

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

SUIT NO SCC/BH/36/2023

Before His Worship- GARBA ABDULLAHI

BETWEEN

AMANA COOPERATIVE.....CLAIMANT

AND

HARUNA MAMMANDEFENDANT

CLAIMANT –Absent

DEFENDANT – Absent

Patrich Owoicho Esq for the claimant

M I Abubakar holding brief of M A Liman Esq for the defendant



JUDGEMENT DELIVERED ON 14/9/23

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 4th August, 2023 and filed on the same date seeking for the following reliefs;

1. AN ORDER against the defendant to pay the sum of N112,143.00 only being the interest in default of payment of the loan due to the claimant.
3. The cost of this action

The originating processes of this Hon. Court has been served on defendant personally as disclosed by affidavit of service deposed to by one Abdussalam Abdullahi a bailiff of this Hon. Court. Dated 8/8/23 and the hearing commenced.

CW 1 in person Bukata Timothy affirmed and told this Hon. court that, the defendant met them on 28/10/23 and borrow money the sum of N100,000 only, before they released the money to him they told him that there are administration charges for three months, if they approved his loan he will repay the principal sum and the charges in three months if he failed he will pay additional charges of 10%

He further told this court that, what she means by administration charges is that for him to become a member he will pay N1,500 as a member, they will use the money to manage the cooperative by payment of staff, electricity bill, taxes and other expenditures.

They are in court because they claim the sum of N112,143 only from the defendant because he enters into agreement with them in written and the said agreement latter dated 18/11/21 has been admitted in evidence and marked as Exh. A, since that undertaking he has not pay anything.

During cross examination she told this Hon. court that, she told this court that their co-operative has a registration, it was registered in 2014 and they have a certificate to that effect, the main purpose of the cooperative is to empower its members by given loan and collecting administrative charges, the loan was given to defendant in Oct, 2020 and he join the association in June 2020 to enable him access the loan, the gave him the sum of N100,000 as loan and he paid N120,000 only.

he further told this Hon. court that their co-operative is not a registered money lender, the money they collected is interest, but administrative charges rather.

Thereafter the claimant closed his case, and the defendant choose to rest his case on that of the claimant.

In his final written address, the learned counsel to the claimant, he formulated lone issue for determination which is hereby reproduced as follows; -

“WETHER THE DEFENDANT IS BOUND TO PAY THE ADMITTED DEBT?

He submitted that in the examination of the sole witness the major high light which are not disputed are as follows: -

1. The claimant is a cooperative society
2. The defendant is a member having join in 2020
3. That the defendant took the loan of N100,000 only on 28/10/2020
4. That the loan was to attract 10% interest or administrative charges each month.
5. That the defendant paid the sum of N120.000 only and on 8/11/2021 he undertook to pay N112.143 ,00 failing which interest will resume
6. That the defendant has not pay a kobo since

The learned counsel argue that the general position of the law is that, parties are bound by their agreement, therefore the defendant is bound by his agreement with the claimant as court generally do not interfere with agreement willingly entered by parties he cited the case of gateway holdings vs S.A.M & T LTD (2016) 9 NWLR PT 1518, PG 490 At 511 and also relied on the dictum of Pats- Acholonu (JSC) IN WCC VS BATALHA (2006) 9 NWLR Pt 986 pg. 595 at 602

Urged the court to enforced the contract.

He further argued that section 11 (3) of the Nigerian cooperative society Act provide that’

“If the object of the registered society includes the creation of funds to be lent to the members, additional bye laws shall be made in respect of conditions on which loans may be granted to members, including

- a. The rate of interest

that act empowers the claimant to charge interest on loan granted to members, the cooperative society law is not any other law or act.

He further contended that, the defendant claim he gave the sum of 10,000 only to the claimant and he refused to collect, since he could not extract any admission

from CW 1 he is duty bound to proof his assertion he refers this court to section 133 of E A 2011 as amended

finally, the defendant refuse to testify or lead any evidence this court left with no option than to accept the version of the claimant which is in line with the evidence of CW 1 and hold the defendant liable, therefore urged the court not to pursue the total interest till date rather demanding only what the defendant undertook to pay on 8/11/2021 as per Exh. A

While the learned counsel to defendant in his final address formulated single issue for determination which is hereby reproduced thus: -

“whether the claimant is entitle to the relief sought before this Hon. court against the defendant?

He argued that, it is trite law the burden of proof in civil matter is on the balance of probability, sometimes is static does not shift, while in another time shift on the defendant when the claimant has discharge the burden place on him he cited section 134 of E A 2011 and the case of EKWEOZOR & ORS VS REG, TRUSTEES OF THE SAVIO'S APOSTALIC CHURCH OF NIG. (2020) LPELR- 49568 (SC)

He further argue that, the claimant has a legal burden to prove before this Hon. court that it is indeed a registered association or cooperative society as well as the amount it claim against the defendant since the defendant denied liability, he submit that since the CW 1 referred to a documents by presumption are in custody of the claimant, and CW 1 is it manager, the only evidence admissible in law is the document themselves not oral statement from the manager, he refer this court to the case of ABUBAKAR VS WAZIRI (2008) 14 NWLR (PT 1108) 507 at 534 para. A-B he urged the court to discountenance the oral evidence of the sole witness

He further argues that Exh. A has been tendered not through the maker and urged the court not to attached any weight or probative value to it he placed reliance on the case of INIAMA VS AKPABIO (2008) 17 NWLR (PT 1116) 225

He further submits that this court is a court strictly of resolution of simple and liquidated debt recovery dispute he cited Article 1 of THE PRACTICE DIRECTION

Of this court NO 2 of 2022

Finally, he urged to dismiss this case with cost against the claimant

Having evaluate the evidence before the court and after taking into consideration the submission and argument of both counsels, this Hon. court formulate lone issue for determination realized that the issues formulated by both parties in their final written addresses are inter related, inter woven and not dissimilar therefore are hereby amalgamated and compressed thus; -

“whether or not the claimant is entitle to Judgment having taken into consideration the testimony of the witness brought by the claimant”

The law is trite that in civil case the claimant is duty bound to prove his case to the balance of probability to entitle to judgment by the strength of his case not the weakness of the defendant sees the case of IMAM VS SHERIFF (2005)4 NWLR (PT 914)80 and MRS ROSE MARY ONWUSOR VS YAH I MAINA & ORS (2021) LPELR-11919 C A, LONGE VS CBN (2006) 3 NWLR (PT 11)24

It is in record that defendant has collected the loan of N100,000 only from the claimant and he has paid the sum of N120,000 only including administration charges, that piece of evidence has not been discredited during cross examination

The evidence before the court revealed that, the defendant failed to refund the money loaned to him as when due which attract 10 % interest every month as jointly agreed by the parties and defendant has wrote an under taking to upset the interest as contain on Exh. A, that part of evidence has not been controverted during cross examination and I so hold.

The sole witness before the court told this Hon. court that the claimant is a registered cooperative, based on the above stated evidence it is clear that, the claimant has given loan to the defendant with interest to be paid in default

The law is trite that, only a licensed money lender can engage in the business of money lending I refer myself to section 4 of the money lender Laws of Bauchi state, On the meaning of money lender 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 act of the claimant of given money as loan and expected additional sum as interest 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)

In the instant case the claimant witness did not state in his testimony, that it has license issued by the authority concerned to enable him engage in such type of business and I so hold.

Therefor it is beyond argument that the general position of the law is that money lender shall obtain 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

It is in evidence CW 1 informed this Hon. court that, the claimant has a registration as cooperative and that piece of evidence has not been contradicted, therefore it falls under the above exception (a) the parties to the said transaction i.e. the claimant and defendant herein had a binding contract between themselves, and nowhere in the record of this case disclosed that the defendant deny that he enjoys and benefited from the said loan took from the claimant and Exh. A show that the defendant has wrote an undertaking to pay the interest due to the claimant but he failed to do so.

Furthermore, the consideration agreed between the parties in respect of this transaction, for the money given to the borrower to me is the interest agreed to be paid by the borrower, which the claimant would have earned, had he lodged the money in the bank or invested it.

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 interest.

Therefore, and I hereby resolved the lone issue for determination in favor of the claimant against the defendant.

Judgment is hereby entered against the defendant and the following orders are hereby made

1. AN ORDER against the defendant to pay the sum of N112,143.00 only being the interest in default of payment of the loan due to the claimant
2. No cost awarded

This case is decided today being 14/9/2023 there is right of appeal to H C of Justice within 30 days by the aggrieve party

