

IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT HIGH COURT MAITAMA –ABUJA

BEFORE: HIS LORDSHIP HON. S.U. BATURE

COURT CLERKS: JAMILA OMEKE & ORS
COURT NUMBER: HIGH COURT NO. 34
CASE NUMBER: SUIT NO. FCT/HC/CV/2207/18
DATE: 10TH OCTOBER, 2019

BETWEEN:

ACCESS BANK PLC.....CLAIMANT

AND

TORSIA INDUSTRIES LTD & 1 OR.....DEFENDANT

APPEARANCE

Affam Osigwu Esq with Ijeoma Nwobu Esq for the Claimant.

JUDGMENT

The claimant filed this suit on 28th day of June 2018 under the undefended list claiming against the defendants jointly and severally as follows:-

- (1) The Sum of #44,716,050.15 (forty four million fifty Naira, fifteen kobo) only, being the outstanding indebtedness of the term loan as at 31st May 2018, owing the claimant by the Defendant.

- (2) Interest on the above Sum calculated at the rate of 29.5% from October 22, 2016 and thereafter at the rate of 10% from the date of judgment until final liquidation of the judgment sum.

The writ which was issued by Mazi Afam Osigwe Esq, solicitor to the claimant, is also supported by an affidavit of 38 paragraphs deposed to by one Evelyn Idanwojo, a banker in the employ of the claimant in this suit. Attached to the affidavit are some annexures marked as Exhibits A1-A8 respectively.

The matter was stated for hearing on 29th /4/19. Records of the court show proof of service of hearing notice on both the 1st and 2nd defendants dated 15 day of April, 2019 and 16th day of May 2019 respectively signed by one Victor Ukwuto.

When this matter came up for hearing for the very first time on the 18th day of April 2019 the defendants were not represented in court. The court decided to give them benefit of the doubt and adjourned the matter to 21/5/2019 for hearing.

Again on the 21/5/2019 when this matter came up for hearing for the 2nd time, the 1st and 2nd defendants were yet again not present nor represented.

Based on that, Ijeoma Nwosu Esq, learned claimant's counsel drew the attention of the court to the fact that this suit was filed on the 28th day of June and urged the court to enter Judgment for the claimant relying on the provisions of order 35 Rule 4 of the High Court of the Federal Capital Territory (civil procedure rules) 2018.

This court having been satisfied that the defendants had been duly served, had not filed any process nor sent any correspondence explaining their absence in court, decided to adjourn the matter to 19/6/19 for judgment in line with the provision of order 35 rule 4 of the Rules of this court.

The court did not sit on this matter again till on 31/9/19, when it resumed from vacation.

On that date, this Court drew the attention of claimant's counsel to a motion on notice filed and served on the court seeking for extension of time to

file notice of intention to defend and other Reliefs incidental thereto brought pursuant to order 43 Rules 1 (2) & (2) and order 49 Rule 4 of the Rules of this Honourable Court.

The Application with motion No. M/5640/19 is dated 29th day of April 2019 and filed same day one E.V. Chinedun Esq, counsel to the defendants.

It was on this basis that this court Reserved judgment to enable counsel who filed the said motion on notice to move the Application.

However, on that date i.e 31st /09/2019, counsel who filed the Application was not in court and there was no correspondence as to his absence in court.

It is on this premise that learned claimant's counsel Afam Osigwe Esq applied for judgment to be entered for the claimant for a second time in this suit. And even informed the court that they were not served with the motion papers. Learned claimant's counsel highlighted the history of this suit and submitted among other things that thus far, the defendants have not shown any seriousness in defending this suit as counsel who had filed the motion on notice was not in court.

He urged the court-to strike out the motion and to proceed to enter judgment for the claimant.

This court carefully considered the application and accordingly struck-out motion with No. M/5640/19 and adjourned the matter to 10/10/2019 for judgment.

First of all, let me begin by stating that the undefended list procedure is governed by the provision of order 35 of the High Court of the Federal Capital Territory (civil procedure) Rules 2018.

Order 35 Rule 3 (1) provides thus:-

“ where a party served with the writ deliver to the register, before 5 days to the day fixed for hearing, a notice in writing that he intends to defend the suit, together with an affidavit disclosing defence on the merit, the

court may give him leave to defend upon such terms as the court may think just."

Order 35 Rule 4 provides thus:-

" where a defendant neglects to deliver the notice of defence and an affidavit prescribed by rule 3 (1) or is not given leave to defend by the Court, the suit be heard as an undefended suit and judgment given accordingly."

(underlining mine for emphasis).

It is trite Law that the purpose of bringing matters under the undefended list procedure is to avail a claimant swift Justice in respect of a debt or liquidated Sum by allowing a court to give judgment without the need of going into full trial and without calling witnesses in order to save judicial time and expense. Please see order 35 rules 1 and 2 of the rules of this court and the ease of OKAFOR V PDP (2014) LPELR 23037(CA)

Where the court held:-

".....It is therefore clearly the law and not disputed that by the provisions of order 21 rules 1-5 of the Federal Capital Territory (civil procedure) Rules 2004, a plaintiff such as the Applicant, in a claim to recover liquidated demand can file a suit along with an affidavit stating that in his believe the defendant has no defence to the action where the defendant in such a situation fails or neglects to file a notice of intention to defend the suit along with an affidavit stating a defence to the claim upon being served with the writ five days before the return date, the trail court can hear the suit as undefended."

Similarly, it was held in the case of ONOEYO V VBN PLC (2014)LPELR-24242 thus:-

" The essence of suits on the undefended list is for quick dispensation of justice to the parties. Therefore, upon service of a writ of Summons in respect of a suit on the undefended suit on the defendant, the latter must decline or file a notice of intention to defend and together with the said

notice, he sign a defence on the merit and where the defendant fails to do so or act, then judgment may be entered against him as per the writ of Summons without necessarily calling on the plaintiff to formally prove his claim by calling witnesses to testify.”

In this suit, although the defendant had filed a notice of intention to defend together with an affidavit disclosing a defence on the merit as required by the rules of this court, they did not show seriousness in defending this suit, hence the reason for striking out the motion for extension of time and other reliefs incidental therefore, as earlier explained in this judgment.

Therefore, in the circumstances the question to ask here is whether the plaintiff is entitled to judgment on the strength of his absence to be entitled to the reliefs sought as per the writ of Summons?

And affidavit in support of the writ of Summons, the claimant has attached the following exhibits namely:-

- (1) A letter addressed to the Bank manager of Access Bank plc dated 15/09/2015 signed by one Victor Okwule for Torsia Industries Ltd, marked as exhibit A1.
- (2) A letter of offer for a credit facility by Access Bank dated October 12. 2015 marked as exhibits A2.
- (3) Board Resolution of TORSIA INDUSTRIES LIMITED Dated 18th of October 2015 signed by one Victor Okwule, marked as exhibit A3.
- (4) A personal guarantee form Between Torsia Industries Ltd (herein called ‘the Principal’) and Mr. Victor Okwule (herein called the Guarantor) marked as exhibits A4.
- (5) A letter from Access Bank addressed to the managing Director, Torsia Industries limited titled “INDEBTEDNESS OF TORSIA INDUSTRIES LIMITED TO ACCESS BANK PLC: CALL IN/DEMAND FOR PAYMENT dated February 15 2018 marked as exhibit A5

- (6) A letter from access Bank Addressed to Mr Victor Okwule Torsia Industries limited titled " INDEBTEDNESS OF TORSIA INDUSTRIES LIMITED TO ACCESS BANK PLC: CALL-IN /DEMAND FOR PAYMENT dated February 15, 2019.
- (7) A statement of account Torsia Industries limited bearing logo of Access Bank marked as exhibit A7.
- (8) A certificate of identification bearing Access Bank logo of Access Bank logo marked as exhibit A8.

I have carefully considered the claims as per the writ of Summons, the affidavit in support as well as the exhibits attached therein. From the averments contained in the claimant's supporting affidavit particularly paragraph 6 thereof, it is clear that the 1st Defendant is a customer of the claimant and maintains Account No.0065360596 with its branch office in medife House, plot 2135, Herbert Macauley way, Wuse Zone 5 Abuja.

The claimant orders in the following paragraphs of the affidavit thus:-

"7. By a letter dated September 15,2015, 1st defendant applied to the PP PRA, Branch of claimant situate at central Area, Abuja for the renewal of its existing revolving credit (overdraft) facility from the claimant to enable it to finance purchase of products from flour mills plc, Honey well mills plc and Dangote Flour plc. A copy of the letter is hereby attached hereto and marked exhibit A1.

8: By an offer letter dated October 12, 2015, the claimant offered Term loan of #30,000.00 (Thirty million Naira) only to the 1st Defendant for a Tenure of 12 (twelve)months. A copy of the offer letter is hereby attached hereto and marked exhibit A2.

9:By a Board Resolution at a meeting of Board of Directors of the 1st Defendant, held on 18th October 2015, the 1st Defendant accepted the offer of the Renewal of overdraft facility loan of #30,000,000.00(thirty million Naira) only from claimant. A copy of the Board Resolution is hereby attached hereto and marked exhibit A3.

15: 2nd Defendant Victor Okwule guaranteed the repayment of the loan granted the 1st Defendant as primary obligator by excuting a Deed of personal Guarantee in favour of Access Bank plc. A copy of the personal Guarantee is attached hereto and marked as exhibit A4.

17: The 1st Defendant duly drew down on and utilized the credit (overdraft) facility.

18: 1st Defendant has failed to service the interest monthly instalment and the loan has among other grounds be come due and payable as a result of defendant by the 1st defendant in the payment of the outstanding.

21: The default by the 1st Defendant in making the mandatory repayments automatically rendered the entire loan immediately payable.

Now, from the contents of exhibit A5 and A6, it is clear that the claimant wrote to both the 1st and 2nd defendants in this suit Demanding for liquidation of the 1st defendant indebtedness to the claimant to the tune of #41,604,282.00(forty one million, six hundred and four thousand, two hundred and eighty two Naira, fifty Kobo). And also for the 2nd Defendant to honour his obligations to claimant in pursuance of his personal guarantee.

The claimant states in paragraph 31 of its affidavit thus:-

“ The defendants are owing claimant the Sum of #44,716,050.15(forty four million, seven hundred and sixteen thousand, fifty Naira, fifteen Kobo) only being the overdraft facility as at 31st of May 2018. A copy of the entries in 1st Defendant’s Account No. 0065360596 is attached hereto and marked as exhibits A7 while the certificate issued pursuant to section 84 of the evidence Act is marked as exhibit A8.”

In paragraphs 33 and 36 it is avered that the defendants have failed, refused and or neglecter to liquidated the said indebtedness due and owing to the claimant and that the defendants have no defense to this suit.

Unfoundingly, in this suit, the defendants clearly failed and or neglected to avail themselves of the opportunity to be heard. They abandoned their motion for extension of time to file notice of intention to defend together with an affidavit disclosing a defence on the merit. In such situations therefore, the court would have no option than to proceed to judgment.

On this I refer to the case of J.O.E CO.ltd V SKYE BANK PLC (2006)6 NWLR (PT1138)518 where the court held that:-

“.....The law is designed to give opportunity to parties to be heard. It is left to them to decide either to utilize the opportunity or not. When a party decides not to utilize the opportunity, he cannot turn round later to blame the court or any other person for his failure. It must also be born in mind that the principles of fair hearing do not apply only to the defendant only, but also the plaintiff who has initiated action for Judicial relief.....”

Therefore, from the circumstances of this case particularly the evidence put forth by the claimant in proof of its claims. I have no hesitation in granting the reliefs sought as the plaintiff has proved its case on the balance of probabilities.

The claimant has also claimed interest which is awarded in paragraph 10 of the affidavit to be 17.5000 (seventeen point five percent) per annum, but shall be subject to review from time to time in line with the prevailing market conditions. In the writ of Summons, the claimant claims interest calculated at the rate of 29.5% from October 22,2016 and thereafter at the rate of 10% from the date of judgment until final liquidation of the judgment sum.

Finally, having already held that the claimant is entitled to the reliefs sought, judgment is hereby entered for the claimant against the defendant jointly and severally as per the claims on the writ of Summons.

Signed

HON. JUSTICE SAMIRAH UMAR BATURE

10TH October, 2019

Claimant's counsel: my lord are most obliged.