

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

BEFORE: HON. JUSTICE O. C. AGBAZA

COURT CLERKS: UKONU KALU & GODSPower EBAHOR

COURT NO: 10

SUIT NO: FCT/HC/M/11811/2020

MOTION: M/9748/2020

BETWEEN:

- 1. ESTATE OF LATE KELECHI UGOCHUKWU (DECEASED)**
- 2. KENNETH .U. KELECHI.....CLAIMANTS/APPLICANTS**

VS

- 1. THE PROBATE REGISTRAR, FCT HIGH COURT**
- 2. ACCESS BANK PLC.....DEFENDANTS/RESPONDENTS**

RULING

By a Motion on Notice with No. M/9748/2020 dated 15/9/2020 and filed same day, brought pursuant to Order 2, Rule 6, Order 62 Rule 3 of FCT High Court (Civil Procedure) Rules 2018 and under the inherent jurisdiction of this court, praying for the reliefs set out in the face of the Motion.

- (1) An Order of Court compelling the Defendants/Respondents to pay the total sum of **N58,512,169.44 (Fifty Eight Million, Five Hundred and Twelve Thousand, One Hundred and Sixty Nine Naira, Forty-Four Kobo)** and **\$445,088.55 USD (Four Hundred and Forty Five Thousand and Eighty-Eight Dollars, Eight-Five Cents)** together with

accrued interest standing in the account numbers **2014437276** and **0024864050** in the name of Late Kelechi Ugochukwu to the Claimants/Applicants.

(2) Omnibus Prayer.

In support of this application is 15 Paragraph affidavit sworn to by 2nd Claimant, with 3 (Three) Annexures marked as Exhibits "A", "B", and "C" with a Written Address dated 15/9/2020. In response to the 2nd Defendant counter-affidavit, filed the Claimants Reply on points of law dated 18/11/2020 and urged the court to grant the reliefs sought.

The 1st Defendant counsel, in response, submits that the 1st Defendant, filed a 13 paragraph counter-affidavit sworn to by Sunday Ochoche on 30/9/2020, with 7 (Seven) Exhibits. Also filed is a Written Address and urge the court to hold in favour of the Claimant.

The 2nd Defendant Counsel, in response submits that the 2nd Defendant filed a counter-affidavit of 7 (Seven) paragraphs with 6 (Six) Exhibits sworn to by Nancy Shikaan. Also filed is a Written Address and adopts same in urging this court to refuse this application, must importantly urge the court that oral evidence be called to resolve the conflicting issue in this application.

In the Written Address of the Claimants/Applicants, settled by F.S. Jimba ESq, only one (1) issue was distilled for determination, which is;

“Whether having regards to Exhibits “A”, and “B” and the entire circumstances of this Suit, the Applicants are not entitled to the grant of the relief sought.

In the Written Address of the 1st Defendant, settled by Kayode Agunleye Esq, only one (1) issue was formulated for determination, namely;

“Whether, having total recourse to the facts of this case, and the evidence tendered, it is in the interest of justice to grant the application of the Claimants/Applicants”.

In the Written Address of the 2nd Defendant, settled by Joy Etiaba Esq, only one (1) issue was formulated for determination, namely;

“Whether this application has merit”

Having carefully considered the submission of counsel for and against the grant of the reliefs by the Applicant, the affidavit evidence, as well as the judicial authorities cited. I find that only one (1) issue calls for determination;

“Whether or not the Applicant has made out a case deserving of the grant of the reliefs sought”.

The grant or otherwise of an application of this nature is at the discretion of the court. And in the exercise of that discretion, the court overtime is enjoined to do so judicially and judiciously taking into cognizance the facts placed before it. See case of Anachebe Vs Ijeoma (2015) ALL FWLR (PT.284) 183 @ 195 Para D – E, the Supreme Court stated thus;

“The discretion in a court is required to be exercised judicially and judiciously, as it entails application of legal principles to relevant facts/materials to arrive at a just/equitable decision. It is this not an indulgence of a judicial whim, but the exercise of judicial judgment based on facts and guided by the law or the equitable decision.”

In this instant application, the Applicant is seeking the Order of Court compelling the Defendants to pay certain funds of a deceased in the account with the 2nd Defendant. This application is hinged on the grant of Letters of Administration granted to it by the 1st Defendant consequent upon an application.

The 1st Defendant on the other hand, relying on the counter-affidavit, and exhibits affirms that the 1st Defendant took all the appropriate steps sequel to grant of the Letters of Administration, therefore not opposed to the grant of the application in favour of the Applicants.

In opposition the 2nd Defendant filed a counter-affidavit of 7 paragraphs and contends that the application is tainted with fraud, necessitating them to investigate, hence their failure to comply with the request of the 1st Defendant. To buttress these facts, relied on Exhibits “A”, “B”, “C”, and “F”, affidavits of facts of Onyinyechi Doris Ugochukwu, wife of the Mr. Kelechi Ugochukwu and Bright Ekwen Ugochukwu, biological brother of the said Mr. Kelechi Ugochukwu (deceased) and a Letter addressed to the 1st Defendant informing them of the on-going investigation.

It must be noted that the facts deposed to in the counter-affidavit and Exhibits “A”, “B”, and “C” of the 2nd Defendant, raising issues challenging

the authenticity of the said Mr. Kelechi Ugochukwu, being alive not dead and the fact that they have been in touch with him in China, were not controverted by way of a further affidavit, by the Applicant, rather the Applicants responded vide a Reply on point of law. It is trite that facts contained in an affidavit should be countered by an affidavit in this case by a further affidavit.

Granted, that the Applicants has by Exhibit "B" attached to their supporting affidavit showing that Letter of Administration was granted to said Applicants and this facts confirmed by the 1st Defendant not opposing, this court finds that in view of the unsettled issues raised in this instant application, it would not be in the best interest of justice to grant this instant application rather in the face of the conflicting affidavit evidence, before the court, the interest of justice of the case would be best resolved by directing the parties to call oral evidence to clear the issues in contention in their respective affidavits before the court.

Consequently, from all of these, it is the finding of this court, that this instant application be refused, and the parties are hereby ordered to call oral evidence to assist the court in reaching a just decision in the matter. Case is adjourned to 15/5/2021 for hearing.

HON. JUSTICE O. C. AGBAZA
Presiding Judge
11/2/2021

APPEARANCE:

F.S. JIMBA - FOR THE CLAIMANTS/APPLICANTS

KAYODE AGUNLOYE - FOR THE 1ST DEFENDANT

JOY ETIABA (MRS) FOR THE 2ND DEFENDANT