

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GUDU – ABUJA
DELIVERED ON TUESDAY THE 2ND DAY OF MAY, 2023.
BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE OSHO-ADEBIYI

SUIT NO. CV/1422/2023

BETWEEN
NEP MALL LIMITED ----- CLAIMANT
AND

- 1. HIGHAGOLD GLOBAL INVESTMENT LIMITED**
(Trading under the name and style of “Lego”)
- 2. ARC LIGHTS LIMITED----- DEFENDANTS**
- 3. ODUBELA OMOLADE ABIODUN**
- 4. TAYO ABISOLA OBASANYA**

JUDGMENT

The Claimant filed an amended writ of summons and a statement of claim on 26/1/2022. Then on the 9/11/2022 filed a motion for summary judgment brought pursuant to Order 11 Rules 1 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2018 praying for the following: -

1. AN ORDER entering summary Judgment for the Claimant/Applicant against the Defendant/Respondent in the following terms;
 - i. The sum of USD1,915,985.64 (One Million, Nine Hundred and Fifteen Thousand, Nine Hundred and Eighty-Five US Dollars, Sixty-four Cents) being the sum due and payable to the Applicant for the provision of transponder segment services to the Respondent from July 1, 2017 to September 30, 2018 pursuant to the provisions of the Master Agreement-dated June 13, 2017 and the Full Time Service Agreement-Service Order No 6563 dated June 14, 2017 (as amended);
 - ii. The sum of USD61,577.54 (Sixty-One Thousand, Five Hundred and Seventy Seven US Dollars, Fifty-four Cents) being late payment charges from March 2018 to July 2018, payable by the Respondent to the Applicant pursuant to the Provisions of the Master Agreement dated June 13, 2017.

- iii. The sum of USD7,430,400 (Seven Million, Four Hundred and Thirty Thousand, Four Hundred US Dollars) as Termination Fee pursuant to the provisions of the Master Agreement dated June 13, 2017.
 - iv. Pre-Judgment interest at the rate of 21% per annum on the above sum of USD1,915,985.64 (One Million, Nine Hundred and Fifteen Thousand, Nine Hundred and Eighty-Five US Dollars, Sixty Four Cents) from the date of filing until Judgment is delivered;
 - v. Post judgment interest at the rate of 10% per annum from the date of judgment until the judgment sum is paid;
 - vi. ₦ 5,000,000 (Five Million Naira only) as costs of this action.
2. SUCH FURTHER order(s) as this Honourable Court may seem just or appropriate.

The grounds upon which this application is sought are:

- a. The Applicant and the Respondent entered into a Master Agreement dated June 13, 2017 and a Full Time Service Agreement-Service Order No. 6563 dated June 14, 2017 (as amended)
- b. Pursuant to clause 1(B) of the Master Agreement, on June 14, 2017, the Applicant and the Respondent executed a Full Time Service Agreement-Service Order No. 6563, which was later amended on November 30, 2017 (the Service Order).
- c. However, despite the Applicant's performance of the Service, the Respondent defaulted in performing its contractual obligations under the Master Agreement and the Service Order (together referred to as the Agreements). Essentially the Respondent failed to pay the Service Fees under the agreements as at when due and is therefore indebted to the Applicant for the Service rendered during the Free Period and the Service rendered for the period between January 2018 to September 2018.
- d. As a result, the Respondent is indebted to the Applicant in the sums claimed in the motion paper.
- e. Despite repeated demands from the Applicant, the Respondent has refused to honour its obligations under the Agreements. Thus, the Respondent has no defence to the claims as contained in the writ of Summons and Statement of Claim.
- f. This Court is empowered under Order 11 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2018 (the Rules) to grant judgment to the Applicant.

- g. The Respondent has no reasonable defence to the reliefs endorsed on the Applicant's Writ of Summons and the Statement of Claim, and the reliefs do not require plenary trial.

In support of the Application is an affidavit of 28 paragraphs deposed to by Victor Ojeah and 6 exhibits attached thereto;

- a. Attached and marked Exhibit 1 is a copy of the Master Agreement.
- b. Attached and marked Exhibit 2 (a) and (b) is a copy of the said Service Order executed on June 14, 2017 and the amendment made pursuant thereto on November 30, 2017.
- c. Attached and marked Exhibit 3 (i) – (ix) is copies of invoices issued to the Respondent by the Applicant they are as follows: (i) Invoice No. ABS1706138 dated June 13, 2017; (ii) Invoice No. ABS1706139 dated June 13, 2017; (iii) Invoice No. ABS1803126 dated March 1, 2018; (iv) Invoice No. ABS1803184 dated March 1, 2018; (v) Invoice No. ABS1804199 dated April 1, 2018; (vi) Invoice No. ABS1805230 dated May 1, 2018; (vii) Invoice No. ABS1806122 dated June 1, 2018; (viii) Invoice No. ABS1806210 dated June 1, 2018; and (ix) Invoice No. ABS1807174 dated July 1, 2018.
- d. Attached and marked Exhibit 4 is a copy of the letter before action dated March 27, 2018.
- e. Attached and marked Exhibit 5 is a copy of the Notice of Termination dated August 24, 2018.
- f. Attached and marked Exhibit 6 (a) and (b) are copies of the demand letters dated August 29, 2018 and November 30, 2018.

From the facts deposed, it is the case of the Applicant that Applicant and the Respondent, not being a satellite operator, entered into a Master Agreement dated June 13, 2017 (the Master Agreement) with the Applicant to enable it leverage on, access and / or use the Applicant's satellite to operate a successful Direct-to-Home Television (DTH). Under the Master Agreement, the Applicant agreed to provide "transponder segment service" (the service) to the Respondent. That consequently, and pursuant to clause 1 (B) of the Master Agreement, on June 14, 2017, the Applicant and the Respondent executed a Full Time Service Order No. 6563, which was later amended on November 30, 2017 (the Service Order). That by the Service Order, the parties outlined the details and/or nature of the service to be provided from July 1, 2017 to September 30, 2022 at a monthly rate of USD 154,800 (One Hundred and Fifty-Four Thousand, Eight Hundred US Dollars) which is to be paid quarterly in advance (the service Fee). That provided the Respondent performs its payment obligation as at when

due, the Applicant shall provide the service for free between July 1, 2017 and September 30, 2017 (the Free Period). The free period was subsequently extended to December 31, 2017 as such payments for the service were to effectively commence on January 1, 2018 to September 2022 at a monthly rate of USD 154,800 (One Hundred and Fifty-Four Thousand US Dollars).

However, despite the Applicant's performance of the service, the Respondent defaulted in performing its contractual obligations under the Master Agreement and the Service Order as Respondent failed to pay the Service Fees under the Agreement as and at when due.

Pursuant to Note 1 (a) of the Service Order, the service provided during the free period are to be paid for, following the Respondent's default in performing its financial obligations under the Agreement. Thus, the Respondent is indebted to the Applicant in the sum of USD928,800 (Nine Hundred and Twenty-Eight Thousand, Eight Hundred US Dollars) being the outstanding Service Fee for the Free Period as well as the sum of \$1,393,200 (One Million, Three Hundred and Ninety-Three Thousand, Two Hundred US Dollars) being services rendered from January 2018 to September 2018. That the Respondent has only paid the sum of USD406, 014.36 (Four Hundred and Six Thousand, Fourteen US Dollars, Thirty-Six Cents) as Service Fee. That in total, the Respondent is indebted to the Applicant in the sum of USD1,915,985.64 (One Million, Nine Hundred and Fifteen Thousand, Nine Hundred and Eighty-Five US Dollars, Sixty-Four Cents) after deducting sum already paid by the Respondent. That the Applicant issued several invoices to the Respondent. That due to the inability of the Respondent to pay for the Services rendered as at when due, the late payment charges in the sum of USD61,577.54 (Sixty-One Thousand, Five Hundred and Seventy Seven US Dollars, Fifty-Four Cents) were charged on outstanding sums from March 2018 to July 2018. That by Clause VI (C) (i) of the Master Agreement, where the Respondent fails to make necessary payments under the Agreement, the Applicant may after notifying the Respondent of its indebtedness, terminate the Agreement.

That by a letter dated July 30, 2018 titled "Letter Before Action" (the Notice), the Applicant gave notice of non-payment of the outstanding fees under the Agreements, in accordance with the aforesaid Clause VI (C) (i) of the Master Agreement. That pursuant to the Clause VI (C) (i) of the Master Agreement, where the Respondent fails to pay the amount due and payable under the Agreements within five (5) days after the Notice , the Applicant has a right to terminate the Agreements to the

Respondent. That further to the termination of the Agreement, and pursuant to Clause VI (C) of the Master Agreement, the Applicant is entitled to a Termination Fee in the sum of USD7,430,400 (Seven Million, Four Hundred and Thirty Thousand, Four Hundred US Dollars) covering the period from October 1, 2018 to September 30, 2022 (the remaining Service Terms).

That the Respondent has failed and/or refused to settle the outstanding sum, late payment charges and termination fee (the Debts). That two letters of demand from their firm dated August 29, 2018 and November 30, 2018 were issued to the Respondent in respect of the Debts.

That an attempt was made to visit the Respondent's offices on September 21, 2018 to arrange a meeting for parties to discuss possible options to pay the indebted sum without recourse to adversarial proceedings but was turned down by officials of the Respondent as the representative of the Respondent was not only evasive but declined to confirm the possibility of holding such meeting.

That in spite of the several demands and efforts stated above, Respondent has failed, refused and/or neglected to liquidate its indebtedness to the Applicant and the Respondent will continue to evade payment obligation to the Applicant, unless this Honourable Court intervenes.

Counsel to the Applicant in the written address filed, raised a sole issue for determination which is, **“Should this Court enter summary judgment against the Respondent and in favour of the Applicant given the facts and evidence before this Court as it is clear that the Respondent has no defence whatsoever to the Applicant's claims”**.

Counsel submitted that by virtue of the totality of the facts contained in the Applicant's Statement of Claim; and the affidavit evidence adduced that this is a proper case where this Court should enter summary judgment against the

Respondent. Learned Counsel relied on ORDER 11 of the Rules of this Court and the cases of **UBA V. JARGABA (2007) 11 NWLR (PT 1045) 247, WOODGRANT LTD V. SKYE BANK PLC (2011) 12 NWLR (PT. 1260) P.61,67•, VASWANI V. JOHNSON (2000) 11 NWLR (PT.679) P. 582 @ 586 TO 587 PARA H-B and OKORO V.OKORO (2018) 16 NWLR (PT. 1646) 506.**

Submitted that under Order 11 Rule 1 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2018, an applicant should file an application for summary judgment where he reasonably believes that there is no defence to his claim. Relied on **UBA V.**

JARGABA (Supra), where the Supreme Court held that a plaintiff is entitled to judgment, in a summary judgment application, where it is inexpedient to allow a Respondent to defend for mere purpose of delay. Submitted that the courts have held in various decisions that the summary judgment procedure is such that dispenses timeous justice to an applicant who can show that the respondent has no defence to stand on. It ensures that a respondent does not defend for the mere purpose of delay. Counsel relied on **WOODGRANT LTD V. SKYE BANK PLC (supra)**.

Submitted further that in an application for summary judgment, the law is that an applicant must disclose by his pleadings and supporting affidavit that he has a very reasonable cause of action against the respondent and that the respondent has no tenable defence to the liquidated sum claimed.

Counsel contended that the Respondent does not have any defence to the Applicant's claim as seen from Exhibits 1 - 6 and paragraphs 4 - 24 of the Affidavit. Submitted that the Respondent's failure to respond to the business letters sent, is an admission of its indebtedness to the Applicant. Relied on **ALH. GARBA ABUBAKAR BAGOBIRI V. UNITY BANK PLC (2016) LPELRCA/K/5 /2011**.

Learned Counsel further submitted that in this instant case, the Respondent failed to pay for or respond to the invoices issued to it by the Applicant and the Court in **AMBER RESOURCE (NIG) LTD v. CENTURY ENERGY SERVICES LTD (2018) LPELR-43671 (CA)**, held that ".....an invoice is the list of goods that have been supplied or the quantum of work done requesting payment for the work done or goods supplied..... A person served with an invoice, is taken to have been served a business correspondence expecting express reaction of that person to it. Where there is no reaction or there is silence, it is taken that that person on whom the business correspondence was served is deemed to have admitted the contents, demand or message contained in the business correspondence."

Learned Counsel submitted that in this instant case, there is evidence that the Respondent received the business letters delivered to it via email and surface mail (i.e. the Notice of Termination dated August 24, 2018 and the demand letters dated August 29, 2018 and November 30, 2018) and these documents though received, were not responded to by the Respondent.

Counsel urged the court to hold that the Respondent has admitted its indebtedness to the Applicant in terms of Exhibits 3 (i) - (ix); and Exhibits 4 and 6 (a) & (b). Relied on **ALH. GARBA ABUBAKAR**

BAGOBIRI V. UNITY BANK PLC (Supra) and AMBER RESOURCE (NIG) LTD v. CENTURY ENERGY SERVICES LTD (Supra).

Submitted that where a Respondent is shown to have no real defence to a suit, he should not be allowed to frustrate or cheat the applicant out of Judgment. Relied on **VASWANI V. JOHNSON (Supra)** where the Court held that "...The principles governing an application for summary judgment is that a Respondent who has no real defence to a Suit should not be allowed to frustrate or cheat the plaintiff out of judgment. In this regard the court has a duty to assess facts presented before it in order to ensure that there is no abuse of its process so that there is no delay of justice to a deserving plaintiff ". Counsel submitted finally that the Applicant is entitled to all the sum claimed and urged the Court to grant same.

The Respondent were served with the originating processes and hearing notices, they did not enter appearance neither did they file any process. The sole issue for determination is "whether the Applicant has proved that it is entitled to the prayers sought". Applicant filed this application under **Order 11 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2018**. The said Order 11 states that a Claimant who believes that the Defendant has no defence to a claim shall file same under summary judgment procedure by filing his originating processes, statement of claim, exhibits relied upon, witness statement on oath and an application for summary judgment. That same shall be served on the Defendant and where a party served with the processes for summary judgment intends to defend the suit, he shall within the prescribed time for defence file his defence along with the necessary processes. But where it appears that the Defendant has no good defence at all as in this case the Court will proceed to enter summary judgment in favour of the Plaintiff. The rules provide that defendant file his defence within 21days after service of any Originating processes.

Order 17 Rule 3 of the FCT Rules state that in an action for debt or liquidated money demand the defence in denial must deny the receipt of the money or the existence of those facts which are alleged to make such receipt by the defendant, a receipt to the use of the Claimant. Defendant in this suit has failed to file any defence within the stipulated time and **Order 21 of the FCT Rules** states that if a claim is for a debt or liquidated money demand, and the defendant does not within the time allowed for the purpose, file a defence, the Claimant may at the expiration of such time, apply for final judgment for the amount claimed.

The Applicant prayed this court for a pre-judgment interest in their statement of claim at the rate of 21% per annum on the sum of USD1,915,985.64 (One Million, Nine Hundred and Fifteen Thousand, Nine Hundred and Eighty-Five US Dollars, Sixty-four Cents) from the date of filing until judgment is delivered. It is trite law that for a party to claim pre-judgment interest he has to plead not only his entitlement to the interest, but the basis of the entitlement either by statute or contract agreement between the parties or under custom or under principle of the equity see **DANTAMA v. UNITY BANK PLC CITATION: (2015) LPELR-24448(CA.** In the case of **ADEBIYI (TRADING UNDER THE STYLE OF DELOCK ASSOCIATION) & ORS v. NATIONAL INSTITUTE OF PUBLIC INFORMATION & ORS (2013) LPELR-22628** the court of Appeal held that "The general rule at common law is that pre judgment interest is not payable on a debt or loan in the absence of express agreement or some course of dealing or custom to that effect. Thus, pre judgment interest will, be payable where there is an express agreement to that effect and such agreement may be inferred from a course of dealing between the parties or where an obligation to pay interest arises from the common practice or usage of a particular trade or business - **Alfontrin Ltd Vs. Attorney General, Federation (1996) 9 NWLR (Pt 4750) 634, Diamond Bank Ltd Vs. Partnership Investment Co Ltd (2009) 18 NWLR (pt 1172) 67.** Consequentially, a plaintiff, in order to succeed in a claim for pre judgment interest, must show how the entitlement to such interest arose, that is whether by law, by contract or agreement or he must plead facts showing that the claim is part of the loss or special damages which the defendant's wrong imposed on him. It is not enough to merely say that the plaintiff is claiming interest. The basis of the claim of interest must be made manifest on the pleadings - **Ekwunife Vs. Wayne (W.A.) Ltd (1989) 2 NWLR (pt 122)**

422, Sani Abacha Foundation for Peace & Unity Vs. United Bank for Africa Plc (2010) 17 NWLR (pt 1221) 192." Per ABIRU, J.C.A.(P. 26, paras. A-G). The Claimant has not shown either in their pleading nor by evidence attached how the entitlement to pre-judgment interest arose hence this Court shall not grant same.

Consequently, judgment is hereby entered in favour of the claimant as follows:-

- i. The Respondent shall pay the sum of USD1,915,985.64 (One Million, Nine Hundred and Fifteen Thousand, Nine Hundred and Eighty-Five US Dollars, Sixty-four Cents) being the sum due and payable to the Claimant for the provision of

transponder segment services from July 1, 2017 to September 30, 2018 pursuant to the provisions of the Master Agreement-dated June 13, 2017 and the Full Time Service Agreement-Service Order No 6563 dated June 14, 2017 (as amended);

- ii. The Respondent shall forthwith pay the sum of USD61,577.54 (Sixty-One Thousand, Five Hundred and Seventy Seven Thousand US Dollars, Fifty-four Cents) being late payment charges from March 2018 to July 2018, to the Claimant pursuant to the Provisions of the Master Agreement dated June 13, 2017.
- iii. The Respondent shall pay the sum of USD7,430,400 (Seven Million, Four Hundred and Thirty Thousand, Four Hundred US Dollars) as Termination Fee to the Claimant pursuant to the provisions of the Master Agreement dated June 13, 2017.
- iv. That the Respondent shall pay Post judgment interest at the rate of 10% per annum from the date of judgment until final liquidation;
- v. Cost of action is hereby awarded to the Claimant in the sum of ~~N~~500,000 (Five Hundred Thousand) only against the Respondent.

PARTIES:

APPEARANCES:

**HON. JUSTICE M. OSHO-ADEBIYI
JUDGE**

2ND MAY, 2023