Longitudinal Research into the History of Debts

Abstract: Background: Man, who includes companies, has tried to provide sufficiency and surplus through the request for loans. However, economic and political structures have hampered the realization of the initiatives towards borrowing. This paper has sought to examine the macro and definition of terms in order to make recommendations for more egalitarian societies.

Keywords: Economic and political structures.

INTRODUCTION

Whether Marxist, socialist or capitalist, commerce was eponymous to debt. The necessity to collect debts existed long before currency was invented. The bartering of goods or services in return for other goods or services often led to the creation of debt as one of the parties failed sometimes to deliver their goods or services, as agreed.

A longitudinal research shows that the earliest recording of how debt was dealt with goes back to 3000BC during the ancient civilization of Sumer who populated an area that is now modern-day South East Iraq. The book of Chronicles narrated how a debtor who was unable to pay a debt along with their family and servants became debt slaves. They were forced to work for the creditor until such time that their physical labour had repaid the debt. In some cases, it took years to repay the debt, which could even be passed on to the following generation of the debtor’s family. Debt slaves became common throughout many ancient civilizations. However, some of the more liberal early societies introduced forms of debt forgiveness or allowed debts to be discharged after a specific period of time. However, Abrahamic religions, discouraged lending and creditors were prohibited from seeking to collect debts.

Before the medieval times, and post Adam Smith, John Maynard Keynes, Milton Friedman etc., businesses and national economies needed finance for expansion, growth, development, or business rescue. The Marshal Plan was an example of continental initiative for European bail out. In the modern times, statistics show that as at 2017, about 2.3 million Nigerians owe banks ₦15.9 trillion. The Asset Management Corporation of Nigeria (AMCON) has expressed that only three hundred and fifty (350) debtors in Nigeria owe it the humongous amount of ₦3.6 trillion (three trillion, six billion naira). With low productivity, large scale corruption, low savings, and high consumption patterns, Nigerian institutions have had to borrow from local and external sources to bridge gaps in funding, control the national economy and secure maximum welfare, freedom and happiness of citizens on the basis of social justice, equality of status and opportunity.

The Marshall Plan assisted the development of Europe, and regional initiatives like the ADB, NDIC, AMCON have emerged in the loan recovery space. The celebrated case of Salomon v Salomon & Brothers od 1894 came to the fore. Mr. Salomon had transferred his business of boot making, initially run as a sole proprietorship, to a company (Salomon Ltd.), incorporated with members comprising himself and his family. The price for such transfer was paid to Salomon by way of shares, and debentures having a floating charge (security against debt) on the assets of the company. Later, when the company’s business went into liquidation, Salomon’s right of recovery (secured through floating charge) against the debentures superceded the claims of unsecured creditors, who would, thus, have recovered nothing from the liquidation proceeds.

To avoid an alleged unjust exclusion, the liquidator, on behalf of the unsecured creditors, alleged that the company was a sham, being essentially an agent of Salomon. Since Salomon was the principal, he was personally liable for its debt. In other words, the liquidator sought to overlook the separate personality of Salomon Ltd., distinct from its member

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Mr. Salomon so as to make Salomon personally liable for the company’s debt as if he continued to conduct the business as a sole trader.

For corporations, there are various reasons for debt defaults e.g. like mismanagement, micro-economic headwinds, environmental and political risks, many debtors default in making payments at the agreed time frame or/and debtor(s) blatant refusal to pay preferring to dishonor agreements.

In Nigeria, particularly, the Nigerian state suffers from Quotidian reality “group grievance,” “economic decline,” “human capital flight,” “demographic pressure,” “weak and corrupt public service,” “deterioration in the rule of law,” deterioration in human rights,” and “ineffective security apparatus.” It may be no exaggeration to add even that “state legitimacy is in doubt.” A descent to self-help in debt recovery can translate to a recipe for chaos, which must be prevented by a process of Law.

There are so many reasons why some debtors do not pay their debts as at when due. Some of the reasons include divergence between theory and praxis.

1. The debtor’s mismanagement of the loan sum
2. The diversion of the loan sum into unprofitable ventures, even for marrying more wives and for political participation.
3. The debtor may suffer actual inability to pay due to failure of the venture or project for which he borrowed the money. In the Mikibanga’s case, the plaintiff debtor obtained an agricultural loan from the defendant creditor bank and mortgaged his house to the bank as security for the loan. He used the loan sum to enhance his poultry farm which indeed was the agreed purpose of the loan. Later, however a mishap set in through no fault of his and he suffered severe loss of the fowls. His poultry business nose dived sharply and as a result, he found himself unable to pay the loan sum.
4. Loans obtained for the purpose of executing government contracts. When this happens, most contractors and business men rely on government patronage and they frequently borrow from banks, institutions and individuals to execute the government contracts. Very often the contractor/debtor may have performed the contract for which he had borrowed money. Government fail to pay him for the contract, eventually he too will become unable to repay the loan sum to the creditor. An illustrative case of the role of government in non-payment by debtors is Nyoyoko v Akwa Ibom State Government & 2ors. The plaintiff had borrowed money from a bank for the purpose of purchasing some typewriters for supply to the then Akwa Ibom State House of Assembly in 1992. After he had supplied the items but before he could be paid, the military took over government and dissolved all civil democratic structures including the State House of Assembly. Even though all the supply / contractual documents were available to the new military government it still did not pay the plaintiff until the plaintiff went to court which ordered payment.
5. Negligence on the part of the debtor or deliberate refusal to pay.
6. Debt loans as low hanging fruits

1.3 DEFINITION OF TERMS:

i. Debt:

Debt in the context of this article is a fixed or certain obligation to pay money or some valuable thing or things; either in the present or in the future. In *Eco Bank Plc V Hon Lukpata John Udo* a "debt" was defined as a specific sum of money due by agreement or otherwise." The action of debt lies where a party claims the recovery of a debt; that is, a liquidated or certain sum of money due him. The action is based upon contract, but the contract may be implied, in fact or in law, as well as expressed and it may be either a simple contract or a specialty. The most common instances of its use are for debts: (a) upon unilateral contracts expressed or implied in fact (b) upon quasi-contractual obligations having the force and effect of simple contracts (c) upon bonds and covenants under seal (d) upon judgment, or obligations of record (e) upon obligations imposed by statute.

In summary, a debt exists where a certain amount of money is owed from one person (the creditor) to another (the debtor) due to certain agreements. Contracts are entered and executed between parties for various reasons and when there

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1. Mikibanga & Sons (Nig) & anor. V. African Continental Bank PLC.
2. (2020) LPELR-49691 (CA)
3. *2012 LPELR-13926 CA*
4. See Black's Law Dictionary, 8th edition p.432 where the learned authors referred to Benjamin J. Shipman Handbook of common-Law Pleading edited by Henry Winthrop Ballantine, 3rd edition 1923 paragraph 52 page 132 where the learned author wrote that:
5. *Per TUR, JCA (Pp. 13-14, paras. B-A)*
is a breach or failure of party to perform his part of the contract, and a debt arises, the aggrieved party or in this case, the creditor may commence a process to recover the said debt.

The meaning of debt was further defined in the case of Nigerian Postal Services v Insight Engineering Company Ltd.6 Viz;

“What then is a debt? I think a useful guide may be found in Jowitt’s Dictionary of English Law where the following definition and explanation as to the nature of the “debt” were given. A debt is “... a sum of money due from one person to another. An action of debt lay where a person claimed the recovery of a liquidated or certain sum of money affirmed to be due to him; it was generally founded on some contract alleged to have taken place between the parties, or on some matter of fact from which the law would imply a contract between them. There is aspecies mentioned in the books, called debt in the detinet, which lay for the specific recovery of goods, under a contract to deliver them.... A debt exists when a certain sum of money is owing from one person (the debtor) to another (the creditor). Hence ‘debt’ is properly opposed to unliquidated damages...; to liability, when used in the sense of an inchoate or contingent debt; and to certain obligations not enforceable by ordinary process .... ‘Debt’ denotes not only the obligation of the debtor to pay, but also the right of the creditor to receive and enforce payment. Debts are of various kinds, according to their origin ... Debts may be created under the provisions of various statutes.”

ii. A DEBTOR:

A debtor is a company or an individual who owes money. If the debt is in the form of a loan from a financial institution, the debtor is referred to as a borrower, and if the debt is in the form of securities such as bonds the debtor is referred to as an issuer. A person who is in debt or under financial obligation to another is also referred to as a Debtor.

iii. A CREDITOR:

A creditor or lender is a party that has a claim to the services of a second party. It is a person or institution to whom money is owed. The first party, in general, has provided some property or service to the second party under the assumption that the second party will return an equivalent property and service. A creditor is also an entity (person or institution) that extends credit by giving another entity permission to borrow money intended to be repaid in the future. A business that provides supplies or services to a company or individual and does not demand payment immediately is also considered a creditor, based on the fact that the client owes the business money for services already rendered.

v. Debt Recovery:

Debt Recovery is the process of making people or companies pay the money which they owe to other people or companies when they have not paid back the debt at the time that was agreed.

It is also the process of recovering a debt from a debtor(s). This arises when the due date for payment of the debt has elapsed but the debtor has refused to make such payment even when demands for such payment of the loan had been made.

In Nigeria, the limitation period for debt recovery that arises from a simple contract is six (6) years excluding the year the contract was entered into and executed. The court has the power to hear and determine an action for debt recovery and enforce payment on the debtor. The law has provided for a lawful process and procedure for debt recovery. It must be pointed out that owing debt is a civil wrong, and not a criminal wrong. Thus, the Police and other security agencies have no power under the law to arrest, prosecute or to take any action against a person for failure to pay debts.

In the case of McLaren & Ors v Jennings8, the Appeal Court ruled that debt collection is not part of the duties to the police.9 The defendants supplied the vehicle used by the police to go to Kano to demand and recover a debt and not for the purpose of investigating an offence. The arrest, in the circumstance, was wrongful. Justice Ayo Salami10 said in the lead judgment, thus, “In short, the appellants and the policemen they took to Kano were there to collect debt which is not one of the several duties assigned to the police under the provisions of the Police Act to which the court was directed and the court has not been able to find another provision of the Act empowering or constituting the Nigerian Police Force to be one of a debt or rent collector.”

6 2006 LPELR - 8240 (CA)  
7 Per IKONGBEH, JCA (Pp. 22-23, paras. C-D)  
8 McLaren & Ors V Jennings (2002)  
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The Apex court ruled that issues involving breach of contract are not part of the primary duties of the police, while wondering how the police could “easily metamorphose” a civil matter to a criminal case. Likewise, the Apex court dismissed the conviction of the appellant, who had breached a contract agreement to deliver calf giraffes to the Rivers State Ministry of Culture and Tourism through one Sokari Davies.

Many cases confirm that a cause of action is deemed to accrue when the debtor refuses to pay after a demand is made.

See also Victor v. UBA Plc and Okonta v. Egbuna were referred to for the position.

Progressively the law has sought to ensure free flow of loans for expansion and to ensure economic stability. However, the law ensures provision of capital is not jeopardized in the recovery of their loans so that they can go round to those who require them for socio-economic purposes.

**CONCLUSIONS AND RECOMMENDATIONS**

The origin of dents shows a cultural transformation from pure agricultural produce, seedlings, money, batter and journey.

The variants have been increasing since the industrial and digital revolutions.

The subjects of loans and debts remain the same except that institutions and financial structures that give and regulate debts and recoveries vary from country to country.

For all these categories of participants in loan recovery process, training is needed even for the judges, receivers, liquidators and the debtors.

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11 Kure v C.O.P (2020)
13 (2007) LPELR-90413 (CA) Supra
14 (2013) LPELR-21253 (CA) Supra