

IN THE HIGH COURT OF JUSTICE
IN THE BENIN JUDICIAL DIVISION
HOLDEN AT BENIN CITY
BEFORE HIS LORDSHIP, HON.JUSTICE P.A.AKHIHIERO,
ON MONDAY THE
26TH DAY OF JANUARY, 2026.

BETWEEN: **SUIT NO. B/265^{OS}/2024**

1. ***MR. COLLINS AGHAHOWA*** ----- ***CLAIMANT***
AND
2. ***OSEMWENGIE UZAMERE*** ----- ***DEFENDANT***
(For himself and on behalf
Of the Estate of Late Mr. Monday Uzamere)

JUDGMENT

The Claimant instituted this suit by way of Originating Summons filed on the 28th of October, 2024 against the Defendant for the determination of the following questions:

- 1) *Whether having regards to the provisions of paragraph 2B and 2F of the Deed of Agreement dated 10th January 2011, executed between the Claimant and the Defendant, the Defendant has not forfeited the property known as No. 39, Iyobanosa Street, Off Uselu-Lagos Road, Uselu Quarters, Egua-Edaiken Ward 23L, Benin City, Edo State to the Claimant?*
- 2) *Whether the continuous occupation of the property known as No. 39, Iyobanosa Street, Off Uselu-Lagos Road, Uselu Quarters, Egua-Edaiken Ward 23L, Benin City, Edo State by the Defendant is not a violent infraction of paragraph 2B and 2F of the Deed of Friendly Loan Agreement dated 10th January 2011 and thus amounts to trespass?*
- 3) *Whether the Defendant has not deprived the Claimant his right to the property known as No. 39, Iyobanosa Street, Off Uselu-Lagos Road, Uselu Quarters, Egua-Edaiken Ward 23L, Benin City, Edo State having failed to*

act in compliance with the provisions of paragraphs 2B and 2F of the Deed of Agreement dated 10th January 2011 and thus entitled to compensation in damages?

- 4) *Whether the Defendant can continue to occupy the said property known as No. 39, Iyobanosa Street, Off Uselu-Lagos Road, Uselu Quarters, Egua-Edaiken Ward 23L, Benin City, Edo State without the consent and/or authority of the Claimant?*

If the Honourable Court resolves the above questions are resolved in favour of the Claimant, the Claimant is seeking the following reliefs and orders:

1. *A DECLARATION that the Claimant is the bonafide owner of No. 39, Iyobanosa Street, Off Uselu-Lagos Road, Uselu Quarters, Egua-Edaiken Ward 23L, Benin City, Edo State by virtue of paragraphs 2A and 2B of Deed of Friendly Loan Agreement dated 10th January 2011 executed between the Claimant and the Defendant;*
2. *A DECLARATION that the continuous occupation of the property known as Deed of Friendly Loan Agreement dated 10th January 2011 (sic) by the Defendant upon the occurrence of the event contained in paragraphs 2B and 2F of the Deed of Friendly Loan Agreement dated 10th January 2011 is unlawful and a breach of the said agreement and amounts to trespass;*
3. *PERPETUAL INJUNCTION restraining the Defendant, his servants, agents or privies from further dealing with the property known as No. 39, Iyobanosa Street, Off Uselu Lagos Road, Uselu Quarters, Egua-Edaiken Ward 23L, Benin City, Edo State and/or doing anything thereat inconsistent with and/or competing with the Claimant's interest and rights thereto;*
4. *AN ORDER directing the Defendant to deliver possession of the property known as No. 39, Iyobanosa Street, Off Uselu-Lagos Road, Uselu Quarters, Egua-Edaiken Ward 23L, Benin City, Edo State to the Claimant in compliance with the provisions of paragraph 2F of the Deed of Friendly Loan Agreement dated 10th January 2011; and*
5. *N5,000,000.00 (Five Million Naira) being damages for wrongful detention.*

In support of the Originating Summons, the Claimant filed a 23-paragraph affidavit and a Written Address of his counsel.

The Claimant's case is that Defendant is the first son of late Mr. Monday Uzamere who was the original owner of the landed property known as No. 39, Iyobanosa Street, Off Uselu-Lagos Road, Uselu Quarters, Egua-Edaiken Ward 23L, Benin City, Edo State and whom the Claimant claims to have given a loan of ₦5,

500, 000.00 (Five Million and Five Hundred Thousand Naira) in the year 2011. The Deed of Friendly Loan Agreement dated 10th January, 2011 and the undertaking/agreement dated 1st day of February, 2014 between the Claimant and the Defendant's late father (late Mr. Monday Uzamere) are attached to the affidavit as Exhibits "A" and "C" respectively.

The Claimant alleged that these agreements were executed by himself and the Defendant's late father and witnessed in the presence of one Mr. Joseph Osawaru.

The Claimant alleged that he lent the Defendant's late father the sum of ₦5, 500, 000.00 (Five Million and Five Hundred Thousand Naira Only), to the knowledge of the Defendant as agreed by the Defendant's late father on the 10th day of January, 2011.

According to the Claimant, the Defendant's father used his property consisting of a piece of land measuring 50 feet by 120 feet together with the building lying and situate at what is now known as No. 39, Iyobanosa Street, Off Uselu-Lagos Road, Uselu Quarters, Egua-Edaiken Ward 23L, Benin City as security for the said loan. The Claimant stated that this agreement is as contained in paragraph 2D of the Deed of Friendly Loan Agreement dated 10th January, 2011. The Photocopy of the Deed of Friendly Loan Agreement is attached to the Claimant's affidavit and marked Exhibit as "A".

The Claimant stated that the Defendant's late father agreed to repay the sum of ₦5, 500, 000.00 (Five Million and Five Hundred Thousand Naira Only) on or before 31st day of December 2012, and that he agreed to forfeit his said property at No. 39, Iyobanosa Street, Off Uselu-Lagos Road to the Claimant in the event of his failure to pay the said sum as at when due.

The Claimant contended that the Defendant's father having agreed to use his aforesaid property as security for the friendly loan, handed over the title document which is a photocopy of the Oba's approval dated 15th March 1975 and approved on 28/5/75 in respect of the said property to the Claimant as according to the Defendant's late father, he could not find the original copy. The said photocopy of the Oba's approval is attached to the Claimant's affidavit and marked as "Exhibit B".

The Claimant stated that on Saturday the 1st day of February, 2014 as a result of his inability to pay the sum of ₦5,500,000.00 (Five Million and Five Hundred Thousand Naira), the Defendant's father signed an Undertaking to pay the said sum by instalments at the rate of ₦1,000,000.00 (One Million Naira) monthly from February to June 2014 with the balance ₦500,000.00 (Five Hundred Thousand

Naira) to be paid in July 2014 as the last instalment. A photocopy of the said Undertaking was attached to the Claimant's affidavit and marked as Exhibit "C"

The Claimant alleged that in 2015, after the expiration of the due date of payment of the said friendly loan as agreed by the Defendant's father, the Claimant instructed his solicitor E. O. Uhunamure Esq, to write a letter to the Defendant's father demanding for the payment of the said sum of ₦5, 500, 000.00 (Five Million and Five Hundred Thousand Naira). The photocopy of the said letter dated 16/01/15 is attached to the Claimant's affidavit and marked as Exhibit "D".

The Claimant stated that despite the receipt of the said letter by the Defendant's father, the Defendant's father refused, failed and/or neglected to pay the said sum of ₦5, 500, 000.00 (Five Million and Five Hundred Thousand Naira) and absconded. The Claimant stated that all efforts to make the Defendant's father pay back the said money proved abortive and he was later informed that the Defendant's father died sometime in the year 2023.

The Claimant stated that all efforts to see the present Defendant in person to get collect he gave to the Defendant's late father proved abortive hence he instituted this suit against the Defendant.

The Claimant stated that he knows that the said loan agreement between himself and the Defendant's late father binds the late father's estate. He said that justice demands that the reliefs sought be granted, and that the Defendant will not be prejudiced if the reliefs contained in this suit are granted to him.

In his written address filed in support of the Originating Summons, the learned counsel for the Claimant, **E.O. Uhunamure, Esq.** formulated a sole issue for determination as follows:

Whether the wordings of paragraphs 2A, 2B and 2F of the Deed of Friendly Loan Agreement dated 10th January 2011 are not clear and unambiguous to have been construed to vest in the Claimant ownership of the property known as No. 39, lyobanosa Street, Off Uselu-Lagos Road, Uselu Quarters, Egua-Edaiken Ward 23L, Benin City?

Arguing his sole issue, learned counsel submitted that the wordings of paragraphs 2B and 2F of the Deed of Friendly Loan Agreement dated 10th January 2011 are clear and unambiguous. The said paragraphs were reproduced as follows:

"(2A) The lender hereby grants to the borrower a friendly and interest free loan of N5,500,000.00 (Five Million and Five Hundred Thousand Naira only) and the borrower hereby acknowledges receipt of same from the lender.

(2B) The borrower shall before the expiration of 2 years (on/before 31st day of December 2012) repay to the lender in full the said sum hereby given.

(2F) The borrower hereby undertakes to forfeit the said property to the lender in the event of his failure to repay the loan to the lender on or before the said due date.”

Learned counsel posited that it is a fundamental principle of interpretation of statutes, wills or contract that where the words of a statute, will or contract are plain, clear and ambiguous, effect should be given to them in their ordinary and natural meaning except where to do so will result in absurdity. In support of this learned counsel cited the following cases: ***Usuman v. Maccido (2009) LPELR; Shell Petroleum Dev. co (Nig.) Ltd v. FB.I.R. (1996) 8 NWLR Pt. 4661 255 at pg. 285; and Ninonve vs. Anvichie (2005) vol. 124 LRCN Pg. 357 at 377.***

Learned counsel submitted that the court is duty bound to give effect to clear and unambiguous terms in an agreement voluntarily and freely entered into by parties and he relied on the decision of the Supreme Court in the case of ***JFS Inv. Ltd v. Brawal Line Ltd & Ors (211) 794 LRCN 69.***

He further submitted that the Supreme Court has urged the courts to strictly construe terms in an agreement and he referred the Court to the cases of ***Best (Nig.) Ltd (2011) 194 LRCN 31*** and ***Ihunwo V. Ihunwo & 20rs (2013) 223 LRCN (pt.l) 174.***

Learned counsel submitted that the terms of the Deed of Friendly Loan Agreement dated 10th January 2011 particularly paragraphs 2A, 2B and 2F are clear and unambiguous. He therefore urged this court to construe the terms of the agreement in their ordinary meaning and to hold that in the event of the Defendant’s failure to pay the sum of ₦5,500, 000.00 (Five Million and Five Hundred Thousand Naira) to the Claimant as at when due, the Defendant has forfeited his property at No. 39, Iyobanosa Street, Off Uselu Lagos Road, Uselu Quarters, Egua-Edaiken Ward 23L, Benin City to the Claimant absolutely.

In conclusion, learned counsel therefore urged this Court to solve the sole issue in favour of the Claimant, determine the questions contained in his Originating Summons in his favour and grant all his reliefs.

I have carefully considered all the processes filed in this suit, together with the exhibits attached to the Claimant’s affidavit.

It should be noted that the Defendant did not put up any defence to this suit despite several hearing notices served on him. Throughout the course of this trial the Defendant failed and/or neglected to enter an appearance or file any counter affidavit

in response to the Claimant's evidence. Thus, the evidence of the Claimant remains unchallenged.

The position of the law is that evidence that is neither challenged nor debunked remains good and credible evidence which should be relied upon by the trial court, which has a duty to ascribe probative value to it. See the following decisions on the point: *Monkom vs. Odili (2010) 2 NWLR (Pt.1179) 419 at 442*; and *Kopek Construction Ltd. vs. Ekisola (2010) 3 NWLR (Pt.1182) 618 at 663*.

Furthermore, where the Claimant has adduced admissible evidence which is satisfactory in the context of the case, and none is available from the Defendant, the burden on the Claimant is lighter as the case will be decided upon a minimum of proof. See: *Adeleke vs. Iyanda (2001) 13 NWLR (Pt.729) 1at 23-24*.

However, notwithstanding the fact that the suit is undefended, the Court would only be bound by the unchallenged and uncontroverted evidence of the Claimant if it is cogent and credible. See: *Arewa Textiles Plc. vs. Finetex Ltd. (2003) 7 NWLR (Pt.819) 322 at 341*.

Even where the evidence is unchallenged, the trial court still has a duty to evaluate it and be satisfied that it is credible and sufficient to sustain the claim. See: *Gonzee (Nig.) Ltd. vs. Nigerian Educational Research and Development Council (2005) 13 NWLR (Pt.943) 634 at 650*.

Applying the foregoing principles, I will evaluate the evidence adduced by the Claimant to ascertain whether they are credible and sufficient to sustain the Claim.

I am of the view that the sole Issue for Determination in this suit is: *whether the Claimant is entitled to the reliefs claimed in this suit*.

It is trite law that parties are bound by their agreements entered into. See the case *Olupo v. Polaris Bank Ltd (2019) LPELR-51071 (CA)*. Also, in the case of *Union Homes Savings & Loans Plc & Anor v. UBN (2022) LPLR-58242 (CA)*, the Court, per *Umar JCA*, stated as follows, “the law is trite that parties are bound by their contract and of course, the Court has a duty to enforce a contract voluntarily entered into by the parties.”

It is clear from the pleadings of the Claimant that there was in existence a loan agreement between the Claimant and the Defendant's late father. This loan agreement clearly bound not only the parties to the agreement but their heirs, executors, personal representatives, estates, administrators and assigns. Therefore, from the clear wordings of the agreement, the agreement is enforceable against the estate of both parties to the agreement.

It is worthy of note that the Deed of Friendly Loan Agreement between the Claimant and the said Monday Uzamere alleged to be the Defendant's late father was poorly drafted. The said Deed of Friendly Loan Agreement referred to Mr. Monday Uzamere as the "Lender" and the Claimant, Mr. Collins Aghahowa was referred to as the "Borrower". This is clearly a drafting error as Exhibit "C", the undertaking signed by both parties and titled "**ACKNOWLEDGEMENT OF INDEBTEDNESS OF THE SUM OF ₦5,500,000.00 (FIVE MILLION AND FIVE HUNDRED THOUSAND NAIRA) ONLY BY MR. MONDAY UZAMERE TO MR. COLLINS AGHAHOWA AND AN UNDERTAKING TO PAY IT**", clearly shows that indeed the lender is Mr. Collins Aghahowa and the Borrower is Mr. Monday Uzamere.

It is trite that a court of justice can in its inherent jurisdiction correct a contractual term that is misstated. In **Tonimas (Nig) Ltd V. Nze Bernard Chigbu (2020) LPELR-50633 (SC)** the court of appeal stated as follows:

"It is an equitable remedy the Court of justice, in its equitable or inherent jurisdiction, exercises to correct a contractual term that is misstated. This inherent power to do justice avails the Court when, for instance, the rent is wrongly recorded in a lease or when the area of land is incorrectly cited in the deed." Per EKO ,J.S.C (Pp. 12-13 paras. F)

From the foregoing authority, this Court is empowered to look at the substance of the transaction and the intention of the parties, and not to allow mere technical errors or poor drafting to defeat the justice of the matter.

In the instant case, from the affidavit evidence and the exhibits before this Court, particularly Exhibit "C" which is the Acknowledgement of Indebtedness and Undertaking to Pay, it is clear beyond doubt that the Claimant was the lender, while the Defendant's late father, Mr. Monday Uzamere, was the borrower.

I therefore hold that the error in Exhibit "A" which described the parties in reverse is a mere drafting mistake which this Court can correct in order to reflect the true intention of the parties.

Having resolved that, I shall now consider whether the Claimant has proved his entitlement to the reliefs sought. The Claimant's evidence is that he advanced to the Defendant's late father the sum of ₦5,500,000.00 and that the property known as No. 39, Iyobanosa Street, Off Uselu-Lagos Road, Uselu Quarters, Egua-Edaiken Ward 23L, Benin City, Edo State was used as security for the said loan. The agreement was that the loan would be repaid on or before 31st December, 2012, and

that failure to repay the loan as at when due would result in the forfeiture of the said property to the Claimant.

The relevant clause is paragraph 2F of Exhibit “A”, which provides: “*The borrower hereby undertakes to forfeit the said property to the lender in the event of his failure to repay the loan to the lender on or before the said due date.*”

The law is settled that where the words used in an agreement are clear and unambiguous, the Court must give effect to them. The Court is not permitted to rewrite the contract for the parties. See, *Union Bank of Nigeria Plc v. Ozigi* (1994) 3 NWLR (Pt. 333) 385; *Adegbenro v Akintola & Adesoji Aderemi*, (1963) 3 WLR 63 PC.

In the present case, the Claimant’s evidence is that the loan was not repaid even after the due date. Exhibit “C” shows that in 2014, the Defendant’s late father again acknowledged the debt and undertook to repay by instalments, which further confirms that as at 2014, the loan remained unpaid. Also, Exhibit “D” is the demand letter issued by the Claimant’s solicitor, which again supports the Claimant’s assertion that the borrower failed to repay the debt.

The Defendant filed no counter affidavit and did not controvert these facts. The evidence therefore remains unchallenged. However, even in an undefended suit, the Claimant must still succeed on the strength of his case and the Court must be satisfied that the evidence is credible and sufficient. See *Arewa Textiles Plc v. Finetex Ltd (supra)*.

Having carefully evaluated the affidavit evidence and exhibits, I am satisfied that the Claimant has established the existence of the loan transaction and the default in repayment.

The Claimant’s case is founded substantially on forfeiture of the property to him upon default, by virtue of paragraph 2F of Exhibit “A”. While parties are bound by their agreements, the Court must be cautious in enforcing clauses which seek to automatically transfer ownership of landed property as a penalty for default in repayment of a loan, particularly where the arrangement is in substance a security transaction. See the cases of *Owoniboys Technical Services Ltd v UBN, Union Bank of Nigeria Ltd*, (2003) 15 NWLR (Pt. 844) 545; *Ejikeme v. Okonkwo* (1994) 8 N.W.L.R. (Pt. 362) 266; *Yaro v. Arewa Construction Ltd.* (2007) CLR 6(i) (SC); *Ndaba Nigeria Limited & Anor. v. Union Bank of Nigeria Plc & Ors.* (2007) JELR 48096 (CA).

It is trite that equity looks at the intent rather than the form. Equity also frowns at any arrangement that turns a security for debt into an instrument for unjust enrichment. The principle remains that once a transaction is in substance a mortgage, the mortgagor retains an equity of redemption which cannot be clogged or fettered.

Nonetheless, in the present case, the Claimant has not placed before the Court any evidence that the Defendant's late father, or the Defendant on behalf of his estate, made any attempt to redeem the property by repayment, despite repeated demands. The evidence before the Court is that the debt remains unpaid and the Defendant continues to occupy the property without the consent of the Claimant.

More importantly, the Defendant, though served with the court processes, he chose not to appear or contest the suit and has not placed any contrary evidence before the Court to show that the loan was repaid, or that the agreement is unenforceable, or that the forfeiture clause ought not to be enforced.

In the circumstances of this case, and based on the unchallenged evidence before the Court, I hold that the Claimant has shown sufficient basis to entitle him to the declaratory and injunctive reliefs sought.

On the relief of trespass, trespass is an unlawful interference with possession. Once a party establishes a better right to possession, any continued occupation without consent becomes unlawful. From the evidence before this Court, the Defendant's continued occupation of the property after the crystallisation of the Claimant's rights under the agreement amounts to wrongful occupation and constitutes trespass.

I therefore resolve this issue in favour of the Claimant.

Having resolved the sole issue for determination in favour of the Claimant, I hold that the Claimant's Claims against the Defendant succeeds and the Claimant's reliefs are granted as follows:

- 1. A DECLARATION that the Claimant is the bonafide owner of the property at No. 39, lyobanosa Street, Off Uselu-Lagos Road, Uselu Quarters, Egua-Edaiken Ward 23L, Benin City, Edo State by virtue of paragraphs 2A and 2B of Deed of Friendly Loan Agreement dated 10th January 2011 executed between the Claimant and the Defendant;***
- 2. A DECLARATION that the continuous occupation of the property described in the Deed of Friendly Loan Agreement dated 10th January 2011 by the Defendant upon the occurrence of the event contained in paragraphs 2B and 2F of the Deed of Friendly Loan Agreement dated 10th January***

2011 is unlawful and a breach of the said agreement and amounts to trespass;

3. *PERPETUAL INJUNCTION restraining the Defendant, his servants, agents or privies from further dealings with the property known as No. 39, Iyobanosa Street, Off Uselu Lagos Road, Uselu Quarters, Egua-Edaiken Ward 23L, Benin City, Edo State and/or doing anything thereat inconsistent with and/or competing with the Claimant's interest and rights thereto;*
4. *AN ORDER directing the Defendant to deliver possession of the property known as No. 39, Iyobanosa Street, Off Uselu-Lagos Road, Uselu Quarters, Egua-Edaiken Ward 23L, Benin City, Edo State to the Claimant in compliance with the provisions of paragraph 2F of the Deed of Friendly Loan Agreement dated 10th January 2011; and*
5. *₦5,000,000.00 (Five Million Naira) being damages for wrongful detention.*

The Defendant shall pay the sum of N200,000.00 (Two Hundred Thousand Naira) as costs for this action.

Hon. Justice P.A. Akhahiero
JUDGE
26/01/2026

COUNSEL:

1. *E.O. Uhunamure, Esq.....Claimant*
2. *Unrepresented.....Defendants*