

IN THE SMALL CLAIMS COURT OF RIVERS STATE OF NIGERIA

IN THE PORT HARCOURT MAGISTERIAL DISTRICT

HOLDEN AT PORT HARCOURT

CLAIM NO: PMC/SCC/179/2024

BETWEEN

GOLDEN CHIMAB STANDARD LINK LTD ----- CLAIMANT

AND

MR. FEEGHE EMMANUEL DORNUBARI -----DEFENDANT

Parties- Absent

Appearances- T. O. Zaddok appears for the Claimant

JUDGEMENT

By a complaint form filed the 01st day in July 2024, the Claimant instituted this matter and it was assigned to A. E. FUBARA Esq, (as he then was) before it was re-assigned to this Court. Sequel to the affidavit of service dated 07/11/2024, Claimant's counsel entered a non-liable plea on behalf of the Defendant and hearing commenced on the 15/11/2024 with the Claimant calling in one witness, tendered 6 exhibits and closed on the 27/11/2024.

The Defendant was served a hearing notice at the close of Claimant's case, and thereafter, a final written address but did not respond nor was he represented throughout the proceedings of this Court.

CLAIMANT'S CASE

It is the evidence of the Claimant that he is a licensed money lender who based on an agreement between parties, lent money to the Defendant in February of 2020 at two different times and the Defendant deposited two deeds of conveyance as collateral. When the monies became due and payable and the Defendant defaulted, the Claimant caused to be served on him, a notice of demand. The Defendant acknowledged receipt but has failed to pay up what he owes.

The Claimant raised one issue for determination, arguing that the Defendant had knowledge of the pendency of this matter, opted not to partake therein and as such, the Court should consider the evidence of the Claimant. Claimant's Counsel further argued that the contract was voluntarily and validly entered by parties and they are bound by their agreement.

EVALUATION OF EVIDENCE/DECISION

The issue before this Court is, *'whether the Claimant has proved his case to entitle him to judgement.'*

In civil cases, the burden of first proving the existence or non-existence of a fact lies on the party against whom the judgment of the Court would be given if no evidence were produced on either side - **Section 133(1) & (2) of the Evidence Act 2011; A.O. AFOLABI & ORS V WESTERN STEEL WORKS LTD & ORS (2012-07) Legalpedia 29135 (SC).**

The grouse of the Claimant is the alleged breach of the contract he entered with the Defendant.

The CW1 a licensed money lender and Claimant led evidence that he lent the Defendant money at two different times and in proof of his license, the Court admitted exhibit C1 a-d.

Exhibits C2 & 3 are titled loan agreement dated 03 and 11th February 2020, respectively. An in-depth appreciation of both, shows that the Defendant has 3 months repayment plan for exhibit C2 and one month for exhibit C3. In furtherance thereto, parties agreed on an interest rate of 30%. The loan agreements have entrenched in them, terms.

The law is trite that parties are bound by their agreement, given the sanctity of contract and the Court must observe and respect its sanctity." - **Per CHIDI NWAOMA UWA, J.S.C. HAJIA UMMA MUKTAR AHMED MOHAMMED V NIGERIA DEPOSIT INSURANCE CORPORATION (2024-06) Legalpedia 12250.**

From a combined construction of exhibits C2 & 3, parties entered into a contract of money lending and entrenched therein is paragraph 3 which houses the interest chargeable which is, 30% monthly.

Money lending in our state is governed by laws amongst which is the Money Lenders Law CAP 87, VOL IV Laws of Rivers State of Nigeria, 1999.

Section 11 of the Money Lenders Law CAP 87, VOL IV Laws of Rivers State of Nigeria, 1999 pegs the interest rate at 15% per annum for the first One Hundred thousand naira and 12^{1/2}% per annum on any amount in excess of one hundred thousand naira on loans secured by a charge on any freehold property.

Section 11(2) of the Law states that if several sums are loaned to the same person, whether at the same or different times, the rate of interest shall be the same.

Section 13 thereof prohibits compound interest.

In the case of **CHIEF CHRIS NWANKWO V. CHIEF ARTHUR NZERIBE (2004) 13 NWLR (PT.890) 422**, His Lordship, Akintan JCA (as he was) at 434 of the report restated the law, beyond argument inter alia:

"The position of the law is that a loan transaction which shows that an offence has been committed against Section 114(1) of the Money Lender's Law by charging unauthorized interest is an illegal contract and one which the Courts will not enforce." See - FASHINA V. ODEDINA (1957) 11 ER NLR 45."

In **FASEL SERVICES LIMITED & ANOR V NIGERIAN PORTS AUTHORITY & ANOR (2009) 9 NWLR (PT. 1146) 400 S.C.**, the Supreme Court in differentiating between illegal contract and void contract held inter alia that: *'...The position of the law is that where a statute declares a contract or transaction between parties not only void but also imposes a penalty for violation, that contract or transaction is illegal ab initio. However where the legal sanction is merely to prevent abuse or fraud and no penalty is imposed for the violation of the provision of the statute, the violation is merely voidable and not illegal...'* See **SOLANKE V. ABED (1962) 1 ALL WLR 230 41 (2008) 3 NWLR (PT.1074) SC.363.**

Again, the apex Court, **Per Achike JSC in PAN BISBILDER (NIGERIA) LTD. V. FIRST BANK OF NIGERIA LTD (2000) 1 N.W.L.R. (Pt. 642) 684 at 693** opined that *'...contracts which are prohibited by statute or at common law, coupled with provisions for sanction (such as fine or imprisonment) in the event of its contravention, are said to be illegal...'*

The apex Court, in drawing a clear distinction between contracts that are merely declared void and those declared illegal in Pan Bisbilder (Nigeria) Ltd v FBN Ltd. *supra* laid down the test for determining when a contract is merely void and when it is illegal as follows: *'...[i]f the provisions of the law require certain formalities to be performed as conditions precedent for the validity of the transaction without however imposing any penalty for non-compliance, the result of failure to comply with the formalities merely renders the transaction void, but if a penalty is imposed, the transaction is not only void but illegal, unless the circumstances are such that the provisions of the statute stipulate otherwise...'*

It is germane for the purpose of clarity to reproduce Section 12 of the Money Lenders Law *op.cit.* which provides:

Any person who loans money at a rate of interest higher than that authorised by the Law shall be liable on conviction to a penalty of ten thousand naira in respect of each such loan.

From the plethora of authorities relied on, it is glaring even to the blind that Exhibits C2 &3 are illegal contracts. This is because, the Money Lenders Law in Section 12 prohibits charging an interest higher than what is stipulated and went as far as prescribing punishment for default. The Claimant's interest is 30% monthly which is way beyond what is allowed by Law.

The law generally speaking is that, the instant loan agreement being illegal, is unenforceable- **RIVWAY LINES LTD. V RHEIN MAS LIND SEE (1993) 7 NWLR (PT 308) 692 @ 711.** The Claimant can only be entitled to the relief he seeks if he shows the Court that he is not *in pari delicto* with the Defendant. There is no evidence before the Court showing that the Claimant

did not know that the contract he entered into with the Defendant is illegal. Meanwhile, parties have benefited from the illegal contract. This contract is *ex facie* illegal and the intention of parties to be bound by exhibits C2 &3 is immaterial as neither of them can derive any right or interest from it. The rule is that Courts will not enforce illegal contracts- **ACB LTD v ALAO (1994) 7NWLR (PT 621) CA.**

The contract is void *ab initio*. This Court cannot enforce such contract given the maxim: *ex turpi causa, non oritur actio*.

Succinctly put, the agreement for which Claimant is in Court is unenforceable and any alleged right and obligation therefrom is extinguished. This Court like the Biblical Pontius Pilate, shall wash its hands in innocence so as not to be soiled by the murky waters of this illegal contract between the Claimant and Defendant.

The parties are left where the Court found them- it is a hands-off policy and that they have benefited to each other's detriment is immaterial, It would be against the revered doctrines of equity to grant the prayers of the Claimant with respect to this claim as you cannot place something on nothing and expect it to stand. The contract having failed, parties should go home and lick their wounds as the money advanced by the Claimant is not recoverable.

This claim fails, is dismissed in its entirety and I so hold.

I make no order as to cost.

SIGNED

ANUGBUM, OBIARERI.N.

SMC III

20/01/2025.