

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GWAGWALADA- ABUJA

THIS THURSDAY THE 25TH DAY OF JANUARY, 2024

BEFORE HIS LORDSHIP: HON. JUSTICE ALIYU YUNUSA SHAFI

SUIT NO: FCT/HC/CV/2368/2023

BETWEEN:

AGRISEEDCO NIGERIA LIMITED.... CLAIMANT/APPLICANT

AND

REGISTERED TRUSTEE OF MAIZE GROWERS,

PROCESSORS & MARKETERS ASSOCIATION

OF NIGERIA.....DEFENDANT/RESPONDENT

JUDGMENT

By writ of summons for undefended list procedure with suit No: CV/2368/2023 filed dated 14-02-2023,

Here in this suit the claimant claims against the defendant the following reliefs:

- 1. An order of judgement against the defendant in the sum of N100,717,120.00 (One Hundred Million, Seven Hundred and Seventeen Thousand, One Hundred and Twenty Naira) being the Defendants indebtedness to the claimant and constituting of the sums of N91,636.800.00 (Ninety-One Million, Six Hundred and Thirty-Six Thousand, Eight Hundred Naira) for the claimant's unretrieved unused seed and the sum of N91,080,320.00 being the outstanding balance on the payment made by the Defendant for the used seeds.**

- 2. An order directing the Defendant to forthwith, pay to the claimant the sum of N100,717,120.00 (One Hundred Million, Seven Hundred and Seventeen Thousand, One Hundred and Twenty Naira).**
- 3. Ten percent (10%) post Judgement from the date of Judgment till the date of final liquidation of the Judgement sum.**
- 4. The cost of this action as assessed and other embracing costs.**

a companying the writis an affidavit in support of the undefended list of 18 paragraph which encompasses the Background of facts paragraph 5-7, certificate of compliance with section 84 (4) of the evidence Act, 2018 7(a-f).

attached to the affidavit are the certificate of pre-action counselling of 2 pages, list of documents listed as 2 pages, list of documents listed as 1-9 e marked as exhibit 1, 2, 3, 4, 5, 6a, 6b, 6c, 6e, 6f, 6g, 6h, and 6i, 7, 8, 9, 10 and 11.

Upon the receipt of this case the claimant filed a motion ex parte for an order of substituted service dated the 12th Day of April, 2023. The motion was heard on the 20-5-2023 and the order sought therein was granted. And the order sought therein was granted and the order enrolled and served on the defendant by the bailiff of this court dated 11-05-2023 by 1.40pm. certificate of service filed in the court file indicating the mode of service on the defendant and the matter fixed for 8th day of June One Abdulbaji Jafaar representing the claimant reported that service has been effected on the defendant and pray for a date to enable them proceed to the hearing. This matter was adjourned to the 07-07-2023 with an order of Court Directing the claimant to serve the Defendant hearing notice.

On the 07-07-2023 bone Barr. A. J. Suleiman represented the claimant as this counsel while the defendant was not in court.

On this, in the words of the claimant counsel I quote”

“...the relevant notices have been served on the defendant...”

And i pray the court to proceed with the hearing of it’s claim against the defendant.

Before I proceed I will refer to order 35 of the rules of this court that deals with the undefended list procedure.

35(1) provides thus:

Where an application informs I as in the Appending is made to issue a writ of summons, in-respect of a claim for a debtor liquidated money demand claimant supported by an affidavit stating the grounds on which the claim is based, and stating that in the deponents' belief there is no defence to it the judge in chambers shall enter the suit for hearing in what shall be called the Undefended list"

33 (3)(1) provide.

“where a party served with the writ delivers to the registrar. Before 5 days to the day fixed for hearing, a notice in writing that he intends to defend the suit together with an affidavit disclosing on merit, the court may give him leave to defend upon such terms as the court may think just.

35(3)(2) where leave to defend is given under this rule, the action shall be removed from the undefended list and placed on the ordinary cause list and the court may order pleadings or proceed to hearing without further pleadings.

35(4) Where a defendant neglects to deliver the notice to defence and an affidavit prescribed by rule 3(1) or is not given leave to defend by the court the suit shall be heard s an undefended suit and Judgement given accordingly.

In compliance with the above rules stated above, the claimant on the 14/2/2023 brought this action to this court filed dated 14-02-2023 and haven complied with the rules or order 35(1) of the rules of this court proceeded to file a motion on notice for an order of substituted service, the said motion was moved and the order sought therein was served on the defendant.

Now to the affidavit in support to place the suit under the undefended list. In the said affidavit deposed to by the claimant one Mr. TaiwoLawal of plot 34, Yam Market, Television Bypass Kaduna South, Kaduna State of 18 paragraphs, where the claimant Marshalled out his grievances against the defendant and the background of facts supported his view that the defendant has no defence to his claims, paragraph 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16 of the supporting affidavit Marshalled out the facts thus:

Paragraph 5.

Following the defendant's letter to the claimant dated 23-4-2020 indicating the claimants. Appointment by the defendants as it's seeds supplier for the

2020 wet season maize CBN sponsored Anchor Borrowers Scheme that was being implemented nationwide, the defendant requested from the claimant via a ideal purchase order dated 20/5/2020 for the supply of 760,000kg of maize seeds at the cost of N608,000.00. a copy of the letter of appointment and that of the local purchase order are attached hereto as exhibits 1& 2 respectively.

Paragraph 6 pursuant to the local purchase order, the claimant and the defendant executed a memorandum of understanding which both parties were tied to a contract requiring the claimant to supply 760,000.00 kg of maize seeds to the defendants at an agreed unit price of N800 per kg with each bag containing 20kg. the claimant was to supply the agreed maize seeds at agreed locations and same was to be received by representation of the defendant. exhibit 3. Attached.

Paragraph 7, as agreed by parties payment for the maize seeds was to be made by the defendant at a period not exceeding 30 days after, delivery of the maize seeds by the claimant. The claimant eventually supplied the 760,000.00kg of maize seeds as agreed and further supplied extra 167,360kg of maize seeds due to the defendant's increased demand above the initial local purchase order. As such, the total quantity of maize seeds supplied to representative of the defendants by the claimant became N927,360kg at the unit price of N800 per kg in the total sum of N741,888,000.00 and same were certified by members of the defendant who are farmers. The claimant performance of it's own part of the obligation is as shown in the table titled "input Distribution" Exhibit 4.

Paragraph 8,

Further to paragraph 7 above, the Defendant planted 747,240kg of the supplied maize seeds in the value of N597,292,000.00. the defendant 1st payment was made in two tranches as follows:

The sum of N403,190,400.00 was paid in the 1st payment trench, while N185,521,280.00 was paid in the 2nd payment trench, following a demand for same by the claimant via it's letter dated 31-08-202 exhibit 5.

Paragraph 9.

Cumulatively the total payment made by the defendant in both the 1st and 2nd trench is the sum of N588,211,680.00. having paid only the total sum of N588,711,680.00 for the 747,240kg used maize seed, the Defendant left an outstanding yet to be paid for the used maize seeds.

Paragraph 10, a

Also having planted only 747,740kg out of the 927,360kg that were supplied, there was a total number of 180,120kg of unused seeds valued at N144,096,000.00 left in the custody of the defendant. However, the claimant was able to retrieve 65, b574kg valued at the cost of N52,574,200 Out of the 180,120kg of unused stocks, while the Defendant still held unto the remaining 114,546kg of the seeds valued at N91,636,800.00.

Paragraph 11,

The defendant's representative at the various delivery locations comprising of the states of the Federation including the FCT where the seeds were to be delivered, received delivery of the maize seeds and same was acknowledged on the various delivery note/waybill, exhibit 6a-i.

Paragraph 12,

However, the defendant has since failed and/or refused to pay to the claimant it's total outstanding indebtedness in the sum of N100,717,120.00 being the value of the unretrieved unused stocks in the sum of N91,636500.00 and the sum of N9080,3200 being the outstanding balance on the payment made by the defendant for the used seeds as shown in the account statement. Embodying the defendant debts profile maintained with the claimant. Exhibit 7.

Paragraph 13,

Following the failed entreaties by the claimant in ensuring that the defendant liquidates it's indebtedness, the claimant authored several demands notice to the defendant through it's nominated debt recovery agent exhibit 8 & 9.

Paragraph 14,

When it became apparent that the defendant continued deliberate refusal towards liquidating the debts which was a fraudulent attempt to deprive the claimant of it's scarce resources, the claimant appointed a debt recovery agent and authored a petition dated 15/9/2022 for the police to investigate the fraudulent overtures of the defendant. Exhibit 10.

Paragraph 15,

Despite the notices and petitions written by the claimant and against the defendant the defendant has failed, refused and neglected to liquidate it's outstanding indebtedness to the claimant up till date.

Paragraph 16,

I know as a fact that the Defendant has no defence to this action as the amount claimed is not disputed by the defendant as evident in the defendant's letter to the claimant dated 19th May, 2022 wherein the Defendant acknowledged it's indebtedness. Exhibit 1.

The Defendant who did not file any notice of intention to defend in reference to order 35 (4) of the rules of this court. For the purpose of clarity, I deem it fit to reproduce order 35 rule 4 of the civil procedure rules of the FCT High Court 2018 which states.

“where the defendant reflects to deliver the notice of defence and an affidavit prescribed by the rule 3(1) or is not given leave to defend by the court the suit shall be heard as an undefended list and judgement given accordingly”

On this I wish to state that, courts have sufficiently expounded on what amounts to the claimant proving his case to be entitled to relief sought.

In the instant case, the defendant failed to file any notice of intention to defend or a defence on merit.

It is trite law that courts is entitled even in an undefended case to be satisfied that the evidence adduced is credible and sufficient to sustain the claim.

See the case of Ayoke V Bello (1992) 1NWLR (pt. 218)387. Also in the case of Ejasco Global Investment Ltd V Inim (2015) LPELR the court of Appeal held thus:

“In proceeding brought on the undefended list procedure, the duty of the trial court on the return date, is to evaluate the affidavit evidence and determine if the Defendant who has filed a notice of intention to defend supported by an affidavit that condescends upon particular in response to the plaintiff's case, if the trial court is of the view that the defendant has disclosed a triable issue, the matter would be transferred to the general cause list for hearing. If no real defence has been disclosed the matter will be heard on the undefended list and judgement entered in favour of the claimant”

It is trite that where a defendant in an undefended list procedure fails to disclose by affidavit, a defence on the merit, the court is enjoined to give judgement, on the undefended list. In other words in the absence of any compelling facts made

out in a defendant's affidavit in support of his notice of intention to defend, a trial court can enter judgement infavour of the claimant on the undefended list.

Also in the case of AREWA textiles Plc V FINETEX Ltd (2003) 7 NWLR (Pt. 819)322 at 341 paragraph D-9 Per Salami JSC as he then was held thus:

That the claimant will not be entitled to judgement merely because the defendant abandoned it's defence by failing to lead evidence in support thereof.

The court would openly be bound to accept unchallenged uncontroverted and unrebutted evidence of the claimant, if it were cogent and credible. The court couldnot accept a piece of evidence which is not material and of no probative value merely because the only evidence before the court is that of the claimant. Even where the evidence is unchallenged and uncontroverted the trial court has a duty to evaluate it and be satisfied that it is credible and sufficient to sustain the claim"

I need to re-emphasise the point that the undefended list procedure is fashioned to take care of cases relating to simple uncontested debt on liquidated money demand or monetary claims, where in the affidavit on points of law relating to the claims, the trial court ought to exercise caution in entering judgement under the undefended list procedure and should transfer the matter from the undefended list to the General cause list to be dealt with by pleadings, etc.

The essence of the undefended list procedure in the civil procedure rules of the various High Courts throughout Nigeria including order 35(3)(1) of the High Court of the FCT (Civil Procedure) rules 2018, is to allow a claimant obtain quick Justice in respect of a debt or a liquidated sum, where the facts are clear and there is no genuine defence to the claims. It Allows a court to enter judgement in favour of the claimant instantly without the need to go the whole hog of a full trial and the calling of witnesses. It is a veritable tool that saves judicial time experience.

I have carefully gone through the writ of summons, the affidavit in support of the undefended list procedure as provided under order 35 rule 3 (1) of the High Court of Federal Capital Territory (Civil Procedure) Rules 2018 which is a specialized procedure crafted to aid and expedite recovery of a debt or liquidated money demand particularly where the facts are not in dispute, and it is apparent to the court that the defendant has no defence to the claim and from the back grounds of fact. As stated by the claimant, it is clear that they are rooted on

the provisions of 35 (3) (c) of the FCT High Court (Civil Procedure) Rules 2018.

I have equally gone through and perused the exhibits attached to the affidavits in support exhibit 1 being Re-Adoption as seed supplier for our anchor borrowers program from maize grower's processes and marketer's association of Nigeria dated the 23-4-2020 addressed to the M.D. Agriseed Co Nig Ltd.

Exhibit 2 being Local purchase order dated 20-05-2020.

Exhibit 3 Memorandum of Understanding between Maize Growers Processes & Marketers Association of Nig and Agriseed Co Nig Ltd Exhibit 4. Input Distribution (Seed Co Nig)

Exhibit 5, the quest for payment of outstanding balance of N338,697,600.00 from Agriseed Co Nig Ltd dated 31/8/2020 addressed to the president Maize grower's processes and Marketers association of Nig.

Exhibit 6a delivery Note/waybill

Exhibit 6b delivery Note/waybill

Exhibit 6c delivery Note/waybill

Exhibit 6d delivery Note/waybill

Exhibit 6e delivery Note/waybill

Exhibit 6f delivery Note/waybill

Exhibit 6g delivery Note/waybill

Exhibit 6h delivery Note/waybill

Exhibit 6l delivery Note/waybill

And the Magpaman Debt Profile Debtors Account Statement exhibit 7

Exhibit 8, demand for your immediate payment of the sum of N104,717,120,321. 576 being the outstanding sum owed to AgriseedNig Ltd dated 17-3-2022.

Exhibit 9, Re-demand for Immediate payment of the sum of N100,717,120,321,576 being the outstanding sum owed to Agriseed Co Nig Ltd dated 5-5-2022 Exhibit 10, petition against Maize Growers Processes and Marketers Association of Nig (Magpama) for fraudulently obtaining/conveying/Diverting Monies Belonging to Agriseed Co Nig Ltd and lastly letter of Memorandum of understanding dated 19-5-2022, I

have no doubt to say that the Claimant has proved his case hence Judgement shall be given in it's favours as per his claim 1 and 2.

On the claim 3 being Ten Percent 10% post Judgement interest from the date of Judgement until the date of final liquidation of the Judgement Sum.

The claim of 10% interest on the Judgement sum is one granted at the discretion of the court pursuant to the provision of order 39 rule 4 of the rules of court.

The order provides thus:

“the court at the time of making any Judgement or order 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 Judgement 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 Judgement.

On a calm consideration and in accordance to order 39 rule 4, this relief is availing.

The final reliefs sought by the claimant is the cost of action as assessed and other embracing costs.

On this, it is the law that the claim should have been specifically proven before it can be awarded;

This head of claim is not clear whether the sum claimed by the claimant is legal fee paid by the plaintiff to his counsel or as a fee paid to court or out of pocket expenses.

In Divine Ideas Ltd V Umoru (2007) All FWLR (PT.380) at 1509 paragraph A-D. the court of appeal Abuja Division held thus:

“cost of actions or Solicitors fees are in the realm of special damages, which must be specifically pleaded and strictly proved.

In the instant case, the appellant did not specially and specifically plead the details of the amount expended by it in the prosecution of the litigation in the trial court.

It also did not adduce any evidence in proof of this non-specific claim that has been abandoned. The appellant is therefore not entitled to be awarded any amount of general damages and or cost of action in the trial court.

It is trite law, that award of cost is solely at the discretion of the trial court to award cost. And in awarding the cost, the court will look at the cost incurred in the prosecution of the action and award costs accordingly.

This award must be done judiciously and judicially. See Theobros Auto-link Ltd V B. I. A. E. Co Ltd (2013) 2 NWLR (pt. 1338) Page 337 (CA).

I have carefully perused the court, file and the processes of this court, including appearance and dates of adjournment, I shall award the sum of N500,000.00 (Five Hundred Thousand Naira) only.

In summary and for avoidance of doubt pursuant to order 35 rule 4 of the rules of this court 2018, I must proceed to enter Judgement in favour of the Plaintiff. Judgement is hereby entered for the plaintiff against the Defendant as follows:

- 1. The sum of N100,717,120.00 (One Hundred Million, Seven Hundred and Seventeen Thousand, One Hundred and Twenty Naira) being the Defendants indebtedness to the claimant and constituting of the sum of N91,636,800.00 (Ninety-One Million Six Hundred and Thirty-Six Thousand, Eight Hundred Naira) for the claimant unretrieved unused seeds and the sum of N9,080,320.00. being the outstanding balance on the payment made to the defendant for the used seeds.**
- 2. Ten percent 10% post Judgement interest from the date of Judgment till the date of final liquidation of the judgement sum.**
- 3. N50,000.00 as cost of action or rather I award costs assessed at N50,000.00 Fifty thousand Naira (only) payable by the Defendant to the plaintiff.**

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Hon. Justice A. Y. Shafa

Appearance:

1. Abdulbaki J. Suleiman for the Claimant.
2. Defence Absent.

