IN THE CHIEF MAGISTRATE COURT OF RIVERS STATE OF NIGERIA
IN THE RUMUODOMAYA MAGISTERIAL DISTRICT
HOLDEN AT RUMUODOMAYA

BEFORE HIS WORSHIP B.H. ABE (MRS) ESQ., SITTING AT THE CHIEF MAGISTRATE COURT 1 RUMUODOMAYA ON MONDAY THE 29TH DAY OF JANUARY, 2024

RMC/SCC/11/2023

BETWEEN

GUARANTY TRUST BANK LIMITED - CLAIMANT

VS.

1. AMAKIRI INNOCENT RAYMOND - DEFENDANTS
2. AMAK'S DESIGNS

Matter for Judgment

Parties absent, O.Q. Agbai, Esq. for the claimant and Ben Uzozie Esq. for the defendant.

JUDGMENT

The Claimant claims against the defendants as follows:

1. The claimant claims against the defendant the sum of N3,382,680.00 (Three Million, Three Hundred and Eighty-Two Thousand, Six Hundred and Eighty Thousand Naira) only, being the loan facility taken from the claimant including interest accrued on the said loan facility.

2. 10% interest monthly.

3. N200,000.00 (Two Hundred Thousand Naira) only, being cost of the suit.

Facts

This matter commenced on the 17th July, 2023, Oliver Nwamini, holding the brief of O. Q. Agbai (Mrs.) appeared for the claimant, I. E. Thompson appeared for the defendant. The matter was called for plea, the claims were read to the defendant in English Language, the defendant pleaded not liable to the claims, both counsels applied for leave to settle out of Court. Court granted same and adjourned for out of Court settlement.

On the 13th September, 2023 after several adjournments for Report Of Settlement, the claimant's counsel, Oliver .O. Nwamini, holding the brief of O. Q. Agbai Esq for the

claimant, informed the Court that settlement had broken down, the Court vacated the earlier leave granted for out of Court settlement.

Cw1 was called to give evidence on the 18th September, 2023, the 1st defendant was in Court, O. Q. Agbai (Mrs.) appeared for the claimant with O.O. Wamini, Ben Uzozie with O. G. Akimade and N.I. Harrison appeared for the claimant. Cw1 affirmed in English Language. She gave her name as Vanessa Enujuha a litigation officer with Infinity Law Attorney, she said she knows the claimant, they were instructed by the claimant to represent them in recovery of the loan sum from the defendant. The defendant is a debtor to the claimant bank, the defendant has not paid his loan sum, after they were instructed by the claimant bank, they sent a demand letter to the defendant.

They also contacted the defendant and when he was not forthcoming, they filed his matter in Court.

The defendant filed a notice saying that he had paid the loan and only N970,000.00 (Nine Hundred and Seventy Thousand Naira) was left.

They contacted the claimant's bank, they sent a letter with the payment breakdown the defendant had made. The defendant acknowledged the loan and requested they settle out of Court, he sent the terms of settlement, which were not favorable to them, they sent a reply. The defendant has not taken any action to pay the loan.

The demand letter is before me as Exhibit A, the offer for settlement out of Court written by the defence counsel is before me as Exhibit B.

End of evidence of cw1.

Cross-examination of cw1, it was deduced as follows;

That cw1 is not a banker, she does not understand the ratio at which the loan was calculated, her evidence before the Court is based on the information given by the claimant's bank.

On the 20th September, 2023 counsels for the claimant and defendants were all in Court, cw2, Sandra Efenuaye, working with GTB, the sales and marketing department at No. 5 Nnamdi Azikiwe road testified. She said she knows the defendant as a customer of the bank. She is the head of the marking sales, relationship management.

In March, 2020, a facility of N2,970,059.00 (Two Million, Nine Hundred and Seventy Thousand, and Fifty-Nine Naira) was granted to the defendant to support his working capital, which he was to pay back within six months, however, due to Covid, he did not pay back. The bank granted customers extra three months to six months to get their business back, at the of the period the customer did not pay back, all efforts to get him to pay back proved abortive, to regularise the debit balance. Their legal team employed the services of Infinite Law Chambers.

The business address they had, when they visited there, they did not see him, he told them he was out of business. He agreed to come to the bank in 2022 to restructure the loan, he was asked to make a 10% deposit as a commitment to pay the outstanding, which he agreed to do but did not fulfil, so they did not restructure the facility.

He stopped taking their calls, the legal team sent Infinite Law Chambers an email. The defendant is owing N3,600,000.00 (Three Million, Six Hundred Thousand Naira) as of the day this evidence was given.

The documents sought to be tendered, were objected to by the defence counsel on the ground that they were not signed, not properly executed, that they are photocopies not original and the Court should mark same as rejected.

The claimant's counsel in response stated that cw2 is the representative of the claimant, the documents originate from the claimant, cw2 is the head of that team.

The documents are relevant, section 84 of the Evidence Act allows cw2 to represent the bank, because the documents are stamped, even if the maker is not there.

The witness stamped and signed the account statement.

Defence counsel – no proper foundation was laid as a computer generated evidence, the witness is not the maker of the document, the maker of the document did not sign the document, the maker of the document not known. He applied for the cost of N5,000.00 (Five Thousand Naira), claimant's counsel opposed.

The Court in response to the objections of the defence counsel, instructed the claimant's counsel to provide the policy or guideline from the bank, which regulate the bank from appending its signature to documents emanating from the bank as contended by cw2.

The claimant's counsel was advised to attach a certificate authenticating the documents and the mechanical process of their production in compliance with section 84(4)(A-C) of the Evidence Act, 2011.

Award for cost dismissed, the Court adjourned for address.

The claimant's counsel on the 4th October, 2023, informed the Court that there is no written document from the bank, policy or guideline with regards to the bank stamp alone sufficing as the bank's signature, prayed the Court to admit the documents tendered on the last adjourned date, the bank has authorized that the Court relies on the said documents.

Defence was not opposed.

The documents were admitted as Exhibits C and D. Certificate of compliance Exhibit E.

The bank's stamp suffices in this case, the signature of the maker of the document is not needed. This is an unwritten internal policy of the bank.

In the course of cross-examination of cw2, the following were deduced;

She denied the interest sought to be recovered runs from April, 2021.

She reiterated that the bank gave the defendant three months grace because of COVID-19 to repay his loan.

The loan could not be restructured because the defendant could not pay the 10% of the debit balance in the account and the statement of account from his other bank was not complete, some pages were missing.

The loan agreement between the bank and the defendant was collected on internet banking in 2020, no physical agreement, the agreement is automated the customer either picks yes or no on the platform.

No written terms of agreement.

The defendant claimed the business crashed and she could not file his address.

It is her duty to monitor the business of the customer she gave the loan to.

The interest against him is still being counted.

The terms and agreement signed by the defendant are not before the Court because it was an automated loan, you will see either agree or not agree, if you did not agree to the terms, you cannot assess it, this was as far back 2020.

Now there are physical documents for customers to sign.

It is GTB's policy for the customer to pay 10% of the loan sum before it can be restructured. No policy before the Court.

The defendant's offer of N500,000.00 (Five Hundred Thousand Naira) was turned down to liquidate the loan, the loan belongs to the people not the bank.

They offered that he should pay 10% once a year but he refused.

She denied that the loan given to the defendant was also a guarantee by the CBN for small scale businesses.

No re-examination after her cross-examination, claimant's counsel closed her case.

DEFENCE

The defence opened its case on the 16th October, 2023, both counsels were in Court, Dw1 affirmed in English Language, informing the Court thus;

His name is Innocent Amakiri Raymond, living at 22 Kpalukwu Street, Oroworukwu, a business man and Tailor, he confirmed he knows the claimant.

In 2020, through his App on his phone, he was informed that he had been offered a sub facility in the sum of N2,970,059.00 (Two Million, Nine Hundred and Seventy Thousand, and Fifty-Nine Naira) by GTB he agreed to the terms, it was given to him in March, the terms were that money will be deducted from his account gradually till the loan was fully paid. It was for three months before the COVID, there was no restructuring and no interest rate visible.

The loan was given on the 6th of March, 2020, N2.4m was deducted from his account, he was shown that the interest of N3,000,000.00 (Three Million Naira) had accrued on the loan sum.

N570,000.00 (Five Hundred and seventy Thousand Naira) is the outstanding capital of the loan balance, which he agreed he is ready to pay, that is he is ready to liquidate the capital of the loan.

He made several efforts to reconcile this with the bank, he explained to them that his business crashed, but the bank insisted he must pay the amount stated by them. If the Court grants him leave, he will be able to pay back the loan balance within ten months.

Cross-examination of Dw1, in the course of cross-examination, it was deduced as follows;

1. He confirmed he took the loan on the 6th March, 2020.
2. The loan offer popped up on his App.
3. The App isn't opening presently, the terms and agreement are with the bank (GTB) on the App, it was an online transaction.
4. He was not aware that the loan was with interest, it was not stated in the App.
5. His phone has the GTB App.
6. He was invited by the bank and went there, he was never visited by the account officer.
7. He offered N500,000.00 (Five Hundred Thousand Naira) to the bank but they refused.
8. His account statement shows that N2,400,000.00 (Two Million, Four Hundred Thousand Naira) has been deducted.
9. He reiterated he was not aware of the interest capitalized on the said loan facility.
10. His account statement (Exhibit E) was given to him to read from the 6th March, 2020, the 7th item, also the 31st July, 2020, the 1st October, 2020, 1st November, 2020, 30th November, 2020, 1st January, 2021, 31st January, 2021, 21st February, 2021, 21st March, 2021, 30th April, 2021, 31st May, 2021 (N32,000.00 interest capitalized), 28th February, 2022, 31st January, 2023, 31st July, 2023, 31st August,

2023 – all these dates show the interest capitalized on the loan with remarks also.

11. He said those interests are the reasons they are in Court, because, he was not aware of any of them.
12. He went to the bank in 2021, and paid an amount, the bank stopped the interests capitalized, but then they resumed the interest capitalized.
13. He stated that he had paid N2,400,000.00 out of the N2,970,059.00 (Two Million, Nine Hundred and Seventy Thousand, and Fifty-Nine Naira).
14. The account was a business account, so he stopped running it when the business crashed.
15. He denied being indebted to the bank to the tune of N3,626,205.45 with the interest on the loan sum still accruing.

In the course of re-examination, he confirmed that the loan was taken from the GTB App.

The written addresses of both parties were adopted on the 5th December, 2023 and the Court adjourned for judgment afterwards.

Issues for determination

1. Whether parties are bound by the terms and conditions of their contract?
2. Whether this Court has the jurisdiction to hear and determine the claim filed by the claimant against the defendant, being a contract between the bank and its customer which brings the bank/customer relationship into question, the defendant allegedly acting in breach of the contract entered into between both parties?

COURT

It is trite law that were the issue of jurisdiction is raised, the Court will have to suspend every other issue before the Court including its proceeding to consider if the Court has the requisite jurisdiction to adjudicate on the matter before it. No matter how well conducted a proceeding is once the Court lacks jurisdiction, the Court proceeding will be considered a nullity and will be struck out accordingly.

The claim of the claimant vests jurisdiction in a Court.

It is no doubt in this case that the defendant obtained a loan from the claimant, this fact, the defendant has not denied, stated this in his evidence-in-chief and also during his cross-examination. The issue is with regards to the interest capitalized on the loan vis-à-vis the loan sum obtained by the defendant.

I agree with the claimant's counsel that indeed, "facts admitted need no further proof" as seen in section 123 of the Evidence Act, 2011.

The defendant in this case contends that the interest capitalized on the loan sum of N2,970,000.00 (Two Million, Nine Hundred and Seventy Thousand Naira) obtained by

him in March, 2020 did not have any interest attached when the offer was made to him via his GTB App, he informed the Court that he had paid N2,400,000.00 to the bank leaving a balance of N570,000.00 (Five Hundred and Seventy Thousand Naira), which he could not pay because his business crashed, thereby making it impossible to pay/liquidate the balance of the loan sum to the claimant.

He denied all the interests as shown in Exhibit E due to the fact that he was not aware of all those interests when the loan was offered to him.

The defence counsel in his final written address argued extensively that;

Whether the Court can import extraneous details into the contract willingly entered by parties?

In the case of Access Bank Plc. Vs. N.S.I.T.F. (2022) 16 NWLR (pt. 1855) SC, the Court held on the binding effect of agreement on parties in ratio 4 that, 'parties are bound by their agreements freely entered into and will not be permitted to resile therefrom. This is the essence of sanctity of contracts'.

The Apex Court went further to rule on the duty on the Court to confine itself to terms of a written contract when ascertaining intention of parties thereto:

"Where the terms of a contract are clearly expressed in a written document or documents, the Court cannot go outside those terms to ascertain the intention of the parties. The judgment of the Court cannot be based on speculation".

Going further, the Apex Court in Ratio 6 stated:

'Parties in their freedom to contract are deemed to intend to be governed by the terms of their contract. They are not permitted to adduce oral evidence to establish terms extrinsic to the terms agreed or to vary the terms agreed'.

Therefore, the Apex Court summarily, stated that a contract, which is by law to be in writing can only be varied by an agreement in writing subject to the exception provided by law.

From the evidence before this Court, it could be deduced that the parties had a written agreement, which was transmitted electronically. The defendant contends that from the conditions of the loan, that there were no interests.

The defendant further contests that the terms of the loan was that the loan sum will be deducted from his account until the loan is extinguished.

My lord, from the evidence of the cw2, it showed that the transaction was not an official transaction and that as such there was no official interest to be charged as a condition for the loan.

Moreover, my lord, it could be inferred that the claimant accepted that the loan sum would be liquidated by deductions from the defendant's account. In paragraph 6.0. (a-iv), the list shows that the claimant repeatedly kept deducting money from the defendant's account even far above the loan sum.

My lord, justice is a three-way traffic: justice for the claimant, justice for the defendant and justice for the society. The claimant cannot be allowed under our law to benefit from her deceptive practices against the defendant.

The facility was given via phone with an only option of a click of "YES" or "NO" whereas there were hidden conditionalities, which were never disclosed to the defendant. E.g. Interest rate and the restructuring of facility among other hidden terms and conditions.

Whether this Court has jurisdiction to hear and determine the claimant's claim being a claim that hinges on the bank/customer relationship.

In M.G.S. & L. Ltd. Vs. W.B.S. Ltd. (2013) All FWLR (pt. 663) Pg. 1889 SC, the Apex Court in a considered ruling was faced with the same dilemma confronting this Court as to whether this Court has jurisdiction to hear matters bordering on bank-customer relationship. The Apex Court in Rt. 4 ruled:

"…when a dispute arises from such transaction, then the relationship of individual customer and a banker is established. Such dispute is triable in the State High Court as well as in the Federal High Court".

"Plainly the provision in question in Section 251(1)(d), to put it in simple analysis says that the Federal High Court will have exclusive jurisdiction in banking matters but when what is involved is individual customer and his bank transaction, the Federal High Court shall not have exclusive jurisdiction. Understandably, that was to recognize the jurisdiction of the State High Court…".

In U.B.A. Plc. Vs. BTL Industries Limited (2007) All FWLR (pt. 352) RT 15, the Apex Court held Per Onu JSC, that a claim or dispute between an individual customer and his bank falls exclusively within the jurisdiction of the High Court or Federal High Court as the case may be.

My lord, a community reading of the cited authorities shows that the small claims Court of Rivers State is substantively robbed of jurisdiction to determine the small claims of the claimant and as such this Court is urged to decline jurisdiction relying on judicial precedents.

The claimant's counsel in response also argued that;

Whether the Court can import extraneous details into the contract willingly entered by parties?

The defendant accessed the loan electronically and the terms of the said loan are also generated electronically on the screen of the customer, wherein the customer after

reading it is expected to either “accept or decline” the terms before the loan is processed and disbursed to the customer. There were no physical terms of the loan facility.

In the instant case, the defendant accepted the terms by clicking a “Yes”, which presupposes that the customer has read the terms and accepted them. Thereafter the loan sum was disbursed on 6th March, 2020. The defendant now utilized the loan facility granted by 3rd July, 2020, the defendant had withdrawn all the loan sum and the defendant’s account was in negative when the loan matured for installment repayment.

The law is trite that a customer(s) has the duty to meet up with their financial obligations… and customers must always repay the loans extended to them. Once a customer has been granted a credit facility, the customer is duty bound to repay the said loan.

See Banks and other Financial Institutions Act (BOFIA), 2020.

The defendant admits to receiving a loan facility from the claimant and the same is also evident on Exhibit D – their statement of account. And also admits to the total outstanding balance as at 7th August, 2023 as seen on Exhibit B.

The law is trite that admitted facts needs no further proof.

See: Duru Vs. Duru (2017) LPELR – 42490.

The defendant now turns around to contend after his 1st counsel refused to represent them anymore and he engaged the services of a 2nd counsel to represent him, that by the conditions of the loan facility, which they accepted, there was no interest attached to the loan, therefore it was a zero-interest loan.

My lord, from this mere fact, it can be deduced that the defendant is not a witness of truth. A person ought not to be allowed to blow hot and cold, to affirm at one time and deny at another time. That’s to say, to approbate and reprobate. The Dw1 also did not tender the said contract document he referred to.

Assuming, without conceding that the loan availed to the defendants were a No-interests/zero-interest loan as claimed by the defendant in paragraphs 6.0, the 1st defendant on behalf of the 2nd defendant had a duty of diligence to contact the claimant immediately via phone call and or visit the claimant in any of its branches to lay a complaint.

My lord, by the defendants not approaching the claimant nor insisting that the claimant keep to their alleged terms of contract as he is putting forward, there is proof that the defendants knew of the accruing interests on the loan and never intended to contest same until the 19th September, 2023 when they changed counsel and hearing commenced. The Dw1 cannot approbate and reprobate at the same time.

My lord, the interest capitalization on the account of the defendants commenced since 2020 and is still accruing till 2023 as shown on Exhibit D.

The law is trite that documentary evidence is the best form of evidence.

See: Evidence Act, 2011.

The defendants when they filed their defence in Form RSSC 5 claimed they had repaid the loan sum leaving a balance of N970,000.00, thereafter during hearing, the defendant gave evidence that they had repaid the total sum of N2,400,000.00 leaving a balance of N570,000.00.

However, in their final address filed on 1st November, 22023, the defendants have now changed their stance by stating that they have paid a total sum of N3,172,594.05, which is in excess of the loan facility disbursed to the defendants. The defendants have reproduced under paragraph 6.0(i.v) certain figures from Exhibit D – statement of account in proof that they have repaid a total sum of N3,172,594.05.

My lord, this is totally false and can be seen on Exhibit D, however the claimant will reproduce the same figures and state what each payment was for as shown on the Exhibit D – Statement of Account.

From the above, the total paid from (b, i, k, m, n, o, p, q, r) are N1,393,716.04 as against the alleged sum of N3,172,594.05 stated by the defendants as total money deducted by the claimant from the defendants account. All these are stated in Exhibit D.

My lord, it is evident that there was no iota of deceit from the claimants. The defendants took the loan in March, 2020 and by July, 2023, the 1st interest was “N518.23” and continued. The 1st defendant has set out to deceive this Honourable Court as he had always done in the past with the claimant. He has also stated figures under paragraph 6.0(iv), which he knows the bank did not deduct from his account and claimed the claimant deducted them.

My lord, we humbly submit that YES parties are bound by the contract they willingly enter into. Therefore, the defendants are bound by their contract and are by law expected to repay the loan sum with accruing interest.

Issue 2

Whether the Court can import extraneous details into the contract willingly entered by parties?

Issue 3

Whether this Court has jurisdiction to hear and determine the claimant’s claim being a claim that hinges on the bank/customer relationship?

The law is trite that the Magistrate Court has jurisdiction to hear matters on debt recovery and simple contracts. The claimants claim falls under such matters. The claim is for the sum of N3,382,680.70 (Three Million, Three Hundred and Eighty-Two Thousand, Six Hundred and Eighty Naira, Seventy Kobo) only as at July 2023 when the suit was filed, which debt has accrued given the defendants refusal to repay the loan sum.

See: Order 8(1) Rivers State Magistrate Courts (Civil Procedure) rules, 2007.

From evidence adduced and the Exhibits attached proves that the claimant upheld its part of the contract while the defendant has utilized several excuses to evade repayment of the loan sum availed to him. Exhibits A, B and D are proof of this.

Also, the jurisdiction of the Magistrate Court permits for recovery of debt of N5,000,000.00 (Five Million Naira) only and below. The claim of the claimant falls within the jurisdiction of the Magistrate Court and the Honourable Court has jurisdiction to entertain the suit. The defendant/applicant has relied on certain judicial authorities, it is submitted that those cases are distinguishable from the instant one. The Honourable Court has jurisdiction to hear the suit. Your Worship, is further urged to hold that it has jurisdiction to entertain the suit.

The judiciary has moved above technicality that presently, the Rivers State Small Claims Court even permits and has jurisdiction for matters of simply contracts and claim not exceeding N5,000,000.00 (Five Million Naira) only. These suits are heard in the Magistrate Court and any one including a corporation is permitted to file an action therein.

See: Rivers State Small Claims Court practices direction, 22023.

Your Worship, from the totality of arguments, the claimant/respondent has proved that “YES”, the Honourable Court has jurisdiction to hear this suit as it is one of a simple contract on debt recovery.

By Exhibit A, being a demand letter sent to the defendants and Exhibit B, being a letter from the defendants’ 1st counsel as an acknowledgement of indebtedness and acceptance to repay the loan sum, although in installments and Exhibit D, the defendants statement of account, the defendants are duty bound to repay same and there is an implication of a contract/obligation, which must be upheld.

My lord we humbly state that by the defendants drawing on the sum of N2,970,000.00 (Two Million, Nine Hundred and Seventy Thousand Naira) only, credit facility of the claimant, and subsequently refusing, neglecting, and or failing to repay the entire loan sum, have led to the defendant’s breach of their financial obligations. This breach now entitles the claimant to demand for an immediate liquidation of the entire outstanding loan sum.

The law is well settled that a debtor who benefited from a loan facility from a bank has both moral and legal duty and obligation, express or implied, to repay the loan.

See: Afribank Vs. Alade (2000) 13 NWLR (pt. 685) 591; National Bank Vs. Shoyoye (1977) 5 SC 181 and FCMB Vs. Rophine Nig. Ltd. & Anor (2017) LPELR 42704 (CA).

The cw1 on the strength of Exhibit C – the instruction letter gave evidence to prove her case and to successfully discharge the onus of proof placed on him by the Evidence Act, 2011. Cw2 also gave evidence and tendered 3 documents. The entirety of the evidence were on the fact of the defendants indebtedness and actions taken by both cw1 and cw2 and team. They tendered several documents evidencing the loan sum owed and steps taken by the claimant in demand and recovery of the said loan sum. These are Exhibited as A, B, C, C1, and D.

Your Worship, we humbly submit that the issuance of Exhibit A from the claimant to the defendants, and the response of Exhibit B. the claimant has satisfied the requirements of the law on this claim and has therefore made out a substantial claim entitling it to the reliefs sought and the right to recover the outstanding loan sum of N3,382,680.70 (Three Million, Three Hundred and Eighty-Two Thousand, Six Hundred and Eighty Naira, Seventy Kobo) only claimed with accruing interest and cost.

Also, the 1st defendant who gave evidence on behalf of the defendants admitted to receiving the loan facility, he also admitted to drawing on the loan facility since March, 2020.

We humbly submit further also that a fact and or evidence neither denied nor challenged are deemed admitted and needs no further proof.

See: Section 123 Evidence Act, 2011; Ogolo Vs. Fubura (2003) 11 NWLR (pt. 831).

We also submit that the defence of the defendants at this stage of the matter is an afterthought. The defendants took and utilized the loan in 2020 and when a suit is filed for recovery of the said loan facility and accruing interest the defendants now claim that they were not aware of the accruing interest on the loan facility. When the defendants have at all times had access to his statement of account.

My lord, we humbly submit that the claimant has proven on the preponderance of evidence that the defendants are liable to the claimant in the reliefs sought. It is in consideration of the totality of these facts, circumstances and decided authorities that we submit that the claimant has proved their case as required by law and is therefore entitled to their claim as represented in the particular of claims, which also includes cost of litigation.

COURT

Taking a cursory look at the pending issues before the Court with respect to the evidence of cw1, cw2 and Dw1, this is indeed a banker/customer relationship.

The 1999 Constitution as amended is seen as the ground norm in our jurisprudence. It is the law of our land; country Nigeria.

It is upon this constitution, that other statutes and even the Courts are created. All other laws are subjected to the provisions of the 1999 Constitution. The rules of Court cannot override the provisions of the Constitution, rather are subject to the Constitution. The rules of event are formulated to ensure that the Courts are properly guided in its day to day adjudication.

The orders as contained in the Civil Court, Civil procedure rules 2007 are subject to the provisions of the 1999 Constitution.

Yes, I agree with the claimant's counsel that O8(1) rules of Court, 2007, provides for debt recovery and simple contracts, which the Court is clothed with jurisdiction to entertain, hitherto the monetary jurisdiction of the Magistrate Court is N5,000,000.00 in Civil Cases. The claim of the claimant before me is for a claim less than N5,000,000.00.

Form RSSC 2, the complaint form, states that the defendant owes the claimant the sum of N3,382,680.70, and demands that 10% monthly interest be paid by the defendant and also N200,000.00 cost of this suit.

Though the defendant is vehemently opposed to the above sum being owed by him and insists that he owes only N570,000.00.

The Court granted leave to parties to settle out of Court on the 17th July, 2023 but parties failed to resolve their irreconcilable differences with regards to the liquidation of the loan sum obtained by the defendant and the accrued interests.

Perhaps it would have been better to resolve this case out of Court.

I agree with the defence that parties are indeed bound by their agreements freely entered into and will not be permitted to resile from such agreements. Where there is such a breach of contract, the defaulting party should be sued. A contract is the meeting of two minds, "consensus ad idem".

The question is, was there a consensus ad idem between both the claimant and the defendant considering the fact that this was an online transaction, which the defendant conceded to, without taking specific diligent note of the terms of the facility loaned or structured for him by the GTB App?

Though ignorance of the law is not an excuse as provided in our Evidence Act, 2011.

The pertinent questions or salient issues here are;

1. How much are the interests that have accrued on the said loan facility granted to the defendant?
2. Did parties freely enter into an agreement for such interests to be paid by the defendant?
3. Was there a consensus ad idem between both parties?

4. The restructuring of the loan facility and the interest accrued on the loan sum, where they expressly provided by the bank on the bank App, which the defendant claims he did not see?

If the facility was still available on the App, perhaps it would have been better for the Court to examine the contract document to ascertain the terms and conditions arising therefrom, which the defendant failed to see or did not see because they were not contained therein.

I will refrain from commenting further due to the fact that this Court will not entertain this case any further.

Those questions aforementioned and more would have been considered by this Court in the course of this judgment, but this Court, declines jurisdiction to entertain this suit, this suit is basically a banker/customer suit, where the transaction involved is between the bank and the customer.

The 1999 Constitution, precisely section 251 provides that in such cases as the instant case, rightly posited by the defence counsel in his final written address, the Federal High Court has exclusive jurisdiction in all banking matters, the State High Courts also have jurisdiction, where the matter is between an individual customer and his bank transaction. In determining the Court's jurisdiction, the Court considers the parties and the subject matter of the action.

The Magistrate Court does not have jurisdiction in banker/customer relationship, the fact that O8(1) of the rules of the Magistrate Court, 2007, provides for debt recovery cases and simple contracts, does not cloth this Court with the jurisdiction to entertain a banker/customer transaction especially with regards to loan obtained by the bank's customer. See Owena Mass Transport Company Limited & Anor Vs. City Express Bank & Anor (2018).

The rules of Court and the rules of the Small Claims Court confer monetary jurisdiction in civil cases on the Magistrate Court up to N5,000,000.00, but even if this instant case is less than N5,000,000.00, the Court declines jurisdiction and advises that the claimant file this case for recovery of debt from the defendant at the State High Court or Federal High Court, which both have the jurisdiction to entertain these suits.

I will like to reiterate that there is a distinction between simple contracts and debt recovery of not more that N5,000,000.00, which confers jurisdiction on the Magistrate Court, and banker/customer relationship, which is different from the customer/banker relationship, where the bank claims that the customer has acted in default of a transaction by breaching the terms of the transaction.

Issues of interests to loan and the bank adding money outside its legal authority are triable before the High Court or Federal High Court. They have concurrent jurisdiction.

Debt recovery is triable before the Magistrate Court, which does not have any connection between a banker/customer relationship or transaction. A claim or dispute

between an individual customer and the bank falls within the Federal High Court/State High Court's jurisdiction.

See; (1) Section 251(1)(d) of the 1999 Constitution of the Federal Republic of Nigeria, as amended, which gives the Federal High Court exclusive jurisdiction to entertain disputes between banks and other banks. The legal relationship between a bank and its customer is a contractual relationship.

2. See Ecobank Vs. Anchonage Leisures Ltd. & Ors (2018) LPELR 45125 (SC); see Per John Iyang Okoro JSC pp. 36-36, para D-A.
3. See section 272(1) of the 1999 Constitution of the Federal Republic of Nigeria.
4. MGS & L Ltd. Vs. WBS Ltd. (2013) All FWLR (pt. 663) pg. 1889 SC, Per Ariwoola JSC (DC).
5. UBA PLC Vs. BTL Industries Ltd. (2007) All FWLR (pt. 352) RT 15 Per Owu JSC (DC).

"It is to be noted though the situation has become trite that it is the claim of a plaintiff that vests jurisdiction in a Court. See Adeyemi v Opeyori (1976) 9 – 10 SC 31.

In Bank of the North v. Yau (2001) 10 NWLR (Pt.721) 408 at 438 paras D – E, the Court per Ayoola JSC held thus: "In the course of carrying on business of banking, a bank enters into several contractual relationships and performs various roles. It is important in an action between bank and customer to be clear which of the several contractual relationships forms or form the basis of the action. In this case, it is pertinent to note only four of these possible relationships, namely: (i) The relationship of creditor and debtor that arises in regard to the customer's funds in the hands of the bank; (ii) The relationship of creditor and debtor that arises when the bank loans money to the customer or allows him to overdraw on this accounts; (iii) The relationship that arises from the role of the bank as a collecting bank of cheques drawn or other banks or branches of the same bank by a third person; and (iv) the possible role of the bank as a holder for value of a negotiable instrument."

Evidently clear from what has been showcased above is that what is available as the relationship between the parties is that of banker/customer, a situation of interaction emanating from a banking transaction where both parties assumed the role of creditor and debtor however the colouring presentation may seem to be.

My lord, Per Mary Ukaego Peter-Odili, J.S.C. pp 21-23, paras F to A, in Ecobank vs Anchorage Leisures Ltd & five others (2018), supra; held thus;

From the provisions of Section 251 (1) (d) CFRN, the Federal High Court is vested with exclusive jurisdiction in relation to issues pertaining to banks, banking and other financial institutions but when the dispute relates to banker/customer relationship, the jurisdiction is not exclusive and the said jurisdiction is concurrently shared with the Federal High Court and the State High Courts and that of the Federal Capital Territory. The interpretation clearing the grey area on the confusion that would have otherwise arisen is seen in the case of NDIC v. Okem Ent. Ltd (2004) 10 NWLR (Pt.680) 107 at 221 where the Supreme Court stated thus: "Section 251 (1) (d) does not confer

exclusive jurisdiction in disputes arising between individual customer and the bank on the State High Court. All it did is to remove the exclusivity in dealing with those kinds of disputes from the Federal High Court; which means that the High Court of a State by virtue of Section 272 (1) of the 1999 Constitution also shares the jurisdiction with the Federal High Court."

Per John Inyang Okoro, J.S.C (Pp. 36-38, paras. D-A), in the same case aforementioned, held thus;

"A close perusal of the originating process before the trial Court clearly shows that the relationship between the appellant and the respondents is that of banker/customer relationship. There is nothing in the entire process to show a matter relating to simple contract. Section 251(1) of the Constitution of the Federal Republic of Nigeria vests exclusive jurisdiction on disputes between banks and other financial institutions but the Proviso thereto confers concurrent jurisdiction on the Federal and State High Courts in matters between an individual customer and his bank in respect of transactions between the individual customer and the bank.

My Lord further stated, It must be noted that Section 251(1) (d) of the 1999 Constitution particularly the proviso thereof does not lose sight of the provision of Section 272(1) of the same constitution which provides that – "subject to the provisions of Section 251 and other provision of the Constitution the High Court of a State shall have jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue." I do not think this provision provides exclusive jurisdiction on the State High Court on issue of disputes between an individual customer and his bank. Both Courts have concurrent jurisdiction on issue of banker/customer relationship.

From the above cited authorities, the Federal High Court and the State High Courts have concurrent jurisdiction in matters or disputes relating to or arising from banker/customer relationship including the FCT High Court.

There is no mention of such jurisdiction being conferred on Magistrate Courts.

See section 251(1) and section 272(1) of the 1999 Constitution of the Federal Republic of Nigeria.

Loan facility falls outside the slim perimeters of a simple contract and debt recovery, which this Court is not clothed with the jurisdiction to try such matters arising from it. The authority is limited to the jurisdiction of the State High Courts and Federal High Court. See also (1) NDIC Vs. Okem Enterprises Ltd. (2014) 10 NWLR (pt. 880) 107 at pg.188, see Uwanigo JSC. (2) Olowu Vs. Building Stock Ltd. (2018) 1 NWLR (pt. 1601) 343.

On the **ISSUE OF JURISDICTION**: "Once an issue of jurisdiction is raised at any stage in the proceedings in any court in any matter, it should be addressed first as failure to do so may mean that all the exercise of adjudication may turn out to be a useless waste of time. See State v. Onagoruwa (1992) 2 NWLR (Pt. 221) 33 at 57 per Nnaemeka-

Agu, J.S.C.; Galadima v. Tambai (2000) 11 NWLR (Pt. 677) 1. Also in Adekanye v. Comptroller of Prisons (2000) 12 NWLR (Pt. 682) 563 at 570, the Court held that the issue of jurisdiction being a fundamental issue which touches on the competence of a Court or Tribunal to adjudicate on the suit before a Court or Tribunal must always be resolved first and foremost whenever it is raised in a suit. See G & C Lines v. Olaleye (2000) 10 NWLR (Pt. 676) 613 at 627."PER OMOKRI, J.C.A (P.18, Paras. A-E).

In keeping with the tenet and spirit of the law as enshrined in section 251(1) and section 272(2) of the 1999 Constitution as amended of the Federal Republic of Nigeria, the Court hereby declines jurisdiction in this case and holds that this case be struck out.

Accordingly, The Court hereby orders that this suit be struck out on the ground that this Court lacks jurisdiction to entertain this case.

This is the judgment of the Court.

MRS BARIYAAH .H. ABE
Chief Magistrate
29th January, 2024.

Mrs B H Abe
CHIEF MAGISTRATE
Sign:
Date: 29/1/24