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 THURSDAY THE 20TH DAY OF FEBRUARY, 2025.

CLAIM NO: U/SCC/19/2024

BETWEEN

MR. ERUANGA AJAYI - CLAIMANT

AND

MR. ISAIAH ALIWERI ONUWA - DEFENDANT

Parties are present except the Defendant.

APPEARANCES:- S.U. Onuoha Esq for the Claimant. S.O. Adikwu Esq for the Defendant.

COURT: Judgment

The Claimant is claiming from the Defendant the sum of ₦2,500,000.00 (Two Million Five Hundred Thousand Naira) as loan he gave to the Defendant and ₦450,000.00 interest for three months at the rate of ₦150,000.00 (One Fifty Thousand Naira) per month. The Claimant also claim the sum of ₦2,200.00 (Two Thousand Two Hundred Naira) as Court fee and One Million Naira as 30% gain. The total sum claimed by the Claimant on the face of the summons is ₦3,950,000.00 (Three Million, nine hundred and fifty thousand naira).

The summons was served on the Defendant and Affidavit of Service is filed at Page 13 of the Courts file. The Defendant in his response, filed a counter claim, claiming the sum of ₦2,500,00.00 (Two Million Five hundred Thousand Naira).

The Defendant pleaded non liable to the claim of the Claimant. The Claimant on the 4/4/2024, open his case and testified as CW1. His evidence can be summarized thus: That he entered into a partnership with the Defendant to process palm kernel. That on the 9/9/2020, he entered into an agreement with the Defendant to borrow the Defendant the sum of ₦2.5 Million Naira to finance the business which both of them agreed on an interest of ₦150,000.00 (One Fifty Thousand Naira) monthly and the agreement was for one year. That it was also agreed that 70% of the profit will be paid to the Defendant and 30% paid to him. That the said agreement was in writing. That said agreement was admitted in evidence as Exhibit A. That he paid the Defendant the sum of ₦2,377,000.00 (Two Million, Three Hundred and Seventy Seven Thousand Naira) and that he was to transfer the sum of ₦2.5 Million according to the agreement but that he had a challenge of ₦123,000.00 (One Hundred and Twenty Three Thousand Naira) and that both of them agreed that the difference of ₦123,000.00 be used to pay for the first month interest. He went further to say that he borrowed the said money he paid the Defendant from one Frank Oviosu and transferred same to the Defendant's personal account on 10/9/2020 as demanded by the Defendant. CW1 went on to say that the Defendant said he will be the one to use the money and buy raw materials. That apart from the first interest that was deducted at source, the defendant on the following days paid him the following amount of money.

On	**26/12/2020**	**₦100,000.00**
	28/12/2022	**60,000.00**
	3/2/2021	**50,000.00**
	30/3/2021	**100,000.00**
	26/4/2021	**100,000.00**
	17/6/2021	**100,000.00**
	25/5/2022	**34,640.00**
	6/6/2022	**40,000.00**
	19/8/2022	**200,000.00**
	20/8/2022	**200,000.00**

That the total amount given to him by the Defendant is ₦1,107,640.00 (One Million, One hundred and seven thousand six hundred and forty Naira. CW1

went further to say that the total amount of money the defendant was to pay him at ₦150,000.00 per month agreement was the sum of **₦1,800,000.00 (One Million Eight Hundred Thousand Naira)** which is the total interest for one year but the Defendant paid **₦1,107,640.00** leaving a balance of **₦692,360.00 (Six Hundred and Ninety Two Thousand, Three hundred and sixty naira).** It was his evidence that the principle sum of **₦2.5m** is yet to be paid by the Defendant which the defendant was to pay it in the month of October 2021. That the total sum the Defendant is owing him now is **₦3,192,360.00 (Three Million, One hundred and Ninety two thousand, Two Hundred and Sixty Naira)** which is the total sum of Principle sum of **₦2.5m** and the balance of ₦692,360.00. CW1 went on to say that the 30% share of the profit made in the business has not been paid to him and he tendered the statement of account of Stanbic IBTC as Exhibit B and B1. CW1 also said that the Defendant did not pay him **₦2,771,000.00 (Two Million Seven Hundred and seventy-one Thousand Naira)** as claimed by the Defendant.

Cross examination of CW1 commenced on the 25/4/2024 and ended same day. And the evidence adduced under cross examination was that the Claimant was in partnership with the Defendant and as a funding partner. The Claimant maintained he brought in ₦2.5 million Naira and the money was paid into the Defendant's account. That the Defendant was doing everything and that even though he the Claimant goes there twice or thrice a week, the Defendant did not carry him along and never trained him to do the business and he also maintained that both of them agreed that the Claimant take a loan for the funding of the business. That he wrote a letter and asked the Defendant to hands off the factory because the agreement period was for October 2020 to November 2021 and the Defendant only paid 5 months interest and when he called the Defendant and asked him, the Defendant asked him to go to Court.
That there was never a time he took over the factory since the inception till now, the defendant is still running the factory. That there was never a time the factory broke down during the period the money was to be given to him

during that 2021. That it was in February 2022 that the machine broke down and the Defendant brought engineers.

At the close of cross examination of CW1, the Claimant closed his case and the defence opened his defence on the 14/6/2024 and the Defendant testified as DW1. The evidence of DW1 is thus:- That the Claimant is his business partner, that they had a business of palm kernel oil extraction; that he is the owner of the business and the Claimant is the funding partner. That he owns the business and everything including the machines and that he had an agreement with the Claimant which was documented. Which is Exhibit A before the Court. That on 9/9/2020, he entered into a business partnership with the Claimant for purchasing of palm kernel and production of palm kernel cake (PKC), palm oil and sludge.

That based on that, they agreed that the Claimant will bring ₦2.5 million Naira and that him, as the business owner will take 70% of the profit and the Claimant will take 30% of the profit. That on 10/9/2020; the Claimant transferred to his bank account the sum of **₦2,377,000.00 (Two Million Three Hundred and Seventy-Seven Thousand Naira)** less ₦123,000.00 from what was agreed upon. And that when he called the Claimant to let him know about the difference of ₦123,000.00, the Claimant told him that he has financial challenge that he will balance the money later which the Claimant did not. That later on, within a week, the Claimant called him and told him that he wants to buy paint, that he has a production he wants to do. That he is in need of money that he withdrew the sum of ₦100,000.00 (One Hundred Thousand Naira) and took it to the Claimant at his piggery farm at Ukwu Ugba, Afara. He went further to say that immediately the claimant paid in the ₦2,377,000.00, he called the Claimant and asked him to come to the factory that they need to look for raw materials and start the business immediately. That before the Claimant paid in the money, that they met and agreed to employ three staffs on a monthly salary of ₦20,000.00 and one security at ₦10,000.00 monthly. That after inviting the Claimant, he told the Claimant that the raw materials in Abia are not of good quality that they have to go to Delta State where they can get high quality oil producing palm kernel nuts. That the Claimant agreed and the

differences was looked into. That then, a tone of kernel was ₦250,000.00 and a tone in Delta was ₦180,000.00 a difference of ₦70,000.00 a tone compare to Abia State. That the cost of transportation, other expenses like loading and offloading was also calculated and the difference was clear. That on the 20/9/2020, he bought 9 tonnes of palm kernel nuts at ₦180,000.00 per tone which was a total sum of ₦1,650,000.00 (One Million Six Hundred and Fifty Thousand Naira). That the cost of transporting it was ₦130,000.00 and ₦30,000.00 was for loading and offloading. That at the point of starting the business, immediately the machines were hung and work started, the machines broke down and that from September the kernel were brought, till December 2020, no production was done. The Palm kernel started decaying and he was paying workers. That he brought different engineers to work on the machine without anything until the last person one Mr. Chidera from the mechanic village who came and confirmed that the crank sharf of the engine, the engine block, the radiator, pistons and the rings were not good and he gave him an option of getting a heavy duty machine. And that by that time, all the money has finished for the expenditure. He went further to say that he collected a salary loan of ₦900,000.00 (Nine Hundred Thousand Naira) and bought an engine with ₦870,000.00 (Eight Hundred and Seventy Thousand Naira), that he sold half tone of the kernel for ₦100,000.00 to run the expenses. DW1 went further to say that on:

20/9/2020 he paid ₦100,000.00 cash to the Claimant
20/12/2020 he paid ₦100,000.00 into the Bank
18/12/2020 he paid ₦50,000.00 into the bank
2/2/2021 he paid ₦50,000.000 into the bank
2/3/2021 he paid ₦100,000.00 into the bank
30/3/2021 he paid ₦100,000.00 into the bank
26/4/2021 he paid ₦100,000.00 into the bank
17/5/2021 he paid ₦24,000.00 into the bank
17/6/2021 he paid ₦100,000.00 into the bank
August 2021 paid ₦100,000.00 cash
September, 2021 paid ₦80,000.00 cash
19/8/2022 he paid ₦40,000.00 Cash
9/5/2023 he paid ₦50,000.00 into the bank

That the total is **₦1,336,400.00 (One Million three Hundred and Thirty six thousand four hundred Naira).**

That on February 2022, the Claimant took over the factory and stayed for 6 months and made a profit of ₦900,000.00 (Nine Hundred Thousand Naira). That a total of ₦4,665,000.00 is the money paid to the Claimant. DW1 tendered Exhibit C, the Defendant's bank statement and exhibit D1-D3.

The defendant was crossed examined on the 6/9/2024. Under cross examination, DW1 maintained that he entered into a business agreement with the Claimant and it was a partnership agreement; he owned the factory and the Claimant was a funding partner and the sum of ₦2,377,000.00 was paid into his personal account. Leaving a balance of ₦123,000.00 and that he never remitted 30% profit to the Claimant.

At the end of the cross examination of DW1, the defence closed their case and the defence Counsel filed his written address on the 23/10/2024 and the Claimant's Counsel reacted by filling response on the 20/11/2024. The Defence Counsel thereafter filed his reply on point of law on the 18/12/2024.

In his written submission, the defence counsel raised four issues for determination to wit: (a) Whether the Claimant has a claim before this Court and whether the transaction leading up to the Claimant's claim is lawful and confers jurisdiction on this Honourable Court to enforce same (b) Whether the partnership agreement entered into by the parties which is validated by the written document is a binding document that can be interpreted strictly as intended by the parties: (c) Whether there is a cause of action to be determined by this Honourable Court (d) 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 adopted the issued for determination as set out by the defence and profess arguments thereto.

On issue no. 1, defence counsel submitted that the Claimant's Claim runs afoul of the Practice Direction of the Small Claims Court of Abia State in Article I which is debt recovery disputes and/or liquidated money demands. Counsel contended that in the instant case, there is no debt recovery disputes between the parties neither is there any liquidated money demand as provided for by the Practice Direction. Counsel contended that the parties are business partners and as a result of power failure and break down of factory engines which are entirely an act of god, the business did not succeed. Counsel submitted that in determining whether or not a Court has jurisdiction to entertain an action, it is the Claimants originating process that has to be considered. Counsel relied on the case of **Okorocha V UBA Plc (2011) I NWLR (Pt. 1228) 348 @ 373** and submitted that, the crux of the claim is not debt recovery disputes or liquidated money demand and that deprive this Court of its jurisdiction to try this case. Counsel also submitted that this suit runs afoul of the **Section 2 of the Money lender's Law, CAP 126 Laws of Abia State** which criminalizes the act of carrying on business as a money lender without in possession of a valid money lender's license. Counsel submitted that by the position of the law, an offence has been committed by engaging in charging unauthorized interest in an illegal contract and one which the Courts will not enforce. Counsel relied on the **case of Kekong & anor V Abang & Ors (2010) LPELR – 9013 CA and the case of Solanke V Abed (1962) I SCNLR 371@372** and submitted that, the contract sought to be enforced in this suit, is illegal and unenforceable and urge the Court to decline from aiding the Claimant in enforcing a transaction which is criminalized by the money lender's law of Abia State.

On issue No. 2, Counsel submitted that the contract voluntarily entered into by the parties are binding on them and the Court is not to make a contract for the parties. Counsel contended that the partnership agreement relied upon by the parties stated a force majeure clause and a termination clause of the partnership agreement and submitted that the Court is to construe the surrounding circumstances, including written and oral statements so as to effect the intention of the parties. Counsel on this relied on the case of **FGN V Zebra Energy Ltd (2002) 3 NWLR (Pt 754) Pg 471 @ 491 and**

Energy Ltd (2002) 3 NWLR (Pt 754) Pg 471 @ 491 and also the case of Omega Bank Plc V OBC (2005) 9 NWLR (Pt 928) Pg 547.

On issue No. 3 Counsel submitted that the law provides a condition precedent referred to as Demand notice without which an action shall fail if instituted and that the cause of action does not arise until there has been a demand made or notice given. Counsel relied on the case of **WEMA Bank Vs. Owosho 2018 LEPLR – 43857CA** and submitted that in a claim for recovery of debt, the cause of action accrues when a demand is made and the debtor refuses to pay. Counsel again relied on the case of **Victor V UBA (2007) LPELR. 9043** and contended that there is no cause of action that even confer jurisdiction on this Court, that will warrant the Defendant to defend himself.

On issue 4, Counsel submitted that the evidence of the Claimant is inconsistence and cannot be countenanced by the Court and such evidence does not deserve to be described as truthful. Counsel also submitted that the material inconsistency in the evidence of the Claimant on the very material point as to whether he is a partner or that he gave loan to the Defendant goes to show the falsity of the Claimant's claim that the ₦2.5m paid into the Defendant's account was for both partnership with the Defendant as well as loan. And contended that no probative value be ascribe to the evidence of the Claimant as he claimed to be a partner and a loan provider at the same time. Counsel relied on the case of **Monoprix (Nig) Ltd V Okenwa (1995) 3 NWLR (Pt 383) 325 and the case of NBC Plc V Obah (2000) II NWLR (Pt. 677) @ 23.** 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 submission took the issues for determination in seriation and submitted thus: In issue one, Counsel referred to Article 1 of the Practice direction of the Small Claims Court of Abia State and submitted that the Claimant claims falls within the Jurisdiction of the Small Claims Court and the agreement of the parties in Paragraph 3 of the second page of the Partnership Agreement. Counsel contended that it was

the agreement of the parties to get a loan which the Claimant did in his name. Counsel further submitted that by the decision of the Supreme Court in the case of **Chidoka V First City Finance Co. Ltd (2013) 5 NWLR (Pt 1346) 144** and the case of **Eremeruwou V Obibilagba (2021) LPELR – 56724 (CA),** it is clear that the money the Claimant paid into the defendant's account for the purpose of funding the business was not paid as a money lender but as a funding partner to the business which was supposed to be paid back to the Claimant for off-setting the loan.

On issue 2, the Claimant Counsel submitted that parties are bond by the terms of the contract which they voluntarily entered into. Counsel relied on the case of **Nigeria Merchant Bank Plc V Garba (2013) ALL FWLR (Pt 688) Pg 1004@1031** and also submitted that the entire document must be interpreted as a whole and not in parts or pocket convenient to a party; Counsel also relied on the case of **Akinbisade V State (2007) All FWLR. (Pt 344) 17.** Counsel also contended that there was no issue of force majeure and the termination clause of the partnership agreement never arose.

On issue 3, Counsel submitted that before filling form SCA 2 and SCA 3, form SCA 1 which is a letter of demand was in line with the rules of Court. Counsel submitted that there is a valid cause of action the condition precedent having been complied with as in form SCA 1.

On issue 4, Counsel submitted that burden of proof in civil cases shall be discharged on the balance of probabilities which means that Judgment is given to the party with the greater weight or stronger evidence. Counsel relied on the case of **Interdrill Nig Ltd & Anor V UBA Plc (2017) LPELR – 41907(SC)** where the Court held that where a party adduces sufficient evidence to satisfy the Court, that fact sought to be proved is established, the burden shifts to the person whom Judgment would be given if no further evidence were adduced. Counsel also relied on the case of **Solola V The State (2005) 5 SC (Pt. 1) 135.** Counsel contended that, there is an evidence before the Court that the loan was borrowed as agreed by the

parties in Exhibit A and the evidence of the money borrowed is in Exhibit B and B1. Counsel further contended that, the statement of the Defendant is inconsistent with his testimony and submitted that such testimony is to be treated as unreliable while the statement is not regarded as evidence upon which the Court can act upon. Counsel relied on the case of **Anselem Agu V The State (2017) LPELR-41664 (Sc)** and also the case of **Emeka V Okoroafor & Ors (2017) LPELR -41738 Sc.**

Counsel submitted that the Claimant has proved his case on the balance of probabilities/preponderance of evidence that the defendant is owing him ₦2.5 million and its interest and Counsel urge the Court to uphold the claim of the Claimant.

In his reply on point of law even though a reply is not for the defendant to take a second bite at the cherry, the defence counsel submitted that liquidated sum must be ascertained without further investigation, it must be a specific amount of money which has been agreed upon by parties.
Counsel further submitted that the business between the parties is purely a partnership, where both parties are entitled to sharing of profit and loss as clearly provided for in **Section 3(91) of the Partnership Acts LFN, 2004**. Counsel further submitted that rules of Court are meant to be obeyed and relied on the case of **Oyegun V Nzeribe (2010) 7 NWLR (Pt 119) 5.77** and contended that the Claimant was expected to issue form SCA 1 first on the defendant before issuing the summons for that is the condition precedent to the exercise of the jurisdiction of this Court and relied on **Enterprise Bank Ltd V Aroso (2014) 3 NWLR (Pt 1394) 257**. Counsel also argued that there is no evidence to proof that the Claimant and the defendant agreed to take a ₦2.5m loan that attracts an interest of ₦150,000 monthly. Counsel relied on Section 132 of the Evidence Act, 2022 and submitted that Exhibit A speaks for itself and submitted that friendly or partnership loans do not admit or permit any usury or charge of interest and relied on the case of **Champion Breweries Plc V Specialty link Ltd & Anor (2014) LPELR – 23621 CA.**

I have carefully summarized the evidence before me and the written address of Counsels and also carefully reviewed the authorities cited. I will take the issues formulated by Counsel for determination serially since most of the issues raised bothers on the jurisdiction of this Court.

On Issue No. 1: The argument of the defence is that there is no debt recovery dispute between the parties and neither is there any liquidated money demand. I agree with the submission of the defence counsel that it is the originating process that determines the jurisdiction of the Court. I also agree with the defence Counsel that liquidated money demand is an amount that is ascertained. By the provisions of Article 1 of the Practice Direction of the Small Claims Court, the objective of the Small Claim Court is to provide easy access to an informal, inexpensive and speedy resolution of simple debt recovery disputes and/or liquidated money demands. **The Supreme Court in the case of Ndoma Egba V Chukwuogor (2004)2 SCNJ 117 @123 or (2004) 6 NWLR(Pt. 867) 382 @ 409** held that the ordinary usage of the word 'or' is disjunctive and 'is' conjunctive but it is conceded that there are situations which would make it necessary to read 'and' in place of 'or' and vice versa. The word and/or in this context is very clear and concise. In order words, the Claim can be for debt recovery disputes and also be for liquidated money demand or both. A liquidated money demand, the Supreme Court in the case of **Akpan V Akwa Ibom Property and Investment Company Ltd (2016) EJSC (Vol. 33) 150** held that a liquidated money demand is an amount claimed which must be ascertainable and if based on contract, it must have been accepted upon by the parties thereto. Also, in the case of **Maja V Samouris (2002) 95 LRCN 341**, the Supreme Court held that liquidated sum is a debt or other specific sum of money usually due and payable and its amount must be already ascertained as a matter of arithmetic without any other or further investigation. In the Small Claim Court, Form SCA 3 is the summons which is the originating process and on the face of the said form SCA 3, the claim of the Claimant is clearly stated as debt of a specified amount in which the Claimant is claiming from the defendant. In form SCA 2, the Claimant again stated the amount in which he is claiming from the defendant. These are the originating processes in

this suit and same has conferred jurisdiction on this Court. I hold that the claim falls under the recovery of debt and liquidated money demand as envisaged under Article 1 of the Practice Direction of the Small Claim Court. The Defence Counsel under this issue has made heavy weather out of a fine cloud on the issue of money lenders law cap 126 laws of Abia State and submitted that this Suit runs afoul of section 2 of the moneylenders law and therefore the Claimant's claim is illegal and unenforceable. The defence argument is that the Claimant is not a licensed money lender yet he gives out loan to the Defendant and charged interest and that action is criminalized under Section 5(d) of the moneylenders law. Section 2 of the money lenders law defines a money lender 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 any way as carrying on that business of money lending. The question here is, is the Claimant's business that of money lending? Or did the Claimant carried out, advertise or announces or hold himself out as a money lender? There is an undisputed evidence before me that the Claimant is a Civil Servant who works with the National War Museum. The Defendant also said that him and the Claimant were doing piggery farming at Ukwu Ugba Afara before they entered into the agreement that led to this Suit. There is no evidence whatsoever that the primary business of the Claimant is money lending. The law is that where it is not shown that the primary object of the business of the Claimant is lending money; such transaction does not come within the purview of the money lenders law. This was decided by the Supreme Court in the case of **Chidoka & anor V First City Finance Company Ltd (2012) LPELR 1343 SC and also in the case of Veritas Insurance Company Ltd V City Trust Investment Ltd (1998) 13 NWLR (Pt 281) 349.** Section 3 of the moneylenders law 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 be proved. The key word here is presumed. The piece of evidence that the Claimant apart from being a Civil Servant was not into any business of money lending stands solid before me. The Claimant from the evidence before me, did not hold himself out as a money lender. The defendant did not led evidence to show that the Claimant is involved in

the business of lending money. It therefore stands that, that presumption in section 3 of the money lenders law, has been rebutted. The defence counsel placed so much emphasis on the case of Kekong & anor V Abang (Supra) and the case of Nnamdi V Ndukwe & ors (Supra). Let me state categorically that, those two case are quite different from what is before me. In Ketong V Abang (Supra), the debtor lent money to be repaid within one month and the money was interest free but will attract 30% interest per month upon failure to repay the principal sum. The Court of Appeal held that the transaction was one in a series of business of money lending transaction and the appellant had testified on oath to have been lending money previously to the Defendant. In Nnamdi's case, (Supra), the association filed a suit for recovery of loan given to one of its members and the interest. The Court of Appeal held that association was a money lending association and ought to have been registered. The defence argument that the transaction was illegal and unlawful and therefore cannot give rise to an enforceable cause of action, is a misconception of the position of the law. In **Viritas Insurance Co. Ltd V City Trust Investment Ltd (Supra)** the Court said `…..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 money lenders law or any other law. I am of the firm view that the moneylenders law was intended to apply to persons who lends money for a living, persons whose sole business is that of lending money and not to persons like the Claimant, who act of lending money was as an incident in business'. Having said this, I hold that there is nothing unlawful in the transaction and this Court has jurisdiction to entertain this suit.

On Issue No. 2. On this issue, both parties answered the issue in the affirmative. The defence Counsel relied on force Majeure and submitted that power failure and breakdown of machine is an act of God and therefore the Claimant cannot seek for recovery of any form. Force majeure clause as seen on page 3 of Exhibit A has the same effect as frustration incident in a contract force Majeure has been described by the Court in the case of **Globe Spinning Mills Nig Plc V Reliance Textile Industries Ltd (2017)**

LPELR- 41433 (CA) to be a clause in contract which provides that one or both parties can cancel a contract or be excused from either part or complete performance of the contract on the occurrence of certain specified events or events beyond the control of the parties. The Supreme Court in a plethora of cases have listed situations or events that have been held by the Courts at one time or the other to constitute frustrating events to be: An outbreak of war, death, permanent incapacitation by ill health or imprisonment of a party, destruction of subject matter of the contract, government acquisition of the subject matter of the contract; subsequent legal changes or statutory impossibility. On this **see the case of A.G. Cross River State V A.G. of the Federation & anor (2012) LPELR – 9335 (Sc); Nwaolisah V Nwabufoh (2011) LPELR – 2115 (SC). See also the case of Jacob V Afaha (2012) LPELR-7854 (CA) and WECO Engineering & Construction Company Ltd V Dufan Nig Ltd & anor (2019) LPELR - 47211 (CA).**

For the defendant to plead force majeure, the event must be something beyond the control of the defendant and the claimant who claimed to be an expert in that line of business and who have been running the business on his own and funding same before the Claimant joined him, must have taken reasonable precautions and steps to avert same. Am wondering when power failure and break down of machine became an act of God as claimed by the defendant. In the case of **Federal Ministry of Health V Urashi Pharmaceutical Ltd (2018) LPELR-46189 CA** the court held that, the law is that the rule of Force majeure will not avail the Defendant where the intervening circumstance is one which the law will not regard as so fundamental as to destroy the basis of the agreement. And what is more, if there was a force majeure as claimed by the defendant, the business would have been brought to an end automatically, but this is not the case. The business still continued even after the end of the 1 year that was agreed upon. Also, there will not have been a question of a breach of contract and a claim in counter claim. These are the effect of force majeure in a business. See the cases of **A.G. Cross Rivers State V A.G. Federation & anor (Supra) and the case of Onuigbo V Azubuike (2013) LPELR – 22796 (CA).** I find as a fact that the force majeure clause does not exist in this

circumstance and therefore cannot avail the defendant. The written document which is the agreement is binding.

On issue No. 3: In resolving this issue, it is important to determine what a cause of action is. The Supreme Court in **Garba V APC & 2ors (2024) EJSC (Vol 202) 178** defines a cause of action to mean a factual situation the existence of which entitles one person to obtain a remedy against another person and it is determined by the Claim of the Claimant. The Proceedings in the Small Claims Court are commenced by the issuance of form SCA 1 which is the demand notice. The said form SCA 1 was issued and served on the Defendant on the 1/8/2024 and the defendant acknowledged the service of same. The said form SCA 1 is filed at Page 12 of the Courts file. The said form SCA 1 is not a document that can form an exhibit in the Proceedings or to be tendered in the Proceedings as an exhibit as canvassed by the defence counsel. The defendant never denied being served with Form SCA 1 or its existence. The argument of the defence counsel that there is no cause of action and the Court does not have Jurisdiction because Form SCA 1 was not tendered as exhibit is baseless and does not represent the procedure in the Small Claims Court. There is a cause of action and this court has the jurisdiction to entertain this Suit I so hold.

On issue No. 4. It is trite that burden of proof in civil cases are discharged on the balance of probabilities. The Claimant evidence was that he agreed with the defendant to enter into partnership agreement and business with the defendant as the funding partner and they agreed to take a loan with the Claimant's name for the running of the business and the loan will attract ₦150,000 interest per month with interest starting from the first month of receiving the loan. It is not in dispute that the sum of ₦2,377,000.00 was paid into the Defendant's personal account as agreed by the parties that the money be paid in there. The sum of ₦2.5million was to be borrowed as loan but the sum of ₦2,377,000.00 was actually paid into the account. The claimant evidence was that he agreed with the Defendant that the difference of ₦123,000 be used to service the loan for the 1st month from source since he has financial challenge. From the bulk of evidence before me, this piece

of evidence was not controverted now challenge by the defendant whatsoever. The law is that evidence not challenged, the facts are deemed admitted. **See the case of Arewa Textile Ltd Plc V Fintex Ltd (2003) 6 FR Pg 184.** The defendant admitted knowing what a loan facility is and also admitted knowing what servicing of a loan facility is. It beats my imagination that after the Defendant agreed that a loan be taken and he actually received ₦2,377,000.00, he turned around to say that he is not aware that the money was a loan the Claimant took and an interest was attached to the loan. The Defendant had admitted that he entered into the said agreement tendered as Exhibit A; he relied on the said Exhibit A and at the same time denied the content of Exhibit A. The defendant cannot speak from both side of his mouth in this circumstance. The Claimant gave evidence as to how much the defendant has paid him for the interest on the said principal sum of ₦2.5 Million and tendered Exhibit B_1.

The Defendant has also gave evidence and stated the amount of money he has paid the Claimant and tendered Exhibit C. I have carefully gone through Exhibit B_1, and I find as a fact that the oral evidence of the Claimant is in line with the content of Exhibit B1 cogent and exact. I have also carefully gone through Exhibit C tendered by the Defendant. I found out that the oral evidence of the defendant with regards to the money he claimed to have paid the claimant and his Exhibit C are in conflict. Exhibit C does not reflect the testimony of the defendant. The content of Exhibit C does not reflect what the defendant claimed to have paid the Claimant through the bank. Maybe the money is still on its way to the bank account or maybe its in the laboratory of the defendants heart. The Claimant evidence was that the interest for one year is the principal sum of **₦2.5million** was **₦180,000.00** and the defendant has paid him **₦1,107,640.00 (One Million, One Hundred and Seven Thousand, Six Hundred and forty naira)** leaving a balance of **₦692,360 (Six hundred and Ninety two thousand, Three Hundred and sixty naira).** In the defendant's evidence in Chief, he said he has paid the Claimant **₦4,665,000.00 (Four Million, Six Hundred and Sixty five thousand naira)** and under cross examination when asked how much he has paid the Claimant he said **₦ 1,364,000.00 (One Million, Three hundred and sixty four thousand naira.** In form SCA 5, he said

he has paid **₦2,771,000.00**. This figure quoted by the Defendant cannot be substantiated by any evidence. The Defendant tendered Exhibit D which he refereed to as Record; This document has no date, no signature and the Claimant does not know about the said Exhibit D and did not sign it either and therefore it carries no weight and has no evidential value. **See the case of Maku V Al-Makura (2016) EJSC (Vol 37) 42 and also Conoil V Vitol S.A. (2018) EJSC (Vol. 94) 128.** The evidence of the defendant is so inconsistent and conflicting. The Claimant is claiming 30% gain and his evidence is that the Defendant has never given him any gain from the business. The Defendant admitted this fact. Unfortunately, there is no evidence before me to ascertain how much profit was made and how much was due to the Claimant. This arm of the Claimant claim has not been proved. I will note that there is a counter claim in this Suit. The Defendant did not prove his counter claim and therefore the counter claim must fail and it has failed. I so hold.

I believe the evident of the Claimant and I do not believe the evidence of the defendant. The Defendant is economical with the truth and in an attempt to cover the truth, he ended up manufacturing three different figures as the amount he paid the Claimant. It will be quite unjust after benefitting from the loan facility turned around to castigate the same transaction he benefitted from. It does not lay in the month of the defendant to short or scream that the transaction was illegal, unenforceable, force majeure, Partnership Act and all of that. It only lies in the mouth of the Court to determine whether the transaction was illegal. How can a man benefit from a transaction, especially that of obtaining loan and when it is time to pay turned into a dragon. The Defendant cannot use the Court to aid his underhanded activity. It is high time parties who enter into an agreement should honour the terms of the agreement rather than try to look for a loophole or technical spring board to jump on. Having said this, I am of the view that the claim of the Claimant is lawful and enforceable and the Claimant have proved his claim on the balance of probabilities. Accordingly, Judgment is and hereby entered in favour of the Claimant in the following terms.

(a) The Defendant shall pay to the Claimant the total sum of ₦3,192,360.00 (Three Million, One Hundred and Ninety-Two Thousand, Three Hundred and Sixty Thousand Naira). Which is ₦2.5 million principal sum and ₦692,360.00 which is the interest on the principal sum.

(b) Cost of ₦10,000.00 is awarded against the Defendant.

This is the Judgment of the Court.

Signed
His Worship Mary U. Emenike (Mrs)
Chief Magistrate Grade 1
20/02/2025

AGBANYIM C.C. (MRS)
ASST. CHIEF REGISTRAR I