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

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT KUBWA, ABUJA

ON MONDAY THE 12TH DAY OF SEPTEMBER, 2022

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

SUIT NO.: FCT/HC/CV/836/2020

BETWEEN:
DANIEL ADEOGUN ------- } CLAIMANT

AND

1. JULIET ONUNKWO
2. NEDUJU GLOBAL RESOURCES LIMITED --- } DEFENDANTS

JUDGMENT

On 17th July, 2020 the Claimant – Daniel Adeogun instituted this action against the Defendants – Juliet Onunkwo and Neduju Global Resources Limited claiming the following Reliefs:

1. An Order directing the Defendants to jointly and severally pay the sum of Nineteen Thousand, Four Hundred and Ninety Six Pounds, Fourteen Pence (£19, 496.14) to the Claimant being outstanding balance and interest sum of the sum of money unpaid to the Claimant for the loan obtained by the Claimant on behalf of the Defendants.

2. **An Order directing the Defendants to pay the Claimant Ten Percent (10%) of the Judgment sum monthly, from the date of Judgment till the entire Judgment sum is fully liquidated.**

3. **An Order of Court directing the Defendants to pay the sum of Five Million Naira (₦5, 000,000.00) as General Damages and cost of this Suit.**

4. **Omnibus.**

It is the story of the Claimant that he obtained loan of Twenty Five Thousand Pounds (£25, 000.00) from the Lloyds Bank for the Defendants who deceivingly told him that they have a contract awarded to them by the Ministry of Niger Delta. The loan was with liquidated interest. The Claimant did so when the Defendants told him that as mere visitors to United Kingdom, they cannot and do not have what it takes to access the loan directly from the Lloyds Bank. They could not meet the requirements and criteria required by the Bank. The Claimant staked his head, obtained the loan for the Defendants, handed over the money to them on three (3) tranches.

In the Loan Agreement, the Claimant on behalf of the Defendants entered into an agreement with the Lloyds Bank for the said loan of Twenty Five Thousand Pounds (£25, 000.00) charging the monthly interest sum of 515.31 on the said loan of Twenty Five Thousand Pounds (£25, 000.00) for a tenure of Eighty Four (84) months

bringing the accumulated and calculated loan and the interest thereof to the total sum of Forty Three Thousand, Two Hundred and Eighty Six Pounds, Four Pence (₤43, 286.04).

To the Claimant's shock and chagrin, the Defendants refused to pay/refund the loan and refused to pay the interest on the loan. They attached EXH 1, 2, 3 & 4.

The Claimant demanded for repayment. The Defendants acknowledged their responsibility to repay the loan and the corresponding liquidated interest. They also pleaded for more time as shown in **EXH 6 & 8.** When they failed to live up to their promises, the Claimant reported the matter to Economic and Financial Crimes Commission (EFCC). The Defendants, sensing the danger ahead, made an undertaking to repay the loan and the liquidated interest in order to avoid prosecution. They paid Twenty Three Thousand, Seven Hundred and Thirty Eight Pounds, Nine Pence (₤23, 738.9) leaving a balance of Nineteen Thousand, Four Hundred and Ninety Six Pounds, Fourteen Pence (₤19, 496.14) unpaid. The Claimant made several demands for the Defendants to pay but they refused.

In order to get them pay the balance he instituted this action claiming the Reliefs that were already read out above. The Claimant tendered Ten (10) documents marked EXH 1 – 10. The Claimant opened his case and called a Witness. The Defendants jointly filed Statement of

Defence. The Claimant filed a Reply to the Statement of Defence.

In his Final Written Address the Claimant raised 2 Issues for determination which are:

(1) **"Whether the relevant Exhibits tendered before the Court expresses the intention of the parties for the Defendants to be liable to defray the loan of Twenty Five Thousand Pounds (£25, 000.00) and the known interest as shown in the Exhibits.**

(2) **Whether the Claimant has proved his case on the balance of probability to be entitled to the Reliefs sought."**

On Issue No. 1, he submitted that it was the intentions of parties that the Defendants were liable to repay the loan and the known liquidated interest thereof as shown in Exhibit 1. That the Defendants consented to the loan between the Claimant and Lloyds Bank and as such they are liable to pay the head loan and the agreed interest thereof. He referred to averment in the Statement on Oath of the Claimant and EXH 1, 2, 3, 4, 6, 8 & 9. That the loan and interest are well known to the Defendants before the loan was disbursed as the method of payment was contained in the Loan Agreement.

That the Defendants wrote to Claimant as shown in EXH 2 and agreed to the said loan and the liquidated interest.

That failure of the Defendants to repay the loan and the liquidated interest made the Lloyds Bank to attach the Claimant's salary and other properties for recovery of the loan and the liquidated interest. That the loan is not a business transaction with the Defendants, not an investment. That the interest was as charged by Lloyds Bank. They urged Court to hold that the Defendants are liable to defray the outstanding balance of the loan and the liquidated interest thereon. He relied on the cases of:

CDC V. SCOA
(2007) 6 NWLR (PT. 1030) 300 @ 366

S.S. Gmba V. T.O. Industry
(2010) 11 NWLR (PT. 1206) 585

Ogundipe V. Obasuyi
(2015) LPELR – 25813 (CA)

Ifeanyichukwu Trading V. Onyesom Community Bank
(2015) 17 NWLR (PT. 1487) 39 – 40

On Issue No. 2, whether he has proved his case on balance of probability, he affirmed that he has and that he is entitled to all his Reliefs as sought.

That the Defendants rested their case on that of the Claimant after filing their Statement of Defence. That they did not call any Witness to testify on its behalf because they want to avoid Cross-examination by the Claimant's Counsel.

That by that, the Claimant has minimal evidential proof of its case and that his evidence is uncontroverted and overwhelming.

That the Defendants affirmed their indebtedness by repaying part of the loan and liquidated interest having repaid Twenty Three Thousand, Seven Hundred and Thirty Eight Pounds, Nine Pence (£23, 738.9) leaving the balance of Nineteen Thousand, Four Hundred and Ninety Six Pounds, Fourteen Pence (£19, 496.14). He relied on the following cases:

Arowolo V. Olowokere
(2011) 18 NWLKR (PT. 1278) 280

Ayuya V. Yorin
(2011) 10 NWLR (PT. 1254) 135 @ 162

Unical & Or V. Effiong & Ors
(2019) LPELR – 47976 (CA)

Visitor Imo State University & Or V. Okonkwo & Ors
(2014) LPELR – 22458 (CA)

Uzodinma V. Izunaso (No. 2)
(2011) 19 NWLR (PT. 1275) 30 @ 58

Babale V. Eze
(2011) 11 NWLR (PT. 1257) 48 @ 106

Akinsule V. Ogunyanju
(2010) 12 NWLR (PT. 1261) 262 @ 286

He urged the Court to resolve all the Issues in their favour and grant the Reliefs as sought.

On their part, the Defendants did not deny the loan or the liquidated interest. But they claim that loan was based on a futuristic contract project. But that the loan came before the contract. That payment of the interest was futuristic too. That there was no evidence to show that the Claimant actually got the loan from Lloyds Bank as the loan document – EXH 1 was not signed or signed with a different signature. That there is inconsistence in EXH 1 and the signature in the Statement on Oath. That there was no Agreement between Lloyds Bank and the Claimant. She referred to EXH 2. That they have had a business partnership with the mindset of the parties to profit share same.

The Claimant did not find out if the Defendants acted bonafide with regard to the contract.

The Defendants rested their case on that of the Claimant and in their Final Written Address they raised four (4) Issues for determination which are:

(1) Whether from EXH 1, there exists privity of contract between the Defendants and Lloyds Bank as to bind the Defendants into the payment of the interest on the loan between the Claimant and Lloyds Bank simpliciter?

(2) Whether under our extant laws, this Court is entitled to view EXH 2 as a construct of 1st Defendant's exuberant emotion rather than an agreement properly so called?

(3) Whether under our system of jurisprudence the Claimant in his personal capacity is entitled to be paid interest on the loan disbursed to the Defendants herein?

(4) Whether by S. 101 of the Evidence Act, this Court is empowered to determine the identity of a signor from competing different signatures in evidence received into Court?

On Issue No. 1, they submitted that the Defendants were not privy to EXH 1 – Agreement between the Claimant and Lloyds Bank. That the loan was personal. That the Defendants did not authorize the loan. There is no nexus between the Defendants and the Lloyds Bank on the loan. That the loan was not obtained for the benefit of the Defendants. That there is no Statement of Account to show the disbursement of sum claimed. They urged Court to discontinuance the submission of the Claimant.

On Issue No. 2 – on the EXH 2 as exuberant emotion of the Defendants rather than as an agreement, they submitted that written agreement can only exist where 2 or more persons are involved. That the EXH 2 is a letter written by 1st Defendant and not executed by the Claimant.

That EXH 2 is not an agreement and should not be treated as one. That obtaining the loan was based on a partnership between the Claimant and the Defendants. That parties believed that the profit from the contract will be shared between the Claimant and Defendants. They relied on the cases of:

Ali V. Ahmed
(2019) All FWLR (PT. 990) 1444

Layade V. Panalpina World Transport
(1996) LPELR SC 14/1993

Maeskhie V. Winline Nigeria Limited
(2015) All FWLR (PT. 808) 672

That claim of interest in the loan is a non-sequitor as Defendants are not liable to pay any interest.

On Issue No. 3, they submitted that the Claimant is not entitled to any interest on the loan disbursed to the Defendants. That the Claimant is not entitled or licensed to act as money lender under our jurisprudence. He is not entitled to charge interest on loan given out to the Defendants. They referred to the cases of:

Amos V. Photo Place Limited
(2014) All FWLR (PT. 1744)

Chimezie V. Nwaturuocha
(2016) All FWLR (PT. 823)1979

They urged Court to so hold.

On Issue No. 4 – on S. 101 of the Evidence Act, whether the Court is empowered to determine the identity of a signature comparison. They submitted that the document in evidence – EXH 1 was signed by the Claimant on the 22nd of June, 2012. But the signature in the Statement of Claim signed by the same Claimant bears a different signature. That the inconsistency in the signature makes the submission of the Claimant to be inconsistent. That it makes the 2 documents to fail to satisfy the requirements of S. 101 of the Evidence Act. That the Claimant did not lead evidence as to the disparity. Hence, the documents and his case should be discountenanced as the signatures were not made by the same person.

They urged Court to dismiss the claim of the Claimant as regards the interest on the said loan. That the Defendants has paid out the amount of the loan as per the intervention of the EFCC.

THE CLAIMANT'S REPLY ON POINTS OF LAW TO THE DEFENDANT'S FINAL ADDRESS

BRIEF INTRODUCTION

1.1 The Defendants upon been served with the Claimant's final address on the 29/3/2022, the Defendants filed and served the Claimant it's own final address on the 27/4/2022.

1.2 The Defendants who had filed statement of defence, abandoned same and rested their case on that of the Claimant, attempted to build in their final address, a case totally different from the case presented before the court by the Claimant.

1.3 The Defendants also in their final address resulted to technicality as defence to the suit. Thus, the Defendant's final address is riddled with excessive technicality as their Defence to this suit.

1.4 We humbly submit that the arguments of the Defendants as contained in their final written address shows a misconception of the case of the Plaintiff.

1.5 It is settled law that what determines the subject matter of a case is derived from the Writ of Summons and Statement of Claim or Counter Claim as the case may be. In this case, the Defendants have no Defence or counter claim, and so, it is only the case set out by the Plaintiff that determines the substance of the issues to be resolved by the Court.

ARGUMENTS ON POINTS OF LAW

1.6 The substance of the Plaintiffs' case is whether by series of exhibits tendered and admitted, the Defendants agreed to defray the loan of £25,000(Twenty Five Thousand Pounds) plus the liquidated interest given the total sum of £43,286.04(Forty Three Thousand, Two Hundred and Eight Six Pounds, Four Pence) advanced to the Claimant by Lloyds bank, London and as shown on exhibit 1.

1.7 We submit that the law is settled that in the consideration of a relationship where series of correspondences have been written, it is the duty of the court to consider all the correspondences in order to decipher what the letters are saying with regards to the relationship. See the case of **UDEAGU V. BENUE CEMENT CO. PLC (2006) 2 NWLR(PT 965) 600.**

1.8 IN SYNDICATED INVESTMENT HOLDINGS LTD. V. NITEL TRUSTEES LTD & ANOR(2015) 16 NWLR (PT. 1486) P. 454, the court held as follows:

> "It is trite that a binding contract is formed when there is an offer, an acceptance and consideration; that where the parties rely on documents as evidencing the offer, acceptance and consideration, the question whether the documents satisfy the requirements for the formation of a contract depends upon the ascertainment of the parties contractual intention by a process of the construction of the documents. There are three documents involved in this contract. It

is trite that all the documents have to be read together in order to identify the terms and real intentions of the parties. In doing so, the Court adopts the objective test in ascertaining the parties' intentions”

Also ALUKO & ANOR V. INTERCONTINENTAL PROPERTIES LTD & ORS (2015) LPELR-24776 (CA), THE COURT HELD AS FOLLOWS

"Where it is contended, as in this case, that a contract exists between parties on the basis of a series of correspondence between them, the law is that; "... the Court will take into consideration the whole of the correspondence which has passed and, will not necessarily draw the line at any particular letter or letters which might have afforded evidence of a contract if considered apart from the rest" per Lord evershed M. R; in FOWLER v. BRATT (1950) 2 KB 96, 101 quoted with approval by the Supreme Court in EJUETAMI v. OLAIYA (2001) 18 NWLR (746) 572, 594. See also SHELL BP PETROLEUM DEV. CO. v. JAMMAL ENG (NIG) LTD (1974) 4 SC 33, 72."

Per EKANEM ,J.C.A (Pp. 10-11, paras. F-C)

1.9 In the instant case, in order decipher the intention of the parties, to wit; that the Defendants received the said loan of £25,000(Twenty Five Thousand Pounds) plus the liquidated given the total sum of £43,286.04(Forty Three Thousand, Two Hundred and Eight Six Pounds, Four Pence) and agreed to repay the loan and the corresponding liquidated interest either to the Claimant or directly to the Lloyds bank where the loan was obtained, the Claimant tendered exhibits 2, 3, 4, and 8 respectively.

1.10 So sad the Defendants in their final address purposely refused to give credence to exhibits 2, 3, 4 and 8 evidencing clearly how the Defendants received/ agreed to defray the said loan of £25,000(Twenty Five Thousand Pounds) plus the liquidated interest given the total sum of £43,286.04(Forty Three Thousand, Two Hundred and Eight Six

Pounds, Four Pence) to either directly to the Claimant or to Lloyds bank where the loan was obtained.

1.11 It is settled law that in determining a case, the Courts have been enjoined to consider the totality of the documentary evidence before the Court, and not just isolated documents.

We refer My Lord to the case of **LEYLAND (NIG) LTD V. DIZENGOFF W.A (1990) 2 NWLR (PT. 134) 610 at page 620 paragraph F-G,** wherein it was held thus:

> ***"It is not the duty of the court to determine the issues before it on the basis of one document only, when the contract is contained in a series of documents or letters. The court is under a duty to consider the whole of what has passed between and the conduct of the parties."***

Also, in the case of **UDEAGU V. BENUE CEMENT CO. PLC (2006) 2 NWLR (PT. 965) 600, 628 PARA A**, it was held thus:

> ***"In a contractual relationship where the contract agreement is contained in a series of documents or letters or correspondences, the court is under a duty to consider the whole of what has passed between the conduct of the parties..."***

A consideration of the totality of the documentary evidence before the Court would show that the Plaintiff has established their case on the balance of probability.

Paragraph 3 of the said **exhibit 2** provides as follows:

> "***We also agree that the interest and capital will be paid monthly by Neduju Global Resources/Mega Trends to the bank where the loan was given or to Mr. and Mrs. Daniel Adeogun through Onunkwo Juliet"***

Also at paragraph 21 of the statement of claim, the Claimant Cleary pleaded as follows:

> ***"That the tenure of 84 months for the repayment of the loan had long lapsed and the Lloyds bank London has***

been attaching my salaries and other properties for recovery of the loan"

1.12 We also respectfully submit that it was the agreement of the Defendants by series of exhibits admitted in this case to either pay back the loan to the Claimant or directly to Lloyds' Bank, London where the loan was obtained by the Claimant and we urge the court to so hold In **UZOR & ORS V. EZIMUO MICROFINANCE BANK (NIGERIA) LTD. (supra).**The court held as follows:

> "The 1st and 3rd appellants accepted and knew ab initio that the debt shall rise and continue to rise owing to the periodic accruals of interest and other penalties stipulated in Exhibit A, C and D. The rates of interest and penalties accruable were ab initio fixed, certain and known to the 1st appellant as per the terms of the agreement contained in Exhibits A, C and D…."

1.13 Very strange as it appears, the Defendant after refusing to give evidence in order to be cross examined on the series of correspondences evidencing the disbursement of the said loan of £25,000 pounds to the Defendants by the Claimant argued at page 10 of their final address that there was no evidence that there was loan advanced to the Claimant by Lloyds bank.

1.14 We submit that **exhibit 1** is the original loan agreement between the Claimant and the Lloyds bank. The said exhibit 1 was tendered without objection and the said exhibit shows clearly how the loan of £25,000 pounds was disbursed to the Claimant and the repayment pattern. During cross examination, the Claimant explained how the said loan was given to the Defendant in tranches as follows:

Question. Is it not true that on the 29/6/ 2019, what you release is 11 thousand pounds to the Defendant?

Answer: yes because every account has a daily limit.

Question: the daily limit stretched to 6th July, 2012?

Answer: yes because she has no U.K account so I went to the bank and cash the money out.

The Claimant's above clarifications during cross examination was most significantly evidenced by **exhibit 3.**

1.15 Significantly paragraph 1 of exhibit 2 prepared and signed solely by the Defendant provides as follows: "

> "***The <u>sum of twenty five thousand pounds</u>, was borrowed to Mrs. Juliet Onunkwo by Mr. and Mrs. Daniel Adeogun on this date 25th June,2012, <u>in respect to a contract execution being awarded by Niger Delta Ministry Abuja</u> to Neduju Global Resources and Mega Trend Company Nigeria Limited***"

1.16 Also Exhibit 6 is an Email and Whatsapp correspondences between the 1st Defendant and the Claimant, on the demands to defray the said loan of£25,000(Twenty Five Thousand Pounds) and the liquidated interest thereof. In the 4th sentence of the email, the 1st Defendant passionately pleaded for time to defray the said loan of £25,000(Twenty Five Thousand Pounds) and the liquidated interest.

The 4th sentence of the email reads as follows:

> ***"I wish to pay off the accumulated capital within six months by god grace and if I happen to get added money before them, I will also send. But if after the six months nothing and know payment, you can take any action you feel you wish. Thanks for your understanding"***

1.17 Another important express intention/agreement to defray the said loan of £25,000(Twenty Five Thousand Pounds) by the Defendants was expressed in the Defendant's solicitor letter (exhibit 8). Paragraph 2 of exhibit 8 provides as follows;

> ***"Our client is not in denial of the fact that Daniel obtained a loan from Lloyds bank TSB bank London to the tune of loan of £25,000(Twenty Five Thousand Pounds)."***

Also paragraph 3 of the said exhibit 8 provides as follows

> ***"Since your client petitioned the EFCC through your office, our client has been making deposits with the commission as she covenanted to do in other to defray the loan sum….."***

Paragraph 6 of the said exhibit 8 also provides as follows:

> ***"It is our client intention to repay the loan and at every point she has made effort to deposit money with the EFCC. We therefore crave your indulgence to allow the sequence of***

payment to continue as the primary aim is to pay up the outstanding loan sum without resorting to legal battle in any way"

1.18 Finally exhibit 3 is hand written sorts of agreement prepared solely by the Defendant evidencing how the loan was advanced to the Claimant.

1.19 We commend my noble lord to the case of **S.S. GMBH V. T.D. INDUSTRIES LTD (2010) 11 NWLR (PT. 1206) 589AT 613 PARAGRAPH C**, where the Supreme Court held thus:

"Documentary evidence is the best evidence"

Also, in C.D.C. V. SCOA (NIG) LTD (2007) 6 NWLR (PART 1030) 300 AT 366, PARAGRAPH G – H, it was held thus:

"Documentary evidence, being permanent in form, is more reliable than oral evidence, and it is used as a hanger to test the credibility of oral evidence".

1.20 Finally we urge the court to evaluate all the exhibits tendered in this case in order to decipher the intention of the parties

In **EPE RESORTS & SPA LTD V. UBA PLC (2018) LPELR-45310 (CA), THE COURT HELD AS FOLLOWS:**

"In the instant case, Exhibits B, B1, B2 and H contained at pages 91, 94 - 95, 96 and 92 - 93 respectively were tendered by the Respondent before the Lower Court to confirm the indebtedness of the Appellant to the Respondent. Contrary to the Appellant's contention in the Reply Brief that only Exhibit B3 should be considered while Exhibits B, B1, B2 and H should be ignored, the Lower Court was right in considering the said Exhibits B, 81, 82 and H. See BFI GROUP CORPORATION Vs. BUREAU OF PUBLIC ENTERPRISE (2012) LPELR-9339 (SC) where FABIYI JSC held that the Lower Court had an abiding duty to scrutinize all the series of documents and bonds to determine whether there is a contract between the parties. See also ANIMASHAUN & ANOR vs. OGUNDIMU & ORS (2015) LPELR-25979 (CA) pg. 19, paras. B - E and

RAINSON INDUSTRIES LIMITED VS. ABIA STATE COMMISSIONER FOR HEATH AND SOCIAL WELFARE & ORS (2014) LPELR-23771 (CA) Pg.26, paras. C - F where this Court held that: "It is settled that when a contract is contained in a series of documents or letters or Correspondences, the Court is under a duty to consider the whole of what has passed between and the conduct of the parties. Indeed, it is not the duty of the Court to determine issues on the basis of one document only..."
Per ABUBAKAR ,J.C.A (Pp. 35-36, paras. F-G)

1.21 The Defendants in their final address at pages 11-15 argued strenuously that exhibit 2 (which is one of the documents showing that the defendant received the said loan of 25,000 pounds and the liquidated interest) should be disregarded on the ground that it was signed solely by the Defendant. The Defendant further somersaulted and argued that said exhibit 2 should be regarded as partnership agreement between the Claimant and the Defendant.

1.22 We submit that the argument of the Defendant is gross misconception of the law and of the facts of this case. The said exhibit 2which was written and signed solely by the Defendant and tagged: AGREEMENT LETTER BETWEEN MRS. JULIET ONUNKWO AND MR AND MRS. DANIEL ADEOGUN is **only but one of the documents** evidencing the reception of the loan of 25, 000 pounds by the Defendants from Claimant. paragraph 1 of the exhibit 2 provides as follows:

> "***The sum of twenty five thousand pounds, was borrowed to Mrs. Juliet Onunkwo by Mr. and Mrs. Daniel Adeogun on this date 25th June,2012, in respect to a contract execution being awarded by Niger Delta Ministry Abuja to Neduju Global Resources and Mega Trend Company Nigeria Limited***".

Also paragraph 3 of the said exhibit 2 provides as follows:

> "***We also agree that the interest and capital will be paid monthly by Neduju Global Resources/Mega Trends to***

<u>the bank where the loan was given</u> or to Mr. and Mrs. Daniel Adeogun through Onunkwo Juliet".

1.23 We submit that exhibit 2 is one of reassurance and concrete solemn promise that the said of loan of £25,000 pounds and liquidated interest was accepted by the Defendants and the Defendants in the said exhibit agreed to either repay the loan to the Claimant or directly to the bank where the loan was obtained.

1.24 We further submit that exhibits 3, 4,6 and 8 further showed clearly that the Defendants indeed received the said loan of £25,000 pounds and the agreed to repay the loan and the liquidated interest.

1.25 During cross examination, the Claimant cleared and debunked any form of a deliberate and ambiguous interpretation of exhibit 1 to mean a partnership or business relationship as follows:

Question- look at exhibit 2, paragraph 4, you agreed that you and the Defendant to share profit

Answer- Is an assurance from the Defendant to ascertain that she will abide by the loan agreement. If you look at it, it was signed by the defendant. It shows that she is aware of the loan agreement that both the original loan and interest would be paid back by herself"

1.26 In **A.G RIVERS STATE V. A.G AKWA IBOM STATE(2011)8 NWLR(1248)(PG.31 AT PG. 186-187)THE APEXCOURT HELD AS FOLLOWS**

"a party cannot rely or take benefit of the contents of a document and at the same time turnaround to question the legality of the same document. It is the rule of equity that one cannot approbrate and reprobate. It is a doctrine of justice and equity that would be unjust and inequitable to blow hot and cold…"

1.27 In the instant case we submit that it is incongruous that the Defendant who has not denied receiving the loan of £25,000pounds and also accepted to repay back the loan and the liquidated interest to either to the Claimant or to Lloyds Bank where the loan was obtained as

evidenced on the exhibits tendered in this court to summersault and describe exhibit 2 as “sentimental letter of intent or partnership”

1.28 The Defendant knowingly refused to call any evidence to offer an explanation on all the exhibits it authored and tendered in this case.

1.29 The Defendant counsel decided to put up a defence in its final address on behalf of the Defendant. We submit that the address of the Defendant’s counsel no matter how beautiful it is, cannot take place of evidence in this suit. we refer my noble lord to the case of **OJEMENI V. STERLING BANK PLC (2014) LPELR-2442(CA), THE COURT HELD AS FOLLOWS**:

> "The law is settled that address of counsel cannot take the place of evidence. An issue of fact, as in the instant case, cannot be raised on counsel's address. In a trial where pleadings are filed, issue of fact can only be properly raised in the pleadings - See Awoyale v. Ogunbiyi (1985) NWLR (Pt.10) 861; Buraimoh v. Bangbose (1989) - NWLR (Pt.109) 352 at 365; UBN Plc v. Ayodore & Sons. (Nig.) Ltd. & Anor (2007) 13 NWLR (Pt.1052) 567 at 595-596; Oduwole & Ors v. West (2010) 10 NWLR (Pt.1203) 598 at 621."
>
> Per AKOMOLAFE-WILSON ,J.C.A (P. 21, paras. A-C)

1.30 Another gross misconception of the case of the Claimant’s case was contained in 15-16 of the Defendant’s address wherein the Defendant argued on whether the Claimant is to be paid interest on the loan of £25,000 pounds given to the Defendant of which loan was advanced by Lloyds bank.

1.31 Most significantly paragraph 3 of exhibit 2 provides as follows

> “***We also agree that the <u>interest and capital</u> will be paid monthly by Neduju Global Resources/Mega Trends <u>to the bank where the loan was given</u> or to <u>Mr. and Mrs. Daniel Adeogun through Onunkwo Juliet”.***
>
> ***(Underlining by us)***

1.32 We submit that the Defendant by exhibit 2 and other documents tendered in this case, agreed unequivocally to either pay the interest on

the loan to the Claimant or directly to the Lloyds bank where the loan was obtained.

1.33 During cross examination the Claimant informed the court that it was the bank that charges the interest and not the Claimant.

1.30 In **ASIKPO V. ACCESS BANK (2015) LPELR 25845(CA),** the court held as follows:

> "It is well settled that by practice, usage and custom of banking, banks charge interest on loans, overdrafts and other financial facilities granted to their customers. As long as a credit facility of whatever nature is granted to a customer by a bank remains outstanding, the bank is entitled to charge interest thereon. This is simply because it is part of the business of banking to grant credit facilities, and since it is not a charity organization, it must charge reasonably for that service."

Also In **UZOR & ORS V. EZIMUO MICROFINANCE BANK(NIGERIA) LTD.(2013) LPELR-21880(CA) THE COURT HELD AS FOLLOWS**:

> “The 1st and 3rd appellants accepted and knew ab initio that the debt shall rise and continue to rise owing to the periodic accruals of interest and other penalties stipulated in Exhibit A, C and D. The rates of interest and penalties accruable were ab initio fixed, certain and known to the 1st appellant as per the terms of the agreement contained in Exhibits A, C and D. It is obvious from the terms of the said exhibits that the 1st appellant accepted the condition of periodic accruals of certain rate of interests and penalties.

1.31 In the instant case, the 1st Defendant who is also banker (exhibit 4 clearly showed that the 1st Defendant was a banker at the time the Defendants received the said loan) by exhibit 2 agreed to repay the said loan to either to the Claimant or to the Lloyds bank where the loan was given.

1.32 The Defendants failed/or refused to pay the interest as agreed and the Defendant’s disdainful refusal to repay back the loan and the agreed

liquidated interest led to the attachment of the Claimant's salary by the bank. Thus, at paragraph 12 of the statement of claim, the Claimant Cleary pleaded as follows:

> ***"The Claimant states that after obtaining the said loan and handing same to the 1st Defendant, the 1st Defendant immediately returned to Abuja, Nigeria and since then refused to discharge her obligation of repaying the loan. Unfortunately the said purported contract proposal with which the Defendants deceived the Claimant to advance the said loan never existed"***

Also at paragraph 19 of the statement of claim, the Claimant pleaded as follows

> ***"That the tenure of 84 months for the repayment of the loan had long lapsed and the Lloyds bank London has been attaching my salaries and other properties for recovery of the loan"***

1.33 We submit that it was as a result of the Defendant's breach of the agreement to repay the loan and the liquidated interest, that Lloyds bank had since been attaching the Claimant's salary domiciled with the Bank to recover the loan.

1.34 We submit that my noble lord has the power by virtue of relief 4 praying for further such orders as this Honourable court may deem fit to make in the circumstances of this case, to either order the Defendant to pay the outstanding balance of the loan to the Claimant and liquidated interest to the Lloyds bank or to the Claimant in this case.

1.35 The Defendant further made recourse to technicality by urging the court to compare the signature of the Claimant on exhibit 1 and the signature of the Claimant on the statement on oath.

1.36 We submit that the law has developed from the level of technicality to the level of substantial justice. In **BAKAN & ANOR V. ARABO & ORS(2015) LPELR-40857(CA)**

> "The Courts have maintained over the years that the sole purpose of a Court is to do substantial justice between the parties that come before it for adjudication of disputes and not to adhere to

technical issues that becloud the justice of a manner because such adherence to technicalities to the detriment of substantial justice inevitable leads to injustice State Vs Gwonto (1983) 1 SCNLR 142, Marine Management Associates Inc Vs National Maritime Authority (2012) 18 NWLR (Pt 1333) 506, Uwazuruike Vs Attorney General, Federation (2013) 10 NWLR (Pt 1361) 105, Garan Vs Olomu (2013) 11 NWLR (Pt 1365) 227, Ikechukwu Vs Nwoye (2014) 4 NWLR (Pt 1397) 227 and Mfa Vs Inongha (2014) 4 NWLR (Pt 1397) 343.

1.37 In the instant, we submit that Defendant did not challenge the signature of the Claimant during the trial. However, the Claimant before adopting his statement on oath identified same with his signature and picture affixed on the said statement on oath. **Section 112 of the evidence Act**, 2011 provides as follows "an affidavit shall not be admitted which is proved to have been sworn before a person on whose behalf the same is offered or before his legal practitioner or before a partner or clerk of his legal practitioner.

In the case of **MARAYA PLASTICS IND. LTD. VS INLAND BANK NIG. PLC. (2002) 7 NWLR (765) 109 AT 120 C - E. OMAGE. JCA,** stated thus.

> "My understanding of the description of an affidavit is that the averments contained in a paper are admissible as a fact until they are disproved because the averments are sworn to before a commissioner for oaths. It is the swearing thereto that makes the document an affidavit."

1.38 In the instant case, there no evidence that the Claimant's statement on oath was sworn to before the Claimant's counsel or partner or clerk to make same incompetent. We submit that a perusal of the said Claimant's statement on oath shows that same was sworn or signed in the presence of the commissioner for oath which makes same competent and valid.

1.39 In the **MICHMERAH INT'L LTD. V. NIGERIA INT'L BANK LTD(2015) LPELR-25768(CA),** the court defines signature as follows:

"At Page 1415 Blacks Law Dictionary 8th Edition signature is defined as a person's name or mark, written by that person or at the persons direction, it is also any name, mark or writing used with the intention of authenticating a document."
Per ABUBAKAR, J.C.A (P. 15, paras. A-B)

Also in **NGUN V. MOBIL PRODUCING NIG INLTD(2013)LPELR-20197(CA),** the court held as follows

"The word "signature" is further defined (p.1507) as "1. A person's name or mark written by that person or at the person's direction ... 2. Commercial law... Any name, mark, or writing used with the authenticating a document."

Per TUR, J.C.A (P. 28, paras. B-C)

1.40 In the instant case, the signature of the claimant was properly appended on the claimant's statement on oath and the Claimant identified his Statement on Oath with his signature. We also submit that the claimant is entitled to many signatures and that ought not to be the problem of the Defendant in this case. The Defendant with respect, decided to abandon the facts of this case and chasing shadows.

In **GTB V. ABIODUN(2017) LPELR-42551(CA),** the court held as follows:

"It is also settled that mere dissimilarity of the signatures is not conclusive evidence. It is not proof that they were not made by the same person. See also: Daggash v. Bulama (2004) ALL FWLR (pt 212) 1666 at 1712."

Per ELECHI, J.C.A (P. 40, para. A)

1.41 We submit therefore with respect that the Defendant's counsel lacks the locus to challenge any of the signatures of the Claimant in this suit. Assuming without conceding that there was an allegation of forgery of the Claimant's signature, it only the Claimant that can raise the forgery of his signature and the law requires the calling of a signature expert.

1.42 We therefore respectfully urge my noble lord to discountenance the hypothetical or academic argument of the Defendant's counsel on dissimilarity of signatures of the Claimant in this suit

CONCLUSION

1.43 In conclusion, we submit that the Defendant failed to call evidence in this case despite the fact that majority of the documents tendered in this case were authored and prepared by the Defendant. It is trite, that a Defendant who rests his case on that of the Plaintiff will be bound by the credit and debit situation in the Claimant's evidence as proffered before the trial Court. Such a party will sink or swim with the Claimant's evidence

1.44 We urge My Lord to rely on **the omnibus clause prayer** to do justice to the Plaintiffs in this suit, as same empowered My Lord to make any Order that will serve the cause of justice, whether expressly prayed for or not.

1.45 We also refer My Lord to the case of **UZODINMA V. IZUNASO (NO. 2). (2011) 17 NWLR (PART 1275) 30**, at page 79, paragraph E, where it was held thus:

> ***"The court exists to maintain a balanced scale of justice between or amongst contending parties to ensure peace and stability in the polity"***

1.46 We submit that it is in the interest of justice to grant the reliefs of the Plaintiffs based on the totality of the evidence before the Court.

1.47 We urge My Lord to uphold the Plaintiffs' case and resolve this entire suit in favour of the Plaintiff.

COURT:

The Court adopts as if set here seriatim the Claimant's Reply to the Defendants' Final Written Address.

Having summarized the stances of the parties in this case, can it be said that the Claimant have established his case against the Defendants so much so that this

Court should hold that the Defendants are liable to pay both the outstanding Balance of the Loan in the main and the Liquidated Interest as claimed and as such enter Judgment in his favour?

Or, should this Court hold that the Defendants have established that they are not entitled to pay the said outstanding Balance of the money lent to them as well as the Liquidated Interest which they were aware of ab initio?

It is the humble view of this Court that the Claimant has established his claims with his testimony and the documents he tendered in support. This Court hereby enters Judgment on his behalf. The reasoning is as set below.

It is not in doubt that the Claimant got the loan from Lloyds Bank for the benefit of the Defendants. This is a fact which the Defendants confirmed not only in its Statement of Defence but severally in their Final Written Address. Again, the Defendants were aware and accented the fact that the loan should be obtained for their use to execute the so called non-existent contract from the Ministry of Niger Delta.

A closer look at the EXH I puts no one in doubt that there was a loan. The amount is specified. The Interest Rate stated. The repayment amount known and stated. The duration was also clearly stated in the said Loan Agreement. It was signed by the Claimant and the

Representative of the Lloyds Bank. Given the date the Loan Agreement was made, it shows that it was signed on the 22nd of June, 2012; days before the money were paid to the Defendants by the Claimant. That obviously shows that the loan predates the disbursement of the fund. This shows that the loan was meant for the said contract.

Of very important interest is the EXH 2 and its content. That document was made in the hand of the 1st Defendant. Before I analyze the document, it is imperative to state that document of Contract Agreement is not only admissible where the 2 parties have signed the dotted/unsign the document. Binding contract can be deciphered from the correspondence of the parties made over time in different documents. It can also be deciphered from the SMS, Email, Whatsapp messages too and even from the body language of the parties and their actions and relationship which are never penned down in black and white. So the Defendants' submission and contention of the EXH 2 not being signed by the 2 parties does not hold any water. The document is, as already done, admitted. The Court attaches all the judicial weight to the said EXH 2 – Letter of the 1st Defendant titled:

> **"Agreement between Mrs. Juliet Onunkwo and Mr. & Mrs. Daniel Adeogun."**

The document is where the Defendants spelt out their accompliance of the Agreement and their obligation too.

A closer look at the document shows that, even by its title, there was agreement between the parties. That the agreement is on the loan obtained. In paragraph 3 the Defendants agreed that:

> **"We also agree that the Interest and Capital will be paid monthly by the Neduju Global Resources Limited .... TO THE BANK where the loan was given or to Mr. & Mrs. Daniel Adeogun through Juliet Onunkwo – (1st Defendant)."**

Note: All emphasis mine).

The above is very self explanatory. It shows vividly that the Defendants are aware of the loan. They are aware of the Interest on the loan. They aware of the repayment plan. They are aware and had opted to pay the loan and interest to either the Bank or to the Claimant and his wife. They are aware of where or the Bank where the loan obtained from. So if the loan given to the Claimant was personal, why did the 1st Defendant indicated, through this letter – EXH 2 signed by the 1st Defendant, that the Defendants are willing, eager and able to repay the loan and the interest on the loan to the Bank where the loan was obtained? The only answer is because they know that the loan was obtained because of them and for them. It confirmed that, as the Claimant stated that he took the loan for the Defendants because they cannot access loan since they are not resident in the United Kingdom. It confirms that they were aware of the purpose of the loan

and accented to it. After all, they would not have ordinarily been ready to repay the capital and the interest to the Bank where the Loan was obtained if they were not part and parcel of the plan to obtain the loan.

This Court admits the submission the Claimant in that regard and awards it the full judicial mark it deserves in this case. The Defendants are therefore liable to repay the loan and the liquidated interest as they have agreed. The Court therefore discountenances the submission of the Defendants in that regard.

A look at paragraph 4 of the EXH 2 shows that the so called Agreement to pay profit to the Claimant is even independent of the Agreement to repay the Loan.

The Defendants are not in denial of the receipt of the money – Loan. They can be seen in the documents evidencing the receipt of the money signed by the 1st Defendant on behalf of the 2nd Defendant on the 6th of July, 2012 and 29th of July, 2012 at 11 am.

Again, paragraph 1 of EXH 2 shows that the Defendants were aware that the money was borrowed – that is the Twenty Five Thousand Pounds (£25, 000.00) by the Claimant and his wife.

EXH 2 Paragraph 1

> **"The sum of Twenty Five Thousand Pounds (£25, 000.00) was borrowed to Mrs. Juliet Onunkwo by Mr. & Mrs. Daniel Adeogun on 26th June, 2012."**

Contrary to the submission the Defendants that the money was lent before the contract. Paragraph 1, EXH 2 & 5 shows that the money was:

> **"…. in respect of a Contract execution awarded by Niger Delta Ministry to Neduju Global Resources Limited – (2nd Defendant)."**

The percentage – 11% mentioned in the paragraph 2 of EXH 2 is different from the percent of the loan. This is because the paragraph 3 where the Defendants agreed to pay the Capital and Interest on the loan states thus:

EXH 2 Paragraph 3

> **"We also agreed that interest …."**

This means that it is in addition to the Agreement to pay as contained in paragraph 2 of EXH 2. So also the agreement as contained in paragraph 4 of the same EXH 2.

If the loan was personal loan, why did the Defendants state in the several paragraphs that they will pay the Loan and Interest on the loan to the Bank where the loan was granted/obtained? Why should the 1st Defendant give her ID Card and information page of her International Passport? Simply because she knows that the loan was obtained because of the Defendants. Besides, International Passport and ID Card are not Collateral for loan, it is for identification purposes. The Defendants are liable to pay the loan and the Interest thereon.

The Defendants have also by their agreement to pay, and actually paying the part-payment, agreed that they are liable and have agreed to pay the outstanding Balance given the content of EXH 2 paragraph 1 and also as confirmed in their Statement of Defence. Besides, they have rested their case on that of the Claimant which means that wherever the case of the Claimant goes so the Defendants case goes too. The Claimant has established that his case is meritorious. Therefore the Defendants agrees intoto by virtue of the fact that they rested their case on that of the Claimant. So this Court holds.

The content of the Emails and Whatsapp messages further buttresses the Claimant's case. It shows the Defendants pleading for more time to repay the loan and the interest on the loan. Even the handwritten letter evidencing collection of the loan speaks volume. They had in the Emails pleaded for time to fulfill what they had promised – repayment of the loan and the liquidated interest which was known to the Defendants. They even promised in the Email of 14th May, 2014 to pay. They even asked that if they failed to pay after Six (6) months that the Claimant should:

> **"But if after 6 months nothing ... you can take any action you feel you wish."**

They ended it by stating thus:

> **"Thanks for your understanding."**

Meanwhile the Email started thus:

> **"Hello Daniel, ... I plead with you to exercise more patience please."**

They had in paragraph 1 line 4 & 5 promised thus:

> **"I wish to pay off the accumulated capital within 6 months by the grace of God. If I happen to get added money before then I will also send."**

The additional money of course without any doubt covers the Interest. The same is the Whatsapp messages where the Defendants were trying to pacify the Claimant begging him to calm down that everything will be alright and asking him not to take advice of the people.

The Defendants knew ab initio that the contract was a fraud because they never mentioned to the Claimant that the contract was never awarded or that it was yet to be awarded.

As the Claimant stated, they presented a fake contract documents to the Claimant in order to get the said fund from him for only God knows reason. In all their Email messages, they never said that the contract has been executed and that they are waiting to be paid. Even in the Letter of Demand, they did not deny what was written thereon. They did not challenge the amount sought. It is only in their Written Address that the Defendants made feeble attempt to deny stating that they have paid out the loan. Meanwhile, going by their averment in the

Statement of Defence, the paid about Twenty Three Thousand, Seven Hundred and Fifty Pounds (£23, 750.00). But from the evidence before the Court, they collected Twenty Five Thousand Pounds (£25, 000.00) and agreed to repay that and the accumulated Interest.

The Issue of disparity in the signature of the Claimant in the Loan Agreement and the Statement on Oath as raised laboriously by the Defendants in the Final Written Address does not hold water. They did not bring before the Court any document to show that the two (2) signatures are not from the Claimant. They had rested their case on that of the Claimant too. The Court accepts the extended explanation and submission of the Claimant in the Reply to Defendants' Final Written Address. It the Claimant that can challenge and show that the signatures are not his. Besides, he attached evidence of change of name, his International Passport information page and the publication of Change of Name. That suffices. Besides, that so called disparity in the signature of the Claimant does not deny the fact that he obtained the loan which was given to the Defendants who promised to repay the capital and the interest.

From all indication, the Defendants anchored on that signature issue as a ploy to deceive and distract the Court. But they know that the issue is on their inability to repay the loan and the interest thereon which they promised to pay.

It is most unfortunate that the gratitude which the Defendants are showing to the Claimant after he stuck out his head and integrity and reputation and obtained the loan for the Defendants is this feeble denial by the Defendants now anchoring on disparity in signature and arguing that the loan was personal and that it was for joint venture. What a shame. It is most unfortunate.

If the Defendants were not out to defraud the Claimant, why did they not return to the United Kingdom after the loan was obtained? If it was a Joint Venture and that the money was the Claimant's contribution as the Defendants claim, why did they agree to and actually refunded part of the money? Why did they not present that to the Economic and Financial Crimes Commission (EFCC) that it was Joint Venture Agreement? Simply because they know that it was a loan obtained for their benefit in which they agreed to pay the lead loan and the interest thereon.

The semantism that the Defendants were doing in their submission in their Final Written Address were only ploy to deceive themselves. Documents attached to this case by the Claimant speak louder than human voice.

There was in existence privity of contract between the Defendants and the Claimant to repay the loan and the interest going by EXH 2 and its content. Exhibit 2 is not in any way an exuberant emotion of the Claimant as the Defendants most erroneously and deceivingly portrayed in their Final Written Address. EXH 2 was the Agreement of

the parties where the Defendants stated their own side of the obligation in the Contract they have with the Claimant as regards the loan and the interest thereon. Since the parties have agreed, the Defendants are entitled to pay interest on the loan obtained for their use by the Claimant. The Claimant is not a money lender. The payment is on the loan from the Lloyds Bank and the Liquidated Interest as claimed by the Claimant in his claims. The Court is not a Forensic outfit on signature. Besides, the issue of signature is not in the claim of the Claimant. The issue was not pleaded. It has nothing to do with the claim. Besides, the Defendants did not deny that they received money given to them by the Claimant which they have repaid part and are yet to repay the balance of Nineteen Thousand, Four Hundred and Ninety Six Pounds, Fourteen Pence (£19, 496.14). It is not in doubt that the Claimant is owing this money. EXH 1 shows that there was a Loan Agreement between the Claimant and Lloyds Bank. It is not a secret that in Loan Agreement, the money is not usually ready, available and disbursed on the day the Loan Agreement is signed. It is a global practice that after the signing of Loan Agreement that the Bank takes some days to put its house in order before disbursing the fund. That is the delay in the Claimant giving the Defendants the money on the 6th of July, 2012 after the Loan Agreement was signed on the 22nd of June, 2012.

All in all, this Court holds that the Claimant's case is meritorious. He had established his claims in this case with the testimony and documents tendered and have shown that the loan was obtained for the Defendants. The Defendants are aware of that and they sub-succumbed to it. They are aware of the requirement for repayment of both the Loan and the Liquidated Interest. The Loan was not for any Joint Venture. The document of the loan was signed by the Claimant and Lloyds Bank. That shows it was duly obtained and used for the purpose it was meant. The Claimant obtained the loan for the Defendants because the Defendants, not being residents in the United Kingdom, lack the capacity to access loan. Hence the Claimant used his auspices to help the Defendants in that regard. The Defendants are liable to repay the Loan and the Liquidated Interest.

This Court therefore enters Judgment in Claimant's favour and Orders as follow:

Prayer No. 1 is granted.

Prayer No. 2, the Defendants are to pay the Claimant 7% of the Judgment sum monthly from the date of Judgment until final liquidation.

The Defendants are to pay to the Claimant the sum of Five Hundred Thousand Naira (₦500, 000.00) only as General Damages.

The Defendants are to pay also to the Claimant the sum of One Hundred Thousand Naira (₦100, 000.00) only as cost of the Suit.

This is the Judgment of this Court.

Delivered today the ___ day of _____ 2022 by me.

K.N. OGBONNAYA

HON. JUDGE