

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GWAGWALADA**

THIS MONDAY, THE 16TH DAY OF NOVEMBER, 2020.

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: FCT/HC/CV/560/18

BETWEEN

UTAKO MICROFINANCE BANK LIMITEDPLAINTIFF

AND

**1. DOLIZ BROWN NIGERIA LIMITED }
2. CHIEF OMENIFE A.C. IZUEGBU }DEFENDANTS**

JUDGMENT

By a writ of summons on the undefended list issued on 13th December, 2018, the plaintiff claims the following reliefs against the defendants:

The sum of N6, 000, 000.00 (Six Million Naira) only being the amount agreed by the parties as unpaid from the loan granted the defendants vide the letter of offer dated 19th November, 2010.

Pursuant to **Order 35 of the Rules of Court**, the suit was on 11th March, 2019 placed for hearing on the undefended list.

From the Records, the 1st defendant was duly served with the originating court process on 1st April, 2019. The plaintiff however had difficulties serving the 2nd defendant personally with the court processes. They accordingly filed a motion for substituted service which was granted on 12th February, 2020. The 2nd defendant was served the originating court process by substituted means on 14th February, 2020 vide proof of service filed by the bailiff of court dated 14th February, 2020.

The defendants were equally served hearing notices at different times on the Record. For purposes of today's hearing, they were both served hearing notice on 9th November, 2020 vide certificate of service filed by the bailiff of court both dated 9th November, 2020. The defendants despite the more than ample time they had to react if they so desired have not reacted in anyway or specifically filed a notice in writing that they intend to defend the suit together with an affidavit disclosing a defence on the merit in compliance with **Order 35 Rule 3(1) of the Rules of Court**.

It is only where a defendant(s) takes those steps within the purview of **Order 35 Rule 3(1)** and does so within five days to the day fixed for hearing or within a time as may be extended by court upon an application that the court may then grant leave to defend on terms as the court considers just. Where however, a defendant neglects to take these steps or comply with **Order 35 Rule 3(1) of the Rules of Court**, as the defendants have elected to do in this case, then the provision of **Order 35 Rule 4** comes into play and in such circumstances, the suit shall be heard as an undefended suit and judgment given accordingly.

I have above given a brief analysis of the applicable rules. I will simply apply it to the facts of this case which is largely uncontested and straightforward and I will here summarise the substance of the case. The plaintiff's case as made out in the affidavit in support of the writ is to the effect that the defendants sometime in November 2010 applied for a loan facility which was granted in the sum of N5, 000, 000 via a letter of offer attached as **Exhibit A** which contains the terms regulating the relationship. That by the letter of offer, the loan was expected to be paid on or before 19th December, 2010 and it was secured with a post dated cheque vide **Exhibit B** in the sum of N5, 700, 000 (inclusive of capital and interest).

The plaintiff's aver that at due date, the defendants appealed to the plaintiff not to present the cheque and that since then, the 2nd defendant has continued to appeal for more time to settle their indebtedness.

The plaintiff then through their solicitors made a demand for the payment of the principal sum and the interest in April 2016 vide **Exhibit C** in the sum of N11, 700, 000 and that the Respondents replied vide **Exhibit D** proposing a repayment plan and asking for six (6) months to pay a negotiated sum. That despite the extended time and exchange of various correspondence on the issue, the defendants could still not settle their long outstanding indebtedness.

It is the case of plaintiff that in August 2018, their solicitors made a final demand notice vide **Exhibit H** to defendants who responded vide Exhibit H1 appealing to be allowed to pay N6, 000, 000 only as full and final settlement of the loan. That this offer was accepted and approved by plaintiff via their solicitors letter dated 24th August, 2018 vide Exhibit 1.

The plaintiff aver further that despite the acceptance of this offer of **N6, 000, 000**, that the defendants have as at end of September 2018 which they promised to liquidate the loan (see Exhibit H1) and till date refused to settle their loan obligations to the plaintiff.

The above facts as stated earlier are largely uncontested. The defendants have since enjoyed the loan facility granted them but have refused to live up to their commitments years after receiving the loan and despite the ample time given to them to do so and the concessions made on the part of plaintiff. This certainly is not fair. Agreements will have no meaning if parties do not live up to the commitments in the Agreement. I live it at that.

The defendants as stated at the beginning of this judgment have not in any manner challenged or controverted these clear depositions in support of the claims of plaintiff or filed any process disclosing any defence on the merit. The only point to note is that counsel to the plaintiff in the course of hearing has informed court that the defendants have paid the plaintiff after this action was filed the sum of **N1, 000, 000** leaving the balance of **N5, 000, 000** as their indebtedness to the plaintiff.

I accordingly therefore find these facts relating to the indebtedness of defendants as established. The defendants are therefore indebted to the plaintiff to the extent of the outstanding balance now in the sum of **N5, 000, 000** only. I accordingly hold that the plaintiff is entitled to judgment for the amount of **N5, 000, 000** as the defendants have not disclosed any defence on the merit enjoining me to transfer this matter to the general cause list. See **Ben Thomas Hotels Ltd V. Sebi Furniture Ltd (1989)5 N.W.L.R (pt.123)523**.

In summation and for the avoidance of doubt, pursuant to **Order 35 Rule 4 of the High Court Rules 2018**, I must proceed to enter judgment in favour of the plaintiff. Judgment is hereby entered for the plaintiff for:

- 1. The sum of N5, 000, 000 (Five Million Naira) only being the balance of the amount agreed by the parties as unpaid from the loan granted the defendants vide the letter of offer dated 19th November, 2010.**
- 2. I award cost assessed in the sum of ₦20,000 payable by defendants to plaintiff.**

Hon. Justice A.I. Kutigi

Appearances:

- 1. Onyebuchi Obeta, Esq. with Cynthia Okwu for the Plaintiff.**