

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT KUBWA, ABUJA

ON THURSDAY, THE 17TH DAY OF JUNE, 2021

BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA

JUDGE

SUIT NO. FCT/HC/CV/268/19

PHOEBE AKKO CLAIMANT

AND

1. VERA ANIGBO DEFENDANTS

2. ALHAJI UMAR SADIQ

JUDGMENT

On the 7/11/19 the Plaintiff Phoebe Akko instituted this action against Vera Anigbo and Alhaji Umar Sadiq via a Writ of Summons filed same date 7/11/19.

According to the Plaintiff the 1st Defendant entered into a loan agreement with the Plaintiff on the 5/6/18. The Plaintiff lent her the sum of ₦2, 000,000.00 (Two Million Naira) at the interest rate of 13% the loan duration was 45 days. The 2nd Defendant accepted the loan and pledged the title documents in respect of the House D5 Rd 10, Congress Court, Sunny Vale, Abuja FCT as collateral.

The Plaintiff and 1st Defendant entered into another loan Agreement on 30/7/18. The Plaintiff lent the 1st Defendant the sum of ₦1.4 Million at the interest rate of

10% for 90 days. 1st Defendant accepted the loan and pledged title documents of House D5 Road 10, Congress Court Sunny Vale Abuja as collateral. The total amount lent to the Defendants was ₦6 Million. When the Defendants defaulted in the repayment of the loan, the Principal and the interest sum increased to ₦9.4 Million as at 20/12/18.

In order to recover same the Plaintiff caused his solicitor Akintola S. Amao to write a letter of Demand to the 1st Defendant. The 1st Defendant responded to the letter on the 26/2/19. She pleaded to repay the total sum of ₦9.4 Million till date the 1st Defendant has refused to live up to that promise she made on the 26/2/2019. The Plaintiff decided to come to Court to seek redress so that the Defendants should pay her the money- principal and accrued interest she's seeking for the following reliefs.

1. An Order directing the 1st Defendant to transfer the charged property- House D5 Road 10, Congress Court Sunny Vale Abuja, out rightly to the Claimant.
2. An Order directing the 1st Defendant to pay to the Claimant ₦4 Million together with the agreed interest of 10% for the 1st 3 months and further interest of 10% quarterly from 10/11/18 until the liquidated sum is fully and wholly paid off.
3. An Order directing the 1st and 2nd Defendants to pay the Claimant the sum of ₦2 Million together with the agreed 13% interest for the first 45 days and thereafter 13% for every 45 days from 21/7/18 and or alternatively
4. An Order directing that the charged property be sold or for an appointment of a receiver for the

purpose of selling the said property to settle the Claimants claimof the proceeds of sale.

5. ~~N~~2 Million as cost of the Suit.

The Defendant filed a 21 paragraphs statement of Defendants both parties testified as sole witnesses respectively.

On the 3/3/21 the Defendant filed her Final Address in her testimony she had confirmed the loan of ~~N~~2 Million given to the 2nd Defendant which she took on behalf of the 2nd Defendant using her family house as collateral. She also confirmed that she personally took another loan for herself- N6 Million still using the said house as collateral for a duration of 90 days. She had confirmed that she had pleaded with Plaintiff to repay the loan and interest instalmentally. She had stated that she had made some repayments through her Access Bank Account 2005224159.

She also confirmed the interest charged on the 2 loans 10% & 13% respectively. In her Final Address she raised 2 issues for determination which are:-

- 1. Whether this Court has requisite Jurisdiction to entertain this Suit.**
- 2. And whether the Claimant has discharged the burden of proof from evidence lead to be entitled to her claims.**

ON ISSUE NO.1 – She submitted that the 2nd Defendant as a dead person is not competent and a juristic person. Again that 2nd Defendant was not served with the processes of the processes of this Suit. That the loan

transaction is illegal and unenforceable by this Court pursuant to S.14 (2) Money Lenders Act.

She submitted they raised the issue of Jurisdiction at this state because Jurisdiction can be raised at any stage in a Suit even on Appeal. He referred and relied on.

ANYANWU Vs. OGUNNEWE (2016) 47 WRN 94

That she brought the knowledge of the death of the 1st Defendant to the Court when his Counsel told Court that the 2nd Defendant was dead from inception. He did so during cross-examination of the Plaintiff. That the Plaintiff had told Court that the 2nd Defendant does not exist and she said that she is not aware of his death and does not know him. That the above inform being sufficient notice of the death of the 2nd Defendant and that Court cannot trivialize same. That 2nd Defendant as dead person is not competent and juristic person party that can sue and be sued in any Court. That any Suit maintained with incompetent and non-jurist person affects the jurisdiction of the Court seized of the matter. He relied on the case of:

ADENIRAN Vs. OLUSOKUM II (2019) 8 NWLR (PT.1673) 98 @ 118 PARA A, @ 123 PARA F-G, @ 124 PARA C-D

That even if the 2nd Defendant is still alive as at the time the action was filed and later died while the matter is pending, the notice or knowledge of his death now requires that Claimant should bring a motion on notice for substitution of the dead man's name with his heir and ask that his name be struck out as he ceases to be a party upon his death. That the 2nd Defendant's name must be because substitutedas judgment will be

binding on his estate and who were supposed to be made a party upon his demise. As such decision will be made without giving them chance to be heard. He referred to the case of:

AKPANIGBO OKADIGBO Vs. CHIDI (2016) 47 WRN 17

They urged Court to strike out the Suit for reflecting the name of 2nd Defendant who is not a competent proper and juristic person. That if Court decides to hold 2nd Defendant as a juristic person that the Court should know that he was never served any process in this Suit. That Plaintiff (PW1) confirm same in her cross-examination when she said that tom the best of her knowledge the 2nd Defendant does not exist and that she has never seen him. That she confirmed that she served the 2nd Defendant through the 1st Defendant who is the person she knew that evidence elicited from Claimant shows that 2nd Defendant was not served any process in this situation that it isthat service of process must be effected on all the parties to a suit otherwise the Suit will be a nullity. He referred to the case of:

ONWUBIYA Vs IKEGBUNAM (2019) 16 NWLR (PT.1697)49

That the Court lack jurisdiction because the loan is illegal and unenforceable by virtue of money lenders Act S.14 (2) that there is no piece of evidence before this Court to establish that any of the requirement of S.14 (2) money lenders Act exists in this contract to vest the Court with the competent jurisdiction to enforce the loan Agreement against the 1st Defendant. That there is no

evidence that cheques was issued by Claimant on her Account in any sum claimed as loan at any licensed bank in favour of the 1st defendant. That Plaintiff claimed that she did so through transfer. That cheque does not mean or include transfer. He referred to the case of:

MASSKEN NIG.LTD Vs AGIP PETRO.LTD (2010) 5 NWLR (PT. 1187) 349

They submitted that this Court lacks jurisdiction to entertain this case and they urge Court to so hold and decline jurisdiction and strike the matter out.

ON ISSUE NO.2- the 1st Defendant submitted that answering the question on the negative that the Plaintiff had not provedher case and is therefore not entitled to the claims as sought.

That Plaintiff failed to discharge the onus of establishing her claims and proving the existence of the facts alleged in her pleadings both in her oral submission and document evidence tendered before the Court.

That the evidence in paragraph 5 of the Statement of Oath is clearly in conflict with and contradicts paragraph 6 of her pleadings and therefore does notand support the said pleadings. She referred to case of:

ASAWO-FILA Vs TOLOFARI (2019) 6 NWLR (PT.1669) 445 @ 475.

She urged the Court to either discountenance or expunge that piece of evidence as contained in paragraph 5 of Statement of Oath and Exhibit 5 which are contrary to and notor support paragraph 6 of the plaintiff's pleadings.

That the claim of the Plaintiff of giving the ~~N~~2 Million and ~~N~~4 Million loan to 1st Defendant cannot stand because under cross-examination the Plaintiff claimed that the 1st Defendant repaid only ~~N~~400,000.00 which is far less than what the 1st Defendant actually repaid going by Exhibit 6.

That that admission negates the Plaintiff's reliefs for full loan and interest refund. That this fact is contrary to the facts in paragraph 7 of the Statement of Oath of the Plaintiff. That that contradiction makes the claim of the Plaintiff ungrantable.

She refers to the case of:

IKEAZU Vs OTTI (2016) 34 WRN 1 @ 47 LINE 10-15

That the 1st Defendant had admitted the loan of N2 Million give to 2nd Defendant where she 1st Defendant signed as Borrower that she denied ever receiving the loan of N6 Million as stated in paragraph 5,7 & 8 1st Defendant Statement of Oath. That she made several repayments through her access bank account into the Plaintiff's zenith account No. 2005221459.

That by her evidence as stated in paragraph 11-13 of her Oath and payment receipts which she tendered before the Court as Exhibit 6. Which the Plaintiff did not contradict she urged Court to apply S.167 EA 2011 as amended.

That juxtaposing the evidence of Claimant to that of 1st Defendant on amount repaid show that the total amount repaid stands at ~~N~~1, 000,000.00 contrary to ~~N~~400, 000.00 claimed by the Plaintiff. That the interest of the

10% and 13% on the ~~₦~~4 Million and ~~₦~~2 Million respectively. That Plaintiff is not entitled to any interest on any of the loan because the interest agreed to be paid by the 1st Defendant as parties agreed.

On the loan are totally contrary to S. 15 and an offence under S.16 money lenders Act. That a look at paragraph 5 & 6 of plaintiffs Oath and Exhibits 1 show that the interest rate is far and above what is supported on the said S.15. That the said interest charge is illegal. That Court cannot lend support to and order payment of interest which shows that offenses have been committed against S.15 & 16 of money lenders Act she referred to the case of:

NWANKWO Vs NZERIBE (2004) 13 NWLR (PT.890) 422

That the interest charged is also against authorized lending rate of the CBN which provides that every lender should lend at one digit rate. She referred to the case of:

OGBOJA Vs. ACCESS BANK (2016) 2 NWLR (PT.1496) 291 @ 323

That by the foregoing decision, this Court lacks jurisdiction to enforce or order for payment of the illegal interest herein she referred to the case of:

AGIP Vs AGIP PETROL INT'L & ORS @ PG 412 PARA E-G, PG 413

On the Plaintiff's claim for order to transfer the interest in House D5 Road 10 Congress Court, Sunny Vale Abuja, the 1st Defendant submitted that this Court lacks jurisdiction to enforce.

The 1st Defendant submitted that the Court should not transfer the said interest in the said property used as collateral for the loan. That Claimant has no right and is not entitled to the interests claim against the 1st Defendant. That the title document which was tendered as Exhibit 4 is not in the name of the 1st Defendant alone and that 1st Defendant is not a sole owner of the property. That she jointly owns the property with another person who is not a party to this transaction or the suit. That the name in the property Exhibit 4 is Mr & Mrs Cyril Anigbo which is not same as Vera Anigbo. Again that there is no evidence on record to show that Mr & Mrs Anigbo consented to or authorized the use of the house as collateral for the loan in issue. That since there is a joint ownership that one party thereon cannot and has no right to divest the interest jointly owned without consent of the other party unless authorized to do so which is not the case in the instant case. She urged Court to so hold in the interest of Justice to the innocent joint owner by rejecting prayer a & d of plaintiff's claim. That not doing so will amount to deciding the legal right of the other joint owner who is not a party to this action without such joint owner been heard which is a violation of that party's right to fair hearing. She referred to the case of:

AKPANGBO OKADIGBO Vs CHIDI (2016) 47 WRN 17

On the Claim of ₦2 Million as cost of the Suit the 1st Defendant submitted that that claim is without iota of evidence and should be refused as it is unreasonable and not to be granted. That the plaintiff is only entitled to balance of ₦1 Million to make up for the loan of ₦2

Million which plaintiff gave to 2nd Defendant through the 1st Defendant. That plaintiff failed to prove that she gave the 1st Defendant a loan of ~~N~~6 Million in support and as such plaintiff is not entitled to the ~~N~~4 Million claimed which she pleaded she urged Court to so hold.

The Plaintiff filed her Final Address date and filed on 5/2/21. In it she raised an issue for determination which is:

“Whether from her pleading and evidence adduced in this case, the plaintiff is entitled to her claims”

She submitted that the establishment of a case in civil matter is as disclosed in the pleading. That the burden is fixed on her to show that she is entitled to her claims based on law and facts. She refers to the case of:

NAT. INV. & PROPERTY CO. LTD Vs THOMPSON ORGANISATION LTD & ORS (2001) 15 WRN 79

That she has successfully proved her case in this matter through her testimony and documents tendered. That a loan for N4 Million between Plaintiff and 1st Defendant dated 30/7/18. That she also tendered and testified on evidence of ~~N~~2 Million date on 5/6/18 signed by the plaintiff and 1st Defendant. That she also tendered the document of title for the property used as collateral for the loans.

That she tendered the Demand Letter date 20/12/18 written by her Solicitor on her instruction and addressed to the 1st Defendant demanding for the payment of the sum of ~~N~~9 Million ~~N~~400,000.00 only. That she also tendered a letter written by 1st Defendant dated 26/2/19

written to Plaintiff through her Counsel where the 1st Defendant pleaded for time to repay the loan of ~~₦~~9.4 Million only. That all documents tendered by Plaintiff were never disputed by the Defendants. That she has clearly and succinctly proved her case and is therefore entitled to her claims. She urged Court to so hold.

That evidence given by her which is not challenged by the Defendants who has all opportunity to defend or challenge same is deemed to be admitted as it remains unchallenged. She referred Court to the case of:

UBN LTD Vs OGBOH (1995) 2 NWLR (PT.380) 647 @ 654 Ratio 11.

That her case documents and testimony were not challenged by defendants and remain uncontroverted and she is entitled to her claims in that regards.

That parties are bound by the Agreement they have entered into. That they are bound by the terms and conditions set out in such agreement. That no Court hasto add or subtract. That Court is there to only interpret such terms and enforce same if allegation of breach is established. She referred to the case of:

AFRA IND.LTD Vs NBC (1997) 1 NWLR (PT.483)

That 1st Defendant is bound by the terms and conditions of the 2 loan Agreement which she entered into with Plaintiff and which she signed on 30/7/18 for ~~₦~~4 Million and dated 5/6/18 for ~~₦~~2 Million respectively and the agreed interest which has accumulated on the loans. She urged Court to grant the Claims.

That by the facts in the pleadings and the unchallenged evidence adduced, she urged Court to grant her claims having so established same.

COURT:

Pacta sunt servanda is a latin maxim which means that parties to a contract must obey and observe the agreement they have entered which is not fraudulent. It is a mantra that is chartered by parties to a contract counting that the parties to such Contract Agreement must observe the terms and condition in that contract which they where observing such terms has been made impossible by this is so whether the contract was entered in writing or by oral or body language and actions of such parties. The doctrine of Pacta sunt servanda encapsulates the necessity of the parties honouring undertakings which they have agreed to and which are legally enforceable. That's what the Supreme Court decided in the case of:

A-G NASSARAWA Vs A-G PLATEAU STATE (2012) 10 NWLR (PT.419)

RIVERS STATE Vs BAYELSA STATE

Going by the said maxim- Pacta Sunt Sarvanda no party is allowed to resile unilaterally from the commitment which both parties have signed. Once signed parties are bound by such terms. See A-G NASSARAWA Vs A-G PLATEAU SUPRA

Once there is privity of contract between the parties thereto a party can enforce such contract. That's Court decision in the case of:

UBN PLC Vs SOARES (2012) 11 NWRL (PT.550)

Once a party has availed herself of the benefits of the contract entered into such party cannot resile from such contract. Where she does, it is a breach of the contract. The other party to the contract has a right to seek redress and claim damages. See the case of:

DASPAN Vs MANGU LOCAL GOVT. COUNCIL (2013) 2 NWLR (PT.203)

Once parties have taken bold steps in the contract, they are bound. That means where there was an offer there was an acceptance and where applicable parties have signed the dotted lines in the agreement and one party has enjoyed the goodies arising from the contract such party cannot turn around after and start crying wolf. See the case of:

LAGOS STATE Vs TOLUWASE (2013) 1 NWLR PG.555

That is so once there is complete agreement on all the material terms of the contract. That means once there is contractual intention and consideration there is a valid contract and parties are bound by it. That's the Supreme Court decision in the case of:

AKINYEMI Vs ODU'A INV.CO.LTD (2012) 17 NWLR PG.209

Where all the requirement of a valid contact is present the Contract Agreement is complete and competent. It is imperative to state that no Court of law is allowed to re-write the terms and condition or the agreement properly made by parties in a contract. The duty of a Court is only

to interpret the clauses written in a Contract Agreement see.

CALABAR CEMENT CO.LTD Vs DANIEL (1991) 4 NWLR (PT.188) 750

OSAKWE Vs NIG. PAPER MILLS LTD (1998) 10 NWLR (PT.568) 1

NIGER DAM AUTHORITY Vs LAJIDE (1973) 5 SC 207.

OLAMIYAN Vs UNIVERSITY OF LAGOS (1985) 2 NWLR (PT.9) 599

In the interpretation of a written Agreement the Court must confine itself to plain words. It has no right to add or subtract. See the case of:

MOHAMMED Vs MOHAMMED (2012) 11 NWLR PG1

ABALOGUN Vs SPDC NIG. LTD (2003) 13 NWLR (PT.837) 308

In as much as it is not the duty or function of the Court to make Contract between the parties the Court has the duty to construe the terms of the Contract and its surrounding circumstances including written and oral statements and action of the parties in order to effectuate the intention of the parties in a Contract. That's the Courts decision in the case of:

OMEGA BANK Vs OBC LTD (2005) 8 NWLR (PT.928) 547

An aggrieved party to a contract has a right to seek redress in Court where the other party or parties have violated or breach any of the terms of the contract or put different where such party has failed to fulfil its own side

of the obligation in the contract as willingly agreed. Where such aggrieved party has been able to establish the alleged breach, he/she it as the case maybe is entitled to damages for the breach. That means that the Judgment will be entered in its favour in that case.

The Plaintiff in this case

Phoebe Akko has alleged that the Defendant's particularly the 1st Defendant; Vera Anigbo had breached the Contract Agreement she entered into with the plaintiff in that she failed to repay the loan advanced to her and the loan advanced to the 2nd Defendant who she and on behalf of who she took the 2nd loan. The Plaintiff had urge Court to enter Judgment in her favour and grant the reliefs sought. She had tendered several documents which included the loan Agreements, the letter of Demand to 1st defendant. The Response of the 1st Defendant to her letter begging for time to repay the loan and accrued interest. She tendered the documents of title too. The Defendant denied the loan and claimed that it was contrary to the extant provision of the money lenders Act and that she paid some part of the interest (N417, 000.00) and that the Court has no Jurisdiction to entertain the suit she tendered the evidence of repayment.

But from the totality of the evidence and oral testimony of the parties for and against the Suit, can it be said that the plaintiff has been able to establish her allegation of breach of contract against the Defendants especially the 1st Defendant who signed the 2 loan Agreements, so much that this Court should grant her claims as sought.

OR

Can it be said that the Defendants especially the 1st Defendant had been able to controvert, challenged and rebutted the case of the Plaintiff and that the Court should hold that Court has no Jurisdiction to entertain the suit and that the suit or the Contract was caught up by the money lenders act and that the interest rate charged was illegal as the said rate of interest was outside what the CBN provided for and that the plaintiff has not been able to establish their case and discharged the onus on her to do so. And that the 2nd Defendant was not served with the Court processes against Defendant claim.

It is the humble view of this Court that the Plaintiff has establish her case of breach of Contract against the Defendants, especially the 1st Defendant with both her watertight oral testimony in chief and during cross-examination and also through the documents she tendered which spoke louder than any oral testimony/evidence.

She is therefore entitled to her claims as required by law. The Defendants especially the 1st Defendant who also is the mouth piece of the 2nd Defendant who this Court believes never existed by only in statement and who the 1st Defendant claimed she borrowed one of the moneys for had not been able to controvert, effectively challenged or rebutted the plaintiff's water-tight evidence even under cross-examination.

It is also the humble view of this Court that this Court has the requisite jurisdiction to entertain this suit. This

Contract is not in any way affected by money lenders Act. The issue of the interest rate being outside the CBN recommendation does not and cannot start. There is no illegality in the Contract Agreement between the parties in this case.

To start with the claim by the 1st Defendant that the 2nd Defendant was not served with the Court process is not true. The 2nd Defendant was served with the said processes and Hearing Notices through the 1st Defendant who had endorsed receipt of the processes going by the evidence of service of the process in the Endorsement and return copy of the process. The address for service of both Defendants are the same even as shown in the Writ where it was clearly indicated thus:

“Alhaji Umar Sadiq c/o Mrs. Vera Anigbo House D5, Road 10 Congress Court Sunny Vale Abuja”

A closer look at the loan Agreement of 5/6/18 showing that the address of the 2nd Defendant is same as the address of the 1st Defendant. To that extent this Court holds that service of the process on the 1st Defendant as endorsed and acknowledged by her is perfect service of the same documents Originating Processes and Hearing Notices on the 2nd Defendant. So the claim that 2nd Defendant was not served as alleged by the 1st Defendant is grossly misconceived and deceiving. That false and unsubstantiated allegation is dismiss. This Court holds against that it has every requisite jurisdiction to entertain this suit. This suit is proper before this Court. The 2nd Defendant was served via the 1st Defendant. The action of 1st Defendant is same as that that of the 2nd

Defendant. After all the 1st Defendant borrowed the money on behalf of the 2nd Defendant.

A closer look at the document –Agreement signed by the parties put no one in doubt that there is a valid subsisting loan Contract between the parties. The Defendants did not deny that. The 1st Defendant confirmed that in both her statement of Defence her testimony in Court and the letter of demand which she responded to.

In her statement of defence she said:

“...the 1st Defendant approached the Plaintiff with the 2nd Defendant,..... to enable the 2nd Defendant execute contract awarded to the 2nd Defendant...”

In paragraph 5 of her Statement of Defence she said:

The 1st Defendant admitted paragraph 4 & 5 of Statement of Claim...

“...that the 2nd Defendant was known to her (-1st Defendant) as a person of good character and the sum of ₦2 Million only was given to the 1st Defendant (on behalf of the 2nd Defendant.”

Paragraph 6:

“...the Claimant agreed to raise the sum of ₦2 Million and the 1st Defendant

... take it on behalf of the 2nd Defendant with her family house a collateral.”

In paragraph 11 the same 1st Defendant stated under oath that:

I was always repaying the money raised by the Claimant to the DEFENDANTS in instalment as later agreed and permitted by the Claimant.

Paragraph 12:

I made several repayment of the money raised by the Claimant.

Paragraph 16 & 17

“... the Claimants agreed and permitted the execution and repayment plan...requested byfor the repayment of the bail of the fund raised.

All the above paragraphs which are contained in both the statement of oath and statement of defence need no further elucidation. The bottom line is that there was a clear legitimate binding contract loan agreement between the Plaintiff and 1st Defendant who acted and borrowed money for and on behalf of the 2nd Defendant.

It is instructive to know that the same 1st Defendant signed both contracts dated 5/6/18 and 30/7/18 she never doubled borrowing the money in the loan agreement of 30/7/18. She signed both agreements as borrower as can be seen in the contract Agreements at the signature columns.

In the Contract of 5/6/18 she stated in the 1st paragraph thus:

I Vera Anigbo of House D5 Road 10 Congress Court Sunny Vale on behalf of Alhaji Umar Sadiq hereby referred to as the Borrower

In the signature column she signed thus:

Vera Anigbo

(Borrower)

By that it puts no one in doubt about who the Borrower in both Agreement is of course the borrower is the 1st Defendant Vera Anigbo the 1st Defendant in this Suit. The 2nd Defendant never signed any Agreement with the Plaintiff going by the Agreement. The 1st Defendant never show that the 2nd Defendant whom the Plaintiff described as none existent never signed any agreement with the Plaintiff in this case.

Again the 1st Defendant never presented any document before this Court to show that she signed the loan for the 2nd Defendant and that the parties agreed that 2nd Defendant was to repay the loan and accrued interest. Her failure to do so waters down her defence in this case. It made the Claim of the Plaintiff in that regard to be uncontroverted. So this Court holds.

Again a look at paragraph 3 of the loan of the 5/6/18, it shows that the loan was to be repaid within 45 days and that the interest rate is 13% starting from the day the account of the borrower Vera Anigbo was funded. It is imperative to point out that the 1st Defendant never tendered any evidence or made any oral testimony showing that the money ₦2 Million was paid into the Account of the 2nd Defendant. That's why this Court holds that in that loan of ₦2 Million the borrower is Vera Anigbo and that the so called Alhaji Umar Sadiq never existed as far as this case and the loan agreement is concerned. The 1st Defendant Vera Anigbo is the borrower of the 2 loans and she knows that.

Again the issue challenging the interest of 13% by the 1st Defendant cannot stand it is deceptively misconceived because of the interest rate of 13% and the duration of the loan was detailed stated clearly in the said agreement- paragraph 3 of the Agreement of 5/6/18 and in paragraph 3 of Agreement of 30/7/18. Where the duration was for 90 days.

In the Agreement of 30/7/18 it was equally clearly and vividly stated in paragraph 4 that:

“The loan amount of ₦4,000,000 will be credited in full and 10% accrued interest will be paid every month for the period of 3 months in lieu of, while the principal amount will be paid at the end of the Three months.”

The above term of the contract as regard the percentage payable, the duration of the loan and repayment plan is not in doubt. It also needs no further elucidation or interpretation.

Again it was not in doubt what the collateral for the loan was. Going by the agreement of parties it was clearly stated that in paragraph 5 of both Agreements what the collateral is:

“the property of Mrs Vera Anigbo situate at Sunny Vale is to be used as collateral for the above said loan (Original property papers and property plan attached) which is with the Borrower (Phoebe Akko) will also serve as collateral.”

That document is in the custody of the Borrower-Plaintiff and was tendered.

Again the contract Agreement spelt out in clear terms a what will happen when the Borrower defaults to pay back the loan as at when agreed by parties. In the same document particularly in paragraph 6 in both Agreement they agreed that:

Paragraph 6:

“failure to pay back this loan as at when agreed, the property SHALL be transferred outrightly to the Borrowee- the Plaintiff Phoebe Akko.”

The above like all other terms and conditions in the Agreement is very clear.

It has been held in plethora of cases, it is also trite that once a party is aggrieved about a breach of any of the terms of contract that party has a right to come to Court to seek redress. Again once a party has successfully established a breach of the contract that party has a right to be paid damages against the party in breach of such contract.

It is also the law and has been held in plethora of cases and it is equally trite that where there is allegation that person is being owe some money that such person must make a formal demand for the repayment of the money before going to Court to seek redress or for the repayment in order to succeed with such Claims. In this case the Plaintiff before coming to this Court had demanded for the repayment of the loan and the accrued interest there from the 1st Defendant who borrowed the money from her. The 1st Defendant acknowledges that. They did so by instructing her Counsel to write formally to the 1st Defendant demanding for the repayment of

both the loan and the interest accrued. She tendered the letter before this Court. That letter was dated 20/12/18. The 1st Defendant acknowledged Receipt on 14/1/19. The said letter was captioned.

Demand for Repayment of N9.4 Million due to Phoebe

In paragraph 1 the solicitor Akintola S. Amao & Co wrote:

“It is the instruction of Phoebe Akko ... to demand and recover from you the sum of ₦9.4 Million as a sum of money due and payable to hera growing concern which was mutually entered into on 5/6/18 and 30/7/18respectively.”

The letter it further stated that:

“In view of the foregoing we humbly demand that the sum of ₦9.4 Million be paid into as.....”

The letter further gave the notice to the 1st Defendant that the Plaintiff will, where Defendant fail to pay:

“... we shall be left with no option other than to move against the pledged property legally as provided for in your agreement.”

The 1st Defendant responded to the letter. The Plaintiff as a law abiding citizen also attached the 1st Defendants response to the letter dated 26/2/19. In her opening paragraph in the letter she said the 1st Defendant wrote:

“I write to beg for more time to be given to me to meet up the obligation of the Loan Agreement between I the (Borrower) and Mrs. Phoebe Akko the (Borrowee)”

She stated her reason for extension of time which she claimed was on ill-health and the contract not yet executed as at that time. She further stated:

“I am begging that the said litigation should not be carried out and I am also begging that I will be paying the sum of ₦500,000every month starting from the month end of March 2019 when lump sum will be paid to clear... I will clear up the balance of the loan.”

She ended by saying thus:

“thanks and I hope and beg that I should be considered.”

From the above, there is no doubt that there was a loan, there was default in repayment. There was demand to repay loan and interest. There was response to the demand asking for extension of time to repay instalmentally. There is no denial of the amount owed- ₦9.4 Million there was no doubt about who the borrower is and who will repay the money. It was clearly stated and known that Vera Anigbo the 1st Defendant in this case is the borrower of the said money who defaulted to repay the money she borrowed from Phoebe Akko.

The collateral was known and properly identified. And the document was given to Phoebe as it was attached to the Agreement as stated in paragraph 5 of the agreements. The 1st Defendant never distinguished the ownership of the property as at the time it was presented to the Plaintiff as collateral. She had given impression that the document was document of title and the plan of her property the Plaintiff only had access to that document because the 1st Defendant presented that to her -(Plaintiff) stating that the property belongs to her.

There had not been any challenge as to the ownership of the property throughout the.....of the case and the Agreement that property solely actually belongs to the 1st Defendant that was why she presented as the collateral for the loan.

The claim of 1st Defendant that the property does not belong to her cannot stand.

This Court believes the Plaintiff and also holds that she had established her case against the Defendants. This Court holds that she-Phoebe Akko is entitled to her claim. This Court has the requisite jurisdiction to entertain this Suit. The 1st Defendant did not present any document before this Court to show that the 2nd Defendant existed and that he had died as she claims. The loan is enforceable and is not caught up by S.14 (2) Money lenders Act. The Contract was a simple contract entered into legally legitimately and voluntarily by the parties. The 1st Defendant Vera Anigbo enjoyed the contract she utilized the money lent to her. She never raised any issue concerning money lenders act until she was asked to write her final Address. She never raised that of Money Lenders act when she begged for time to repay the loan instalmentally until now when Plaintiff had served her to pay what she borrowed. It is the right of a Defendant to use all the arsenal in her cupboard to defend herself. But it is for the Court to consider all the issues before it and follow the due procedure permitted by law and as laid down in the Rules of Court to determine the issues before it and administer justice as is just and proper.

This Court had considered the case of the parties and had noted the documents attached by the 1st Defendant evidencing repayment of some money. This Court hereby grants the Claim of the Plaintiff to wit because her case is established and meritorious

Prayer b & c are granted as prayed.

The 1st Defendant is hereby directed to transfer the charge property..... House D5 Road 10 Congress Court, Sunny Vale Abuja FCT or to be sold for the purpose of settling the Claimants Claim out of the proceed of the sale by deducting the outstanding balance due to Plaintiff which covers both the loan and interest accrued to defray the said amount owed to the Plaintiff the remaining amount after all deductions shall be returned to the 1st Defendant.

The Defendant is to pay the Plaintiff ₦100, 000.00 as cost of this Suit.

This is the Judgment of this Court.

Delivered today the ____ day of _____ 2021 by me.

**K.N.OGBONNAYA
HON. JUDGE**