

IN THE MAGISTRATE'S COURT OF ENUGU STATE OF NIGERIA
IN THE ENUGU NORTH MAGISTERIAL DISTRICT
HOLDEN AT ENUGU

BEFORE HIS WORSHIP K. O EZE, CHIEF MAGISTRATE GD. 2 ON THURSDAY THE 7TH DAY OF
FEBRUARY 2019

SUIT NO MEN/485/2016

UNITED BANK FOR AFRICA PLC

PLAINTIFF

VS

OSSY PETERS ENT NIGERIA LTD
MR OSSY PETER OKOYE

DEFENDANTS

JUDGEMENT

By her summons to obtain judgment by default dated July 4, 2016 and filed on July 15, 2016 the Plaintiff is claiming from the defendant as follows:

- (a) An Order of this Honourable Court mandating the defendant to offset/liquidate the sum of N4,482,465.16 (Four Million Four Hundred and Eighty-Two Thousand Four Hundred and Sixty-Five Naira Sixteen Kobo) only being outstanding debt from the loan granted to the defendants including accrued interest as at December 31, 2014 which is now long overdue.
- (b) Interest at the rate of 15% per annum from January 1, 2015 until the said debt is liquidated.
- (c) The plaintiff is also entitled to the agreed monthly management fee of 2% from January 1, 2015 until the debt is liquidated.

The defendants filed a notice of intention to defend dated November 17, 2016 supported by a 21 paragraph affidavit. The court thereafter ruled that the defence disclosed merit and transferred the matter to the general cause list for hearing and determination.

The defendants filed a counter claim dated October 17, 2018 and filed on February seeking the sum of N469,000.00 (Four Hundred and Sixty-Nine Thousand Naira) only being excess amount repaid to the plaintiff by the defendants. The plaintiff in response filed a defence to the counter claim dated November 14, 2018 and filed on November 26, 2018.

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During the proceeding, there were four witnesses of which the plaintiff called one witness and the defendants called three witnesses. Both parties were represented by counsels.

The first plaintiff witness introduced himself as Chukwuma Eze. He lives at No 23 Mbanefo Street, New Haven, Enugu. He is a banker and staff of the plaintiff. His branch office is at Agbani Road, Enugu. He knows the defendants in the suit. They are customers of the plaintiff and opened an account in 2006. The witness stated that in January 2011, the defendants applied for a loan in writing. The loan application dated January 24, 2011 was tendered and admitted as exhibit 1. The loan offer letter dated January 24, 2011 was tendered and admitted as exhibit 2. The loan facility was disbursed in February 2011 and till date the defendants have not liquidated the loan sum. The statement of account of the first defendant was tendered and admitted as exhibit 3. The letter of demand dated December 11, 2012 was tendered and admitted as exhibit 4 while the defendant's application letter for waiver dated March 27, 2012 was admitted as exhibit 5. The witness further stated that following the freezing of interest on the account, the outstanding balance stood at N4,482,465.16 (Four Million Four Hundred and Eighty-Two Thousand Four Hundred and Sixty-Five Naira Sixteen Kobo) only. The witness was cross examined in court and thereafter the plaintiff closed her case.

The defendants' first witness introduced himself as Ossy Peters Okoye. He is the second defendant in the suit. He lives at No 1 Bethsaida Close, Independence Layout, Enugu. He knows the plaintiff in the suit. He stated in his testimony that he and the first defendant which is his registered business name are not indebted to the plaintiff. The plaintiff only granted a facility to Alhaji Baba Ali, the chairman of cattle dealers association. He was called to use his business name and surety Alhaji Baba Ali by the branch manager of the plaintiff. The bank later informed him that Alhaji Ali was indebted to the bank and he agreed to help pay the outstanding balance. The witness stated that he has completed the payment and have had several meetings with the plaintiff and staff of EFCC on this issue which he believed has been resolved. He was surprised when the matter was brought to court again. He made series of payments into the account for repayment of the loan facility. The copies of the deposit slips were tendered and admitted as exhibit 6. The provisional bail application form from EFCC was tendered and admitted as exhibit 7. After the payments EFCC invited the parties and informed the plaintiff that he has completed the payment. The matter was then closed. The witness also stated that he believed he over paid the outstanding sum. The witness was cross examined in court.

The second defendants' witness introduced himself as Alhaji Baba Ali. He lives at No 346 Agbani Road, Enugu. He knows he parties to the suit. He did business with the plaintiff years ago. He stated in his testimony that he collected the facility from the bank but when the manager asked for a corporate account he used the account of the first defendant. He also stated that he is

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aware that the money has been fully repaid by the first defendant. The plaintiff counsel declined to cross examine the witness and the witness was discharged.

The third defendant witness introduced himself as Chukwuma Okoro. He lives at No 35 Silver Smith, Coal Camp, Enugu. He is a business man. He knows the defendants in the suit. He made deposits on behalf of the second defendant into the account of the first defendant at UBA Plc. he made the deposits around 2008/2009 but could not recall the account number. He heard the second defendant had problems with EFCC. He also knows Alhaji Baba who has a business relationship with the second defendant.

The defendants' counsel applied to recall the first defendant witness, which application the court granted and upon further examination certified copies of the deposit slips and letter dated October 17, 2012 was tendered and admitted as exhibits 8 and 9. Thereafter the defendants counsel closed their case.

The defendants counsel filed his written address on March 27, 2018 and was adopted by the Court on November 29, 2018. The defendant Counsel formulated two issues for determination as per the suit and urged the Court to dismiss the plaintiffs' claim in its entirety with cost. The defendants counsel also file an additional written address dated and filed on October 11, 2018. The Plaintiff Counsel filed his final written address dated May 21, 2018 on May 24, 2017 and was adopted by the Court on November 29, 2018. The Plaintiff Counsel formulated two issues for determination as per their claim and concluded by urging the Court to hold that the plaintiff has discharged his burden of proof and grant their prayers. The plaintiff counsel also filed a further final written address dated October 2, 2018 and filed on October 11, 2018 in response to the tendering of exhibits 8 & 9 and urged the court to grant the claim of the plaintiff. Based on the Claim of the plaintiff as well as the facts of the case and applicable laws, the court is faced with the following issues for determination:

1. Whether the plaintiff has proved her case to be entitled to judgment
2. Whether the defendants have proved their case to be entitled to the counter claim.

The court has to bear in mind that the law provides that he who asserts must prove in accordance with section 131 of the evidence Act 2011 CAP E14 Revised LFN. Also the burden of proof in a suit or proceedings lies on that person who would fail if no evidence at all were given on either side. Sections 132 and 133 Evidence Act (Supra). "Where evidence called by a party in a civil case is neither challenged nor contradicted the onus of proof on that party is discharged." Fagbero v Arobadi (2006) 7 NWLR (Pt.978) 172. In civil cases burden of proof shall be discharged on the balance of probabilities. Section 134 Evidence Act (supra). Where evidence given by a party to any proceedings was not challenged by the opposite party who, like in the instant case, had the

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opportunity to do so, it is always open to the court seized of the matter to act on such unchallenged evidence before it. Okoebor v. Police Council (2003) 12 NWLR (Pt.834) 444. Evidence which is unchallenged and uncontradicted, if credible, ought to be accepted as there is nothing on the other side to balance. See Adejumo v. Ayantegbe (1989) 3 NWLR (Pt. 110)417. Furthermore, if the evidence led on the facts pleaded is admissible, relevant, uncontradicted and not discredited by cross-examination, a court can legally rely and act on it. Egbunike v. ACB Ltd (1995) 2 NWLR (Pt.375)34.

On the first issue for determination, whether the Plaintiff has proved her case and is entitled to Judgment. The Plaintiff is seeking reliefs as set out in her claim and the first paragraph of this judgment. In order to effectively determine the issue above, the court would answer the following in the affirmative or otherwise based on the evidence before the court and the evaluation of the said evidence:

- A. Whether the credit facility was granted to the defendants.
- B. The amount repaid and the amount due and unpaid by the defendants.
- C. If the plaintiff is entitled to reliefs sought.

The court would now undertake a finding of facts and evaluation of the totality of evidence before the court.

The plaintiff witness testimony was concise and direct. He stated that the plaintiff granted credit facility to the defendants in the sum of N4,500,000.00. The said facility was accepted by the defendants by virtue of exhibit 2 and disbursed on February 2011. The defendants also made repayments into their account with the plaintiff as shown on exhibit 3. They also made a demand for repayment as shown on exhibit 4. The defendants even applied for interest waiver as shown on exhibit 5. Let me state that the evidence of the plaintiff remained consistent, cogent and mostly uncontradicted by the defendant's witnesses. The credibility of a witness is enhanced if there is no contrary evidence to his testimony. Under cross examination the defendants counsel focused mostly on events that happened at EFCC and not the fact that the defendants were granted a credit facility or if same have been fully liquidated. Since the testimony of the plaintiff witness was not contradicted, I will crown it with the toga of credibility. Interestingly, the law gives me the latitude to act and rely on unchallenged evidence, see Ogunyade V Oshunkeye (2007) 15 NWLR (pt.1057) 218. The position of the law as regards unchallenged evidence is as stated above, for any such evidence that is neither attacked nor discredited, and is relevant to the issues joined ought to be relied upon by a Judge. Amayo v. Erinmwingbovo (2006) 11 NWLR (Pt.992) 699.

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The second defendant in his testimony stated that he merely guaranteed a loan for Alhaji Baba Ali. The witness stated that he agreed for the money to pass through his account and signed on behalf of Alhaji Baba Ali. The witness went ahead to state that he was invited to EFCC with respect to the credit facility. This evidence is clearly contradictory to the evidence before the court including the conduct of the second defendant. The second defendant did not rebut exhibits 1-4 before the court and he further admitted making repayments for the credit facility. The court is minded to accord no probative value to his testimony.

The evidence of the second defendant witness mostly referred to his request for a loan and the fact the loan was granted through the defendants. He testimony goes to support the assertion of the plaintiff that the credit facility was granted to the defendants. The court would attach no probative value to his testimony.

The testimony of the third defendants witness was very brief. The witness admitted making payments into the account of the first defendant. He further stated he had no knowledge of what happened at EFCC or with the credit facility. The court would attach no probative value to his testimony.

Exhibits.

Exhibit 1 was the application for rollover of cash collateralized facility. The request was made by the defendants to the plaintiff and tendered by the plaintiff. The defendants counsel failed to deny or contradict same. The court would rely on same and place a high probative value on it as evidence a credit facility was granted to the defendants.

Exhibit 2 is the offer letter dated January 24, 2011 issued by the plaintiff to the defendants. The offer was also accepted on behalf of the defendants by the second defendant. The defendants failed to contradict same and the court shall rely on same and accord a high probative value to the exhibit.

Exhibit 3 is the bank statement of the first defendant tendered by the plaintiff. The defendant counsel stated it was not an accurate reflection of the transactions in the account without providing any evidence or proof in support of his assertion. The court is minded to accept the statement as an accurate reflection of the transactions therein and shall accord a high probative value to the exhibit.

Exhibit 4 is the response letter written by the plaintiff to J.O Mba with respect to the credit facility. The exhibit goes to reaffirm the assertion of the plaintiff that the credit facility was indeed granted to the defendants. The court shall in the absence of contrary evidence accept same and accord a high probative value to the exhibit.

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Exhibit 5 was the request for waiver of interest written by the defendants and tendered by the plaintiff. The court shall accept same in the absence of contrary evidence as emanating from the defendants and accord a high probative value to the exhibit.

Exhibit 6 are bank deposit tellers tendered by the defendants as proof of repayments. The plaintiff did not contradict the said tellers. Same is admitted and shall be relied upon by the court.

Exhibit 7 is the EFCC grant of provisional bail to the second defendant. The exhibit is of little relevance and the court would grant no probative value to it.

Exhibit 8 is the letter from the Plaintiff to EFCC. The defendants tendered same as proof of the amount outstanding and unpaid by the defendants. The plaintiff did not contradict same but stated in their address that the exhibit goes to buttress the fact the defendants were granted credit facility by the plaintiff. The court shall rely on same and place a high probative value to the exhibit.

Exhibit 9 are certified copies of the deposit slips used by the plaintiff to make repayments. The plaintiff position is that same is also reflected in exhibit 3 and goes to support their position. The court shall rely on same and accord a high probative value to the exhibit.

In resolving issue A, the defendant's counsel contention is that the defendants merely acted as a surety and guaranteed the loan for Alhaji Baba Ali since he did not have a corporate account. The defendant counsel in his address conceded that it was the name of the defendants that reflected in the agreements. The position of the defendants is clearly contrary to the cogent, credible and irrefutable evidence before the court. The defendants applied for a rollover of the credit facility as evidenced by exhibit 1, accepted an offer as evidenced by exhibit 2 and went further to apply for interest waiver as evidenced by exhibit 4. The bank statement of the first defendant also shows that the facility was disbursed and utilized by the defendants. The court therefore hold that the credit facility was indeed granted to the first defendant and duly accepted by the second defendant.

On issue B above, the contention of the defendants is that they have repaid the facility in full. The defendants tendered exhibits 6 & 9 is support of their position. Upon carefully perusing the said exhibits, it is manifestly clear that all the deposit slips are reflected on the bank statement admitted as exhibit 3. This clearly shows that all the repayments made by the defendants as shown on exhibit 6 & 9 were made into the account of the first defendant. The defendants did not provide any further evidence of repayments through any other means or channel. I would therefore rely on exhibit 6 & 9 as the only evidence of repayments made by the defendants into the account of the first defendant. Upon calculating the total sum paid by the defendants as shown on exhibits 6 & 9 and reflected on exhibit 3, the evidence shows the defendants made a

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total deposit of N2,600,000.00 (Two Million Six Hundred Thousand Naira) only into the account of the first defendant. The defendant counsel's contention was that the credit facility has been fully liquidated. This position is clearly not supported by the evidence before the court. The second defendant wrote exhibit 5 before the court which was not contradicted admitting that as at March 27, 2012 he was owing an outstanding balance of N4,000,000.00 (Four Million Naira) only. Even this assertion is contradictory to the bank statement which showed a debit balance of N5,392,344.35 (Five Million, Three Hundred and Ninety-two Thousand Three Hundred and Forty-four Naira Thirty-five kobo) on the same date. It is pertinent to note that all the repayments made by the defendants and admitted in court occurred between November 2011 and September 2014. The plaintiff in his testimony also stated that the interest on the account was frozen as per the request of the defendants and the outstanding balance remained fixed at N4,482,465.16 (Four Million Four Hundred and Eighty-two Thousand Four Hundred and Sixty-five Naira Sixteen Kobo) as at December 2014. I therefore hold that the balance on the credit facility outstanding till date is as stated on the closing balance of the bank statement tendered as exhibit 3.

On issue C above, the court hereby hold that the plaintiff is entitled to the repayment of the principal and interest as stated on the claim in the sum of N4,482,465.16 (Four Million Four Hundred and Eighty-two Thousand Four Hundred and Sixty-five Naira Sixteen Kobo) only. The court further holds that the plaintiff is not entitled to interest at the rate of 15% per annum as the plaintiff witness has already stated in his testimony before the court that the interest on the account was frozen upon the request on the defendant. On the claim for management fee, upon perusing the offer letter admitted as exhibit 2, the fee has been paid and is a one-off fee as the offer letter clearly does not describe the fee as monthly or per annum fee. There is also no evidence before the court showing that the management fee is paid monthly. The bank statement tendered as exhibit 3 does not show any history of monthly payment of management fee. I therefore dismiss the claim for management fee.

On issue two for determination, the defendants are counter claiming from the plaintiffs the sum of N469,000.00 (Four Hundred and Sixty-Nine Thousand Naira) only being excess amount repaid to the plaintiff by the defendants. Generally, a counter claim is a claim for relief asserted against an opposing party after an original claim has been made, that is a defendant's claim in opposition to or as a set-off against the plaintiff's claim. See; Black's Law Dictionary. Ninth Edition page 402. In other words, a counter claim is a claim by the defendant against the plaintiff in the same proceedings. It is regarded as an independent and separate action in which the defendant/counter claimant is in the opposition of the plaintiff and therefore has the burden of proving the counter claim to be entitled to judgment thereon. MAOBISON INTER-LINK ASSOCIATED LTD v. U.T.C. NIGERIA PLC (2013) LPELR-20335(SC). Upon the evaluation of the evidence of the defendants in proof of their counterclaim as set out above, the court hereby


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resolve that the defendants have clearly failed to adduce any cogent and credible evidence to show that the defendants over paid the credit facility or are entitled to the sum claimed. I therefore dismiss same for lack of evidence.

Flowing from above, it is clear from the evidence adduced that the defendant has not fully liquidated the credit facility granted and the claim of the plaintiff can be sustained as the plaintiff has clearly discharged the evidential burden placed on him by virtue of section 131 of the Evidence Act. I therefore order as follows:

1. That the defendants shall fully liquidate the outstanding balance on the credit facility granted and accepted by them in the sum of N4,482,465.16 (Four Million Four Hundred and Eighty-two Thousand Four Hundred and Sixty-five Naira Sixteen Kobo) on or before the 31st day of January 2020 by monthly instalments until the entire sum is fully liquidated.

Parties: The Plaintiff is not represented.

The second defendant is present.

Appearances: E.C iphie appeared for the plaintiff as Plaintiff Counsel.

Appearances: The defendants are not represented.

This is the judgement of the Court.


J. UGWU
ASSISTANT CHIEF REGISTRAR

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CHIEF MAGISTRATE'S COURT
ENUGU
DATE: 10/6/2019

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