

**IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL
TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI HIGH COURT
BEFORE HIS LORDSHIP HON. JUSTICE A.A.I. BANJOKO-JUDGE
DELIVERED ON THE 6TH OF MAY 2019**

SUIT NO: FCT/HC/CV/0769/18

BETWEEN

**1. GABRIEL JANET IHIE
2. GLADYS IHIE
3. ELIAGWU GRACE
4. ONYENEKWE CHIKODI ROBERTS
AND**



CLAIMANTS

**VISCOUNT MULTIPURPOSE
COOPERATIVE SOCIETY LIMITED.....DEFENDANT**

- **CHUKWUDI MADUKA ESQ. WITH RICHARD ADEYEMO ESQ. AND QUEEN UCHECHUKWU FOR THE CLAIMANTS**
- **IFEANYI OKEREKE ESQ. FOR THE DEFENDANT**

JUDGMENT

By way of Writ of Summons dated the 29th of January 2018 but filed on the 30th of January 2018 brought under the Un defended Cause List Procedure, the Claimants sought the following Claims, namely: -

- 1. The Sum of N6, 700, 000.00 (Six Million, Seven Hundred Thousand Naira) being a total of the debt owed to the Claimants by the Defendant, which sum the Defendant have since refused and/or neglected to repay to the Claimants.**
- 2. Interest at the rate of 5% monthly on the sum owed to the Claimants respectively from the date of maturity of**

their investment with the Defendant till Judgment is delivered and thereafter till the Judgment debt owed is fully paid.

The Writ was supported by a Seven Paragraph Affidavit deposed to by Mr. Tsebo Emmanuel a Litigation Clerk in the office of Chief Chris Uche SAN, who attached Annexures marked **Exhibits A, A1, A2, A3, B, B, B2, B3, C and C1**. Also accompanying the Writ was a Written Address of Counsel and other accompanying processes.

Upon service of the Writ on the Defendant on the 24th of May 2018, the Defendant filed a Notice of Intention to Defend dated 12th of June 2018 but filed on the 13th of June 2018, which was supported by a Twenty-Five Paragraph Affidavit deposed to by General Manager of the Defendant, Mr. Tersoo Osbert Uhon, who attached as Annexures **Exhibits A, VMC A, A1, VWC A1, A2, VMC A2, A3, VMC A3 and VMC A4**.

The Written Addresses of Counsel in relation to the foregoing Court Processes are all on Record.

Before the Hearing of this Claimant's Application, the Defendant was granted Leave to File out time a Preliminary Objection and a Written Address dated 19th of June 2018, and the Claimants in response, filed a Reply on Points of Law dated 10th of October 2018 but filed on the 12th of October 2018, and all Arguments and Submissions of Counsel across the board are Record.

For the purposes of this Judgment, it is imperative to first consider the merits of the Preliminary Objection before dovetailing into the Substantive Suit as presented by Parties.

On the one hand, Learned Counsel representing the Defendant had contended that the Claimants being members of the Defendants ought to have referred their dispute to the Director of Cooperative Societies of the Federal Capital Territory for Arbitration pursuant to **Section 49 of the Nigerian Cooperative Societies Act**.

Therefore, the Defendant urged the Court to strike out the Suit or in the alternative refer the matter to the Director of Cooperative Societies for Arbitration.

On the other hand, Learned Counsel representing the Claimants contended that the Defendant having taken steps in this Proceeding, the referral to Arbitration has been foreclosed, as the proper channel would have been an application to Stay this Proceeding. He placed reliance on Section 5(1) of the Arbitration and Conciliation Act LFN 1990 and the cases of **ONWARD ENTERPRISES LIMITED VS MV MATRIX& ORS (2008) LPELR-4789 (CA); KANO STATE URBAN DEVELOPMENT BOARD VS FANZ CONSTRUCTION CO. LTD (1986) PART 39 PAGE 47 AT PAGE 86.**

Now, the Court notes that from the Annexures furnished by both Parties, it is noted that there is no Contract Document evidencing an Arbitration Clause entered into between the Defendant and each of the Claimants. Rather, what is before the Court is the Defendant's reliance on the provisions of **Section 49 of the Nigerian Cooperative Societies Act**, to ground its argument that the Claimants as a matter of condition precedent needed to tow the path of Arbitration rather than commencing their Action before this Court.

Section 49 as relied by the Defendant states thus : -

(1) If a dispute touching the business of a registered society arises—

(a) ...; or

(b) between a present, past or deceased member and the society, its committee or any officer, agent or servant of the society; or

(c) ...; or

(d) ..., the dispute shall be referred to the Director for settlement.

(2) A claim by a registered society for any debt or demand due to it from a member..., shall be deemed to be a dispute touching the business of the society within the meaning of subsection (1) of this section.

(3) The Director shall on receipt of a reference under subsection (1) of this section—

(a) settle the dispute; or

(b) subject to the provisions of any regulations made under this Act refer it to an arbitrator appointed in accordance with regulations made under this Act for disposal.

(4) A decision made by an arbitrator under paragraph (b) of subsection (3) of this section shall, except as otherwise provided in subsection (6) of this section be final.

(5) The decision shall, on the application of the party in whose favour it is made, be enforced by any court which has jurisdiction in a civil suit between the parties to the dispute to give a judgment for the payment of the amount awarded or, where the decision does not relate to the payment of money, to give a similar decision in the same manner as if the decision has been a judgment or decision of the court.

A community reading of the above Subsections of Section 49 defines a debt or a due demand as a dispute when made by members against their Cooperative Society. Subsection (3) then creates two paths through which such a dispute could be resolved either through outright settlement by the Director of the Cooperative Societies of the Federal Capital Territory, or the Director referring the dispute to an Arbitrator, whose decision is final subject to Appeal to the Minister of the Federal Capital Territory.

By the above Statutory Provision, the Defendant had neither the power nor the prerogative to dictate to the Director of Cooperative Societies, which of the two paths he needed to deploy for the purposes of resolving the disputes between Defendant and

the Claimants. Therefore, the arguments and counter-arguments on the Question of Arbitration go to no issue because Section 49 demonstrates that Arbitration was only an Option but not a Hard Rule.

The Preliminary Step expected of the Defendant upon being served with the Claimants' Writ of Summons and other accompanying Court Processes, was to refer that dispute to the Director of Cooperative Societies as set in **Section 49(3) of the Act**. Thereafter, prior to the date fixed for Hearing, the Defendant would have filed and served on the Claimants their Application for Stay of Proceedings premised on the Ground that the dispute, cause or matter, had been referred to the Director of Cooperative Societies for his decision to settle or refer the dispute to an Arbitrator.

However, this, the Defendant failed to do.

Rather, the Defendant went ahead to join issues with the Claimants when they filed their Application for Leave to File out of time their Preliminary Objection as well as also filed their Notice of Intention to Defend, approximately Three (3) Weeks as demonstrated in the Proof of Service. These Court Processes filed by the Defendant are proofs of taking of steps in the proceedings, which disentitles or robs them of the absolute benefit or right of the provision enshrined **Section 49 of the Nigerian Cooperative Societies Act**.

The Court therefore finds that the Preliminary Objection was rather pre-emptive seeking to overreach the powers of the Director of Cooperative Societies. Further, the Defendant had taken steps in this Proceeding, which further denies them of a right to Section 49. These are justifiable reasons to refuse reference to arbitration, which now paves the way for this Court to be seised of jurisdiction to determine the Substantive Suit.

The Court finds this Preliminary Objection unfounded and unmeritorious and same is accordingly dismissed.

Now, turning to the Substantive Claims before the Court, the Defendant through its Chief Executive Officer, Mr. Amieghomwan O.O., issued to each Claimant an Offer Letter for Investment of Funds, which Offer was deemed accepted upon collection of its Original Copy. It is clear that from the Annexures furnished by both the Claimants and Defendant and the subsequent acts that flowed therefrom, a subsisting agreement existed between both Parties.

Exhibits A, A1, A2 and A3, represents Terms and Conditions of the accepted Offer made to each Claimant and it is important to set out the Investment(s) each Claimant made to the Defendant.

In **Exhibit A**, the 1st Claimant's initial investment was N1, 000, 000 on the 10th of October 2016 and her second investment was in the Sum of N2, 000, 000 on the 27th of December 2006 now totalling the Sum of N3, 000, 000, as set out in Affidavit supporting the Writ.

In **Exhibit A1** the 2nd Claimant, her initial investment was the Sum of N700, 000 on the 15th of April 2016, then the Sum of N800, 000 on the 15th of August 2016 and finally, the Sum of N1, 000, 000, now totalling the Sum of N2.5Million as set out in the Supporting Affidavit.

In **Exhibit A2**, the 3rd Claimant made a sole investment in the Sum of N900, 000 on the 16th of February 2017, which was also set out in the Supporting Affidavit.

Finally, in **Exhibit A3**, the 4th Claimant also made a sole investment in the Sum of N300, 000 on the 23rd of June 2016 as set out in the Supporting Affidavit.

The Defendant did not deny these foregoing Investments as set out above.

Further, the common denominator that runs through these above accepted Offer shows that the investments would be deposited into the Defendant's Fixed Deposit Account at the **Monthly** Interest Rate of 5%, which begins to accrue from the Date of Deposit and to terminate on the Date of Maturity.

The Offer then provides a Caveat, which reads thus: -
“Notice of 30days shall be given to the Cooperative for any liquidation or rollover prior to the details captured above; Viscount Cooperative reserves the right to reduce or increase interest rates due to prevailing market exigencies.”

From the Claimants unchallenged averments, upon maturation of their Fixed Deposit, they demanded and the Defendant issued Cheques covering only the Principal Sums initially invested, which upon presenting of them to the Bank, returned unpaid. After repeated demands, both the Principal and the Interests remained unpaid. They then engaged the services of a Solicitor, who wrote to the Defendant a Letter of Demand on the 28th of September 2017 and a Final Demand Letter dated the 13th of October 2017, wherein they ventilated their intention to liquidate their investments but still, there was no positive response from the Defendant.

The Defendant in response, furnished Annexures marked **Exhibits A, VMC A, A1, VWC A1, A2, VMC A2, A3, VMC A3 and VMC A4**, evidenced payments into the respective Bank Account of the Claimants. The Court finds that in the absence of any Further and Better of Affidavit countering or denying these payments, each Claimant received payment, which is different from what was initially averred in their Supporting Affidavit.

Since the Claimants had demanded liquidation of their investments through their Solicitor, the Defendant has sufficient Notice of that liquidation. In fact, the Defendant had waived her right to the agreed 30 Days Notice for Liquidation when it

liquidated the investment of the 3rd Claimant as seen in **Exhibit VMC A3**. This act of liquidating the investment of the 3rd Claimant, invariably waived the requirement of that 30Day Notice in favour of the 1st, 2nd and 4th Claimants' investment as the Demand Letter for liquidation through their Solicitors in **Exhibits C and C1** were made jointly and not severally.

Now, as regards the 1st Claimant's Claim, she had a total investment of N3, 000, 000 and so far, the Defendant had only paid the Sum of N1, 780, 000, which represents a partial payment of the Principal Sum as seen in **Exhibit VMC A**. The difference between these two sums clearly shows that the Defendant was still owing the 1st Claimant up and including the date when the Action was commenced on the 30th of January 2018. Further, there is no documentary evidence showing that the 5% monthly interest rate that had accrued before, during and after the maturity period had been paid by the Defendant, which rate was the incentive for the investment in the first place.

The foregoing analysis also applies to the 2nd and 4th Claimants who were still owed outstanding balances on the Principal Sums initially invested in the Defendant and are also owed the 5% Monthly Interests before, during and after the maturity period of their investment.

Without further ado, the Defendant is ordered to pay the remaining outstanding balance of the Principal Sum standing to the credit of the 1st, 2nd and 4th Claimants and to further pay the monthly interest of 5% from the date of deposit to the date of maturity and then till date of this Judgment and thereafter, until the Judgment Debt is liquidated by the Defendant.

The Court finds that the Principal Sum claimed by the 3rd Claimant has been fully liquidated. In the absence of any contrary evidence by way of Reply Affidavit from the 3rd Claimant, the 3rd Claimant is held to be entitled to the interests calculated at 5% in

like fashion, as the 1st, 2nd and 4th Claimants, if this interests was not incorporated in the liquidation.

Judgment is entered for the Claimants.

JUSTICE A.A.I. BANJOKO
JUDGE