

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA ABUJA

ON 4TH DAY OF OCTOBER, 2021

BEFORE HIS LORDSHIP HON. JUSTICE CHIZOBA N. OJI

PRESIDING JUDGE

SUIT NO: FCT/HC/CV/704/2012

BETWEEN:

ASO SAVINGS & LOANS PLC PLAINTIFF

AND

RUKUBA SAMAILA AHALU DEFENDANT

APPEARANCES:

AUSTINE DIMONYE ESQ FOR THE CLAIMANT

B.O. OBIALO ESQ FOR THE DEFENDANT

JUDGMENT

This suit was commenced by a writ of summons and affidavit filed on 7th November 2012 under the undefended list wherein the Plaintiff claimed against the Defendant:-

“(a) The sum of ₦21,242,906.37 (Twenty One Million, Two hundred and Forty Two Thousand Nine Hundred and Six Naira Thirty Seven Kobo).

(b) Interest at the rate of 18% per annum.

(c) Interest at the rate of 10% per annum from date of judgment until full payment is made.

(d) ₦500,000 (Five hundred Thousand Naira Only) being the cost of litigation.”

The Defendant filed a notice of intention to defend and an affidavit wherein he admitted owing the Claimant ₦8,000,000 having earlier paid ₦9,000,000 out of the loan sum of ₦17 million. He also disputed the computation whereby the Claimant arrived at the sum ₦21,242,906.37 claimed. The court entered judgment for the Claimant for the admitted sum of ₦8 million and transferred the rest of the claims to the general cause list and ordered pleadings to be filed and exchanged.

Thus by their amended statement of claim filed on 3rd March 2016 but served the Defendant on 7th March 2016 the Claimant claimed against the Defendant as follows:-

- “(a) The sum of ₦13,242,906,37 (Thirteen Million, Two Hundred and Forty Two thousand, Nine Hundred and Six naira, Thirty Seven Kobo)***
- (b) Interest at the rate of 18% per anum***
- (c) Interest at the rate of 10% per annum from the date of judgment until full payment is made***
- (d) ₦500,000.00 (Five Hundred Thousand Naira) being the cost of litigation.”***

The Defendant filed a statement of defence on 26th February, 2016 deemed duly filed and served on 1st March 2016.

The Claimant filed a reply to the statement on defence on 19th May 2016.

To prove her case, the Claimant called a sole witness, PW1 Akachukwu Ikechukwu, a legal officer with the Claimant. He adopted his additional witness statement on oath of 3rd March 2016 and “better witness statement on oath” of 19th May 2016. He tendered a total of 16 exhibits in evidence which were admitted and marked Exhibits P1 to P15. His testimony is that the Defendant was offered a 4 bedroom bungalow situate at Plot SC 20, Prince and Princess Estate, Duboyi, Abuja (the property) by Sunvic

Construction Limited (the vendor) for ₦22 million – See Exhibit P1 dated 21st February, 2008.

The Defendant applied to the Claimant for a mortgage facility to enable him purchase the property – see Exhibit P2 dated 22nd February 2008. He also completed and executed the Claimant's standard mortgage application form – see Exhibit P3.

Consequently, the Claimant offered the Defendant a mortgage facility of ₦17 million vide Exhibit P4 dated 1st April 2008, to enable him purchase the property and the Defendant duly accepted same.

The terms of the offer as accepted by the Defendant included:-

Interest rate at 18% p.a

Legal and processing fees of 1%

Admin fees of 1%

Tenor 60 months

With monthly interest payment as shown in the letter.

In addition the Defendant executed inter alia, a Deed of Legal Mortgage, Loan Agreement and Letter of undertaking to give priority to the repayment of the loan as at when due.

The Defendant's employers also agreed to domicile his salaries with the Claimant to enable it effect payment reductions. See Exhibit P5,P6,P7,P8 respectively.

The Claimant credited the Defendant's account with ₦17 million on 21st April 2008. See Exhibit P9(a) and P9(b). Prior to this time the Defendant had deposited ₦5 million in his account being his equity contribution to the total purchase price of the house.

The total sum of ~~₦~~22 million was on 29th April 2008 debited from the Defendant's account for payment of the property via Exhibit P10 – FCMB cheque.

It was further deposed that the Defendant was to commence scheduled repayments on 21st April 2008, the day the facility was disbursed.

The Defendant however failed in his scheduled repayment obligations, prompting the Claimant to make a formal demand for the due and unpaid sums.

The Defendant in response, apologised and promised to pay ~~₦~~10 million on or before 23rd March 2009. See Exhibit P11 dated 2nd March 2009.

The Claimant acknowledged the Defendant's plea via letter dated 4th March 2009 informing the Defendant it would proceed with legal recovery if the promise was not kept. See Exhibit P12.

With a covering letter, the Defendant subsequently paid ~~₦~~9 million vide Intercontinental Bank cheque dated 16th July 2009. See Exhibit P13 and P14.

Thereafter, the Defendant again for about 38 months paid nothing which prompted the Claimant to write letter of demand dated 8th May 2012, Exhibit P15.

That as at 24th September, 2012, the unpaid obligations stood at ~~₦~~21,242,906, 37.

That the Defendant was not charged compound interest and that the charges on the Defendant's account were in accordance with the terms of the offer letter.

The witness was cross examination and discharged.

The Defendant, Samaila A. A. Rukuba testified as DW1. In his defence he adopted his witness statement on oath of 26th February, 2016. He works with Abuja Investments Company Limited.

He testified inter alia that out of the ₦17 million facility granted to him that he had defrayed the sum of it ₦9 million which covered both arrears and subsequent repayment of his monthly obligation.

That upon the bulk payment of the said ₦9 million, he requested the Claimant to come up with a new amortization on how to clear the outstanding balance and on 4th July 2012 wrote to the Claimant emphasising the need for proper reconciliation of the outstanding balance.

That the Claimant failed to come up with a new amortization formula or schedule a meeting as requested for the purpose.

That the ₦9 million payment made in 2009 covers 40 months out of the 60 months the facility should last, but, the Claimant has continued to charge compound interest on the facility both on due and paid sum without his knowledge.

That the excess charge of ₦13,242,906.37 does not represent the 20 months unpaid sum that is outstanding.

Thus he urged the court to dismiss the Claimant's suit. He tendered two documents marked Exhibits D1 & D2. He was cross - examined and discharged.

In his final written address filed on 4th March 2020 deemed duly filed and served on 11th March 2021. Mr B.O Obialo for the Defendant raised a sole issue for the court's determination thus:-

“Whether the Claimant in the circumstances of this case is entitled to its claim as contained in the statement of claim”.

Mr Austine Dimonye for the Claimant in his final written address filed on 8th March 2021, deemed duly filed and served on 9th March 2021, raised a similar issue for determination thus:-

“Whether by the preponderance of evidence adduced the Claimant is entitled to the reliefs claimed in the statement of claim”.

For the Defendant it was submitted that parties are bound by the terms of the agreement they validly entered into and the court must give effect to the intention of the parties in the agreement.

Again where the terms of the contract agreement are clear, the law is that the operative words in it should be given their simple and ordinary grammatical meaning.

See DALEK NIG LTD V OMPADEC (2007) 7 NWLR (PT 1033) PG 402 AT 406; YARO V AREWA CONSTRUCTION LTD (2007) 17 NWLR (PT 1063) PAGE 333 AT 341 and BAKER MARINE LTD V CHEVRON LTD (2006) 12 MJSC PAGE 174 AT 176.

It was submitted that Exhibit P4 the offer letter dated 1st April 2008, Exhibit P5 Deed of Legal Mortgage and Exhibit P6 Loan Agreement dated 1st March 2008 form the basis of the contractual relationship between the Claimant and the Defendant.

That the Defendant was granted a loan of ₦17 million with an interest rate of 18% per annum for 60 months and to pay up front 1% legal and processing fee and 1% per annum admin fee.

That of the ₦17 million, the Defendant had paid ₦9 million and admitted owing ₦8 million earlier in court for which the court has entered judgment for the Claimant.

That what is now in contention is the 18% interest. It was contended that the Claimant abandoned the 18% interest per annum agreed upon and embarked

on a unilateral charge on the Defendant's account with compound interest, which according to learned counsel, is evident in paragraph 14 of the statement of claim where the Claimant computed the balance owed by the Defendant and the various deductions made in the statement of account in the course of calculating his reducing balance, all of which make the Claimant's case unsustainable.

Learned counsel contended that the agreed interest rate of 18% was not used in Exhibit P1? (Exhibit P4) in the schedule of payment on the reducing balance and cannot be said to represent the intention of the parties.

He proceeded to do the math, insisting that the figures were wrong and that the Claimant did not explain to the court how these calculations and deductions were made.

He urged that where a bank and a customer are clear with regard to agreed rate of interest and there is no provision for variation of rate of interest, the bank cannot unilaterally vary the agreed interest rate to accord with the guidelines of the Central Bank on interest rate.

See Supreme Court in **UNION BANK OF NIGERIA PLC V AJABULE (2011) 18 NWLR (PT 1278) PAGE 152 AT 186 - 187; IDS LTD V A.I.B LTD (2002) 4 NWLR (PT 758) PAGE 660 AT 681 - 682 PARAGRAPH H-A.**

Likewise a bank cannot charge interest on a loan after the fixed expiry date of the loan. See **IDS NIG LTD V A.I.B LTD (supra).**

Finally learned counsel urged that the suit is incompetent and the court lacks jurisdiction to entertain same. He urged the suit be dismissed.

(I have since dismissed the challenge to the jurisdiction of this honourable court raised having found same to be lacking in merit).

Mr Dimonye for the Claimant submitted that the interest charged on the facility was in accordance with Exhibit P4 – the Offer for Mortgage Loan.

That the onus was on the Defendant who, though admitting he had paid no interest on the loan, alleged the interest charged was illegal and excessive, to prove same.

That the Defendant's allegations on illegal deductions bothered on fraud, which is an allegation of crime and requires proof beyond reasonable doubt.

It was further argued that where a party sees interest in his statement of account but did not contest it, a claim of interest by the bank will be justified in law. He urged that the Defendant, though aware of the interest charges in the statement of account, Exhibit P9A did not contest same.

He urged that the Defendant admitted in paragraph 3.5 of the defence counsel's written address that he owes the Claimant ₦9,180,000 (computed on the monthly interest payments in Exhibited P4 at 18% p.a).

He submitted that what is admitted needs no proof. Thus he urged the court to enter judgment in favour of the Claimant for ₦9,180,000 admitted by the Defendant, and also for the balance of the amount and for costs of ₦500,000. Reliance was placed on **MAGNUSSON V KOIKI & ORS (1993) LPELR - 1818 (SC) PAGE 11 PARAGRAPH E-F, PER KUTIGI JSC. AFRICAN INTERNATIONAL BANK LTD & ORS V ASAOLU (2005) LPELR 11340 (CA) PP 28-29 PARAGRAPH E-A PER SALAMI JCA; UBN LTD V SALAMI (1998) LPELR 6189 (CA) PG 13 PARAGRAPH D-E PER IGEH JCA; OSENI & ORS V DAURODU & ORS (1998) LPELR 2795 SC PAGE 27 PARAGRAHS B-C & ORS.**

I have considered the evidence before me and the written and oral submissions of learned counsel on both sides.

The narrow issue before this court is whether the Claimant has proved its claim of interest owed by the Defendant before this court.

The Claimant claims the balance of ₦13,242,906.37 as the outstanding sum on the ₦17 million facility it granted the Defendant for the purchase of 4 bedroom bungalow at House 27 Drive 6, Prince and Princess Estate Abuja.

The Defendant disputes this interest, though he admitted he has never paid any interest on the said mortgage loan of ₦17 million. The onus is on the Claimant to prove its case.

The said evidence required in proof of the case must come from the witness of the Claimant in this case PW1, Akachukwu Ikechukwu, a legal officer of the Claimant. In cross examination he was not able to tell the court how the Claimant computed the claim of ₦21,242,906.37, the balance of interest unpaid now being the sum of ₦13,242,906.37 claimed; the Defendant having admitted ₦8 million out of ₦21,242,906.37 for which the court had entered judgment in the Claimant's favour on 4th November 2013. All he said was that there were default interest charges apart from the 18% interest per annum charge where the Defendant was in default. He could not compute 18% per annum of ₦17 million off hand.

The Defendant as DW1 on his own part who had alleged illegal charges and deductions could not demonstrate how the illegal charges and deductions were made. Though he said he had the statement of account he did not demonstrate the illegal deductions therefrom. Neither did he present any other mortgage application other than Exhibit P3 to show the true representation of the facts. Mr Obialo laboured to compute the interest rate rather than present the evidence through DW1. It is trite that address of counsel however brilliant cannot take the place of evidence. See **ADEGBITE & ANOR V AMOSU (2016) LPELR - 40655 (SC) PG 10 PARA C; NIGER CONSTRUCTION LTD V OKUGBENI (1987) LPELR 1993 SC PG 7 PARA B, PER OPUTA JSC (of blessed memory).**

The Defendant blamed his not paying the rest of the loan on the Claimant who did not schedule a fresh amortization on the remaining balance to enable him pay.

One thing remains clear that the Defendant has not paid any interest since the loan was advanced to him in 2008.

The parties as well as the courts are bound by the agreement parties voluntarily entered into. The contents of their agreement are admitted and need no proof.

The parties voluntarily entered into the agreements tendered. Particularly Exhibit P3, P4, and P6 are relevant here. Exhibit P4 spells out the terms/repayment schedule of interest on the loan tenor as follows:-

“Term/Repayment Schedule interest:

Interest

***Monthly Interest
Payment and Annual
Principal Repayment
of ₦3,400,000.00 as
per attached schedule***

1st year (Interest on ₦17,000,000.00) : ₦255,000.00 monthly

2nd year (Interest on ₦13,000,000.00) : ₦204,000.00 monthly

3rd year (Interest on ₦10,000,000): ₦153,000.00 monthly

4th year (Interest on ₦N6,800.000) : ₦102,000.00 monthly

5th year (Interest on ₦3,400,000.00): ₦51,000.00 monthly

Tenor

60 months

Pricing

Interest Rate:

18% p.a

Fess – Legal and processing:

1% flat (payable upfront)

Admin Fee:

1% p.a (payable up

front)”

The Defendant agreed to these terms and conditions by affixing his signature on the memorandum of acceptance on 7th April 2008.

The words of the agreement are clear and unambiguous.

He is therefore bound by the repayment schedule he freely and voluntarily agreed to. The court will not make a new contract for the parties.

See UBN LTD & ANOR V NWOKOLO (1995) LPELR-3385 (SC) PAGE 42 PARA D per Iguh JSC; BFI GROUP CORPORATION V BPE (2012) LPELR 9339 (SC) PG 23 PARA C-F per Fabuyi JSC.

Having paid no interest at all since the inception of the loan, I hold that the Defendant is bound to pay interest as agreed by parties in Exhibit P4 as follows:-

1 st year	₦255,000 x 12 months =	3,060,000
2 nd year	₦204,000 x 12 months =	2,448,000
3 rd year	₦153,000 x 12 months =	1,836,000
4 th year	₦102,000 x 12 months =	1,224,000
5 th year	₦51,000 x 12 months =	612,000
TOTAL	-----	₦9,180,000

Accordingly I enter judgement in favour of the Claimant for ₦9,180,000 in line with the agreement of the parties.

The Claimant could not prove the balance of ₦4,062,906.37 that is, ₦13,242,906.37 - ₦9,180,000 = ₦4,062,906.37 claimed. Thus the balance in the sum of ₦4,062,906.37 is hereby dismissed.

(b) The claim of rate of interest at 18% per annum is not indicated as to whether it is a pre or post judgment interest and for what duration. The court will not act on speculation. That claim is dismissed.

(c) I award interest at 10% per annum from today 4th October 2021 until the judgment sum is fully repaid.

(d) On ~~₦~~500,000 claimed as cost of litigation, there is no evidence to prove this claim. However a successful litigant is entitled to normal costs of action. This is a 2013 matter. I award costs of ~~₦~~150,000 in favour of the Claimant against the Defendant.

Hon. Judge