IN THE HIGH COURT OF JUSTICE OF THE F. C. T.
IN THE ABUJA JUDICIAL DIVISION
HOLDING AT APO, ABUJA
ON TUESDAY, THE 18HDAY OF APRIL, 2023
BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINI MUSA
JUDGE

SUIT NO: FCT/HC/CV/2922/2021

BETWEEN:

1. DR NICHOLAS AGOMUO

2. SHAGARI ALHAJI LIKITA **APPLICANTS**

AND:

HILLTRUST GLOBAL INVESTMENT LIMITED **RESPONDENT**

JUDGMENT

By an Originating Summons dated and filed on the 4th of November, 2021, the Applicants brought this action praying for the following reliefs:-

1. *A Declaration that by virtue of the personal loan agreement between the parties herein and dated the 1: 2: 2019 and which terms and conditions were accepted by the 1st Applicant on the 1: 2: 2019 the maturity date for the repayment of the said loan or any portion of it is the 1: 3: 2019*
2. *A Declaration that by virtue of the personal loan between the parties herein and dated the 1: 2: 2019 and which terms and conditions were accepted by the 1st Applicant on the 1: 2: 2019 at maturity and on the default of the 1st Applicant repaying the said loan that the amount due to the Respondent is the sum of ₦6,000,000.00;*
3. *A Declaration that by virtue of the personal loan agreement between the parties herein and dated the 1: 2: 2019 and which terms and conditions*

were accepted by the 1st Applicant on the 1: 2: 2019 the Respondent is not entitled under the said agreement to claim as principal and accrued interest any amount above the sum of ₦6,000,000.00;

4. *A Declaration that by virtue of the personal loan agreement between the parties herein and dated the 1: 2: 2019 and which terms and conditions were accepted by the 1st Applicant on the 1: 2: 2019 the Respondent is only entitled under the said agreement and on the maturity of the repayment obligations of the Applicant to proceed to dispose the property used to secure the repayment of the loan or in the alternative to demand from the 2nd Applicant as the guarantor of the 1stApplicant for the repayment of the said loan;*
5. *A Declaration that by virtue of the personal loan agreement between the parties herein and dated the 1: 2: 2019 and which terms and conditions were accepted by the 1st Applicant on the 1: 2: 2019 the failure or delay of the Respondent to exercise its right under the said agreement towards or with respect to the enforcement of the repayment of the loan on its maturity does not entitle it to continue to charge interest on the principal sum;*
6. *A Declaration that by virtue of the personal loan agreement between the parties herein and dated the 1: 2: 2019 and which terms and conditions were accepted by the 1st Applicant on the 1: 2: 2019 the Respondent is not entitled to the sum of ₦39,000,000.00 which sum purportedly represents the principal sum and accrued interest;*

7. *An Order of this Court restraining the Respondent from exercising its right to enforce the repayment of the said loan until such time the amount the 1st Applicant is indebted to it under and by virtue of the personal loan agreement between the parties herein and dated the 1: 2: 2019 is determined by this Court;*

8. *An Order of this Court restraining the Respondent from exercising its right to enforce the repayment of the said loan as contained in the personal loan agreement between the parties herein and dated the 1: 2: 2019 and which terms and conditions were accepted by the 1st Applicant on the 1: 2: 2019 either by proceeding to dispose of the property the 1st Applicant used to secure the repayment of same or by making a demand on the 2nd Applicant as the 1st Applicant's guarantor for the repayment of the said loan until such time the amount the 1st Applicant is indebted to it under and by virtue of the personal loan agreement between the parties herein and dated the 1: 2: 2019 is determined by this Court;*

9. *An Order of this Court restraining the Respondent from dealing with the property the 1st Applicant used to secure the repayment of the said loan in any manner inconsistent with the title of the 1st Applicant until such time the amount the 1st Applicant is indebted to it under and by virtue of the personal loan agreement between the parties herein and dated the 1: 2: 2019 is determined by this Court;*

10. *That the costs of this application be provided for.*

In support of the Originating Summons, the Applicants filed the supporting affidavit and a written address. Exhibits were attached to the affidavit. These are the letter of offer of ₦5,000,000.00 (Five Million Naira) personal loan marked as **Exhibit A**, a letter from the 1st Applicant's solicitors to the Respondent dated 23/03/2021 titled "*Ref: Offer of ₦5,000,000.00 Personal Loans to Agomuo, Nicholas A.*" marked as **Exhibit B**, the reply from the Respondent to the 1st Applicant's letter marked as **Exhibit C**, and the 1st Applicant's response to the Respondent's reply marked as **Exhibit D**.

The Respondent was served with the originating processes on the 7th of January, 2022. Upon being served with the originating processes, the Respondent filed its Counter-Affidavit on the 26th of September, 2022. It also filed, on the 26th of September, 2022, a Motion on Notice with Motion Number M/11075/2022 dated the 26th day of September, 2022. The Motion sought to regularize the processes of the Respondent which were filed out of time. The Motion was moved on the 27th of September, 2022 and the prayers contained therein granted as prayed. The Applicants were served with the Respondent's processes on the 27th of September, 2022. On the 8th of November, 2022, the Applicants filed their Reply on Points of Law. on the 25th of January, 2023, the parties herein adopted their processes and argued their respective positions for and against the suit. This Court thereupon adjourned for Judgment.

The case of the Applicants as put forward in the affidavit in support of the Originating Summons is that the 1st Applicant had approached the Respondent for a loan facility of ₦5,000,000.00 (Five Million Naira). The Respondent agreed. A

Personal Loan Agreement dated the 1st of February, 2019 was drawn up and the 1st Applicant accepted the terms contained therein on the same 1st of February, 2019. The 2nd Applicant stood as a guarantor of the 1st Applicant and undertook to indemnify the Respondent in the event of default in repayment by the 1st Applicant. The tenor of the loan was thirty (30) days and the interest rate was fixed at 20% flat. Thus, the 1st Applicant was required to repay the sum of ₦6,000,000.00 (Six Million Naira) only on the 1st of March, 2019.

It was the case of the Applicants as stated in the affidavit in support of the Originating Summons that the 1st Applicant secured the loan with his property situate at and known as Plot No. A03/1463 Dwelling Plot No./Floor 3371/02 Dwelling Unit Block 3 Flat 21 Street Luaulu Close, Wuse 1 District, Abuja with File No. AK30368 which was still in the name of Inam Etukudoh Akrasi*vide* a Deed of Mortgage which the parties separately executed thereby creating an equitable mortgage over the property in favour of the Respondent.

The deponent, the 1st Applicant, stated that though he was unable to repay the loan within the agreed time frame, he was worried when the Respondent did not take any step towards recovery of the loan sum. His apprehension, he averred, pushed him to wrote **Exhibit B** to the Respondent, demanding an update on the loan. Responding *via***Exhibit C**, the Respondent informed him that the total indebtedness of the 1st Applicant stood at ₦39,000,000.00 (Thirty-Nine Million Naira) only as at October, 2021. He insisted that the Respondent did not inform him of the process through which it arrived at that figure. After a series of correspondence had been exchanged between the 1st Applicant and the

Respondent, the 1st Applicant, anxious that the Respondent might, in the exercise of its right of enforcement of the repayment of the loan, take steps that would be prejudicial to his interests, has approach this Court seeking the reliefs contained on the face of the Originating Summons.

In the Written Address in support of the Originating Summons, learned Counsel for the Applicants formulated a lone issue for determination, namely: "*Whether the Respondent in the exercise of its right to enforce the repayment of the loan it granted to the 1st Applicant as contained in the personal loan agreement between the parties herein and dated the 1: 2: 2019 is entitled to any sum of money above the sum of ₦6,000,000.00 either from the disposal of the property used by the 1st Applicant to secure the repayment of the loan or by making a demand for repayment on the 2nd Applicant as the guarantor for the repayment of the said loan.*"

Arguing this sole issue, learned Counsel submitted that the Applicants were not disputing the facts of the loan and the 1st Applicant's default in repayment, adding that their contention resided in the actual amount payable to the Respondent by the 1st Applicant as outstanding balance. He further argued that the gravamen of the suit was an invitation to the Court to interpret **Exhibit A**. Counsel further maintained that **Exhibit A** was in the form of an executory contract, and that the need to respect the terms freely entered into by the parties remained sacrosanct.

It was the case of the Applicants that there was no clause in the agreement that provided for the accrual of interest on the principal sum after the 1st of March,

2019 notwithstanding that the 1st Applicant was in default of repayment. Counsel added that the option available to the Respondent following the failure of the 1st Applicant to repay the loan sum on the due date was to commence the process of recovery of the said loan sum and the agreed interest or to exercise its right of sale over the property used to secure the loan.

In his submissions on the legal status of the 2nd Applicant as a guarantor of the 1st Applicant in respect of the loan agreement, Counsel argued that the liability of the 2nd Applicant was not *in continuum*, adding that the liability of the 2nd Applicant accrued upon the failure of the 1st Applicant to repay the loan sum on the agreed maturity date of 1st of March, 2019. Counsel urged this Court to construe the terms of the guarantee strictly against the Respondent. After defining a contract of guarantee in the light of judicial pronouncements, he maintained that the liability of the 2nd Applicant was limited to the total loan sum of ₦6,000,000.00 (Six Million Naira) only which represents the principal loan sum of ₦5,000,000.00 (Five Million Naira) only and the 20% interest on the loan sum, which is, ₦1,000,000.00 (One Million Naira) only. He therefore urged the Court to grant the reliefs sought in the suit.

For all his submissions on this lone issue, learned Counsel cited and relied on the following cases: ***Niger Dams Authority v. Lajide (1973) NMLR 376 at 384 – 385; Obikoya& Sons Ltd v. Wema Bank Ltd (1991) 7 NWLR ((Pt. 201) 119; Olanrewaju Commercial Services Ltd v. Jumoke Sogaolu& Anor (2015) 12 NWLR (Pt. 1473) 311 at 325 – 326; Trade Bank Plc v. Chami (2003) 13 NWLR (Pt. 836) 158 at 210 – 211; Umegu v. Oko (2001) 17 NWLR (Pt. 741) 142 at 155;***

Att.-Gen. (Lagos) v. Purification Tech. (Nig.) Ltd (2003) 16 NWLR (Pt. 845) 1 at 14; First Bank v. Pan Bisbilder (1990) 2 NWLR (Pt. 134) 647 at 656; Hydro-Quest (Nig.) Ltd v. B.O.N. Ltd (1994) 1 NWLR (Pt. 318) 47 at 53 among other cases.

Counsel for the Applicants equally adopted the Applicants' Reply on Points of Law after he had adopted the Applicants' originating processes. In the Reply on Points of Law, Counsel submitted that, contrary to the claims of the Respondent that the Applicants, in seeking equitable reliefs, had not come to equity with clean hands, the Applicants had approached the Court with clean hands, adding that they were not asking the Court to restrain the Respondent from recovering its money from the Applicants; but, that, on the contrary, they were asking the Court to direct the Respondent to approach the 2nd Applicant as the guarantor to repay the loan or, in the alternative, to exercise its right of sale by selling the property used to secure the loan, retain its ₦6,000,000.00 (Six Million Naira) only and return the balance to the 1st Applicant.

In answer to the claim of the Respondent that the Applicants withheld evidence from the Court, learned Counsel submitted that the manner of presenting its case rested on a party. He added that since the Applicants did not refer to the mortgage agreement or the cheque the 1st Applicant issued to the Respondent as a demonstration of his intention to repay the loan, he could not be accused of withholding evidence.

Responding to the assertion of the Respondent that the 1st Applicant executed the mortgage agreement in favour of the Respondent, Counsel submitted that the intentions of the parties to a contract could be deduced from the words used in the contract, adding that it was not for the Court to re-write the agreement of the parties for them. Counsel drew the attention of the Court to the contents of the mortgage agreement and submitted that the mortgage agreement could not override the loan agreement.

For all his submissions in the Reply on Points of Law, Counsel cited and relied on the following cases: ***Awojugbagbe Light Ind. Ltd v. Chinukwe (1995) 4 NWLR (Pt. 390) 379; Acme Builders Ltd v. KSWB (1999) 2 NWLR 288 at 309; Engineer Ugwu & Anor v. Senator Ararume (2007) 7 MJSC 1 at 14; Okunzua v. Amosu (1992) 6 NWLR (Pt. 248) 416 at 435; Att.-Gen. (Adamawa) v. Ware (2006) 4 NWLR (Pt. 970) 399 at 421; Mueller v. Mueller (2006) 6 NWLR (Pt. 977) 627 at 652; Olanrewaju Commercial Services Ltd v. Jumoke Sogaolu& Anor (2015) 12 NWLR (Pt. 1473) 311 at 325 – 326; Att.-Gen. (Bendel)& 2 Ors v. U.B.A. Ltd (1986) 7 SC (Pt. 1) 146 at 166, Daniel Basil & Anor v. Chief Fajebe& Anor (2001) 3 MJSC 87) at 117*** as well as section 167(d) of the Evidence Act, 2011.

In its defence to the suit of the Applicants, the Respondent, through its company director, Mr Emmanuel Onofua, averred in its Counter-Affidavit that, indeed, a loan agreement existed between the 1st Applicant and the Respondent. He, however, added that the parties also executed a deed of mortgage whereby the 1st Applicant used his property to secure the loan. The deponent swore that the

Respondent had begun the process of disposing the property in satisfaction of the loan sum but has been hamstrung by the present suit which the Applicant filed to frustrate its debt recovery efforts. He also stated that the 1st Applicant issued a dud cheque to the Respondent, adding that the 1st Applicant had no intention of repaying the loan. In support of its depositions, the Respondent attached two exhibits marked as **Exhibit HT1** and **Exhibit HT2**. These are the mortgage agreement between the 1st Applicant and the Respondent and a dud cheque for the sum of ₦6,000,000.00 (Six Million Naira) only respectively.

In the Written Address in support of the Counter-Affidavit, learned Counsel for the Respondent formulated the following issue for determination: "*Whether in the circumstance of this case, this Honourable Court can grant the reliefs sought by the Applicants in this suit*." In his submissions on this sole issue, learned Counsel argued that the Applicants were seeking equitable reliefs from the Court, but had not approached the Court with clean hands. He hinged his position on the fact that the Applicants were indebted to the Respondent and were still fighting against the Respondent's right to sell the mortgaged property. Counsel further contended that the Applicants hid the fact of the mortgage and the issue of dud cheque from the Court which latter fact attracted an additional 15% interest on the loan sum.

Counsel further asserted that the reliefs sought by the Applicants were academic in nature as the Court was not an accountant to waste its judicial time computing interest payable on the loan sum. He referred this Court to the contents of the mortgage agreement where the 1st Applicant was obligated to make monthly payments. He insisted that the parties were not in disagreement when the

mortgage agreement was made while also agreeing that it was not for the Court to make agreements for the parties, more so as the parties had agreed that the mortgaged property would be sold in the event of default in repayment. He insisted that interest on the loan would continue to accrue as the 1st Applicant did not make the repayment on the due date. It was the case of the Respondent that the power of sale accrued immediately the 1st Applicant defaulted in the repayment of the loan.

For all his submissions on the sole issue he formulated, learned Counsel cited the following cases: ***Nkwocha v. Gov. Anambra State (1994) 1 SCNLR 634; Texaco Overseas (Nigeria) Petroleum Company Unlimited v. Rangk Limited (2009) All FWLR (Pt. 494) 1520 at 1522 para 2; and Babatunde & Anor v. Bank of the North Ltd &Ors (2011) LPELR-8249 (SC)***.

The above is the synopsis of the cases of the parties which they made out before me. At the centre of this dispute is the construction of **Exhibit A** annexed to the affidavit in support of the Originating Summons and **Exhibit HT** attached to the Counter-Affidavit. In determining the real dispute between the parties herein, the following issue lends itself for determination, to wit: "***Whether from a community construction of the Offer of ₦5,000,000.00 Personal Loan marked as Exhibit A and attached to the Affidavit in support of the Originating Summons and the Deed of Mortgage marked as Exhibit HT and attached to the Counter-Affidavit the Applicants are not entitled to the reliefs sought in the Originating Summons?***"

In resolving this issue, it is important I highlight the salient features of this case. Both parties herein are agreed on the fact that the 1st Applicant applied for and was granted a loan facility of ₦5,000,000.00 (Five Million Naira) only by the Respondent on the 1st of February, 2019. Both parties are agreed that the loan was subject to a flat 20% interest on the principal sum. Both parties are agreed that the loan facility was for a tenor of thirty days, repayable on the 1st of March, 2019. Both parties are agreed that the 1st Applicant used his property located at and described as Plot No. A02/1463 Dwelling Plot No./Floor 3371/02 Dwelling Unit Block 3 Flat 21 Street Luaulu Close District, Wuse I, Abuja with File No.: AK30368 in the name of Inam Etukudoh Akrasi as a collateral to secure the loan. Both parties are agreed that the 2nd Applicant guaranteed the loan facility for the 1st Applicant and undertook to indemnify the Respondent in the event of default by the 1st Applicant in repaying the loan and the accrued interest. Both parties are agreed that the 1st Applicant defaulted in repaying the loan on the termination date of the loan facility and had not repaid the loan at the time of filing this suit. The point of divergence between the parties herein is the amount of the interest accruable on the said loan facility. While the Applicants contend that upon an interpretation of **Exhibit A** the Respondent is not entitled to recover any sum above and beyond the sum of ₦6,000,000.00 (Six Million Naira) only being the principal loan sum of ₦5,000,000.00 (Five Million Naira) only and the accrued interest of ₦1,000,000.00 (One Million Naira) which represents 20% of ₦5,000,000.00 (Five Million Naira) only, the Respondent believes that **Exhibit A** should be read conjunctively with **Exhibit HT** and that the facile interpretation of

such community reading will be a conclusion that interest will continue to accrue on the loan until the 1st Applicant liquidates the loan and the accrued interest.

Because the suit borders on the construction of **Exhibit A** and **Exhibit HT**, this suit falls within the province of suits commenceable by way of Originating Summons. Order 2 Rule 3 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules, 2018 provides that

> ***(1) Any person claiming to be interested under a deed, will, enactment or other written instrument may apply by originating summons for the determination of any question of construction arising under the instrument and for a declaration of the rights of the persons interested.***
>
> ***(2) Any person claiming any legal or equitable right in a case where the determination of the question whether he is entitled to the right depends upon a question of construction of an enactment, may apply by originating summons for the determination of such question of construction and for a declaration as to the right claimed.***

The gravamen of this suit revolves around the quantum of interest payable on the loan facility the Respondent granted to the 1st Applicant. **Exhibit A** is the Offer of ₦5,000,000.00 (Five Million Naira) only Personal Loan. This document created a lender-borrower relationship and governs the relationship thus created. It also contains the terms that regulate the relationship. The tenor of the loan facility is

stated clearly as "*30 days @ 1 month*". The interest is fixed at "*20% flat*". The processing fee is "*3% (payable upfront)*. Under the subheading for repayment, it is stated thus: "*01/03/2019 ₦6,000,000.00*".

The letter of offer of the personal loan proceeds to provide for the following additional terms:

"*PLEASE NOTE THAT LATE REPAYMENT FEE:*

- *10% flat at any point of liquidation hence is (sic) after month of payment.*
- *15% will be charged if the applicant's cheque returned (DUD CHEQUE)*
- *5% will be charged on an amount which only interest is to be serviced.*
- *Interest can only be serviced once.*

1. *In event of default the Borrower shall be liable to pay all reasonable legal fees should the default lead to litigation or otherwise and other cost reasonably incurred to ensure repayment shall be settled by the Borrower or the Guarantors as the case may be.*
2. *The undersigned and all other parties to this note whether as guarantors, sureties or endorsers agree to remain fully bound until this loan shall be fully paid and further agree to be bound notwithstanding*

any extension, modification, waiver or other indulgence and discharge."

What is the implication of the above terms? To unravel the implication of these terms, the *terminus a quo* will be an understanding of the word "flat" used in describing the interest rate throughout the length of **Exhibit A**. According to the **Merriam-Webster Dictionary and Thesaurus**, "flat", in relation to numbers and percentages, is described in its adjectival form under Definition 6(b)(1) as follows: "***Not varying; fixed***". In its adverbial form, the above dictionary and thesaurus defines the word in Definition 4 as "***without interest charge especially: without allowance or charge for accrued interest***." The ***Longman Dictionary of Contemporary English*** defines the word "flat" in Definition 2 thus: "***MONEY: a flat rate, amount of money etc is fixed and does not change or have anything added to it***". Similarly, one of the definitions of "flat" in the ***Cambridge English Dictionary*** is this: "***flat adjective (FIXED) [before noun] (especially of an amount of money) fixed and not likely to change:***"

The law is settled that words used in any written instrument must be given their ordinary, literal meaning where they are clear, unambiguous and do not lend themselves to absurdity. See ***The Daily Times (Nig.) Plc v. Amaizu (1999) 12 NWLR (Pt. 631) 439 C.A. at 455-454. paras. H-A; 456. paras. E; Integrated Finance Ltd. v. N.P.A. (2019) 17 NWLR (Pt. 1700) 131 C.A. at 163-164, paras. H-C; I.N.E.C. v. Yusuf (2020) 4 NWLR (Pt. 1714) 374 S.C. at 410, paras. E-F; Ogbuoji v. Umahi (2022) 8 NWLR (Pt. 1832) 323 C.A. at 360, paras. A-C***. In

Umeano v. Anaekwe (2022) 6 NWLR (Pt. 1827) 509 S.C. at 532-533, paras. F-D, the Supreme Court per Kekere-Ekun, JSC held *inter alia* that

> "***Specifically, there are three main rules of statutory interpretation: The literal rule, which states that where the words are plain and unambiguous, they must be given their natural and ordinary meaning, unless to do so would lead to absurdity. That is, the plain words used by the legislature provide the best guide to their intention [Adewunmi v. A.-G., Ekiti State (2002) 2 NWLR (Pt. 751) 474; A.-G., Lagos State v. Eko Hotels Ltd. (2006) 18 NWLR (Pt. 1011) 378; Ojokolobo v. Alamu (1987) 3 NWLR (Pt. 61) 377; Sani v. President, F.R.N.(a) (2020) 15 NWLR (Pt. 1746) 151 referred to] The golden rule, which states that where the use of the literal rule would lead to absurdity, repugnance, or inconsistency with the rest of the statute, the ordinary sense of the words may be modified so as to avoid the absurdity or inconsistency, but no further. [General Cotton Mill Ltd. v. Travellers Palace Hotel (2019) 6 NWLR (Pt. 1669) 507; P.D.P. v. I.N.E.C. (1999) 11 NWLR (Pt. 626) 200;.Saraki v. F.R.N. (2016) 3 NWLR (Pt. 1500) 531 referred to.] The mischief rule, which enjoins that statutes be interpreted to suppress the mischief the statute was enacted to solve and to advance the remedy provided in the statute by answering the following questions: (i) what was the common law before the making of the Act? (ii) what was the mischief and defect for which the common law did not***

provide? (iii) what remedy the parliament had resolved and appointed to cure the defect of the common law? (iv) what is the true reason of the remedy?"

It is against these definitions and judicial injunctions that I return to **Exhibit A**. The interest rate on the loan of ₦5,000,000.00 (Five Million Naira) is fixed at "*20% flat*". 20% of ₦5,000,000.00 (Five Million Naira) is ₦1,000,000.00 (One Million Naira) only. This is arrived at using the formula 20 divided by 100 and multiplied by 5,000,000.00, mathematically expressed as follows:

20/100 x 5,000,000.

It is significant to note that the interest rate is stated to be "*20% flat*" No mention is made in the exhibit whether it is per annum, per month, per diem. Because no mention is made as to whether the interest rate is per annum, per month, or per diem, this Court cannot import into the agreement freely executed by the parties terms which they neither included in the agreement nor contemplated when they were drafting and executing the agreement. See ***Macaulay v. NAL Merchant Bank Ltd. (1990) 4 NWLR (Pt. 144) 283 S.C. at 311, paras. B-E; p.316, paras. C-D***. ***Access Bank Plc v. Nigeria Social Insurance Trust Fund (2022) 16 NWLR (Pt. 1855) 143 S.C. at 172, paras. F-G***. In ***Nimanteks Associates v. Marco Const. Co. Ltd. (1991) 2 NWLR (Pt. 174) 411 C.A. at 427,paras F – G***, the apex Court held that "***It is the law that parties to an agreement retain the commercial freedom to determine their own terms. No other person, not even the court, can determine the terms of contract between parties***

thereto."This principle was restated in ***Statoil (Nig.) Ltd. v. Inducon (Nig.) Ltd. (2021) 1 NWLR (Pt. 1774) 1 S.C. at page 127, paras. A-D***where the Supreme Court per Agim, JSC held *inter alia* that "***A court has no power to make contract for parties. The duty of the court is to enforce the terms of the contract as agreed upon by the parties. The court has no power to introduce into the contract, terms that the parties did not agree on.***" The Court went on in that case to describe this judicial approach to contracts freely made by the parties as the "***policy on autonomy and sanctity of contracts***" which the Court pronounced "***as a paramount policy.***"

Indeed, the Latin maxim "e*xpressiouniusestexclusioalterius*" is applicable here. In ***Awuse v. Odili (2004) 8 NWLR (Pt. 876) 481 C.A. at 541, para H***, the Court of Appeal explained that "***The latin maxim "expressio uniusestexclusioalterius" means that the express mention of one thing in a statute automatically excludes any other which would have been included impliedly***."See also ***Jegede v. INEC (2021) 14 NWLR (Pt. 1797) 409 S.C. at 497, para. A; D-E; A.P.G.A. v. Oye (2019) 2 NWLR (Pt. 1657) 472 S.C. at 497, para. A; D-E; Stanbic IBTC Holding Plc v. FRCN (2020) 5 NWLR (Pt. 1716) 91 C.A. at 146, paras. C-E, 147, para. E***. Thus, it can be said that the express mention of "*20% flat*" to the exclusion of "*per annum*" presupposes that the parties did not intend that the interest would accrue beyond the 20% interest on₦5,000,000.00 (Five Million Naira). Indeed, it is so, for if the parties had intended that the interest on the loan would be 20% per annum, the interest sum would not have been

₦1,000,000.00 (One Million Naira). It would have been approximately ₦82,200.00 (Eighty-Two Thousand, Two Hundred Naira) using the formula:

Interest = Principal x Rate x Tenor
Interest = ₦5,000,000 x 0.20 x (30/365)
Interest = Approximately ₦82,200.00

In view of this, it is my considered view, and I so hold, that considering the dictionary meaning of the word "flat" which connotes a fixed amount which does not change or have anything added to it, or, as Merriam-Webster defines it, "***without interest charge especially, without allowance or charge for accrued interest***", interest of 20% flat means exactly ₦1,000,000.00 (One Million Naira). Thus, the amount payable as at the 1st of March, 2019 and subsequently after that date is ₦6,000,000.00 (Six Million Naira). This is not without prejudice to the other payments the parties agreed would attend late repayment of the aggregate loan sum. I shall try to deconstruct the terms though I acknowledge the awful draftsmanship that afflicts **Exhibit A**.

The first term is this: "*10% flat at any point of liquidation hence is after month of payment*". What does this term connotes? There is no equivocation that this term is one of the penalties that attend late repayment of the loan. The payment of "*10% flat at any point of liquidation*" "*after month of payment*" can only mean that if the 1st Applicant makes a late repayment on the loan, that is, a payment after the 1st of March, 2019, he will be charged a flat fee of 10% of the outstanding amount at any point in time after the payment was due. This means that the late fee will apply even if he makes the payment one month after the due date. Since the late

fee is a flat rate, it also implies that the same 10% flat rate will apply even if he is in default of repayment for several years.

To arrive at the amount payable under this term, we must keep in contemplation the aggregate sum of ₦6,000,000.00 (Six Million Naira) which is the total of the actual loan sum of ₦5,000,000.00 (Five Million Naira) and the accrued flat interest of ₦1,000,000.00 (One Million Naira). The 10% payable under this term will, therefore, be calculated thus:

Interest = Outstanding balance x Rate
Interest = 6,000,000 x (10/100)
Interest = 6,000,000 x 0.1
Interest = 600,000

Therefore, the 1st Applicant is obligated to pay the sum of ₦600,000.00 (Six Hundred Thousand Naira) as penalty for late repayment which is the 10% flat contemplated under that term.

The next term to consider is this: "*15% will be charged if the applicant's cheques returned (dud cheque)*". There is evidence before this Court that the 1st Applicant did issue a cheque to the Respondent. The cheque was dishonoured. See paragraph 9 of the Counter-Affidavit and **Exhibit HT2**. This fact was alluded to in paragraph 8.0 of the Applicants' Reply on Point of Law. Under this term, the 1st Applicant is obligated to pay the Respondent a penalty which is 15% of the outstanding loan sum. To arrive at the sum payable, we return to our trusted formula:

Interest = Outstanding sum x Rate
Interest = 6,000,000 x (15/100)
Interest = 6,000,000 x 0.15

Interest = 900,000

Therefore, the 1st Applicant is obligated to pay to the Respondent the sum of ₦900,000.00 (Nine Hundred Thousand Naira) as penalty for issuing a dud cheque to the Respondent.

Finally, on the regiment of late fees and penalties payable by the 1st Defendant at default, the 1st Applicant agreed with the Respondent that "*5% will be charged on an amount which only interest is to be serviced*". I have struggled to make sense out of this clause. My challenge is two-fold. The first flows from the unintelligibility of the clause. What does it mean exactly? Does it mean that the 5% interest is chargeable on the aggregate loan sum? Does it mean that the 5% is chargeable on only the accrued interest of 20% flat of the loan sum? Significantly, there is no provision as to the period of service – whether yearly, monthly or daily. My second challenge is the nature of the loan. The parties agreed that both the accrued interest and the principal sum would be payable after thirty (30) days, that is, on the 1st of March, 2019. By saying that the "*5% will be charged on an amount which only interest is to be serviced*," the clause presupposes that the 1st Applicant is required only to service the accrued interest of ₦1,000,000.00 (One Million Naira) and not to make any repayment on the principal loan in liquidation of same. This clause therefore stands at a contradistinction to another clause in the same**Exhibit A** which stipulates that the repayment on the 01/03/2019 would be ₦6,000,000.00 (Six Million Naira). Considering that the 1st Applicant is required under **Exhibit A** to repay both the principal sum and the interest thereon, this clause is not only unnecessarily redundant, it is absolutely otiose.

To arrive at a reasonable construction of this clause this Court embarked on an exploratory voyage into the realm of finance and investments. For instance, ***LandlordInvest***, a London, United Kingdom-based property investment company describes "serviced interest" as follows: "***a serviced interest loan means that the borrower is required to make interest payment each month***." {see <https://landlordinvest.com/frequently-asked-questions/what-is-serviced-interest> accessed on 7th, April, 2023} ***ASC Finance for Business***, a team of finance brokers based in London, the United Kingdom, identifies three types of interests. These are serviced monthly interest, rolled up interest and retained interest. The first is the type of interest which requires payments to be made each month by the borrower to the lender. The second does not envisage monthly repayments; it requires the interest to be rolled-up, that is, paid as a lump sum when the loan term ends. The last type of interest does not require the borrower to make any monthly interest payments; the interest is added to the total loan amount, and is paid to investors at the interest due date. { See <Do you know the difference between serviced monthly, rolled up, and retained interest? - ASC Finance for Business> accessed on 7th, April, 2023}

But, as I have noted earlier, the challenge is that the term in **Exhibit A**doesnot specify the frequency of the service of the interest. Equally challenging is that the clause does not specify the amount on which this 5% is chargeable. This Court is left with the only sensible option in this regard, and that is, that the 5% is chargeable on the 20% flat interest on the loan sum of ₦5,000,000.00 (Five Million Naira) – that is, ₦1,000,000.00 (One Million Naira). Again, applying the Latin

maxim e*xpressiouniusestexclusioalterius*, this Court holds that the 5% is intended by the parties to be a one-off payment and not annually, monthly or daily. I am reinforced in this conclusion by the next clause which states that "*interest can only be serviced once*". Further to this, and applying the ejusdem generis rule of interpretation, this Court that the 5% interest is a flat rate. This is because the preceding interests imposed in **Exhibit A** were fixed rates, that is flat interest. In Nwobike v. F.R.N. (2022) 6 NWLR (Pt. 1826) 293 S.C. at *343-344, paras. B-D*, the Supreme Court held that

> **"*The* *ejusdem generis* *rule is an interpretative rulewhich the court would apply, in an appropriatecase, to confine the scope of general words whichfollow special words as used in a statute or documentor Constitution within the genus of those specialwords. In the interpretation of statutes therefore,general terms following particular ones apply onlyto such persons or things as are* *ejusdem generis* *withthose understood from the language of the statuteto be confined to the particular terms. The generalwords are therefore to be read as understandingonly those things of the kind as that designatedby the preceding particular words or expressions,unless there is something to show that a wider sensewas intended by the legislature***."

It therefore follows that the 5% to "*be charged on an amount which only interest is to be serviced*" was also intended by the parties to be a flat interest rate.

Thus, the only logical and reasonable interpretation of that clause is that the 1st Applicant is required under that clause to pay an additional 5% fee on top of the interest amount of ₦1,000,000.00 (One Million Naira). To arrive at the figure payable under this head, we use our dependable formula:

Fee = Interest Payment x (5/100)
Fee = 1,000,000 x 0.05
Fee = 50,000

The 1st Applicant is required, therefore, to pay the additional sum of ₦50,000.00 (Fifty Thousand Naira) on the original interest of ₦1,000,000.00 (One Million Naira).

As I have noted earlier, the sums payable here are one-off payment because (1) **Exhibit A** does not provide the frequency for the payment and this Court will not import into the document terms to which the parties did not agree; (2) **Exhibit A** uses the word "flat" in describing the interest rate which, by necessary logical extrapolation and connotative implication, suggests that the interest is fixed and not subject to either addition or subtraction; and (3) the fourth clause under the heading for late repayment fees stipulates that the interest can only be serviced once. In view of these, therefore, the total amount due to the Respondent from the 1st Applicant is this:

1st Applicant's total indebtedness = Outstanding balance + 10% flat at any point of liquidation after 01/03/2019 + 15% penalty for drawing a dud cheque + 5% interest on serviced interest
1st Applicant's total indebtedness = ₦6,000,000.00 + ₦600,000.00 + ₦900,000.00 + ₦50,000.00
1st Applicant's total indebtedness = ₦7,550,000.00 (Seven Million, Five Hundred and Fifty-Five Thousand Naira) only.

I am not oblivious of the contents of **Exhibit C** and **Exhibit D**. In **Exhibit C**, the Respondent claimed that the amount due to it from the 1st Applicant is ₦39,000,000.00 (Thirty-Nine Million Naira). On the other hand, the 1st Applicant, in **Exhibit D** claimed he is indebted to the Respondent only to the tune of ₦6,800,000.00 (Six Million, Eight Hundred Thousand Naira). Curiously, none of them illumined how they arrived at their figures. For the purpose of clarity, therefore, this Court iterates that, after a comprehensive analysis and construction of **Exhibit A**, the total indebtedness of the 1st Applicant to the Respondent is ₦7,550,000.00 (Seven Million, Five Hundred and Fifty-Five Thousand Naira) only.

The Respondent has invited the Court to hold that **Exhibit HT1** enables it to recover the sum of ₦39,000,000.00 (Thirty-Nine Million Naira) from the 1st Applicant. In fact, the Respondent had averred through its director in paragraph 7 that "*That contrary to paragraph 13 of the Affidavit, the conditions for the loan includes those stated on the mortgage, the 1st Applicant executed*." While I agree with the Respondent that **Exhibit HT1** also regulates the relationship between the 1st Applicant and the Respondent, I do not agree with it that the document is designed to supplant or, even, supplement **Exhibit A**. The law has always been that the contents of a written document can be altered only by another document duly executed by the parties to the original contract. See section 128 of the Evidence Act, 2011. In ***Layade v. Panalpina World Trans. Nig. Ltd. (1996) 6 NWLR (Pt. 456) 544 S.C. at 558, paras B – C***, the Supreme Court held that "***The general rule is that where parties have embodied the terms of their agreement or contract in a written document, extrinsic evidence is not***

admissible to add to, vary, subtract from or contradict the terms of the written instrument. Thus, where parties enter into a contract, they are bound by the terms of the contract and it is unfair to read into such a contract the terms on which there was no agreement."This principle has been followed in a plethora of cases such as***Maidara v. Halilu (2000) 13 NWLR (Pt. 684) 257 C.A. at 271, paras. C-D; Obajimi v. Adediji (2008) 3 NWLR (Pt. 1073) 1 C.A. at 14, paras. C-D; Access Bank Plc v. Nigeria Social Insurance Trust Fund (2022) 16 NWLR (Pt. 1855) 143 S.C. at 172, paras. F-G***.

This is particularly imperative when it is considered that **Exhibit A** did not in any of its provisions make reference to the existence of **Exhibit HT1**. I am moved to agree with Counsel for the Applicants that Clause (c) under the mortgagor's covenants is vague and cannot be used to form the basis for the astronomical interest rate the Respondent had imposed, rather unilaterally, on the loan sum. The said clause provides that "*The Mortgagor will make each monthly payment secured by this Mortgage as agreed by the parties.*" There is no evidence that the parties agreed on any mode of repayment of the loan facility other than that envisaged under **Exhibit A**.

Exhibit HT1, just like the guarantor undertaking embedded in **Exhibit A**, is a means of securing the loan facility. The object is to guarantee that the 1st Applicant would repay the loan and that in the event of his default in repayment, the Respondent would be able to recover its money from exercising its power of sale over the collateralized property. In other words, the utility of **Exhibit HT1** is the collateralization of the loan granted in **Exhibit A** by using the property stated

therein to secure the loan; it is not meant to vary, modify, alter or in any way change the terms of the loan contained in **Exhibit A**. Thus, the Respondent has the option of enforcing the terms of **Exhibit A** against the 2nd Applicant to recover the sum which this Court has found to be the guarantor of the indebtedness of the 1st Applicant to the Respondent. This is because a guarantor stands in the stead of the original debtor and the creditor can proceed against him without necessarily exhausting his option of recovering the debt from the original debtor. In ***Chami v. U.B.A. Plc (2010) 6 NWLR (Pt. 1191) 474 S.C. at 501, paras C – E***, the apex Court held that "***A contract of guarantee can be enforced against the guarantor directly or independently without the necessity of joining the principal debtor in the proceedings to enforce the guarantee. Thus, a surety may be proceeded against without demand from him and without first proceeding against the principal debtor.***"

In the alternative, the creditor whose loan is secured by a deed of mortgage can exercise his power of sale of the mortgage property where the debtor fails to fulfil his obligation of repayment under the loan agreement. In ***Ayanlere v. F.M.B. (Nig.) Ltd. (1998) 11 NWLR (Pt. 575) 621 C.A. at 628, paras. B-C***, the Court held that

"***A mortgagee, unless where a contrary intention is shown, has a power of sale provided: (a) the mortgage was made by deed; and (b)the mortgage money is due, that is the legal date for redemption has passed. Where the money is payable by instalments, the power of sale arises as soon as any instalment is in arrears***." As to when a mortgagee may be restrained from

exercising his power of sale, the Court held further at ***628, paras. D- F*** that "***A dispute as to volume of indebtedness is not a valid ground known to law such as can be relied upon to prohibit a mortgagee from exercising his right of sale. In other words, the mortgagee will not be restrained from exercising his power of sale because the amount due is in dispute. He will be restrained, however, if the mortgagor pays the amount claimed into court, that is the amount which the mortgagee swears to be due to him, unless on the terms of the mortgage the claim is exclusive.***"

I am not unaware that the reliefs sought by the Applicants are mainly declaratory. Being declaratory, the suit is an invitation to this Court to exercise its equitable jurisdiction. To that end, therefore, the Applicants are under a legal bounden duty to establish their entitlement to the reliefs sought. See ***Amobi v. Ogidi Union Nigeria (2023) 1 NWLR (Pt. 1864) 153 S.C. at 182-183, paras. F-C;U.T.C. (Nig.) Plc v. Peters (2022) 18 NWLR (Pt. 1862) 297 S.C. at 313, paras A – B***. The Respondent has argued that the Applicants have not come to equity with clean hands. I disagree with it. The Applicants have placed the material facts before this Court. The Respondent has equally adduced material evidence before this Court in opposition to the suit of the Applicants. This Court has evaluated clinically and dispassionately the affidavit evidence of the parties before it. It is my considered view, and I so hold that the Applicants are entitled to invocation of the equitable jurisdiction of this Court in their favour.

In conclusion, therefore, I find this suit meritorious. It is not academic as the Respondent has struggled valiantly to project. The suit succeeds and the reliefs sought by the Applicants is hereby granted as follows:-

1. **THAT by virtue of Exhibit A the maturity date for the loan whose terms and conditions the 1st Applicant accepted on the 1st of February, 2019 is the 1st day of March, 2019.**
2. **THAT by virtue of Exhibit A the outstanding sum on the loan as of the 1st day of March, 2019 was ₦6,000,000.00 (Six Million Naira) only.**
3. **THAT by virtue of Exhibit A, Relief No. (c) is not granted.**
4. **By virtue of Exhibit A and for the reasons set out in this Judgment and which reasons were arrived at after a painstaking evaluation and construction of Exhibit A, the total indebtedness of the 1st Applicant to the Respondent is the aggregate sum of ₦7,550,000.00 (Seven Million, Five Hundred and Fifty Thousand Naira) only made up of the following sums: ₦6,000,000.00 (Six Million Naira) only being the aggregate of the principal loan sum of ₦5,000,000.00 (Five Million Naira) and the 20% flat interest of ₦1,000,000.00 (One Million Naira) only; ₦600,000.00 (Six Hundred Thousand Naira) only being the 10% flat interest on the outstanding balance where payment is made after the month of payment, that is, after the 1st of March, 2019; ₦900,000.00 (Nine Hundred Thousand Naira) only being the 15% penalty chargeable on the outstanding balance where the 1st Applicant issued a dud cheque to the Respondent; and, ₦50,000.00 (Fifty Thousand Naira)only being**

the 5% fee chargeable on the sum of ₦1,000,000.00 (One Million Naira) only being the 20% flat interest to be serviced.

5. **THAT the Respondent, pursuant to Exhibit A and Exhibit HT1 has the option to enforce the recovery of the above sum of ₦7,550,000.00 (Seven Million, Five Hundred and Fifty Thousand Naira) only from the 1st Applicant through an action in Court for recovery of the said sum pursuant to Clause 1 of Exhibit A, by proceeding against the 2nd Applicant pursuant to the contract of guarantee embedded in Exhibit A, or by exercising its power of sale of the collateralized property situate at and known as Plot No. A03/1463 Dwelling Plot No./Floor 3371/02 Dwelling Unit Block 3 Flat 21 Street Luaulu Close, Wuse 1 District, Abuja with File No. AK30368 which is still in the name of Inam Etukudoh Akrasiused in securing the loan pursuant to Exhibit HT1.**
6. **THAT the Respondent does not have the powers under Exhibit A to charge any interest on the loan sum other than the categories of interest, penalties and fees expressly provided for under Exhibit A and at the rate expressly provided for therein.**
7. **THAT pursuant to the construction of Exhibit A and the reasons set out in this Judgment the Respondent is not entitled to recover the sum of ₦39,000,000.00 (Thirty-Nine Million Naira) only from the Applicants.**
8. **THAT having determined the total amount outstanding and due to the Respondent from the 1st Applicant to be ₦7,550,000.00 (Seven Million, Five Hundred and Fifty Thousand Naira) only, Reliefs No. (g), (h) and (i)**

are no longer grantable as they have been overtaken by events. The Respondent may proceed to recover the above stated sum through an action in Court for recovery of the said sum of ₦7,550,000.00 (Seven Million, Five Hundred and Fifty Thousand Naira) only pursuant to Clause 1 of Exhibit A, by proceeding against the 2nd Applicant pursuant to the contract of guarantee embedded in Exhibit A, or by exercising its power of sale of the mortgaged property pursuant to Exhibit HT1.

9. **THAT Relief No. (j) is hereby refused. Parties should bear their respective costs.**

This is the Judgment of this Court delivered today, the 18th day of April, 2023.

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HON. JUSTICE A. H. MUSA
JUDGE
18/04/2023

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