal sum and interest of the loan due to the Claimant as at 1-09-2023.
2. The sum of ₦50,00.00 (Fifty Thousand Naira) only as cost.

I make no further orders

Parties are reminded of their rights to appeal.

Signed:

S. S. IBANICHUKA, ESQ.

18/04/2024.

