

**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 13<sup>TH</sup> DAY OF MARCH, 2025.**

**CLAIM NO: U/SCC/50/2024**

**BETWEEN**

**NDEJI JULIET NGOZI**

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**CLAIMANT**

**AND**

**ESTHER JACOB**

**AMARA CHINENYE ORIAKU**

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**DEFENDANTS**

Parties are present except the Defendant.

**APPEARANCES:** A.C. Nwosu Esq for the Defendant.

**COURT:** Judgment

The Claimant is claiming the sum of **₦1,020,000.00 (One Million and Twenty Thousand Naira)** being debt owed her by the Defendants, **₦2,500.00 (Two Thousand Five Hundred Naira) Court fees and ₦100,000.00 (One Hundred Thousand Naira) Costs.** The Claim was filed on the 8/8/2024 and same was served on the Defendant. Affidavit of Service is filed at Page 7 of the Courts file. Plea was taken on the 5/9/2024, the Defendant pleaded not liable to the claim of the Claimant.

On the same date, the Claimant opened her case and her evidence is that she is a trader, she folded up her business and sold some things off. That on 18/9/2022, her sister called her and introduced one of the Defendant and another woman called Esther Jacob to her. That when she got there, the woman told her that she needed money urgently and she told her that she is not going to give her money because she is using it for business the following year, but she begged her and she told her that if she is giving the money, it will be with interest and the woman

agreed and said she will be paying her ~~N~~40,000.00 interest on the 18<sup>th</sup> of every month. That on 18/10, she brought ~~N~~40,000.00 to her through her sister who introduced the Defendant to her, and she told her sister that the Defendant was to pay her the sum of ~~N~~240,000.00. In November, the Defendant paid ~~N~~30,000.00 through her sister. December, the Defendant brought ~~N~~10,000.00. That when the Defendant came with her sister, the Defendant pleaded that she was going to bring the money by December. By December, N10,000.00 was sent to complete the interest of October/November. In June, the Defendant sent the interest of December/January and half of February and the total money the Defendant has given her is ~~N~~180,000.00 which both of them are not disputing about. She went further to say that there was an agreement between both of them and she tendered the agreement as Exhibit A and also tendered a land purchase Agreement the Defendant gave to her as collateral as Exhibit B. It was her evidence that she complained to the Chief Security of Amawom and also showed him the collateral and that the Defendant has sold the land to another person and that she has calculated the interest from February 2022 when they stop payment of interest till September which is 2 years and that the interest and capital makes it up to N1. Something.

Immediately after her evidence in Chief, the Claimant was cross examined and under cross examination, CW1 maintained that the Defendant has paid her N180,000.00 and that she is not a money lender that the Defendant cried and bagged her to give her the money and that the N180,000.00 paid is for the interest and that from October 2022 to ½ of the month of February 2023 is the N180,000.00 the Defendant paid her.

CW2 testified on the 20/9/2024 and her evidence can be summarized thus: She gave her name as Chinyere Onwuchekwa a Proprietress that on 11/9/2022, the 2<sup>nd</sup> Defendant in company of the 1<sup>st</sup> Defendant came to her house requesting for a friendly loan of N200,000.00 on the agreement that she will pay with any accrued interest. That as at that time, she had no money with her but she pleaded that she needed the money urgently for her son who went abroad. That after pleading, she called her friend ie the Claimant and pleaded with her to give the Defendant money since she has agreed to pay any interest that will accumulate. That they signed a friendly loan agreement and the money was handed over. That after one month, the 2<sup>nd</sup> Defendant brought N40,000.00 because the 2<sup>nd</sup> Defendant was to return N40,000.00 and N200,000.00 principal sum but that she brought N40,000.00 and pleaded that she will bring the money with whatever interest

accrued on it. It was her evidence that the Defendant paid ₦30,000.00 on 18<sup>th</sup> November paid ₦10,000 on 18<sup>th</sup> December and around June 2023, she paid ₦100,000.00 and when the Defendant stopped paying the interest or the Principal sum and will not pick up calls. That they went to take over the collateral as stated in the document and when they got there, they discover that the Defendant has sold the land she used as collateral for the loan.

The cross examination of CW2 was on the 11/10/2024 and under cross examination. CW1 said the ₦180,000.00 paid by the 2<sup>nd</sup> Defendant is the default fee at ₦40,000.00 until the Principal sum of ₦200,000.00 is paid.

DW1 testified on the same 11/10/2024 and gave her name as Amara Oriaku and a business woman. Her evidence can be summarized thus:- that the 1<sup>st</sup> Defendant is her sister who took her to the house of CW2 to borrow money but CW2 said she does not have money but will direct her to someone that will give her money. That she called the Claimant and she met the Claimant and told her that she needed N200,000.00 and the Claimant asked her if she has any collateral and she said yes and gave her land document and the Claimant borrowed her N200,000.00. That she asked the Claimant the condition of the money and the Claimant told her that she will be paying ₦40,000.00 every month until she pays off the ₦200,000.00. That she borrowed the money in October, 2022 and that she has paid the Claimant ₦180,000.00 leaving a balance of ₦20,000.00. DW1 identified the land document ie Exhibit B and also admitted that she signed Exhibit A. DW1 was cross examined on the 17/10/2024 and under cross examination, DW1 maintained that she signed Exhibit A the loan agreement and that the Claimant is in possession of the agreement and that she does not know where the 1<sup>st</sup> Defendant is who signed as a witness and a guarantor is.

At the close of the evidence of witness, Counsel filed their written arguments. The Defendant's Counsel written address was filed on the 24/10/2024 and the Claimant's Counsel filed on the same 24/10/2024.

The defence Counsel raised a sole issue for determination to wit: Whether the Claimant has proved her case on the acceptable legal standard to entitle her to Judgment of the Court. The Claimant's Counsel in his argument, profess argument on the sole issue raised by the defence Counsel.

In his argument, the defence Counsel submitted that the law is settled that for a Claimant to be entitled to Judgment in Civil Proceedings, he shall prove same on the preponderance of evidence or balance of probabilities. Counsel relied on the case of **Zenith Bank Plc V Ekereuwem(2012)4 NWLR (Pt 1290) 207**. The Defence Counsel contended that Exhibit A is in conflict with the parties claim as to the amount borrowed and that the figure in Exhibit A is mutilated and it makes Exhibit A legally unreliable and urge the Court not to place probative value on Exhibit A. It was his contention that the signature of the 2<sup>nd</sup> Defendant on Exhibit A is different from that in Exhibit B and it goes to show that the 2<sup>nd</sup> Defendant never signed Exhibit A. It was also the defence Counsel contention that, in Exhibit A, the 1<sup>st</sup> Defendant is the debtor instead of the 2<sup>nd</sup> Defendant who ought to be the debtor on the document and the 1<sup>st</sup> defendant a guarantor. And Counsel submitted that the Claimant is not a license money lender and therefore cannot charge interest and Counsel relied on **Section 4 of the money lenders Act** and the case of **Nnamdi V Ndulue & Ors (2017) LPELR 43593 CA**. Counsel submitted that the Claimant has not proved her case beyond the preponderance of evidence as to entitle her to the reliefs sought.

In his response, the Claimant's Counsel submitted that by **Section 133(1) of the Evidence Act**, in civil cases, the burden of first proving the existence or non-existence of a fact lies on a party against whom the Judgment of the Court would be given if no evidence were produced on either side and relied on the case of **Tewogbade V Akande (1968) NMLR 404 at 408**. Counsel contended that the parties agreed that there was a loan transaction of ₦200,000.00 and the terms of the loan transaction were reduced into writing and duly signed by the parties and parties also agreed that the sum of ₦180,000.00 has been paid. Counsel submit that the fulcrum of the matter before the Court depends majorly on Exhibit A and submitted that DW1 cannot by an oral evidence vary or alter the content of a document. Counsel rely on **Section 128(1) of the Evidence Act** and submitted that extrinsic evidence is not admissible in respect of proof of the content of a document and that the facts as contained in a document can only be proved by the production of the document itself and that is what the claimant has done and that the Defendant who claimed to sign a page document could not provide same in Court as non exist.

Counsel further submitted that, the 2<sup>nd</sup> Defendant intentionally refused to call the 1<sup>st</sup> Defendant who played a very vital role in the transaction to give evidence as to

what transpired between CW1 and DW1 from the inception of the loan transaction and Counsel urge the Court to invoke **Section 167(d) of the Evidence Act, 2011** (as amended) and hold that evidence which could be and is not produced would, if produced, be unfavourable to the 2<sup>nd</sup> Defendant who withheld it and Counsel relied on the case of **Okere V IGP (2022) 315 LRCN 158**. Counsel went further to submit that, the law cannot be used as an instrument to perpetrate fraud. And went on to say that a borrower who has benefitted from a loan transaction should not be allowed to plead that the contract was illegal in order to escape obligations to repay. Counsel relied on the case of **Uzoukwu V Idika (2022)3 NWLR (Pt 1818) 403** and also the case of **Litchfield V Dreyfus (1906) 1KB 584** where the Court held that the English money lenders ordinance were not introduced to apply to persons who lend money as incident business or to a few friends. Counsel also relied on the case of **Ibrahim V Bakori (2009) LPELR 8681 CA**. Counsel then submitted that, the Claimant is not a licensed moneylender on the authority of **Uzoukwu V Idika (Supra)** and further submit that parties are bound by the terms of an agreement freely entered into by them and the duty of a trial Court is simply to give effect to that agreement for the parties. Counsel on this relied on **Aminu Ishola Investment Ltd V Afribank Nig Plc (2013) MRSCJ No. 117 Pg 97@100** and the case of **Nike Fishing Co. Ltd V Lavina Corporation (2008) 16 NWLR (Pt 114) 509**. Counsel also submitted that in **Augustine Ibama V Shell Petroleum Development Company Nig Ltd (2005) 17 NWLR (Pt 954)364**, it is trite Law that the Court can only interpret or enforce the agreement entered into by the parties and is incapable of making contract between them. Again Counsel relied on the case of **JFS Investment Ltd V Brawal Line Ltd & Ors (2011) 194 LRCN 68**. It was the submission of Counsel that, contract that is ex-facie not illegal nor offend public policy like in the instant case will be enforced by the Court and that there are situations which would make some contracts incapable of enforcement and such situations are not prevalent in the contract entered into by CW1 and DW1 and as such the contract between the parties is enforceable. Counsel on this relied on the case of **West Conts Co. Ltd V Batalha (2006)3 JNSC 54**. Counsel also submitted that the transaction between CW1 and DW1 was contractual and governed by the Memorandum of Understanding and it is the law that in this case, extrinsic evidence will generally not be capable to vary the terms agreed up. Counsel cited **Okonkwo V Commerce Bank (2003)2 SCNJ 106** and urge the Court to resolve the sole issue for determination in favour of the Claimant and grant the reliefs of the Claimant.

Having carefully summarized the evidence of the witnesses before me and also gone through the written address of Counsel and the cases relied upon, I will adopt the sole issue for determination to wit: whether the Claimant has proved her case to entitle her for Judgment.

From the evidence adduced before me, it is not in doubt that the Claimant gave the Defendant the sum of ~~N~~200,000.00 and it is not also in dispute that the defendant has paid the Claimant the sum of ~~N~~180,000.00. The crux of the matter now is was there is an interest/default fee of ~~N~~40,000.00 attached to the ~~N~~200,000.00 per month OR put the other way, the ~~N~~180,000.00 paid by the Defendant the Principal sum of the interest/default fee.

The defence Counsel submitted that by Section 4 of the Moneylenders Act, the Claimant cannot charge interest. Let me rely 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 Moneylenders case where the Supreme Court held that when 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. In the case of **Nwankwo V Nzeribe(2005) LPELR -5452 CA**, the Court held that it must be shown that the Plaintiff primary business was lending money. There is no evidence before me to the effect that the Claimant is in the business of lending money. Having failed to establish this fact, the aforementioned Section 4 of the Moneylenders Act cannot be applicable to the loan made by the Claimant to the Defendant.

The evidence of the Claimant is that there was an agreement between her and the Defendant and she tendered Exhibit A as the agreement and went on to tender Exhibit B a land purchase agreement given to her as collateral for the loan by the Defendant. The Defendant admitted giving the Claimant Exhibit B and also admitted signing Exhibit A, in another breath, the Defendant said it was a one page document that she signed as the agreement and not the one tendered by the Claimant as Exhibit A and the Defendant has not been able to tender any document to the contrary or call a witness to support her assertion. By the provisions of **Section 131 of the Evidence Act 2011**, the law is that he who assists or alleges must prove. See the case of **Adesina V Air France (2023) EJSC (Vol 192)64**. It is not just enough for the Defendant to say Yes I signed

an agreement to the loan but it is not this one. The Defendant should be able to lead credible evidence to tell the Court what the document she signed was. Every other facts that led to this transaction has been admitted by the Defendant and the only thing the defendant is denying is, the number of pages in Exhibit A and not her signature either. I do not believe the defendant that Exhibit A is not the document she signed. The parties had the liberty to draft their agreement the best way they could and it is not the duty of this court to rewrite a contract or an agreement for parties. See the case of **Fakorede & Ors V AG Western State (1972)1 All NLR Pt 1 Pg 178 & 189**. It is a well settled principle of Law that in the construction of documents the cardinal principle is that the parties are presumed to intend what they have in fact said or written down in the document. The word employed by the parties in the said Exhibit A is what parties intended and whatever and however they intended the tone of the document to be is what the Court cannot rewrite.

The Claimant claim is the sum of ~~₦~~1,020,000.00 as debt owed her by the Defendant. Her evidence was that the 2<sup>nd</sup> defendant stopped paying her in the month of February 2023 and this fact was not disputed by the 2<sup>nd</sup> Defendant. The facts adduced before me is that the 2<sup>nd</sup> Defendant is owing the interest of 19 ½ months with the Principal sum of ~~₦~~200,000.00. The 19 ½ months is the sum of ~~₦~~780,000.00 (Seven Hundred and Eighty Thousand Naira) and the principal sum of ~~₦~~200,000.00 (Two Hundred Thousand) which brings it to a total of ~~₦~~980,000.00 (Nine Hundred and Eighty Thousand Naira). The Claimant has not proved the sum of ~~₦~~1,020,000.00 as stated on the face of the summons. It is the law that a Court may grant less than what is claimed by the Claimant. See the case of **Ekpenyong V Nyong (1975)2 SC 71** and the case of **Carlen (Nig) Ltd V UNIJOS (1994)1 NWLR (Pt 323)631**.

I have come to a conclusion that the Claimant and the 2<sup>nd</sup> Defendant had an agreement and the terms of the agreement was well understood by the parties in which the 2<sup>nd</sup> Defendant gave exhibit B as a collateral for the loan and in the wisdom or should I say smartness of the 2<sup>nd</sup> Defendant, she proceeded to sale off the collateral leaving the Claimant hanging. I am of the view that the principle of unjust enrichment should be applied here. The Defendant who freely entered into an agreement and benefitted from it should not be allowed to rely on a lame excuse that she only signed a one page document and thereby continue to unduly enrich herself from the transaction. The argument that the Claimant is estopped

by law to charge interest as she is not a money lender does not avail the defendant or that the Claimant is a money lender and ought to have a license. The Supreme Court in the case of **Uzoukwu V Idika (2021) EJSC (Vol 164)28** held that the mere fact that a person gives out a loan with interest or in returns for a higher amount does not make him a money lender.

Having said this, I am of the view that the Claimant has prove her case on the preponderance of evidence and balance of probabilities. Accordingly, Judgment is and hereby entered in the following terms;

- (a) The 2<sup>nd</sup> Defendant shall pay to the Claimant the sum of **₦980,000.00 (Nine Hundred and Eighty Thousand Naira)** being the debt owed the Claimant by the Defendant.
- (b) The 2<sup>nd</sup> Defendant shall pay the Court fee of **₦2,500.00 (Two Thousand Five Hundred Naira)**.
- (c) A cost of **₦20,000.00 (Twenty Thousand Naira)** is hereby awarded against the 2<sup>nd</sup> Defendant.

This is the Judgment of the Court.



**Signed**  
**His Worship Mary Ukeje Emenike (Mrs)**  
**Chief Mag. Gd. I.**  
**13/03/2025**

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