

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT COURT 10, AREA 11, GARKI, ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE S. B. BELGORE

SUITNO. FCT/HC/CV2840/2020

DATE: 5-3-24

B E T W E E N

- | | | |
|----------------------------------|---|-----------|
| 1. BULHAJA BUREAU DE CHANGE LTD. | } | CLAIMANTS |
| 2. ALHAJI MOHAMMED B. SULEIMAN | | |

AND

- | | | |
|-----------------------------------|---|------------|
| 1. MOHAMMED AMINU ISMAILA | } | DEFENDANTS |
| 2. YAKUBU ABBA | | |
| 3. HADDAUM A.Y.M. GENERAL TRADING | | |

J U D G M E N T
(DELIVERED BY HON. JUSTICE S. B. BELGORE)

The Claimants/Applicants vide this Motion on Notice M/10506/2020 dated the 7th August, 2020 but filed on the 7th October, 2020.

It prays for the following orders to wit:-

1. An Order of this Honourable Court entering summary Judgment for the Claimants/Applicants by mandating the Defendants/Respondents to refund the sum of \$20,240,000.00

(Twenty Thousand, Two Hundred and Forty Dollars) jointly and severally to the Claimants/Applicants being money which the Defendants/Respondents had collected from the 2nd Claimant/Applicant under the guise of paying for the mandatory caution deposit by Bureau De Change Operators at the Central Bank of Nigeria.

2. An Order of this Honourable Court entering summary Judgment for the Claimants/Applicants by compelling the Defendants/Respondents to pay them the sum of **N12,392,000.00 (Twelve Million, Three Hundred and Ninety Two Thousand Naira)** only jointly and severally as special damages being the money given to the 1st Defendant/Respondent by the 2nd Claimant/Applicant to register the 1st Claimant/Applicant as a Bureau De Change Operator.

3. An Order of this Honourable Court entering summary Judgment for the Claimants/Applicants by mandating the Defendants/Respondents to pay them the sum of **N50,000,000.00 (Fifty Million Naira)** only jointly and severally as General Damages for the distress, hardship and trauma suffered by the 2nd Claimant/Applicant as well as the loss of business suffered by the 1st Claimant/Applicant which were all occasioned by the actions of the Defendants/Respondents.

4. An Order of this Honourable Court entering summary Judgment for the Claimants/Applicants by mandating the Defendants/Respondents to pay them the sum of **N100,000,000.00 (One Hundred Million Naira)** only jointly and severally as exemplary damages.
5. An Order of this Honourable Court entering summary judgment for the Claimants/Applicants in the sum of **N500,000.00 (Five Hundred Thousand Naira)** only as the cost of the proceedings.
6. **10% (Ten Percent)** post Judgment interest calculated from the day Judgment is delivered till the date the Judgment sum is liquidated.

It is supported by a 39 paragraphs affidavit deposed to by the 2nd Claimant/Applicant, Alhaji Mohammed B. Suleiman along with 22 Exhibits attached that is Exhibits A – T.

Exhibit A is the Board Resolution.

Exhibit Bis the agreement between the 1st Defendant/Respondent and the 2nd Claimant.

Exhibit C is the document referred to in paragraph 12 signed on the 5th day of August, 2010.

Exhibit D is the letter titled “Final Approval to Operate as Bulhaja Bureau De Change Limited (Class ‘B’ Bureau De Change and signed by I. S. Tukur, on behalf of the Acting Director.

Exhibit E is the Certificate of Membership issued to the 1st Claimant/Applicant by ABCON.

Exhibit F is the letter titled: "Non-Payment of \$20,000.00 (Twenty Thousand Dollars) mandatory Deposit and signed by one Umar Farouk Shehu, on behalf of the Director.

Exhibit G is the letter referred to in paragraph 17.

Exhibit H is the press announcement made by the Central Bank of Nigeria in the Daily Trust Newspaper of 2nd October, 2012.

Exhibit I is the letter titled "Submission of Evidence of payment of Bureau De Change (BDC) Mandatory \$20,000.00 (Twenty Thousand Dollars) caution deposit.

Exhibit J is a computer printout of the yahoo mail.

Exhibit K is the press announcement made by the Central Bank of Nigeria in the Daily Sun Newspaper of 14th January, 2013.

Exhibit L is the letter referred to in paragraph 24.

Exhibit M is the letter referred to in paragraph 25.

Exhibit N1 is the final letter of demand to the 1st defendant.

Exhibit N2 is the final letter of demand to the 2nd defendant.

Exhibit N3 is the final letter of demand to the 3rd defendant.

Exhibit O is the letter referred to in paragraph 30.

Exhibit P is the letter referred to in paragraph 31 bearing the letterhead of R. H. Ahmed & Co.

Exhibit Q is the acknowledged copy of the letter referred to in paragraph 32 dated 16th July, 2019 bearing the letterhead of E. H. Edeh& Co.

Exhibit R is the acknowledged copy of the letter referred to in paragraph 34.

Exhibit S is the letter referred to in paragraph 35.

Exhibit T is the receipt issued by my lawyer evidencing this payment.

It is brought pursuant to **Order 11 Rule 1** of the Rules of this Court. Also it is accompanied with a written address.

Moving the application *brevimanuin* Court, the Learned Counsel to the Claimants/Applicants submitted that they relied on all the depositions in the affidavit in support as well the Exhibits attached and also adopted the written address as their oral argument in support of the application.

It is worth noting that the 1st Defendant/Respondent did not oppose this application at all as he did not file anything in opposition.

As for the 2nd and 3rd Defendants/Respondents, they filed a counter affidavit of 20 paragraphs dated and filed 24th November, 2020. It is accompanied with a written address and 3 Exhibits which are Exhibits A – C.

Exhibit A:- is the letter titled “Demand for Restoration of Operating License/Pre Action Notice” to the CBN dated 15th January, 2020.

Exhibit B:-is the yahoo mail titled “Confirmation” dated 12th day of November, 2012.

Exhibit C:-is the 3rd Defendant’s Statement of Account.

The Learned Counsel representing the 2nd and 3rd Defendants/Respondents relied on the averments and Exhibits attached. He also adopted the written address as his argument in opposing the application for summary Judgment.

Both Learned Counsel formulated a sole issue for determination in their written addresses.

According to the Applicants’ Learned Counsel, the issue for determination is this;

“whether the Claimants has made out a good case so as to entitled them to summary Judgment?”

While the 2nd and 3rd Defendants/Respondents’ Learned Counsel is of the opinion that the issue for determination is;

“Whether this suit is one that can be decided summarily?”

With due respect to the two Learned Counsel, they are saying the same thing but differently as a matter of semantic. They are all correct in their formation of the sole issue.

STATEMENT OF FACTS

That sometime in 2010, the 1st Defendant/Respondent approached me and informed me that he (i.e.) the 1st Defendant/Respondent is a

consultant and he offered to help me to register the 1st Claimant/Applicant as a Bureau De Change Operator in Nigeria by procuring the necessary licences to that effect for the 1st Claimant/Applicant and myself.

That on the 15th day of July 2010, I entered into an agreement with the 1st Defendant/Respondent and pursuant to the said agreement titled “**Agreement for securing Bureau De Change on behalf of M. B. Suleiman**”, the 1st Defendant/Respondent demanded for the sum of **₦12,392,000.00 (Twelve Million, Three Hundred and Ninety Two Thousand Naira)** only from me to register the 1st Claimant/Applicant as a Bureau De Change Operator in Nigeria.

That the 1st Defendant/Respondent in the same agreement which he signed with me equally acknowledged receipt of another sum of **\$20,240,00 (Twenty Thousand, Two Hundred and Forty Dollars)** from me which he said was for the payment of a certain fee called “**Mandatory Caution Deposit by Bureau De Change Operators**” including the commission and which he subsequently claimed to have paid into the Central Bank of Nigeria’s Dollar Account domiciled at J. P. Morgan Chase Bank, United States of America.

That the 1st Defendant/Respondent also requested for the sum of **₦1,900,000.00 (One Million, Nine Hundred Thousand Naira)** only from me as his payment for the registration referred to in paragraph 9 above which I paid him as evidenced by a document titled “**Additional Collection on Bureau De Change Agreement with M. B. Suleiman**”.

It is the submission of the Claimants/Applicants' Learned Counsel that the Rules of this Court permits a Claimant who believes that there is no defence to his claim, to file alongside his originating process, an application for summary Judgment supported by an affidavit as well as a written brief in support of the application. He referred to **Order 11 Rule 1 of the Rules of this Court.**

He further submitted that there is no dispute whatsoever as to the fact that the 1st Defendant/Respondent collected various sums of money from the 2nd Claimant/Applicant to register the 1st Claimant/Applicant as a Bureau De Change Operator in Nigeria.

It is equally not in doubt that the money the 1st Defendant/Respondent collected from the 2nd Claimant/Applicant included the sum of **\$20,240.00 (Twenty Thousand, Two Hundred and Forty Dollars)** which he later claimed to have given the 2nd Defendant/Respondent to make the mandatory payment for Bureau De Change Operators in Nigeria on behalf of the 1st Claimant/Applicant. He referred the Court to **paragraphs 9 – 39** of the supporting affidavit and Exhibits B, J, L and M respectively.

The Defendants/Respondents never made any payment on behalf of the 1st Claimant/Applicant into the Central Bank of Nigeria's Account for the Mandatory Caution Deposit by Bureau De Change Operators in Nigeria despite collecting money from the 2nd Claimant/Applicant for that purpose. Their non-payment of this money led to the de-listing of the 1st Claimant/Applicant by the Central Bank of Nigeria as a Bureau De Change Operator in Nigeria, thereby leading to the loss of business suffered by the

1st Claimant/Applicant. The actions of the Defendants/Respondents equally caused great hardship, difficulties and distress to the 2nd Claimant/Applicant who provided the money for the registration of the 1st Claimant/Applicant which has subsequently gone down the drain as a result of the de-listing of the 1st Claimant/Applicant.

On the part of the 2nd and 3rd Defendants, they submitted that they have fulfilled their obligation by paying the **\$20,000.00 (Twenty Thousand Dollars)** as mandatory caution fee for Bureau De Change Operators in favour of the Claimants.

The big question now is, how do we verify the genuineness or authenticity of this payment? This is the crux of this issue. Another question is whose duty it is to verify this payment? The claim of 2nd and 3rd Defendants/Respondents that they remitted the money to Central Bank of Nigeria in their counter-affidavit (paragraphs 7 and 10) is not verifiable. Even the Central Bank of Nigeria by virtue of Exhibit 'S' pursuant to paragraph 35 of the supporting affidavit did say they have no evidence of such payment.

Therefore, it is the duty of the Defendants/Respondents to have made the payment in such a way that would be verifiable for the Claimants which they had failed to do.

Order 11 Rule 5(2) empowers the Court to enter Judgment for a Claimant where it appears to the Court that the Defendants have no good defence to the claim of the Plaintiffs.

The object of a summary Judgment is not to short out a Defendant but to allow expeditious disposal of a case.

See **ELFA LTD. VS. CITIBANK NIG. & ANOR.(2013) L.P.E.L.R. – 20721 (CA); OBASANJO FARMS NIG.LTD. VS.MUHAMMAD (2016) L.P.E.L.R. – 40199 (CA); MOSHOOD VS.AKUBI (2014) L.P.E.L.R. – 24005 (CA).**

It is for the above reasons that I granted paragraphs 1, 2 and 6 of this application. In essence, this application succeeds in part and fails in part.

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S. B. Belgore
(Judge) 5-3-2024