

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. 13
CASE NUMBER : SUIT NO: CV/1841/2024
DATE: : WEDNESDAY 5TH MARCH,
2025

BETWEEN:

HARIL GLOBAL
LTD.....CLAIMANT/APPLICANT

SOLUTIONS

AND

1. ECONOMIC AND FINANCIAL CRIMES } DEFENDANTS
COMMISSION (EFCC)
2. GLOBUS BANK LIMITED }

RULING

This Ruling is at the instance of the Claimant/Applicant who approached this Honourable Court vide Motion on Notice dated 19th June, 2024 and filed 20th June, 2024 praying the Court for the following reliefs;

1. An Order of this Honourable Court granting leave to conduct virtual hearing to wit: the examination, cross-examination and re-examination of the Claimant's sole witness in this suit, Oluwaseun Onobun, virtually.
2. And For Such Further Order Or Orders as this Honourable Court May Deem Fit to Make in The Circumstance.

The grounds upon which this application is made are as follows:

- a. The witness for the Claimant, Oluwaseun Onubun is scheduled to be examined and give testimony before this Honourable Court on the next hearing date.
- b. However, the witness is not within the Country and is unable to attend the hearing physically.
- c. The evidence of the witness is vital to the case of the Claimant/Applicant.

d. In order not to frustrate proceedings, the witness is ready and willing to participate in virtual hearing, subject to the convenience of the Honourable Court.

In support of the application is a 7 paragraph affidavit deposed to by Samuel Ogundipe, Litigation Secretary in the law firm of counsel to the Claimant/Applicant. It is the deposition of the Claimant/ Applicant, that the witness for the Claimant, Oluwaseun Onobun is scheduled to be examined and give testimony before this Honourable court on the next hearing date.

That the witness is not within the Country and is unable to attend the hearing physically. That the evidence of the witness is vital to the case of the Claimant Applicant.

That in order not to frustrate proceedings, the witness is ready and willing to participate in virtual hearing, subject to the convenience of the Honourable Court.

That it is in the interest of justice to grant this application.

The Defendant/Respondent will not be prejudiced by this Application.

In line with procedure, written address was filed wherein sole issue was formulated for determination to-wit;

"Whether it is in the interest of justice to grant this Application".

It is the submission of learned counsel, that the Court's Primary function is to see that justice is done to the parties before it; and not to allow technical difficulties hinder the cause of justice. Accordingly, the Rules of this Honourable Court recognized this principle by affirming same in Order 1 Rule 2.

YAKUBU VS. FRN (2022) LPELR-57749 (SC) was cited.

Learned further submits, that in the absence of the witness from the country, a virtual hearing is in the interest of justice, to avail parties an opportunity to be heard in spite of technicalities.

In conclusion, learned counsel submits that granting this application is in furtherance of expeditious dispensation of justice, and this court is urged to so hold.

On their part, 2nd Respondent filed 9 paragraph Counter Affidavit deposed to by Tamunosiki, Litigation Clerk in the law firm of counsel to 2nd Respondent. It is the deposition of the 2nd Respondent;

That sometime in November 2023, the 2nd Respondent during its routine review of transactions by its Internal Audit Department

observed that fraud was perpetrated against the 2nd Respondent by the Applicant through its directors and agents in collusion with the 2nd Respondent IT staff Mr. Igwe Benedict George and Chinedu Mba, who is now an ex staff of the Bank, Upon discovery of the fraud the 2nd Respondent immediately notified the office of the 1st Respondent via a petition wherein several invitations were issued to the Applicant to enable the 1st Respondent investigate the fraud. However, the Applicant willfully failed to honor the invitations issued by the 1st Respondent. The invitations letters to the Applicant dated 5th and 29th January was herein attached and marked Exhibit "G1".

That the promoters and Directors of the Applicant are at large and despite the 1st Respondent's invitations to the Applicant, the Applicant and its Directors have failed, refused and neglected to honor the invitations of the 1st Respondent and have willfully concealed themselves from the investigation of the 1st Respondent.

That investigation of the 1st Respondent reveals that the shadow Director of the Applicant, Mr. Babatunde Idris Olayiwola, a former pioneer IT staff of the 2nd Respondent, together with Chinedu Mba, an ex-IT staff of the 2nd Respondent, colluded with an IT

staff of the 2nd Respondent Mr. Igwe Benedict George and gained access into the system of the 2nd Respondent through Mr. Igwe Benedict George's workstation and transferred monies over N3,500,000,000 (Three Billion, Five Hundred Million Naira) from the Applicant's restricted overdraft facility account no: 1000085336 to the Applicant's collection account no: 3000002010 domiciled with the 2nd Respondent and subsequently transferred the funds to other accounts with the 2nd Respondent and other banks across Nigeria.

That during the course of investigation, the prime suspect, Mr. Igwe George Benedict was arrested and interviewed and made a statement to the effect that he colluded with the Applicant via its directors, shadow director (Mr. Babatunde Idris Olayiwola) and Chinedu Mba, in perpetrating the fraud against the 2nd Respondent.

The statement of Mr. Igwe George Benedict was herein attached and marked Exhibit "G2".

In response to paragraph 4 (a) of the Applicant's Affidavit, the 2nd Respondent states that the Applicant's witness Oluwaseun Onobun scheduled to testify in this suit is one of the Directors of the Applicant who is at large.

The Applicant is a juristic body registered in Nigeria and the witness Oluwaseun Onobun is a director, shareholder and secretary of the Applicant and resides within the jurisdiction of the court. The Corporate Affairs Commission Status report was herein attached and marked Exhibit "G3".

Furthermore, the said witness is a beneficiary of the monies fraudulently moved from the Applicant's overdraft facility account to its collection account and subsequently moved to 3rd parties' accounts inclusive of the Applicant's witness and he is currently at large as a result of the crime perpetrated.

The 2nd Respondent is not in the position to admit or deny paragraph 4(b) of the Applicant's Affidavit and puts to the Applicant the strictest proof of his claim; the Applicant has placed no material before this Court to prove its asseveration in paragraph 4(b) of its supporting Affidavit. The 2nd Respondent further states that the Applicant and its Directors have been at large and have failed to honor the several invitations of the 1st Respondent.

In Response to paragraph 4(c) of the Applicant's Affidavit, the 2nd Respondent states that the said witness being a Director of the Applicant in this case is evading investigation of the alleged fraud

by the 1st Respondent. The 2nd Respondent shall rely on Exhibit G1.

Contrary to paragraph 4 (d) of the Applicant's Affidavit, the 2nd Respondent denies and states that the relief sought by the Applicant is a ploy to avoid being investigated by the office of the 1st Respondent and is not in the interest of justice.

That the Respondents will be prejudiced by the grant of this application and that the grant of this application would not be in the interest of justice.

In line with procedure, written address was filed wherein sole issue was formulated for determination to-wit;

"Whether the Applicant is entitled to the reliefs sought"

It is the submission of learned counsel, that it is trite law that he who asserts must prove. In addition to Section 136 of the Evidence Act 2011, learned counsel cited ***AGBABIKA VS. FIRST BANK (2019) LPELR-48125(SC).***

Learned counsel submits, that the Applicant has not placed any proof whatsoever before the Honorable Court to support the assertion that the Applicant's sole witness Oluwaseun Onobun is

not within the court's jurisdiction and unable to attend the hearing in this matter physically and therefore is not entitled to relief sought in this application. ***DAUDA MOHAMMED VS. AMINU TIJANI (2021) LPELR - 54215*** was cited.

In conclusion, learned counsel submits that the submissions above, authorities cited and the facts deposed to, this court is urged to discountenance the submission of Applicant in its entirety and refuse the instant Applicant with substantial cost.

COURT:-

I have gone through the affidavit in support of the reliefs herein contained on the face of the application in view, on one hand, and the counter affidavit in opposition to the application on the other hand.

The peculiarity of each case shall be considered.

See ***AKANINWO VS NSIRIN (2008) 1 SC (Pt. 111) 151.***

It is established that every opportunity must be afforded parties to a dispute in court to put their respective cases fully before the court.

I however must be quick to mention that all cases are not the same.

An Applicant who seeks to be allowed to do an act which he ought to have done in a more appropriate manner during the trial, has a duty to give reasons that are adequate and reasonable to explain why he should be allowed to do the act during the said trial.

It is not sufficient for a party to merely ask for the Order of court to that effect.

Applicant stated before this court, that the witness is not within the country and is unable to attend the hearing physically.

2nd Respondent however contended, that the Applicant's witness Oluwaseun Onobun scheduled to testify in this suit is one of the Directors of the Applicant who is at large..

I need to state at this juncture, that the party seeking to have his witness testify before this court virtually, given the nature of this case would have to depend on the exercise of the discretionary power of the court to do so.

2nd Respondent attached the invitation letters to the Applicant dated 5th and 29th January which they referenced in paragraph 3(b) of their counter affidavit.

2nd Respondent also attached Corporate Affairs Commission status report referenced in paragraph 3(g) of their counter affidavit proving that the witness Oluwaseun Onobun is a Director, Shareholder and Secretary of the Applicant and resides within the jurisdiction of this court.

Trial court has the onerous duty of considering all documents placed before it in the interest of justice. It has a duty to closely examine documentary evidence placed before it in the course of its evaluation and comment and or act on it. Document tendered before a trial court are meant for scrutiny or examination by the court, documents are not tendered merely for the sake of tendering but for the purpose of examination and evaluation ***OMEGA BANK (NIG) PLC. VS. O.BC LTD. (2002) 16 NWLR (Pt. 794) 483.***

It is settled law that where there are oral as well as documentary evidence, documentary evidence should be used as hanger from which to assess oral testimony. ***PASHAMNU VS. AKEKOYA (1974) 6 S C 83.***

The trial court is enjoined to give more weight to the documentary evidence rather than oral testimony. This is because oral evidence may tell a lie but documentary evidence which is shown to be genuine does not tell lies.

UDERAH VS. NWAKONOB I (2003) 4 NWLR (Pt. 811) 643 at 678 paragraphs A-C.

Applicant did not present any evidence before this Court to prove the assertion that their witness is not within the country and or incapacitated to be able to attend trial and give evidence upon his return.

It is trite that he who asserts must prove.. and the burden of proof as to any particular fact in this application lies on the Applicant who wishes this court to believe that its witness is not within the jurisdiction of this court.

Thus, for the reasons advanced, and on the strength of the affidavit evidence before the Court, it is my considered opinion that the Applicant has failed to prove that he is entitled to the relief sought.

On the whole, application No. **M/9558/2023** moved is hereby refused and accordingly dismissed.

Justice Y.
Halilu
Hon. Judge
5th March,
2025

APPEARANCES

Vanessa C., Esq. – for Claimant

Chiamaka E., Esq. – for 2nd Defendant.

1st Defendant not in Court and not represented.