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TEMPLARS ThoughtLab

Debt Drama: The Supreme Court's Stance on Moneylenders and Casual Loans in Nigeria

Introduction

Lending is an essential element of the right to property under the Nigerian Constitution.[1] As such, it should be supposed that every Nigerian citizen would be imbued with the right to manage their finances and do as they will—and if you like, lend money without government interference. However, a more circumspect examination would reveal that the legal situation is not as simple. This is because moneylending is subject to legal limitations and conditions imposed by the relevant law.[2]

The pain point of the money lending regulation in Nigeria is its use by contracting parties to challenge the legality and enforceability of transactions involving the advancement of friendly and low interest-bearing loans. Often times, to evade their financial obligations under such contractual arrangements, some beneficiaries of friendly loans seek to take advantage of the uncertainty in the law resulting from judicial interpretation of the applicable regulatory framework. Largely, the interpretation suggests that it is illegal to transact or lend money to another without being licensed as a money lender, such that any resulting loans or funds advanced in such situations, run the risk of being unrecoverable. Therefore, it becomes pertinent to ask whether a person who advances a friendly loan qualifies as a moneylender? Or better still, whether the action of such a lender qualifies or meets the standard of the business of money lending in a strict legal sense?

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[1] Section 43 of the 1999 Constitution of the Federal Republic of Nigeria (as amended). This accords with the position under International Law, and there is a plethora of international instruments that guarantee the right to property such as the Universal Declaration of Human Rights, the African Charter on Human and Peoples' Rights, the American Declaration of the Rights and Duties of Man, the European Convention on Human Rights, etc.
[2] See the Moneylending Laws of the different states in Nigeria.

This thought piece attempts to provide some insights on the foregoing posers in a manner that provides some clarifications on who qualifies as a moneylender within the plain language of the law, particularly in the context of the recent decisions of the Supreme Court in ***Uzoukwu v. Idika*[3] *and Ekeremor LGC v. Omie*[4]**.

Enforceability: interest-bearing loans necessarily start with resolving the issue of whether a lender or the transaction itself qualifies as a moneylender or moneylending respectively under the applicable law.

The Moneylender and His Business

Conversations around the enforceability of friendly and low interest-bearing loans necessarily start with resolving the issue of whether a lender or the transaction itself qualifies as a moneylender or moneylending respectively under the applicable law. The business of money lending in focus is within the legislative competence of the States or sub-national governments in Nigeria in accordance with the system of enumerated legislation, which is one of the hallmarks of the federalism practised in Nigeria. For this reason, this paper will, for the purposes of analysis, rely on the representative example of the Moneylenders Law of Lagos State Cap M7 Laws of Lagos State 2009 (the "Law"), which, in every material respect, mirrors the Moneylenders' laws of the other States in Nigeria.

The Law requires money lenders to obtain a moneylenders' licence, renewable annually,[5] as a pre-requisite for operating or carrying on moneylending business. Failure on the part of any moneylender within the State to obtain the moneylenders' licence is, among others, treated as a criminal offence[6]. In imposing the licensing requirements, the Law defines a moneylender to include "*every person whose business is that of moneylending or who carries on or advertises or announces himself or holds himself out in any way, as carrying on that business; whether or not he also possesses or owns property or money derived from sources other than the lending of money and whether or not he carries on the business as a principal or as an agent*..."[7] However, the Law, amongst others, excludes "*any person bona fide carrying on any business, not having for its primary object the lending of money, in the course of which and for the purposes whereof he lends money.*"[8]

Notably, the Law further provides that, except those already excluded from the definition of a money lender, any person who lends money at interest or who lends money in consideration of a larger sum being repaid shall be presumed to be a money lender until the contrary is proved[9]. While the definition of who a money lender is appears to be straightforward, its practical application creates uncertainty, especially regarding friendly loans advanced by individuals in the ordinary course of human interactions.

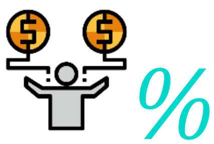
The uncertainly is even more profound by pronouncements of courts in the decided cases. In a long line of cases, our superior courts, in interpreting the statutory characterization of the term "moneylender", tend to suggest that anyone who lends money or gives a loan to another on interest or takes collateral that can be sold in cases of loan default, must necessarily be licensed as a moneylender, and where this license is not obtained, anyone who purports to lend money to another in return for a higher sum or interest is not only involved in an illegal transaction, but has also committed an offence.

[3] (2022) 3 NWLR (Pt. 1818) 403.
[4] (2022) 4 NWLR (Pt. 1819) 129.
[5] Section 5 of the Moneylender Law of Lagos State.
[6] Section 6 of the Moneylenders Law of Lagos State.
[7] Section 2 of the Law.
[8] Section 2(c) of the Moneylenders Law of Lagos State.
[9] Section 4 of the Moneylender Law of Lagos State.

Thus, in the case of **Ajao v. Ademola & Ors**[10], the respondent contended that the appellant not being a licensed moneylender, was not entitled to charge interest, sell or put up for sale the property of a defaulting borrower. In response, the appellant countered that he was not a moneylender, but only a trader involved in the buying and selling of general merchandise. However, the Court of Appeal, accepting the findings of the trial court, held that the appellant qualified as a money lender under the applicable law. For this and other reasons, the appellant's appeal was dismissed and his attempt to sell the property of the respondent, the defaulting borrower, failed.

As if the above decision was not enough, the recent decision of the Supreme Court in ***Ekeremor LGC v. Omie***[11] *seems to have further exacerbated the uncertainty surrounding the classification or what qualifies as money lending business or who is a money lender. In that case, the Supreme Court faulted the judgment of the Court of Appeal, which gave the impression that the appellant was merely being patriotic when he advanced a loan to a Local Government Council in Bayelsa to pay outstanding allowances of some political appointees, simply because he had charged interest. According to the Supreme Court, the appellant "was not just being a Bayelsan, he charged interest. Yet he insisted under cross-examination that he is not a money lender. The respondent is not a money lender, but he charged interests...".*

The view taken by the Supreme Court in ***Ekeremor LGC v. Omie*** suggests that once a person gives a loan on interest, no matter how minute or marginal such interest might be, he must be taken to be a money lender. But with due difference to the Apex Court, in the opinion of the authors, this view is problematic for the following reasons. First, the Supreme Court was not called upon in this case to decide and did not, indeed, decide the question of who a money lender is. Rather, the Apex Court mainly resolved the question of the legality or otherwise of the transaction, as was alleged, for non-compliance with the Fiscal Responsibility Law of Bayelsa State, and the Model Financial Memoranda for Local Government. Thus, in line with the rule that cases are authorities for what they decide within the context of their peculiar facts[12], this case is not, in our view, the preferred judicial authority for the proposition that once a person lends money with interest, he must *ipso facto*, be taken to be a money lender.



Once a person gives a loan on interest, no matter how minute or marginal such interest might be, he must be taken to be a money lender.

Second, the decision failed to consider the plain language of the law which describes a moneylender as any person *who carries on or advertises or announces himself or holds himself out in any way, as carrying on that business; whether or not he also possesses or owns property or money derived from sources other than the lending of money and whether or not he carries on the business as a principal or as an agent*. Applying the plain and ordinary meaning of the foregoing language of the law, clearly shows that in the business of moneylending or to be a moneylender, will involve granting loans to persons on a regular or continuous basis as an enterprise. This means that a situation where a person grants a loan bearing interest to another on a one-off basis, but not as an enterprise, will not fit into the statutory description or meaning of moneylender.

[10] (2004) LPELR-5717 (CA).
[11] (2022) 4 NWLR (Pt. 1819) 129
[12] Abioye v. Ismail (2023) 13 NWLR (Pt. 1902) 431; Interdrill (Nig.) Ltd. v. U.B.A. Plc (2017) 13 NWLR (Pt. 1581) 52.

The Clarity provided by the Supreme Court in *Uzoukwu v. Idika*

It is against the foregoing backdrop that we welcome the Supreme Court's decision in the case of ***Uzoukwu v. Idika*** which seems to have come to the rescue by providing the needed clarity and if you like, salutary resolution. In the above case, the respondent advanced four loans to the appellant during their cordial relationship, which was repayable with interest, but the appellant defaulted. When the respondent filed an action to recover the principal loan and interest, the appellant challenged the enforceability of the loan transactions on the ground that the respondent failed to obtain moneylenders' license as required under the Money Lenders Laws of Eastern Nigeria, 1963 applicable in Imo State. On this basis, the trial court dismissed the respondent's claim. The respondent's appeal to the Court of Appeal was allowed, and the appellant appealed to the Supreme Court.

After hearing the parties, the Supreme Court took the view that the respondent was not a moneylender. In taking this view, the Supreme Court considered the following factors, that: (a) the evidence on record showed that the respondent was not in a business whose primary objective is money lending, (b) the respondent did not hold herself out as a money lender, (c) the mere fact that a person gives out a loan with interest or in return for a higher amount does not make the person a money lender provided the person satisfies the first two factors; and (d) the loans in question were friendly loans to assist the appellant to resuscitate his ailing business.

In ***Uzoukwu v. Idika*** in which the Apex Court specifically resolved the reoccurring question of who a money lender is and the factors that must be taken into account in deciding whether giving of a friendly loan makes one a money lender, seems forceful and authoritative. Going by this decision, it becomes prescient to say that as long as a person does not carry on a business in which his primary objective is money lending, and does not hold himself out as a money lender, he may not be correctly said to be a money lender or be involved in moneylending. It thus, follows that the mere giving of friendly loans with interest would not be sufficient to make a person qualify as a money lender.

Overall, premised on the foregoing expose, the authors are inclined to think that Supreme Court's decision in ***Uzoukwu v. Idika,*** like a Daniel, has come to judgment in the moneylending landscape. This is because the decision not only aligns with the plain language of the law, it also accords with common sense.

Conclusion

The clarity provided by the Supreme Court in ***Uzoukwu v. Idika*** that charging interest on friendly loan does not make the giver a money lender is timely and should be applauded. This is particularly so given the growing attitude of the beneficiaries of such loans seeking to avoid their repayment obligations under the loan arrangements by taking refuge under the interpretations of the Moneylenders laws of the various States. With this in place, a person who gives a friendly loan is now more assured of repayment in that the same is not likely to be defeated on the mere technical defence of failure to obtain money lenders license under relevant law.