

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE NYANYA JUDICIAL DIVISION
HOLDEN AT NYANYA ON THE 23RD DAY OF JANUARY, 2019
BEFORE HIS LORDSHIP, HON. JUSTICE U. P. KEKEMEKE
SUIT NO.FCT/HC/CV/2506/18

COURT CLERK: JOSEPH ISHAKU BALAMI & ORS.

BETWEEN:

FIRST MULTI MICRO FINANCE BANK LTD.....CLAIMANT

AND

IBRAHIM & SALISU INSURANCE BROKERS LTD.DEFENDANT

JUDGMENT

This is a matter under the Undefended List Procedure. The Writ of Summons and Statement of Claim is dated 7/08/18. It was served on the Defendant on 22nd November 2018. The Defendant entered appearance on the 29th Day of November 2018 without leave of Court. He also filed a Notice of Intention to defend dated 29/11/18.

By Order 9 Rule 1(1) of the Rules of this Court, a Defendant served with an Originating Process shall within the period prescribed for appearance file in the registry as many copies of the completed and signed memorandum of appearance as in form 12 with such modifications or variation as circumstances may require for the use of the Court and for service on the other parties.

Order 9 Rule 2(1) states that a Defendant entering appearance shall within 7 days serve a sealed copy of the memorandum of appearance on a Claimant's Legal

Practitioner or on the Claimant if he sues in person. Order 35 of the rules of court is however a unique procedure.

By Order 35(3), it states where a party served with the writ delivers to registrar, before 5 days to the date fixed for hearing, a notice in writing that he intends to defend the suit, together with an Affidavit disclosing a Defence on the merit, the Court may give him leave to defend upon such terms as the Court may think just.

It is my view therefore that this unique fast track procedure hinting the filing of a Notice of Intention to Defend with an Affidavit before five days to the date fixed for hearing still requires compliance with Order 9 of the rules of Court.

Order 9 applies to all Originating Processes without exception. Non compliance is a breach. Rules of Court are meant to be obeyed. The Defendants is therefore improperly before this Court. He has also not complied with Order 49(5) of the rules of Court. No penalty was paid for not filing the Memorandum of Appearance out of time as the 7 days within which he ought to file the memorandum of appearance had lapsed. There is no application for extension of time within which he should enter appearance as required by Order 49(4) of the Rules of this Court.

In ***IBIGBAMI VS. MILITARY GOVERNOR EKITI STATE (2004) 21 WRN 53***, the Court of Appeal held:

“Rules of Court are meant to be complied with and therefore any party or counsel seeking the discretionary power of a judge to be exercised in his favour must bring his case within the provisions of the rules on which he purports to make his application”.

In the instant case, since there is no proper Memorandum of Appearance, the Notice of Intention to Defend and Affidavit cannot stand.

In the circumstance, there is no Notice of Intention to Defend with an Affidavit properly so called despite an adjournment to enable Defendant regularise its processes. This Court has only one duty and which is to enter judgment.

Judgment is hereby entered in favour of the Claimant against the Defendant as follows:

1. The Defendant shall pay to the Claimant the sum of N12,665,590.09 being the indebtedness of the Defendant as at 06/02/18 on account of the loans and overdraft facilities granted by the Claimant to the Defendant which he failed to pay despite repeated demands.
2. 10% interest from the date of judgment until the judgment sum is finally liquidated.

The 2nd relief is prejudgment interest. It is not a liquidated money demand. It is outside the provision of the Undefended List Procedure. It is therefore transferred to the General Cause List for trial.

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HON. JUSTICE U.P. KEKEMEKE
(HOH. JUDGE)
23/01/19