

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT MAITAMA**

**BEFORE HIS LORDSHIP:     HON. JUSTICE Y. HALILU**  
**COURT CLERKS                 :     JANET O. ODAH & ORS**  
**COURT NUMBER               :     HIGH COURT NO. 22**  
**CASE NUMBER                 :     SUIT NO: CV/2266/2020**  
**DATE:                                 :     THURSDAY 25<sup>TH</sup> MARCH, 2021**

**BETWEEN:**

**BARR. BULA ZAKAYO KELLE** } **CLAIMANT**  
**(Doing business under the name the Bulakz Solicitor)** }

**AND**

**1. GWAZE LIMITED** } **DEFENDANTS**  
**2. JOSEPH OBADIAH** }

# **RULING**

Claimant's counsel, K.N Jatau Esq. filed application **No. M/8809/2020** pursuant to the statement of defence filed by the Defendants seeking an Order of this court entering summary judgment as per the reliefs sought as endorsed on the writ of summons and statement of claim against the Defendants.

The said application which was supported by a 23 paragraph affidavit also had Exhibits "A", "B", "C", "D", "E", "F", "G", "H" and "I" annexed, i.e letter of retainership, memorandum of understanding, irrevocable power of Attorney, sale of land agreement, Deed of Assignment, 3 Solicitors letter, Writ of Summons in suit **No. FCT/HC/CV/08/09**, and Notice of change of counsel.

Defendants on their part filed a 30 paragraphs affidavit, annexing four Exhibits i.e Access Bank Certificate of Identification of Four Statements of Account belonging to one Joseph Obadiah Gwaze Ltd separately marked as Exhibits “J01”, “J02”, “J03” and “J04” respectively.

A further affidavit was also filed by Claimant.

The 28 paragraph further affidavit had annexed to it Exhibit “AA” and reply on points of law.

Learned counsel for the Claimant and Defendants adopted their written arguments in support and against the application for summary judgment.

I need mention that the whole essence or purpose of a summary judgment procedure is to ensure justice to a Plaintiff and minimize delay where there is obviously no defence to the claim of the Plaintiff and

thus prevent grave injustice that might occur through a protracted and immensely frivolous litigation.

It is meant to prevent sham and baseless defence from defeating the right of a Plaintiff by delay and thus causing great loss to Plaintiff.

Under the FCT High Court Civil Procedure Rules 2018, the procedure for summary judgment is provided for under Order 11 of the High Court Civil Procedure Rules 2018.

Unlike proceedings under Order 35 of the Rules of this Court i.e undefended list, Order 11 of the Rules of this court envisages a situation where from the available pleadings i.e statement of claim and Defence, Defendants has not shown any defence at all to warrant being afforded any such opportunity to Defend the said suit all the way.

I have considered the statement of claim of the Claimant and reliefs as contained on the Writ of Summons and the Statement of Defence of the Defendants which formed the basis for the application for summary judgment under consideration made by the Claimant's counsel.

Issues have been joined with respect to professional jobs carried out by Barr. BulaZakayoKelle who does business under the name "the Bulakz Solicitors."

Whereas it is the claim of the Claimant that he carried out jobs for the Defendants and has not been paid, Defendants in their counter affidavit annexed print – outs of statements showing various payments made to the Claimant for the various jobs done. Defendants have also denied owing Claimant such sum as captured in the bill sent to them.

This is a very cumbersome situation.

In the absence of any common understanding as to what to pay as professional fees and or how much was paid and unpaid balance, there would not have then any clear perimeter for the court to give judgment under order 11 of the Rules of this Court. I am in agreement with Defendants' counsel that this action not been one for liquidated money demand, this court should refuse and dismiss the application.

This is not one of those cases where Order 11 could come to play.

I find solace for above on the authorities of ***OKAMBAH VS SULE (1990) 11 – 12 SC 47, SODIPO VS LEMMINIKAINEN & ORS (1986) NWLR (Pt. 15) 220.***

I hereby grant leave to Defendants pursuant to Order 11 Rule 5(1) to defend this action.

Accordingly, the said application filed for summary judgment having fallen short of the established law is hereby dismissed.

*Justice Y. Halilu*  
*Hon. Judge*  
*25<sup>th</sup> March, 2021*

**APPEARANCES**

Claimant in Court.

K.N Jatau with D.U Aduna - for the Claimant.

Justina A. Adeniyi – for the Defendants