

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT: COURT 8 JABI – ABUJA
DATE: 23RD OF JUNE, 2021
BEFORE: HON. JUSTICE M.A. NASIR
SUIT NO: CV/857/20
MOTION NO: M/10515/2020

BETWEEN

DIZENGOFF W.A. (NIGERIA) LIMITED ----- PLAINTIFF/APPLICANT

AND

PHARMAQUEST LIMITED ----- DEFENDANT

RULING

Before the Court is a motion on notice No. M/10515/2020 filed by the claimant on the 7/10/2020. The application is brought pursuant to Order 11 Rule 1 and Order 20 Rule 4 of the rules of this Court. The claimant is praying for two reliefs as follows:

“1. An order entering summary judgment against the defendant in the sum of N5,600,000.00 (Five Million, Six Hundred Thousand Naira) plus accrued interests being the unpaid balance of the value of goods

supplied to the defendant by the claimant which said sum remains outstanding.

ALTERNATIVELY:

2. An order for judgment on admission against the defendant for the sum of N4,500,000.00 (Four Million, Five Hundred Thousand Naira)being the amount admitted by the defendant to be due and outstanding to the claimant as unpaid balance of the value of the goods supplied to it.”

The application is supported by 22 paragraphs affidavit and annexures marked as Exhibit CU1 and CU12. Also in support is a written address duly adopted by Bolaji Gabari Esq. Counsel raised two issues for determination as follows:

“1. Whether having regard to the facts of this case, the claimant is entitled to summary judgment as prayed.

In the alternative:

2. Whether having regard to the facts of this case and the admission made the defendant in its letters, particularly that of 12/9/2019 and paragraphs 4, 6

and 11 of its Statement of Defence, judgment should not be entered against the defendant for the sum of N4.5. Million being the amount admitted as due and outstanding to the claimant.”

Learned counsel submitted that the object of summary judgment procedure, which is similar to the undefended list procedure is designed to enable a party obtain judgment especially in cases of liquidated money demand without the need for a full trial, where the other party cannot satisfy the Court that it has a good defence or triable issues against the action. He added that by virtue of Exhibits CU1, CU2 and CU3, the defendant having received goods from the claimant worth the sum of N59.5 Million, the defendant is bound to pay for the goods supplied, and failure of the defendant to settle its indebtedness to the claimant for the goods supplied, the defendant becomes liable to the claimant for the sum of N5.6 Million being the outstanding balance including accrued interest due and unpaid.

For the alternative relief, learned counsel submitted that any admission in law is a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact. That once a party has admitted its indebtedness, judgment should be entered irrespective of other considerations that may arise. He added that the essence of Order 20 Rule 4 of the rules of court, is to enter judgment against the defendant based on the admission, and dispense with the requirement of full trial where the defendant has so admitted. Reference was made to the following cases Thor Ltd vs. FCMB Ltd (2005) 14 NWLR (part 946) 696, Crown Floor Mills Ltd vs. Olokun (2008) 4 NWLR (part 1077) 254, Auto Import Export vs. Adebayo (2005) 19 NWLR (part 956) 44, UBA vs. Jargaba (2007) 11 NWLR (part 1045) 247, Ojukwu vs. Onwudiwe (1984) 1 SCNLR 247 among others.

The plaintiff also filed a further affidavit on the 3/12/2020.

Victor Yatu Esq who appeared for the defendant submitted that they had no objection to the alternative prayer being granted by the Court.

It is important to point out that the whole purpose of a summary judgment procedure is meant to ensure justice to a plaintiff and minimize delay where there is no defence to a claim, and thus prevent the grave injustice that might occur through a protracted and frivolous litigation. See GTB vs. Ginal Industries Ltd & anor (2019) LPELR - 47251 (CA)

This application is brought pursuant to the provisions of Order 11 Rule 1 of the Rules of this Court, 2018. It provides:

“Where a claimant believes that there is no defence to his claim, he shall file with his originating process the statement of claim, the exhibits, the depositions of his witness and an application for summary judgment which application shall be supported by an affidavit

stating the grounds for his belief and a written brief in support of the application.”

In law, the summary judgment provision in the Rules of Court is usually aimed at dispensing with dispatch cases which are virtually uncontested and would readily apply to and be invoked in cases where there can be no reasonable doubt that a claimant is entitled to judgment and it is inexpedient to allow a defendant to defend for the mere purposes of delay. It is thus a procedure meant for the plain and straight forward cases and not for the devious and crafty. See UBA vs. Jargaba (2007) 11 NWLR (part 1045) 247, Agro Millers Ltd vs. Confidential Merchant Bank (Nig) Plc (1997) 10 NWLR (part 525) 469.

The very straight forward and simple uncomplicated procedure is that on the date fixed for hearing of the application for summary judgment, the Court would after hearing the parties or their counsel ascertain if on the facts as placed before it, the defendant had made out any triable issue or defence on the merit. In arriving at such a finding, the Court would critically scrutinize and examine

the pleadings of the parties, their affidavits and documentary exhibits if any to determine at that stage if the defendant has disclosed any defence on the merit or raised at least triable issue that would need to be further investigated into by the Court by way of a full hearing. However, where the Court finds that the defendant has not disclosed any defence on the merit or raised any triable issue, the Court is under a duty to proceed to enter judgment in favour of the claimant against the defendant, no more no less. See Bellview Airlines Ltd vs. Carter Harris (Proprietary) Ltd (2016) LPELR - 40989 (CA).

The gist of the case is that the defendant approached the plaintiff for the supply of goods on credit worth N59.5 Million. Parties executed a credit facility agreement and the claimant proceeded to supply the goods to the defendant. The defendant liquidated the total sum of N52.5 Million upon receipts of the goods. Upon further demands for the outstanding, the defendant paid the sum of N2.5 Million leaving a balance of N8,691,222.00 (Eight Million, Six Hundred and Ninety

One Thousand, Two Hundred and Twenty Two Naira). On the 12/9/2019 the defendant wrote a letter to the plaintiff acknowledging indebtedness and promising to pay not later than 20/11/2019 and infact made an additional part payment of N1.5 Million. The plaintiff wrote a reply to the defendant on the 9/10/2019 acknowledging receipt of the sum of N1.5 Million and refusing any interest waiver and presented the defendant with total outstanding indebtedness of the sum of N6.6 Million.

Upon instituting this suit, and service of the Writ of Summons on the defendant, the defendant made an additional part payment of N1 Million to the plaintiff, leaving an outstanding of N5.6 Million as the amount due and payable plus interest at the prevailing bank rate of 24% as agreed in Clauses C and A(3) of the credit facility.

The defendant has admitted being indebted to the plaintiff but only in the sum of N4.5 Million. The defendant has also challenged the amount of interest charged and the computation of same. The defendant

stated that some other payments were made i.e. N1.5 Million in July, 2019 and N1 Million in September, 2019.

In the further affidavit filed by the plaintiff, the deponent averred that after the proceedings of the Court on 14/9/2020, the defendant made another part payment of the sum of N500,000.00 (Five Hundred Thousand). Thus the outstanding indebtedness of the defendant now stands at N5.1 Million and the admitted sum now stands at N4 Million.

In determining whether or not the defendant has put up a good defence to the action filed against him, it did not behove upon a trial judge to consider at that stage whether the defence had actually been established. At that crucial stage of the trial, what is required is simply to look at the facts deposed in a counter affidavit, where applicable and determine prima - facie if it affords a defence to the action. See Nu Metro Retail (Nig) Ltd vs. Tradex S.R.L & anor (2017) LPELR - 42329 (CA), Nnabude vs. G.N.G. (W/A) Ltd (2012) All FWLR (part 619) 1198

A careful and composite perusal of the documents filed by the parties, it is clear that the defendant is indeed indebted to the plaintiff. The bone of contention is the actual amount due to the plaintiff. The defendant has admitted being indebted to the tune of N4.5 Million out of which the sum of N500,000.00 has been paid leaving a balance of N4 Million. The defendant however disputed the interest of 24% of the prevailing bank rate and how it was arrived at.

The law is that where it appears to a Judge that:

1. A defendant has a good defence, he may be granted leave to defend.
2. The defendant has no good defence, judgment may be entered for the plaintiff.
3. The defendant has a good defence to part of the claim, he may be granted leave to defend that part of the claim.
4. The defendant has no defence to other parts of the claim; judgment may be entered in favour of the plaintiff for that part of the claim.

5. Any of several defendant has a good defence or raises a triable issue, he may be permitted to defend, and,

6. Any of the defendants has no defence or raised no triable issue, then judgment shall enter against him.

See Digital Security Technology Ltd & anor vs. Andi (2017) LPELR - 43446 (CA).

In this instance, the defendant has admitted being indebted to the tune of N4.5 Million and having repaid the sum of N500,000.00 (Five Hundred Thousand Naira), it leaves a balance of N4 Million as the admitted sum. Judgment is thus entered for the claimant in the admitted sum of N4 Million.

For the remaining part of the claim, it is my humble view that the defendant has raised a triable issue. Therefore leave is hereby granted to the defendant to defend that part of the claim being the sum of N1,100,000.00 (One Million, One Hundred Thousand Naira) only.

Hon. Justice M.A. Nasir

Appearances:

Bolaji Gabari Esq, with him Chizoba Njoku Esq and

Franklin Okoro Esq – for the claimant

P.I. Lemut Esq, with Victor Yatu Esq – for the defendant