

IN THE SMALL CLAIMS COURT OF FEDERAL CAPITAL TERRITORY ABUJA
IN THE BWARI JUDICIAL DIVISION

HOLDEN AT BWARI, ABUJA.

BEFORE HIS WORSHIP CHIEMENA. K. NONYE-OKORONKWO

DATED 29TH MAY, 2024.

SUIT NO. CV/SCC/3 /2024

BETWEEN

1. KIPNETWORKS INTERNATIONAL LTD
2. KIPNETWORKS INTERNATIONAL MULTIPURPOSE CO-OPRETIVE SOCIETY LTD
3. NKANICAN EKOTT.....PLAINTIFFS

AND

1. OKORO RAHILA (CARRYING OUT BUSINESS AS BEST BRAIN INTERNATIONAL ACADEMY)
2. EDWARD TETTEH (CARRYING OUT BUSINESS AS DE GRATE JEWELS INT'L ACADEMY).....DEFENDANTS

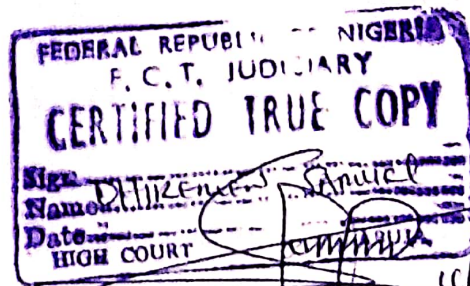
JUDGMENT

The suit was instituted and brought before the Small Claims Court. The Claimants claimed against the Defendants as follows:

1. To enter Judgment in favour of Claimants and order the Defendant to immediately pay the above debts, the sum of **₦4,000,000.00 (four million Naira Only)**.
2. Any other orders deemed necessary in this case to help the Claimants recover their money.

The 1st and 2nd Claimants are Artificial entities capable of suing and being sued, duly registered under the corporate Affairs Commission in Nigeria. The 3rd Claimant is the President and Chief Executive Officer of the duo. The RC numbers of the 1st and 2nd Claimants are RC: 812895 and 21157

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respectively. The 1st and 2nd Claimants deal in Organizing seminars, workshops, consulting, granting co-operative loans, grants, contributions, marketing .

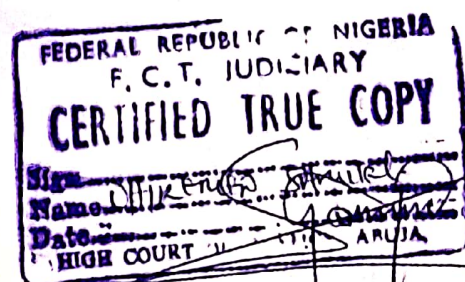
The 1st Defendant and 2nd Defendant are both registered members/ Partners of the 1st and 2nd Claimants. But for the purpose of this instant suit, the 1st Defendant had applied for a loan of **N500,000 (five hundred Thousand Naira Only)** from the 1st and 2nd Claimants at a 5% monthly interest rate on the 31/3/2021 to be repaid in two month from 31/3/2021. The second Defendant is a Guarantor of the 1st Defendant in respect of the loan. The 1st Defendant has defaulted in repaying the loan as and when due but has only finally paid the sum total of **N800,000.00 (Eight hundred thousand Naira Only)** from the expiration of two months i.e from 1st June 2021 till 4/4/2024. This fact is undisputed by all parties to the suit. However the case of the Claimants are that the sum of **N800,000(Eight hundred thousand Naira)** is to be used as Deposit and that the interest on loan will be repaid before the actual principle sum of **N500,000(Five hundred thousand Naira Only)**. The Claimants have now come before the small claims court to seek the sum of **N4,000,000 (Four million Naira Only)** being:

- a. **N500,000 (Five hundred thousand Naira Only)** for principal loan amount.
- b. **N3,500,000 (Three million Five hundred thousand Naira Only)** for the debt owed to the Claimants for the purchase of Bye law of the cooperative society and for various training Economic Empowerment – done for her (1st Defendant) before and after the loan was given, without which the loan would not have been given.

The small claims court is a special court, constituted mainly for recovery of claims not above **N4,000,000 (Four million Naira Only)**. The objective of the small claims procedure is to provide easy access to an informal, inexpensive and speedy resolution of simple debt recovery disputes in the District Courts. A suit may be small claim complaint and the court robbed with jurisdiction to determine the issues where the following conditions are all met:

- i. "The Defendant or one of the Defendant resides or carries on business in FCT Abuja;
- ii. The course of action wholly or in part in the FCT Abuja;
- iii. The claim is for a liquidated monetary demand in a sum not exceeding **N4,000,000 (Four million Naira Only)** excluding interest and costs.

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iv. **The Claimant has served on the Defendant, a letter of Demand as in form SCA1".Article 2 of the Practice Direction of the Small Claims Court.**

I have carefully looked through the particulars of claim and I am of the view that this Honorable Court is clothed with jurisdiction to hear this suit.

The legal truth is that jurisdiction neither comes from the East or West or North or South or even from conferment by parties or the Court suo moto itself but from the statutes that create the Court. **Ugba and Anor v. Suswam and Ors (2012) LPELR – 8635 (CA)**. Also, what a court will consider or look upon to determine whether or not it has jurisdiction are:

- a. The claim of the parties.
- b. The statue creating the court as courts are creature statutes.

Ebohon V. A. G. Edo state and Ors. (2016) LPELR – 41269 (CA).

Without much ado, this Honourable Court is satisfied that it has requisite jurisdiction to adjudicate and determine the disputes between parties.

Parties opened their case on the 15/4/2024. The Plaintiff started and ended with only one witness, Mr. Nkanican Ekott who testified as the sole witness of the Plaintiff – PW1 He tendered 16 documents, which this Hon. Court admitted in evidence in the absence of any objection. The exhibits are reproduced here under as follows;

1. CAC Certificate of Incorporation –KIPNetworks International Ltd. **Exh. P1**
2. Certificate of Registration – KIPNetworks International Multipurpose Cooperative Society Ltd. **Exh. P2.**
3. The Byelaw of KIPNetworks International Multipurpose Cooperative Society Ltd. **Exh.P3.**
4. Decisions and Amendments To The Rules & Regulations and the Byelaw of KIPNetworks International Multipurpose Cooperative Society Ltd**Exh.P4.**
5. Loan Application Form of Okolo Rahila the 1st Defendant **Exh. P5.**
6. Affidavit for Guarantee of Loans/Debts Recovery of Okolo Rahila –the 1st Defendant. **Exh.P6.**
7. Participation Form of Edward Tetteh- the 2nd Defendant **Exh. P7.**
8. Feed Back Form of Edward Tetteh the 2nd Defendant **Exh. P8.**
9. Acceptance letter of Edward Tetteh the 2nd Defendant **Exh. P9.**



10. Zenith Bank Account Statement showing when the loan was disbursed and the amount Exh. P10

11. Letter of Bound and Authority to Narrate cheque of Okolo Rahila – the 1st Defendant –showing the amount Exh.P11. Owed so far and the vicarious Guarantee for Loan/Debts of the 1st Defendant. Exh.P11 A&B

12. Letter of Bond and Authority to Narrate Cheque of Edward Tetteh –the 2nd Defendant – showing the amount owed so far and vicarious Guarantee for Loan/ Debts of the 1st Defendant Exh. P12.

13. Letter of Guarantee from Edward Tetteh the 2nd Defendant Exh. P13.

14. National Identity Card of Edward Tetteh the 2nd Defendant Exh. P14.

15. Bank's cheque of OkoloRahila the 1st Defendant Exh. P15.

16. Bank's cheque of Edward Tetteh – the 2nd Defendant. Exh. P16.

PW1 was later cross examined by DW1 and DW2 and the case of the Plaintiff was closed. The Defendants opened their case on 29/4/2024 calling 3 witnesses who tendered the following documents in evidence, which the court admitted and marked accordingly:

DW1 – Okolo Rahila tendered 3 documents in evidence to wit:

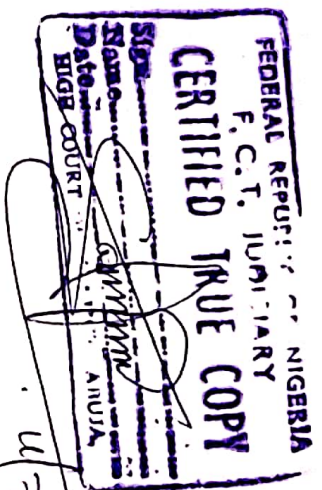
1. Bonds and Authority to narrate cheque to the tune of N500,000(Five thousand Naira Only) dated 31/3/2021 – EXH
2. Bonds and Authority to narrate cheque to the tune of N3,500,000(Three million five hundred thousand Naira Only) dated 31/3/2021 – EXH
3. Loan Application form dated 31/3/2021 – EXH

DW2 – Edwin Teteht tendered 2 documents in evidence to wit:

1. Bonds and Authority cheque to the tune of N500,000 (Five thousand Naira Only) and N3,500,000 (Three million Five Hundred Thousand Naira Only) both dated 31/3/2021 – EXH DW2 a and b respectively.

DW3 – AlongeSegun who tendered 2 documents in evidence

1. Receipt of N100,000 (One Hundred Thousand Naira Only) dated 29/3/2024 issued from Okolo Rahila to Nkanican Ekott (First Bank) – EXH D3a.
2. Receipt of N20,000(Twenty thousand Naira Only) dated 4/4/2024 issued from Okolo Rahila to Nkanican Ekott (First Bank) EXH D3.



The three witnesses for the Defendant adopted their witness statements on oath dated the 2/4/2024, 29/4/2024, 6/5/2024 respectively. They were cross-examined individually by claimant (3rd) and independently and the case of Defendant was closed. The suit was adjourned for adoption of final written address and on the day slated for same, the Defendants never showed up, neither their did Counsel, they were foreclosed from entering any final written addresses. The Plaintiffs/Claimants waived their right to file any on 13/5/2024. The judgment was slated for 29/5/2024. Pardon me, the Defendants during the pendency of the suit retained the services of Muhammed Jibrin Esq, however Mr. Fredrick Nite Esq. held his brief all through the proceedings.

In determining the issues before this Honourable Court, the question that arises to take care of same is:

“Whether upon the preponderance of evidence, the Claimants in this suit has discharged the evidential and legal burden of proof to be entitled to their claims or reliefs sought for?”

The practice direction of the Small Claims Court in Article 12 (2) provides that;

“In the international of justice, the court may depart from the strict application of the provisions of the Evidence Act”.

While the Evidence Act applies to all Courts and proceedings held in such Courts, the small claims may not adhere to strict application of the Evidence Act as long as it will not lead to a miscarriage of justice but such liberal approach will aid the court in doing substantial justice to case and issues before it. I believe that this most likely would have been the mind of the drafters of the practice Direction.

That being said, the law of evidence is trite that he who asserts must prove. Where a person says that a thing exists, he/she must lead admissible and most importantly credible evidence to establish the existence of that fact. In civil cases, such as this instance case, the standard of proof or on which the Court determines the dispute is based on the preponderance or weight of Evidence or Balance probabilities.

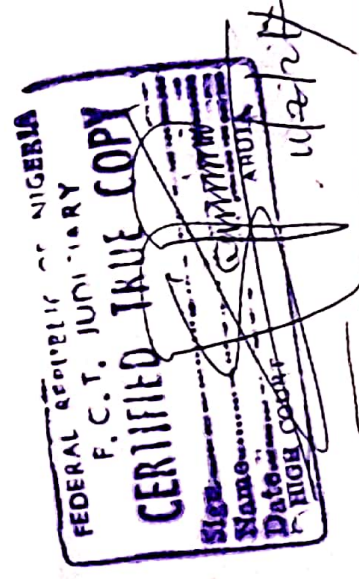
FEDERAL REPUBLIC OF NIGERIA
F.C.T. JUDICIARY
CERTIFIED TRUE COPY
SIGN: _____
Name: _____
Date: _____
JUDGE COURT
[Signature]
[Signature]

Section 131 “(1) Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts shall prove that those facts exist.

(2) When a person is bound to prove the existence of any fact it is said that the burden of prove lies on that person”.

The law is settled that a party who adduced cogent and credible evidence in support of his case and whose credible evidence outweighs that of his opponent on the imaginary scale of justice is entitled to succeed in his claim *Obu and Anor V. Okigwe and Ors. (2018) LPELR – 43938 (CA)*. It therefore means that, the totality of the evidence should be considered in order to determine which has weight and which no weight at all. The Appellate Court has held that in deciding whether a certain set of facts given in evidence by one party in a civil case before a court in which both parties appear is preferable to another set of facts given in evidence by the other party, the Court must put the two set of fact on an imaginary scale, weigh one against the other then decide upon the preponderance of credible evidence which weighs more, accept it in preference to the other and then apply the appropriate law to it. *A.R Mogaji and Ors V. RabiatoOdofin (1978) 1 LKN 212.Olujinle V. Adeagbo (1988) LPELR – 2622 – SC*. Also, the burden of proof in civil cases first lies on the party against whom the judgment of the court would be given if no evidence were produced on either side. See *Section 133 (1) and (2) of the Evidence Act 2011*. The burden lies on the Plaintiff to first adduce prima facie evidence in support of his case. Where a prima facie case is made out, the burden shifts to the Defense to adduce counter evidence to sustain their Defense where an allegation is made, positively or negatively and it forms an essential part of a party's case, the proof of such allegation rests on him. *Plateau state of Nigeria and Anor V. A. G. Federation and Anor (2006) 3 NWLR (pt 967) 345 @ 417 D – F, Imana V. Robinson (1979) 3 – 4 SC (Rep.int), Nduul V. Wayo and Ors (2018) LPELR – 45151 (SC)*.

The Plaintiffs/Claimants claim a sum total N4,000,000(Four million Naira Only) against the Defendant, divided into 2 heads, the first is the principal loan or sum of N500,000 (Five hundred thousand Naira Only) at a monthly rate of 5% interest in the case default and to be repaid after two months. The loan was sought and obtained on the 31/3/2024. All parties agreed that it was a quick term loan and the Defendant (1st Defendant) received same before the expiration of two hours after applying. There is no contention from the evidence of parties as to the following:



(Five Hundred Thousand Naira Only)

1. Principal sum – **N500,000**(Five Hundred Thousand Naira Only)
2. Interest where there is default – 5%.
3. Date of obtaining loan – 31/3/2024.
4. Agreement to pay interest before principal loan sum.
5. Date of final repayment – 4/4/2024.
6. Total sum payable so far – **N800,000**(Eight hundred thousand Naira Only).

There is no contention or dispute as to these facts. The law is settled that fact not disputed, denied or controverted are deemed as admitted. *PDF V. Lawal and Ors (2012) LPELR – 7972 (CA).Ayomale V. Yadaut (NO 2) (2003) FWLR (pt. 182) 1913 at 1925. Ogar V. James (2001) 10 NWLR (pt. 722) 621 at 639.*

See paragraph 5 of 2nd Defendant's witness statement on oath, paragraph 6 of the 1st defendant witness statement on oath, paragraph 3 of the DW3's witness statement on oath, paragraph 3 of the CW1 and 3rd Claimant's witness statement on oath.

Paragraph 5 of 2nd Defendant's witness statement on oath, **"That the 1st Defendant has so far made payment totaling Eight Hundred Thousand Naira (N800,000.00) only being Five Hundred Thousand Naira (300,000.00) (500,000.00) Loan and Three Hundred Thousand Naira 6 of Witness Accumulated 5% interest. (As contained in paragraph 6 of Witness Statement on Oath of Nkanican Ekott, the Claimants).**

Paragraph 6 of the 1st Defendant's witness statement on oath, **"That I have so far made payment totaling Eight Hundred Thousand Naira (500,000.00) (N800,000.00) only, being Five Hundred Thousand Naira (300,000.00) Accumulated Loan and Three Hundred Thousand Naira (300,000.00) Oath of Nkanican Ekott, the Claimants".**

Paragraph 3 of the DW3's witness statement on oath, **"That the 1st Defendant registered as a member on 31st March, 2021 and she applied for a 24 Hour Quick Loan of Five Hundred Thousand Naira (500,000.00) at 5% monthly interest rate on 31st March, 2021 and was disbursed same amount the same date of 31st March, 2021".**

Paragraph 3 of the CW1 and 3rd Claimant's witness statement on oath, **"The 1st Defendant has applied for 24 Hour Quick Loan of Five Hundred Thousand Naira (500,000.00) at 5% monthly interest rate on 31st March,**

FEDERAL REPUBLIC OF NIGERIA
F. C. T. JUDICIARY
CERTIFIED TRUE COPY

Signature: *[Signature]*
Name: *[Name]*
Date: *[Date]*
BY: *[Signature]*

2021 and was disbursed same amount the same date into her bank's account. (As she stated in her Affidavit on Oath Paragraph 3 and 4)."

DW3 CROSS – EXAMINATION

"Q: Tell the Court when she made her last deposit?

A: 4/4/2024 – N20,000.00 (Twenty Thousand Naira Only).

Q: During cross-examination, you ask if the N300,000 (Three Hundred Thousand Naira Only) is a payment or deposit?

A: I said payment.

Q: The total sum of N800,000.00 (Eight Hundred Thousand Naira Only), is a full payment?.

A: Yes it is a full payment.

Q: That's all".

CROSS – EXAMINATION OF DW2

"Q: She defaulted in paying loan principal and interest as admitted?

A: She admitted in her witness statement on oath, she deferred the payment.

Q: She made her last deposit on 4/4/2024?

A: She made her last repayment on the 4/4/2024.

Q: She was given loan on 31/3/2021?

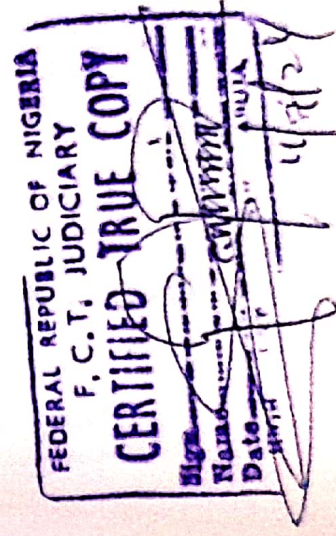
A: Yes.

Q: Between 31/3/2024 till 24/4/2024, she was indebted to us. Yes/NO?

A: She was indebted but had not finished payment.

Q: Between 31/3/2021 to 4/4/2024, the interest was running. Yes/NO?

A: That is left to the organization to decide, I don't normally calculate interest.



Q: Based on EXH P11A, authorizing us to charge her whatever she is owing, we are authorized to charge her the interest. Yes/NO?

A: That is agreement between the loan lender and the debtor”.

CROSS – EXAMINATION OF DW1

“Q: In clause 21 of EXH P5 (loan Application form) you agreed that interest should be charged first Yes / No?

A: Yes but interest was paid.

Q: In S 19(b) (i) of EXH P3 (Bye laws), you are required to pay interest first before paying the principal sum.

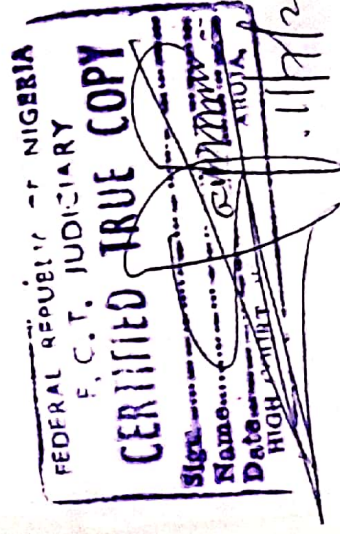
A: No ma.

Q: In clause 7 of EXH P4 (Decision on Amendment) you also agreed that interest should be paid first.

A: No. These Bye laws and Rules and Regulations were not given to me at any point in time”.

While the Defendant make a case that they have paid for both the interest and the principal loan sum and the 1st Defendant particularly agrees that interest should be charged first before the principal loan, the Claimants' case is that the total payment of **₦800,000 (Eight Hundred Thousand Naira Only)** and **₦40,000 (Forty Thousand Naira Only)** (deducted from the account of the second defendant in his capacity as Guarantor) is merely a deposit which has been converted to interest and leaving the principal loan still left unpaid.

All Defendants agree that the loan came with a default or penalty or interest of 5%. This fact is admitted by both Claimants and Defendants. Loan was obtained on the 31/3/2024 to be repaid after two month with 5% interest per month. The final sum was made on the 4/4/2024. The time difference between this two dates are 34 months. When one calculates 34 months by **₦25,000(Twenty – Five Thousand Naira Only)**(being 5% of **₦500,000 (Five Hundred Thousand Naira Only)** one gets **₦850,000 (Eight Hundred And Fifty Thousand Naira Only)**. The 3rd Claimants witness statement on oath in paragraph 6 provides as follows:



"The 1st Defendant has made the total deposit/saving of Eight Hundred Thousand Naira (N800,000.00) only into the banks accounts of the Claimant which has been taken and charged as part payment of the above total accumulated monthly interest: yet to balance One Hundred Thousand Naira (N100,000.00) only of the above interest, (Provision of Sections 6 (G) (iii) 18 (N), 18(1) (2), 19: (B)(1) 21(A)(1), 21 (B) (stage 1 and 2) of the Cooperative Society's Byelaw: Clause 7 of Decisions and Amendments. To The Rules & Regulations and the Byelaw of KipNetworks International Multipurpose Cooperative Society Ltd apply)".

I have looked at EXH P5, the loan application form duly and ably signed by the 1st Defendant Mrs. Okolo Rahila on 31/3/2024.

Clause 21 provides;

"In the case of interest payment the debtor agrees to pay first and foremost the interest before the money loaned and that every payment made by the debtor should be taken first as interest".

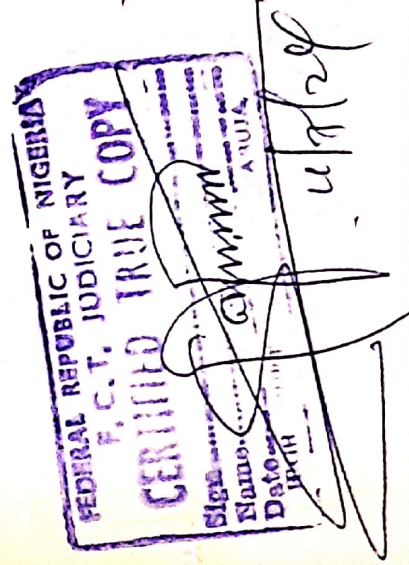
The above is the express and clear provision of Clause 21 of EXH P5 and admitted unequivocally by the 1st Defendant. I couldn't agree more with the Court of Appeal in the cases of:

Amiri Medical Relief Ltd and Ors V. E – Barclays Microfinance Bank Ltd (2015) LPELR – 24722 (CA) SPDC (Nig) Ltd V. Allaputa (2005) LPELR 11183 (CA) to the effect that, (respectively of course)

"it is indeed trite that parties are bound by their agreement and cannot go outside it to set up a case inconsistent with it" Per Ekanam JCA (Pt. 13. Paragraph D – D)

"parties are bound by the agreement freely entered into. None of the parties can be allowed to read into same what is not contained therein" Per Fabiyi JCA (pt. paragraphs A – A)

It is trite that the Courts only function is to interpret the agreement in enforceable terms and cannot rewrite the agreement. *Union Bank(Nig) Ltd V. Ozigi (1994) 3 NWLR pt. 333 pg 385. Ogbemor V. Utagba Rubber Estate Ltd. And Anor (2014). LPELR-24476 (CA).*



There is already an execution page containing terms and conditions behind the loan application of 1st Defendant. It was duly executed by both her and 3rd Claimant. This Honourable Court with respect to the sanctity of their agreement and contract voluntarily entered into by the parties and will not interfere in the manner that parties choose to do business with each other, as long as it is not criminal. *Max - cleanBecal ventures Ltd and Anor V. AEPB (2016) LPELR 41204 (CA)*. All parties are expected and indeed mandated by the law to honour the terms of the agreement freely entered into by them. *Jalbait Ventures (Nig.) Ltd &Anor V. Unity Bank Plc. (2016) LPELR 41625 (CA)*.

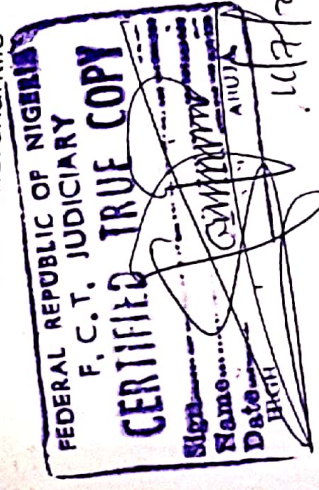
It is upon the foregoing that I hold the firm and resolute view that the **N800,000.00(Eight Hundred Thousand Naira Only)** paid by the 1st Defendant, the **N40,000 (Forty Thousand Naira Only)** deducted from the account of the second Defendant is taken as interest on the principal loan of **N500,000 (Five Hundred Thousand Naira Only)**. The principal loan of **N500,000(Five Hundred Thousand Naira Only)** still unpaid.

I agree that with Honourable Court of Appeal in the case of *Asikpo V. Access Bank (2015) LCN/7912(CA)* or (2015) LPELR – 25845 where my Lord Otisi held that:

“It may not be unheard of to find a bank which loads unreasonable charges on it customers. If such charges where not voluntarily agreed upon prior to the grant of the facility, they may not be enforceable. But where a party voluntarily agreed to such unreasonable charges prior to grant of the facility, the party may not permitted to retract from it. Parties are bound by contents of any lawful written agreement duly executed by them”.Anyoebunam V. Osaka (2000) 3 Sc1 ..(PP 22 – 23 paragraphs C).

I also believe and respectfully hold the view that once the loan was not discharged, the interest will continue to run and be charged to the account of the Defendants and the Defendants are bound to pay those interest charges as long as they agreed to them. The Court of Appeal held the same view in the case of *Bedko (Nig.) Ltd and Anor V. Unity Bank and Anor (2018) LPELR – 46977 (CA)*. *I.O.M Nwoye company Ltd V. Co – operative commerce Bank Plc (1993) 8 NWLR (Pt. 310) 21u*.

It was also held that interest may be claimed as a right where it is contemplated by agreement between the parties, or under merchantile



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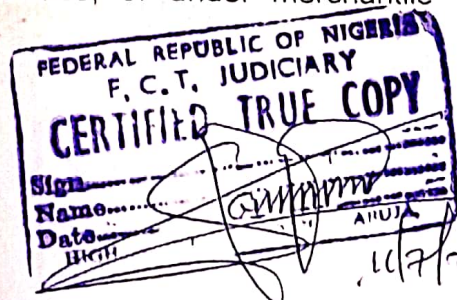
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It was also held that interest may be claimed as a right where it is contemplated by agreement between the parties, or under merchantile



custom, or under a principle of equity such as a breach of a fiduciary relationship. *Isensee K.G V. UBA Plc (2012) LPELR – 8028 (CA). Ekwunife V. Wayne (WA) Ltd (1989) 5 NWLR (Pt 122) at pg 422.*

In the case of *Diamond Bank Ltd V. Plc Ltd (2009) 18 NWLR Pt. 1172 67 at 96 – 97 Ogbuagu J.S.C* had this to say:

“Thus interest will however be payable where there is an express agreement to the effect such an agreement may be inferred from a course of dealing between the parties”.

From the above Judicial and past authorities, the evidence of both sides / parties, it is not in question or issue that the Defendant (1st) has not satisfied the loan obligation of **N500,000 (Five Hundred Thousand Naira Only)**. Therefore, this Court orders that the Defendant (1st) is still liable to pay the principal loan of **N500,000(Five Hundred Thousand Naira Only)**, I so hold.

In respect of the sum of **N3,500,000(Three Million Five Hundred Thousand Naira Only)** being the sum claimed by the Claimant against the 1st Defendant for the purchase of Bye laws of the cooperative society and various trainings, Economic Empowerment Programme done for the 1st Defendant before and after loan was given, without which the loan would not have been given. The 1st and 2nd Defendants and the DW3 vehemently oppose these facts, they avered that nothing at all was spoken of Byelaws or any training, they have testified that no training was done and no Byelaws were given to them, their testimony is that this is the first time they are hearing of it.

See evidence of parties in respect of same

Cross - Examination of DW3.

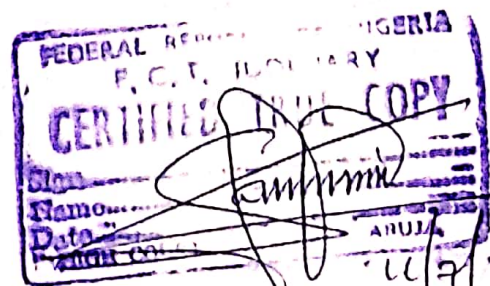
“Q: In other words, the 1st Defendant is fully aware of the Byelaws?”

A: No, because from the 1st day, the 1st and 2nd Defendants did not show or tell me of any Byelaws.

Q: Do you have documented proof that there was no empowerment training?

A: There are no documents because there was no training.

Q: You are not aware that there was empowerment training?



A: I am aware that there was no empowerment training.

Q: You are aware that there is no Bye laws?

A: There are no Bye laws at the time of application of the loan of N500,000 (Five Hundred Thousand Naira Only)".

CROSS – EXAMINATION OF DW1

"Q: What is your name?

A: Okolo Rahila

Q: You are a Registered Prestige Partner of both the 1st and 2nd Claimant?

A: Yes.

Q: You met all the requirement and procedure for membership registration before you were registered accordingly?

A: Yes.

Q: That is the requirement of Section 6a and b of EXH P3 (Bye Law)

A: No ma, when I registered as a member, I was not given or told about the Bye Laws.

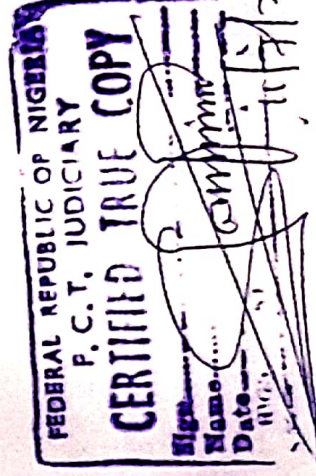
Q: You stated in EXH P6 (Affidavit) in paragraph 2 and 10 that you shall abide by the bye laws of the society, that means that you are aware and in possession of the Bye law?

A: Before the Affidavit, it was a verbal agreement entered with him not any written agreement.

Q: You stated that in EXH P6 that you are a prestige partner of the 2nd claimant, which means you have made requirement of the Bye law and you are bound by them.

A: No it was quick loan, and you only asked me for my ID, Cheque book and password because it is a quick loan, you never gave me the Byelaws

Q: How quick was the loan?



A: In less than two hours.

Q: You started in paragraph 8 that it is a 24 hours quick loan, meaning there was enough time to have the Byelaws?

A: No .it was a quick loan. It was not within 24 hours but less than 2 hours. The second Defendant was there on the day of payment and documentation.

Q: You met all the requirements for the loan application before you were granted.

A: What requirements?

Q: Behind Exhibit P5, you signed it?

A: Yes

Q: Clause 3 and 4 requires you to attend the Empowerment training and purchase the material before getting the loan?

A: No training was given .It was a quick loan. I keep saying it.

Q: Do you have any evidence to show that no training was given because it is a quick loan, does the Bye law say so.

A: I have no idea of that. The only evidence I have is the application form and the very moment the money was transferred and the date (they tally with date formed was filled)

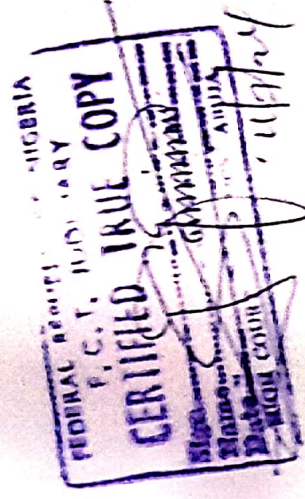
Q: You came to the office and I discussed and explained things regarding finances and loans. Yes/No?

A: No I was only briefed on the operation of the cooperative.

Q: I put it to you that briefing was on economic issue in relation to co-operative. Yes/No?

A: No

Q: In clause 32 of EXH P5, you agreed that you understood all explanations, terms and conditions, mode of operation as explained to you?



A: Yes.

Q: You signed all documents submitted as Exhibits?

Q: You signed the Loan Application, Bond to date and Narrate Cheque, there are 2 forms in it, the second one, the copy he has and submitted to this Court, one of it was not signed by me. That one originated from the 1st copy to date and narrate because the second one was critically altered and if one looks at the form, the Court will discover that a tipex was used to clean some parts and fill up with different handwriting. The document tendered is a forged document.

Q: You duly signed EXH P6, (Affidavit of loan Recovery)?

A: I did.

Q: In clause 21 Of EXH P5 (Loan Application) you agreed that interest should be charged first Yes/No?

A: Yes. But interest was paid.

Q: In section 19 (b)(i) of EXH P3 (Bye Law), you are required to pay interest first before paying the principal sum?

A: No ma.

Q: In clause 7 EXH P4 (Decision on amendment) you also agreed that interest should be paid first?

A: No there Byelaws and Rules and regulation were not given to me at any point in time.

Q: I put it to you that you have no evidence before this Court that you did not have empower training.

A: What evidence can I have when I did not attend the programme? At the last hearing I asked you to supply the Court with time and venue of the meeting.

Q: I put it to you that you have not paid principal or any money at all in accordance with Section 19 (b)(viii), Section 21 (iv), Section 23 (c) and Section 18 (m) (vi) of EXH P3?



A: I have made payment to the Account given to me, both principal and interest".

Paragraph 5 of the 1st Defendant witness statement on oath reads:

"That I was supposed to have attended Economic Empowerment Trainings before issuance of the loan. However the Training did not take place, at all, because it was a 24 Hour Quick Loan. No Trainings took place. No Bye-laws were issued".

CROSS-EXAMINATION OF DW2.

"Q: Name Again?

A: Edward Tetteh.

Q: You are a registered fellow partner of the 1st and 2nd Claimant and a guarantor to the 1st Defendant?

A: I am.

Q: You signed EXH P7, P8, P9, P12, P13, P16?

A: I signed them.

Q: You are not aware that there was no empowerment training?

A: I am aware that there was no empowerment training?

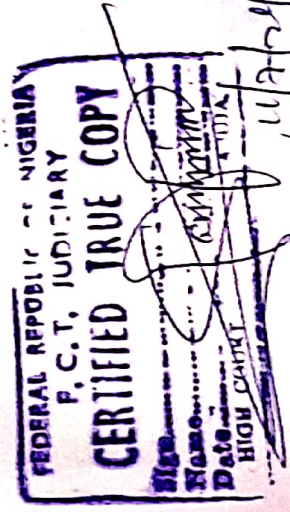
Q: You are not aware that there is no bye?

A: There are no bye laws at the time of Application for loan of N500,000 loans and interest?

A: I have proof that the 1st Defendant has made payment in respect of the N500,000 and interest of N300,000

Q: Can you show the Court such proof?

A: Yes I can, refer to your Amended Plaintiff note paragraph 6 (The 1st Defendant has made the total deposit of Eight Hundred Thousand Naira N800,000.00 only which has been taken and charged as part



payment of the above total accumulated monthly interest; yet to balance One Hundred Thousand Naira N100,000 only of the above interest).

Q: That is deposit and not payment Yes/No?

A: I guaranteed her for a loan. Any money she made so far is in respect of the loan.

Q: I put it to you that you have no proof in accordance with Section 18 (m) of the Bye laws EXH P3 and Section 23 (c)?

A: I don't have any idea.

Q: She has not made any payment at all?

A: She made some payment in my presence.

Q: Take a look at P11a, Original of Bond to date and narrate, is there any alteration or tipex?

A: There is none.

Q: Read the EXH P11a Bond and Authority to Date and Narrate My Cheque?

A: I/We solemnly declare and bond that I/we shall be vicariously responsible and liable for any and all the debts owed by the above person to your Organization/Society.

Q: The 1st Defendant authorized us to date and narrate her cheque?

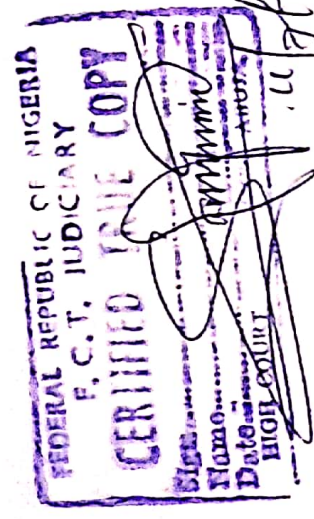
A: According to what I have read, that is it.

Q: This document, you are aware that it is not forged.

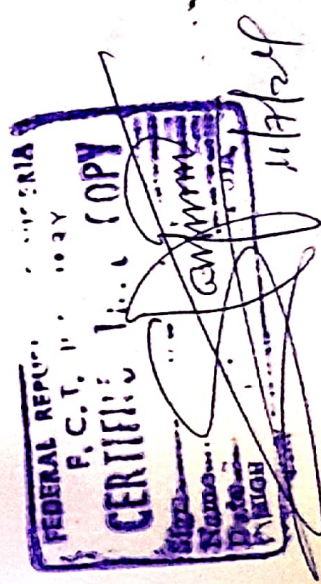
A: That particular one is not forged.

Q: In other words, we are right to demand Four Million Naira based on the document you read?

A: Based on this document, whoever is indebted is indebted to the tune of N500,000.



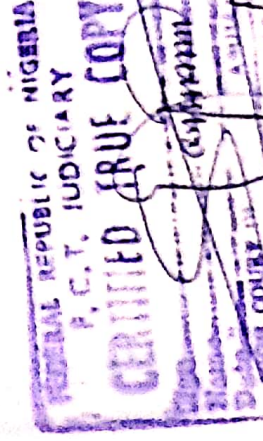
- Q: She defaulted in paying loan principal and interest as admitted?
- A: She admitted in her witness statement on oath, she deferred the payment.
- Q: She made her last deposit on 4/4/2024?
- A: She made her last repayment on the 4/4/2024.
- Q: She was given loan on 31/3/2021?
- A: Yes.
- Q: Between 31/3/2024 till 24/4/2024, she was indebted to us. Yes/NO?
- A: She was indebted but had not finished payment.
- Q: Between 31/3/2021 to 4/4/2024, the interest was running. Yes/NO?
- A: That is left to the organization to decide, I don't normally calculate interest.
- Q: Based on EXH P11A, authorizing us to charge her whatever she is owing, we are authorized to charge her the interest. Yes/NO?
- A: That is agreement between the loan lender and the debtor
- Q: You issued and signed EXH P12, ie (Bond and Authority to date and narrate cheque by Edward Tetteh)?
- A: I am seeing this for the first time.
- Q: You signed this document?
- A: I said, I am just seeing it for the 1st time. If it is there, I want to see the original copy.
- Q: Please show him this Original Copy
- Court: Is that the Original?
- A: I am seeing this for the 1st time.
- Q: You signed this together with EXH P13?



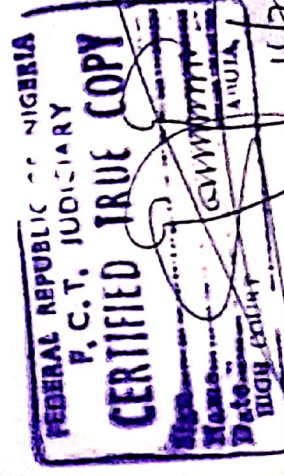
- A: I signed it, yes, the letter of Guarantee.
- Q: Look at EXH P16 (cheque) you issued this cheque?
- A: Yes.
- Q: Showed him the Original
- Court: Is that the Original?
- A: Yes I signed it but did not fill it.
- Q: You did not Object to all EXHs submitted?
- A: I objected to some.
- Q: Take a look at the Byelaws, Section 6 (a)(iii)
- A: All debts owed.
- Q: You obliged to the charging of your account to whatever debt the 1st Defendant owed?
- A: I am hearing it for the 1st time.
- Q: Take a look at Section 6 (f) of the Byelaws (EXH P3) and read it out?
- A: Members Obligation to the Society

A member of the society shall have the obligation to:

- "observe and comply with all the covenants, rules and regulations, terms and conditions of the Organization and the Society's Bye-law and all decisions taken by Members in accordance with provisions of the Bye-law otherwise access to benefits may be denied.
- ii. Attend all Meetings of the Organization and the Society otherwise further access to benefits may be denied.
- iii. Pay up for shares or make any other payments provided by the Organization and the Bye-law otherwise loans and grants and access to other benefits may be denied.



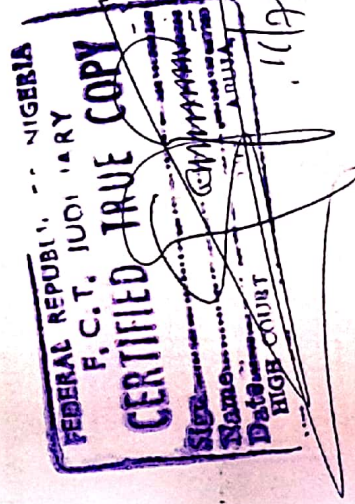
- iv. Renews his/her Annual Subscriptions of the Organization and the Society yearly at the time fixed by the Organization otherwise further access to benefits shall be denied and his/her accounts shall be surcharged or be penalized with 100% of the Annual Subscription Fees.
- v. Not misrepresent the Organization in any way otherwise further access to benefits may be denied and shall be penalized as deemed fit and prosecuted and shall exonerate and indemnify the Organization and the Society in such cases from any consequences whatsoever of such misrepresentation.
- vi. Settle his/her debts to the Organization and the Society in accordance with the provisions of the Bye-law otherwise be prosecuted in accordance with the Rules and the Bye-law.
- vii. Buy and/or sell products/services/brands produced or provided by the Organization otherwise further access to benefits may be denied.
- viii. Introduce at least four (4) persons to join the Organization otherwise further access to benefits may be denied.
- ix. Participate in at least four (4) other Schemes of the Organization otherwise further access to benefits may be denied.
- x. Purchase the Society's Bye-law and other publication relevant to the Organization and the Society otherwise access to loans and grants and other benefits shall be denied.
- xi. Attend all EET otherwise access to loans and grants and access to other benefits shall be denied.
- xii. Participate in and save through the Thrift & Thrive Savings & Loans Schemes of the Organization and the Society otherwise further access to loans and other benefits shall be denied.



- xiii. Join and actively and compulsorily participate in the monthly non-denominational fellowship of ICMF in designated places otherwise access to loans and grants further access to benefits shall be denied.
- xiv. Attend the monthly business meetings; K-BOMPS in designated places otherwise further access to benefits shall be denied.
- xv. Join and actively and compulsorily participate in other aspects of the Organization otherwise further access to benefits shall be denied.
- xvi. Bear all the costs of transportations, handlings, advertisings, promotions, distributions, and the likes of products/services/brands.
- xvii. Oblige to and wholeheartedly accept and without hesitation as true the use of his/her personal information including but not limited to personality profile, curriculum vitae, pictures, endorsements, attestations and the likes by the Organization and the Society as testimonials, disclaiming, reports and the likes to the public for the purpose of information, news, public relation and marketing in general without compensation, complaints and prosecution for the periods which include the time he/she is a Member and the time he/she ceases to be Member.
- xviii. Contribute to and comply with the Organization and the Society for further expansion projects as shall be done from time to time.
- xix. Oblige to the surcharging of his/her accounts upfront and in arrears any money owed to the Organization and the Society without notice.
- xx. Other obligations as shall be given from time to time".

Q: You Obligated as a Registered fellow partner that your account should be charged for whatever money you're owing.

A: No.



Q: As a guarantor to the 1st Defendant, you are indebted to the same debt as the 1st Defendant?

A: 1st Defendant is not even owing so I am not indebted to the same

Q: You don't have proof that all document submitted are forged?

A: I have proof that you submitted a forged document in an attempt to cheat and rob the Defendants of tune of N3,500,000 and that appears on the bond to narrate my cheque (b)

Q: Can you tender proof of same?

A: Yes I can, there is proof in EXH P11b and EXH P12b.

Q: Do you have documented proof that there was no Empowerment training.

A: There are no documents because there was no training.

Q: you have falsely accused us of forgery and cheating?

A: I have not falsely accused you.

Q: No evidence before this Court to show forgery?

A: EXH P11b and EXH P12b show forgery.

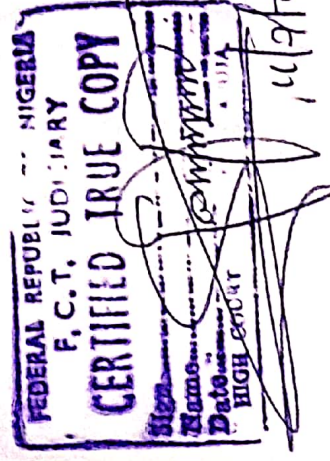
Q: That is all".

Paragraph 4 and 5 of DW3's witness statement on oath states.

4. "That the 1st defendant at the time of her application with the Plaintiff, no Bye laws were issued to her".
5. "That the Plaintiff did not conduct empowerment training programmers for the 1st Defendant before issuance of the loan".

Paragraph 4 of DW2's witness statement on oath reads:

"That the 1st Defendant was supposed to have attended Economic Empowerment Trainings before issuance of the loan. However the Training did not take place, at all, because it was a 24 Hour Quick Loan. No Trainings took place. No Bye-laws were issued".



From these excerpts from the testimonies, both oral testimonies of DW1, DW2 and DW3 and their respective Cross – Examinations, one thing / fact is in uniformity, that there were no empowerment trainings and no Bye laws were given to the 1st Defendant. The 1st and 2nd Defendant admit in their respective witness statement on oath that the 1st Defendant was supposed to attend the empowerment training but no training was conducted and no Bye laws were issued to her.

The 1st Defendant during Cross – Examination was asked by the 3rd Claimant:

Q: You signed all the documents tendered as exhibits

A: No I signed the loan application form, bond and authority to narrate cheque **EXH DW1**

1st Defendant agrees that she signed the loan application form – EXH P5.

I have now looked through Exh P5(Loan Application) which contains all the terms and conditions to be met and satisfied before the grant of loan.

Clause 3 provides:

“The Applicant agrees to compulsorily attend all the Economic Empowerment trainings (EET) without which the loan may not be given”

Clause 4 provides:

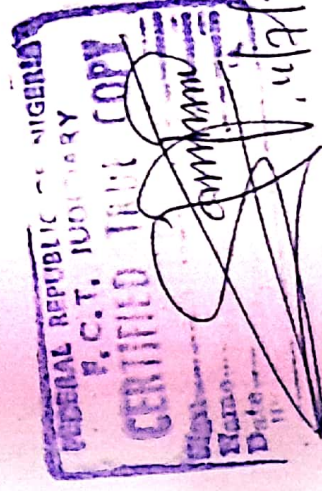
“The Applicant agrees to purchase all the EET Training materials without which loan may not be given”

Clause 8

“The Applicants agrees and permits that any or all his / her account should be surcharged for whatever money he / she owes the company or for settlement of any money owed by him or her without notice”.

Clause 34

“The Applicant agrees that he / she has fully and duly understood the operational terms and conditions, rules and regulations and shall strictly comply and abide by them without complaint”.



I have looked through all 40 Clauses contained in the loan agreement form (Terms and conditions) duly executed by the 1st Defendant and admitted by her. Unfortunately for the Defendants, they are bound by their agreement. Pacta Sunct Servanda. (Parties are bound by their agreement). It is an irrebuttable presumption that the Defendant particularly the 1st Defendant is very aware of the terms and conditions before signing the Exh. P5 – loan Agreement / Application form. An irrebuttable presumption is a legal rule that says a fact is true no matter what other evidence is presented. It cannot be challenged or changed. It means that if a certain fact is proved, then the court must draw a certain conclusion from the proved fact and such conclusions are conclusive, unquestionable and incontrovertible.

In fact, My Lord Per Tobi JSC captures it beautifully in the case of *Abubakar and Ors V. YarAdua and Ors (2008) LPELR – S1(SC)* he held as follows:

“Presumption of law is in fact a preliminary rule of law which may disappear in the face of rebutted evidence. However, in the absence of evidence to the contrary, the presumption stands” see. Chief AfeBabalola (ED) law and practice of evidence pg. 361.

This is a very adequate definition of presumption. I cannot put it better. A presumption of law is law and the court can make use of it. A presumption of law will however fossilize into thin air if it is rebutted. Of course a party can rebut an evidence if it is a rebuttable presumption. Where a presumption is irrebuttable it stands for all time like the rock of Gibraltar. See *Idahosa V. Idahosa and Ors (2010) LPELR 9072 – (CA)* (Read from law pavilion)

I do not see a rebuttal in this instant case none has been presented. By the way, for the purpose of the lay parties and litigants, a rebuttal is to oppose, to offer contrary contention or argument, a statement that says something is not true in law, rebuttal is a form of evidence that is presented to contradict or nullify other evidence that has been presented by an adverse party.

I do not see the need for a rebuttal because the 1st Defendant states unequivocally that she signed loan agreement Application form which specifies the terms and conditions sine qua non to the grant of the loan, among which is the obtaining of the Byelaws and attending the empowerment training. It is a condition precedent to getting the loan without which the loan will not be issued. The question of whether it was given to the 1st Defendant i.e the Bye laws or the training is an absolutely different kettle of fish.



What this therefore means is that the 1st Defendant has acquiesced to not receiving the EET training and Bye laws before the acceptance of the loan. It is taken to mean that since the 1st Defendant signed the Exh. P5 (the loan Application form), and also obtained the loan. He has satisfied any condition precedent to obtaining the loan.

To acquiesce or “Acquiescence” in its proper legal sense, implies that a person abstains from interfering when a violation of his rights is in progress. *Atunrase and Anor V. Sumnola and Anor (1985) LPELR – 634 (SC)* in the case of *Adedeji V. Oloso (2007) 5 NWLR (pt 1026) 113*, the Supreme Court agreed that “acquiescence” means conduct from which it can be inferred that a person has agreed to a certain state of affairs affecting to his legal rights. If a person has agreed to his rights to be taken away, he should not afterwards complain about it. He would be estopped by the fact having consented to the act complained of *Okunade V. Olawale (2014) LPELR 22739 (CA)*.

Such acquiescence takes place when a person with full knowledge of his own right and of any act which infringe, has either at the time infringement or after infringement by his conduct led the persons responsible for the infringement to believe that he has waived or abandoned his rights.

Nsiege and Anor V. Mgbemena and Anor (2009) LPELR – 2065 (SC) Per Kalgo JSC (Pp. 7 paragraphs B).

If the court is permitted to hazard a guess, it looks as though the Defendant was in urgent need of the loan and as such was unmindful and eager to sign whatever document given in order to obtain the loan, without understanding and considering the terms and conditions to which she bound herself. Not anticipating that issues may arise and when these issues arise out of the valid contract voluntarily entered into by her, she shall be bound by the terms of the contract (anyway, this is just the result of my thinking, it is a guess, mere speculation and has no bearing on the case. Indeed, a party who signs a document is bound by the content thereof and cannot be heard to resile therefrom. *Suleman V. FRN (2018) LPELR – 46667 (CA)*. It was held in the case of *Samuel Nwarie V. Daniel Adakwa (2016) LPELR – 41600 (CA) pg 14 paragraph B – F, Per Abba – Aji JCA* as follows:

“It is trite that where a document is voluntarily signed by a person, the content of such document are binding on the signatory to it, and generally no extrinsic evidence will be allowed to add or reduce there from any of such content. It will amount to injustice to allow such a



person to renege from the position he had voluntarily created by signing such a document. The position is that a man must not be allowed to blow hot and cold with reference to the same transaction...."

There are a litany of authorities on this position. My Lord Dongban Mensam – JCA held on the effect of a signed document in the case of *Intl Starchem Industries Ltd V. African Newspapers Ltd (2014) LPELR – 23244 (CA)* that:

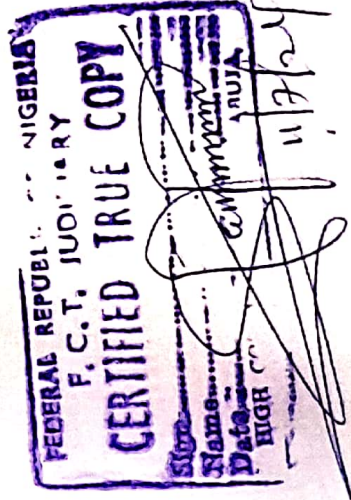
– *(CA)* that:

“My Lord Eso JSC held in the case *Egbase V. Oriareghan (1985) LPELR – 1030 (SC) Pp. 29 – 30* held that:

“Whenever a man of full age and understanding who can read and write signs a legal document which is put before him for signature by which it mean a document which, it is apparent on the fact of it, it intended to have legal consequences, then if he does not take the trouble to read it as it is, relying on the word of another as to its character or contents or effect, he cannot be heard to say that it is not his document. By his conduct in signing it he has represented to all those whose hands it may come, that it is his document; and once they upon it as being from the document, he cannot go back on it and say it was a nullity from the beginning”

From the foregoing, it is also clear that the 1st Defendant is bound by her signature/agreement, she has no excuse, justification, defense. Indeed she concedes that she signed Exh P5 which provides all these terms and conditions, whether she read them or not is of no consequence.

A sub question follows: How much is the 1st Defendant indebted? To the tune of **N3,500,000 (Three Million Five Hundred Thousand Naira Only)**? There is a huge disagreement by the 1st, 2nd, and 3rd Defendant in respect of Exh. P11 b that is Bond and Authority to narrate check dated 31/1/2021. It is also called Exh DW2b. (The 2nd Defendant also tendered it, it is again called Exh. D2 (1st Defendant tendered it). It is the same document the 1st and 2nd Defendant and DW3 have all made allegations of fraud, alleging that part of the document was altered particularly the Bonds and Authority to narrate check to the tune of **N3,500,000 (Three Million Five Hundred Thousand Naira Only)**. The Plaintiff upon being notified to produce the original informed the court that same has been lost when the police arrested or invited and took his documents. The document in question is one of those missing hence the



tendering of the photocopy or secondary evidence having laid proper foundation.

Oral evidence in respect to this issue can be seen in / during Cross – Examination DW1

Q: In paragraph 6(a) & 7(a) of your witness statement of oath, you demanded for Original copy of EXH P 11, I have a copy here. I have the 1st Bond to narrate cheque here (N500,000). I stated earlier that the police carried some documents and never returned completely. I have the 3rd one (paragraph 16).

Is there any where that the document is altered? Tipexed?

A: This is not the document altered. It is the one of N3,500,000 which is not produced.

Court: “Original Bond and Authority to date and Narrate Cheque of N500,000 is admitted and marked EXH Original Bond and Authority to Narrate”.

Q: I put it to you that you have not shown this Court where the document was altered or tipexed?

A: I have nothing to say.

Q: You don't have any evident of the document you duly signed to prove that the document were forged and different from those tendered?

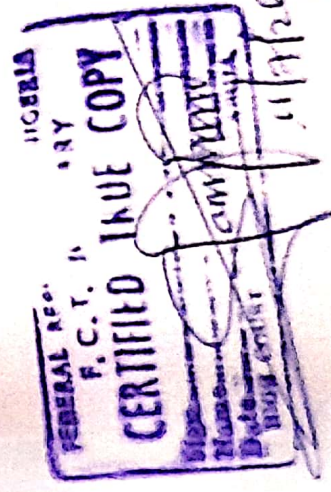
A: I don't have. He submitted them to the Court.

Q: I put it to you that you don't have received copies of those signed before the loan was given to you?

Q: You gave authority to date and narrate cheque as EXH P 11. Yes/No?

A: No.

Q: Please read through EXH P11a?



A: I/We solemnly declare and bond that I/we shall be vicariously responsible and liable for any and all the debts owed by the above person to your Organization/Society.

Q: You gave us that Authority?

A: I didn't do that on that of N3,500,000.

Q: You were to pay up loan and interest within 2 month?

A: Yes.

Q: You defaulted in payment within 2 months?

A: Yes.

Q: That means we are right to date and narrate your cheque to whatever amount that you owe us?

A: No.

Q: I put it to you that you have no evidence before this Court that the document were forged?

A: I have no evidence.

Q: You have falsely accused us of forgery?

A: I am not. It is the document that you presented that I am relying on. I need the evidence of the Original copy of the documents.

Q: You are lying on oath. Yes/No?

A: No.

Q: You falsely accused us of attempting to deceive the Court?

A: No.

That's all in Cross-examination".

CROSS – EXAMINATION OF DW2

"Q: Take a look at P11a, Original of Bond to date and narrate cheque, is there any alteration or tipex?

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A: There is none.

Q: Read the EXH P11a Original of Bond to date and narrate cheque?

A: I/We solemnly declare and bond that I/we shall be vicariously responsible and liable for any and all the debts owed by the above person to your Organization/Society.

Q: The 1st Defendant authorized us to date and narrate her cheque?

A: According to what I have read, that is it.

Q: This document, you are aware that it is not forged?

A: That particular one is not forged.

Q: In other words, we are right to demand 4 Million Naira based on the document you read?

A: Based on this document, whoever is indebted is indebted to date tune of ₦500,000.

Q: You issued and signed EXH P12, i.e. (Bond and Authority to date and narrate cheque by Edward Tetteh)?

A: I am seeing this for the first time.

Q: You signed this document?

A: I said, I am just seeing it for the 1st time. If it is there, I want to see the original copy.

Q: Please show him this Original Copy

Court: Is that the Original?

A: I am seeing this for the 1st time.

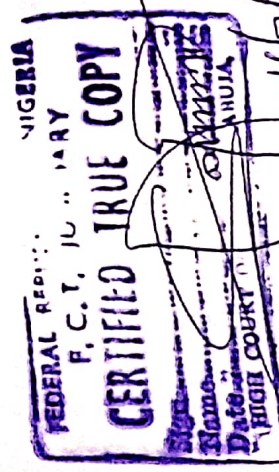
Q: You signed this together with EXH P13?

A: I signed it, yes, the letter of Guarantee.

Q: Look at EXH P16 (cheque) you issued this cheque?

A: Yes.

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Q: Showed him the Original

Court: Is that the Original?

A: Yes I signed it but did not fill it.

Q: You have falsely accused us of forgery and cheating?

A: I have not falsely accused you.

Q: No evidence before this Court to show forgery?

A: EXH P11b and EXH P12c shows forgery.

Q: That is all".

CROSS – EXAMINATION OF DW3

“Q: She issued them?

A: Yes, I can see the name.

Q: There is no alteration, tipex in any of these document. Yes/No?

A: There is in EXH P12b. there is tipexing before the ₦3,550,000

Q: I put it to you that there is no alteration.

Q: The 1st Defendant duly signed EXH P11 Yes/No?

A: Yes.

Q: Any alteration or tipex. Yes/No?

A: None.

Q: There is no forgery in all the Exhibits tendered by all witnesses including you.

A: I know of only myself".

Also in the Witness Statement on Oath of DW1 / (1stDefendant) paragraph 6(a) – (k) paragraph 7, paragraph 15,



6. That I have so far made payment totaling Eight Hundred Thousand Naira (₦800,000.00) only, being Five Hundred Thousand Naira (₦500,000.00) Loan and Three Hundred Thousand Naira (₦300,000.00) Accumulated 5% interest. (As contained in paragraph 6 of witness statement on Oath of Nkanican Ekott, the Claimant).

(a) That the Claimant did not provide the original document with the caption "Bond and Authority to Date and Narrate my cheque of Okolo Rahila (A); with amount Five Hundred Thousand Naira (₦500,000.00) having known that he has altered the one provided before the court.

(b) That the Honourable Court should order the Claimants to provide the original copy of this document for scrutiny and verification.

(c) That the document with the caption "Bond And Authority to Date Narrate my cheque of Okolo Rahila (B); with amount Three Million And Five Hundred Naira (₦3,500,000.00) was altered and erased by the Claimant and it is not the original.

(d) That the suspected Document (B) was forged from Document (A) via Tipex and Alterations by the Claimants.

(e) That there is total alteration in Document (B).

(f) This Document was FORGED to cover cost of so-called "Various Empowerment Trainings" to the tune of Three Million And Five Hundred Thousand Naira (₦3,500,000.00) which Trainings never took place.

(g) The Claimants have provided neither schedule nor programmers for the so-called "Various Trainings".

(h) This Document was FORGED in an attempt to deceive this Honourable Court to believe that Various Trainings were organized for me by the Claimants.

(i) This Document was FORGED by the claimants to cheat and defraud me to the tune of Three Million and Five Hundred Thousand Naira (₦3,500,000.00) only.



(j) That I hereby request the Claimants to produce the Original copy of this Document titled "Bond and Authority to Date and Narrate my Cheque (B); for scrutiny and verification.

(k) That failure of the claimants to produce the original copy of this suspected FORGED Document, I pray this Honourable Court to strike out this suit.

7. That I demanded that the Claimants should produce the following Original Document:

15. That the Claimant wants to reap where he did not sow.

See the DW2 / 2nd Defendant, paragraph 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 26.

"6. That the Claimant did not provide the original document with the caption Bond and Authority to Date and Narrate my cheque of Okolo Rahila (A); with amount Five Hundred Thousand Naira (₦500,000.00) having known that he has altered the one provided before the Court.

7. That the Honourable Court should order the claimants to provide the original copy of this document for scrutiny and verification.

8. That the document with the caption "Bond And Authority to Date Narrate my cheque of Okolo Rahila (B); with amount Three Million And Five Hundred Naira (₦3,500,000.00) was altered and erased by the claimant and it is not the original.

9. That the suspected Document (B) was forged from Document (A) via Tipex and Alterations by the Claimants.

10. That there is total alteration in document (B).

11. This Document was FORGED to cover cost of so-called "Various Empowerment Trainings" to the tune of Three Million And Five Hundred Thousand Naira (₦3,500,000.00) which Trainings never took place.

12. The Claimants have provided neither schedule nor programmers for the so-called "Various Trainings".



13. That the Document was FORGED in an attempt to deceive this Honourable Court to believe that Various Trainings were organized for the 1st Defendant by the Claimants.

14. That Document was FORGED by the claimants to cheat and defraud the Defendant to the tune of Three Million and Five Hundred Thousand Naira (N3,500,000.00) only.

15. That the Defendants, hereby request the Claimants to produce the Original copy of this Document titled "Bond and Authority to Date and Narrate my Cheque (B); for scrutiny and verification.

16. That failure of the claimants to produce the original copy of this suspected FORGED Document, I pray this Honourable Court to strike out this suit.

18. That I demanded that the Claimants should produce the following Original Documents:

(a) Bond and Authority to Date and Narrate my Cheque of Okolo Rahila the 1st Defendant showing amount of Five Hundred Thousand Naira (N500,000.00) P11a.

(b) Bond And Authority to Date Narrate my cheque of Okolo Rahila the 1st Defendant showing amount Three Million And Five Hundred Naira (N3,500,000.00) P11b.

26. That the Claimant want to reap where he did not sow."

All this paragraphs point to the allegation that the document was forged or altered, therefore it is not their deed i.e. the 1st and 2nd Defendant. The legal maxim that defines the act or denial of the 1st and 2nd Defendant is called "Non est factum" translated to mean "Not my deed". It is a denial of the execution of an instrument sued on. It is a formal denial that the deed is the deed of a person. See *Blacks law dictionary, 9th Edition*.

The 1st and 2nd Defendant have pleaded fraud or forgery but have not led any evidence to establish same. The Plaintiff has called for concrete evidence, alternative documents or their own copies of the said documents or general proof of same but nothing has been tendered by the Defendants to prove fraud. The 2nd Defendant even admitted during Cross - Examination that he signed Exh P12 - Bonds and Authority to date narrate



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cheque of Edward Tetheh to the tune of ₦3,500,000 (Three Million Five Hundred Thousand Naira Only). He also stated that he had never seen it before now.

The law or general rule in respect to the above issue is that the plea of non est factum requires clear and positive evidence before it can be established. *Egbase V. Oriareghan (1985) NWLR (pt. 10) 884*.

Fraud is a key element and where it is relied upon even as a defense it must be proved by evidence. The supreme court in the case of *Anosile V. Sotunbo (1992) NWLR (pt. 243) 514*. stated as follows:

“A complaint by a person of full age, sense, knowledge, and discretion that at the time he signed the document he did not knowing its content without proving fraud, will not avail him a plea of non est factum to avoid the validity and legal effect of such a document”.

See also *Fhomo (Nig) Ltd V. Zenith Bank (2016) LPELR – 42233 (CA)*.

Also in this extant case of *Fhomo Nig.Ltd V. Zenith Bank (Supra)* the Court held, that fraud is a criminal allegation, thus it is the requirement of the rules that it must be proved beyond reasonable doubt. This is the requirement of the Evidence Act that where crime is alleged in a civil claim, it should be proved beyond reasonable doubt. Section 135(1) of the Evidence Act (2011).

Forgery is also a criminal allegation and is classified under the category of fraud. Once a party pleads fraud or any crime, the burden is on he who asserts. That party must lead credible evidence before fraud can be established. During Cross – Examination of DW1(1st Defendant) she even retorted “I have nothing to say”. No incriminating proof or evidence was tendered by either of the Defendant to substantiate their claims. For failure to do the needful, this Honourable Court finds that there was no fraud. Therefore the 1st Defendant is indebted to the tune of ₦3,500,000 (Three million five hundred thousand Naira Only) for items as claimed by the Plaintiff and agreed to by them by virtue of Exh P5.

In respect of the 2nd Defendant who agrees that he is the guarantor of the 1st Defendant. Paragraph 1 of his witness statement on oath: “That I am the 2nd Defendant and Guarantor of the 1st Defendant, OkoloRahila”



This fact is not in dispute. Without much ado, I will proceed to reproduce the case of *Ojemeni V. Sterling Bank Plc. (2014) LPELR 24442 (CA)*. Wherein the court held that.

“It is thus evident that a contract of guarantee presuppose the existence of another prior contract: e.g. contract of loan, bank facility e.t.c under which the principal debtor is liable. The liability of a guarantor under a contract of guarantee is secondary. The law is trite that the liability of a guarantor crystallizes at the failure or inability of the principal debtor to discharge the obligation in the contract. This is to say that, generally, the guarantor’s liability becomes due and mature immediately the debtor/borrower becomes unable to pay his outstanding debt. See *Fortune Int’ bank Plc. V. Pegasus Trading Official (GMBIT) (2004) 4 NWLR (pt. 863) 369, R.E.A.N (Nig.) Ltd. V. Aswani Textile Ltd. (1992) 3 NWLR (pt.227) 1; Eboni V. Finance & Sec Ltd. V. Wole-Ojo Tech Service Ltd. (1996) 7 NWLR (pt. 461) 464 , Salawal Motor House Ltd. V. Lawal (1999) 9 NWLR (pt. 620)692.*The concomitant effect of this is that the cause of action in a contract of guarantee arises only after the principal debtor has defaulted in his obligation to the creditor. It is only then that the limitation period begins to run” Per AKOMOLAFE-WILSON, J.S.C (pg. 6-7 paragraph C- C)

A Guarantor may be discharged when and where any of the following circumstances arises:

- i. Where his Obligation under the guarantee contract has been satisfied.
- ii. Where the principal debt has been extinguished by acts or act of the parties.
- iii. Where a limitation or prescriptive period has elapsed.
- iv. Where a court applied a presumption which operates to terminate the contract of guarantee.

FBN Plc V. Songonuga (2005) LPELR – 7495 (CA)

None of these circumstances have arisen, thus the 2nd Defendant is likewise, liable for the inability of the 1st Defendant to discharge her financial Obligations. I also have a Letter of guarantee duly issued and executed by the 2nd Defendant in favour of the 1st Defendant (Exh. P13).



The 2nd Defendant is ordered to discharge his Guarantee responsibilities towards the 1st Defendant. That is the essence of being a Guarantor.

The Defendants have entered into the contract, wide eyed, without proof of fraud or misinterpretation or mistake sufficient to vitiate the legally binding contract.

It is of no consequence whether they are totally abreast of the documents signed by them or their responsibilities and liabilities. They entered as consenting Adults with full and complete mental capacity. They must be bound by the terms of the contract entered into by them.

The sole issue for determination is answered in favour of the Claimants and against the Defendant. It is obvious by the evidence tendered, these untended, the law, past authorities and judicial precedents. The courts are enjoined to desist or making judgments based on sentiments or empathy. This judgment has been arrived purely based on the preponderance of credible evidence, particularly on the part of the Claimant, totally devoid of sentiments.

The Claimants is therefore entitled to be paid the total sum of **N4,000,000 (Four Million Naira Only)** as claimed. Thank you.

Judgment delivered on 29/5/24 at 9:36 am - 10:32am

Parties: Absent.

Appearances: Fredrick .F. Nle Esq. -- 1st & 2nd Defendant.

SIGN. [Signature] DATE 11/2/24
CHIEMENA .K. NONYE -OKORONKWO
MAGIS TRATE.....
F.C.T. HIGH COURT, ABUJA

Chiemena .K. Nonye-Okoronkwo
Presiding Magistrate 2

