

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ZUBA, ABUJA

ON FRIDAY THE 15TH DAY OF MARCH, 2024

BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA
JUDGE

SUIT NO.: FCT/HC/CV/6986/2023

BETWEEN:

MR. RICHY ONOLEMEMEN ----- CLAIMANT
(Suing through his lawful Attorney
Barrister Felix Onolememen)

AND

MR. EMMANUEL EGWU ----- DEFENDANT

JUDGMENT

In this case premised on claim of a debt the Claimant suing through his lawful Attorney – Felix Onolememen has sued Emmanuel Egwu claiming the debt of **₦48, 575,000.00 (Forty Eight Million, Five Hundred and Seventy Five Thousand Naira)** only being debt owed the Claimant by the Defendant which was covered by a Zenith Bank Cheque issued to Claimant by the Defendant which went dud. He also wants **10%** Interest per annum on the Judgment sum till Judgment is delivered and after. **10%** interest until the

full liquidation of the Judgment sum. He supported that with Affidavit of 15 paragraphs and Verifying Affidavit of 6 paragraphs.

According to the Claimant who is a Senior Advocate of Nigeria (SAN), he alleged that in December 2021 the Defendant under false pretence obtained the sum of **₦66, 754,000.00 (Sixty Six Million, Seven Hundred and Fifty Four Thousand Naira)** from him under the picture that he will supply the Claimant Brand New Prado SUV. But the Defendant did not supply the Claimant the said Prado. That he demanded for full refund of the money and the Defendant repaid **₦20, 000,000.00 (Twenty Million Naira)** only leaving a balance of **₦48, 575,000.00 (Forty Eight Million, Five Hundred and Seventy Five Thousand Naira)** only despite repeated demand from the Claimant. That the Defendant issued him four (4) different Zenith Bank Cheques covering the said outstanding balance of **₦48, 575,000.00 (Forty Eight Million, Five Hundred and Seventy Five Thousand Naira)** only. He exhibited the said Cheques dated 10th May, 2022; 19th May, 2022 and 19th May, 2023. That when he presented the Cheques at the Bank they all went dud and were unpaid. That the Bank wrote “Drawer’s Attention required.” He attached the said Cheques as **EXH B – F**. That the Defendant has failed to repay the balance. That the Defendant had also admitted the indebtedness. That despite several demands the Defendant has not paid the said balance. That the money is liquidated and the Defendant has no defence to the Suit. He urged Court to enter Judgment under Undefended List

Procedure in his favour, the Defendant having failed to repay and having no defence on merit.

The Claimant had submitted that the money is a debt, ascertained and ascertainable and as such the Suit should be retained in the Undefended List.

Upon receipt of the Writ which was marked Undefended, the Defendant filed a Notice of Intension to Defend the Suit and Affidavit of 4 paragraphs. He attached blurred picture of a vehicle with Registration Number PF 4178 SP_Y and another document – a letter from the Police titled:

RE: REQUEST FOR SPECIAL POLICE SPY NUMBER.

The document is dated 20th May, 2021.

According to the Defendant it claimed that it delivered the vehicle to the Claimant who registered and drove same for over 2 months before returning same to him claiming that it is not to the specification. He altered evidence of the Claimant applying for the Police Special Unit Number – Police SPY Number on the vehicle. That he agreed to resell the vehicle and balance the Claimant the remaining money.

That while the car was still in his car stand the Claimant arrested him and he was taken to the Police office at Guzape and was tortured and forced to sign the Cheques. That the Cheques were not dud but that he instructed his Bankers not to honour the Cheques.

That the Court should not grant the Reliefs as sought. That Court should transfer the case to General Cause List as he has defence to the Suit. That the Claimant did not pay the

sum he claimed and that he is not indebted to the Claimant. That he intends to file a Counter-Claim against the Claimant.

The Claimant had filed a Reply on Points of Law to the Defendant's Affidavit in support of Notice of Intention to Defend. He submitted that the Affidavit is misconceived and the cases cited are out of context and does not apply to the facts in this case. That it offend **S. 115(2) of the Evidence Act**. They referred to the case of:

**Cocoa Merchants Ltd V. Commodity Sales
(1993) 1 NWLR (PT. 271) 627**

He urged Court to expunge the offending paragraph. That all other paragraphs are hearsay and speculative as the Deponent was informed and did not have eye-witness account of what happened and was not specific as to dates and time. That they are inadmissible and contrary to **S. 38 of the Evidence Act**. He referred to the case of:

**Utteh V. State
(1992) LPELR – 6239 (SC)**

That failure of the Defendant to provide details, names and dates makes his fact speculative. He referred to the cases of:

**Aku Nmecha Transport Nig Ltd & Anor V. S.D. Atoloye
(1993) 6 NWLR (PT. 298) 253 Ratio 21**

**Ona V. State
(1985) 3 NWLR (PT. 12) 236**

That the Defendant had agreed that he issued the Cheques which went dud. That if actually the payment of the Cheques was stopped based on his instruction that the Bank would have marked the Cheques DCR – Drawer’s Confirmation Required. But that the Cheques all bounced.

That the vehicle – **EXH A – C** was registered in 2021 while the vehicle was to be supplied in May 2022 as the same Defendant claimed. That the submission of the Defendant is contradictory, vague and an afterthought. He referred to the case of:

Tatama V. Jalomi
(2003) FWLR (PT. 181) 1682 R. 9

He further submitted that the Claimant is entitled to be paid interest on the liquidated money/sum in this case. He referred to the case of:

Petgaz Res. Ltd V. Mbanefor
(2007) 6 NWLR (PT. 1081) 544

That by paragraph 3(vi) – 3 (viii) the Defendant admitted that he supplied the vehicle in May 2022 and that **EXH C** is evidence of such confirmation. That a look at the same **EXH C** shows that it was registered in 2021 even before the purported supplied car was supplied. That the said **EXH C** is inadmissible and should therefore be rejected. That it is equally not certified too. That there is no certification on the said **EXH C** as required by the Evidence Act. He referred and relied on the case of:

Bayawo V. NDLEA & Ors

(2018) LPELR – 45030 (CA)

That by the issuance of a Cheque by the Defendant it means he had admitted his indebtedness and admitted the Claimant's claim too. Hence, the Claimant is entitled to Judgment without further ado. He referred to the case of:

**Dana Air Services Ltd V. Sudan Airways Ltd
(2005) 3 NWLR (PT. 912) 394**

That the Defendant has not shown in his Affidavit that he has a prima facie defence on merit. He urged Court to enter Judgment for Claimant and grant his claims.

COURT

Once a Claim or Relief sought in a Writ is based on ascertained or ascertainable amount or a debt is liquidated, the Court shall without any waste of time mark the Writ Undefended before it is served on the Defendant. Once that is the case, the Defendant must within a reasonable time file Notice of Intention to Defend with an Affidavit showing Defence on merit. He can, where necessary and available, attach documents to prove that it has Defence on merit. Once the money in issue is specific, due and payable it is said to be liquidated form. See the cases of:

**Maja V. Sampuris
(2002) LPELR – 1824 SC**

Petgas Res Ltd V. Mbanefor Supra

Alibro Transport Service Ltd & Anor V. Access Bank PLC

**(2023) LPELR – 60432 (CA) deliver on 5th May, 2023.
Court of Appeal Abuja Division**

It has been held in plethora of cases that where a Claimant has a clear case and the Defendant has no prima facie defence and the Claimant has satisfied the Court with Affidavit evidence which the Defendant cannot controvert, that the Court would enter Judgment for the Claimant. Where that is the case the Court will award full blown trial forth with frustration, delay and usual expenses. See the cases of:

**MC Inv. Ltd V. CI & CM Ltd
(2012) 12 NWLR 1**

**UTC V. Pamotei
(1989) 2 NWLR (PT. 103) 224**

**Jammal Eng. Co. Ltd V. Misr Nig. Ltd
(1972) 4 SC 79**

Again, where a Defendant fails to show or establish that he has a prima facie Defence, the Suit shall be heard under the Undefended List Procedure and Judgment entered without delay. In that case the Claimant will not be called upon to summon Witness(s) before the Court to prove its case formally. That is Court's decision in the cases of:

MC Inv. Ltd V. CI & CM Ltd Supra

**Theobros Auto-Links V. BIAE Co. Ltd
(2013) 2 NWLR (PT. 1338) 337**

Once the Suit is heard under Undefended List it shortens the procedure. See the cases of:

SBN PLC V. Kyentu
(1998) 2 NWLR (PT. 356) 41

Garba V. Sheba (Nig) Ltd
(2002) 1 NWLR (PT 748) 372

Haldo V. Usman
(2004) 3 NWLR (PT. 859) 65

In that case the Defendant shall not be called upon to be heard as Judgment will be entered in favour of the Claimant. See the case of:

Haldo V. Usman Supra

In this case the Court had just dismissed the Defendant's Notice of Intention to Defend the Suit because the Defendant failed to establish any defence on merit. The Claimant has from the facts in the Affidavit in support of the Writ shown that actually there is no defence and that the Defendant is actually indebted to him.

To start with, the Claimant tendered four (4) Cheques issued by the Defendant totaling the amount in issue. The Defendant did not deny that fact. In his own Affidavit in support he confirmed that he issued the Cheques which is the amount he owes the Claimant.

Again, the Claimant established that the money owed him is part of the amount which he gave to the Defendant for purchase of Prado SUV. The Defendant also confirmed that

fact. The Defendant also confirmed and did not controvert the fact that the Claimant returned the Prado SUV to him, a fact which the Claimant established in his Affidavit. The Claimant confirmed that the transaction took place in May 2022. The Defendant confirmed that.

It is imperative to state that the Defendant's claim of been arrested and tortured has nothing to do with the debt in issue. All allegation/submission on receiving only **N40,000,000.00 (Forty Million Naira)** are unsubstantiated. He did not show any fact or documentary evidence to support that fact. He had admitted issuing the 4 Cheques. Besides, a look at the dates in the Cheques shows that they were issued within the same month after the supply was made – May 2022. Hence, controverting the claim of the Defendant that the Prado SUV Jeep was returned after 2 months.

Worthy of mention is the document which the Defendant exhibited, the picture of an SUV and the letter approving Police SPY Number. The letter was written a year before the Prado SUV transaction was entered into – May 2021. Besides, the picture of the vehicle exhibited has no proof that it was the exact type requested that was supplied. The vehicle seats were not covered with polythene as new vehicles are usually covered. There is no evidence to show its Chassis Number and document of importation and sale by the Defendant. The Defendant did not exhibit any document to show that the Claimant paid only **N40,000,000.00 (Forty Million Naira)** as he claimed.

That is why this Court holds that the Claimant established the Defendant's indebtedness to him and that the Defendant

could not controvert that fact. In fact, his Intention to defend supported the Claimant's claim in this case.

This Court therefore holds that there is merit in the case of the Claimant. And as such, this Court enters Judgment in the Claimant's favour as claimed and grants his Reliefs to wit:

- (1) Relief No. 1 granted as prayed.
- (2) The Defendant is to pay to Claimant 5% Interest on the Judgment sum from the day Judgment is delivered until final liquidation.

This is the Judgment of this Court.

Delivered today the ___ day of _____ 2024 by me.

K.N. OGBONNAYA
HON. JUDGE

APPEARANCE:

CLAIMANT COUNSEL: VICTOR MOMOH ESQ.

DEFENDANT COUNSEL: EMMANUEL I. OKANI ESQ.
WITH JENNIFER UGWOKÉ
(MRS.).