

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT KUBWA, ABUJA

ON THE 6TH DAY OF MARCH, 2020

BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA

JUDGE

SUIT NO.

FCT/HC/CV/3097/19

BETWEEN:

CHIEF JOHNBULL EJOVI

CLAIMANT

AND

MR. JATTO OJO FRANKLYN

DEFENDANT

JUDGMENT

In the Writ of Summons dated and filed on 3/10/19, the Plaintiff seeks the following Reliefs:

- (1) Judgment of this Honorable Court directing the Defendant to forthwith pay to Claimant, the liquidated Sum of ~~₦~~9,000,000 (Nine Million Naira) being an outstanding balance of ~~₦~~12,000,000 (Twelve Million Naira) which the Defendant collected from claimant as part-payment for the purchase and delivery of VXL Toyota Land Cruiser SUV to the Claimant which Defendant neither purchased nor delivered.
- (2) 10% interest on the Judgment sum on monthly basis from the date of judgment till full and final liquidation of the entire Judgment sum.

He supported it with an Affidavit of 4 paragraph deposed to by Blessing Afolabi. He attached 12 documents in support of his Claims.

Since the Claim is on liquidated money demand/debt, the process was marked Undefended before it was served on the Defendant. Again since personal service was impossible the court granted an Order for substituted service of the document on the Defendant. To the Plaintiff's belief the Defendant has no prima facie defence to the Claim. After service of the process on the Defendant, there was no response. The Plaintiff Counsel approached Court to enter judgment summarily on his behalf and in his favor.

Since there was no response from the Defendant the Court allowed the Plaintiff Counsel to move the said application and reserve the case for Judgment.

It is the case of the Plaintiff that sometime in February 2019 one James Omeru introduced the Defendant to plaintiff as a gold watch Seller with office at Plot 903 Nicon Luxury Tafawa Balewa way Area 11 Abuja FCT. That subsequently the Defendant informed the plaintiff that a member of the National assembly is in dire need to sell his SUV-VXL Toyota Land Cruiser (herein after called the Res) for a price of ₦22,000,000 Million. That the parties agreed that an initial deposit of ₦12, 000,000 Million will be paid before the Res is delivered at the Warri Residence of the Plaintiff. After which the remaining balance of ₦10, 000,000 Million will be paid upon delivery of the vehicle. The Plaintiff remitted to the Defendant ₦2,000,000 Million from the Ejovi Dredging & marine service Ltd Account, ₦5,000,000 Million from his personal Account and another ₦5,000,000 Million from the plaintiff's daughter's (Richeal Ejovi) Account at UBA Account No.1016938574. He attached the pictures of the vehicle (Res)

and evidence of the payment of the ₦12, 000,000 Million as Exhibit 1-4 and Exhibit 5-7 respectively. Defendant confirmed receipt of the ₦12, 000,000 Million.

He stated that that the parties also agreed that the Defendant should register the vehicle at Abuja before bringing it down to Warri. But unannounced the Defendant Claimed that he was bringing the vehicle without the registration as agreed and was attacked by armed robbers at Abaji-Lokoja road and that the Res was snatched at gun-point. The Plaintiff asked for the refund and Defendant pleaded for a week of grace within which to refund the money.

Instead of refunding the money the Defendant forwarded to Plaintiff the “proposed lease of his property at Gwagwalada the Plaintiff attached the document as Exhibit 8”

After the Defendant failed to refund the money, it was obvious to the Plaintiff that the Defendant had obtained money by false pretence. The Plaintiff contacted and instructed his lawyer to lodge formal criminal complaint against the Defendant. Based on that the counsel wrote a petition to the Area commander Nigeria police Force. The Petition is attached as Exhibit 9.

At the station the Defendant was requested to present a police report about the armed robbery incident. He confessed that he did not buy any vehicle for the Plaintiff and that all he told the Plaintiff in that regard was fabricated. He then pleaded with the Plaintiff to allow him time, the last opportunity to refund the money. He promised to refund the money in 2 installments – ₦5, 000,000 million in May 2019 and ₦6, 000,000 million in June 2019. He issued 2 cheque of his Company in favor of the Plaintiff the 2 cheques dated 15/5/19 and 15/6/19 respectively. The Plaintiff annexed these Cheques as Exhibit 10 & 11 respectively.

The Cheques upon presentation were dud. When he was notified about the dud cheques the Defendant paid ~~N~~2, 000,000 Million to the Plaintiff leaving a balance of ~~N~~9, 000,000 Million which is the sum claimed in this Suit. The Plaintiff instructed his lawyer to write a letter of Demand to Defendant. He attached the copy as Exhibit 12. The Defendant collected the letter of Demand but failed to acknowledge receipt. The Plaintiff made several Oral demands and solicitation for defendant to pay/refund the money. He refused, declined and neglected to liquidate the money hence filing of this suit. The plaintiff alleged that the Defendant had boasted that he has contacts and high connections which he will use to perpetually circumvent the payment of this money. To the Plaintiff the Defendant has no prima facie defence to this Claim and that the grant of the relief to enter Judgment in his favor will make for the justice of the case as the Defendant will not in any way be prejudiced.

The Defendant was served by the Order of Court for substituted service made by Plaintiff when all attempts to effect service personally on him failed.

The Defendant did not file any response to the Claim. He did not also enter appearance in flesh and blood or engaged a Counsel to represent him.

It is based on that the Court allowed the Plaintiff to move his application for summary Judgment on the 25/2/10. It is the law and also trite that once the Claim of a plaintiff is liquidated money demand, debt or money had and obtained that the Court upon application marks the Writ as Undefended before it is served on the Defendant. Again once such Defendant is served, he has within 5 days to enter appearance and file a notice of intention to defend the Suit, supported by Affidavit of facts showing that he has a prima facie defence to the suit of the

Plaintiff and urging the Court to transfer the suit to the general cause list so that parties can exchange pleading and call evidence for and against the claim.

Once the Plaintiff is served with such notice to defend and Affidavit he will file Counter Affidavit to Challenge the notice to defend were necessary. The Court upon due and in-depth consideration can transfer the Writ to general cause list where the notice to defend is meritorious, otherwise it will retain the Suit as undefended list and enter judgment in favor of the plaintiff and their the matter ends. It is imperative to point out that the Court can suo motu transfer the case to the general cause list or even retain it under undefended list and enter Judgment accordingly.

The whole essence of undefended list is to save parties from the tedious rigours of full hearing associated with litigation. See the case of:

Osita Vs Nanka Micro Finance Bank Ltd
(2018) ALL FWLR (PT.946) 1083

Once a matter is brought under undefended list the court is required to consider only the evidence contained in the Affidavit filed by the Defendant in support of the Notice of Intention to Defend. Where Court concluded that the Affidavit does not disclose any defence on merit, the Court will proceed with the hearing of the Suit as undefended suit and enter judgment accordingly without calling on the Defendant even if present in court to answer or to be heard. Where there are enough documentary evidence by which the conflict can be resolved calling of evidence becomes unnecessary. It is so where the affidavit in support of notice to defend did not disclose triable issues.

To succeed a Plaintiff must ensure that he had disclosed on the face of his claim that he had satisfied Court that there is no defence to the action for the recovery of the debt or liquidated money demand. The Plaintiff must show through his Affidavit and documents in support that his case is patently clear and unassailable. Undefended list procedure is not meant to shut out the Defendant who can show that there is triable in the suit. This is the decision of the Court in the case of:

Amede Vs UBA Plc (2018) ALL FWLR (PT1607)@1571-1573

See also the case of:

Nkwo Community Bank Vs. Obi
(2010) ALL FWLR (PT.529) 1094

SBN Plc Vs Kyenta
(1998) 2 NWLR (PT.534) 41.

It is the law and it is also trite and has been held in plethora of cases that where a Defendant is served with a Writ marked Undefended and failed to enter appearance and file notice of Intention to defend supported by Affidavit of facts it is held that the said Defendant has no prima facie defence to the claim of the Plaintiff. In that case the case of the Plaintiff is Unchallenged. The Court will in that situation ask the Plaintiff to move his application in the absence of the Notice to defend even if the defendant is in Court. That is the decision of the Supreme Court in the case of:

Osita Vs Namka Microfinance Ltd Supra at Page 1082 para3

The Court will go ahead to enter Judgment in favor of the Plaintiff without delay. That's the decision of the Court in the case of :

Osita Vs Namka Microfinance Ltd Supra at Page 1082 para3

In this case the Plaintiff ensured that the Defendant was served with the Writ more than the required number of days as statutorily provided. The Defendant did not enter appearance or file any memo or Intension to defend the suit/claim of the Plaintiff. He did not also file the notice of Intention to defend the claim of the Plaintiff. So, on that ground alone the Claim of the Plaintiff is unchallenged to that extent: unchallenged facts are deemed admitted; so this Court hold.

A closer look at the 12 documents attached shows that there is a commercial business transaction between the parties in this Suit. That can be deciphered from the claim of the Plaintiff, the intention of the parties, their body language, correspondences between the parties. Of particular importance is the exchange payment and refunds of money and demand for refund see the case of:

Osita Vs nanka Microfinance bank Ltd @ P.1083 para 5 & 6

See also averments in para 3(a)- 3(p) of the Affidavit in support of this Claim.

The Plaintiff also attached the pictures of the vehicle. Marked as Exhibit 1-4.

It is not in doubt that the Plaintiff issued cheques for the purchase of the said vehicle. He also attached voucher marked as Exhibit 5. As well he attached confirmation of fund transfer of N5,000,000 million in favor of the Defendant. That document is attached and marked as Exhibit 6. The transfer was made on 1/3/19 payment via NIBSS into Defendant Account No. 1016938574, Transfer Form NO. 0129615764.

Also he attached evidence of instant payment receipt of Diamond Bank from the Account of Oghenerukevwe Racheal Ejovi Account No. 0093958087 paid to the account of the

Defendant Franklyn Ojo Account UBA Account No. 1016938574 . The amount is ~~N~~5, 000,000 Million.

A closer look at the detailed information on the Petition written on behalf of the plaintiff by T.P. Tochukwu & co further buttressed and laid bare the transaction between the parties in this suit. That document- letter to the Nigeria Police Kubwa, is attached and marked as Exhibit 9. Document marked as exhibit 10 evidenced the ~~N~~5, 000,000 million paid by the Defendant to the Plaintiff in the First city Monumental Bank Ltd Cheque issued on 15/3/19 in favor of the Plaintiff.

By the markings on the cheque it show that there was insufficient funds and that the cheque was dud when it was presented to the bank. So also the cheque from the same FCMB dated 15/6/19 for ~~N~~6, 000,000 million in favor of the Plaintiff made by the Defendant.

The letter of the demand of the payment of the balance of ~~N~~11, 000,000 million written by the Solicitor of the Plaintiff, the same T.P Tochukwu sealed the deal.

It is interesting and very imperative to point out that the Defendant did not challenge all these documents. He did not file any Notice to Defend the claim. And as far as this Court is concern the case/claim of the Plaintiff is unchallenged and facts in the Affidavit in support of this Writ/Application are admitted.

The question before this Court is should this Court enter Judgment in favor of the Plaintiff in that he has, been able through both the facts in the Affidavit and documents (12) attached as Exhibits established his case and that the Defendant has no prima facie defence to the Claim of the Plaintiff particularly so, having not filed any notice to defend after being served with the said Writ marked “Undefended”?

It is my humble view the Plaintiff have established his Claim, showing that there is no prima facie defence to his claim and this Court has no reason not to enter Judgment in his favor. That being the case, this Court hereby enters Judgment in favor of the Plaintiff by ordering the Defendant to refund to the Plaintiff without further delay the ~~N~~9,000,000 million as sought in relief No. 1 in the Writ .

On the issue of interest as contained in prayer No.2 it is important to state that claiming of interest under undefended list procedure bear same principle as in a claim under the general cause list. To be entitled to the claim of interest under undefended list procedure the Plaintiff must show at the time the suit was instituted the sum in issue was a liquidated sum. Once that's the case interest accrued before the suit was instituted qualifies as liquidated sum. So where that is the case and where established the Court will grant the interest claimed. That's the decision of the Court in the following cases:

1. Akpan Vs Akwa Ibom property & investment Corporation
(2013) 6 SCNJ 400 @418
2. Abia State Transport Corporation Vs Quorum Consortium Ltd
(2009) 4 SCNJ 1
3. Osita Vs Namka Micro Finance @ p1081

In this case it is not in doubt that the ~~N~~9, 000,000 million claimed by Plaintiff as the balance of the money-debt owed by the Defendant is in a very liquidated form.

It does not need any mathematical calculation to ascertain the amount in issue in this case. So also there is no doubt that the said amount in issue was liquidated as at the time this matter was instituted. That is in line with the decision of the Supreme Court in the case of:

Osita Vs Nanka Micro Finance bank Ltd (supra) page 1081 para 2

Where it was held that

“Any Plaintiff claiming interest under the undefended list must disclose that the total sum claimed with interest as at the time the suit was instituted was a liquidated sum.

..... the said interest accrued qualify as liquidated sum.”

So where the interest claimed was based on liquidated money demand as at the time of filing the suit, the Court has the right to award and grant same.

In this case the amount is ascertained as at the date 3/10/19 when this action was instituted. So this Court has no reason not to award interest on the liquidated sum.

The Court therefore award interest of 7% per month from the date of this Judgment until the entire sum is fully and finally liquidated.

This is the judgment of this Court.

Delivered today the ----- day of ----- 2020 by me.

K.N.OGBONNAYA
HON.JUDGE

