

**IN THE DISTRICT COURT OF BAUCHI STATE
IN THE BAUCHI JUDICIAL DIVISION
HOLDEN AT SMALL CLAIMS COURT NO. 1 BAUCHI**

SUIT NO. SCCBH/79/2023

BEFORE HIS WORSHIP- GARBA ABDULLAHI

BETWEEN

MGBANWE MINILOAN & 1 OTHER CLAIMANTS

AND

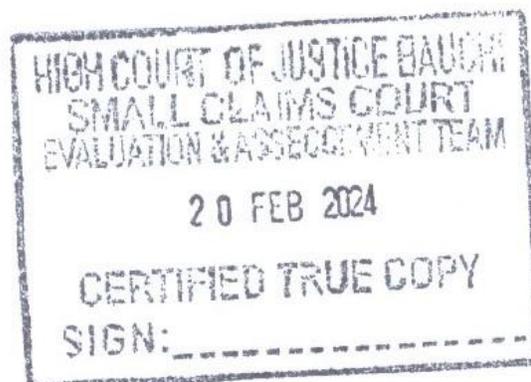
ALHERI ALHAMDU & 2 OTHERS..... DEFENDANTS

CLAIMANTS – Present speaks Hausa Language

DEFENDANTS –Absent

A G Salisu Esq for Claimant with Lidia Solomon

T M Bakir ESQ FOR THE DEFENDANT



JUDGEMENT

This small claim matter brought and filed by the claimant pursuant to Article 2 (1) (2) and (3) of small claims court practice direction NO 2 of 2022, wherein the claimant fill form SCA 2 and 3 dated 6th November, 2023 and filed on the same date seeking for the following reliefs;

1. AN ORDER of this Hon. Court against the defendant to pay the sum of N484,500 only being the Money collected as loan with in interest from the claimant
2. the cost of this action N99,000 only

The originating processes of this Hon. Court has been served on defendant as disclosed by affidavit of service deposed to by one Abdulsalam Abdullahi a bailiff of this Hon. Court. Dated 5/12 /23

Before the commencement of hearing claimant apply for the court to join the name of the 2 Guarantors one DUMBWA ZAKARI and Polum Williams all of Mu'azu layout Yelwa Kagadama Bauchi as co-defendant, and the application was granted'

In their effort to prove their case Claimants called a single witness and tender 2 documents Which marked as Exh. A & B respectively thereafter closed their case, defendant rest his case on that of the plaintiff and the matter was adjourned for adoption of final address, defendant failed to filed his own consequent upon which his right foreclosed and the claimant leave it to discretions of the court thereafter the matter was adjourned for Judgment.

CW 1 in person of Friday Mafindi affirmed and testify to the effect that, on 15/8/23 Mrs Alheri Alhamdu (Defendant) has approach their company and apply for a loan of N150,000 only and the form was given to her after explaining all the terms and condition of the loan defendant review her application to N180,000.00 only .

On/10/22 the loan was disbursed to her on conditions that she will pay within three months on condition that interest of N15% will be charge and will be calculated based on the amount withheld with the client if defaulted 10% interest will be applying since the defendant collected the loan, she has neither pay the principal amount nor the interest and the default charge for a period of one year and three months

The total amount and the interest accrued on the loan as at 18/12/2023 is N827,576,00 only defendant failed to pay despite several demand.

Defendant tendered Exh. A, that is the agreement form and Exh. B balance sheet in evidence before the court, he finally urged the court to compel the defendants to pay the amount due to him, the sum of N200,000.00 as solicitors fee, N50,000.00 as filling fees and N200,000.00 as damage.

During cross examination CW 1 informed this court that he is claiming N1,277,576.00 only, the principal sum, accrued interest and default charges is N827,576,00 only, as at 3/9/23 when he filed this case the principal amount, default charges and accrued interest was N553,245,00 only, that is his claim against the defendant when he filed this action and he has not amended his claim.

He further told the court that the name of the company is Mbamwe loan co. LTD and is registered as business name and is the 2nd claimant, the loan was originally N80,000.00 only after 3 months he is entitle to N116,000.00 only, and at the end of the loan that is 3 months he is entitle to N140,000.00.

He informs the court that his company is not a licensed money lender and with the default charges he is entitle to N116,000.00 and even after the loan was terminated he keep on calculating the charges.

No re-examination was conducted, thereafter defendant rest their case on that of the claimant

Having carefully reviewed the testimonies of the witness before the court and evaluate it and taken into consideration the facts and circumstances of this case, this Hon. Court formulate single issue for determination thus

“Whether the claimant has proof her case by preponderance of evidence to be entitled to judgment”

It is an elementary principles of law for which a citation of authority is not necessary, that the onus is on the plaintiff to prove his case and he must do so by the strength of his own case and not on the weakness of the defendant. I refer myself to the case of MRS ROSE MARY ONWUSOR VS YAHY MAINA & ORS (2021) LPELR 11919 C A

The facts and evidence before this Hon court is apparent that there was a Loan transaction between the parties in this case, pw 1 stated in his examination in chief that defendant apply for loan of N80,000 only and it was disbursed to her on condition that he will repaid within three months with interest and charges the sum of N140,000 only and he defaulted to upset the loan despite several demand, the evidence further disclosed that the principal sum and the interest accrued was to the turn of N483,500 only, that piece of evidence has not been discredited or controverted during cross examination, the law is trite that uncontradicted evidence the court can safely rely on it for just determination of a matter before it.

It is in record that the defendant did not fill form SCCA 5 which to my view is tantamount to admission

Article 6 (3) provide that

“where the defendant fails to filed an answer to the claim such defendant may be held to have admitted the claim”

The law is trite that admitted facts need not further proof because an onus of proof does not exist in vacuo, I refer myself to section 123 of Evidence act 2011 as amended, and the case of MR KWASI KARI ADUSEI & ANOR VS MR TOYIN ADEBAYO (2012) LPELR-7844 SC-, It is in record of this court that the defendant fails to answer the claim in this suit and I so hold, therefore the claimant deserved to have the judgment of this court in his favor

However, It is also in evidence that the 2nd claimant is not a licensee money lender, therefore the traction entered without license is illegal and cannot be enforceable in the eyes of law as in the instant case and I so hold.

The position section 3 of the Bauchi state money lender’s law provide that ‘money lender to include any person who lends money on interest” money lender has been defining by the court of appeal in the case of EBONI FINANCE & SECURIRIES LDT VS WOLE OJO & 2 ORS held inter alia that

“the definition of a money lender encompasses every person whose business is that of money lending and any person who lends money on interest or who lends a sum of money in consideration of larger sum being repaid”

Therefore in the light of the above it is beyond argument that the claimant business of given money as loan and expected additional sum while repaying by the borrower is money lending and I so hold.

Is a fundamental requirement of the law which authorities need not to be cited that every person engage in such type of business of money lending must obtained a license to enable him operate as a legally approve money lender, I refer myself to

section 4 of the money lender law of Bauchi state and the case of UZOUKWU VS IDIKA (SUPRA)

It is trite law that a money lender shall obtained a license to practice as money lender in Nigeria except the following

- a) Any society registered under the co-operatives societies or law
- b) Anybody corporate or empowered by special law to lend money in accordance to such law
- c) Any person bona fide carrying on the business of banking or insurance or bona fide carrying on any business, not having for its primary object the lending of money, in the course of which and for the purpose whereof he lends money
- d) Any person or body corporate exempted from the provision of the law
- e) Any pawn broker licensed under the pawn brokers law

Apart from the afore mentioned person's no one has a right to operate as a money lender without license as in the instant case and I so hold. Put differently the claimant is a money lender without license and does not fall within the above mentioned exception.

The maxim 'dura lex, esd lex" (meaning the law is hard, but it is still law), is one that easily come to mind when considering the plight of an innocent lender who is unable to recover his money from the borrower simply because, having charge interest for loan, he is presume to be a money lender in the eyes of law so that his failure to obtain a money lending license as in the case at hand rendered his agreement with the borrower I e defendant illegal and I so hold.

However, the parties to the said transaction I e the claimant and defendant (borrower) herein had a binding contract among themselves, and nowhere in the record of this case disclosed that the borrower deny that he enjoys and benefited from the said loan took from the claimant.

Furthermore, the consideration agreed between the parties in respect of this transaction for the money given to the borrower is the interest agreed to be paid

by the borrower, which the plaintiff would have earned had he lodged the money in the bank or invested it.

The courts, indeed this court will be frown at an effort made by the defendant or the borrower to deprived the claimant his principal sum, this will allow the borrower to gloat over his enrichment unjustly at the expenses of the innocent lender.

Therefore, the borrower/ defendant should not be allowed to plead that the transaction was illegal, in order to escape from his obligation of repaying the principal sum as posited by the Apex court in the case of UZOUKWU VS IDIKA (2022) 3 NWLR (PT1818) 403

To my own view will not best served the interest of justice to allowed the borrower to take advantage of money lenders law to escape their obligation as in the instant case, and I so hold.

It is in evidence before this Honourable court that, the plaintiff has given the sum of N180,000.00 as loan to the defendant with interest as evident by the content of Exh. A, & B before this court and the defendant failed to upset the loan therefore the claimant is entitle to recover their principal amount of money given to the defendant as loan with cost, therefore in the light of the forgoing I hereby enter judgment in favor of the claimant consequent upon which I make the following order

AN ORDER against the defendant to pay the sum of N180,000 collected from the claimant as loan

As to cost the law is trite that cost follow event, and in award of cost the courts are expected to take into consideration the number of adjournment, fees paid for filling of process, money paid as solicitor's fee among others I refer myself to the case of NNPC VS CLIFCO NIG.LTD (2011) LPELR-2022 SC

In the light of the above cited authority I hereby award cost of N100,000 against the defendant

This case is decided today being 5th February, 2024 there is right of appeal to High Court of Justice within 14 days by the aggrieved party

HIGH COURT OF JUSTICE BAUCHI
SMALL CLAIMS COURT
EVALUATION & ASSESSMENT TEAM
20 FEB 2024
CERTIFIED TRUE COPY
SIGN: 

THE CHIEF MAGISTRATE

GABBARA ABDULLAHI
CHIEF MAGISTRATE
SIGN: _____