

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT HIGH COURT 28 GUDU - ABUJA
ON TUESDAY THE 17TH DAY OF NOVEMBER, 2020.
BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE R. OSHO-ADEBIYI
SUIT NO. FCT/HCCV/1578/2020

BENJAMIN IDOWU IREMIREN-----CLAIMANT

AND

1. DOUGLAS INEFOGUE
2. ISIAKU SABA ADAMU -----DEFENDANTS

JUDGMENT

By a Writ of Summons under the undefended list, the Claimant is claiming against the Defendants jointly and severally for:

1. An Order directing the Defendants to pay to the Claimant the sum of ₦10,300,000.00 (Ten Million, Three Hundred Thousand Naira) being outstanding debt owed the Claimant by the Defendants.
2. Interest on the above sum calculated at 10% (ten percent) from the date of judgment until the judgment is liquidated.

Accompanying the Writ is an affidavit of 4 paragraphs deposed to by the Claimant and attached are two exhibits, the Claimants Statement of account as Exhibit C1 and Cheque of ₦3,500,000.00 issued to the Claimant by the 2nd Defendant as Exhibit C2. The Defendants filed a notice of intention to defend with an affidavit of 30 paragraphs deposed to by the 2nd Defendant.

The undefended list procedure is a summary judgement procedure designed by the rules of Court for the speedy dispensation of uncontested cases or where Defendant intends to contest the case,

the rules places a responsibility on the Defendant to file an affidavit disclosing a defence on “the merits” thereby raising a “triable issue”. In SPDC (NIG) LTD VS. ARHO-JOE (NIG) LTD (2006) 2 NWLR (PT.966) 173, the Court of Appeal stated that,

“a triable issue or defence on the merits under the undefended list procedure is where a Defendant’s affidavit in support of the notice of intention to defend is such that requires the Plaintiff to explain to some certain matters with regard to his claim, or throws some doubt on the Plaintiff’s claim”

Hence, situations that would give rise to triable issues are (i) dispute as to the facts which ought to be tried (ii) real dispute as to the amount due to the party making a claim which would necessitate taking an account to determine the amount or (iii) reasonable grounds or a fair probability of a bonafide defence. See G.M.O NWORAH & SONS CO. LTD VS. AFAM AKPATA ESQ (2010) 9 NWLR (PT.1200) 443.

A triable issue is an uncontroverted material allegation contained in the Defendant’s affidavit which cannot be ignored.

Claimant in this suit is claiming the sum of ₦10,300,000.00 being outstanding debt owed Claimant by the two Defendants and interest at 10% from the date of judgment until judgment sum is liquidated. Claimant in his affidavit claimed that 1st Defendant sold a Plot of land to him for ₦12,000,000.00 but after paying the 1st Defendant, 1st Defendant went ahead and sold same land to another person. That 1st Defendant had indeed confessed to his crime and promised to refund Claimant his money. That 2nd Defendant who is the 1st Defendant’s associate stood surety for the 1st Defendant and

undertook to repay the ₦12,000,000.00 should 1st Defendant fail to pay. That 2nd Defendant had subsequently paid the sum of ₦1,000,000.00 and ₦700,000.00 on different occasions into claimant's account in fulfilment of his suretyship. That 2nd Defendant also went ahead and issued a cheque of ₦3,500,000.00 to Claimant which cheque was returned unpaid on the ground that the account had insufficient funds.

The 1st Defendant did not depose to an affidavit, rather it was the 2nd Defendant that deposed to an affidavit disclosing defence. In the affidavit, 2nd Defendant stated that 1st Defendant knows nothing about the circumstances that led to this suit before this Court, that rather, a certain Mr. Fola Jalaidu had been awarded a contract to grade a road and construct a drainage at Gwagalada, Abuja but had no money to execute the contract and had offered to sell two of his land in order to fund the contract, that the said Mr. Fola had sold the plots of land to a certain Mr. Paul. That in 2019, Mr. Paul had sold two of the plots of land to the Claimant. 2nd Defendant had gone further in his affidavit to state that when Claimant's land had problems, he had told Claimant that he does not know Claimant but rather Mr. Paul who sold the said land to the Claimant. That Claimant reported the matter to the Police Station, and he was forced to pay some money into Claimant's account and also issue an undated cheque to claimant in order to "*show his commitment*". That he had specifically warned Claimant that there were no funds in the account, but Claimant ignored him and went ahead to pay in the cheque which was ultimately returned for lack of funds in the 2nd Defendant's account. That rather, Mr Paul should be the person Claimant ought to confront but Claimant refused to join Mr. Paul in

this matter knowing full well that it is the said Mr. Paul that will tell the Court the truth of the matter as there is an agreement between Mr. Paul and Claimant which said agreement will help the Court to determine the issue in controversy. I have read the affidavit of both parties and I find that the issue for determination is: -

“Whether Defendants have been able to raise triable issues in his affidavit to warrant the Court to refer this matter to the general cause list and whether Claimant has equally proved his case”.

First and foremost, Claimant instituted this suit against two Defendants. The first Defendant did not depose to an affidavit disclosing any defence, rather, 2nd Defendant deposed to an affidavit disclosing his defence to the suit. Counsel to the Defendants announced his appearance for both Defendants and contended in his oral argument that the 2nd Defendant deposed to the affidavit on behalf of himself and the 1st Defendant bearing in mind that both Defendants were sued jointly and severally for money allegedly owed the Claimant.

Defendants' Counsel specifically referred to paragraph 4 of the 2nd Defendant's affidavit disclosing defence and submitted that the said paragraph 4 is enough evidence that 2nd Defendant deposed to the affidavit on behalf of himself and the 1st Defendant.

For ease of comprehension, I will reproduce paragraphs 1-4 of the 2nd Defendant's affidavit disclosing defence: -

1. **“That I am the 2nd Defendant sued by the Claimant.**
2. **That by virtue of this fact, I am conversant with facts deposited to in this Affidavit.**
3. **That the facts I depose to in this Affidavit are based upon facts within my knowledge**

4. That the 1st Defendant know(sic) nothing about the circumstances that led to this suit before the Honourable Court".

Suffice to say the 1st Defendant was mentioned once in the whole affidavit and it is only in the 4th paragraph. Section 115 of the Evidence Act 2011 specifically deals with contents of an affidavit. Section 115 contains 4 subsections, and each should not be read in isolation but rather in conjunction with one another.

Section 115 (1), (2), (3) and (4) of the Evidence Act 2011 states that every affidavit used in Court shall contain only statement of fact and circumstances to which the witness deposes, either of his own personal knowledge or from information which he believes to be true. A person who deposes to facts in his belief in an affidavit and such belief is derived from any source other than his own personal knowledge, such deponent shall set forth explicitly the facts and circumstances forming the grounds of his belief. When such belief is derived from another person, the name of his informant shall be stated, and reasonable particulars shall be given in respect of the information. The affidavit purported to have been sworn by 2nd Defendant on behalf of both the 1st Defendant and himself did not state that he had the consent and the authority of the 1st Defendant, also, 2nd Defendant failed to state explicitly in the affidavit, the facts and circumstances forming the ground of his belief if he indeed wanted to convince the Court that the facts stated in the affidavit are purportedly derived from facts which he (2nd Defendant) was told by the 1st Defendant. Hence, 2nd Defendant failed in his affidavit to mention the source of information he furnished the Court about the 1st Defendant in line with Section 115 of the Evidence Act, 2011.

Paragraph 4 of the affidavit of defence does not in any way, satisfy the provision of Section 115 (3) and (4) to conclude that the affidavit was on behalf of both 1st and 2nd Defendants and I am of the opinion that the affidavit is simply in respect of the 2nd Defendant alone. Consequently, I therefore hold that the 1st Defendant did not depose to any affidavit whether on merits or otherwise thereby making this suit undefended and uncontroverted by the 1st Defendant.

Going to the one and only issue for determination, which is whether the 2nd Defendant has disclosed in his affidavit triable issues or a defence on its merits and whether the Claimant has equally proved his case. Claimant in his affidavit stated that 1st Defendant owes him money for land bought from him but which 1st Defendant sold same land to another person. That 2nd Defendant stood as surety to pay up the money in the event that 1st Defendant fails to pay. That to this extent, 2nd Defendant has made two payments in furtherance of his suretyship and paid ₦1,000,000.00 and ₦700,000.00 respectively into Claimants account leaving a balance of ₦10,300,000.00 yet unpaid. That 2nd Defendant went further to issue a cheque of ₦3,500,000.00 to the Claimant which was returned by the bank due to insufficient funds.

I have considered the Defence as set out in the affidavit of 2nd Defendant and nowhere did he specifically state that he did not stand surety for the said amount. It is trite that denials in an affidavit must be sufficiently particularized. The affidavit of the 2nd Defendant is also self-contradictory when he stated in paragraph 21 that due to the absence of Mr. Fola, the Claimant had dragged him into the matter as he was an associate of Mr. Fola.

In the sequence of the entire affidavit of 2nd Defendant, the paragraphs flow from a certain Mr. Fola being awarded a contract and in a bid to raise money, sold his land to Mr. Paul, that Mr. Paul in turn sold part of the land to the Claimant. That Claimant had reported to the police station when he found out the Land Mr. Paul sold to him had equally been sold to another party. That at the police station he was forced to pay some money into Claimant's account. That it is only Mr. Paul that can tell the truth about this matter currently before this Court. From this sequence, paragraph 21 of the affidavit throws a spanner in the wheel of sequence as the said paragraph 21 states that "*due to the absence of Mr. Fola, the Claimant drag(sic) me into the matter that I was an associate of Mr. Fola*". Nowhere in the sequence of his affidavit did 2nd Defendant state that Claimant met Mr. Fola or bought a land from him or ever knew him, rather the nexus established by the 2nd Defendant is between Mr. Paul and the Claimant who sold the piece of land to the Claimant.

In his defence, 2nd Defendant said the sum of ₦1,000,000.00 and ₦700,000.00 paid by him into the Claimant's account was because he was forced to pay at the police station else, he will be refused bail. 2nd Defendant also stated that he also agreed and indeed issued a cheque (an undated cheque) to the Claimant for the sum of ₦3,500,000.00 but told the Claimant that there was no money in the account, but the cheque was just a commitment. All these payments and cheque issued by the 2nd Defendant was purportedly based on the threat that he would be refused bail hence he was "forced to pay" the amount he paid into Claimant's account and further issued the said cheque. From the statement of account of Plaintiff, 2nd Defendant paid the

sum of ₦1,000,000.00 into Plaintiff's account on 22nd May 2019; he paid another sum of ₦700,000.00 on the 22nd of June 2019 and finally issued Claimant a cheque of ₦3,500,000.00 on 22nd July 2019. In essence, the payment into Plaintiff's account and issuance of cheques all played out within a space of 2 months. It is definitely not a defence and I do not believe that 2nd Defendant paid all these monies due to the threat that he will be refused bail. Bail simply connotes that 2nd Defendant was detained by the Police for the whole of 2 months and nowhere in the affidavit did 2nd Defendant state that police ever detained him, not to mention that he was detained for 2 months. 2nd Defendant did not raise any issue controverting that he did not stand as surety in repayment of the money; neither did he raise any triable issue. The only issues raised as a purported defence by the 2nd Defendant was that he was forced to pay the sum of ₦1,000,000.00 and ₦700,000.00 into Claimant's account or threatened with "no bail". That he issued an undated cheque of ₦3,500,000.00 to the Claimant simply as a commitment. It is laughable that 2nd Defendant could wave away his issuing a cheque to the Claimant for the sum of ₦3,500,000.00 as "mere commitment". This defence of "mere commitment" by the 2nd Defendant is so shoddy and unreliable that this Court will not waste it's time to evaluate such a defence but rather, term it as vague and unreliable and definitely a lame reason to issue an undated but signed cheque for a whopping sum of ₦3,500,000.00. The 2nd Defendant also raised a defence that Claimant bought the said plot from Mr. Paul, but Claimant has refused to confront nor join Mr. Paul in this matter as Mr. Paul is the only person that can say the truth about this matter. It will be foolhardy for the Court to transfer this case to the general

cause list to allow a Mr. Paul who is not even a party before this Court nor has 2nd Defendant signified his intention to join Mr. Paul as a Co-Defendant to come and defend this matter. 2nd Defendant did not attach any documentary evidence to his affidavit. There is no specific defence by the 2nd Defendant that he did not stand as a surety for the 1st Defendant. The defence that he paid money to the Claimant's account and also issued a cheque of ₦3,500,000.00 to the Claimant because he was "forced" to pay the money and issued an undated cheque as a form of "mere commitment" has not raised any defence upturning the fact he indeed stood as surety to the Claimant on behalf of the 1st Defendant. It is trite that in an undefended list procedure matter, the onus is on the Defendant to show by affidavit evidence that he had disclosed a defence on the merit for the suit to be transferred to the general cause list and he must go as far as possible to deal specifically with the Claimant's claim and not dance around it like 2nd Defendant has done in his affidavit. In **SOLIDARITY INTERNATIONAL VENTURES LTD VS. AFRO SHELTERS LTD.** (2010) 1 NWLR (PT.1175) 209 @ 237 Paras E, G, H, 238-239, PARAS H-A Per Peter Odili JCA (as he then was) held that the Defendant must not merely deny the claim on peripheral facts touching upon the claim but must particularize facts which would require some explanation on the merit from the Claimant. Unfortunately, 2nd Defendant in this case has merely denied the claim on peripheral grounds without actually raising a triable defence nor did the affidavit condescend upon particulars raised by the Claimant. Although Claimant did not provide proof of a signed document stating that 2nd Defendant stood as surety to the debt (subject matter of this) it is immaterial as 2nd Defendant paying

₦1,700,000.00 into Claimant's account without giving a satisfactory reason why he paid the amount has proved to the Court that the said ₦1,700,000.00 was paid to fulfil his obligation as a surety to the debt. To further show his commitment into paying up the debt upon failure of 1st Defendant, the 2nd Defendant had gone further to issue a cheque of ₦3,500,000.00 to the Claimant. It is glaring that the 2nd Defendant issued the said cheque (in addition to his earlier payment of ₦1,700,000.00) as his commitment to pay the debt. Little wonder 2nd Defendant stated that he merely issued the said cheque of ₦3,500,000.00 as a "mere commitment" to eventually offsetting the debt.

Hence, 2nd Defendant's act of paying ₦1,700,000.00 into Claimant's account and issuing a cheque of ₦3,500,000.00 to the Claimant, although said cheque was subsequently returned by the bank for lack of funds, shows an admission on the part of the 2nd Defendant that he indeed stood surety to the said debt. Consequently, Claimant's failure to attach a document stating that 2nd Defendant stood as a surety in proof of his claim before this Court is immaterial as facts admitted needs no further proof vis-à-vis the fact that 2nd Defendant did not state that he did not stand as a surety to the debt thereby making that fact unchallenged and uncontroverted, also taking into consideration the 2nd Defendant's action of repaying the debt by actual payment of ₦1,700,000.00 to the Claimant and further issuing a cheque of ₦3,500,000.00 to the Claimant. Although it is not the duty of the Defendant at this stage to show in his affidavit a defence beyond reasonable doubt nor is it the duty of the Court to consider whether the Defence will ultimately succeed, however, the Defendant has the onus to disclose a "good defence" in his affidavit, in other

words, Defendant ought to raise a *prima facie* defence on the merit. 2nd Defendant has rather in his affidavit, merely denied the claim without touching upon the claim, neither did 2nd Defendant particularize facts which would require some explanation on the merit from the Claimant.

In **MACAULAY VS. NAL MERCHANT BANK LTD (1990) 4 NWLR (PT.144)** 283 @ 306, Para D, where the Learned Jurist Per Agbaje JSC held that the Defendant's affidavit must 'condescend upon particulars' and should as far as possible, deal specifically with the Claimant's claim and affidavit and state clearly and concisely what the defence is and what facts are relied on as supporting it. It should also state whether the defence goes to the whole or part of the claim, and it should specify the part. Hence, a vague and bare denial as put up by the 2nd Defendant without more will not be adequate to put this case on the general cause list. In all, after reading and evaluating the affidavit evidence of parties before me, I am of the view and I so hold that Defendant has failed to raise an iota of triable issues and therefore has no defence on its merits.

Claimant in this suit has come under the undefended list, claiming the sum of ₦10,300,000.00 against the Defendants. Claimant in his affidavit has deposed that both Defendants jointly owe him a lump sum of ₦10,300,000.00. That 1st Defendant sold a land to him and also sold same land to another person. That in his quest to retrieve the sum of ₦12,000,000.00 being the amount he paid for the land, 2nd Defendant had stood surety for the 1st Defendant peradventure 1st Defendant fails to pay the money. That in furtherance of his suretyship, 2nd Defendant had paid the sum of ₦1,000,000.00, ₦700,000.00 and also issued him a cheque in the sum of

₦3,500,000.00 but the said cheque was returned for lack of funds in the 2nd Defendant's account. 1st Defendant failed to file an affidavit thereby making the case of the Claimant against the 1st Defendant unchallenged and uncontroverted. 2nd Defendant on his part, failed to file an affidavit disclosing a defence on the merits of the case thereby making the case of the Claimant undefended. In **SOLIDARITY INTERNATIONAL VENTURES LTD VS. AFRO SHELTERS LTD (Supra)** the Court Per Peter-Odili JCA held that a trial Court in an undefended suit is enjoined to enter judgment for the Claimant where the Defendant has failed to or neglected to file a notice of intention to defend with its supporting affidavit or where the Defendant has filed a notice of intention to defend with its supporting affidavit but has not satisfied the Court that there is a *prima facie* defence on the merit. From the affidavit evidence and exhibits attached by the Claimant, Claimant has proved his case under the undefended list.

Consequently, judgment is hereby entered for the Claimant as follows:

1. It is hereby ordered that the Defendants pay to the Claimant the sum of ₦10,300,000.00 (Ten Million, Three Hundred Thousand Naira) being outstanding debt owed the Claimant by the Defendants.
2. That interest on the above sum calculated at 10% (ten percent) per annum, be paid to the Claimant from the date of judgment until the judgment sum is liquidated.

Parties: Parties absent.

Appearances: No legal representation for parties.

HON. JUSTICE MODUPE .R. OSHO-ADEBIYI

JUDGE

17TH NOVEMBER 2020