



**IN THE SUPREME COURT OF NAURU**

[CIVIL JURISDICTION]

Case No 6 OF 2014

**BETWEEN**

**NADIA IKA**

**PLAINTIFF**

**And**

**JANE JEREMIAH**

**DEFENDANT**

**Before:** Madraiwiwi CJ, Hamilton-White J and Khan J

**For the Plaintiff:** V Clodumar

**For the Defendant:** J Rabuku

**Date of Hearing:** 8 December 2014

**Date of Judgment:** 12 December 2014

**CATCHWORDS:**

Civil Proceedings to recover monies owed – Money Lenders Act 1900 – Civil Procedural Rules 1972 Order 55 – Whether transaction between the parties required a Business License – Transaction was a private arrangement – Part performance – Evasive conduct by Defendant – Judgment for Plaintiff

## JUDGMENT

### BACKGROUND

1. The Plaintiff and the Defendant are related, the Defendant is the Plaintiff's father's first cousin.
2. In April 2011 the Plaintiff, at the request of the Defendant, lent the Defendant money from time to time. It was agreed between them that the Plaintiff would be charged an interest rate of 20% per fortnight.
3. Between April and May 2012, the Plaintiff lent the Defendant a sum of \$1700, as follows:
  - a. 12 April 2012 - \$600.00
  - b. 15 April 2012 - \$100.00
  - c. 21 May 2012 - \$1000.00
4. The Defendant did not make any repayments and as at 1 Dec 2012 she admitted and acknowledged that she owed a sum of \$4915.00 (see exhibit P2).
5. At that time the Defendant was employed at the Public Health Department of Nauru and she agreed to pay 75% of her pending salary ( \$120.00 per fortnight) from her current salary to the plaintiff towards repaying the of sum of \$4915.00.
6. Pursuant to the Defendant's directions to the Ministry of Finance, two payments were made. On 25 October 2013 a sum of \$806.25 from her pending salary and \$268.75 from her current salary (total \$1,075.00) was paid out to the Plaintiff.
7. On 18 November 2013, the Defendant wrote to the Ministry of Finance and withdrew her directions to pay the pending and the current salary to the Plaintiff (see exhibit P7).
8. On 19 December 2013, the Chief Secretary Bernard Grundler wrote to the Acting Secretary of Finance, copied to the Resident Magistrate, and the Plaintiff that no-one could collect the Defendant's pending salary until the claim against the Defendant by the Plaintiff was resolved.
9. On 10 January 2014 the Defendant wrote to the Treasury Department and transferred her rights to the pending salary in the sum of \$9000.00 to her daughter, Christina Amwano.

### COURT PROCEEDINGS

10. On 20 January 2014, the Plaintiff filed the writ and claim. On 29 May 2014, Mr. Ropate Cabelawa as the Registrar of this Court heard an *ex parte* application for injunction by the Plaintiff.
11. Orders were made:

- (a) the Defendant be restrained from withdrawing her pending salaries;
  - (b) that she be restrained from withdrawing her RONWAN capital and interests from Nauru Phosphate Royalties and Trust;
  - (c) the interim order for injunction should continue until this matter was resolved by this Court. The matter was adjourned to be heard *inter partes* on 19 June 2014.
12. The matter was next before Registrar Mr. G E Leung. Orders were made orders for the filing of the statement of claim by 27 July 2014 and for the reply to be filed by 31 July 2014.
13. The statement of defence was filed on 23 July 2014 and on 28 July 2014 the Plaintiff filed a reply to the defence.

#### **AGREED FACTS AND ISSUES FOR DETERMINATION**

##### 14. Agreed Issues

- a. That the Defendant borrowed monies from the plaintiff in the year 2012
- b. That the Plaintiff lend monies to the defendant in the year 2012
- c. That the Plaintiff charged interest on the amount lent to the defendant
- d. That the Defendant has repaid part of the lent sum but refuses to satisfy the total claimed by the Plaintiff

##### Factual issues to be tried

- a. Whether the Plaintiff had a valid business license at the material time she lent the sum to the Defendant?
- b. What is the total amount of monies repaid by the Defendant to the Plaintiff for the purposes of the monies lent and the interest charged by the Plaintiff?
- c. What are the total monies outstanding, if any, to be repaid by the Defendant to the Plaintiff?

##### Legal Issues to be tried

- a. Is the Plaintiff lawfully permitted to lend money to the Defendant?
- b. Is the Plaintiff lawfully permitted to charge interest on the sum lent to the Defendant?
- c. If the Plaintiff is lawfully permitted to charge interest on the lent sum, what is the lawful chargeable interest?

#### **MONEY LENDERS SUIT**

15. During the course of these proceedings we brought the provisions of Order 55 of the Civil Procedural Rules 1972 to the attention of the parties. Order 55 reads as follows:

*“(1) These rules apply to a moneylender’s suit to the following rules of this Order.*

*(2) In this Order –*

*“money lender” has the meaning assigned to it by section 6 of the Moneylender’s Act, 1900, of England in its application to Nauru;*

*“moneylender’s suit” means a suit for the recovery of money lent by a moneylender or for the enforcement of any agreement or security relating to money so lent, being a suit brought by the lender or an assignee.*

*Indorsement of Writ of Summons (O.55, r.2)*

*2. Before a writ of summons beginning a moneylender’s suit is issued it must be indorsed with a statement that at the time of the making of the loan or contract or the giving of the security in question the lender was licensed as a moneylender.*

*Particulars to be included in Statement of Claim (O.55, r.3)*

*3. Every statement of claim in a moneylender’s suit, whether indorsed on the writ or not, must state –*

*(a) the date on which the loan was made;*

*(b) the amount actually lent to the borrower;*

*(c) the rate per cent per annum of interest charged;*

*(d) the date when the contract for repayment was made;*

*(e) the fact that a note or memorandum of the contract was made and was signed by the borrower;*

*(f) the date when a copy of the note or memorandum, was delivered or sent to the borrower;*

*(g) the amount repaid;*

*(h) the amount due but unpaid;*

*(i) the date upon which such unpaid sum or sums became due; and*

*(j) the amount of interest accrued due and unpaid on every such sum”.*

16. The *Money Lenders Act* of 1900 (the “Act”) gives powers to the Court to reopen any transaction of a money lender and determine as to whether the interest charge is reasonable or whether it is excessive; and if it is excessive then the Court may make a determination as to what is a reasonable amount of interest.

17. This matter was set down for trial on the 8 December 2014 and the Defendant did not attend Court. The Plaintiff was the only witness in this case.

## **EVIDENCE**

18. The Plaintiff’s evidence is that she started to lend money to her close family members in 2011, and at the request of the Defendant she lent her certain sums of money and charged interest at the rate of 20% per fortnight.

19. The Plaintiff lent the sum of \$1700 between 14 April 2012 to 21 May 2012 and charged her interest at the rate of 20% per fortnight.

20. At the time of the initial lending and the subsequent lending of \$1700.00 the Plaintiff never held out to the Defendant that she was a money lender. However, in paragraph 1 of her statement of claim it is stated that she was the proprietor of "Nadia Ika Money Lending Business" which was registered under the Business Act 1976 and she was licensed to operate a business pursuant to the provisions of Business License Act 2011.
21. The Defendant in her defence in paragraph 1 stated that she cannot plead to paragraph 1 of the Plaintiff's statement claim as she has no knowledge of the matters pleaded therein.
22. Mr. Rabuku in his cross-examination asked the Plaintiff that at the time she lent the money she did not have a Business License and therefore whatever payments made by her were when she did not have a Business License. That is in accordance with the Plaintiff's evidence.
23. The Plaintiff agreed that she obtained a Business License on 12 Oct 2012 and it is therefore common ground that at the time of lending money by the Plaintiff to the Defendant she did not have a Business License.
24. Mr. Rabuku's submission is that the Plaintiff lent monies to the Defendant and charged interest, and therefore is in breach of the Act. By being in breach of the Act, it renders the whole transaction unlawful and the Plaintiff cannot recover the balance sum of monies owing to her.

## **FINDINGS**

25. The clear evidence in this case is that the Defendant never held out to be a money lender and she only lent money to her family members. We are of the view that the transaction between the Plaintiff and Defendant was of a private nature. Being a transaction of this nature, does not stop anyone from charging interest as that was agreed to between them. The initial agreement was to charge interest at a rate of 20% per fortnight and the Defendant suggested that it be changed to 50% fixed interest per month.
26. At the Defendant's request the Plaintiff varied the rate of interest to be at 20% per month instead of 20% per fortnight. We are of the view that this points to the transactions being between family members rather than on a more formal footing of between a money lender and a borrower.
27. The Defendant admitted and acknowledged owing a sum of \$4915.00 on 1 December 2012, and upon her admission payments in the sum of \$1075.00 were made to the Plaintiff.
28. The Plaintiff claims that the outstanding amount stands at \$3729.00 and we are satisfied that that is the amount owed by the Defendant to the Plaintiff.

**CONDUCT OF THE DEFENDANT AFTER SIGNING THE ACKNOWLEDGMENT  
ON 1/12/2012**

29. The Defendant's conduct in this matter has been far from genuine - she agreed that she owed a sum of \$4915.00; she also agreed to payment thereof from her pending and current salary. Subsequently the Defendant unilaterally revoked this authority to the Ministry of Finance. Further the Defendant is in breach of the injunction orders made in this case on 29 May 2014 by withdrawing the RONWAN interest/capital on 27 July 2014 (Exhibit P12). In doing so the defendant is in contempt of the Court Orders.

**CONCLUSION**

30. In all the circumstances we enter judgment for the Plaintiff in the sum of \$3729.00 and further order that the Defendant shall pay the Plaintiff's costs of \$1,200.00.

DATED this 12<sup>th</sup> day of December 2014.

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Joni Madraiwiwi  
CHIEF JUSTICE

.....  
Jane E. Hamilton-White  
JUDGE

.....  
Mohammed Shafiullah Khan  
JUDGE