

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
BEFORE HIS LORDSHIP: HON. JUSTICE ASMAU AKANBI – YUSUF
DELIVERED ON THE 23RD NOVEMBER, 2023

FCT/HC/CV/1387/2021

BETWEEN

MR SAMUEL CHEURE..... CLAIMANT/APPLICANT

AND

INDUSTRIAL & GENERAL

INSURANCE PLC..... DEFENDANT/RESPONDENT

JUDGMENT

The claimant by a writ of Summons initiated via the Summary Judgment Procedure, pursuant to ORDER 11 of the F.C.T High Court (Civil Procedure) Rules 2018, dated and filed 1/07/2021, claims against the defendant as follows:

- a) An Order asking the defendant to pay the plaintiff the sum of N#1,750,000.00 for money had and received on Life Assurance Policy No 02425 ABJ
- b) An Order asking the defendant to pay the plaintiff an interest of 21% on the sum of #1,750,000.00 annually from November 2019 to the time of judgment.
- c) An Order asking the defendant to pay the plaintiff 10% statutory interest, until judgment sum is liquidated.
- d) The cost of this action.

Attached to the writ of summons are the accompanying processes as provided for under Order 11 Rule 1 High Court civil procedure Rules (2018). In support of the motion on notice is an 18 paragraphed affidavit deposed to by the claimant himself, and 5 exhibits attached thereto, marked as Exhibits A, B, C, D&E. In line

with the Rules of Court, Dr. D. G Shigaba, learned counsel to the claimant filed a written address and raise a sole issue for determination that:

WHETHER THERE ARE ENOUGH FACTS AND MATERIALS BEFORE THE COURT TO JUSTIFY SUMMARY JUDGMENT FOR THE PLAINTIFF.

The summary of the written address of counsel to the claimant is that this suit deserves to be heard under the summary judgment procedure as the claimant has shown in his depositions that he has good grounds for the claim and that there is no defence to the action. He cited, THOR LTD V. FCMB LTD (2005) LPELR 3242 and some other cases in urging the court to enter summary judgment for the plaintiff as per the reliefs contained in his statement of claim.

It is trite that Summary Judgment is a procedure that is provided for by ORDER 11 of the High Court Rule 2018. It is a procedure whereby the Court gives judgment in favour of a party without going through a full trial. This procedure accommodates both liquidated and unliquidated money demand, provided the claimant believes that the defendant has no defence to his claim. See Order 11 Rule 1 of the High Court Rules 2018 which provides that:

“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 witnesses and an application for summary judgement which application shall be supported by an affidavit stating the grounds for his belief and a written brief in support of the application”.

Also, Order 11 Rule 4 of the High Court Rules 2018 provides:

“Where a party served with the processes and documents referred to in Rule 1 of this Order intends to defend the suit he shall, not later than the time prescribed for defence, file:

a) His statement of defence;

- b) Depositions of his witnesses;
- c) The exhibits to be used in his defence;
- d) Counter affidavit; and
- e) A written brief in reply to the application for summary judgment."

Upon the filing and service of the above processes, the defendant may be granted leave to defend, where it appears to the Court that a defendant has a good defence and ought to be permitted to defend the claim. However, where it is glaringly shown, to the Court, that the defendant has no good defence, the Court may enter judgment for the claimant as it deems fit.

Also, where it appears to the Court that the defendant has good defence to part of the claim, the Court may enter judgment for that part of the claim and grant leave to defend that part to which there is a defence. See Order 11 Rule 5 (3) High Court Civil Procedure Rules 2018.

Basically, the essence of the summary judgment procedure is for disposing of cases which are virtually uncontested with dispatch. It applies to cases where there can be no reasonable doubt that the claimant is entitled to judgment and where it is inexpedient to allow a defendant to defend for mere purposes of delay. It is for the plain and straight forward, not for the devious and crafty. See U.B.A. PLC Vs JARGABA (2007) 11 NWLR (Pt. 1045) 247 @ 270 F-H PER I.T. MUHAMMAD, JSC AND SHODIPO Vs LEMINKAINEN OY (1986) 1 NWLR (Pt. 15) 230

As it can be gleaned from the court's records, i.e. the originating process and accompanying processes, together with claimant's application for summary judgment, it is shown that the processes were served on the defendant on 1/04/2022. (see also the hearing notice of 25th October, 2023).

Now, the claimant in the instant case, avers that he took a Life Assurance Policy with Policy No 02425 ABJ with the defendant which commenced on the 1st June 2009 and was to mature on 1st

June 2024. (see exhibit A attached to the affidavit in support); that the premium monthly was #25,000. He states that by 1st April 2015, he started paying #30,000.00 premium monthly. He stated that, he paid premiums from November 2009 to January 2018 making #1,806,000 in total. He further avers that due to difficulties in cash flow, he was unable to continue with the policy, hence, he wrote to the defendant surrendering his Life Assurance Policy.

The claimant further stated that his application to surrender his insurance policy was approved by the defendant and after necessary deductions, he was assured by the defendant that, he will be paid the sum of #1,750,000; that he received an e-mail from the defendant's officer, one Mathew Ajayi, who assured him that his claim has been processed and forwarded to the Accounts Department for necessary actions which he understood to be for the payment of #1,750,000 to him; that since 24th September 2019, when the assurance of payment of his money was made, the defendant has neglected to pay him the money without any reason at all; that sometime, in December 2020, he caused his Solicitor, to write a letter to the defendant's head office, demanding for his money; that same was received by the defendant's office annex in Abuja on 15th December, 2015, but the defendant neglected to honour his claim. He stated that the defendant owes him the sum of #1,750, 000 as premium he paid in his Life Assurance Policy No 02425ABJ and has willfully neglected and refused to pay him the said amount; that his transaction with the defendant is mercantile in nature as same yields interest; that the defendant has held up his money since 2019, which is close to two years now; that he is entitled to 21% pre – judgment interest, the defendant having held his money and made profit therefrom; that he is also entitled to 10% post judgment interest on the Judgment sum. Finally, he stated that the defendant has no defence to this action, thus he is entitled to summary judgment. He deposed to the affidavit believing same to be true and in accordance with the Oaths Act 2004.

As stated earlier, the defendant was adequately served with the court processes as well as the hearing notice. The defendant

endorsed on the court processes but failed and or neglected to respond to the court processes and neither did the defendant appear in court to defend the matter. Arising therefrom, it is safe to say that the defendant was given ample opportunity to respond to the processes and also put up a good defence as provided for under ORDER 11 RULE 4 of the High Court Civil Procedure Rule 2018.

I shall thereby, proceed to evaluate the evidence put forward by the claimant;

In respect to relief 1, the claimant has asked the Hon. Court to direct the defendant to pay him the sum of #1,750,000.00 for money had and received on Life Assurance Policy No 02425 ABJ. It is important to state that the claimant attached some exhibits to buttress his depositions which I consider pertinent to consider in the determination of this case. Exhibit A is the foundation of the relationship between parties, it is the Life Assurance Policy Schedule; it was issued on 20/11/2009. It states that the commencement date is 01/06/2009 to mature on 01/06/2024. The terms and conditions required of parties are stated in exhibit A, with particular reference to the caveat stated in exhibit A. I find it pertinent to reproduce in part;

“IMPORTANT NOTICE”

Please note that early surrender of policy results into reduced benefits...”

It therefore means, that the defendant envisaged that a party may decide to surrender from the Life Assurance Policy. In paragraph 5 of the affidavit in support of the application, the claimant states that due to difficulties in cash flow, he was unable to continue with the Policy, hence his letter to the defendant surrendering his Life Assurance Policy. See exhibit C and that the defendant communicated their approval to him via exhibit D. He states that despite the approval, the defendant failed to pay him the approved sum, hence, he instructed his solicitor to write a letter of demand to the defendant. See exhibit E. Again, the

defendant failed to respond to the letter and also didn't pay the claimant his entitlement.

It is worthy to note that the evidence as well as the exhibits put forward by the claimant were not denied nor rebutted by the defendant. The law is that evidence that is unchallenged or uncontradicted by the adverse party is good to be acted upon by the Court unless it is either irrelevant or palpably false or worthless by itself. See MTN V. MUNDRA VENTURES (NIG) LTD (2016) LPELR-40343(CA).

Also, see MATHEW IYEKE & ORS V. PETROLEUM TRAINING INSTITUTE & ANOR (2019) 2 NWLR (PART 1656) 217H TO 218 A – D. per AUGIE, JSC *"It is settled law that documents attached to an affidavit as exhibits, form part of the affidavit in question."* See also HON. RABIU GAMBO BAKORI v. PEOPLE DEMOCRATIC PARTY & ORS (2023) LPELR-59955(CA) Per D. Z. SENCHI, JCA (Pp. 53-54, paras. A-B) *"I have perused the Affidavit and further affidavit of the Appellant in support of his Originating Summons. Documents are essential in the circumstance to support the depositions in the affidavit of the Appellant. Mere assertions in an affidavit especially where the averments are denied, then documentary evidence steps in to assist."* (Emphasis mine)

Stemming from the above cases, it is crystal clear, that the claimant has by the facts and exhibits presented proved that his case is worthy to be heard under the summary Judgment Procedure. The defendant being aware of the suit against it and having failed to controvert the assertions or documentary evidence as provided for in the rules, it is indicative of the fact that the defendant has no defence to this action. There is evidence that parties entered into a transaction see exhibits A & B. it is equally in evidence that the claimant wrote to the defendant requesting to surrender from the insurance policy and same was approved. See exhibits C & D. There is also in evidence, the acknowledged copy of the letter of demand written by the claimant's solicitor to the defendant. See exhibit E, which states that failure of the defendant to heed to the demand, the claimant will be left with no option than to take the defendant to

court to ventilate his grievance against the defendant. It can further be gleaned in exhibit E, that the defendant was given 30 days' notice to respond to the demand of the claimant, the defendant, however failed to respond to the letter, hence this suit against it. The Court of Appeal in the case of GWANI V. EBULE (1990) 5 NWLR (PT. 149) 201 held succinctly as follows:

“Silence in circumstances in which a reply is obviously expected raises an irrebuttable presumption of admission by conduct or representation. In the instance case, failure of the defendant to reply to letters written by the claimant both personally and through their solicitors demanding payment for the labor he supplied from the defendant constituted an admission of liability by the defendant and lent credence to the claimant's side of the case.”

See ALIBRO TRANSPORT SERVICES LTD & ANOR V. ACCESS BANK PLC (2023) LPELR-60432(CA).

This suit was instituted against the defendant 1st July, 2021, that is six months after exhibit E was acknowledged by the defendant, the defendant however, refused to honour same. Accordingly, I am satisfied that the defendant has no defence to this action and in the absence of any contrary assertion, I find and hold that the claimant is entitled to relief one.

On the issue of 21% pre-judgment interest, the Supreme Court in NPA V. AMINU IBRAHIM & CO. & ANOR (2018) LPELR-44464 (SC) (Pp. 39-40 paras. C) *“The law is well settled that before a pre-Judgment interest can justifiably be awarded, a plaintiff often pleads that he is entitled to such interest and also that where he so pleads it, he must prove the basis for his entitlement of same by showing that it was supported either by statute or contract agreement between the parties or based on mercantile custom or on principle of equity. Such claim of interest is normally pleaded and proved, See AG Ferrero & Company Ltd vs Henkel Chemicals Nigeria Ltd (2011) LPELR - 12(SC); Adeyemi vs Lan and Baker Nig Ltd (2000) 7 NWLR (pt 663) 3 at 48. It is however a valid law that a Court can still grant pre-Judgment interest on a monetary or*

liquidated sum awarded to a successful party, even in a situation where such a party did not plead or adduce evidence in proof of such claim. Such interest, like in this instant case, naturally accrues from the failure or refusal to pay the amount involved over a long period of time, thereby depriving a party from the use of and/or enjoyment of the sum involved which is the fruit of his Judgment. See Petgas Res Ltd v. Mbaneto (2007) 6 NWLR (pt 1081) 545."

Furthermore, in PETGAS RESOURCES LTD V. MBANEFO (2006) LPELR-6040(CA) per DENTON-WEST, JCA (Pp. 8-9, paras. D-A) The Court has persistently held,

"That a claim for pre-judgment interest must be pleaded; set out in the writ of summons and statement of claim and filing fees calculated and paid on same and evidence must be led to substantiate the claim in the pleadings before the claim may succeed."

See also ALIBRO TRANSPORT SERVICES LTD & ANOR V. ACCESS BANK PLC (SUPRA) Per SENCHI, JCA (P. 32, paras. A-C)

"Pre-judgment interest is interest awarded to a successful party in an action for recovery of a liquidated sum as compensation for loss of the use of money from the time that the claim is determined by the relevant court to the time that judgment is obtained. Pre-judgment interest could also be awarded from the date where the complaint was filed up to the date that the final judgment is obtained. While the interest that is awarded as compensation for loss of the use of money from the time judgment is obtained to the time the principal sum is received by the successful party is known as post-judgment interest".

The claimant in the instant case, averred that his transaction with the defendant is mercantile in nature and that the defendant has held on to his money since 2019 and has been making profit from the money. See paragraphs 12, 13, 14 & 15 of the affidavit in

support. Also, these assertions were pleaded by the claimant in his statement of claim and there is no rebuttal from the defendant. It is not in doubt that the defendant being an insurance company, impliedly has a duty to pay interest to the insured. See exhibit A. Also, after receiving the claimant's letter, indicating his intention to surrender from the insurance policy and on approving same, it behooves on the defendant to have honored the condition stated in exhibit A, i. e by paying the claimant his entitlement. In view of the nature of the business of the defendant, I find that the claimant has been able to prove that he is entitled to 21% pre-judgment interest on the sum of #1,750,000.00 starting from November 2019 till date. And I so hold.

In respect to relief 3, the claimant prayed the court to order the defendant to pay him 10% statutory interest, until judgment sum is liquidated. Basically, this is at the discretion of the court as the rules permit same. See Order 39 Rule 4 of the Rules of this Hon. Court. ORDER 39 RULE 4 of the High Court (Civil Procedure Rule) 2018 provides that:

“the court at the time of making any judgment or order or at any time afterwards, may direct the time within which the payment is to be made or other act is to be done, reckoned from the date of the judgment or order, or from some other point of time, as the Court may deem fit and may order interest at a rate not less than 10% per annum to be paid upon any judgment”.

On a calm consideration of the evidence in this case, I find that the relief is availing and same is accordingly granted.

For the avoidance of doubt, Judgment is entered in favour of the claimant as follows:

- 1) The defendant is ordered to pay forthwith, the sum of #1,750,000.00 to the claimant, being money had and received on Life Assurance Policy No 02425 ABJ.

- 2) The defendant is ordered to pay the claimant 21% pre-judgment interest on the sum of #1,750,000.00 annually from November 2019 till the delivery of this Judgment.
- 3) The defendant is directed to pay 10% post judgment interest from the date of delivery of the Judgment, until final liquidation of the judgment sum.
- 4) #50, 0000 is hereby accessed as the cost of action in favour of the claimant and against the defendant.

ASMAU AKANBI YUSUF

(HON JUDGE)

APPEARANCE

Amanambu Isaac ESQ. for the claimant;

Respondent absent and not Represented.