

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT COURT 1, GUDU - ABUJA**  
**DELIVERED ON THURSDAY THE 12<sup>TH</sup> DAY OF DECEMBER, 2024.**  
**BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE R. OSHO-ADEBIYI**  
**SUIT NO. CV/6678/2023**

**BETWEEN**

**DR. LEO OKO OGBA----- CLAIMANT**

**AND**

**SWIFTLEND LIMITED-----DEFENDANT**

**JUDGMENT**

The Claimant filed a writ of summons and a statement of claim praying the Court for the following reliefs:

- 1 A sum of N50,000,000.00 being the principal invested by the claimant as a working capital into the Defendants' money lending business.
- 2 A sum of N35,000,000.00 only being the interest accrued on the investment sum of N50,000,000.00 from the month May 2022 to the month of June 2023.
- 3 A sum of N2,500,000.00 only per month until the judgment sum is liquidated.
- 4 General damages of a sum of N10,000,000.00 only.
- 5 The cost of prosecuting this suit assessed at a sum of N5,000,000.00 (Two Million Naira Only). (sic)

The Claimant thereafter filed a motion for summary judgment seeking for an order of this Honourable Court entering/delivering a summary judgment in the substantive suit in favour of the Claimant and for such further or other

order(s) as this Honourable Court shall deem necessary to make in the circumstances of this suit.

The grounds upon which the Claimant brought this application are: -

1. That from the facts as well as the documents pleaded by the Claimant/Applicant in his statement of claim which documents contain the transactions between the claimant/applicant and the Defendants/Respondents, the Defendants/Respondents have no defence whether real or imaginary to the principal claims of the claimant/Applicant in the substantive suit.
2. That from the said documents as pleaded by the Claimant/Applicant, embarking on a full trial of the substantive suit to wit; hearing, will only amount to a mere waste of the precious judicial time and occasioning a delay in the justice of the matter.
3. That the claims of the Claimant/Applicant are very self-explanatory and as such, do not need any further proof hence this application.

In support of the application is an affidavit of 26 paragraphs deposed to by the Claimant and documents attached and marked as follows:

- a. Investment Agreement as Exhibit L1.
- b. Funds transfer form as Exhibit L2.
- c. 8 Copies of UBA cheques as Exhibit L3 to L8.
- d. Letter dated 07/09/2022 as Exhibit L9.
- e. Letter dated 20/06/2023, addressed to Defendant as Exhibit L10
- f. Acknowledgement of payment as Exhibit L11.

From the facts deposed, it is the case of the Claimant that he initially intended to purchase a residential apartment in Abuja but found himself short of N8,000,000.00 and during discussions with a friend who is the general manager of the Defendant, he expressed this financial challenge. That this friend suggested that Claimant invest his existing funds with the Defendant, a

registered money lending company, to generate the additional money needed for the apartment purchase.

That Claimant was assured by the Defendant that investing N50,000,000.00 with the Defendant would yield N10,000,000 in interest within four months, providing not only the necessary funds for the purchase but also an extra N2,000,000. That trusting the advice of the his friend, the Claimant entered into an Investment Agreement on February 21, 2022, specifying an eight-month investment period with a monthly interest rate of 5%.

That following the agreement, Claimant transferred the sum of N50,000,000.00 to the defendant's bank account and in return, Claimant received several cheques for interest payments, which were initially cashed without issue for the first few months. However, starting in May 2022, the cheques for interest payments began to bounce, and the Claimant was unable to receive the promised interest. That in September 2022, after months of dishonored cheques, the Claimant formally terminated the investment agreement and requested a full refund of the invested capital and accrued interest. That despite receiving a termination letter, the defendant failed to respond or refund the money, hence this suit.

Also filed is the written address where Counsel to the Claimant raised a sole issue for determination which is "whether considering the reliefs sought in this application in the light of facts deposed to in the supporting affidavit vis a vis the annexed documents, the relief sought in this application can be granted"

Obinna Ugwu, Esq., for the Claimant submitted that this suit is fit for summary judgment as the Defendant is clearly indebted to the Claimant, as can be seen from Exhibit L1, which was not controverted by the Defendant. Counsel submitted further that the Claimant is entitled to general damages as they are presumed by law to follow from a breach of rights and do not require detailed

proof. Submitted further that pursuing a full hearing would be a waste of judicial resources, and the Court should focus on the affidavits presented, assessing whether the Defendant have offered a substantial defense and urged the court to grant the application for summary judgment based on the evidence provided, as no credible defense exists that could justify a trial.

Counsel relied on the following case laws:

1. Gari vs. Seirafina (Nig.) Ltd. (2008)2 NWLR, pt 1070, p. 1@pp. 19-20
2. Orhunhur vs. Ivever (2015)1NWLR, pt 1439, p. 192 @pp07-208 paras. G-A
3. N.B.C.l. vs. Dauphin (Nig) Ltd. (2014)16 NWLR, pt. 1432. P.90@p112, paras. D-H
4. C.B.N. vs. Okojie (2015) 14 NWLR, pt 1479, p. 231 @p 263,paras. B-D
5. Carling Int'l (Nig.) Ltd. vs. Keystone Bank Ltd. (2017)9 NWLR, pt.1571, p. 345@pp363-364, paras C-A
6. UBN PLC. vs. Gap Consultants Ltd (20017)11 NWLR, pt.1577, p. 357.
7. Carling Int'l (Nig.) Ltd. vs. Keystone Bank Ltd. (supra)@p. 136, paras A-D
8. Okoro vs. Okoro (2018)16 NWLR, pt.1646, P. 506, pp. 516-517, paras. G-A.

The Defendant on their part, filed a counter affidavit of 21 paragraphs with documents attached as follows; Investment agreement as Exhibit NLP1;The LoanAgreements, Letter of Demand and Demand Messages attached and marked as Exhibits NLP 2, Exhibit NLP 3 and NLP 4,respectively.

It is the Defendant's case that it operates as a money lender, providing loans to borrowers for profit, with repayment structures in place to whichthe borrowers are expected to pay monthly interest and repay the principal amount at the end of the loan term unless the loan is restructured. That borrowers have defaulted on payments, allowing the Defendant to sell

collateral to recover funds. That the business capital comes from shareholders and investors, and the Claimant, invested N50,000,000 as part of an investment partnership, not a loan agreement to which an Investment Agreement was signed outlining the relationship and responsibilities between the Claimant and the Defendant, identifying the latter as the Fiduciary Manager. That the Claimant's investment is tied to the success of the loan repayments from borrowers and a significant default in payments, constitutes "force majeure," suspending the obligation to repay the Claimant until funds are recovered from borrowers or collateral is sold.

That the Claimant's allegations are false and that the Claimant's investment is still maturing, with repayment contingent upon future loan recoveries and the Defendants intend to use the defence of force majeure and contend that the Claimant's claims lack a reasonable cause of action and are an abuse of court process.

Counsel for the Defendant raised a sole issue which is, "whether the application by the Claimant have (sic) merit and ought to be granted by this Honourable Court?" Arguing the sole issue, Chukwuemeka Nwigwe, Esq., submitted that Defendant has met the necessary criteria for this application to be refused as the Defendant has presented credible and relevant facts in the Statement of Defence, which provides a valid defence against the Claimant's allegations. Counsel therefore urged the Court to rule in Defendant's favour, considering the facts and authorities referenced, and reject the Claimant's application for summary judgment.

Counsel relied on the following:

1. Macaulay v. Nal Merchant Bank Ltd. (1990) LPELR- 1801(SC)
2. Amana Solid Poles (Nig.) Ltd. & Anor v. Okafor & Anor (2021) LPELR- 55676(CA)
3. Sule V. Sule & Ors (2021) LPELR-55788(CA) (Pp 21 - 21 Paras A - D)

4. Moshood v. Akubi (2014)LPELR-24005 (CA)

5. Bako& Sons (Nig.) Ltd& Anor v. Teejay Resources Ltd& Anor(2019)  
LPELR-51281(CA)

I have considered the totality of the case before this Court and the sole issue for determination is “whether the Claimant has proved that he is entitled to the prayers sought”. Claimant 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.

**Order 17 Rule 3 (2) of the FCTR Rules**, provides that in an action for money had and received, a defence in denial must deny thereceipt of the money or the existence of those facts which are alleged to makesuch receipt by the defendant a receipt to the use of the claimant.In this case, the fact is not disputed that the Claimant gave the sum of N50,000,000.00 to the Defendant which Defendant received in line with the Investment Agreement as in Exhibit L1, which set out the terms and conditions in the agreement entered by the parties for a monthly interest of 5% on the investment sum for 8 months. The fact is also not disputed that the Claimant received the interest payment for only two months, and the Defendant has been in default for the remainder term. It is however the defendant’s defence that the default in payment of the interest is due to default from the borrowers in the company, which amounts to force majeure.

Per EKO,J.C.A in C.G.G. (NIG) LTD V. AUGUSTINE & ORS (2010) LPELR-8592(CA) at (Pp. 4-5 paras. F) held as follows:-

*"Force majeure, according to Black's Law Dictionary 8th Ed, is an event or effect that can neither be anticipated nor controlled. It includes both natural and human acts. The human acts may be of political in nature including riots, strikes or war."*

Going by the above definition, the defence raised by the Defendant cannot avail the Defendant as force majeure typically covers natural disasters, wars or other extra ordinary events. There's nowhere in the investment agreement where it was stated that default of borrowers would amount to force majeure. The Defendant in the business of money lending ought to anticipate that borrower's default could occur and make plans to allay the vested interest of investors. Economic downturns or borrowers' default particularly with respect to the business of the Defendant cannot qualify as force majeure except same was explicitly stated in the Investment Contract, which is clearly lacking in Exhibit L1, therefore, the Defendant lacks any defence to this suit.

There is undisputed facts before this Court that the principal amount of N50,000,000.00 invested by the Claimant has been repaid during the pendency of this case as the Claimant's Counsel on the 27<sup>th</sup> day of March 2023, informed the Court thus *"it is important to state that during the pendency of this suit, Defendant went to Claimant to pay the Capital sum of N50,000,000.00 leaving the interest of N2.5m monthly unpaid. We are now in court for the interest up until when the capital was paid."*

The first relief sought by the Claimant in substantive suit has therefore been overtaken by event as the Defendant has clearly repaid the capital invested in the Defendant.

With respect to relief two, the Claimant is seeking for a sum of N35,000,000.00 only being the interest accrued on the investment sum of

N50,000,000.00 from the month of May 2022 to the month of June, 2023. There is undisputed fact before me that the Claimant had been paid the principal sum as well as two months interest. From the term of the investment agreement, the interest was to be paid for 8 months. Consequently, it is my view and I so hold that the interest accrued on the remainder of the term in line with the Investment agreement is the sum of 15,000,000.

The Claimant is also praying the Court for the sum of 10,000,000.00 as general damages. Per AMADI ,J.C.A in OLUWADARE v. GTB PLC (2022) LPELR-58853(CA) at (Pp. 14 paras. B), held thus,

*"The law is settled that general damages cannot be awarded as remedy in an action for breach of contract because general damages belong to the realm of torts. See Baraus v. Cubits (Nig) Ltd (1990) 5 NWLR (pt.152) 630 at 646 - 657; Sosan v. HEP Engineering (Nig) Ltd (2004) 2 NWLR (Pt.861) 546 at 576. In awarding damages in an action founded in contract the rule is restitution in integrum, that is, the claimant is entitled to be put into the position he would have been in, if the contract had never been broken or if the contract had been performed."*

See also Per GALADIMA ,J.S.C in AGU v. GENERAL OIL LTD (2015) LPELR-24613(SC) (Pp. 31-32 paras. G)

*"The basic object of an award of damages is to compensate the plaintiff for the damages, loss or injury he has suffered. The guiding principle is restitution in integrum. The principle envisages that a party which has been indemnified by the act which is called in question must be put in position in which he would have been if he had not suffered the wrong which he is now being compensated for. See NEPA v. R. O. ALLI &*

*ANOR (1992) 10 SCNJ 34. ANAMBRA STATE ENVIRONMENTAL SANITATION AUTHORITY & ANOR v. EKWENEM (2009) 6-7 (Pt. II) SC 5."*

Going by the above authorities, vis a vis the nature of this claim, having been repaid the principal sum and ordered to pay the interest accrued for the specified remainder term as stipulated in the contract, this relief therefore fails.

With respect for the sum of N2,500,000.00 only per month until the judgment sum is liquidated. 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". Consequentially, a plaintiff, in order to succeed in a claim for prejudgment 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. In this case, the prayer sought by the Claimant did not indicate whether the sum being claim is a prejudgment interest or a post judgment interest. Be that as it may, post judgment interest is generally provided by statute. See Order 39 Rule 4 of the Rules of Civil Procedure of the High Court of the Federal Capital Territory, Abuja, 2018,

thus, the Claimant is entitled to 10% per annum of the total judgment sum and I so hold.

With respect to the relief of costs, the award of cost is discretionary and generally is required by law to be exercised judicially and judiciously. The Court in CAPPALBERTO v. NDIC (2021) LPELR-53379(SC) Per ABBA AJI, J.S.C in (Pp. 12 paras. D) held thus

*"A successful party is entitled to costs unless there are special reasons why he should be deprived of his entitlement. In making an award of costs, the Court must act judiciously and judicially. That is to say with correct and convincing reasons. See Per RHODES-VIVOUR, JSC in NNPC V. CLIFCO NIG. LTD (2011) LPELR-2022(SC) (P. 23, PARAS. D-A)."*

The Claimant has clearly expended funds instituting this instant suit as gleaned from Exhibit L11, as well as incidental cost in the process of getting what is due to it from the Defendant, this Court will therefore award cost in the sum of ₦2,000,000.00

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

- i. A sum of N15,000,000.00 only being the interest accrued on the investment sum of N50,000,000.00 from the month May 2022 to the month of October 2022.
- ii. That the Defendant shall pay Post judgment interest at the rate of 10% per annum from the date of judgment until final liquidation.
- iii. Cost of action is hereby awarded to the Claimant in the sum of ₦2,000,000.00 (Two Million Naira) only against the Defendant.

**PARTIES:** Absent

**APPEARANCES:** MaxwelOmage appearing for the Claimant. P. N. Ogwuche appearing for the Defendants.

**HON. JUSTICE MODUPER. OSHO-ADEBIYI  
JUDGE  
12<sup>TH</sup>DECEMBER 2024**