

**IN THE HIGH COURT OF JUSTICE OF THE
FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI - ABUJA**

BEFORE: HON. JUSTICE O. C. AGBAZA

COURT CLERKS: UKONU KALU & GODSPOWER EBAHOR

COURT NO: 11

SUIT NO: FCT/HC/CV/2672/18

BETWEEN:

1. 99 SERVICES SOLUTIONS LTD

2. SABASH INTEGRATED SERVICES NIG LTD.....CLAIMANTS/APPLICANTS

VS

LAMBSTAR LIMITED.....DEFENDANT

RULING

Before the court are two Motions, the 1st one dated 4/9/18 with No. M/8588/18 but filed on 5/9/18 by Claimants/Applicants and the second Motion is dated 1/4/19 with No. M/4838/19 filed same day by Defendant/Applicant. The Claimants/Applicants Motion is brought pursuant to Order 11 Rule (1) of the Rules of this Court seeking the following reliefs:-

- (1) An Order of the Hon. Court to place the Writ of Summons and other court processes under summary judgment in this Suit.

- (2) An Order of the Hon. Court entering final judgment in summary manner against the Defendant as per the endorsement on the Writ and the Statement of Claim.
- (3) And the Omnibus Relief.

In support of the Motion is an affidavit of 19 Paragraph deposed to by Nuru .I. Abdullahi, Legal Practitioner in the law firm of Solicitors to Claimants with Exhibits attached. Also filed a further affidavit dated 20/6/19 deposed to by A.B. Dodo with Exhibits attached. Also filed a Written Address and adopts the said Address in urging the court to grant the application.

In response, Defendant filed a counter-affidavit of 16 Paragraph on 16/1/19 deposed to by Philip Babajide Edu, one of the employee of Defendant. Also filed a Written Address and adopts it in urging the court to dismiss the application.

In the Written Address of Claimants/Applicants settled by Abdulhamid Mohammed, only (1) issue was submitted for determination and that is;

“Whether the Claimants have made out a good case for summary judgment against the Defendant.

And submits a Claimant whose claim against Defendant is based on the recovery of debt or liquidated money denied and whose claim is patently clear and unassailable, rather than originating a suit that will admit full trial involving oral evidence may simply support his application for summary judgment setting out the grounds upon which the claim is based, refer to

Sodipo Vs Lemminkainer O.Y & Anors (1986) 1 NWLR PT 15 at 220. That the dominant consideration of summary procedure as in the instant is usually based on liquidated demand and from the endorsement of the claim in the Writ of Summons and reliefs sought in the Statement of Claim, the facts and Exhibits its very clear and unassailable and warrant the court to enter judgment in their favour. Refer court to Lewis Vs UBA Plc (2016) 6 NWLR PT 1508 329 at 349, Maduiké Vs Tetelis Nig Ltd (2016) 6 NWLR PT 1509 619 at 636 – 638.

In the Written Address of Defendant/Respondent, J.C. Ude of counsel also submitted a sole issue for determination and that is;

“Whether by the facts and circumstances of this case, this court can grant this application”.

And submit this court has discretion to either grant or refuse application for application for summary judgment; however, the discretion must be exercised judicially and judiciously and refer court to Order 11 Rule 5 of Rules of Court. That this case is contentious in nature in view of the documents pleaded and submit further that summary judgment can be made where Defendant failed to deliver a defence and that quick dispensation of a suit anticipated by summary proceeding for judgment is not to be achieved at the expense of fair hearing and that the principles of fair hearing “ nemo iudex in causa sua and audi alteram partem” should be observed and applied in this case for the interest of justice. In all commend the court to Egbarin Vs Aghoghovba (2003) 16 NWLR PT 849 380 at 395 – 396, CPL Vs Scanbeach (Frank-Beach) Denmark (2002) FWLR

PT. 104 574 at 583, Section 36 (1) of Constitution of Federal Republic of Nigeria.

I have carefully considered the submission of both counsel for and against the grant of this application, the authorities cited and Exhibits annexed and finds that only (1) issue calls for determination and that is;

“Whether the Claimants/Applicants have made out a case to warrant the court to enter summary judgment in their favour”.

Order 11 of the Rules of this Court makes Provision for summary judgment procedure. Its purpose is for disposal of cases which are virtually uncontested with dispatch without the right of trial and it applies to cases where there can be no reasonable doubt that a Plaintiff is entitled to judgment and where it is inexpedient to allow the Defendant to defend for mere purpose of delay. It is for plain and straight forward, not for the devious and crafty. See Order 11 Rule 1 of the Rules of this court. See also Lewis Vs UBA Plc (2016) ALL FWLR PT. 833 1860 at 1864 (SC) and Omega Maritime and Energy Ltd & 1 Or Vs Intercontinental Bank Plc (2016) ALL FWLR Pt 849 970 at 972 – 973 (CA).

In an application for summary judgment, as in the instant, the Plaintiff must state in his affidavit in support of his application facts and believes that the Defendant has no defence to the claim and the grounds for his believe. See the case of Woodgrant Ltd Vs Skye Bank Plc (2011) ALL FWLR PT. 601. See also Order 11 Rule 1 of the Rules of Court. And when a Plaintiff applies for summary judgment, the burden is on the Defendant to satisfy the court that he has a good defence or to disclose other facts

entitling him to defence and when it appears to court that the Defendant has a good defence and ought to be permitted to defend, may grant leave to Defendant to defend the suit. See Order 11 Rule 5 (1) of the Rules at court. See also Omega Maritime & Energy Ltd & 1 Or Vs Intercontinental Bank Plc (Supra) at 973. And what the court look for when determining whether or not to grant leave to defend a suit are facts which raise triable issues and not proof of those facts. In other words, the Defendant is only required, under the summary judgment procedure, prima facie defence and not defence on the merit at that stage. See the case of University of Benin Vs Kraus Thompson Organization Ltd & 1 Or (2007) 14 NWLR PT 1055 441 at 449.

In this instant case, the Claimants/Applicants seek the Order of court to place the Writ of Summons and other court processes under summary judgment and enter final judgment in summary manner against the Defendant and disposed to facts and believes that the Defendant has no defence to their claim and also attached 14 Annexures as Exhibits in support of their claim against the Defendants. The Defendants has by their affidavit stoutly denied the claim of the Claimants/Applicants and have even gone ahead with leave of court to file Statement of Defence.

I have critically perused the facts as stated in the affidavit evidence of Claimants/Applicants and the attached annexures in their application for summary judgment in relation to the facts as stated by the Defendant/Respondent and I am of the firm view that the Defendants/Respondent by the affidavit evidence has disclosed triable issues requiring this suit to be heard on the merit. The facts as stated by

Claimants/Applicants and the documents annexed as Exhibits required explanation on the part of the Claimants/Applicants and this cannot be achieved except evidence is called. It is on this basis I shall exercise my discretion in favour of Defendant/Respondent by granting Defendant/Respondent leave to defend this suit and in consequence dismissed the application of Claimants/Applicants. I so hold.

Now to the second Motion filed by Defendant/Applicant brought pursuant to Order 10 Rule 11 and 56 Rules 3, 6, and 11 of the Rules of Court and under the inherent jurisdiction of this Hon. Court seeking the following reliefs:-

- (1) An Order of this Hon. Court varying its Order for cost of ₦20,000.00 made against the Defendant/Applicant and in favour of the Claimant/Respondent on the 17th day of January, 2019 in this case.
- (2) An Order of this Hon. Court reducing the said Ordered amount to the sum of ₦5,000 and directing the Defendant/Applicant to pay same to the Claimant/Respondent forthwith.
- (3) And the Omnibus relief.

In support of the Motion is an affidavit of 4 paragraph affidavit deposed to by Joana Daniel, a litigation secretary in the law firm of counsel for Defendant/Applicant. Also filed a Written Address in support. Upon being served with the Motion, the Claimant/Respondent did not file a counter-affidavit to the Motion but elected to reply orally on point of law.

In the Written Address of Defendant/Applicant, J.C. Ude of counsel submitted a sole issue for determination and that is;

“Whether considering the facts and circumstances of this case, this court can consider and grant the Applicant’s reliefs in this Motion”.

And submit that it within the discretion of court to award or refuse cost. That in considering an application whether or not to grant cost, the court has a duty to examine the circumstances surrounding the application and take into consideration any offer or contribution made by any of the parties , refer to Order 56 (6) and (ii) of the Rules of court. That the court has unfettered discretion to vary its order upon reasonable application brought by a contending party and refer to Order 10 (11) of the Rules. Urgethe court to grant the application in the interest of justice.

Replying on point oflaw, Claimant Counsel refer the court to case of Oveneri & Ors Vs Osagie & Ors (1998) LPELR – 2834 and submits that an Order can only be varied where there is clerical mistake in the order or an error arising from accidental slip or omission or if necessary to do so to carry out its own missing and to make its intention plain. That Applicant did not disclose any of these conditions to warrant the discretion of court to grant this application and pray the court to dismiss this application as lacking in merit.

Having considered the submission of both counsel for the grant or otherwise of the application, I find that the only issue that calls for determination is;

“Whether or not the Defendant/Applicant has made out good grounds to warrant the court to exercise its discretion in their favour”

In this instant, the Defendant/Applicant seek order of court to vary the cost awarded against Defendant on 17/1/19 based on the facts stated in their affidavit evidence to which Claimant/Respondent strongly opposed. The award of cost is at the discretion of court to be exercise judicially and judiciously taken into account the circumstances of the case. See Ojer Ltd Vs Creek Energy Ltd (2018) ALL FWLR PT. 940, 153. And in exercise of that discretion, the court on 17/1/19 awarded cost of ₦20,000.00 against Defendant in favour of Claimant. It is this sum that Defendant/Applicant now seeks the court to vary to sum of ₦5,000.00 based on the facts as stated in their affidavit evidence. This also is at discretion of the court to either grant or refuse based on the circumstances of the matter. I have carefully considered the circumstances of this matter and in particular the records of court and finds that the Defendant/Applicant did not make out good grounds to move the court to exercise its discretion in favour. It is on this basis I effuse this application. It is hereby dismissed.

HON. JUSTICE O. C. AGBAZA

Presiding Judge

9/12/2019

ABDULHAMID MOHAMMED – FOR THE CLAIMANTS

J.C. UDE – FOR THE DEFENDANT