

MONEY LENDING LAW AND REGULATION OF CONSUMER CREDIT IN NIGERIA*

Abstract

Money lending is an indispensable consumer credit device in Nigeria as it is elsewhere. At the outset of the practice it was rife with abuses on the part of the lenders as desperate borrowers had no choice but to accept oppressive terms. The Moneylenders Ordinance 1927 was enacted at the federal level to check these abuses. Subsequently, the various States of Nigeria enacted their own Moneylenders Laws, all of which are a virtual reproduction of the Moneylenders Ordinance. This article examines the adequacy or otherwise of the Moneylenders Laws of Nigeria as consumer credit laws, and opines that not only do the laws sufficiently protect the consumers (borrowers), but that they also unduly fetter the lenders, which development is bad for modern business efficacy. This article concludes with recommendations for review of the Moneylenders Laws.

Introduction

Money is necessary for the facilitation of virtually everything in life. It is, in fact, recorded that it is the answer to all things.¹ As a result, everybody seeks it, sometimes desperately. Those who cannot get it legitimately device other means to get it illegitimately irrespective of the cost or consequence which gives it the added, but unenviable, status of being the root of all evil. To meet the need and demand for money, the art of lending evolved with financial institutions, notably banks, providing large scale credit facilities mainly for investments and related matters. Such credit facilities or loans called for stringent security in the form of cumbersome collaterals. In addition, if the borrower is an individual, he must have a certain level of earning capacity as a primary guarantee of repayment. The result is that those who were low income earners and who did not have the requisite security, but who needed money to meet personal needs or for small scale investments were not covered.

The yawning gap thus created was readily filled by individuals who had extra cash. They gave out their money on high interest rates since often, they would not insist on any collateral. These became known as “money lenders” and their trade “money lending”. With the money lenders credit, low income earners were able to acquire basic consumer goods such as cars, fridges, televisions, generators, etc., and to meet other personal needs. Because of the popularity of their business, the moneylenders charged very high interest rates; not even the stringent intervention of legislation could reverse the trend as the business thrived more in informality and illegality. Attempts by banks to simplify some of their lending procedures to bring them close to the practice of money lending did not dissuade borrowers from the attraction of money lending; a very significant consumer credit facility.

Money lending is not the only consumer credit facility available. Consumer goods can also be acquired from the manufacturers, owners, distributors or retailers and used, while payment for them is made by convenient instalments or deferred to a further date. This has been justified as follows:

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¹ **The Holy Bible** (King James Version), Book of Ecclesiastes, Chapter 10, verse 19.

In the wake of the nineteenth century industrial revolution, there occurred in Europe and in North America an increase in both the supply of and the demand for manufactured goods destined for general consumption. As a result, dealers began to deliver the goods to the consumer on credit so that he could enjoy their use while he paid in instalments.²

The practice has continued till modern times, and is regulated by consumer credit laws, which are the set of laws which govern credit transactions involving consumers as end users of credit facilities. Examples of such laws in Nigeria are the Hire Purchase Act, Pawn Brokers Act and Moneylenders Law of the various States of Nigeria. Credit transactions have two major divisions, one relates to lending of money and the other to credit sale. This much has been acknowledged by R. M. Goode as follows:

...English Law divided up credit transactions into two separate, self-contained compartments, with the result that two parallel and distinct branches of law have developed, one to regulate lending, the other to regulate sales on credit, each branch having its own separate rules and transactions being slotted neatly into one set or the other.³

The lending of money as a consumer credit facility is otherwise known as the “lenders credit”, while the exchange of goods for deferred or instalmental payment is also known as the “vendors credit”. The term “credit” has been defined as, among other things, the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment⁴. On the other hand, the term “consumer credit” is defined as “credit extended to an individual to facilitate the purchase of consumer goods and services”⁵.

The focus of this article is the regulation of consumer credit in Nigeria, particularly as it relates to money lending; and an assessment as to whether the available legal framework is sufficient and robust enough to address the challenges inherent in the transaction. Before that, it is however proposed to examine, albeit briefly, the evolution of the regulation of the business of money lending.

Historical Background

Laws regulating the lending of money have existed for thousands of years.⁶ Money lending, originally called “usury” attracted great moral disapproval by ancient authorities particularly by the early Jewish and Roman authorities. Usury was seen by

² E.A. Farnsworth, “A Modern Instalment Sales Law: A Comparative Survey” in: A. L. Diamond, (ed.) **Instalment Credit** (London: Stevens & Sons, 1970) p. 25.

³ R. M. Goode, ‘The Legal Regulation of Lending’ in: A. L. Diamond, (ed.) **Instalment Credit** (London: Stevens & Sons, 1970) p.45.

⁴ B. A. Garnar (ed.), **Black’s Law Dictionary**, 7th edition (St. Paul, MINN: West Group, 1999) p. 374.

⁵ *Ibid.*

⁶ R. M. Goode, *op. cit.*, p. 44.

the Church as an offence against ecclesiastical law as the Bible clearly condemns it thus:

If thou lend money to any of my people that is poor by thee, thou shalt not be to him as an usurer, neither shalt thou lay upon him usury.⁷

The command was further reiterated in the book of Leviticus, thus:

And if thy brother be waxen poor; and fallen in decay with thee: then thou shalt relieve him ...
Take thou no usury of him, or increase: ...Thou shalt not give him thy money upon usury, nor lend him thy victuals for increase.⁸

Usury, simply put, is the lending of money usually by individuals for profit.⁹ The profit is usually by way of a high interest rate charged on the amount given. The practice was widely detested, save for those who had need of it, as it was considered exploitative. Aristotle criticised the practice as follows:

Usury is most reasonably detested, as it is increasing our fortune by money itself, and not employing it for the purpose it was originally intended, namely exchange ... whence of all forms of money – making it is most against nature.¹⁰

The natural reaction was to seek to regulate usury. In England, rather than limit the high rate of interest, legislation prohibited interest on all loans by individuals, and by extension prohibiting usury.¹¹ But because of the importance of the business; that is by way of the relief it provided to the low income earners, pressure continued to mount on the lenders from willing borrowers. This pushed the lenders underground in order not to confront the law, and like every underground business, the cost became higher; that is to say the interest rate became even higher, sometime as high as 50%.¹² The implication here is that rather than solve the problem of usury, the prohibition aggravated it.

However, much later in the English history certain accommodations were made through legislations admitting some exceptions to the general and outright prohibition on usury by fixing a bench mark for interest not exceeding 10 percent on money lent. This was the case until 1854 when the Usury Laws Repeal Act of that year was enacted. The coming to force of the Usury Laws Repeal Act in 1854 led to an upsurge of money lending activities often at exorbitant interest rates. This was again brought under control by legislation when the English Parliament passed the

⁷ **The Holy Bible**, (King James Version), Book of Exodus, Chapter 22, verse 2.

⁸ Chapter 25, verses 35-37.

⁹ For similar definitions, see Bryan Garner, ed., **Black's Law Dictionary** 7th edition (St. Paul, MINN.:West Group, 1999) p. 1543 and Jonathan Crowther, ed., **Oxford Advanced Learner's Dictionary** (Oxford: OUP, 1998) p. 1316

¹⁰ **Politics**, Book I, Chap. X, translated by William Ellis (Everyman d.), p. 19.

¹¹ See "Money-Lending" at www.1911encyclopedia.org; accessed 02/01/2011

¹² *Ibid.*

first Moneylenders Act in 1900. The philosophy underlying its enactment has been expressed thus:

The Moneylenders Act 1900 was enacted as the result of the report of a House of Commons Select Committee on Money – Lending ... which revealed the existence of serious abuses on the part of those conducting money lending businesses, ...¹³

The Act required registration for money lenders and allowed the court to dissolve “unfair” money lending agreements. The 1900 Act was replaced by the Moneylenders Act 1927. The 1927 Act imposed more stringent conditions. It required licensing as well as registration. It also prohibited canvassing, unsolicited advertisements and the use of agents, among other things. These restrictions affected business adversely, and this brought about the development of hire-purchase; an arrangement under which a person rather than buy an item outright, could obtain (hire) it, use it and make periodic payments for such use while having the option to either purchase it or return it in accordance with agreement.¹⁴ The practice was regulated in the United Kingdom by the Hire-Purchase Act 1938 which was later amended by the Hire-Purchase Act 1958. The Hire-Purchase Act also covered transactions under which a person could buy goods outright but defer payment, which transaction is otherwise known as “credit sale”. Presently in the United Kingdom, all consumer credit legislations have been harmonised and enacted as one legislation called Consumer Credit Act 1974 as amended by the Consumer Credit (Amendment) Act 2006. In other words, money lending and hire-purchase transactions are no more regulated by separate legislations in the United Kingdom.

In Nigeria, the different transactions are still regulated by separate legislations. Prior to 1990, money lending was regulated concurrently by the Federal Government of Nigeria and by the various State Governments through the Moneylenders Act¹⁵ and the Moneylenders Laws of the various States respectively. However, the Moneylenders Act has been repealed¹⁶ leaving the regulation of money lending to the Moneylenders Laws of the various States of Nigeria.¹⁷ Their provisions are basically the same, save for slight modifications and slight displacements of sections. This is so because all of them have a common origin: the Moneylenders Act 1927 of England. Hire-purchase and credit sale transactions are regulated by the Hire-Purchase Act 1965¹⁸. To avoid cumbersome cross references, we shall adopt the Moneylenders Law, Cap. M7, Laws of Cross River State of Nigeria, 2004 as our reference point. Thus, unless otherwise indicated, all sections of the Moneylenders Law cited shall be from the said Law.

¹³ R. M. Goode, *op. cit.*, p. 51.

¹⁴ See “Consumer Credit Act” at www.en.wikipedia.org; accessed 18/04/2011

¹⁵ Cap 124, Laws of the Federation of Nigeria, 1958; enacted as Moneylenders Ordinance 1939.

¹⁶ See I. Sagay, **Nigerian Law of Contract** (Ibadan: Spectrum Books, 2000) p. 380; *fn* 60.

¹⁷ For example, the Moneylenders Law, Cap. M7, Laws of Cross River State of Nigeria, 2004 and the Moneylenders Law, Cap. M7, Laws of Lagos State of Nigeria, 2003.

¹⁸ Cap. H4, Laws of the Federation of Nigeria, 2004.

Who is a Money Lender?

From what has been said so far, a money lender ought to be understood from the point of view of a person who gives out money to individuals as a business, or for the purpose of making profit. But as is to be revealed, a moneylender means much more than that. In the case of **Eboni Finance and Securities Ltd. v Wole-Ojo Technical Services Ltd. & 2 ors**¹⁹, the Court of Appeal held, *inter alia*, that:

The definition of a money lender under the law is wide. It encompasses every person whose business is that of money lending and any person who lends money on interest or who lends a sum of money in consideration of a larger sum being repaid.²⁰

A similar definition was given, again by the Court of Appeal in the case of **Veritas Insurance Co. Ltd. v Citi Trust Investments Ltd.**²¹ where the court stated, on the meaning of money lender, that:

...any person who lends a sum of money in consideration of a larger sum being repaid is deemed to be a moneylender until the contrary is proved...

Section 31 of the Moneylenders Law²² provides thus:

Moneylender includes every person whose business is that of money lending 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 businesses as a principal or as an agent; but shall not include –

- a. any society registered under the Co-operative Societies Law; or
- b. any body Corporate, incorporated or empowered by special Law to lend money in accordance with such Law; or
- c. any person bona fide carrying on the business of banking or insurance or 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, or
- d. any person or body corporate exempted from the provisions of this Law by order of the Commissioner; or

¹⁹ (1996) 7 N.W.L.R. pt. 461, p.1 464

²⁰ *Ibid*, at p.466.

²¹ (1993) 3 NWLR (pt.28), p.349.

²² Cap. M7, Laws of Cross River State of Nigeria, 2004.

- e. any pawn broker licensed under the Pawn Brokers Law where the loan is made in accordance with the provisions of the Pawn Brokers Law and does not exceed the sum of forty naira;

The preceding definition is not only elastic, but somewhat ambiguous as it represents that every and all persons can be a money lender just so long as a person indulges in lending money as a form of business or advertises or holds himself out as carrying on the business of money lending. This raises the vital question as to whether the situation will be the same irrespective of whether such a person obtains a licence in accordance with the law or not. It would appear that unless a person holds a valid moneylender's licence, he would not qualify as a moneylender; as such a licence is a prerequisite to becoming one. This is so notwithstanding the provision of section 1, subparagraph (3) of the Law which provides as follows:

Save as expected in Section 2 and in this Section, a person who lends money at interest or who lends a sum of money in consideration of a larger sum of money being repaid shall be presumed to be a money lender until the contrary be proved.

The section only raises a rebuttable presumption of money lending which may be legal or illegal. It is contended that where there is no licence, the business would be illegal. Therefore, the section which defines a money lender is section 31.²³ A person who has lent money at an interest, or in consideration of a larger sum being repaid, may rebut the presumption that he is carrying on money lending business notwithstanding that he has given a loan.²⁴ Mc Cardie, J. in the case of **Edgelow v MacElwee**²⁵ stated that;

A man does not become a moneylender by reason of occasional loans to relations, friends or acquaintances, whether interest be charged or not ... Nor does a man become a money lender merely because he may upon one or several isolated occasions lend money to a stranger. There must be more than occasional and disconnected loans. There must be a business of money lending; and the word 'business' imports the notion of system, repetition and continuity.

Thus, for the presumption to be raised and sustained, there must be some degree of system, consistency and continuity.

Paragraph (a) to (e) of section 31, as quoted above, however expressly excludes certain entities from being categorized as moneylenders even though they

²³ This view is shared by J. O. Orojo, **Nigerian Commercial Law and Practice**, Vol.1 (London: Sweet and Maxwell, 1983) p. 854

²⁴ Ezejiofor, Okonkwo & Illegbune, **Nigerian Business Law** (London: Sweet & Maxwell, 1982) p.146.

²⁵ (1918) 1 K.B. 205 at p. 206.

may be involved in business akin to, or actual lending of money. These are cooperative societies, incorporated companies, banks, insurance companies, persons or body corporate exempted by the relevant commissioner and pawn brokers.

It is interesting to note that the Moneylenders Law, beyond regulating the activities of licensed money lenders, also regulates the activities of persons other than moneylenders who lend money on interest. This is evidenced by the provision of section 11(1) of the Law which recognises the fact that “any person other than a moneylender” who gives out loan on interest is liable to comply with the law as to the requirement relating to interest chargeable. In the case of **Ojikutu v. Agbonmagbe bank Ltd.**²⁶, it was held that the expression “persons other than moneylenders” are human persons (not institutions such as banks) who do not make money lending their regular business, but who may be involved in a single or occasional transaction of money lending. In other words, these are not money lenders, but where they give out loans which are often regarded as friendly loans, and charge interest, they must be bound by the provisions of the Law relating to interest charging.

As indicated earlier, the object of this article is to examine the Moneylenders Law as a consumer credit law. In order to achieve this purpose, there is henceforth going to be a direct focus on those provisions under the law that are geared towards the regulation of credit transactions as between a moneylender and a borrower cum consumer. This shall be done in two parts, one part addressing the issue from the standpoint of regulation of the moneylender himself, while the second part addresses the regulation of interest chargeable under the Law. The regulation of interest chargeable is differentiated from the regulation of the moneylender because persons other than moneylenders who though not moneylenders but who give out friendly loans on interest are bound by the provisions of the Moneylenders Law relating to the charging of interest even though they may not be bound by other provisions relating directly to the moneylender, as for example, the requirement to take a licence.

Regulation of the MoneyLender

A major complaint against money lending at the early stages of its practice is that it was not regulated. All manner of persons got involved in the business, extremely high interests were charged, and the borrowers were at the mercy of the lenders as their disadvantaged position would make them succumb to unfair contract terms. Thus, came about the necessity for regulation, and the regulation was essentially of the moneylender rather than the borrower in the light of their unequal standing.

The moneylenders contract is a financial contract; as a result the Moneylenders Law made the personality and integrity of the moneylender of paramount importance. Any person intending to carry on a money lending business, or any person to be saddled with the responsibility of managing the business for that matter, must be a fit and proper person in terms of his character and disposition. This and other qualities of the moneylender must be attested to by a magistrate in a certificate which is issued to the moneylender as a precondition for the grant of a licence for the money lending

²⁶ (1966) NCLR 246

business.²⁷ To obtain a magistrate's certificate, the proposed money lender must make an application to a magistrate having jurisdiction in the district in which the money lender's business is to be carried on.²⁸ Every magistrate's certificate must be in respect of one proposed money lender and in respect of one business address.²⁹ In other words, there can be no issuance of the magistrate's certificate to a firm of partners, but to individuals and for one place of business. Where a moneylender uses a business name or operates as a firm, he must do so in his own name and the certificate is for him alone and for the address indicated. For every additional place of business there must be a fresh certificate. There however, appears to be some confusion in the provision of section 4(3)(a) of the Law which suggests that the moneylender can be issued with the certificate in a name other than his true name. The section provides, *inter alia*, that every certificate granted to a moneylender shall "show his true name and the name under which ... he is authorised by the certificate to carry on business ..." It is submitted that the purport of the section is simply that whereas a moneylender can operate under a firm or business name or in partnership with other moneylenders, the magistrate's certificate, and indeed the moneylender's licence (as we shall see) must be in the true name of the moneylender. Thus, a certificate must, among other things, contain the true name of the proposed moneylender, any other name under which the moneylender intends to operate, which name must not include the word "bank", and the address of the place of business. A magistrate may refuse to grant his certificate for the following reasons:³⁰

- a. Where no satisfactory evidence has been given as to the good character of the applicant and of those to manage the business.
- b. Where no satisfactory evidence has been given as to fact that the applicant and those to manage the business are fit and proper persons having regard to their records and antecedence.
- c. Where there is an order of court disqualifying the applicant and those to manage the business from holding a certificate.
- d. Where the applicant or any of those who are to manage the business has been guilty of previously forging a magistrate's certificate; and,
- e. Where the applicant has not complied with the regulation relating to the grant of the certificate.

A moneylender may appeal against refusal to the High Court. A magistrate can still refuse to grant his certificate to an applicant irrespective of the fact that he had been a moneylender before; that is he had previously been a recipient of a magistrate's certificate. In **Re Marcus O. Ojaero**,³¹ the applicant had a licence for two years. In the third year, the Police objected to a renewal on legal grounds consequent upon which the magistrate refused to grant his certificate. His appeal on the ground, *inter*

²⁷ Section 4(1) of the Law.

²⁸ Prior to the formal application for the magistrate's certificate, the moneylender is required to send an advance notice of his intention to apply for the certificate to the relevant magistrate and the Police of the area as required under section 5 of the Law. The notice must be sent by registered post at least 14 days before the application.

²⁹ Section 4(3)(a) of the Law.

³⁰ See generally section 6 of the Law.

³¹ (1952) 20 NLR 77

alia, that having received the certificate before, he was entitled as of right was rejected by the court.

Upon the issuance of the magistrate's certificate, the moneylender becomes eligible for the grant of a moneylender's licence. The licence is the permit or authority with which a person is entitled to engage in the business of money lending. By section 2 (1) of the Law, it is mandatory for any person intending to carry on money lending business to obtain the licence. For the avoidance of doubt, and for its utilitarian value, section 2(1) of the Law is hereunder set out:

Every moneylender whether carrying on business alone or as partner in a firm shall take out annually in respect of every address at which he carries on his business as such, a licence (in this Law referred to as a "moneylender's licence"), which shall expire on the thirty-first day of December next after it is granted, and there shall be charged for every moneylender's licence, a fee of ten naira:
Provided that the Commissioner may by order published in the Cross River State Gazette vary from time to time the fee payable.

The moneylender's licence, as noted earlier, must be taken out by the money lender in his true name otherwise it will be void and the licence must show the authorised name and authorised address of the moneylender.³² "Authorised name" and "authorised address" referred to here mean the name under which and the address at which a proposed moneylender is authorised by a magistrate's certificate to carry on business as a moneylender.³³ The licence must also be for the moneylender alone and in respect of one business address.

The magistrate's certificate and moneylender's licence are renewable annually. Both of them are declared by the Law to expire on the 31st day of December each year irrespective of when they are granted in the course of the year.³⁴

To check the practice by moneylenders of shifting the goal post in the course of play, the Law requires that every money lending contract must be set down in writing, signed by the parties to the contract or their respective agents before the money is lent or security given otherwise such contract shall not be enforceable by a moneylender against a borrower.³⁵ The requirement that the memorandum must be signed or security given "before" the money is lent was the subject of interpretation in the case of **Oyebode v. Oloyede**³⁶. It was held in that case that where the transaction reveals that anything was done for the purpose of the loan, it would be presumed that it was done before the loan was given or security provided where it cannot be established with certainty when it was done. Thus, the statement by the borrower that "it was this house that I used as security for the loan" was held to raise the

³² Proviso to Subsection (2) of Section 2.

³³ Section 31, (Interpretation section) A breach of section 2 is an offence under the Law and punishable upon conviction with imprisonment for three months or fine of two hundred naira.

³⁴ Sections 2(1) and 4(4) of the Law.

³⁵ Section 10(1) of the Law

³⁶ (1999)2 NWLR (pt. 592) 523

presumption that the security was provided before the money was lent notwithstanding the claim of the borrower to the contrary.

It must be stated that the absence of writing will not, *ipso facto*, render the contract void. Thus, where a moneylender has otherwise enforced an oral money lender contract, the borrower cannot seek to set aside the contract simply on the ground that it was not in writing. No particular form of the contract is prescribed; a note or memorandum in writing will suffice, provided that the said note or memorandum shall contain all the terms of the contract, and in particular shall show separately and distinctly:

- a. the date on which the loan is made;
- b. the amount of the principal of the loan; and
- c. the rate of interest per centum per annum, payable in respect of the loan or, where the interest is not expressed in terms of a rate per centum per annum, the amount of such interest.³⁷

Since the English Language is the central medium of communication in Nigeria, it is further required that all dates and numbers shall be written in English numerals notwithstanding that they are also written in any other way.³⁸

For purposes of emphasis, failure to comply with the requirements as to the form and content of a moneylender contract will not render the contract void or illegal but unenforceable.³⁹ Thus, in the case of **Balogun v Obisanya & Anor**,⁴⁰ where the moneylender failed to sign the Mortgage Deed by which the loan was secured and failed to deliver a copy of the Mortgage Deed to the borrower as required under Section 10⁴¹, the transaction was held unenforceable against the borrower. The onus is on the moneylender to show that he has complied with the provisions of the Law as to the contents of the contract since they are in the nature of condition precedent to the bringing of an action.⁴²

Further obligations are imposed on the moneylender by section 17 of the Law. There are two main obligations here: the first is to issue receipts and the second is to keep a book of records. Every moneylender is expected to give a receipt for every payment made to him on account of a loan or any interest paid in respect of the loan; and such a receipt must be issued immediately the payment is made. This provision is fundamental because fraud is as old as man, and unless the provision is complied with, many a shylock in the name of moneylenders would won't to restrain themselves from alleging that the borrowers have not made particular payments when in fact they have. The moneylender must also keep record of his transactions with the borrower. This record must be by way of a book which must be securely bound together and paged so that leaves cannot be removed or inserted without apparent damage to it. The book must contain records of every loan made by him, which record must include the date on which the loan was made, the amount of the principal, the rate of interest payable

³⁷ Section 10(3) of the Law.

³⁸ Section 10(4) of the Law.

³⁹ Ezejiofor, Okonkwo & Ilegbune, *op. cit.* p. 151.

⁴⁰ (1956) 1 F.S.C. 22

⁴¹ Section 12 of the Moneylenders Ordinance, 1939 of Nigeria.

⁴² **Ogbonuju v. Ogbeide** (1966) NCLR 150. See also J. O. Orojo, *op.cit.* at p. 859.

and all sums received in respect of the loan or the interest thereon, with the dates of payment thereof. The entries in the said book shall be made forthwith on the making of the loan or the receipt of sums paid in respect thereof as the case may be. Any moneylender who fails to comply with any of the requirements of section 17 will not be entitled to enforce any claim in respect of any transaction in relation to which the default has been made. He will also be guilty of an offence under the law and will be liable on conviction to a fine of twenty naira or in the case of a continuing offence, to a fine of ten naira for each day or part of a day during which such offence continues. Thus, it would appear that the obligations imposed on the moneylender by section 17 are more stringent than those contained in section 10 of the Law. Not only will failure to comply with the former result in the conviction of the moneylender, he will also forfeit any interest and indeed the principal sum under any related transaction carried out without due compliance with the stated requirements. There has been a judicial application of the provision of section 17⁴³ in the case of **Kasumu v Baba-Egbe**.⁴⁴ In that case, the Plaintiff mortgaged certain leasehold property to Kasumu, a licensed moneylender, to secure a loan of £2,000. The moneylender had admittedly kept no book recording the transaction as required by Section 19 of the Moneylenders Ordinance of Nigeria, 1939, which is *verbatim ad litem* with section 17 of the current Law. About a year after the loan, the money lender went into possession of the Plaintiff's property retaining rents and profits which accrued on the property. The Plaintiff instituted this action claiming redemption of the property and recovery of possession or alternatively that the mortgage was void. The West African Court of Appeal reversing the trial court's decision held that the mortgage transaction was unenforceable and the defendant was ordered to deliver up possession of the property, along with the cancelled deeds and title deeds of the property to the plaintiff. In effect, the Plaintiff was not obliged to pay the outstanding sum of £1,541 2s 6d to the defendant.

The defendant further appealed to the Privy Council and contended that the court should have made it a condition for granting relief to the Plaintiff that he should pay the balance of £1,541 2s 6d and interest on the loan. This proposition was rejected and the West African Court of Appeal decision upheld. The Privy Council further emphasized thus,

The Ordinance, in enacting that no loan which failed to satisfy the statutory requirements was to be enforced, meant that no court of law was to recognize the lender as having a right at law to get his money back, if the court were to impose terms of repayment as a condition of making any order for relief it would be expressing a policy of its own in regard to such a transaction which was in direct conflict with the policy of the Ordinance.

⁴³ Section 19 of the Moneylenders Ordinance, 1939

⁴⁴ (1956) 3 WLR 575; (1956) AC 539.

Also in the case of **Nwankwo v Orji**,⁴⁵ the court reached a similar decision as that in Kasumu's case where the moneylender failed to issue a receipt to the borrower and make an entry in the book as required under Section 19 of the Ordinance, the transaction was held unenforceable.

Further, the moneylender is prohibited from employing canvassers or agents for the purpose of soliciting for borrowers for the lender.⁴⁷ There does not seem to be any utilitarian value to this section as the only consequence for non compliance is that the moneylender cannot cause the borrower to pay any commission to any canvasser or agent, nor can the canvasser or agent enter into a valid contract with the borrower for commission.⁴⁸

Another important obligation of the moneylender is that of disclosure.⁴⁹ The money lender is obliged to disclose every information relating to the transaction to the borrower. This duty of disclosure is however subject to a demand by the borrower, and upon tendering of a reasonable sum for expenses. Where the borrower has made a demand and paid a reasonable sum to discharge the expenses of the moneylender, and the moneylender fails to supply the required information, he shall be liable on summary conviction to pay a fine of two hundred naira for every day of default. And until he complies with both the demand and the penalty, he shall not be entitled to recover the principal and the interest that had accrued before the demand for information was made. As for the interest that would have accrued after the demand and during the period of default, he would forfeit the same absolutely. That is to say even if the money lender subsequently complies with the demand for information, he shall not be entitled to recover any interest on the principal for the period that he defaulted to supply the information demanded by the borrower. Section 23 of the Law prohibits the inducement of borrowing by false, misleading or dishonest concealment of material facts as to terms on which money is to be borrowed. A punishment of imprisonment for six months or a fine of two hundred naira is imposed for defaulters. Again, any money lender who takes as security a promissory note for repayment of money lent without stating truly the principal or leaving the same blank shall be guilty of an offence and liable on conviction to a fine of two hundred naira.⁵⁰

The regulation of money lending by statute came about in the first instance as a result of the way the moneylenders conducted themselves. Thus, the aggregate of the Moneylenders Law shows a primary intendment aimed at ensuring credibility and some level of transparency in money lending transactions such that the moneylender does not arbitrarily conduct business behind closed curtains and thus take undue advantage of the borrower (consumer) who without the help of the law, will be at the mercy of *shylock* lenders in their hour of distress which led them to go borrowing in the first place. Hence, the emphasis on record keeping under the law, and the fixing of the maximum rates of interest chargeable as is discussed in the next subhead.

⁴⁵ (1964) 8 ENLR 1.

⁴⁷ Section 16 of the Law.

⁴⁸ *ibid.*

⁴⁹ See generally section 18 of the Law.

⁵⁰ See generally section 24.

Regulation of Interest Chargeable

As noted earlier, usury⁵¹ which is the older name for money lending was largely detested as a result of the exploitative tendencies of the moneylenders and excessively high interest rates charged. This led to legislation by the English Parliament admitting “usury” under the modern tag of “money lending” but in that bid fixed or regulated the taking of interest not exceeding 10 percent.

This background no doubt led to the adoption of the provision regulating interest chargeable by lenders generally under section 13 of the Moneylenders Ordinance of Nigeria, 1939, now section 11 of the Moneylenders Law of Cross River State of Nigeria which is our reference statute. For purposes of clarity and emphasis, the provisions of section 11 are hereunder reproduced *in extenso*:

- 11(1). The interest which may be charged on loans, whether by a money lender or by any person other than a moneylender shall not exceed the respective rates specified hereunder:
- a. on loans secured by a charge on any freehold property or Government bonds or insurance policy or the debentures or shares of any company or by a bill of sale in respect of any goods or by the assignment of any personal rights legally enforceable, or by the indemnity or personal guarantee of a third party, simple interest at the rate of fifteen per centum per annum for the first one thousand naira or part thereof and at the rate of twelve – and – a – half per centum per annum on any amount in excess of one thousand naira;
 - b. on loans secured by a second charge on any of the real or personal property or rights referred to in paragraph (a) of this subsection, simple interest at the rate of seventeen – and – a – half per centum per annum for the first one thousand naira or part thereof and at the rate of fifteen per centum per annum on any amount in excess of one thousand naira;
 - c. on unsecured loans simple interest at the rate of forty-eight per centum per annum.

It seems obvious that the philosophy underlying this graduation of interests chargeable by the moneylender is founded on the fact that secured loans would almost always be recoverable, while the same might not be the case for unsecured loans. Because of the wide gap between interest chargeable on secured loans and that

⁵¹ Defined in **Oxford Advanced Learner’s Dictionary** (5th Ed.,1998) as “the practice of lending money at an excessively high rate of interest”

chargeable on unsecured, moneylenders prefer giving unsecured loans, since somehow, they would always get to recover the loan.

Some moneylenders are in the habit of imposing multiple charges out side the prescribed interest rates. This practice has been checked by the definition of “interest” in the Law which is as follows:

The interest shall constitute a comprehensive charge to include all discounts, commissions, bonuses, fines, expenses, and any amount by whatsoever name called, in excess of the principal, paid or payable to the lender in consideration of or otherwise in respect of a loan...⁵²

Not only is the charging of unauthorised interest an offence, the moneylenders contract is illegal and unenforceable. In the case of **Nwankwo v. Nzeribe**⁵³, the court held, *inter alia*, that “the position of the law is that a loan transaction which shows that an offence has been committed against [section 11(1)] of the Moneylenders Law by charging unauthorised interest is an illegal contract and one which the court will not enforce”.⁵⁴ Also in the case of **Okonkwo v Okoro**⁵⁵ where a moneylender made a secured loan to the defendant at an interest of 48% per annum instead of 15% per annum as required by law, the court held that the transaction was illegal and thus unenforceable.

Any moneylender who charges unauthorised interest or make charges contrary to the provisions of the Law is liable on conviction to a penalty of one hundred naira, but the prosecution of the offence shall not be commenced except by or with the consent of the Attorney – General.⁵⁶ It remains to be seen what justification there is for the requirement of the Attorney-General’s consent or personal prosecution by him. Until it comes for the pronouncement of the courts, it is strongly contended that this provision is absolutely irrelevant and should be deleted as soon as the opportunity is afforded because this provision will pose a big clog in the will of justice either by the refusal of the Attorney-General to give consent for no good cause or by the delay of bureaucracy where he cannot prosecute personally and promptly. Besides, the offence is not of any serious State importance as to warrant the attention of the Attorney-General. In Nigeria, the Police are empowered by law to prosecute certain offences, some of which are more grievous than this.

The Law similarly prohibits the taking of interest in advance or payment of compound interest or the rate of interest being increased by reason of default in payment of sums due under any money lending contract⁵⁷ and prescribes the same penalty of one hundred naira for contravention.

The provisions of the Law relating to interest chargeable are very important as a result of which it requires strict compliance. Thus, in the case of **Dawodu v.**

⁵² Section 11(3) of the Law.

⁵³ (2004) 13 NWLR (pt. 890) 422.

⁵⁴ Per Akintan, JCA, at p.428.

⁵⁵ (1962) 6 ENLR 74

⁵⁶ See generally section 12(2).

⁵⁷ S.15(1)

Tinubu⁵⁸ where the interest charged under the contract was not expressed in a rate per centum per annum but expressed as “9d. per £ per month”, it was held that the phrase did not properly express the amount of interest charged and the loan transaction embodying the phrase was held unenforceable.

Limitation of Action

A moneylender cannot bring an action to recover money lent or any interest in respect of the loan, or to enforce any agreement or security thereof unless the action is instituted before the expiration of twelve months counting from the time when the cause of action fell due.⁵⁹ For example, a cause of action is due when payment is due and is not made. Three main exceptions are available to this limitation.⁶⁰ Firstly, where the borrower makes an undertaking to pay in writing at any time before or after the time when the loan was due for repayment, time will start counting from the date of such undertaking. Secondly, if at the time when the cause of action accrued the lender was suffering from mental infirmity, time will not start to count until the mental infirmity ceases or the lender dies; whichever comes first. And thirdly, if by the time the cause of action accrues either by the original due time or by undertaking and the borrower is not in Nigeria, time will not start to count until he returns to Nigeria. A written acknowledgement of indebtedness or undertaking must state the amount, otherwise it is ineffective. It will however suffice if the acknowledgement or undertaking which did not state the amount was a reply to a communication which stated the amount. This was the decision in the case of **Akinnola v. Akinyoso**⁶¹.

Conclusion

Money lending is an indispensable consumer credit device in Nigeria, and indeed the world over. Its utility has made banks to design all manner of products and promotions which are in the image of money lending. The customers are allowed to take limited amount of money “with no collateral” except their accounts to enable them acquire some consumer goods or meet other personal needs. Apart from the fact that the borrower must maintain an account with the bank, research has shown that the borrower must also have a steady flow of cash such as a salary into the said account. Here lies the difference between the bank facilities and money lending. The requirements of the maintenance of an account and a steady flow of income are by themselves collaterals. Thus, the simplicity of money lending makes it more attractive, and borrowers will readily go for it irrespective of the exploitative tendencies of the lenders. The object of the regulation of the practice by law has been expressed thus:

The object of the enactment is to protect impecunious, and sometimes foolish, individuals who resort to callous and heartless moneylenders for accommodation in order to solve their financial problems.⁶²

⁵⁸ (1959) LLR 128.

⁵⁹ Section 28 of the Law.

⁶⁰ Under the proviso to section 28 of the Law.

⁶¹ (1973) NCLR 185.

⁶² Ezejiofor, Okonkwo & Ilegbune, *op.cit.* p.145.

Indeed, the Moneylenders Laws of Nigeria sufficiently protect the borrowers against the exploitative tendencies of the lenders by the imposition of stringent regulations on the lenders. Thus, it can be said that whereas the law is good for the borrower, it is bad for the lender. As a result, most moneylenders bypass the law and operate without licence with the consequence that money lending business in Nigeria thrives mostly in informality and illegality. That is to say: the provisions of the Money lending Laws exist more in breach than in observance. This development has been justified as follows:

...the lenders rights are hedged about with numerous restrictions, some highly technical, and breach of any requirement of the particular lending law may well enable the debtor to escape liability not only for interest but for repayment of the principal as well.⁶³

It is agreeable that the restrictions imposed by Law almost a century ago, are not commercially expedient at the present day. It will be no exaggeration to say that the width of application of the law has done much to impair business efficacy thereby forcing parties to adopt other means outside the legal framework of the Law to do their business.

Needless therefore to say that the Moneylenders Laws of the various States of Nigeria, most of which are still in the 1927 form, are overdue for a review. All bottlenecks in the acquisition of a licence should be streamlined. The requirement of a magistrate's certificate should be removed. The penalty for breach of the provisions relating to charging unauthorised interest should be forfeiture of the interest rather than the criminalisation of the breach. Our courts should be more liberal in the interpretation of the Law; under no circumstances should a moneylender forfeit his principal, even though he may forfeit his interest for charging beyond the ceiling. The time limit for the bringing of an action should be expanded beyond twelve months. This is a most monstrous provision as it could cause an unwary lender to lose his principal and interest simply for the reason of not bringing the action within twelve months of accrual. In relation to the consumer as the end – user of credit facility, it would appear that the interest rate of 48% per annum chargeable on unsecured loans is rather high, and calls for a downward review; even though this could be taken as fair when compared with the between 20% and 40% charged per month by illegal moneylenders.

Money lending has come to stay; it has not only assumed the status of inevitability, but also that of indispensability. Regulation should therefore, facilitate it rather than inhibit it. As in other developed economies where the regulation of consumer credit transactions has been harmonised under one legislation,⁶⁴ it is recommended that all consumer credit transactions in Nigeria, particularly money lending, hire-purchase and credit sale be regulated by one all-encompassing legislation.

⁶³ R. M. Goode, *op.cit.* p. 44.

⁶⁴ For example, the Consumer Credit Act, 1974 of the United Kingdom.

