



**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDING AT MAITAMA
BEFORE HIS LORDSHIP: HON. JUSTICE H. B. YUSUF**



SUIT NO: FCT/HC/CV/780/19

BETWEEN:

MR. AYUWE SAMUEL AWENODE.....CLAIMANT

AND

| | | |
|-------------------------------|---|-----------------|
| 1. THE LIGHT MARITIME LIMITED |) | |
| 2. MR. NWAOTULE A. FRANK |) |DEFENDANTS |
| 3. ENGR. FRANCIS IMOYEH |) | |

JUDGMENT

This suit was filed under the Undefended List Procedure. The reliefs sought against the Defendants jointly and severally are as follows:

- 1. An Order of this Honourable Court mandating the Defendants to pay the liquidated sum of N6,000,000.0 (Six Million Naira) less N1,000,000 (One Million Naira) which is the debt the defendants owe the Claimant.**
- 2. An award of 10% interest of the Judgment sum commencing from the day judgment is delivered till the day the judgment sum is full (paid) up.**

3. And for such other or such further orders this Honourable court may deem fit to grant in the circumstance.

The Claimant deposed to an affidavit of 38-paragraphs in support to which photocopies of certain documents were annexed and marked as exhibits AA1 to AA13.

The 1st and 2nd Defendants filed a joint notice of intention to defend with 26-paragraphs supporting affidavit deposed to by the 2nd Defendant wherein the Court was urged to transfer this suit to the general cause list for hearing and determination.

In a related development the 3rd Defendant filed a separate affidavit in support of notice of intention to defend. He personally deposed to the 10-paragraph affidavit on 18th March, 2019 and urged the Court to strike out his name as he is not a necessary party to this action.

The facts of this case are that sometimes in 2015 the Defendants approached the Claimant for a facility of N5 Million. The Claimant upon full assurance by the Defendants that the money would be repaid as at when due was able to raise the said sum with the support of some of his friends who lent him the sum of N2 Million. Parties agreed that the Defendants will pay additional N1 Million to compensate the Claimant for sundry inconveniences. Letters of undertaking to repay the N6 Million agreed upon by parties were issued in favour of the Claimant. The Claimant accordingly disbursed the agreed sum of N5 Million, but the Defendants have failed to discharge their own side of the bargain. Although cheques for the said sum of N6 Million were issued to the

Claimant by the 1st Defendant, but they were returned unpaid. After series of demand the sum of N1 Million was eventually paid to the Claimant leaving an outstanding balance of N5 Million.

I have read the affidavit in support of notice of intention to defend filed on behalf of the respective Defendants and as a take off point I agree with the 3rd Defendant that he was wrongly joined as a party in this suit. The 3rd Defendant has demonstrated on the face of his affidavit that the only role he played was to introduce the Claimant to the 1st and 2nd Defendants and nothing more. He was neither a party to the disputed agreement nor did he execute any undertaking on behalf of the 1st and 2nd Defendant. This position has not been disputed by the Plaintiff. The 3rd Defendant cannot incur liability under the contract nor derive benefit therefrom. Not being privy to the contract in dispute there is no justification for joining him as a party to this action. His name is accordingly struck out of the record.

This now leaves the Court with the 1st and 2nd Defendants.

Now the defence of the Defendants is clear to me and it is to the effect that they did not borrow the disputed sum from the Claimant. That Claimant invested the sum in dispute into the 1st Defendant's business with the sole aim of recouping his investment with accrued interest upon maturity. That the Claimant's fund along with that of seventeen other investors was invested in a housing project and that they are yet to receive payments for the said contract. It was also the defence of the

Defendants that there is a pending matter in Court for the recovery of contract sums on account of a third party housing contract executed by the said defendants. That other investors in the 1st Defendant's business were joined as parties in that suit but the Claimant herein opted to file the instant action instead of joining the referenced suit as an interested party.

I have considered the foregoing defence of the Defendants and I must say that the defence is untenable for obvious reasons. There is nothing to support the Defendants' story that the Claimant invested the disputed funds with the understanding that he would recover his fund upon the successful execution and receipt of payment for the Defendants' housing contract. Furthermore, if indeed the Plaintiff contributed the sum of N5 million which is claimed in the form of investment and was meant to be repaid after the maturity of the investment to which the Defendant put his money how were they able to refund N1,000,000 to him when according to them the investment has failed. As a matter of fact the Defendants did not put forward any document to support the contention that the disputed fund was invested by the Plaintiff in the 1st Defendant's business and that repayment of same is subject to the payment of the housing contract allegedly executed by the 1st Defendant. To my mind this line of defence is strange and obviously meant to mislead the Court and in consequence defeat the justice of this case.

On the other hand the documents put forward by the Claimant are unassailable. Exhibit AA2 is a letter issued by the Defendants dated 29/1/2015 and addressed to the Claimant. The exhibit is titled “Letter of Undertaking” and it reads as follows:

“We the above subject company with full legal responsibility undertake to redeem the subject check No.HC12956673 for the amount N6,000,000.00 (Six Million Naira Only) in favour of Ayuwe Samuel Awenode on or before 27th of February 2015. This cheque is given without prejudice.

Yours Faithfully,

SIGNED

Nwaotule Frank

MD”

The 1st Defendant also issued a First Bank Plc cheque dated 27th February, 2015 in favour of the Claimant in the sum of N6,000,000.00 (Six Million Naira Only) to back up the above letter. See Exhibit AA5. When the cheque was returned unpaid the Defendants made another undertaking similar to exhibit AA2. This latter undertaking marked as exhibit AA7 is reproduced below:

“We the above subject company with full legal responsibility undertake to redeem the subject checksNo.HC12956700 for the amount N6,000,000.00 (Six Million Naira Only) in favour of Ayuwe Samuel

Awenode on the 31st of March 2015. This cheque is given without prejudice.

Yours Faithfully,

SIGNED

Nwaotule Frank

MD”

This undertaking was supported by another First Bank Plc cheque dated 31/03/2015 in the sum of N6,000,000.00 (Six Million Naira). However, the Claimant did not get value for the cheque. At this point the Defendants issued another cheque in favour of the Claimant in the sum of N10 Million dated 31/07/2015. This cheque is annexed to the affidavit in support and marked as exhibit AA10. The rationale for this cheque was explained by the Claimant at paragraph 18 of the affidavit in support in the following terms:

“18. That the 1st and 2nd Defendants again failed to meet up with the payment and even proceeded in his capacity as signatory to the 1st Defendant’s First Bank Plc Account to issue another First Bank Plc Cheque for the sum of N10,000,000 (Ten Million Naira). A copy of the 1st defendant’s First Bank Plc Cheque issued in my favour which he said was to compensate me for the delay in repaying the money borrowed me and which was returned unpaid and marked “D.A.R” upon presentation

by me at the bank and dated the 31st of July 2015 is hereby annexed as EXHIBIT AA10.”

Arising from the foregoing, it is therefore my humble view that the Defendants have no defence to the Claim of the Claimant. They merely set up a sham defence to dribble the Claimant out of the seat of Judgment to which the Claimant is entitled. This Court will not succumb to such unwholesome manoeuvres.

In **ATAGUBA & CO. V. GURA (2005) S.C (PT.II) 101** the apex Court has this day:

“Under the undefended list procedure, the Defendant's affidavit must condescend upon particulars and should as far as possible deal specifically with the Plaintiff's claim and affidavit, and state clearly and concisely what the defence is and what facts and documents are relied on to support it. The affidavit in support of the notice of intention to defend must of necessity disclose facts which will at least throw some doubt on the case of the Plaintiff. A mere general denial of the Plaintiff's claim and affidavit is devoid of any evidential value and as such would not have disclosed any defence which will at least throw some doubt on the Plaintiff's claim. “

See also:

AGRO MILLERS LIMITED V. CONTINENTAL MERCHANT BANK (NIGERIA) PLC (1997) 10 NWLR (PT. 525) 469.

What the Defendants have put forward in this case is a sham defence which cannot avail them. In **G.M.O NWORAH & SONS CO. LTD V. AFAM AKPUTA (2010) 9 NWLR (PT.1200) 443** Ogbuagu, JSC restated the law as follows:

“The Court can refuse to let in a Defendant to defend a suit, when once it is satisfied that the Defendant's affidavit, does not disclose a good defence on the merit, or where the ground of defence, is not clear and reasonable or it is flimsy or vague. It must be stressed that the object in the Undefended List Procedure, is to prevent unnecessary delay in proper cases or where the claim of the Plaintiff from the affidavit evidence, is unassailable.”

See also:

- 1. MACAULAY V. NAL MERCHANT BANK LTD. (1990) 4 NWLR (PT.144) 283 AT 324-325; and**
- 2. AGWUNEDO V. EZE (1990) 3 NWLR (PT.137) 242 AT 255;**

The Law is clear that when a matter filed under the undefended list comes up for hearing the only obligation placed on the court is to look through its record for the purpose of discovering whether the defendant has filed a notice of intention to defend and whether a defence on the merit has been established. If the Court (as in this

case) is not satisfied that there is a defence on the merit the Court in such circumstance does not have any option than to enter judgment for the plaintiff on its claim.

See: BEN THOMAS HOTELS LTD VS. SEBI FURNITURE LTD (1989) 5 NWLR (PT.123) 523 and Order 35 Rule 4 of the Rules of this Court 2018.

Taking into account my earlier finding that the Defendants have failed to make out any prima facie defence, I need to reiterate the point that the Defendants on the face of the affidavit in support of their notice of intention to defend have no satisfactory explanation for the two separate undertakings (i.e. exhibits AA2 and AA7) to refund the Plaintiff's fund on or before 27th February, 2015 and 31st March, 2015 respectively. Further to that critical point the Defendants also issued three separate cheques in favour of the Plaintiff as a way of discharging their obligation/liability to the Plaintiff. If indeed the Plaintiff's fund was not ripe or due for payment why would the Defendants made series of undertaking with definite deadline and backed up the undertakings with cheques issued in the name of the Plaintiff? In my humble view the Defendants' affidavit has woefully failed to disclose any reasonable defence.

It is on the basis of the foregoing that I arrived at the inevitable conclusion that the Defendants have no defence to the claims of the Plaintiff.

Accordingly, Judgment is hereby entered for the Plaintiff on the first leg of his claim which in my view is clearly a liquidated money demand for the sum of N5,000,000.00 (Five Million Naira) Only.

I have also considered the claim for post Judgment interest of 10% on the Judgment debt and taking into consideration the fact that the Defendants have held on to the Claimant's fund for the past five years, I form the view that it is in the interest of justice to grant this head of claim. In reaching this conclusion, I am conscious of the point that the power to grant this head of claim is statutory as it is donated by Order 39 Rule 4 of the Rules of this Court 2018 and it is designed for the benefit of a victorious party. Evidence need not be given for it to be awarded. It is a discretionary power which I hereby exercise in favour of Plaintiff as sought.

At the end of the day, the case of the Claimant succeeds. Reliefs (1) and (2) are granted while relief (3) which is the omnibus prayer is struck out.

Signed
Hon. Justice H. B. Yusuf
(Presiding Judge)
14/05/2020