

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. 22

CASE NUMBER : SUIT NO: CV/1500/2020

DATE : WEDNESDAY 27TH JANUARY, 2021

BETWEEN

MR. SABASTINE ANIBUEZE CLAIMANTS

AND

1. DR. JOHN ANYEKE } DEFENDANTS

**2. ODONI GLOBAL RESOURCES }
LIMITED }**

RULING

The Claimant approached this Honourable Court vide a Writ of Summon under the undefended list procedure Pursuant to Order 35 of the Rules of this Honourable Court.

In line with law and procedure, the said Writ was marked undefended on the 14th September, 2020.

The claims of the Claimant against the Defendants are as follows:-

1. The outstanding sum of N10,240,000.00 (Ten Million, Two Hundred and Forty Thousand Naira) only being the balance of the sum owed to the Claimant by the Defendants from the total sum of N12,240,000.00 (Twelve Million, Two Hundred and Forty Thousand Naira) only which

represents an ascertainable 20% of the recovered sum of N61,200,000.00 (Sixty One Million, Two Hundred Thousand Naira) only.

- b. The cost of N1,224,000.00 (One Million, Two Hundred and Twenty Four Thousand Naira) only as cost of litigation.

In support of the application is an affidavit of 25 paragraph deposed to by the Claimant himself.

The case of the Claimant as distilled from the affidavit is that sometimes in November, 2018, the 1st Defendant engaged him to facilitate and engage a Law Firm on behalf of the 2nd Defendant for the recovery of debt owed to the 2nd Defendant by the Ministry of Petroleum resources Abuja on an executed contract for facilities and equipment of capacity development: rehabilitation of Ministry's

conference rooms at a contract sum of N72,000,000.00 (Seventy Two Million Naira) only with an outstanding sum of N61,200,000.00 (Sixty One Million, Two Hundred Thousand Naira).

That he was engaged through a consent letter, letter of engagement and power of Attorney duly executed by the 1st Defendant on behalf of the 2nd Defendant. A copy of the said engagement letter, letter of consent and power of Attorney dated 22nd November, 2018 is attached and marked as Exhibit 'A'.

That according to the said consent letter, he was to pay a legal mobilization fee of N1,000,000.00 (One Million Naira) only to the Law firm he engaged. Upon engaging the services of a Lawyer Olumide Olujinmi (Olujinmi & Akeredolu, Legal

Practitioners) and other auxiliary personnel to sue the Ministry owing the Defendants and recover the balance owed, he paid accordingly the legal mobilization fee of N1,000,000.00 (One Million Naira) only to the Law Firm as agreed to enable them start the process of debt recovery.

Consequently, the Law Firm filed a Writ dated 10th of January, 2019 and filed same day with Suit Number CV/750/19 against the Hon. Minister of Petroleum Resources. A copy of the Writ is hereby attached and marked Exhibit 'D'.

That contrary to their agreement, the 1st Defendant sent him a mail on the same 25th of December, 2019 stating that the maximum sum he will pay for the sum recovered is N10,000,000.00 (Ten Million

Naira) only. A copy of the mail is hereby attached and marked as Exhibit 'G'.

That on the 21st of January, 2020, he received an alert of N2,000,000.00 (Two Million Naira) only from the Defendants which he acknowledged and waited for the balance of N10,240,000.00 (Ten Million, Two Hundred and Forty Thousand Naira) from them but to no avail.

That he instructed his Lawyer Messrs. OlasupoAshaolu SAN & Co. to help him recover the debt owed to him by the Defendants through a letter of instruction dated 24th of February, 2020. The Law Firm also accepted this instruction via a letter of acceptance. Copies of the said letters are hereby attached and marked as Exhibit 'I and I(a)' respectively.

Upon service, the Defendant filed their Notice of intention to defend the suit with affidavit in support duly deposed to by the 1st Defendant himself.

It is the deposition of the Defendants that the Defendants engaged the Claimant to commission a Law Firm for the recovery of debt owed the 2nd Defendant by the Ministry of Petroleum Resource Abuja to the tune of N61,200,000.00 only.

That Exhibit “A” paraded by the Defendant is a forged document and the signature is not that of the 2nd Defendant, and that at no time did the Defendants promise the Claimant 20% or any percentage of the owed debt when recovered.

Defendant avers that the Claimant did not recover the debt as a lawyer from Akin Olujimi SAN, prosecuted the matter in court and recovered the debt

through settlement between the parties and the legal fees was paid.

That N2,000,000.00 was paid to the Defendants for his effort and that the Claimant did not furnish any consideration to warrant payment, and that at the time the money was recovered, Claimant was in London for scholarship.

That it will be in the interest of justice to transfer this case to the general cause list.

Court:-I wish to observe that the undefended list procedure is a truncated form of ordinary civil hearing peculiar to our adversary system where the ordinary hearing is rendered unnecessarily due in the main to the absence of an issue to be tried or the quantum of Plaintiff's claim disputed to necessitate such a hearing. It is designed to quicken justice and

avoid the injustice likely to occur where there is no genuine defence on the merits to the Plaintiff's case.

It is a procedure meant to shorten hearing of a suit where the claim is for liquidated money demand see ***UBA PLC VS JARGABA (2007) 5 SC1.***

An action begun under the undefended list, is no less a trial between the parties and where a Defendants is properly served, he has a duty to disclose his defence to the action. ***ATAGUBA & CO. VS GURA (2005) 2 SC (Pt. 11) 101.***

However, notice of intention supported by affidavit so filed must condescend to issues stated in affidavit in support of the claim of the Plaintiff. A mere empty affidavit in support of the Notice of Intention to defend which disclose no defence shall certainly

not sway the Court into transferring the matter to general cause list for trial.

Simply put, the Defendants affidavit must condescend upon particulars and should as far as possible, deal specifically with the Plaintiff's affidavit and state clearly and concisely what the defence is and what facts and document are relied on to support it.

Such affidavit in support of Notice of Intention to defend must of necessity disclose facts which will, at least throw some doubt on the Plaintiff's case.

A mere denial of Plaintiff's claim or liability or vague insinuation devoid of evidential value does not and will not suffer as facts, which will throw doubt on Plaintiff's claim. ***UBA PLC VS JARA GABA (Supra).***

I have gone through the affidavit of Claimants in support of its claim brought under the undefended list pursuant to Order 35 of the Rules of this Court. I have also gone through the affidavit in support of Notice of intention to defend this action filed in compliance with Order 35 Rule 3(1) of the Rules of this Court.

The facts averred in affidavit in support of Claimants case are such that if put side by side with those of the Defendants, the reliefs claimed by Claimants cannot be resolved under Order 35 of the Rules of this Court.

This can be gleaned from the affidavits of both parties wherein the issue of legal representation by the law firm of OlumideOlujimi of the law firm of Akin Olujimi, SAN, was in contention as to who

actually engaged their services, and allegation of fraud made by the Defendants in their affidavit.

By the power conferred on me therefore, I hereby transfer this suit to general cause list under Order 35 Rule 3 (2) of the Rule of this Court.

Parties by this are ordered to file pleadings and lead evidence in support of their respective pleadings.

Justice Y. Halilu
Hon. Judge
27th January, 2021

APPEARANCES

Christopher O. Richard – for the Claimant.

Oseni W.B – for the Defendant.