

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA – ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE. H. MU’AZU

SUIT NO: FCT/HC/ CV/6825/2023

MOTION NO. M/11873/2023

DELIVERED ON THE 06/06/2024

BETWEEN:

HI-TASTE INTERGRATED VENTURES LIMITED.....CLAIMANT

AND

NIGERIAN LEGION 19 NORTHERN
STATES AREA COUNCIL

}

.....DEFENDANT

RULING/JUDGMENT

Before the court is a Motion on notice, with No. M/11873/23, dated 14th June, 2023, but filed on 03/07/23 by Claimant/Applicant. The Claimant/Applicant Motion is brought pursuant to Order 11 Rule (1) of the Rules of this Court seeking the following reliefs:-

- 1. An order entering summary Judgment in this Suit in favour of the Claimant/Applicant and against the Defendant/Respondent herein as per the Claimant's writ of summons/statement of claim.*

2. And For such order(s) as the Honourable Court may deem fit to make in the circumstances.

In support of the Motion is an affidavit of 20 Paragraphs deposed to by Hajara H. Adams of suite No. 9, Cappador Mall, Maitama, Abuja with Exhibits attached.

The affidavit evidence of the Applicant is:

- 1. That I am the Managing Director and Chief Executive Officer of the Claimant/Applicant.*
- 2. That by virtue of my position aforesaid, I am conversant with the facts herein deposed to.*
- 3. That the Claimant/Applicant is a company registered under the laws of the Federal Republic of Nigeria, with its corporate head office situate in Abuja within the Jurisdiction of this Honourable Court.*
- 4. That the Defendant/Respondent is also a legal entity registered under the laws of Nigeria with registered offices in Kaduna and Abuja within the jurisdiction of this Honourable Court.*
- 5. That sometime or about the 30th of October, 2016, the Defendant/Respondent issued the*

Claimant/Applicant a letter of award for a contract tagged "AWARD FOR THE SUPPLY OF 6,000 BAGS OF ANY BRAND OF RICE". A copy of the letter of award is hereto annexed and marked "A"

*6. That a payment schedule was presented to the Claimant/Applicant by the Defendant/Respondent as contained in the award letter which indicated that the payment shall be split into 4 months period with a monthly deduction of **₦30, 000, 000.00 (Thirty million Naira)** only, to be made monthly.*

*7. That in line with the award letter, the Claimant/Applicant commenced the supply of the bags of rice and accordingly supplied 1, 800 (One thousand eight hundred) bags as at the 13th day of December, 2016, which was received and confirmed by the Defendant/Respondent via a letter a **letter of Confirmation and Acceptance** by the Minna Branch of the Defendant/Respondent. A copy of the letter of **Confirmation and Acceptance** by the Minna Branch of the Defendant is hereto annexed and Marked "B".*

8. That according to the terms of the offer, the Claimant/Applicant supplied a total of 3, 600 (Three thousand Six Hundred) bags of rice at the rate of **₦20, 000.00** (Twenty Thousand Naira) only, each, making a total of **₦72, 000, 000.00** (Seventy Two Million Naira) only, of the for which a Special Council/Board Resolution Defendant/Respondent to pay the Claimant/Applicant the outstanding claims dated the 16th day of November, 2017 was issued to the Claimant. A copy of the Special Council/Board Resolution of the Defendant to pay the Claimant the outstanding claims dated the 16th day of November, 2017 is hereto annexed and marked "C".

9. That rather than pay up the outstanding sum of **₦72, 000, 000.00** (Seventy Two Million Naira) only, as agreed and within the time agreed, the Defendant/Respondent only paid the Claimant the sum of **₦14, 245, 000.00** (Fourteen Million, Two Hundred and Forty five Thousand Naira) only, leaving a

*balance of **₦57, 755, 000.00 (Fifty Seven Million, Seven Hundred and Fifty Five Thousand Naira) only.***

10. That upon receipt of the said Special Council/Board Resolution of the Defendant, the Claimant/Applicant noticed some irregularities in figures and information for which it wrote a reply to the Defendant/Respondent dated the 11th day of December, 2017, in my hand, stating in clear terms its outstanding claims and correcting the wrong information presented by the Defendant/Respondent. The letter of reply to the Defendant dated the 11th day of December, 2017, is hereto annexed and marked "D".

*11. That upon receipt of the letter referred to as the letter of reply dated 11th December, 2017, the Defendant/Respondent issued a Standing Order to Fidelity Bank, to pay the Plaintiff **₦59, 000,000.00 (Fifty Nine Million Naira) only, instead of the ₦59, 905, 000.00 (Fifty Nine Million, Nine Hundred and Five Thousand Naira) only, as stated in the letter of reply dated 11th December 2017 unchallenged, but***

same was not paid. The said Standing Order to Fidelity Bank is hereto annexed and marked "E".

12. That upon several demands for payment, rather than pay up the said outstanding sum, the Defendant issued two cheques to the Claimant/Applicant urging it to cash same upon the promise that the account would have been funded but it turned out to be dud upon presentation by the Claimant/Applicant at the bank. The said cheques issued to the Claimant/Applicant by the Defendant are hereto annexed and marked "F1" and "F2".

13. That the Claimant/Applicant presented the said cheques mentioned in 12 above at the bank, in an attempt to convert same to cash but both cheques returned unpaid.

14. That it was at that point that the Claimant/Applicant became apprehensive of an attempt to breach the trust upon which the agreement was built, by the Defendant/Respondent due to the issuance of the Dud Cheques referred to above and it accordingly opted to

brief Messrs M.S Pmabi & Co to report the perceived crime of Breach of Trust and issuance of Dud Cheques to the Economic and Financial Crimes Commission (EFCC).

*15. That after its then Solicitors petitioned the EFCC against the Defendant/Respondent, rather than submit itself for investigation as required by law, the Defendant/Respondent turned around and sued both the Claimant/Applicant and the EFCC before the High Court of Kaduna State in **KDH/KAD/1915/2020** wherein after hearing all parties, the Court gave Judgment against the Defendant dismissing the suit. A copy of the originating process and the Judgment of the court are hereby attached and marked "G1" and "G2".*

*16. That the Claimant/Applicant had to expend the sum of **₦1, 000, 000. 00 (One Million Naira) only**, as professional fees to its Solicitors **Mesrs. Dyeitabum Attorneys** to defend it in suit number **KDH/KAD/1015/2020** filed by the Defendant/Respondent against it. A copy of the receipt*

of payment issued by Mesrs. Dyeitabum Attorneys is hereto annexed and marked "H".

*17. That after the Kaduna State High Court entered judgment dismissing the case of the Defendant/Respondent, it briefed its Counsel to write a final demand notice to the Defendant/Respondent at their designated address for the purpose of their contract requesting for the outstanding payment of the balance of **₦57, 755, 000.00 (Fifty Seven Million, Seven Hundred and Fifty Five Thousand Naira)** only, but the Defendant/Respondent has failed, refused and neglected to pay. The said demand letter is hereto annexed and marked "I".*

*15. That the Defendant/Respondent has the means to pay and yet not willing to pay up the outstanding balance due to the Claimant/Applicant to the tune of **₦57, 755, 000.00 (Fifty Seven Million, Seven Hundred and Fifty Five Thousand Naira)** only.*

16. That this suit is for a liquidated money demand.

17. That this Honourable Court has the jurisdiction to entertain and grant the reliefs as claimed by the Claimant/Applicant.

18. That the Defendant/Respondent has no defence to this action.

19. That the Claimant/Applicant claims against Defendant/Respondent as follows:

*a. The Sum of **₦57, 755, 000.00 (Fifty Seven Million, Seven Hundred and Fifty Five Thousand Naira)** only, being the amount outstanding as balance of the sum due to the Claimant for the supply of rice to the Defendant.*

*b. The Sum of **₦1, 000, 000. 00 (One Million Naira)** only, as special damages being the total amount spent as professional fees to its Solicitors Messrs. Dyeitabum Attorneys for defending the Claimant in suit number **KDH/KAD/1015/2020** filed by the Defendant against it.*

*c. The Sum of **₦3, 000, 000. 00 (Three Million Naira)** only, as General Damages for unlawfully withholding monies due and outstanding to the Claimant.*

d. The Sum of ₦2, 000, 000. 00 (Two Million Naira) only, as exemplary damages to serve as a deterrent to the Defendant.

e. 10% interest per annum on the judgment sum from the date of judgment in this suit until the entire judgment sum is fully liquidated by the Defendant.

f. Cost of prosecuting this action in the sum of ₦2, 000,000. 00 (Two Million Naira) only.

Also filed, is a written address duly adopted by counsel while urging the court to grant the reliefs sought.

In response, Defendant failed or neglected to file a counter-affidavit in opposition.

In the Written Address of the Claimant/Applicant settled by B. A. Damshakal Esq, only (1) issue was submitted for determination and that is;

Whether the Claimant/Applicant has shown from the facts and circumstances of the instance case, that she is entitled to summary judgment for her claims against the Defendant in this suit?

It is the counsel's submission, that, the essence of summary judgment

Procedure is to prevent a Defendant from defending the indefensible. Counsel cited the Supreme Court of Nigeria decision in the case of **U.T.C(NIG) LIMITED VS PAMOTEI (2001) FWLR (PT 129) 1557 AT 1610 PARAS C-D** where the Apex Court in the Country held that:

"The rationale of the procedure is for straight forward cases which are legally incontestable and to enable speedy trial of claims which in law ought not to be contested because the legal situation is too clear to allow a defence. It is also designed to discourage unmeritorious claims, or spurious defences".

It is also submitted that the Defendant/Respondent has no any legally recognized answer whether in law or equity to the Claimant/Applicant's claim against him and accordingly he should not be accorded the luxury of defending the instant suit, as such indulgence will prejudice the Claimant/Applicant for no justifiable legal reason.

it was further submitted that from the exhibits/annexure attached to the affidavit in support of the instant motion, it is crystal clear, that, the Defendant/Respondent is indebted to the Claimant to the tune of **₦57, 755, 000.00** (Fifty Seven Million, Seven Hundred and Fifty Five Thousand Naira) only, being the amount outstanding as balance of the sum due to the Claimant for the supply of rice to the Defendant and that the Claimant is entitled to same and costs incurred to recover same. Counsel concluded that the Applicant had established a proper and unassailable case for summary judgment in its favour and urged the court to enter summary Judgment in favour of the Applicant and grant the Reliefs sought.

I have carefully considered the submission of counsel for the grant of this application, the authorities cited and Exhibits annexed to the affidavit in support of the application. The issue that calls for determination, in my view, is *“Whether the Claimants/Applicants have made out a case to warrant the court to enter summary judgment in their favour”*.

Order 11 of the Rules of this Court makes Provision for the Summary Judgment procedure. Its purpose is for disposal of cases which are virtually uncontestable with dispatch without the right of trial and it applies to cases where there can be no reasonable doubt that a Claimant is entitled to judgment and where it is inexpedient to allow the Defendant to defend for mere purpose of delay. It is for honest and straight forward, not for the devious and crafty. See **Order 11 Rule 1** of the Rules of this court. See also **Lewis Vs UBA Plc (2016) ALL FWLR PT. 833 1860 at 1864 (SC)** and **Omega Maritime and Energy Ltd & 1 Or Vs Intercontinental Bank Plc (2016) ALL FWLR Pt 849 970 at 972 – 973 (CA)**.

In an application for summary judgment, as in the instant, the Claimant must state in his affidavit facts in support of his claim and his belief that the Defendant has no defence to the claim and the grounds for his believe. See the case of **Woodgrant Ltd Vs Skye Bank Plc (2011) ALL FWLR PT. 601**. When a Claimant applies for summary judgment, the burden is on the Defendant to satisfy the court that he has

a good defence or to disclose other facts entitling him to defence and when it appears to court that the Defendant has a good defence and ought to be permitted to defend, may grant leave to Defendant to defend the suit. See **Order 11 Rule 5 (1)** of the Rules at court. See also **Omega Maritime & Energy Ltd & 1 Or Vs Intercontinental Bank Plc (Supra) at 973.**

In this instant case, the Claimants/Applicants seek the Order of court to enter final judgment in summary manner against the Defendant and disposed to facts and believe that the Defendant has no defence to their claim and also attached 10 Annexure as Exhibits in support of its claim against the Defendants. The Defendant, however, chose not to file any process in opposition and neither appeared nor caused an appearance to be entered on its behalf.

I have critically perused the facts in the affidavit of Claimant/Applicant and the attached exhibits and in the absence of any evidence to the contrary against same, I consider the evidence as true and shall act on them. I am, therefore, of the firm view that the Applicant has established

its entitlement to summary judgment as prayed and I so order. Accordingly, I make the following orders:

a. Payment of the Sum of ₦57, 755, 000.00 (Fifty Seven Million, Seven Hundred and Fifty Five Thousand Naira) only, being the amount outstanding as balance of the sum due to the Claimant for the supply of rice to the Defendant is hereby granted

b. In view of exhibit “H”, The Sum of ₦1, 000, 000. 00 (One Million Naira) only, as special damages being the total amount spent as professional fees to its Solicitors Messrs. Dyeitabum Attorneys for defending the Claimant in suit number KDH/KAD/1015/2020 filed by the Defendant against it is awarded against the Defendant.

c. The Sum of ₦3, 000, 000. 00 (Three Million Naira) only, as General Damages for unlawfully withholding monies due and outstanding to the Claimant is hereby granted against the Defendant

d. The Sum of ₦2, 000, 000. 00 (Two Million Naira) only, as exemplary damages to serve as a deterrent to the Defendant is hereby granted against the Defendant

e. 10% interest per annum on the judgment sum from the date of judgment in this suit until the entire judgment sum is fully liquidated by the Defendant is hereby granted,

I make no further award of cost.

SIGNED:
HON. JUDGE
06/06/2024.

Appearance:

B. A. Damshakal, Esq, for the Claimant

Defendant is absent and not represented