

IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA - FCT ABUJA
ON THE 12TH DAY OF MAY 2025
BEFORE HIS LORDSHIP HON. JUSTICE CHIZOBA N. OJI

SUIT NO: FCT/CV/2267/2013

BETWEEN:

ASSET & RESOURCES MANAGEMENT CLAIMANT
COMPANY LIMITED

AND

ALHAJI BASHEER KOKO ABUBAKAR DEFENDANT

APPEARANCES:

Macmillian .O. Igbo Esq, with Okechukwu C. Okafor Esq, Happiness Udo Ekong Ms, and Tahira Onewunewu Bello Ms for the Claimant.
C.A Agulefo Ms holding the brief of O.S. Ephraim-Oluwanuga Esq for the Defendant.

JUDGMENT

This suit commenced under the undefended list and was subsequently placed under the general cause list.

By her statement of claim filed on 7th May, 2015 and deemed duly filed and served on 5th November 2015, the Claimant claims against the Defendant as follows:

- "(i) *The sum of N21, 531,539.69 (Twenty - One Million Five Hundred and Thirty One Thousand, Five Hundred and Thirty-Naira Sixty - Nine Kobo), being outstanding principal plus accrued interest on margin facility obtained by the Defendant from the Plaintiff on the 21st of May, 2007.*



- (ii) *An award of 11% interest on the judgment sum from the date of judgment till the judgment sum is fully liquidated.*
- (iii) *Cost of this action inclusive of solicitor's fee accessed (sic) at 1,000,000.00".*

In denial of the claims, the Defendant filed a statement of defence on 5th February, 2016 deemed duly filed and served on 5th December 2016.

The Claimant filed a reply to the statement of defence deemed duly filed and served on 2nd February, 2022.

The Claimant's sole witness, CW1, Ediagbonya Osayomwanbo adopted his witness statement on oath deposed to on 28th June 2019.

He testified inter alia that he is a relationship manager with the Claimant company. That the Claimant is primarily engaged in fund/portfolio management business and grants facilities to its customers on application.

That the Defendant is a customer of the Claimant. That on the 21st of May 2007, at the instance of the Defendant, the Claimant granted the Defendant a margin/credit facility in the sum of N38,500,000 (Thirty Eight Million Five Hundred Thousand Naira) on terms and conditions set forth in the margin loan agreement dated 21st of May 2007. The loan was for a term of 365 days and matured on 20th of May 2008. That the Defendant defaulted in liquidating the facility. That the Claimant wrote the Defendant on 22nd January, 2009, advising him of the Claimant's policy review regarding charges in respect of default on interest payment on margin loan and again on 25th March 2009 to pay down interest accruals on his account and to contact his wealth advisor to address any requisition regarding his account. In response to the letter of 25th March 2009, and in obvious admission of the margin facility, the Defendant by his hand written letter of 22nd April 2009



requested the Claimant to extend the term loan by six months and roll over same at interest rate of 20% per annum.

The Claimant was unable to reach the Defendant to get the Defendant's instruction to rollover the facility at its reviewed interest rate. Therefore the Claimant was unable to rollover the facility.

The Claimant subsequently by its letter of 12th October, 2009 advised the Defendant that the outstanding loan balance inclusive of interest due was N21,531,539.69 (Twenty-One Million Five Hundred and Thirty One Thousand, Five Hundred and Thirty Nine Naira, Sixty Nine Kobo) and to contact his wealth advisor to discuss any concerns regarding the account. The Defendant failed to respond to the Claimant's letter of 12th October, 2009.

However, about two years later the Defendant by his letter of 23rd September 2011 wrote the Claimant requesting a waiver of all accumulated interest on the facility. The Claimant made numerous concessions to the Defendant in its letter of October 5th, 2011 in a bid to encourage the Defendant to pay down on the facility and to maintain a cordial relationship with the Defendant. The Defendant however failed to take the advantage. He failed to respond to the letter.

The Claimant thus instructed its external solicitor Messrs Perchstone & Graeys to write a demand letter to the Defendant dated 29th February, 2012, demanding a liquidation of the Indebtedness.

The Defendant responded through his solicitor ASEK Chambers by letter dated 13th March 2012 requesting for 4 weeks from 13th March 2012 to obtain and study the agreements and correspondences regarding the transaction from their client the Defendant to enable them take a position on how best to resolve all issues involved.



The Claimant's solicitors by their letter of 21st March, 2012 availed the Defendant's solicitors a period of 2 weeks to revert to them, failing which they would take decisive steps to preserve the Claimant's interest on the transaction.

The Defendant failed to revert to the Claimant. The Claimant's solicitors therefore by their letter of 12th April 2012, issued a Preaction notice to the Defendant in readiness to commencing action for recovery of the debt.

The Claimant further appointed Messrs Okorie & Okorie to continue its bid to recover the loan and interest from the Defendant; now amounting to N21,531,539.69, and 11% post judgment interest and N1,000,000 costs.

Through CW1 the following documents were admitted in evidence:

- (i) Photocopy of unsigned specimen loan agreement – Exhibit C1.
- (ii) Photocopy of letter dated January 22, 2009 – Exhibit C2.
- (iii) Photocopy of letter dated March 25, 2009 – Exhibit C3.
- (iv) Photocopy of hand written letter dated 22nd April 2009 – Exhibit C4.
- (v) Photocopy of letter dated October 2, 2009 – Exhibit C5.
- (vi) Photocopy of hand written letter of 23rd September 2011 – Exhibit C6.
- (vii) Photocopy of letter dated 5th October, 2011 – Exhibit C7.
- (viii) Photocopy of letter dated 29th February, 2012 – Exhibit C8.
- (ix) Photocopy of letter dated 13th March, 2012 – Exhibit C9.
- (x) Photocopy letter dated 21st March, 2012 – Exhibit C10.
- (xi) Photocopy of letter dated 12th April, 2012 – Exhibit C11.

Learned counsel for the Defendant did not appear in court on 7th March 2023 for the cross examination of CW1. No letter was filed to explain their absence. Upon the application of the Claimant's counsel, the defence was

foreclosed from cross examining CW1 and CW1 was discharged. Thus the Claimant closed its case.

The application of the learned defence counsel to recall CW1 who was then said to be outside the shores of Nigeria for cross examination was dismissed by the court.

Thereafter the Defendant proceeded with his defence.

The Defendant testifying as DW1 adopted his witness statement on oath of 5th February 2016. He denied paragraphs 1 – 24 of the statement of claim. He stated inter alia that the Claimant availed him a margin loan shares and stocks facility on 21st of May, 2007 in form of a loan facility and thus the Claimant was required to use its professional competence as a capital market operator to properly manage the Defendant's investment.

That amongst the terms and conditions of the grant was that the advancement and/or purchase of the shares and stocks by the Claimant shall be used as security for the margin loan facility granted.

He maintained that he duly complied with the terms and conditions of the contract but the Claimant has continually breached same.

That the duties of the Claimant as a capital market operator and stock broker to the Defendant in respect of the margin loan facility includes but not limited to maintaining a regular and periodic advice to the Defendant regarding the shares and stocks facilities, appropriate, regular and periodic advice to the Defendant to sell the shares when the prices are high or trending downward to maximise profits and returns for the investment and to minimise loss respectively, the essence being to enable the Defendant to liquidate the facility, maximise profit and minimise devastating loss.

That the Claimant failed/neglected to use its professional duties and discretion to sell the shares in their possession and control in 2008 when

the price was dwindling having been given the directive by the Defendant to do so through his wealth advisor who is an employee of the Claimant and whom the Claimant at all material times was fully aware of, and this led to a colossal and fatal loss of the value of the shares which the Claimant is highly instrumental to.

That during the tenure of the margin loan share transaction and the first quarter of 2008, the prices of shares were at all material time high yet the Claimant failed to sell to enable the Defendant enjoy the benefit of the return on investment and possibly liquidate margin loan facilities. That the Claimant delayed in acting on the instruction given to it and allowed the shares to become totally worthless before selling same long after the instruction was given to the Claimant.

That had the Claimant held on to the shares in the portfolio then, now that the capital market has recovered, the sale of the shares would have wiped off the alleged indebtedness of the Claimant.

That the Claimant gave him a wrong impression that the margin facility was of a banker/customer nature, which influenced his making Exhibit D1 dated 22nd April 2009 requesting for a roll over and Exhibit D2, the letter of 23rd September 2011.

That throughout the period of the transaction and tenure of the margin arrangement, he relied on the professional investment advice, direction and suggestion of the Claimant and compensated the Claimant in fees for such. He gave notice to the Claimant to produce the statement of account showing transaction details of the margin loan facilities, repayment of the loan, prices and types of shares.

That the Claimant never disclosed to him how the margin loan facility was effectively managed, therefore his total denial of the Claimant's claim.

That the margin agreement and arrangement alluded to by the Claimant is not a banker/customer relationship but an arrangement relating to the investments and securities matters in the capital market.

That the Claimant's action is frivolous and unmeritorious and ought to be dismissed.

DW1 was cross examined and discharged.

Thus the Defendant closed his case.

The Defendant's final written address was filed by Sola Ephraim- Oluwanuga Esq on 23rd September 2024, deemed duly filed and served on 10th February, 2025, and adopted by Ayenajeyi Habila Esq.

Therein 2 issues for determination were formulated thus:

- "1. Whether from the facts and circumstances of this suit, the Claimant has established his case to be entitled to the reliefs sought before the Honourable Court.***
- 2. Whether or not the Defendant's right to fair hearing was denied in this suit".***

The Claimant's final written address was filed by Happiness Ekong Ms wherein she raised a sole issue for determination thus:

"Whether given the totality of material evidence placed before this Honourable Court, the Claimant is entitled to its claims and reliefs sought against the Defendant?".

DEFENDANT'S SUBMISSIONS



ON ISSUE 1

It was submitted that the onus is on the Claimant to prove his case by cogent and compelling evidence, citing ***OREDOLE OKEYA VS B.C.C.I (2014) 54 (PT***

1) NSCQR 230 AT PAGE 254-255 PER LT MOHAMMED JSC, inter alia; Ss 131, 132 and 136 (1) Evidence Act.

It was submitted that the Defendant in cross examination maintained that he was not indebted to the Claimant because the security he used in obtaining the loan was sufficient to liquidate the balance of the said loan and the Claimant had the right and power to sell off the security without further notice from the Defendant.

That assuming, but not conceding that Exhibit C1 (Margin Loan Agreement) was the executed agreement by both parties, a careful study of Exhibit C1 which the Claimant is relying on shows that the Claimant had every right and power to sell the securities to get outstanding of any amount due. Clause 3 of Exhibit C1 was relied upon.

It was further argued that the margin call was agreed to be made where the size of the facility reaches 75% of the value of the Defendant's portfolio, and that the facility advanced with the inclusion of interest and charges must not exceed 75% of the Defendant's gross portfolio at any given time.

Despite these clauses contained in Exhibit C1, the Claimant still failed to timely exercise its professional discretion to sell the shares to enable it liquidate whatever loan and interest on the margin loan, but delayed till the shares were totally worthless and the interest and charges had exceeded 75%.

It was further stressed that Clause 7 reiterates the right of the Claimant to sell without obtaining consent from the Defendant. That the Defendant equally stated this in cross examination.

Learned counsel thus argued that the Claimant was at liberty to sell the shares to liquidate the loan, and the Claimants delay in doing the needful has nothing to do with the Defendant and the Defendant cannot therefore be said to be indebted to the Claimant, because at the time the margin loan was

due, the security meant to liquidate the loan was sufficient to liquidate same. But instead of selling off all the shares to liquidate the balance, the claimant deliberately chose to sell off some of the shares, with the intention of selling the remaining at a later date to make profit. See Exhibit C5, which is binding on the Claimant.

It was submitted that equity aids the vigilant not the indolent. Therefore the consequence of the Claimant sleeping on its rights should not be visited on the Defendant.

Learned Counsel maintained that the Claimant must succeed on its own case, not on the weakness of the defence.

See *IMAM V SHERIFF (2005) 4 NWLR (PT 914) 80; ELIAS V OMO BARE (1982) 2SC 25..*

He was argued that the Claimant had failed to prove how the Defendant is indebted to it or that the security provided was not sufficient to liquidate the margin loan. That DW1 who stated that at the time the margin loan was due, the prices of shares were at all material time high and that the Claimant had the Defendant's open directive to sell the shares to liquidate the loan but failed to do so, was not discredited in cross examination.

Finally that from the content of Exhibits D1 & D2 that it is clear that the Defendant had been given the wrong impression by the Claimant that the facility was of a banker/customer nature which prompted and influenced the making of Exhibits D1 & D2, which DW1 maintained were not a reaction to any of the purported letters Exhibits C2, C3 & C5 as he was not in receipt of same and there is no evidence before the court that he received Exhibit C5.



ON ISSUE 2.

Whether or not the Defendant's right of fair hearing was denied in this suit. It was submitted that the court's order foreclosing the Defendant from cross examining CW1 on the application of the Claimant's counsel on the sole ground that the Defendant was absent and unrepresented on the 7th March 2023 when the matter came up for cross examination of CW1 is a misapplication of the law which amounts to a breach of the Defendant's right to fair hearing as enshrined in S 36 CFRN.

Citing *SIMON V STATE (2017) LPELR -49188 (SC); LEADERS OF COMPANY LTD & ANOR V BAMAIYI (2010) LPELR - 1771 (SC)*, learned counsel submitted that the right to cross examine a witness of the opponent is one of the fundamental pillars of fair hearing, a breach of which renders the entire proceeding a nullity, and urged the court to so hold.

CLAIMANT'S SUBMISSIONS ON BOTH ISSUES:

It was argued that is trite law that in the absence of fraud or illegality that the court is bound to give effect to the terms and conditions of the agreement of parties to a contract. See *OBIKOYA V WEMA BANK LTD (1990) 7 NWLR PT 201, 119 AT 129 - 130 PER TOBI JCA; GWANI V EBULE (1990) 5 NWLR (PT 149) AT 201*.

It was argued that the agreement of Exhibit C1 is legal, enforceable and valid and the terms and conditions contained therein are unambiguous, express and clear.

That Exhibit C1 is binding on the parties notwithstanding that same is not signed as both rely on it and intend it to be binding. The Supreme Court authority of *OGUDO V THE STATE (2011) LPELR - 860 SC AND AWOLAJA & ORS V SEATRADE G.B. V (2002) LPELR - 615 (SC)* were relied upon.

It was argued that the evidence of CW1 and exhibits tendered are sufficient in proof of the Claimant's claim that the Defendant is clearly indebted to the

Claimant. That the Claimant never gave the Defendant the impression it was a stockbroking firm rather the assets/shares held by the Claimant for the Defendant were used as security for the loan in the event the Defendant defaulted.

That the Defendant admitted taking the loan and his indebtedness to the Claimant but pleaded for roll over in Exhibit C4. That facts admitted need no further proof, citing **AKINNAWO V AYODELE (2013) LPELR - 20318 (CA); MOHAMMED V APC & ORS (2019) LPELR - 48395 CA.**

Learned counsel submitted that the Claimant having proved his case, that the onus shifted to the Defendant to produce the agreement between the parties that the Claimant's duties includes speculating in prices of shares in the capital market with the aim of selling on behalf of the Defendant, which the Defendant failed to prove.

Learned counsel urged that the failure of the Defendant to liquidate the facility within 365 days agreed and till this day is a fundamental breach of the parties' contract, for which the Claimant, the offended party is entitled to restitution for damages suffered on account of the breach. See **MANYA V IDRIS (2001) 8 NWLR (PT 716) 627 AT 631 PARAS D-F.**

That the Defendant failed to cross examine CW1, neither did he object to the exhibits tendered by the Claimant. Therefore the evidence of CW1 remains uncontroverted. That evidence that is unchallenged stands admitted and will be taken as the true state of affairs. The court was urged to enter judgment in favour of the Claimant.

On fair hearing, learned Claimants' counsel urged that the court is functus officio on the matter, the court having ruled that the Defendant did not present sufficient ground/basis upon which he intended to cross examine the witness if recalled. Citing **WILLOUGHBY V INTERNATIONAL MERCHANT BANK LTD (1987) 1 SCNJ 1 AT 16.**

It was further argued that the defence counsel who was in court when the case was adjourned for cross examination, only to be absent at the adjourned date without any reason whatsoever, cannot be heard to complain of lack of fair hearing. See *ONADEKO V UBN PLC (2005) 4 NWLR (PT 916) PG 440 PARAS E-G per ADEKEYE JCA* (as he then was).

The court was urged to find the argument on lack of fair hearing unmeritorious and enter judgement in the Claimant's favour.

RESOLUTION

I have considered the evidence before me and arguments of learned counsel on both sides.

I shall adopt the two issues argued by the parties in resolving this matter:-

1. **Whether from the facts and circumstance of this suit the Claimant has established his case to be entitled to the reliefs sought before this Honourable Court.**
2. **Whether or not the Defendant's right to fair hearing was denied in this suit.**

It is trite law that parties are bound by the terms of their contract they freely entered into and if any dispute arises therefrom, the terms in the document which constitutes the contract are invariably the guide to its interpretation.

See *SERGUIS ONYEKWELU V ELF PETROLEUM NIGERIA LIMITED (2009) LPELR - 2733 (SC) PAGE 17 PARAS A, PER MAHMUD MOHAMMED JSC; HAJIYA FATIMOH IYABO YAKUBU V ABBAS UMARU IBRAHIM & ORS (2016) LPELR - 41496 (CA) PAGE 25 PARAS B-E, PER HASSAN JCA.*

In the instant case the parties are ad idem that the margin loan facility is as in Exhibit C1 (a specimen tendered in court). Though Exhibit C1 is unsigned, the Claimant relies on it and the Defendant equally relies on it. Exhibit C1 therefore is the contract between the parties.



By Exhibit C1, the Claimant on 21st May, 2007 availed the Defendant a margin/credit facility of N38,500,000 (Thirty Eight Million Five Hundred Thousand Naira only) on terms and conditions set out in Exhibit C1. The facility was for 365 days at 20% interest rate per annum.

The Defendant accepted the facility but failed to pay within 365 days as agreed; i.e, as at 20th May, 2008 the facility had not been repaid.

The Claimant wrote Exhibit C2 dated 22nd January, 2009 informing the Defendant that effective from 15th February, 2009, default on interest payment will attract a charge of 45% per annum till payment is made, and urged him to contact his wealth advisor if he required additional information. The Defendant did not respond to his letter.

This was followed by Exhibit C3 dated 25th March, 2009 advising the Defendant to pay down some fees on time to avoid his account being over drawn and further charged interest of 45%. The Defendant was advised to contract his wealth advisor to address any questions he might have regarding the letter.

The Defendant responded via a hand written letter, Exhibit C4 dated 22nd April 2009 (same as Exhibit D1) wherein he requested for a roll over of his facility.

Therein he stated inter alia:

"Dear Madam

REQUEST FOR ROLL OVER

I wish to extend the term of my load (sic) facility with you for another six months.

I would appreciate it if the loan is rolled over at the initial interest rate of 20%.

Thank you for your co-operation.

Best regards.

Signature

Basheer A. Koko"



The Claimant however was unable to roll over the facility.

By Exhibit C5 dated October 12, 2009 the Claimant advised the Defendant that the outstanding balance of the loan plus interest due and payable to the Claimant was N21, 531, 539.69. (Twenty One Million, Five Hundred and Thirty One Thousand, Five Hundred and Thirty Nine Naira, Sixty Nine kobo) and advised the Defendant to contact his wealth advisor to schedule a meeting to discuss any concerns regarding the letter.

The Defendant failed to respond

Two years later the Defendant wrote a hand written letter Exhibit C6 dated 23rd September 2011 requesting a **“review of interest rate (currently 45%) to the original rate . . . and a waiver of all accumulated interest on the loan facility”.**

It ended thus, **“Please approve my request to enable me pay back the loan and start a new portfolio all together.**

Sincerely

Signature

Basheer Koko” (Emphasis mine)

The Claimant by letter dated 5th, October, 2011 Exhibit C7 made numerous concessions to the Defendant, which again the Defendant failed to take advantage of. Exhibit C7 contains the facility computation.

It is clear that in all the correspondences to the Defendant, the Defendant never at any point in time challenged the assertion by the Claimant that the Defendant was owing the Claimant. Particularly, Exhibit C5 clearly stated that the Defendant was owing the Claimant N21, 531,539.69.



In Exhibit C6 the Defendant still did not contest the figure stated but sought review of the interest rate and waiver of interest to enable him pay back the loan.

Exhibit C8 dated 29th February, 2022 is the letter of Perchstone & Graeys, Claimant's solicitors, to the Defendant demanding the payment of the sum of N21,531,539.69 within 14 days.

The Defendants' solicitors ASEK Chambers responded via Exhibit C9 dated 13th March 2012 seeking 4 weeks to study all agreement and letters between the parties before taking a stance on the way forward.

The Claimant's solicitors responded via Exhibit C10 giving only 2 weeks grace for the Defendant to respond.

The Defendant failed to respond, prompting the Claimant's solicitors to issue Exhibit C11 giving the Defendant a preaction notice.

It is again noteworthy that at no time did the Defendant dispute the figure of N21,531,539.69 claimed by the Claimant. The Defendant throughout this transaction did not contest it by himself, nor by his solicitors.

The CW1 testified and was not cross examined by the defence. Thus all the evidence of the Claimant remained unchallenged and uncontroverted. They are therefore deemed admitted.

To further buttress the point, the Defendant in cross examination was asked inter alia:

"Question: In paragraph 6 of your witness statement on oath you said you duly complied with your contractual obligations.

Answer: Yes

Question: What contractual obligation did you perform in this loan agreement.

Answer: I started paying the loan but I have not completed it. It was in the process, the idea was if they need to, they sell part of the shares to take care of the loan. And then there was a request I made through those letters to reduce the interest rate from 45% to a more reasonable percentage.

Question: How much did you pay for this particular loan

Answer: To be honest, I cannot remember, I know I used to borrow and pay. Whether I paid for this particular one, I cannot remember exactly"

It is clear that the Defendant never questioned the amount claimed by the Claimant against him and does not know how much he has paid towards liquidating the loan himself or if he even paid at all.

I think it is too late in the day for the Defendant to claim that he does not owe the Claimant. By his own admission, he owes the Claimant.

See *BEST GRADE ENTRE-POT LIMITED V ECOBANK NIGERIA PLC (2022) LPELR-58 282 (CA) PAGES 43 PARAS E-F, 44 PARA A-B; DEMROWL INTERNATIONAL LTD V GTB PLC (2019) LPELR - 48965 (CA) PAGE 21 PARA B-E.*

Assuming, without conceding that the Claimant had the duty to sell the Defendant's shares at a particular time and did not sell them to the disadvantage of the Defendant, the Defendant had every opportunity to raise the issue as a fundamental breach of their agreement and repudiate same, but he failed to do so.

He continued with the arrangement, pleading for review of interest rate to enable him repay the loan, therefore he never repudiated the agreement Exhibit C1 and remains bound by it.

The court will not make a different contract for the parties.

Having reviewed the evidence, it is my view that the answer to issue 1 is in the affirmation and I so hold.

Whether or not the Defendant's right to a fair hearing was denied in this suit.

I shall waste no time in responding to this issue other than to adopt my earlier ruling on the matter delivered on 22nd of February, 2024 on the Defendant's motion no M/197/2023. The Defendant did not disclose any cogent reason why he should be granted his application to recall CW1 therefore the dismissal of his application is not a denial of fair hearing. The court is functus officio on the point and if the Defendant is aggrieved thereby, his remedy would lie in an appeal to the Court of Appeal and not this attempt to lure the court into sitting on appeal over its own ruling. I hold that the Defendant's right to fair hearing has not been breached.

I therefore hold, on the evidence before me that the Claimant has proved his case on a preponderance of evidence that the Defendant is indebted to the Claimant to the tune of N21,531,539.69 being outstanding principal plus accrued interest on the margin facility obtained by the Defendant from the Claimant on 21st May 200.

The Claimant seeks 11% post judgment interest. Order 42 Rule 3 of the High Court of FCT Civil Procedure Rules 2025 permits 10% post judgment interest. Accordingly, I award the Claimant 10% per annum post judgment interest from today on the judgment sum until the judgment sum is fully liquidated.

I award normal costs of action at N250,000 in favour of the Claimant. There is no evidence to prove solicitors' fees.

Judgment for the Claimant, as follows:

- (1) N21,531,539.69
- (2) 10% per annum post judgment interest
- (3) N250,000 costs.



Hon. Judge

12/5/2025

