

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

BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS

COURT: 28

DATE: 1ST February, 2022

FCT/HC/CV/135/2021

BETWEEN

ACCESS BANK PLC-----

CLAIMANT

AND

**1. NNENNA DORIS UBANI
2. ANNESCA GLOBAL SERVICES LIMITED** }

DEFENDANTS

RULING

The Defendants/Applicants brought this motion on notice No. 083/2022 dated and filed on the 10th January, 2022 praying the following orders:-

1. An order striking out the Claimants process titled "Reply to statement of defence and defence to counter claim" for gross violation of the rules of this Honourable Court and the laws governing pleadings in this Honourable Court; or in alternative
2. An order striking out paragraphs 4,7,8,10,5 and 16 of the Claimant's process titled "Reply to statement of defence and defence to counter claim," being an attempt to introduce new

facts and change or muddle up the facts upon which the Claimant had based its claims, and

3. An order striking out paragraphs 2,3,11,13 and 14 of the Claimant's processes titled "Reply to statement of defence and defence to counter claim" being an unnecessary repetitions of some of the pleadings in the claimant's statement of claims.
4. And for such further order(s) as this Honourable Court may deem fit to make in the circumstances.

The Claimants case was transferred from the undefended list to the general cause list for which reason the Claimant filed a statement of claim. The Defendant filed and serve a joint statement of defence joining issues with the Claimant. The Claimant filed a document titled reply to statement of defence and defence to counter claim as served on the Defendant.

It is the Defendant contention that the Claimant document is unknown to law as only a defence to counter claim could have been filed by the Claimant.

That the said filed and served by the Claimant is in part a general denial and in other part a repetition of the averments. In the Claimant statement of claims. That the said averments as contained in the Claimants document before the Court are rogue and inconsistent with the earlier pleadings by the Claimant. Hence the prayers as contained on the face of the motion on notice. Having reproduced particularly the reasons for the objection above it becomes imperative on the part of the Court to look at

the reason for the objection "reply to statement of defence and the defence to the counter claim whether service is unknown to law. By Order 15 Rule 11-3 of the Rules of this Court provides:-

1. A statement of claim include the relief or remedy to which a Claimant Claims to be entitled.
2. A Defendant shall filed his statement of defence set off or counter claim if any not later than 4 days after service counter claim shall have the same effect as a cross action.....
3. A Claimant shall within 14days of service of the statement of defence and counter claim if any file his reply and defence if any to such defence or counter claim. By the express provision of the above rule Claimants reply to statement of defence and defence to Counter claim is a pleading known and recognized by the rules of this Court.

It is trite law that evidence on facts not pleaded go to issue see ***REPTICO S.A GENEVA VS AFRIBANK NIG. PLC (2013) LPELR 20662 SC***. In the instant case however the 1st Defendant in her affidavit in support of the motion on notice avers that Claimant paragraph 14 and 48 of statement of claim are inconsistent with Claimants paragraph 5 of reply to statement of defence and defence to the counter claim which defendant claims is a new facts. Paragraph 14 of Claimant statement of claim.

The 2nd Defendant agree to reply the principal on the loan facility together with the interest by bullet payment from the proceed of

contract executed from the PPMC while the loan shall become due in the event of any default to the Defendant in the payment of the principal interest and otherwise.

Paragraph 46 the money advanced to the 1st Defendant is part of the deposition funds which form part of the trading capital of the Claimant. Paragraph 5 of Claimants reply to statement of defence and defence to counter claim.

The Claimant did not at anytime whatsoever agree with the Defendant to subject deposition fund to the performance/nonperformance of the contract granted to the Defendant. To my mind paragraph 5 of Claimants reply to defence is at most contradictory to Claimants paragraph 14 of the statement of Claim but not a new fact. Claimant paragraph 5 a direct reply to paragraph 19 of Defendants joint statement of defence.

Defendants acknowledged the Claimant reply dated 13th February, 2017 which same statement was unacceptable to the 2nd Defendant. However the Defendant did not make this position known to the Claimant by reply to the letter dated 18th January, 2017. The said letter gives the Defendant 30 days to settle their indebtedness to the claimant. Defendant did not however write back to ask for more time or lodge their dissatisfaction on the sum owed. Paragraphs 2, 3, 11, 13 and 14 of reply to statement of defence and defence to counter claim are repeated for

emphasis being the Claimant defence to the Defendants counter claim.

Having analyzed the position of the Defendant/Applicant and looking at the counter affidavit seems to me that interest of justice and only be served by allowing the matter to proceed the rules of Court relied upon by the Defendant Counsel order 15 rule 8 is not mandatory rule but rather to Court have the power to do the needful in the interest of justice or fair play.

I therefore deem it just not to grant the relief sought by the Defendant. Consequently all the reliefs prayed are hereby refused instead I hereby allow the two led Counsel to ventilate their position for and against to the justice of the Court as can be seen glaringly. It is helpful to always remember that technical justice is no justice at all and a Court of law should distance itself. Court of law should not be un-duly tired down by technicalities particularly where no miscarriage of justice would be occasioned. Justice can only be done in substance and not impending it with technicalities. Paragraph 7 of the Claimants reply to defence has the offer of banking facilities as dated 26th – 2004 which paragraph 6 of the Claimants statement of claim dates the offer letter offering a loan to the Defendant on 3rd January, 2014 I have carefully perused the file and seen only the offer letter dated 3rd January, 2014 and non dated 26th -2004. Paragraph 6-14 of the Claimants statement of claim contains facts stated in the offer of credit facility dated 3rd January, 2014 which was

signed by the 1st Defendant has the interest rate percent at 22% and a default indemnity clause that read.

“If the borrower fails to pay any sum (of the principal interest or otherwise) due or to become due hereunder, the borrower shall be liable to a penalty fee of 1% flat per months. On unpaid portion of the facilities this fee which shall be charged on the 1st working day after the sum is due will be in addition to the prevailing temporary overdraft interest rate on the unpaid sum from the date when such payment falls due up to the date of payment.”

This means 1% flat shall be added to the already existing overdraft interest rate which is 22%. The demand letters attached as annexures to the Claimants statement of claim do not have acknowledgment copies showing that each letter was served and received by the Defendant. Who claims that they did not receive the letter see paragraph 20 of DSD. Defendants by their paragraph 24 of SD acknowledge writing to the Claimant dated 18th January, 2017 asking for a discountenance of interest by paragraph 25 procedural /irregularity that occasioned no miscarriage of justice. Where the facts are glaringly clear the Court should ignore mere technicalities in order to do substantial justice see ***FARFA OIL LTD A.G FED (2013) 18 NWLR (PT. 852)453. ABUBAKAR VS YARA ADUA (2008) 4 NWLR (PT.***

**1078) 465 AND AKAN VS BOB (2010) 17 NWLR (PT.1223)
421** and i so hold

**HON. JUSTICE M.S IDRIS
(PRESIDING JUDGE)**

1/02/2022