

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA – ABUJA**

**BEFORE HIS LORDSHIP: JUSTICE SALISU GARBA
COURT CLERKS: FIDELIS T. AAYONGO & OTHERS
COURT NUMBER: HIGH COURT TWO (2)
CASE NUMBER: FCT/HC/CV/1694/2018
DATE: 28TH MAY, 2019**

BETWEEN:

VERTEX AGRO LIMITED

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PLAINTIFF

AND

**1. ZAIDAN NIGERIA ENTERPRISES LTD
2. HON. AHMED ALIYU WADADA**

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DEFENDANTS

Parties absent.

M.J. Numa for the Claimant appearing with K.B. Ebitibituwa Esq.

C.S. Sule for the Defendants.

Claimant's Counsel – The matter is for judgment and we are ready to take same.

J U D G M E N T

The Plaintiff in this suit took out a writ of summons against the Defendant by way of Undefended List Procedure claiming as follows:

1. The sum of N50,000,000.00 (Fifty Million Naira) only being the unliquidated balance of a total debt of N60,000,000.00 (Sixty Million Naira) only owed and admitted by the Defendant as residue of N90,000,000.00 (Ninety Million Naira) only representing monies had and received from the Claimant as consideration for the fulfilment of its contractual

consultancy obligation to the Claimant to wit: procurement and facilitation of foreign exchange worth \$4,500,000.00 (Four Million, Five Hundred Thousand Dollars) only at the rate of N20 (Twenty Naira) to every United States of America Dollars (USD) from the Central Bank of Nigeria in favour of the Claimant which the Defendants failed to deliver completely on.

The writ of summons is accompanied by 52-paragraph affidavit and several annexures marked as exhibits Vertex Agro 1A – 8B respectively.

In addition to the above affidavit, learned counsel to the Claimant filed a further and better affidavit dated 9/11/18 and two annexures marked as Exhibit Vertex Agro 1 & 2.

On the 4/2/19, learned counsel to the Claimant further filed another Further Affidavit with one (1) annexure. Reliance is placed on all the paragraphs of the affidavits and the annexures. Learned counsel urged the court to enter judgment for the Claimant in the sum of N24,000,000.00 (Twenty Four Million Naira)_ only being the outstanding balance owed and admitted by the Defendant jointly and severally.

In the affidavit in support of the writ, it was deposed inter alia in paragraph 9, 10, 11, 12, 13 and 14 that the Claimant in the course of its business pursuit regularly bids for foreign exchange from Central Bank of Nigeria (CBN) vide the Bills for Collection Process for the purpose of purchase of its agricultural products from China. That on or about the period of June – October 2016, when the country was undergoing recession there were stringent monetary

policies with the financial sector which resulted in limited release of foreign exchange from the Central Bank of Nigeria for various business policies. Amidst these challenges, the Claimant was well aware that the Central Bank of Nigeria still releases foreign exchange to certain category of products depending on the mode of presentation and expertise put into the application by professionals. The claimant bided and/or applied to the Central Bank of Nigeria (CBN) through its commercial bank – Diamond Bank Plc for the purchase of United States of America Dollars (USD) through Bills for Collection Process for \$4,500,000.00 (Four Million, Five Hundred Thousand US Dollars) only for the singular purpose of purchasing Agro-chemical products from China and importation of same into Nigeria. After several months of waiting to no avail and continuous loss of business, the Claimant became frustrated and vented same to its commercial bankers Diamond Bank Plc who normally mediate the procurement process from Central Bank of Nigeria. The officials of Diamond Bank Plc (the Claimant Bankers) then recommended the use of a consultant with vast resume of expertise and track record in the procurement of foreign exchange for priority, importation such as agricultural related procurement, which falls within the A – List of the Federal Government Diversification Process.

Further deposed in paragraph 15, 16, 17 that on or about the 9th Day of November 2016, the 1st Defendant through the 2nd Defendant represented itself as a consulting outfit in Corporate Finance, Monetary Policy Advisor and Professional Policy Lobbyist specialized in foreign monitoring and miscellaneous matters with

the aim of specifically facilitating the speedy release of Claimants foreign exchange worth \$4,500,000.00 (Four Million, Five Hundred Thousand US Dollars) only from Central Bank of Nigeria (CBN) vide the Bill for Collection Process for the payment of Agro-chemical products from China in favour of the Claimants.

Sequel to the representation and the impressive resume and recommendation demonstrated by the Defendant, the Claimant acceded to the offer to be afforded some assistance in its business pursuit at a consideration.

The Defendants demanded a professional fee of N20 (Twenty Naira) only to every United State Dollars (USD) and was paid N90,000,000.00 (Ninety Million Naira) only upfront as consideration as professional fees for their consultancy services specifically for the facilitation and procurement of the sum of \$4,500,000.00 (Four Million, Five Hundred Thousand United State Dollars) only within a period of (but not exceeding) 30 days on a specific condition that upon failure, the monies had and received will be refunded.

Deposed to in paragraph 20 that the Defendants however on their part were unable to deliver on its obligation or failed, refused and or neglected to facilitate the procurement of the agreed sum within the 30 days time frame agreed by the parties.

Further deposed in paragraph 29 that the Defendant admitted their failure and offered to refund the entire unsatisfied sum of N60,000,000 (Sixty Million Naira) within the shortest possible time and as a show of its commitment to liquidate the indebtedness, the Defendant issued three undated Diamond Bank Plc Cheques in favour of the Claimant amounting to a total of N60,000,000.00

(Sixty Million Naira) only. Copies of the cheques are marked as Exhibits Vertex Agro 2A – B.

It is the deposition in paragraph 33 that on the 6th Day of September 2017 the 1st Defendant made part payment of N10,000,000.00 (Ten Million Naira) only to the Claimant in order to reduce the indebtedness. A copy of the Claimant's Diamond Bank Account evidencing this deposit is marked as Exhibit Vertex Agro 3.

It is also the deposition in paragraph 35, 36, 37 and 38 that the Claimant has made several efforts through demands and appeals to the Defendants to refund the sum owing to the depleting state of its resources to no avail. Due to the continuous failure of the Defendant to keep to their obligation, the Claimant instructed the law firm of Messrs Karina Tunyan (SAN) & Co to cause legal demand and recover the debt. On the 22nd Day of January 2018, the Claimant through its solicitors caused a letter to the Managing Director of the 1st Defendant demanding the refund of the entire sum of N50,000,000.00 (Fifty Million Naira) only. A copy of the said letter is exhibited as Vertex Agro 4. Sequel upon receipt of the letter from the Claimant's solicitors dated 22/1/2018, the Defendant caused a reply through their counsel Z.S Salihu & Co dated 7th February 2018 admitting all the representations stated in the letter from the Claimant and promising to pay within a period of 60 days from the date of the letter. A copy of the letter is exhibited as Vertex Agro 5.

In the further and better affidavit in support of the undefended list summons dated 9/11/18, it is deposed to in paragraph 5 that the

Defendants have only made a total payment of N20,000,000.00 (Twenty Million Naira) only in two instalments since their indication to settle the dispute out of court. Copies of the Diamond Bank draft dated 25/5/2018 and 13/9/2018 are annexed and marked as Exhibits Vertex 1 & 2.

Furthermore, in the further and better affidavit in support of the Undefended List dated 2/4/19 it is deposed to in paragraph 8 that the Defendants has reduced their liability to N24,000,000.00 (Twenty Four Million Naira) only.

Learned counsel to the Claimant urged the court to enter judgment in the sum of N24,000,000.00 being the outstanding balance admitted by Defendants jointly and severally.

From the proof of service before the court, the 1st Defendant was duly served with the writ of summons and hearing notice on the 18/5/2018; while the 2nd Defendant was served with the writ of summons on the 4/7/18.

When the matter came up for hearing on the 27/5/2019, the Claimant was represented by their counsel M.J. Numa while the Defendants were also represented by their counsel S.L. Gule. The Defendant did not file any Notice of Intention to Defend the suit together with an affidavit disclosing a defence on the merit; rather learned counsel to the Defendants submit that he has nothing to say.

By virtue of the provision of Order 35 Rule 4 of the Rules of this Honourable Court 2018, where the Defendant is served with a writ of summons and an affidavit in support under the undefended list procedure and failed to file a notice of his/her Intention to Defend

the suit within 5 days to the date fixed for hearing of the matter, the Plaintiff is entitled to judgment. See OBI v AKUBUEZE & ORS (2017) LPELR – 42750 CA.

It is settled law that on the date fixed for hearing of claim under the Undefended List Procedure, the only business of the trial court is to see whether the Defendant has filed a Notice of Intention to Defend with an affidavit showing a defence on the merit.

The Defendant not having filed a Notice of Intention to Defend together with an affidavit disclosing a defence on the merit, the averments in the affidavit of the claimant are uncontroverted, unchallenged and uncontradicted.

In the circumstance, I hold the view that the Claimant is entitled to judgment in this matter and judgment is hereby entered for the Claimant against the Defendant jointly and severally under Order 35 Rule 4 of the Rules of this Court 2018 and the cases of OBI v AKUBUEZE & ORS (Supra) and IFEANYI CHUKWU TRADING & INVESTMENT VENTURES LTD & ANOR v ONYESOM COMMUNITY BANK LTD (2015) LPELR 24819 SC.

The order of the court is as follows:

1.The Defendants are ordered to pay to the Claimants the sum of N24,000,000.00 (Twenty Four Million Naira) only being the outstanding balance they are owing the claimant jointly and severally.

(Sgd)
JUSTICE SALISU GARA
(PRESIDING JUDGE)
28/05/2019

Claimant's Counsel – We thank the court for the decision.

Defendant's Counsel – We also thank the court for the ruling.

(Sgd)
JUSTICE SALISU GARA
(PRESIDING JUDGE)
28/05/2019