**GOVERNMENT OF ABIA STATE OF NIGERIA**
**IN THE SMALL CLAIMS COURT OF ABIA STATE**
**HOLDEN AT UMUAHIA**

**BEFORE HIS WORSHIP MARY UKEJE EMENIKE (MRS) CHIEF MAG. GD. 1**
**THIS FRIDAY THE 28TH DAY OF FEBRUARY, 2025.**

**CLAIM NO: U/SCC/04/2024**

**BETWEEN**

**MR. OBIOMA OKORIE - CLAIMANT**

**AND**

**BASHIR MUYIWA OGUNGBANGBE - DEFENDANT**

Parties are present except the Defendant.

**APPEARANCES:** S.O. Adikwu Esq for the Defendant. No representation for the Claimant.

**CLERK**: No letter
**COURT**: Judgment
The Claimant is claiming a total of ₦5,153,400.00 from the Defendant. The breakdown of the three arm of the Claimant's claim is as follows:

**(a) ₦5,000,000.00 debt owed**
**(b) ₦3,400.00 Court fee**
**(c) ₦150,000.00 cost**

The claim was filed on the 15/1/2024 and same was served on the Defendant. Affidavit of service is filed at Page 12 of the Court file. The Defendant responded by filling form SCA 5 with no counter claim.

On the 1/3/2024, the Claimant opened his case and testified as CW1. The evidence of CW1 can be summarized thus: That he deals on cement and building materials. That the Defendant borrowed ₦5 million from him when he had a challenge to sought himself out and the defendant said he was

going to add the sum of ₦1 million to the ₦5 million he borrowed when he is going to pay back the ₦5 million. That they had a written document with regards to that transaction and since then, the Defendant has only paid ₦1 million leaving an outstanding balance of ₦5 million. That he has made several efforts to get the money from the Defendant but to no avail. That the money the Defendant claimed he paid him is the money accrued from the debt the Defendant's wife was owing from the cement he supplied to the Defendant's wife and that there was no link between the transaction he had with the defendant and the defendant's wife as regards to the debt the defendant was owing him. That the business between himself and the Defendant's wife is different and that all the payment made by the Defendant's wife through his account were acknowledged by him including the ₦2million the Defendant claimed he paid. That the said ₦2million is for the wife's debt and not for the transaction that brought them to this Court. That the statement of account contained all the transaction both debit and credit the defendant's wife paid and he tendered credit sale Agreement as Exhibit A.

CW1 was cross examined immediately after his evidence in Chief and under cross examination, CW1 maintained that the ₦2million paid into his account by the Defendant's wife was for the cement he supplied to the Defendant's wife and not for the money the defendant is owing him and that the transaction he had with the Defendant's wife was not a single transaction. But a transaction of more than two years. CW1 added that the ₦4,280,000.00 he refunded to the Defendant's wife was the money the Defendant's wife paid when the Defendant had a challenge with EFCC and was detained at Lagos. That the Defendant's wife deposited ₦8 million that she will use it to sought out the EFCC problem that from the ₦8 million, the Defendant's wife was given her balance and that the transaction they had then did not closed. He equally said that as at 2016, he cannot remember how much a bag of cement was and how many bags of cement ₦2million Naira could purchase. He maintained that the Defendant has only paid him ₦1million.

CW2 testified on the 22/3/2024 and her evidence is summarized thus: She gave her name as Okorie Obioma Edna a Director in Obioma Enterprise Nigeria Limited and also the Deputy Managing Director of the Company. That she knows the Defendant and his wife and that the Defendant's wife does business with her company, that her company supply the Defendant's wife cement, the defendant's wife will sale and bring back the money; that the Defendant's wife is a retail customer and that the defendant's wife started doing business with her company since 2014. That the company supply her on credit and the defendant's wife has a statement of account with the company called a Ledger where all the purchase she makes are being posted and that has a column were all her payment to the company are recorded and the debit column where all the goods supplied to her are recorded. She went further to say that, the company has been doing this business peacefully with the Defendant's wife until sometime in 2016 when the Defendant's wife came to meet CW1 and pleaded for help that her husband has a problem with EFCC at Port Harcourt and that she wouldn't want to have any money in her account while the investigation is going on. That the Defendant's wife pleaded with CW1 to allow her transfer the sum of ₦8million into CW1's account for safe keeping until the investigation is over. She went on to say that the agreement was done in good faith even through CW1 did not want to accept that but after much pleading, CW1 accepted it and allowed the Defendant's wife to pay the money into the Account. That, that amount was not involved in their business and if the Ledger is checked, it will be discovered that ₦8 million is the highest amount the Defendant's wife has deposited. That it has been ₦1million, ₦2million and the highest the Defendant's wife has paid is ₦4million. CW2 went on to say that after the matter, the defendant's wife came back and wanted a refund of ₦8 million and CW1 who is her boss said because the defendant's wife was owing the company at that particular time, he was not going to give her all the money, that they amicably agreed that the sum of ₦4,280,000 be credited back to her account while the balance of ₦3,720,000 was paid into the company's account to reduce her outstanding balance with the company at that particular time and they continued doing business. That sometime in 2017, ₦2million was paid into the defendant's wife personal account with the

company as part of reducing her debt with the company. That the Defendant's wife paid the teller in her name Juliet and she did not tell her or the company at that point of making the payment that it was for her husband and that the Defendant's wife is still owing her company. CW2 went further to say that the Defendant is a well known friend of her boss and the company and it started when the Defendant was a Bank Manager around 2016/2017. That the Defendant came to her husband ie CW1 and told him what he has been passing through for some months then and how he was picked up by EFCC and the matter was coming to a conclusion and that he needed a friendly loan of N5m for him to settle with the EFCC. That when her husband ie CW1 told her about the request, she objected to it reason being that he cannot see the Defendant paying back the money and also the Defendant's wife had ₦8million in her account and cannot loan her husband ₦5million why then will it be her boss that will loan him the money. That after pressure and pleading, CW1 out of his benevolence finally agreed to give the Defendant ₦5 million which the Defendant agreed on his own to add ₦1million on top of the ₦5million when paying back the money. She went further to say that a friendly loan agreement was made in form of credit sale between the defendant and CW1 and the Defendant signed and issued his personal cheque of ₦6m and tendered the said cheque as Exhibit B. CW2 further said that the loan transaction and the business transaction with the Defendant's wife are two different transactions.

The cross examination of CW2 commenced immediately after her evidence in chief and under cross examination, CW2 said she did not signed Exhibit A and maintained that the Defendant borrowed the money with an agreement that the defendant will pay interest to CW1 and she also said that her husband is not a money lender and that the transaction between her husband and the Defendant is quite different and that the business between the Defendant's wife and the company did not come to a close in 2016 after the refund of the ₦4,280,000.00 but that the transaction between the company and the Defendant's wife came to a close on the 30th June, 2018.

The defence opened its case on the 5/4/2024 and the evidence of DW1 can be summarized thus: She gave her name as Juliet Oluomachi Ogunbangbe, the wife of the Defendant. That about 2017, the Claimant called her on phone and threatened to arrest her husband based on a friendly loan and as a wife, since she knows she has the money, she appealed to the Claimant not to arrest the defendant that she will go and transfer ₦2million to him. And that when she made the transfer, she called the claimant who confirmed and she equally called her husband and informed him of the payment, and her husband called the Claimant to see if he has seen the money which the Claimant confirmed he has seen the money and that the transfer was made to Obioma Enterprise where the Claimant called her and gave her the account number. DW1 tendered Exhibit C, the statement of account. DW1 went on to say that she paid ₦8million into the account of the Claimant to buy cement from him and when she found out that the prices, the Claimant gave to him were on the high side, she demanded that the Claimant should balance her after taking his own money from the things she bought from him initially which the Claimant balanced her ₦4,280,000.00. That she paid the ₦8million on the 2/9/2016 to the Claimant's account and when she closed the account, the claimant refunded the balance on the 11/11/2026. DW1 tendered Exhibit D and went further to state that the ₦8million was not a cover up on the EFCC case her husband had and the balance of ₦4,280,000 was not the balance after the EFCC case.

DW1 was crossed examined on the 14/6/2024 and concluded on 5/9/2024. The evidence adduced therein was that she was not aware of the friendly loan and she does not know when the transaction was made and that it was when she paid the ₦2million that she called her husband ie the defendant who confirmed that there was such loan and that the ₦2m she paid was not to offset outstanding debt.

DW2 who is the Defendant himself testified on the same 5/9/2024 and his evidence was that the Claimant use to be his friend and business partner and he gave him a friendly loan of ₦5million in 2017 and he tendered the cheque as Exhibit 'E' and that he has paid the Claimant ₦1million and his wife paid ₦2million and that he was not there when the Claimant called his

wife and his wife ie DW1 is absolutely not aware of the money he collected from the Claimant and that he has paid the Claimant ₦3million remaining ₦2million and that he told the Claimant that he will pay the balance of ₦2million and that the friendly loan was not put into writing and that he did not give the Claimant any post dated cheque for a friendly loan and that apart from the friendly loan, he has had transaction with the Claimant involving money or sales. That Exhibit A & B does not have anything to do with the friendly loan.

Cross examination of DW2 commenced immediately after his evidence in Chief and the evidence adduced therein is that he personally signed Exhibit A and he maintained that Exhibit B was not for the friendly loan transaction, that there was no corresponding between him and the Claimant on the loan because of what he did for the Claimant which was winning a contract for the Claimant and he did not collect a dine from the Claimant that was why he obliged him the loan and that he didn't collect any receipt for the payment of the ₦2million. DW2 confirmed that the signatures in Exhibit A and B are his signatories but are documents in a different transaction and has nothing to do with the friendly loan.

At the close of evidence of witnesses, parties filed their written arguments. The defendant's written address was filed on the 26/9/2024 and he raised two issues for determination to wit: (1) Whether the transaction leading up to the Claimants claim is lawful and confers Jurisdiction on this Court. (2) Whether the Claimant has proven his claim on a preponderance of evidence/balance of probabilities, to entitle him to any relief against the Defendant.

The Claimant's Counsel filed his written submission on the 23/10/2024 and raised three issues for determination to wit (1) Whether a friendly loan request from a friend to a friendly non professional money lender can constitute an illegality. (2) Whether conduct of the Defendant in breach and delay to pay back the friendly loan is reprehensible (3) Is the Claimant in the circumstances and facts of this case has proved entitled to his relief and Judgment. The defence thereafter filed their reply on point of law on the 19/11/2024.

The defence Counsel in his legal submission on issue No. 1 submitted that the Claimant's claim runs afoul of **Section 2 of the Money lender's law Cap 126 Laws of Abia State.** Counsel submitted that the Claimant is not a licensed moneylender, but yet carries on business/holds himself out as a moneylender without being in possession of a valid money lender's license authorizing him to do so in Abia State. Counsel further submitted that the law is that a loan transaction which shows that an offence has been committed against the provisions of the moneylenders law by engaging in charging unauthorized interest, is an illegal contract, one which the Court will not enforce. Counsel relied on the case of **Kekong & anor V Abang & Ors (2010) LPELR- 9013 CA** and also the **case of Solanke V Abed (1962) ISCNLR 371.** Counsel further submitted that **Section 5(d) of the Moneylenders law** criminalizes the act of the Claimant and therefore the contract sought to be enforced is illegal and unenforceable and it is trite law that a wrongful act cannot get support from the seat of Justice. Counsel urge Court to dismiss this suit based on illegality.

On issue No. 2 Counsel contended that, even when the Claimant admitted that he does not have a money lenders license, he did not tender any document to show that there was any such agreement on the payment of interest on the friendly loan. Counsel contended that there is inconsistency and falsehood by the Claimant and CW2 and therefore their evidence does not deserve any credibility and cannot be believed. The defence major contention on this is that, CW1 said the Defendant's wife (DW1) transferred the sum of ₦8million to him that she will use it to sought out the problem the Defendant ie her husband was having with EFCC while CW2 said the Defendant's wife ie DW1 came to CW1 (ie her husband) and said she wouldn't want to have any money in her account while the EFCC investigation was going on and pleaded that she transfer the money for safe keeping. Counsel contended that the very material point as to what the ₦8million paid into the Claimant's account by DW1 was meant for, goes to show the falsity of their claim that the ₦2m paid in defrayment of the friendly loan by the Defendant's wife was for supply of goods and the Court should

not ascribe any probative value to the evidence of CW1 and CW2 on the issue of ₦2million paid by the Defendant's wife in defrayment of ₦5million friendly loan. Counsel on this relied on the case of **Kalu V The State (1988) 4 NWLR (Pt. 90) 503.** Counsel further submitted that a friendly loan does not admit of interest or anything that detracts from kindness, friendship, help and partnership, which charging of interest will usury is likely to cause. Counsel relied on the case of **First Bank of Nigeria V I.A.S. Cargo Airlines Nig. Ltd (2011) LPELR – 9827 CA.** Counsel submitted that the Claimant has failed to prove his case on the balance of probability/preponderance of evidence.

The Claimant's Counsel in his written address made the following submissions on issues formulated by him. On issue No. 1, Counsel submitted that it is trite that a party claiming legal right arising from breach of contract agreement and failure to repay a friendly loan or a declaration of title must prove the rights being asserted on the premise of evidential requirement that he who asserts must prove and the need for averment or claim tally with evidence. Counsel went on to submit that proof as in the extant case rest squarely on the person who approaches the court. Counsel relied on the case of **Bamgbegbin V Oriake (2009)12 NWLR (Pt 1158) 370** and also the case of **Ojukwu V Yaradua (2009) 12 NWLR (Pt 1154)50.** Counsel further submitted that the Claimant both in his evidence and exhibits A,B,C and E has been cogent and consistent to prove his legal rights and claim. Counsel further submitted that the Claimant is a renowned cement and iron rod merchant businessman at the Industrial market Umuahia and not a professional money lender who trade on the business of money lending for which, the entrenchment or invocation of the money lenders law into the friendly loan contract is most misconceived both in law and on facts as the money lenders Act rules is overtly inapplicable.
Counsel further submitted that it is trite law as stated by the Apex Court that for a person to be a money lender, it must be shown unequivocally that, he is a professional who ordinarily trades upon lending in interest as his business overtime and not an isolated case or on off transaction. Counsel on this relied on the case of **Uzoukwu V Idika (2008) 9 NWLR (Pt 1091)**

**34 CA** and also the case of **Nwankwo V Nzeribe (2005) LPELR – 5452 CA.** Counsel further submitted that an isolated case of lending money to a friend with small interest cannot be regarded as carrying business of money lending. Counsel relied on the case of **Ukaobasi Nwosu V Wilson Aladu (1965) 9 ENLR 117** and further submitted that, a friendly loan interest is payable where there is express agreement or inferred from the dealings of the parties as in the case the intendment inferred from Exhibit A and B. Counsel on this relied on the case of **Mohammed Abubakar V Mahmod Modibo (2008) All FWLR (Pt400) 751.**

On issue No. 2, Counsel submitted that a diligent and honest party to any given contract must show utmost good faith to honour his obligation without fail, coercion or delay. And that the Defendant signed Exhibit A and issued Exhibit B with a duty to pay back but failed and breached the terms of the agreement which is reprehensible. Counsel cited the cases of **Peter V Okoye (2002) 3 NWLR (Pt 755) 529** and also the case of **Oceanic Bank Int. Ltd V Chitex Industries Ltd (2000) FWLR (Pt 4) 678**. Counsel further submitted that, where a person of full age and discretion like the Defendant, signs a document in full knowledge of the nature it will avail him to complain or deny he neither made it or he did not know the contents of the documents. Counsel relied on **Egbase V Oriageghan (1985) 10 SC 80.**

On issue No. 3, Counsel contended that DW1 admitted she is a customer of the Claimant and has account ledger of credit and debit with the Claimant and that the N2million DW1 claimed she transferred to the Claimant to defray the friendly loan of the Defendant she never got or obtained as it is in general practice any evidence receipt of the ₦2million payment or acknowledgement receipt from the Claimant to cancel Exhibit B nor made attempt to retrieve Exhibit B. Counsel submitted that by the provisions of **Sections 135 of the Evidence Act,** the Law is that where there is an allegation of the existence of a particular fact, it is the duty of the person who alleges to prove his allegation. Counsel relied on **Omotosho V. Ojo (2008) All FWLR (Pt 408)389.** Counsel contended that there is an established fact of a friendly loan and there is no credible evidence or receipt of repayment. Counsel urge

the Court to hold that the Claimant has proved his case on the balance of probability as required by entitling him for Judgement.

The Defendant filed a reply on point of law on the 19/11/2024. I am constrained to comment on the reply on point of law filed by the defence Counsel. A reply on Point of Law is not designed or intended to give the defence Counsel a chance to reopen his argument or to repeat and improve on his argument in his final written address. A reply is limited to answering any new points arising from the Claimant's Counsel's submission. It is not for the defence Counsel to further bite at the cherry or use it as a repair kit or opportunity to provide additional arguments in support of his argument. See the Supreme Court division in **Oguebego V PDP (2016) EJSC (Vol 45) 142 also the case of Kolo V Lawan (2018) EJSC (Vol 90)80** and **Salihu V Abdulwasiu (2016) EJSC (Vol 42)2 or in (2016) LPELR-26062 Sc.** Having said this let me pick the relevant submissions of the defence in his reply on point of law. Counsel has submitted that Section 132 of the Evidence Act as well as the rules of evidence, Exhibit A speaks for itself and extraneous evidence is not permissible to alter or vary its content. Counsel submitted that it is a settled principle of law that where there are two conflicting decisions, the later in time prevails. Counsel relied on **Oye V Odidan & Ors (2024) LPELR-62621(CA)** and submitted that the cases **Kekong & anor V Abang & Ors (2010) LPELR – 9013 (CA)** and the case of **Nnamdi V Ndulue & Ors (Supra)** are later in time and thus represent the current position of the law as against **Uzokwu V Idika (2008) 9 NWLR (Pt 1091) 34(CA)** and **Nwankwo V Nzeribe (2005) LPELR-5452 (CA)** cited and relied upon by the Claimant's Counsel.

Having carefully summarized the evidence before me and the written address of Counsels and also considered the exhibits tendered before me including the review of the authorities cited. I will formulate two issues for determination which are drawn from the issues formulated by both Counsel. The issues are: (1) Whether the transaction between the parties is lawful and enforceable as to confer jurisdiction on this Court to entertain same (2)

whether the Claimant has proved his claim as to be entitled to the reliefs sought.

Before I proceed, it is important to point out that it is on record that the Defendant in his form SCA 5, admitted owing the Claimant the sum of ₦2million and on the 8/2/2024, Judgment was entered in the admitted sum of ₦2million against the Defendant. The matter was thereafter adjourned for trial on the disputed sum of ₦3million.

Now, on Issue No. 1, the defence argument is that the transaction between the parties was illegal and unenforceable. Counsels contention is that the transaction runs afoul of Section 2 of the **Money lenders Law Cap 126 Laws of Abia State** and that the transaction is criminalized by Section 5(b) of the money lenders law. Counsel submission is that it is illegal for the Claimant not being a money lender, to loan money and charge unauthorized interest. The position of the defence counsel is well understood by me and I equally understood the position of the law as to when a matter is founded on illegality and I am very conversant with the position of the law as to the effect that a Court cannot be used to enforce an illegal contract see the case of **Passco Int'l Ltd V Unity Bank Plc (2022) EJSC (Vol 176) 182** and the case of **Ituebner V Aeronautical Industrial Engineering and Project Management Co. Ltd (2017) EJSC (Vol 16)54.** Whenever the issue of illegality of a contract or transaction is raised, it touches the jurisdiction of the Court and the Court will not have the Jurisdictional competence to enforce an illegal contract. See the case of **Passco Int'l Ltd V Unity Bank Plc (Supra)** and the case of **Citee International Estates Ltd V E Int'l Inc & Associates (2018) 3 NWLR (Pt 1606)362.** The Defendant is simply saying that this Court lacks the jurisdiction to entertain this suit because the transaction was illegal and defence counsel relied heavily on the case of **Kekong V Abang & Ors (Supra) and Nnamdi V Ndulue & Ors (2017) LPELR- 43593 (CA).**

I have carefully looked at Section 2 of the Moneylenders law and the cases referred to by the Defendant. Section 2 of the Moneylenders law defines Moneylenders to include 'every person whose business is that of money

lending or who carries on or advertises or announces himself or holds himself out in anyway as carrying on that business.' For the Claimant to be referred to as a Moneylender, it must be shown unequivocally that the Claimant is into the business of lending money as his major business or objective. It is an evidence before me that the Claimant deals on cement, Iron rods and building materials and the Defendant equally confirmed same by saying that the Claimant is not a money lender. The lingering question still remains; did the Claimant held himself out as a money lender or did he advertise himself or announces himself as a money lender. I have found the answer to this question in the Supreme Court case of **Chidoka V First City Finance Company Ltd (2012) LPELR -1343 (SC)** or see it in **(2013)5 NWLR (Pt 1346) 144** a case commonly referred to as the money lenders case where the Supreme Court held that when it is not shown that the primary objective of the business of the Claimant is lending money. Such transaction does not come within the purview of the money lenders law. The learned Jurist Coomassie JSC in Chidoka's case (Supra) adopted the reasoning of Inyang Okoro JCA (as he then was) in the case of **Ibrahim V Bakori (2009) LPELR-8681(CA)** where the learned jurist held 'A person engaged in other business who out of sympathy or pressure as in this case lends money to his friend to resuscitate his ailing business should not by any stretch of imagination be termed money lender under the law aforesaid". In the same case, adopted the views Farewell, J., in Lintchifield V Dreyful (1906) 1KB 554 @ 559 adopted by Okoro JCA that money lenders law was intended to apply to persons who really carrying on the business of money lending and not persons who lend money as incident business or to a few friends. The Supreme Court in the case of **Uzoukwu V Idika (2021) EJSC (Vol 164)28** or see it in (**2022)3 NWLR (Pt 1818)403** held that 'the mere fact that a person gives out a loan with interest or in return for a higher amount does not make him a money lender'. On this same issue, the Court held in **Veritas Insurance Company Ltd V City Trust Investment Ltd (1998)13 NWLR (Pt 281)349** held '…….it is certainly not my understanding of the law that once a Plaintiff claims interest in an amount, the transaction automatically comes within the ambit or purview of the money lenders law…..There is no such provision, either in the moneylenders

law or anyother law'. On the strength of the above decisions of the Apex Court, l can one comfortably say that the Claimant is not by Section 2 of the money lenders law, a money lender.
In Section 3 of the Moneylenders Law of Abia State, it states 'any person who lends money at interest or who lends a sum of money in consideration of a larger sum being repaid shall be presumed to be a money lender until the contrary is proved'. This presumption was rebutted when evidence was led to the fact that the Claimant has always been in the business of selling cement, Iron rods and building materials. There is no way all through the trial that this piece of evidence was contradicted. I have found out as a fact that the Claimant did not hold out himself, advertises himself or announces himself as a moneylender and therefore the Provisions of Section 2 of the money lenders Law is not applicable in this circumstance. The argument of the defence Counsel that the decision of the Court in **Kekong V Abang & Ors (Supra)** prevails over **Uzoukwu V Idika (2008)9 NWLR (Pt 1091)34 CA** as cited and relied upon by the Claimant's Counsel. Let me state that is not the current position of the Law. Uzoukwu (Supra) cited by the Claimant's Counsel (a 2008 citation), was the Court of Appeal. It went on Appeal to the Supreme Court and was decided in February, 2021 and it became a recent decision. Having said this, I see nothing in the transaction leading to this Suit as illegal and unenforceable. This Court has the Jurisdiction to hear and determine this Suit. I so hold.

On Issue No. 2, it is trite law that civil cases are determined on the balance of probability and the preponderance of evidence. Let me streamline the crux of the case which is the sum of ₦2million that was paid into the Claimant's company's account by the Defendant's wife and ₦1million interest. It is not in dispute that the sum of ₦2million was paid on the 6/6/2017 by the Defendant's wife ie DW1. It is not also in dispute that the Defendant's wife use to do business of buying cement from the Claimant's company. The question is what was the said ₦2million for? Was it for the defrayment of the loan or for the reduction of the debt owed the company by the Defendant's wife. The defendant in his evidence simply said his wife paid the Claimant ₦2million. It is evidence before me that the wife of the defendant was not

aware of the transaction between the Claimant and the Defendant and the Defendant also said he was not there when the Claimant called his wife for the money. In other words, the Defendant's wife was not privy to the transaction between the parties and would not know the terms of the transaction.

In the cause of cross examination of CW1, an issue of ₦8million was brought up by the Defendant and it became a fact in issue. In **Amadi V Amadi (2017) EJSC (Vol 58) 62** a fact in issue is any fact from which either by itself or in connection with other facts the existence or non-existence assertion and denial constitutes the dispute. The Defendant's wife claimed she paid the sum of ₦8million on the 2/9/2016 into the Claimant's account and when she closed her business account with the Claimant, the Claimant refunded a balance of ₦4,280,000.00 on the 11/11/2016 to her and that refund brought to a close her business transaction with the Claimant and she tendered Exhibit D to back up her claim. While the Claimant said the refund of ₦4,280,000 did not bring to a close their business transaction with her. As I earlier mention, this issue became a fact in issue and I have carefully looked at Exhibit D tendered by the Defendant and I have noted that after the refund of ₦4,280,000.00; the Defendant's wife had 9(nine) more transaction with the Claimant's Company up to 30/10/2017. CW2 said the company and the Defendant's wife business transaction came to a close in June, 2018. CW1 had also said that after the refund, the transaction with the Defendant's wife did not come to a close that the company only deducted what she owed the company and sent the refund to her as at that time. I am convinced that the transaction between the Defendant's wife and the Claimant's company did not come to a close after the refund of ₦4,280,000.00 as seen in Exhibit D. The Defendant's wife evidence was that she paid the ₦2million in 2017 in defrayment of the friendly loan owed the Claimant by her husband and she never had any dealings again with the Claimant. A transaction she said she wasn't aware, and she made the payment according to her after the Claimant threatened to arrest her husband. She did not deem it wise to approach the Claimant and obtain a receipt or evidence for the said sum to show clearly that it was in defrayment of the loan when she knew trouble was looming. Under cross examination,

DW1 said it was after she made the payment that she called her husband to confirm if he had such a transaction with the Claimant. Am wondering which action would have come first. Is it paying ₦2million and then called the debtor or call the debtor-before paying the ₦2million since according to the DW1, the Claimant is a Shylock. The Defendant on his own path, having been told that ₦2million was paid, did not also deem it wise to approach the Claimant and get a receipt or an evidence to that effect. I will not want to go into the issue of what the ₦8million transaction was for, because it is not an issue for determination before me. But I will not fail to mention the demeanor of DW1 when asked question under cross examination about her husband ordeal with EFCC and the ₦8m; she lost her temperament and that alone speaks volume. I do not believe the evidence of DW1, I do not believe that after falling out with the Claimant in business as she said, she could give him money without demanding for a prove of such payment. The Defendant in this instance seems not to know much about what transpired between DW1 and the Claimant, all he knows is that DW1 paid the Claimant ₦2million and nothing more.

On the issue of ₦1million interest, the Claimant tendered Exhibit B. The Defendant admitted that he signed Exhibit B. The Defendant admitted that he signed Exhibit B but it was for a different transaction and he never disclosed what transaction that was all through his evidence. The burden of proof of the existence of a term of an agreement rest on the party asserting same. It is a matter of evidence. **See Adedeji V Obajimi (2019) EJSC (Vol 106) 132** and it is settled that the Court cannot rewrite the law neither can a court rewrite an agreement for parties see the case of **Obanye V Union Bank of Nigeria Plc (2018) EJSC (Vol 97)2.** The evidence of the Claimant was that the Defendant said he will add ₦1m to the ₦5million Principal sum when repaying the loan and issued him a post dated cheque. I am of the view that parties are bound by the terms of their agreement unless it is established that a party was fraudulently led into such an agreement. Apart from fraud, duress, misrepresentation or undue influence, parties are bound by whatever they agreed upon. See the case of **Chidoka V First Finance Co. Ltd (2012) LPELR -9343(SC).** The defence Counsel argued that there was inconsistency in the evidence of the Claimant in

relation to the ₦8million to wit; CW1 said DW1 said she will use it to sought out EFCC while CW2 said DW1 she wouldn't want any money in her account while the EFCC investigation was going on. This issues to my mind are not material facts bothering on the disputed N2million. It can only be said to be contradictory when the inconsistency touches on what is material evidence depending on the facts of the particular case. See the case of **Eke V State (2011)3 NWLR (Pt 1235) Pg 589.** Whatever the situation was, it is clear that the Defendant had problem and needed help and that was why he went to get the loan from the Claimant. It is quite unfair that after getting the money to solve whatever problem it was, turned around to castigate the money and the owner of the money and even calling him names. The Defendant according to him has claimed that the Claimant is a shylock, a man with dogy and shifty character as he has called him, still went ahead to get money from him instead of looking somewhere else. The Defendant cannot take benefit of a simple agreement and refused to keep his own part of the terms of the agreement. I find it as a fact that the Claimant has proved his claim as to be entitled to his relief. Accordingly, Judgment is and hereby entered in favour of the Claimant in the following terms, that the Defendant shall pay to the Claimant the sum of **₦3,000,000.00 (Three Million Naira)** being the amount claimed by the Claimant. The Defendant shall pay the Court fees of **₦3,400.00** and cost of **₦20,000.00** is hereby awarded against the Defendant.

This is the Judgment of the Court.


**Signed**
**His Worship Mary Ukeje Emenike (Mrs)**
**Chief Mag. Gd. I.**
**28/02/2025**


**AGBANYIM C.C. (MRS)**
**Asst. Chief Registrar I**