

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT GUDU - ABUJA**

**DELIVERED ON TUESDAY THE 6<sup>TH</sup> DAY OF JULY, 2021.**

**BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE R. OSHO-ADEBIYI**

**SUIT NO. CV/2842/2020**

**MOTION NO:M/10508/2020**

**BETWEEN**

**POLARIS BANK LIMITED ----- CLAIMANT/APPLICANT**

**AND**

**SALOME GARBA-----DEFENDANT/RESPONDENT**

**RULING**

Before the court is a Motion on notice dated and filed 7/10/2020 by Claimant/Applicant. This Motion is brought pursuant to Order 11 Rule (1), Order 43 Rule 1 of the Rules of this Court and Sections 6 (6) (b) and 36 (1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) seeking the following reliefs: -

1. An order of this honourable court entering summary judgement in favour of the Claimant/Applicant against the Defendant/Respondent in the sum of N43,197, 178.60k (Forty Three Million, One Hundred and Ninety Seven Thousand, One Hundred and Seventy Eight Naira, Sixty Kobo) being the admitted sum of the principal sum.

2. An order of this honourable court entering summary judgment in favour of the Claimant/Applicant for 5% interest rate on the admitted sum (i.e. N43,197, 178.60k) of the principal sum of N103,464,962.61k from the 1<sup>st</sup> day of January 2019 up until when the suit is entered before this honourable court of the mortgage loan facility granted to the Defendant/Respondent by the Claimant/Applicant.
3. An order of this honourable court entering summary judgment in favour of the Claimant/Applicant for 10% interest on the judgment sum from the date of the judgment until the judgment sum is liquidated.
4. And for such further other order(s) that this honourable court may deem fit to make in the circumstances of this case.

In support of the Motion is an affidavit of 20 Paragraph deposed to by Fidel Andepu, a staff in the recovery unit of the Claimant/Applicant with 9 Exhibits attached (Exhibit PB1 – PB9). Also filed a further and better affidavit dated 1/03/2021 deposed also to by Fidel Andepu with Exhibit PB10 attached. And also filed a Written Address and adopts the said Address and urged the court to grant the application.

In response, Defendant filed a counter-affidavit of 21 Paragraph on 18/11/2020 deposed to by Mrs. Salome Garba, the Defendant in this suit with 8 Exhibit attached (Exhibits A – H). Also filed a Written Address and adopts it in urging the court to dismiss the application.

In the Written Address of Claimant/Applicant, only (1) issue was submitted for determination and that is;

“Whether this honourable court ought to grant the claimant/applicant's application for summary judgment?”

Learned counsel submitted that this honourable has the power to grant the Claimant/Applicant's application for summary judgment in the sum of N43,197,178,60k (Forty Three Million, One Hundred and Ninety Seven Thousand, One Hundred and Seventy Eight Naira, Sixty kobo), being the admitted sum of the Defendant/Respondent's indebtedness to the Claimant/Applicant out of the N103,464,962.61k principal sum. Counsel further submitted that the grounds for the Claimant/Applicant's application for summary judgment is borne out of the fact that the Defendant/Respondent who has admitted her indebtedness to the Claimant/Applicant in the sum of N43,197,178.60k, has refused to pay same, has continued to default in liquidating same despite it being overdue and having breached the terms of the staff loan/credit facility granted her by the Claimant/Applicant has no defence to the Claimant/Applicant's application for summary judgment. He refers the Court to **IBACEHM LTD VS. VISA INVESTMENT & SECURITIES LTD (2009) ALL FWLR PART 485 PG 1770 AT PAGE 1784 PARAGRAPH E-F, BRAWAL SHIPPING (NIG) LTD V. OMETRACO IND LTD (2012) ALL FWLR PT 628 AT PAGE 932 AT PAGE 948 PARAGRAPH E and CATCO CORPORATION ORGANISED vs. A.R.C (2010) ALL FWLR PART 517 PAGE 677 AT PAGE 695 - 696 PARAGRAPH I-I-A.**

Counsel finally submitted that Claimant]Applicant's application for summary judgment is one warranting the favourable exercise of the honourable court's discretion, as the Claimant/Applicant has furnished the honourable court with sufficient materials (i.e. exhibit PB9 in paragraph 14 of the affidavit in support of the application for summary judgment) for grant of its said application and urged the honourable court to grant the Claimant/Applicant's application for summary judgment in the interest of justice

In the Written Address of Defendant/Respondent, counsel raised three (3) issues for determination and that is;

- a. Whether this motion on notice for summary judgment is competent as presently constituted.
- b. Whether this suit is one that can be heard under the summary judgment procedure of this court.
- c. Whether the Defendant/Respondent has disclosed in the processes filed before this court, a defence on the merit and/or triable issues to the Claimant's action to warrant the transfer of same to the general cause list for hearing on the merit.

Summarily, learned counsel submitted that in a suit filed to be heard under the summary judgment procedure of the court, the motion on notice for summary judgment must ask for judgment in the sum claimed in the writ of summons and statement of claim. Any straying or deviation from this restriction renders the application incompetent and liable to be refused. He urged the Honourable Court to strike out the

Claimant's motion for summary judgment and transfer this suit to the general cause list. Counsel further submitted that the mere fact that the Claimant stated that he believes that the Defendant has no defence to the action is of no moment if it appears as in this case that the belief of the Claimant, fails in the face of the facts of the case as disclosed in the pleadings and documents before the court, more particularly, the Statement of Defence. Counsel submitted that aside from raising triable issues of facts on the Claimant's case, a Defendant can also raise triable issues of law on the claim or suit of the Claimant, which if upheld by the court, would defeat the suit of the Claimant from being heard under the Summary Judgment procedure of this court. Counsel then submitted that the Defendant had prior to the institution of this suit, filed an action against the Claimant before another Court of competent jurisdiction for the recovery of the same terminal benefit the parties contracted which would be the source of funds for the settlement of the mortgage loan and that parties have already joined issues in that suit. Finally, counsel submitted that the effect of all this is that the Defendant herein has not only raised defences on the merit against the claimant action, but has raised triable issues of both facts and law to warrant this matter being transferred to the general cause list. He cited; **Order 11 Rule 1, Order 20 Rules 1, 2 and 4 of the Rules of court, NIGERIAN BOTTLING CO. V. TAIWO (2018) ALL FWLR PT 940, PG. 25 @ 52-53, PARAGS H-B and FRAZIMEX (NIG) LTD V. DOATEE CONCEPTS (NIG) LTD (2011) ALL FWLR PT 589 PG 1139 @ PG 1158, PARA G-H.**

Having carefully considered the submission of both counsel for and against the grant of this application and Exhibits annexed the sole issue for determination 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 summary judgment procedure. The whole purpose of a summary judgment procedure is to ensure justice to a Plaintiff and minimize delay where there is obviously no defence to his claim and thus prevent the grave injustice that might occur through a protracted and immensely frivolous litigation. In an application for summary judgment, as in the instant, the Claimant must state in his affidavit in support of his application facts he believes that the Defendant has no defence to the claim and the grounds for his believe. And when a Plaintiff 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, as provided in **Order 11 Rule 5 (1) of the Rules of court**. And what the court looks for when determining whether or not to grant leave to defend a suit are facts which raise triable issues and not proof of those facts as held in **Ekiti State Mojere Primary School Teachers Co-operative Multipurpose society ltd v. GTBank (2019) LPELR-47447 (CA)**. In other words, the Defendant is only required, under the

summary judgment procedure, to establish a prima facie defence and not defence on the merit at that stage.

In this instant case, the Claimant/Applicant is seeking the Order of court to place the Writ of Summons and other court processes under summary judgment and enter final judgment in summary manner against the Defendant. Claimant had deposed to facts that he believes the Defendant has no defence to in their claim and also attached 10 Annexures as Exhibits in support of their claim against the Defendant. The Defendant has by her counter affidavit in opposition denied the claim of the Claimant/Applicant.

I have critically perused the facts as stated in the affidavit evidence of Claimant/Applicant and the attached annexures in their application for summary judgment in relation to the facts as stated by the Defendant/Respondent. The Claimant/Applicant's application is hinged on paragraph 14 of the affidavit in support of the motion which states as follows;

“That in response to the letter of demand dated 25<sup>th</sup> February 2019, the defendant through her solicitors wrote a letter dated 17<sup>th</sup> May 2019 to the claimant in which the defendant admitted her indebtedness to the claimant in the sum of N43,197,178.60k (Forty Three Million, One Hundred and Ninety Seven Thousand, One Hundred and Seventy Eight Naira and Sixty kobo) and also admitted her default in repayment of the said loan facility plus the accrued interest thereon. Copy of the letter dated 17<sup>th</sup> May 2019 is attached as exhibit PB9.”

In her defence the Defendant/Respondent averred in paragraph 6 of her counter affidavit in opposition to motion on notice;

“That although the mortgage loan granted to me by the Claimant has the sum of N43,197.178.60 outstanding, it is the agreement between me and the claimant at the point of the loan that same would be repaid from my monthly salary or terminal benefit if I stop working for the claimant.”

Defendant has stopped working for the Claimant and believes her terminal benefit is due. Following from the above, I am of the view that the Defendant/Respondent by the affidavit evidence has disclosed triable issues requiring this suit to be heard on the merit. The facts as stated by Claimant/Applicant and the documents annexed as Exhibits (especially Exhibit PB9) requires explanation from both parties and this cannot be achieved except evidence is called. It is on this basis I shall exercise my discretion in favour of Defendant/Respondent by granting Defendant/Respondent leave to defend this suit and in consequence this suit is moved to the general cause list. I so hold.

**Parties:** Absent

**Appearances:** Karina Williams for the Claimant. Abubakar I. Kolawole for the Defendant.

**HON. JUSTICE M. R. OSHO-ADEBIYI**

**JUDGE**

**6<sup>TH</sup> JULY, 2021**