

IN THE MAGISTRATES' COURT OF RIVERS STATE
IN THE PORTHARCURT MAGISTERIAL DISTRICT
HOLDEN AT SMALL CLAIMS COURT BEFORE HIS WORSHIP. G.C.AMADI ESQ.
SITTING AT CHIEF MAGISTRATE COURT,8, PORT HARCOURT ON THURSDAY, THE 31st
MAY, 2024.

SUIT NO. PMC/SCC/87/2024

MR. ERNEST OJEME ASAK

}

CLAIMANT

AND

FIDELITY BANK PLC

}

DEFENDANT

AND

NIRSAL MICROFINANCE BANK LIMITED

}

THIRD PARTY

JUDGMENT

This is the final judgment in this suit wherein the Small claim before the court, dated and filed on the 8th of April, 2024 is for:

- A. An order directing the defendant to refund the Claimant, the sum of N233,569.57 (Two Hundred and Thirty Three Thousand, Five Hundred And Sixty Nine Naira, Fifty Seven Kobo being sum debited /deducted without the Claimant's authorization.
- B. N2,000,000 (Two Million Naira) for damages in breach of duty

In proof of their case, the Claimant called one witness and the defendant called one witness and the third party also called one witness and a total of 13 exhibits were tendered in evidence.

On the 15th of April 2024, an application to join the third party to this suit was granted by the Court. The third party filed its amended particulars of defence and counterclaim against the Claimant on the 9th day of May, 2024 for

- A. the immediate payment of the sum of N266,430.43 being and representing outstanding indebtedness of the Claimant to the 3rd party arising from the loan sum of N500,000 granted to the Claimant by the third party
- B. 9% interest on the sum of N500,000 with effect from 1st day of March 2023 per annum until liquidation

On the 30th day of April, 2024, the defendant counsel applies for plea of not liable to be entered on behalf of the defendant and the 3rd Party also applies that a plea of not liable to be entered on behalf of the 3rd party, this applications was granted and matter was set down for hearing.

On the 8th, May, 2024, the CW1, the Claimant on record commenced his evidence in Chief and stated that he adopts his written statement on oath dated 13th May, 2024 wherein he stated that)



the Defendant is his banker, where he runs his account No. 5330984131. He did not know the 3rd Party until it was joined at the instance of Defendant, pursuant to the Order of this honourable Court. That in March, 2024, the defendant without my consent/authorization, debited his said account with the sum of N233,569.57 (Two Hundred and Thirty-Three Thousand, Five Hundred and Sixty-Nine Naira, Fifty-Seven Kobo) and he immediately sent an email to the Defendant, who eventually responded that the debit was for a supposed third party loan, for which a Global Standing Instruction (GSI) was raised to debit his account. That he insisted that there was no such third party loan as claimed, and demanded that his money be refunded. That the Defendant refused despite several demands, hence this suit. The debit alert for the said debited sum, his emails to the defendant, as well as his Solicitor's letter of demand, the accompanying way bill, receipt, and the debit transaction alert were identified in evidence, admitted and marked as Exhibits A' 'B', B1, 'C' C1 & C2 respectively. That he saw documents filed by the third party in response/defence to his claim and he did not know of the existence of, nor did he at any time apply to, nor obtain any loan facility from the 3rd Party. The purported Letter of Offer and Loan Agreement are unfounded, and at best, conjured documents which he had never seen prior this suit. That he did not at anytime physically engage, or enter into any form of correspondence (whether by email or telephone) with the 3rd Party to warrant the purported debit on his account.

In conclusion, the CW1 states that he wants the Court to grant his claim as per before the Court.

During the cross-examination of the CW1 on the same day, he stated that his relationship with the defendant is one of banker and customer relationship and that the bank is bound to carry out his instructions directly and not to obey instructions through third parties and that he also banks with Sterling Bank Account No:0074593089 and all the transaction on the sterling bank which is a personal account is done by him.

That he did not apply for any loan facility at any time and did not know of the existence of the 3rd parties before they were joined in this suit. That he never provided his account No, for loan for Covid 19. That he received a 3rd party fund at the instance of a 3rd party who asked him to provide her with his account details because she was having issues and was not in Nigeria at the time. That he received the money and transferred to the account she supplied and that was all. That it was only when the matter came up that he saw what they exhibited and then he recalled that this was the transaction. That he received into the sterling bank account N474,500 of which was not a loan.

The next day, the 3rd party cross examined the defendant and stated that the name of the wife's friend that requested for the account number is Ebimo Coker(Mrs) ,That there was no negotiation for loan, that the said Mrs Ebimo only asked for his account number. That he has been a lawyer for 30 years. That yes, he knows that a borrower is under obligation to repay but that in this case, he did not collect any loan, That he is not aware that his details corresponds with the details that the 3rd party because banks and other institutions have access to personal information, That those details are in the financial domain.

After the evidence of CW1, The Claimant closed her case and on the same day, the defendant opened their case and the DW1, One Bridget Oburuomah Chindah of Fidelity Bank Plc, Plot 76, Trans Amadi Industrial Layout, Port Harcourt, Rivers State of Nigeria, adopts her written statement on oath as evidence before this Court and states that she is the Customer Service Unit Head, of Fidelity Bank Plc. (Defendant in this suit) .That she has the consent and authority of the Defendant, her employers, to depose to this oath on behalf of the said Defendant.

That the Claimant is a customer of the Defendant with account number 5330984131. The Claimant has been operating his said account domiciled with the Defendant for a long time



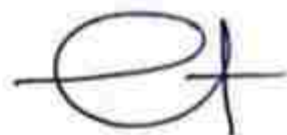
without any issue with the defendant whatsoever. That sometime within the month of March, 2024, the defendant, in compliance with a Global Standing Instruction (GSI) mandate and on the directive of the Central Bank of Nigeria (CBN), debited the Claimant's account number 5330984131 domiciled with it with the sum of N233,569.57 (Two Hundred and Thirty-Three Thousand, Five Hundred and Sixty-Nine Naira, Fifty-Seven Kobo), which sum was an automatic loan recovery of an outstanding loan with the Third Party (Nirsal Microfinance Bank Limited).

That sometime within the year 2020, financial institutions in Nigeria and the Central Bank of Nigeria (hereinafter referred to as "CBN") set up the Nigerian Inter-Bank Settlement Systems Plc. (hereinafter referred to as "NIBSS") as a payment and settlement company to serve as a central switch and provide payments aggregation, settlement services and shared-service platforms for the financial services industry. The NIBSS, in fulfillment of its shared service mandate and in conjunction with the CBN and the Bankers Committee, agreed to develop and operate a Global Standing Instruction (GSI) service to facilitate seamless recovery of delinquent credit advanced to Borrowers by Financial Institutions.

That the Global Standing Instruction (GSI) aforesaid, is an instruction, given by a borrower to his/her financial institution, for recovery of an outstanding facility from the borrower's account in any financial institution. That by the said arrangements, all financial institutions (Creditor banks) desirous of utilizing the GSI services by using the debit instrument executed by its borrower to recover delinquent loans from its borrower's accounts in other licensed financial institutions and perform all other services incidental to the GSI services are to ensure that borrowers execute the GSI Mandate with them. Under and by virtue of the said arrangements/agreements, all Participating Financial Institutions are to ensure that all qualifying accounts and other financial assets are properly maintained and visible to NIBSS on the Industry Customer Accounts Database (ICAD) or by any other service created or provisioned by NIBSS for that purpose and also ensure that their customer accounts in NIBSS ICAD are correctly tagged with the correct Bank Verification Number (BVN), TIN and RC Number where applicable. Under and by virtue of the said arrangements/agreements, the Creditor bank is responsible for set-up, updating, triggering and deletion of GSI mandates and all financial institutions are obligated to comply with all applicable directives of the Central Bank of Nigeria in respect of the Global Standing Instruction (GSI) service. That by the said arrangements, all financial institutions (Creditor banks) under the supervision of the CBN and desirous of utilizing the GSI services are to individually execute a Service Level Agreement/Global Standing Instruction (GSI) Mandate Agreement with the NIBSS. The herein Defendant, as well as other financial institutions, including the herein Third Party, duly executed the said Service Level Agreement/Global Standing Instruction (GSI) Mandate Agreement separately. The Defendant will rely on the Service Level Agreement/Global Standing Instruction (GSI) Mandate Agreement it executed with the NIBSS. The copy of the said Agreement is an electronic copy printed by me from an Acer Corei5 computer and printed through an HP Laserjet M1132MFP printer and that appropriate measures were in force to prevent unauthorized access to the computer and that the computer was at the material times operating properly as provided.

That the Third Party, as a Participating Financial Institution (PFI) granted a loan/credit to the herein Claimant, for which the herein Claimant executed a Global Standing Instruction (GSI) Mandate for the said Third Party. Upon the loan/credit facility granted by the said Third Party to the herein Claimant becoming delinquent, the said Third Party triggered the Global Standing Instruction (GSI) Mandate executed in its favour by the herein Claimant.

That as a result of the herein said Third Party triggering the GSI Mandate, the Central Bank of Nigeria directed the Defendant to effect debit of the said sum of N233,569.57 (Two Hundred and Thirty-Three Thousand, Five Hundred and Sixty-Nine Naira, Fifty-Seven Kobo) from the

A handwritten signature in black ink, consisting of a large, stylized letter 'E' followed by a vertical line and a horizontal stroke at the bottom.

Claimant's account domiciled with the Defendant towards the payment of the outstanding loan obligations of the Claimant to the Third Party. The said deducted sum of N233,569.57 (Two Hundred and Thirty-Three Thousand, Five Hundred and Sixty-Nine Naira, Fifty-Seven Kobo) from the Claimant's account domiciled with the Defendant was for the liquidation of the outstanding loan obligations of the Claimant to the herein Third Party and same was credited to the Third Party.

That the Defendant is not in any way liable to the claims of the Claimant in this suit or any other claims at all. The money debited from his account was on the directive of the Central Bank of Nigeria as a result of the loan liability of the Claimant to the Third Party. That under and by virtue of the said arrangements/agreements variously executed by all financial institutions in Nigeria with NIBSS and CBN, including the herein Defendant and the Third Party, the Third Party shall indemnify the herein Defendant from all liabilities that may arise in case of erroneous triggers of the Global Standing Instruction (GSI) occasioned by incorrect, inaccurate or erroneous information provided by the Third Party to trigger the GSI process resulting in an incorrect amount being debited, a GSI recovery being triggered prematurely or other error etc.

That under and by virtue of the said arrangements/agreements variously executed by all financial institutions in Nigeria with NIBSS and CBN, including the herein Defendant and the Third Party, the Third Party shall indemnify the herein Defendant from all liabilities, losses, costs and expenses, demands, claims, actions, investigations and proceedings whatsoever that may arise as a result of honouring a GSI Recovery made by the Third Party or any other circumstances that may arise as a consequence of debtor/creditor or Banker/Customer relationship. That any or all liability that may accrue or be attached to the Defendant as a result of the Defendant honouring the Global Standing Instruction triggered by the herein Third Party shall be wholly borne by the herein Third Party. The herein Defendant is also entitled to be indemnified by the Third Party for the costs and expenses and the costs of the proceedings in this court.

The DW1 identifies service legal agreement and same is tendered in evidence and is marked as Exhibit E.

During the cross-examination of the DW1 by the Claimant on the same day, he stated that The Claimant did not take any loan from fidelity bank and has not taken any loan since 2009, when he opened the account.

During the cross-examination of the DW1 by the 3rd party on the same date, he stated that a bank triggers a document like Exhibit E when the customer is owing bank A and has defaulted in the payment of the loan to bank A and no longer running the account and is going to bank B to do business when there is no money to service the loan, the document like Exhibit E is triggered. That Exhibit B is backed by law and signed by all banks

On the 15th of May, 2024, the DW2, one Ibitoru Dikibo adopts his written deposition as evidence wherein he states that he is an employee of the Third Party in this suit, and thus conversant with the facts of this case.

That the Claimant was granted a TCF (Household Loan) of N500, 000.00 (Five Hundred Thousand Naira) only via an offer letter dated 13th April, 2024. Identifies the offer letter which was printed online from the Third Party's portal using the office HP printer which is used by the Third Party's Port Harcourt office in our day to day activities. The printer as well as the computer



used was in good working condition at the time of printing and use. Same was admitted in evidence as marked as Exhibit F.

That the sum of N473, 500.00 (Four Hundred and Seventy Three Thousand Five Hundred Naira) was transferred to the Claimant's Account Number 0074593089 domiciled with Sterling Bank Plc. on 25th April, 2024. That Nirsal Microfinance Bank (The third party) confirmed the Claimant's Account Number 0074593089 with Sterling Bank Plc. which provided for payment and they ascertain it with his BVN before disbursing the loan. That the loan has become due but the Claimant refused to pay which prompted them to trigger the Global Standing Instruction (GSI) clause as contained in the offer letter against the Claimant's BVN (22244455776).

That by the operation of the GSI, Nirsal Microfinance Bank can recover the loan from any account of the Claimant as linked to his BVN.

That the 3rd Party confirmed that the account into which the loan sum was paid belong to the Claimant. That the BVN of the claimant as shown in the BVN printouts showed that the Applicant for the loan is the same person with the Claimant. The DW1 identifies the BVN printouts and same is tendered in evidence and is marked as Exhibit G.

That the funds recovered from the Claimant's BVN was used to settle part of his outstanding indebtedness to them and that the Claimant is still indebted to the Third Party. That once the Global Standing Instruction is triggered, any bank that has funds belonging to the Claimant is mandated to debit such customer in order to recover the loan amount.

That the Claimant is still indebted to the Third Party in the sum of N266, 430.43 (Two Hundred and Sixty Six Thousand Four Hundred and Thirty Naira Forty Three Kobo). The Claimant is also liable to pay interest of nine percent on the sum of N500, 000.00 (Five Hundred Thousand Naira) lend to him with effect from 1st day of March 2023 per annum until liquidation.

That he wants the Court to order the Claimant who is now Defendant to Counterclaim to pay the Third Party, the outstanding sum of N266, 430.43 (Two Hundred and Sixty Six Thousand Four Hundred and Thirty Naira Forty Three Kobo) and also to pay interest of nine percent on the loan sum per annum as contained in the offer letter.

During the cross-examination of third party on the same date, he stated that the 3rd party is not owned by CBN, That the third party has access to information from NIBSS and not CBN. That the Claimant does not have an account with the 3rd party. That the transaction is an online process that regulates itself and the application for the loan is done online and initiated by third party websites, That the key settlement instrument is the BVN and serves as a source of repayment in case of default, That Exhibit F, which is the offer letter is not signed by the Claimant because it is an online form and there is no room for signed portions. That he does not know who the guarantor is because it was imputed at the point of entry

That it is not correct that they did not comply with the GSI directive in paragraphs 5.6.7 and 8 of the guideline. The third party identifies the GSI guideline and same was applied to be tendered in evidence and the defendant submits that the document cannot be tendered because it has not been authenticated by the witness, in admitting the document, the Court held that the 3rd party having identified the document as what it is, which is the premise upon which the document were made, the document can be tendered through the witness and the document and the certificate of compliance is admitted in evidence as Exhibits K and L respectively.

During the cross-examination of the third party by the defendant, he stated that the third party triggered the GSI mandate by which the defendant debited the Claimant's account the sum of



N233,589.57 and the same was credited to the Claimants account in the 3rd party's bank. That there is no indemnity in the case of a mistake, because all the banks are in agreement.

At the close of the evidence of the DW2, the matter was adjourned for the adoption of final addresses

That said, I will proceed to consider the case of the parties in the light of the relevant laws. I have noted the essence of the claim and have also taken cognizance of the evidence of the claimant and the defendant and her witness before the court.

However, before we proceed to consider the case of the parties as regards the judgment, there is a preliminary objection raised by the defendant filed on the 20th of May, 2024, wherein the defendant stated that the Court should strike out this suit on the ground that this Court lacks the jurisdiction to hear and determine the suit on the grounds that the proviso to section 252(1)(d) of the 1999 Constitution of the federal republic of Nigeria as amended, the federal High Court and the High Court of a state have concurrent jurisdiction over matters involving transactions between a customer and his bank. That the Magistrate Court not being expressly mentioned does not have jurisdiction to hear matter bothering on customer and banker relationship.

In their submission, the defendant have stated that Section 251(1)(d) of the constitution is to the effect that the federal High Court no longer has exclusivity in matters bordering on banker and customer relationship and that the implication of Section 272(1) that the state High Court shares a concurrent jurisdiction with the High Court in banker and customer relationship.

In response to this, the Claimant/respondent have submitted that by the combined interpretation of Section 6(1)(4)(a) of the Constitution, the Magistrate Court has the jurisdiction to hear matters bothering on banker and customer.

I have taken a close look at the section 251(1)(d) of the Constitution of the Federal Republic of Nigeria as amended is to the effect that the federal High Court will have jurisdiction in banking matter but when what is involved is banker/customer relationship, the federal High Court shall not have exclusive jurisdiction. This court is of the position that this is in recognition of the powers of the state High Court and also powers conferred on the Magistrate Court as in the combined effect of Section 6(1)(4)(a) of the Constitution and Section 14(a)(c) of the Rivers State Magistrate Court Law No, 2, 2004

From the foregoing, it is the position of this court that this Court has the jurisdiction to hear the matter and the application to dismiss/strike out this suit for want of jurisdiction is refused. The said motion is dismissed.

Back to the substantive argument as relates to the final addresses of the parties

ISSUE FOR DETERMINATION:

Whether The Claimant Has Proved His Case To entitle him To The Following orders:

The defendant in their final address have submitted that the Claimant have failed to prove their case against the defendant because his sudden admission under cross-examination that he gave out his sterling Bank Account to a 3rd party whom he received money for in his said account has failed to prove that he is entitled to his claims before the Court because he is not a credible witness and that by section 60(2) of the Banks and Other Financial Institutions



Act,(BOFIA)LFN ,2004, the defendant has a justifying ground for debiting the account of the Claimant.

The Claimant on the other hand, submitted in their final address that the Claimant did not permit the withdrawal of N233,000 from his account and that there was no valid basis for the triggered GSI to justify the debit. That the 3rd party failed to prove that the Claimant created an online account because the firm is unsigned and no evidence of a guarantor was shown. That the Exhibit F is not a valid loan agreement

Furthermore that the 3rd party did not comply with the mandatory requirement of the GSI Guideline 2020, Exhibit K, which compels the production of the physical or digital copy of the GSI Mandate executed by a borrower consenting that his consent should be subjected to that process upon default of repayment. That the 3rd party have failed to provide copies of the GS1 mandate to justify the debit on the Claimants account.

The Third Party addressed the Court and stated that the 3rd Party has established its claim against the Claimant, the Claimant has woefully failed to establish any claim against the 2nd defendant and by extension, the 3rd party. That Exhibit G and J leads inexorably to the conclusion that the Claimant borrowed the money from the third party. Urges the Court to compare the undisputed details including BVN and pictures of the Claimant as shown on Exhibit G and J. The Claimant did not allege forgery and no particulars of forgery was given in evidence.

It is trite that he who asserts must prove. The general principle of law is that he who asserts must prove, coined from the old maxim incumbit probation qui dicit non qui negat which means that the burden of proving as fact rest on the party who asserts the affirmative of the issue and not upon the party who denies it, for a negative is usually incapable of proof. See *Omisore v. Aregbesola* (2015) 15 NWLR (Pt. 1482) p. 217. See also, Section 131 and (2) Evidence act 2011, and *Agwaramgbo v. I Dumogu* (2008) 5 NWLR (Pt. 1081) p. 564 at 572.

During cross-examination, the Claimant have stated that he received a 3rd party fund at the instance of a 3rd party,one Mrs who asked him to provide her with his account details because she was having issues and was not in Nigeria at the time. That he received the money and transferred to the account she supplied and that was all. That it was only when the matter came up that he saw what they exhibited and then he recalled that this was the transaction. That he received into the sterling bank account N474,500.

Please where is this Ebimo Coker(Mrs.).Why was she not called as witness ,What was the exact purpose that she required the Claimant's account? Armed with the Claimant's account number, did she electronically apply for the loan using the Claimant's details?what 3rd party fund did the Claimant admit that he received for Mrs Ebimo, could the fund , the Claimant received on behalf of Mrs Ebimo, be the loan that the defendant and the 3rd party is alleging were disbursed to the clamant?

The said Mrs Ebimo is a very vital witnesses her evidence would have helped this Court to arrive at the truth. It appears that the Claimant is withholding evidence and the Claimant is caught under the principle in section 167 of the Evidence Act of withholding evidence to the effect that evidence withheld is against the party who withholds same.

Secondly, the Claimant is also caught up with the principle of Volenti non fit injuria to the effect that if he unknowingly received loans for a 3rd party as he has admitted, he is liable to pay the loan and interest.

The Claimant have submitted, submitted in their final address that the Claimant did not permit the withdrawal of N233,000 from his account and that there was no valid basis for the triggered GSI to justify the debit. That the 3rd party failed to prove that the Claimant created an online account because the firm is unsigned and no evidence of a guarantor was shown. That the Exhibit F is not a valid loan agreement

Furthermore that the 3rd party did not comply with the mandatory requirement of the GSI Guideline 2020, Exhibit K, which compels the production of the physical or digital copy of the GSI Mandate executed by a borrower consenting that his consent should be subjected to that process upon default of repayment. That the 3rd party have failed to provide copies of the GSI mandate to justify the debit on the Claimants account.

The above argument of the Claimant will be considered when the Court wants to determine whether the 3rd party /counterclaimant have established her counterclaim before the Court as a claimant is not allowed to succeed based on the weakness of the defendant's case. Ferdinand George v. UBA Ltd (1972) 8-9 Sc. 4 at 280; Carlen (Nig) Ltd v. UniJos (1994) 1 NWLR (Pt. 323) 631 at 668; Siesmographic Ltd. v. Ogbeni (1976) 4 Sc. 85 at 101 and Overseas Construction C Ltd. v. Creek Enterprises Ltd. (1985) 3 NWLR (Pt 13) 407." A. I. C. LIMITED v. NIGERIAN NATIONAL PETROLEUM CORPORATION(2005) LPELR-6(SC) Per Edozie, JSC. (Pp. 35-36, paras. G-C)

It is the party that will necessarily loose in a particular case that ought to adduce evidence to support his case, thus it is on whoever is asserting to prove his case if his assertion is to be taken into consideration or the force of law. Evidential burden has been described as the obligation "to show, if called upon to do so, that there is sufficient evidence to raise an issue as to the existence or non-existence of a fact in issue. Adake vs. Akun(2003) 7 SC 26

Flowing from the above, the court will hold that the claimant has failed on the preponderance of evidence to show that he is entitled to his claim before the Court and the Claimants Claim is hereby dismissed.

There is no order as to cost.

ON THE COUNTERCLAIM

On the Counterclaim for the immediate payment of the sum of N266,430,43 being and representing outstanding indebtedness of the Claimant to the 3rd party arising from the loan sum of N500,000 granted to the Claimant by the third party

B. 9% interest on the sum of N500,000 with effect from 1st day of March 2023 per annum until liquidation

Again he who asserts must prove. The Counter claimant must prove on the preponderance of evidence that he is entitled to his counterclaim before the Court.

The Third party/ counter claimant have submitted that the Claimant took a loan from them via Exhibit F, and that Exhibit G and H confirms via BVN, that the Claimant is the same person that took the loan as on Exhibit G and H.



However, the Counter defendant is contending seriously that the debit was done via a triggered GSI but that the debit was invalid because it was done without recourse to the provisions of Exhibit K, The GSI Operational Guidelines.

I have taken a close look at Exhibit K especially at section 3.2.1 and 3.2.2 as to the roles and responsibilities of the borrower and the creditor bank, and it is stated therein that the Borrower will execute a GSI mandate in hard copy or digital form and that the creditor bank is to retain copies of the executed GS1 mandate and to provide same when requested.

According to the definition section, the GSI mandate is an instruction (written or digital) executed by a borrower being an Account Holder in a participating financial institution authorizing the recovery of an amount specified by the creditor from any/all accounts maintained by the Account Holder across all participating financial institutions.

Why is the counterclaimant not addressing the issue of the GS1 mandate. Where is the GS1 mandate? Was it executed by the Claimant?

According to paragraphs 3.2.1 and paragraphs 3.2.2 of exhibit K, the production of a duly executed GSI mandate appears to be a *sine qua non* to a valid loan debit. Compliance with the exhibit K compels the production of the physical or digital copy of the GSI Mandate executed by a borrower consenting that his consent should be subjected to that process upon default of repayment. The 3rd party/Counter Claimant did not provide this all important consent document and so have failed on the preponderance of evidence to prove that he is entitled to his counter claim before the Court.

On the basis of all of the foregoing, this Court hereby holds that the 3rd party /counterclaimant have failed to prove their counterclaim before the Court and their counter claim is hereby dismissed

There is no order as to cost



G. CHINYERE AMADI, ESQ.
CHIEF MAGISTRATE G.D.I

