IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2023

CORAM: YEBOAH CJ (PRESIDING)

PWAMANG JSC

AMEGATCHER JSC

PROF. KOTEY JSC

PROF. MENSA-BONSU (MRS.) JSC

CIVIL APPEAL

NO. J4/74/2021

10TH MAY, 2023

ROYAL BENEFICIARIES ASSOCIATION PER THE PRESIDENT, JOANA EWURABENA OCRAN — PLAINTIFF/APPELLANT/ APPELLANT

VS

1. PHILOMENA ADOTSOE ANKAMAFIO
2. ALICE BADU
3. RUBY OBIMPEH
4. KOFI ANSAH LARBI

— DEFENDANTS/RESPONDENTS/ RESPONDENTS

JUDGMENT

PWAMANG JSC:-

My Lords, this is a case that commenced in the High Court on 11th January, 2007 but experienced inordinate delay in the prosecution of the appeal to this court such that, more than ten years back, the points of law that arise in the case were determined by the Supreme Court in a different case. If the parties and their counsel had used that final position of the law as stated in that earlier case as a guide, this case ought to have been amicably settled long ago to make this judgment unnecessary. Then, in 2013, the Supreme Court applied that precedent in another case, this time, involving this same plaintiff/appellant/appellant (the plaintiff) before us on a matter on almost all fours with this case, yet the case was not settled out of court. We do not know the reason for this appeal being pressed to the end after the parties themselves initially showed no interest in it, but the reality is, that the value of whatever money may be gained or saved by our decision today would not be what it would have been if the parties had settled the case amicably back then. In this judgment, we shall use the current denomination of the cedi since our currency was demonetised after the transaction subject matter of this case was entered into.

The background of this case is that, small traders in our society have always had challenges accessing bank credit to expand their trading activities. In 2005, the plaintiff and the Ghana Commercial Bank (now GCB Bank) identified that need and decided to turn it into a business opportunity by assisting small traders in Accra to access credit and to also make margins for themselves. The bank dealt with a number of small traders associations including Mayekom Cloth Sellers Association, Ahenfie Cloth Sellers Association and the plaintiff herein. These associations that were registered as companies limited by guarantee were stated to be welfare associations established to address the welfare needs of their members. As part of their activities, they cooperated with the GCB Bank and obtained loans at reasonable rates of interest to be shared to their members as working capital . However, the manner the leaders of the associations went about these otherwise legitimate business ventures landed all of them in litigations as, about one year after they disbursed small loans to individual

traders, the Courts, especially in Accra, became inundated with suits instituted by the leaders to recover payments from the traders. Thus, this well-intended initiative for the economic empowerment of small traders turned out to be costly to them. This case is only one of the several cases the plaintiff and the other traders associations filed.

The facts here are that, on 1st December, 2005, the plaintiff contracted a loan of GHS300,000.00 from the GCB Bank, out of which it on-lent GHS50,000.00 to the 1st defendant/respondent/respondent (the 1st defendant). The loan was to be repaid with interest within one year. The remaining part of the main loan from the bank was supposed to have been given to other traders. At the trial, an official from the bank testified and explained how the transaction between the bank and the plaintiff was configured. Though the letter granting the loan to the plaintiff stated the rate of interest as 27% per anum, a schedule of 52 weekly instalment repayment was worked out which, if followed, was expected to make the repayment more tolerable as the interest was calculated on only the outstanding balances of the principal. By that schedule, which was tendered in evidence, the total main loan and interest repayment over the 52 weeks came to GHS343,093.76. A facility fee of 1% and GHS100 processing fee were charged by the bank for the main loan of GHS300,000.00. The bank left it wholly to the plaintiff to set the terms on which it on-lent the loan to its members and this was where the problems arose.

The plaintiff in this case charged the 1st defendant GHS3,500.00 as collateral, processing and legal fees for the loan of GHS50,000.00. The plaintiff also received advance repayment of GHS7,500.00 from the 1st defendant before a cheque for the loan of GHS50,000.00 was handed to her. Thus, in effect, the amount of the loan was GHS42,500.00. Meanwhile, the plaintiff collected the title deed to the house of the 1st defendant to be used as part of the collateral with the bank to secure the main loan. Then, the schedule of weekly repayment the plaintiff set for the 1st defendant was GHS1,500.00 per week for 52 weeks and this made the total amount payable by her to the plaintiff for the loan principal and interest to be GHS78,000.00. From these figures,

the 1st defendant was given a sixth of the main loan, so if we calculate her direct responsibility for repayment according to the bank's schedule, she would have had to pay GHS57,182.29 for principal and interest, if she had dealt directly with the bank. What this means is that her interest payment to the bank was GHS7,182.29. But, when her total direct liability to the bank is deducted from what she was required to pay in accordance with the plaintiff's schedule, we get a difference of GHS20,817.71. This represents the margin the plaintiff added on top of what was due to the bank from the 1st defendant. The 2nd to 4th defendants guaranteed the loan to the 1st defendant.

The 1st defendant started paying according to the schedule agreed with the plaintiff but along the way she defaulted and failed to complete the payment within the one year. The plaintiff therefore sued to recover GHS25,000.00 outstanding by then, with interest at the prevailing bank rate of interest. The defendants filed a defence in which they disputed the amount of the loan as well as what had been repaid. They then pleaded in their defence that, in any case, the loan agreement that they signed with the plaintiff violated the provisions of the **Moneylenders Act, 1941 (CAP 176)** and the **Loans Recovery Act, 1918 (CAP 175),** in that the president of the plaintiff was using the Association as a cover for her moneylending business but she had not obtained a license for the purpose under CAP 176. Furthermore, the terms and conditions under which the plaintiff on-lent the loan to them were harsh, excessive, oppressive and unconscionable so the transaction should be re-opened by the Court pursuant to CAP 175 and relief granted to them. The defendants therefore counterclaimed for those remedies.

At the trial, the facts were established as stated above and the High Court in its judgment dated 26th November, 2007 took the view, that what the plaintiff did by granting loans to various traders at high interest rate amounted to engaging in the business of moneylending for which she had no license so the agreement with the defendants violated CAP 176 and was illegal, null, void and unenforceable. He also held that the terms and conditions on which the plaintiff on-lent to the 1st defendant

were excessive, oppressive and unconscionable. The Court concluded by holding that, it was true that the plaintiff loaned GHS50,000.00 to the 1st defendant but the agreement was not enforceable so he dismissed her claims and entered judgment for the defendants on the counterclaim. The trial Judge further ordered the plaintiff to return the 1st defendant's house documents to her. The plaintiff appealed to the Court of Appeal but lost there too, as they were of the same opinion about the evidence and the legal consequences of the plaintiff lending money as a business without a license.

The judgment of the Court of Appeal was dated 21st May, 2009 and the plaintiff filed her Notice of Appeal to the Supreme Court on 17th June, 2009. However, nothing was done in the appeal for more than ten years until 24th September, 2020 that the parties settled records before the registrar of the lower Court. Clearly, the courts below dealt with this case expeditiously but for some unknown reasons, the parties themselves are those who caused the unreasonable delay in the final resolution of this case. The plaintiff filed the appeal but went to sleep and the defendants too did not apply to have the appeal struck off for want of prosecution.

In her statement of case filed by her lawyer on 21st June, 2022, the plaintiff has placed considerable reliance on **Mensah v Ahenfie Cloth Sellers Association [2010] SCGLR 680,** which was decided subsequent to the judgment on appeal before us as alluded to earlier. The facts of that case are similar to those here. In that case, the appellant, under cover of an Association of cloth sellers, contracted loans from the GCB Bank that it in turn gave out to individual cloth traders at much higher rate of interest. This it did without obtaining a license or registering in accordance with CAP 176. The High Court and the Court of Appeal both dismissed the claim for recovery of the loans from the individual cloth traders describing the loan transactions as illegal, null, void and unenforceable. However, on a final appeal, the Supreme Court held that although the Association was clearly engaging in moneylending business in violation of CAP 176, on a true and proper interpretation of CAP 176 as a whole, the loan transactions were not void *ab initio* but could be enforced on terms the court deemed fair and

reasonable. The plaintiff herein has therefore submitted, that even if we hold that her conduct violated CAP 176, we ought to nevertheless enforce the loan agreement the defendants signed and started paying and order them to pay the outstanding amount with interest.

In the statement of case of the defendants filed on 18th July, 2022, they state that they are aware of the decision of the Supreme Court in **Mensah v Ahenfie Cloth Sellers Association**. In fact, the defendants referred to the second decision of this Court on CAPs 175 and 176 in the case involving this same plaintiff and a defendant that she loaned money to under conditions similar to those in this case. That case is **Mensah & Ors** v **Royal Beneficiaries Association [2013-2014] 2 SCGLR 933**. In that case, the Supreme Court came to the same view of the law as it did in **Mensah v Ahenfie Cloth Sellers Association** and it is intriguing that the plaintiff did not make reference to that case, especially it being almost on all fours with this case. But we realise that it may be because the plaintiff did not particularly like the final orders of the Supreme Court in that other case involving her.

In the unanimous judgment of the Court in **Mensah & Ors v Royal Beneficiaries Ass (supra),** delivered by Anin Yeboah, JSC (as he then was), who incidentally is the president of the bench in this case, he observed as follows at p.944;

"The evidence on record also established beyond doubt that the respondent charged excessive interest on the loans granted to the appellants and customers under the guise of friendly assistance and was therefore squarely caught by the revised Money Lenders Act, 1941 (cap 176)."

The Court ended its judgment as follows at p.945;

"From the foregoing it does appear that the whole transaction was clearly unconscionable under the circumstances. This court like the other courts below is empowered by section II of the moneylenders Act 1941 (Cap 176) and section 1 of the Loans Recovery Act 1918 (Cap 175) to re-open the transaction giving rise to this action.

It is apparent that the appellant had paid fifteen million cedis for every week and had indeed paid for thirty eight weeks out of the fifty-two weeks which was agreed as the terms of the contract. It must be pointed out that by simple calculation of the outstanding balance the appellant had paid ¢570,000,000 and was left with only ¢210,000,000.00 to be paid to the respondent.

Given the amount of money paid by the appellant to the respondent, a so-called Company Limited by guarantee, we are of the view that the whole transaction which is obviously unconscionable should be re-opened for the court to impose its terms favourable under the circumstances. From the facts we are of the opinion that the payment of the amount of the ¢570,000,000 was enough given the fact that the transaction was against the objects of incorporation of the respondent's company."

Our opinion about the facts of this present case as related above is, that both the High Court and the Court of Appeal were right in holding that the plaintiff's conduct in this case constituted lending money as a business in violation of CAP 176. Nevertheless, in line with the precedents in **Mensah v Ahenfie Cloth Sellers Association (supra)** and **Mensah & Ors v Royal Beneficiaries Association (supra),** which are ordinarily binding on us, we take the view that the plaintiff is nonetheless entitled to be paid a fair and reasonable part of the contracted amount the defendants agreed to pay on the loan they collected and made use of.

From the undisputed facts, we find the fees, charges and interest imposed by the plaintiff on the defendants to be harsh and unconscionable. Whereas the bank charges for the whole amount of GHS300.000.00 loan were GHS3,000.00, being 1% facility fee and GHS100.00 for processing fee, the plaintiff exacted GHS3,500.00 as fees and charges on the loan of GHS50,000.00 it gave to the 1st defendant. Secondly, the plaintiff charged the defendant interest of GHS20,817.71 for the loan of GHS50,000.00 when the bank charged her only GHS7,182.29 interest on GHS50,000.00. She charged the 1st defendant almost three times what the bank was charging by way of interest on GHS50,000.00. We shall therefore consider the counterclaim of the defendants that

prayed for the loan agreement between the parties to be re-opened and the terms adjusted to what is fair and reasonable as we are empowered to do under section 1 of CAP 175 which provides that;

1. Re-opening a money-lending transaction

(1) The Court may re-open a transaction where the transaction is harsh and unconscionable or is otherwise a transaction in respect of which a court of equity would give relief.

(2) The Court in re-opening a transaction under subsection (1) may take an account between the lender and the person sued, and may, despite

(a) a statement or settlement of the account, or

(b) an agreement purporting to close previous dealings and create a new obligation,

re-open an account already taken between them, ***and relieve the person sued from payment of a sum of money in excess of the sum adjudged by the Court to be fairly due in respect of the principal, interest and charges as the Court having regard to the risk and the circumstances, may adjudge to be reasonable.*** *(Emphasis supplied).*

According to the defendants, the court ought to consider the amount the 1st defendant had already paid to the plaintiff to be sufficient to discharge all her obligations arising from the loan agreement, as was ordered by the Supreme Court in Mensah & Ors v Royal Beneficiaries Ass (supra). The detailed facts in that case differ from this case before us so we need to examine the facts closely before deciding what amount when paid by the defendants would be fair and reasonable under the circumstances of the case.

It is agreed by both parties that before the case was filed the 1st defendant paid GHS53,000.00 for principal and interest, plus GHS3,500.00 for fees and charges, making a total of GHS56,500.00. However, by the schedule for repayment by the bank, the plaintiff was to pay GHS57,182.29 on principal and interest on the GHS50,000.00.

We shall add the 1st defendant's share of the fees charged by the bank which would amount to GHS520.00 to give GHS57,702.29 as the amount that would have been payable directly to the bank in respect of the loan of GHS50,000.00. We do not think that it is fair for the 1st defendant to pay to the plaintiff an amount less than what the plaintiff was supposed to pay the bank in respect of the GHS50,000.00 which went to the 1st defendant.

In addition to that, we are mindful of the fact that the plaintiff must have incurred some legitimate overhead expenses in arranging for the main loan. On the face of the bank's loan approval letter, the bank itself charged 5% interest margin on top of the base rate at the time which was 22% and that accounted for the interest on their loan to the plaintiff being 27%. Adding the same 5% interest on top of the 27% charged by the bank would be a fair and reasonable margin to cover the plaintiff's overheads. Adding this 5% of GHS50,000.00 as interest would increase the amount payable by the 1st defendant to the plaintiff by GHS2,500.00, bringing what we consider to be fair and reasonable in total for the plaintiff to have demanded from the 1st defendant under the circumstances of this case to GHS60,202.29 instead of GHS78,000.00. When we deduct the total amount the plaintiff had already paid from this amount, the 1st defendant would have owed the plaintiff GHS3,702.29 as at the commencement of the case and not GHS25,000.00.

Accordingly, we hereby enter judgment for the plaintiff against the defendants jointly and severally for payment of GHS3,702.29 with interest at the prevailing bank rate as of today 10th May, 2023. The interest shall be calculated from 18th November, 2006, as endorsed on the plaintiff's writ of summons, to the date of this judgment. If the plaintiff has not yet returned the title deed to the 1st defendant's house to her, we hereby order the plaintiff to deliver it to her forthwith.

It is our hope that if some disputes in this class of cases are still pending resolution in the courts, the parties will take guidance from this judgment and work out amicable settlements.

In conclusion, the appeal succeeds in part and is allowed in part.

G. PWAMANG

(JUSTICE OF THE SUPREME COURT)

ANIN YEBOAH

(CHIEF JUSTICE)

N. A. O. AMEGATCHER

(JUSTICE OF THE SUPREME COURT)

PROF. N. A. KOTEY

(JUSTICE OF THE SUPREME COURT)

PROF. H. J. A. N. MENSA-BONSU (MRS.)

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