

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT APO-ABUJA**

**ON 10<sup>TH</sup> DAY OF JUNE 2020**

**BEFORE HIS LORDSHIP HON. JUSTICE CHIZOBA N. OJI**

**PRESIDING JUDGE**

**SUIT NO: FCT/HC/CV/636/19**

**BETWEEN:**

**YEATHFO COCKTAIL LTD ..... PLAINTIFF**

**AND**

**1. ROYAL COCKTAIL LTD**

**2. MR. SAMUEL ASOMUBHA**



**DEFENDANTS**

**CLAIMANT REPRESENTED BY MR. MATTHEW OYEYEMI.**

**2<sup>ND</sup> DEFENDANT IN COURT, REPRESENTING THE 1<sup>ST</sup> DEFENDANT.**

**FEMI ADEDEJI ESQ. FOR THE CLAIMANT**

**S.N. OKONTA ESQ. FOR THE DEFENDANTS**

**JUDGMENT**

By a writ of summons filed under the undefended list, the Claimant seeks:

- (a) An order compelling the Defendants to pay over to the Claimant jointly and severally the sum of N54, 900,000 (Fifty Four Million, Nine hundred Thousand Naira) as the outstanding debt owed to the Claimant by the Defendants.
- (b) Interest at 10% from the date of judgment until the debt is paid.

The writ is supported by a 25 paragraph affidavit of Mr Matthew Oyeyemi, Director and representative of the Claimant, to which several exhibits marked Exhibits A, B & C are attached.

Therein, it was deposed inter alia that the Claimant provided the Defendant with a total sum of N22, 000, 000 (Twenty Two Million Naira only) to facilitate the execution of a mass house project under the Federal Housing Authority Abuja as follows:

N5m in November 2016; N5m in late 2017 and N12m in February 2018.

See Exhibit A

That the parties agreed that the sum of N12m will be repaid to the Claimant with the monthly interest of 20% for a three month period.

It was agreed that the sum of N2, 500,000 (Two Million Five Hundred Thousand Naira) shall be paid to the Claimant as compensation for treasury bill.

The Defendants further agreed to pay N26, 400,000 (Twenty Six Million Four Hundred Thousand Naira only) representing 20% interest from February 2018 to January, 2019 (Eleven months to the Claimant).

The Defendants via agreement dated 14<sup>th</sup> December 2018 agreed to pay a total interest of N4m each on the 1<sup>st</sup> and 2<sup>nd</sup> financial assistance given to them by the Claimant.

The total amount due to the Claimant by virtue of the agreement dated 14<sup>th</sup> December 2018 is N54,900,000 (Fifty Four Million, Nine Hundred Thousand

Naira. See Exhibit B by which the Defendants undertook to pay the sum of N54,900,000 on or before 30<sup>th</sup> April 2019.

That the Claimant, on 8<sup>th</sup> October 2019 through its solicitor, issued letters of demand to the Defendants. See Exhibit D.

That notwithstanding the repeated demands, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants have refused and neglected to pay the debt.

That the Defendants have no defence to the suit.

The 1<sup>st</sup> and 2<sup>nd</sup> Defendants filed a notice of intention to defend on 6<sup>th</sup> February, 2020 and an affidavit in support thereof of 39 paragraphs, sworn to by Mr Samuel Asomugha the 2<sup>nd</sup> Defendant. Several exhibits were attached marked Exhibits A to G3.

Therein, it was deposed inter alia that the Claimant did give the sum of N22,000,000 to the Defendants.

That the Claimant petitioned to the Commissioner of Police FCT against him and the 3<sup>rd</sup> Defendant (now struck out) vide Exhibit F.

That the petition was pending at the Police station and he was locked up. Upon his release on bail, the Claimant requested he will only withdraw the matter from Police if the Defendants enter into an agreement on how they will repay the sum of N22m the Claimant brought into the business, and the Defendants accepted.

That after being persuaded by the 3<sup>rd</sup> Defendant (now struck out) to accept the Claimant's demands since as at that day they were promises given to the Defendants by the FHA to release first tranche of money to the Defendants as soon as the document approvals are out and which were promised them would come out in no time, he accepted to sign the agreement attached as Exhibit B to the Claimant's affidavit dated 14<sup>th</sup> December 2018.

That the Claimant still did not withdraw the criminal matter rather he took the agreement to the Police and charged the matter to court, which is pending at Court 11 Jabi till date. From the above facts, that he believed he was deceived by Mr. Mathew Oyeyemi to sign the agreement which he will use to prosecute him.

That there is no way he will accept to pay him compensation and various interests he "rumped" into the agreement if he had known he would not withdraw the criminal case and allow FHA release the first tranche of the sponsorship from which he will pay him.

That the only money the Claimant gave to the 1<sup>st</sup> Defendant is N22m which the 2<sup>nd</sup> Defendant never denied with the interest, if the Claimant waits for the project to take off, which is the only source from which the Defendant will raise money to pay him, as all the parties envisaged in paragraph 4 of Exhibit B of Claimant's affidavit.

That no registered money lender or bank could charge 20% on loan.

That the Claimant is a party in the project and has some benefits to enjoy should the project commence.

That he has a defence to the action.

That FHA has not released money and the Defendants refused to pay the Claimant as envisaged in Exhibit B to Claimant's affidavit.

Order 35 Rules 3 (1) (2) & 4 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2018 provide that;

"3 (1) Where a party served with the writ delivers to the registrar, before 5 days fixed for hearing, a notice in writing that he intends to defend the suit together with an affidavit disclosing a defence on the merit, the court may give him leave to defend upon such terms as the court may think just.

(2) Where leave to defend is given under this rule, the action shall be removed from the undefended list and placed on the ordinary Cause List; and the court may order pleadings or proceed to hearing without further pleadings.

(4) 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 shall be heard as an undefended suit and judgment given accordingly".

In the instant case, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants admit to signing Exhibit B dated 14<sup>th</sup> December 2018 wherein they agreed to pay the Claimant the sum of N54, 900,000 on or before 30<sup>th</sup> April 2019.

According to the 2<sup>nd</sup> Defendant in paragraphs 18-19 of his affidavit, he agreed to sign "after being persuaded by 3<sup>rd</sup> Defendant to accept since as at that day there were promises given to us by FHA to release first trench (sic) of money to

us as soon as the document approvals are out and which we were promised would come out soon in no time then.

That it was based on those promises in paragraph 19 above that I accepted to sign the agreement which is attached as Exhibit “B” to the Plaintiff’s affidavit in support of the undefended list dated 14<sup>th</sup> December 2018”

From the above paragraphs, the Defendants agreed to sign Exhibit B, voluntarily. They were not coerced by the Claimant to do so.

Parties are bound by their agreement voluntarily entered into. See, **AG FERRERO & COY LTD V HENKEL CHEMICALS NIG LTD. 2011 LPELR – 12-SC.**

The 1<sup>st</sup> and 2<sup>nd</sup> Defendants having not paid the sum of N54,900,000 by 30<sup>th</sup> April 2019 as agreed to the Claimant, the 1<sup>st</sup> and 2<sup>nd</sup> the Defendants have no defence to the action.

In **IBRAHIM KHALIL AHMED V ALH. GAMBO DANPASS 2014 LPELR - 24620 (CA) PAGES 47-48 PARAGRAPHS D TO A.**

Abiru JSC in his concurring judgment held:

It is trite that where a matter is placed under the undefended list, a Defendant who has no real defence to the action should not be allowed to disturb and frustrate the plaintiff and cheat him out of the judgment he is legitimately entitled to by delay tactics aimed at not offering any real defence to the action but at gaining time within which to continue to postpone meeting his obligation and indebtedness. **KENFRANK (NIG) LTD V UNION BANK OF NIGERIA PLC (2002) 15 NWLR (PART 789) 46; SANYAOLU V ADEKUNLE (2006)**

**7 NWLR (PART 980) 551. THEOBROS AUTO-LINK NIG LTD V BAKELY  
INTERNATIONAL AUTO ENGINEERING CO LTD supra”.**

The Defendant’s affidavit in support of the notice of intention to defend has not disclosed a defence on the merit. The excuse that the money from FHA did not materialise from FHA as the Defendants expected has nothing to do with their fulfilment of their obligation to the Claimant, from the wording of the agreement in Exhibit B.

I therefore refuse the Defendants leave to defend this action and hear the suit as an undefended list.

The Claimant having proved his case, I accordingly enter judgment in favour of the Claimant for N54, 900,000 as claimed against 1<sup>st</sup> and 2<sup>nd</sup> Defendants.

I award 10% interest per annum on the judgment debt from today till the judgment debt is full liquidated.

**Hon. Judge**