

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

RULING

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 **N66, 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

The Court had summarized the stance of parties in this case and the question is; Does the Defendant have any Defence on merit in that the matter should be transferred to the General Cause List as the Defendant is seeking? Or should this Court enter Judgment in the favour of the Claimant holding that the case of the Claimant is meritorious?

It is the humble view of this Court that the Court should retain the case under the Undefended List Procedure and therefore enter Judgment in favour of the Claimant without any further delay as the case of the Claimant is meritorious.

The Defendant has not been able to show any defence on merit. The Defendant agreed and confirmed that he is indebted to the Claimant and had equally collected back the vehicle in issue. He showed that he issued the Cheques that wend dud. He exhibited vehicle picture but it is evidently clear that the vehicle number document he tendered as **EXH 6** was on vehicle registered sometime in 2021 (May) which is several months or even one year before the vehicle in issue was supplied. According to the Defendant he supplied the vehicle in issue in May 2022. By the dates in the Cheques he issued, they were in May

2022 showing and confirming that he was not able to supply the vehicle as the Claimant alleged, hence he issued the Cheques. Fact admitted need no further proof. The Defendant had admitted that he is owing the Claimant for the vehicle which he was supposed to supply. He has not denied issuing the dud Cheques. The marking on the face of the Cheques is there for all to see.

The issue of indebtedness is clear. The amount of debt is equally clear as can be deciphered from the amount in the Cheques which tallies with what the Claimant is claiming. The submission of the Claimant in that regard is proper.

The Defendant was not able to show that the Cheques were issued under duress as he claimed. There was no details as to the date, time and place when and where he was detained. The documents he attached are in total disparity as to the day he claimed he supplied the vehicle. The unclear pictures he attached could have been for any other vehicle. He as a car dealer could not give details of the vehicle particulars.

The application for and approval for Police SPY Number was dated 21st May, 2021 which means that it was birthed even before the Defendant supplied the vehicle.

From all the above, the Defendant has no prima facie defence to the case of the Claimant. So this Court holds.

Therefore the said Notice of Intention to Defend the Suit lack merit and it is therefore dismissed.

This is the Ruling 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.).