

IN THE SMALL CLAIM COURT: DELTA STATE OF NIGERIA
IN THE WARRI MAGISTERIAL DISTRICT
HOLDEN AT WARRI

SUIT NO. SCC/06/2023

BETWEEN

COSTLINE MICROFINANCE BANK LIMITED

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CLAIMANT

AND

EJIRO HAPPINESS OKE

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DEFENDANT

Plaintiff Present. Defendant Present. Sp. Siketi Esq For Plaintiff

JUDGMENT

By a claim filed into Court on the 1st day of November, 2023, the claimant prays for an order of this Court directing the Defendant to pay the sum of N51,396.00 (Fifty One Thousand, Three Hundred and Ninety Six Naira) only being the outstanding balance and accrued interest of the loan facility granted to the Defendant on the 10th day of July, 2019. All efforts at mediation at the multi door courthouse proved abortive.

In proof of this Case, the claimant called one witness and tendered 6 (six) Exhibits, that is, Exhibits 'A' to 'F' The evidence of the claimant in a nutshell is that the sum of N100,000.00 (One Hundred Thousand Naira) was loaned to the Defendant as shown in Exhibit 'A'. The loan was guaranteed as shown in Exhibit 'B'. A repayment plan was given to the Defendant which she failed to comply with. CWI tendered Exhibit 'C' which is a loan approval letter signed by Defendant, Exhibit 'D' is an acceptance letter and Exhibit 'E' is a statement of account of the Defendant both evidencing the disbursed amount and accrued interest. Defendant stopped payment in 2020 and currently owes N51,365.00 Defendant refused to pay this amount hence the claimant filed this suit against her. Defendant who was absent on several adjourned dates was foreclosed from cross examining CWI but later came to court to defend this suit.

they will give me a loan of N100,000 to pay N1,000 daily for 6 (six) months.. The marketer came to collect money from me on a daily basis. I pay and the marketer marks the card. By January 2020, I defrayed the loan with my savings. My savings was about N20,000 since January I have not heard anything from microfinance bank. The card I was marking on a daily basis was in the custody of the marketer called Joy".

The claimant did not tender the repayment plan in evidence. Claimant relied heavily on Exhibits 'C' and 'E' to prove that the Defendant is still indebted. Defendant however denied knowledge of exhibit 'C' when she stated under cross examination that " Exhibit 'C' was not served on me. Exhibit 'D' was served on me. I was not given any letter like Exhibit 'C'

Exhibit 'C' contains the terms and conditions of the loan. Though Exhibit 'C' has the name of the Defendant on it, there is nothing on Exhibit 'C' nor any document to support the evidence of CWI that Defendant has knowledge of Exhibit 'C' moreso, there is no signature of Defendant on Exhibit 'C' neither is any endorsement of Defendant on Exhibit 'c' acknowledge receipt of a copy of Exhibit 'C'. On this, I do not believe the evidence of CWI. I find the Evidence of Defendant more credible and I therefore hold that Exhibit 'C' was never given to the Defendant.

Another document heavily relied upon by the claimant in proof of the claim is Exhibit 'E'. Exhibit 'E' is the statement of account of the Defendant. One thing that resonated in the evidence of the Defendant is that she made all payments in respect of the loan through one "Joy Omoghene" who is the staff of the claimant bank. This piece of evidence was craftily avoided by CWI. CWI was completely silent on the role of Joy Omoghene in the whole transaction. A cursory glance at the figures in Exhibit 'E' evidently shows that all the payments made was majorly made by Joy Omoghene. In fact there is no entry in Exhibit 'E' showing Defendant's name. similarly Exhibit 'A' shows "Omoghene Joy" as the loan officer. Omoghene Joy was never called as a witness by the claimant. Failure to call Omoghene Joy as a witness amounts to withholding evidence contrary to section 167(d) of the Evidence Act 2011. In *OLUWATOYIN V. THE STATE* (2018) LPELR 44441(CA) The court held that S.149(d) of the Evi. Act 2004(Now "S.167

Defendant testified in person but neither called any witness nor tendered any Exhibit. Defendant's evidence in a nutshell is that she was approached in her shop by one Omoghene Joy who is a marketer of claimant bank and was offered a loan of N100,000. The loan was given to her in July 2019 and she made payments of N1,000.00 daily to Omoghene Joy who marked her payments in a card that was in custody of Joy. Defendant gave evidence that she has fully paid that was in the loan in January 2020 with her savings of N20,000 (Twenty Thousand Naira) in claimant bank

The issue before this court is whether on the evidence adduced, is the claimant entitled to judgment on his claim? To be entitled to Judgment, the Claimant must discharge the burden of proof imposed by law, which is, the task of establishing before the court the claims of a party. This task is accomplished by a party through cogent, compelling and credible evidence in *AGBABIKA VS FIRST BANK (2019) LPELR-48125 SC*.

The Supreme Court held that.

"Whoever desires any court to give him judgment as to any legal right or liability dependent on the existence of facts which he asserts, has the onus of proving that those facts exist: section 131(1) and 132: of the Evidence Act, 2011". Has the Claimant discharged the burden of proving that the Defendant owed an outstanding balance of the sum of N51,396.00? CWI gave evidence that the claimant loaned the sum of N100,000.00 to the Defendant in July 2019. Defendant admitted that indeed the Claimant loaned her the sum of N100,000.00. On whether the Defendant owes N51,396, CWI gave evidence that the loan was for a duration of six (6) months and a repayment plan was given to the Defendant. In the words of CWI,

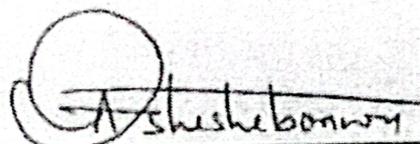
"A repayment plan was given to her showing the duration of 6 (six) months... Defendant did not follow the repayment plan as a result of that there is an accrued interest on the loan. She stopped payment in 2020. She currently owes N51,396.00

The Defendant on the other hand gave evidence that "In 2019 one of Plaintiff's marketer named Joy Omoghene came to my shop to tell me that

(d) of the Evid. Act 2011) empowers the court to presume that evidence which ought to be produced would, if produced, be against the party who should have produce it" I hereby hold that the evidence of Joy Omoghene is crucial to the case of the claimant.

Exhibit 'E' tendered as the statement of account of the Defendant cannot fix liability on its owner. Brandishing Exhibit 'E' without more is not sufficient evidence to hold the Defendant in this case with liability See. Section 51 of the Evidence Act 2011 .

Having discountenance Exhibit 'C' and 'E', this court is inclined to believe the evidence of the Defendant as against that of the Claimant. it is for the above reasons that I hereby hold that the claimant has failed to discharge the burden of proof as to be entitled to Judgment. Accordingly, Defendant is found not liable and this case is dismissed on the merit



O.Y.ASHESHE-EBONWU (MRS)
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