IN THE MAGISTRATE'S COURTS: DELTA STATE OF NIGERIA
IN THE SMALL CLAIMS COURT HOLDEN AT WARRI

BEFORE HIS WORSHIP O.Y. ASHESHE-EBONWU (MRS) CMI
ON MONDAY THE 29TH DAY OF JANUARY, 2024

SUIT NO: SCC/04/2023

BETWEEN:

COASTLINE MICROFINANCE BANK LTD	::::}	**PLAINITFF**
VS		
BRIVEL GLOBAL LTD & ANOR	::::}	**DEFENDANT**

JUDGMENT

By a claim filed into court on the 13th day of September, 2023. The Plaintiff/Claimant prays this court for an order directing the Defendants jointly to pay the sum of N4,937,037.50k (Four Million, Nine Hundred and Thirty Seven Thousand, Thirty Five Naira, Fifty Kobo) only being defendants indebtedness to the claimant as unpaid loan owed.

When this case commenced on 4th October, 2023, it was transferred to the Multidoor Court House for mediation in compliance with Article 9(1) of the Practice Direction on Small Claims Court 2023.

Moves towards amicable settlement failed. In proof of her case the claimant/plaintiff called one witness and tendered three (3) exhibits, that is Exhibits "A" "B" and "C".

Pw1 gave evidence as the head of credit in charge of loan disbursement department. Pw1 gave evidence of how Defendants requested for a loan of N3,000,000.00which was approved by the claimant as shown in Exhibit "A" headed "**LETTER OF OFFER AND ACCEPTANCE**". The said sum was disbursed and paid into the Defendant's account number 1100530471 as shown in the statement of account of the 1st Defendant admitted as Exhibit "C". Pw1 testified further that several demand notices were served on the Defendants one of which is a seven days demand notice admitted in evidence as Exhibit "B". Defendants still failed to pay the loan. According to pw1 the amount owed by the Defendant's is N4,937,035.50k.

In conclusion of examination in chief, pw1 prayed this Honourable Court to enter judgment against the Defendant and in favour of the claimant for the sum of N4,937,035.50k. Hearing notices was ordered by this court to be served on the Defendants.

Evidence elicited from pw1 under cross examination was that the amount given to Defendants as loan was N3,000,000.00 but the claim against the defendant is for N4,937,035.50k. Pw1 further stated that the bank deducted charges from the N3,000,000.00 disbursed to the Defendants at an interest rate of 4% monthly for a duration of 6 months and that Defendant has paid N2,000,000.00 so far to the claimant.

The Defence called the 2nd Defendant who testified as Dw1. Dw1 testified as the Chief Executive Officer of 1st Defendant company. Dw1 gave evidence that the loan granted by the Plaintiff is N3,000,000.00 as evidenced in Exhibit "D" dated 23rd March, 2022. According to DW1 the actual amount credited to his account was N2,700,000.00 (Two Million, Seven Hundred Thousand Naira) only and that he did not sign exhibit "A" as his handwriting is not on Exhibit "A" and that the only document given to him was exhibit "D" as exhibit "A" was not given to him.

Under cross examination, dw1 gave evidence that he did not fill the loan form himself. Rather it was one Mofe who was the Assistant Manager of the Bank that filled the form but that Mofe never called him to pick up documents. Plaintiff/Claimant gave defendant account no. 1100530471 as shown in Exhibit C. Dw1 reiterated that it was N2,700,000.00 that was given to him after Claimant took N200,000.00 as charges and a further N100,000.00 was to go to his savings account according to Plaintiff/Claimant.

At the close of evidence, Defence counsel raised one issue for determination in his address, which is, whether the claimant has been able to prove her claim as to be entitled to judgment. According to defence counsel, plaintiff failed woefully to discharge the burden placed on her by law as to be entitled to judgment on her claim. Defence counsel submitted that, this court can interpret forms SCC 1 and SCC2, to hold that the claim of N4,937,035.50k shows that the Defendant was given a loan of N4,937, 035.50k. Since pw1 gave evidence that it was N3,000,000.00 loan that was given to Defendants, Defence counsel therefore submitted that the amount owed by Defendants is at variance with the evidence of Pw1 and as such the Plaintiff has not been able to adduce credible evidence to prove her case. Defence counsel further queried that Exhibit A and D showed Defendants was granted N3,000,000.00 as loan, how is it that Plaintiff claimed N4,937,035.50k as loan granted to Defendants in form SCC2. Defence counsel submitted that Plaintiff failed to prove the sum of N4,937,035.50k as unpaid loan granted to Defendants. Defence counsel contends that where there is no evidence to establish a claim, the proper thing for the court to do is to dismiss the claim for want of evidence. Counsel also referred court to Exhibit "D" which showed the rate per annum 48.00 and that oral evidence cannot vary the content of a document. Counsel n conclusion submitted that based on Exhibit "A" the money owned by Defendants is N1,720,000.00 while based on Exhibit "D" what Defendants owed is N1,419,000.00 and not N4,937,035.50k as claimed by Plaintiff and urged court to dismiss the case. In reply, Plaintiff counsel submitted that the Defendant admitted receiving the loan of N3,000,000.00 and did not dispute the claim of N4,937,035.50k. counsel referred to Exhibit "A" wherein item 7 shows N3,000,000.00 approved as loan, item 11 showed 4% monthly interest while item 17(1) showed the default rate clause. Counsel also referred to Exhibit D which is the repayment plan for (6) six months breached by the Defendants. Counsel submitted further that since the Defendant did not refute owing plaintiff the sum of N4,937,035.50k he is deemed to have admitted that fact, moreso, when Defendants failed to file form SCC5 in compliance with Article 6(1) & (3) of the PD in the Small Claims Court 2023. According to counsel, defendant have no valid Defence as they were indebted to the Plaintiff from April, 2023 to September, 2023 to the tune of N4,320,000.00 as interest alone plus N3,000,000.00 which is the principal sum making a total of N7,320,000.00.

Counsel concluded that parties who freely enter into a contract cannot resile from it and thereby urged court to give effect to Exhibit A & D as they are written contract/agreements entered into by the parties.

The lone issue in this judgment is whether the plaintiff has discharged the burden of proof as required by law in this case as to entitle her to judgment. By the claim of the plaintiff, the defendant owes an unpaid loan of N4,937,035.50k. Has the Plaintiff been able to prove by credible, cogent and compelling evidence that the Defendants owe him the aforesaid sum? Being a civil case, the onus is on the Plaintiff to discharge this burden on the preponderance of evidence or on the balance of probabilities.

Both the Plaintiff and the Defendant agreed on the amount granted as loan to the Defendants. Pw1 stated on 30/10/23 thus:

> "The Plaintiff approved the sum of N3,000,000.00 as loan for the Defendants........ I have evidence that N3,000,000.00 was actually disbursed to the Defendants".

The Defendant gave evidence on 01/12/23 thus:

> "The Plaintiff approached me to assist my business. They gave me a loan of N3,000,000.00 .... There is a document to show that Plaintiff gave me the sum of N3,000,000.00"

Based on the evidence above, this court therefore hold that the amount approved as loan by the Plaintiff to the Defendants is N3,000,000.00.

Has the plaintiff been able to prove that the amount owed by the Defendants is N4,937,035.50k as stated in Plaintiff's claim? Plaintiff's evidence was rather very brief but however relies on Exhibits "A" "B" and "C" that she tendered. Exhibit "A" shows the letter of offer and acceptance wherein the terms of the loan agreement are clearly shown. In his examination in chief 2nd defendant stated thus:

"I did not sign exhibit "A". I did not write my name on Exhibit A". I do not have a copy of Exhibit "A". the only document given to me is Exhibit "D".

A cursory look at Exhibit "A" shows that Exhibit "A" is an original copy which ought to be the Defendant's copy yet was tendered by the Plaintiff. By page 4 of exhibit "A" it is the duplicate copy that ought to be with the Plaintiff and not the original copy. Lines 1-3 of page 4 of Exhibit "A" states

> "if all the above stated terms and conditions are acceptable to you, kindly indicate your acceptance by appending your signature and or affixing your company seal on this letter and return the duplicate copy of the letter attached"

From the above, this court is inclined to believe the evidence of the 1st Defendant who gave evidence that he was not given a copy of Exhibit "A" which is the terms of the loan agreement. I hereby hold that Exhibit "A" was not given to the Defendants and this court will attach no weight to Exhibit "A" as a binding contract between the plaintiff and the Defendants. Plaintiff counsel referred to Exhibit "A" as the gravaman of this entire dispute. If this is so, then plaintiff case has not foundation to stand on as this court will attach no weight to Exhibit "A" and I so hold. I must not fail to add that the evidence of 1st Defendant that he did not see, sign or was he given a copy of Exhibit "A" was not rebutted under cross examination by Plaintiff counsel. In FRANCIS OSAWE ESEIGBE VS FRIDAY AGHOLOR & ANOR (1993) LPELR 1164(SC) the supreme court held that:

> "A party in a civil case, where the proof is on preponderance of evidence, cannot safely decline to offer evidence where on the evidence led a rebuttal of such evidence is required. The onus of proof is not static. It shifts depending on the nature of the case and the evidence offered by either party. However, the onus of adducing further evidence is always on the party who would fail if such evidence were not produced".

In proving her case, Plaintiff also placed heavy reliance on Exhibit "C", which is the statement of account of the 1st defendant company. Exhibit "C" does not prove how the Defendant's came to owe the outstanding sum of N4,937,035.50k. It does however show that the sum of N3,000,000.00 was disbursed. Particulars in Exhibit "C", particularly transactions for serial numbers 51, that is, being expenses incurred to arrest Bright Ukpebor from Lagos to Warri; serial number 52 which is N94,650.00 being 10% commission to police of N946,000 recovered; serial number 63 which is N10,000.00 being execution of the Bench warrant ordered by the Magistrate Court against Bright and even serial number 46 which is N5,000.00 being cost of investigation to guarantor's place. The plaintiff has failed to prove how the above expenses make up the total amount of unpaid loan owed her by the Defendants. Similarly, Exhibit "C" shows a debit balance of N4,426,660.55 and not N4,937,035.50k

Apart from merely giving evidence that the Defendants owe Plaintiff the sum of N4,937,035.50k, the Plaintiff failed woefully to prove either by documentary evidence or oral evidence how Defendants' indebtedness came up to the amount claimed. Exhibit "D" heavily relied on by Plaintiff is an unsigned document. The law is settled that an unsigned document is a worthless paper. It is inadmissible and where admitted, it cannot be relied upon by the court to resolve any controversy between the parties as no weight or probative value can be attached to an unsigned document. See the case of Uzokwelu v PDP (2018) LPELR 43733CA.

It is for the above reason, that I hereby hold that the Plaintiff failed woefully to prove her case as to entitle her to judgment. Accordingly, this case is hereby dismissed for lack of sufficient proof.

O.Y. Asheshe-Ebonwu (Mrs)
CMI
29/01/2024.