

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GWAGWALADA- ABUJA

THIS THURSDAY THE 14TH DAY OF DECEMBER, 2023

BEFORE HIS LORDSHIP: HON. JUSTICE ALIYU YUNUSA SHAFIA

SUIT NO: FCT/HC/GWD/CV/149/2023

BETWEEN:

SANUSI MUSA (SAN).....CLAIMANT/APPLICANT

AND

ATTORNEY GENERAL OF KANO STATE.....DEFENDANT

JUDGMENT

By a writ of summons dated the 20th of September, 2023 one M. J. NUMA (SAN) the claimant counsel commenced this action, claiming against the Defendant as follows:

- 1. AN ORDER of this Honourable Court awarding the sum of Two hundred and Fifty Million Naira (₦250,000,000.00), against the Defendant and in favour of the Claimant, being professional fee owed by the Defendant to the Claimant, for instituting an action in Suit No. SC/CV/200/2023; Attorney General of Kano State V Attorney General of the Federation and prosecuting same to completion at the Supreme Court of Nigeria, on behalf of the Defendant.**
- 2. AN ORDER of this Honourable Court awarding the sum of Ten Million Naira (₦10,000,000.00), against the Defendant and in favour of the Claimant, being the cost of instituting the instant suit.**
- 3. AN ORDER of this Honourable Court awarding post-judgment interest against the Defendant at 10% per annum on the judgment**

sum from the date when judgment is entered till the date the judgment debt is completely satisfied.

Accompanying the writ of summons is an affidavit in support of 18 paragraphs deposed to by Sanusi Musa (SAN) of No: 8, Muhammed Abu Ali Jabi FCT Abuja Attached to the Affidavit in support are exhibits marked

- i. AMPL1-being letter of instruction dated the 7th February, 2023. Addressed to Aliyu& Musa Legal Practitioner & consultant.**
- ii. AMPL3-letter of instruction to instruction an action against the Attorney General of the Federation on behalf of Kano State, invoice**
- iii. AMPL2- the originating summons in case No: SC/CV/200/2023, between A.G. of Kano Sate Vs A.G. of the Federation dated. 9-2-2023.**

The claimant/Applicant alongside filed a motion ex parte with motion number FCT/HC/GWA/M/464/2023, dated the 25th September, 2023 for an order of this Honourable Court entering the claimant/Applicant writ of summons for hearing in the undefended list. And a motion with No: FCT/HC/GWD/M/413/23 for an order of this honourable court granting leave to the claimant/applicant to issue and serve the Defendant with the writ of summons outside the Jurisdiction of this court and in Kano State.

The two motions were taken same date and the order sought therein were all granted.

The defendant on receipt of the order filed a memorandum of conditional appearance dated the 22-10-2023 and notice of intention to defendant alongside dated same date.

Attached to the notice of intention to defend is an affidavit in support of notice of intention to defend, of 4 paragraphs sworn to by Benjamin Silas of No: 37 T. Y. Danjuma Street, Asokoro Abuja.

This writ is under undefended list, and order 35 of the High Court of Federal Capital Territory, Abuja. (Civil Procedures 2018, provided for the procedure thus:

35(1)(1)(2) where an application in form I as in the appendix is made to issue a writ of summons in respect of a claim to recover best or liquidated money demand, supported by an affidavit stating the grounds on which the claim is based, and stating that in the deponent's belief there is no defence to it, the Judge in chambers shall enter the suit for hearing in what shall be called the undefended list"

(2) a writ of summons for a suit in the undefended list shall contain the return date of the writ.

Subsection (2)

A claimant shall deliver to a registrar on the issue of the writ of summons as many copies of the supporting affidavit as there are parties against whom reliefs sought for service.

Subsection 3(1) where a party served with the writ delivers to registrar before 5 days to the day fixed for hearing, a notice in writing that he intends to defend the suit together with an affidavit discussing a defence on the merit, the court may sue him leave to defend upon such terms as the court may think just.

(2) were leave to defend is given under this rule. The action shall be removed from the undefended list and placed on the ordinary cause list and the court may order pleadings or proceed to hearing without further pleadings.

Subsection (4) where a defendant neglect to deliver the notice of defence and an affidavit prescribed by rule 3(1) is not given leave to defend by the court the suit shall be heard as an undefended suit and judgment given accordingly.

In compliance to the above rules as stated above, both the claimant and the defendant complied with the above rules, hence I shall proceed to consider the affidavit in support filed by both party to.

The claimant filed 18 paragraphs affidavit in support produce below:

- 1. I am the Principal Partner in the law firm of Aliyu& Musa (SAN) Legal Practitioners and Consultants, and by virtue of my position, I am conversant with the facts leading to the instant suit. The facts deposed herein are facts within my knowledge unless where otherwise stated.**
- 2. I am a legal practitioner and a Senior Advocate of Nigeria (SAN) carrying on the business of law practice under the name and style of Aliyu& Musa (SAN) Legal Practitioners and Consultants, registered under Part E of the Companies and Allied Matters Act, 2020 with Reg. No. BN 2047306.**

- 3. The Defendant is the Attorney General of Kano State, who is the Chief Law Officer of Kano State and Commissioner for Justice of the Kano State Government.**
- 4. On the 26th day of October 2022, with the approval of the President of the Federal Republic of Nigeria (the President), the Central Bank of Nigeria (the CBN) announced the de-monetization economic policy aimed at redesigning and recalling the ₦200, ₦500, and ₦1000 notes with the aim of replacing them with newly redesigned notes.**
- 5. Based on the approval of the President, the CBN gave a three (3) month deadline to all Nigerians to exchange the ₦200, ₦500, and ₦1000 notes for the newly redesigned notes, which period was to expire on 31st January 2023.**
- 6. Pursuant to the Naira redesign policy, the CBN issued a Circular on December 6, 2022, to all Deposit Money Banks (DMBs) and other financial institutions wherein the CBN directed all DMBs and other financial institutions to comply with a maximum cash withdrawal over the counter by individuals and corporate organizations to ₦100,000.00 and ₦500,000.000, respectively, per week.**
- 7. By another Circular dated December 21, 2022, issued by the CBN, the withdrawal limits prescribed by the CBN in the circular of December 6, 2022, was revised to a maximum of ₦500,000.00 and ₦5,000,000.00 weekly limit for cash withdrawal across all channels by individuals and corporate organisations, respectively.**
- 8. The CBN by yet another Circular dated January 20, 2023, announced that it is launching a Cash Swap program in partnership with ‘Super Agents’ and DMBs in order to reach out to citizens in rural areas with limited access to financial services for the exchange of their old notes for the redesigned notes.**
- 9. In the circular of January 20, 2023, the CBN limited the amount to be exchanged in cash to a maximum of ₦10,000.00 while any deposit above that will be treated as a cash deposit into wallets or bank accounts to be opened for each individual in the rural communities.**
- 10. In opposition to the policy of the Federal Government highlighted above, on 7th February 2023, the Defendant approached me and**

instructed me, through my law firm, to institute a suit at the Supreme Court of Nigeria challenging the policy of the Federal Government.

The Letter of Instruction sent to me by the Defendant is attached to this Affidavit and marked Exhibit AMLP1.

11. It was agreed by the Defendant and I that for the successful completion of the suit, the Defendant would pay me Two hundred and Fifty Million Naira (₦250,000,000.00) only.

12. On behalf of the Defendant, I proceeded to file Suit No. SC/CV/200/2023 against the Attorney General of the Federation at the Supreme Court of Nigeria.

A certified true copy of the Originating Summons filed on behalf of the Defendant in Suit No. SC/CV/200/2023 is hereby attached to this Affidavit and marked Exhibit AMLP2.

13. On the 17th of February 2023, through my law firm, I sent an invoice to the Defendant in respect of Suit No. SC/CV/200/2023.

The acknowledgment copy of the invoice dated 17/2/2023 is attached to this Affidavit and marked Exhibit AMLP3.

14. I successfully instituted and prosecuted the suit at the Supreme Court on behalf of the Defendant and the Supreme Court delivered its judgment in favour of the Defendant.

A certified true copy of the judgment of the Supreme Court in Suit No. SC/CV/200/2023 is attached to this Affidavit and marked Exhibit AMLP4.

15. Despite several demands and the letter of 17/2/2023, the Defendant has refused to pay the agreed sum. Consequently, I sent a Bill of Charges dated 15/05/2023, to the Defendant. The said Bill of Charges was received at the office of the Defendant on 15/05/2023.

The acknowledgment copy of the Bill of Charges dated 15/05/2023 is attached to this Affidavit and marked Exhibit AMLP5.

16. The Defendant has been in receipt of the Bill of Charges of 15/05/2023 for more than a month as of the time of instituting this action.

17. I believe that the Defendant has no defence to this suit as I have evidently fulfilled my part of the agreement while the Defendant has failed to pay me as agreed.

While on the side of the Defendant the affidavit in support of notice of intention to defend is of 4 paragraph reproduced below:

Paragraph 3a-m

- a. That he has painstakingly read and digests the affidavit in support of the writ of summons under the undefended list and the depositions contained therein are not entirely correct.**
- b. That contrary to paragraph 11 of the affidavit of Sanusi Musa, SAN in support of the Writ of summons under the undefended list, the Defendant unequivocally deny any agreement that the Claimant would be paid Two Hundred and Fifty Million Naira (250,000,000.00) only for his services.**
- c. That the claimant was briefed by his predecessor on behalf of Kano State Government and there is no record of any agreement with the Defendant for the payment of N250,000,000.00 (Two Hundred and Fifty Million Naira) or any sum at all, as professional fees upon the successful completion of the suit.**
- d. That from the record available to him, the Claimant was briefed on the 7th day of February, 2023 but the instruction was not perfected as no agreement was reached with the Kano State Government or on its behalf on how much Claimant would be paid as his professional fees either before the intention of the suit at the Supreme Court or after its completion.**
- e. That the claimant submitted an invoice on the 17th February, 2023 for the sum of N250,000,000.00 (Two Hundred and Fifty Million Naira) as his professional fees after he had hurriedly filed the suit at the Supreme Court in order to deprive the Defendant the opportunity to negotiate his Professional fees.**

- f. That the sum of N250,000,000.00 (Two Hundred and Fifty Million Naira) claimed by the Claimant as his professional fees is bogus, excessive, unreasonable, unwarranted and not commensurate to the services purportedly rendered by the Claimant.**
- g. That contrary to the letter of instruction, the Claimant had at no time briefed and/or provided the Defendant with any update on any step taken before, during and after the conclusion of the suit at the Supreme Court.**
- h. That from the bill of charges served on the Defendant, details and/or particulars of the services rendered were not provided.**
- i. That neither himself nor his predecessor has powers to engage the services of the Claimant on behalf of the Kano State Government for a Professional Fee of N250,000,000.00 (Two Hundred and Fifty Million Naira) without recourse to and/or the approval of the Kano State Executive Council.**
- j. There is no available record of any approval sought and obtained for the engagement of the services of the Claimant for a professional fee of N250,000,000.00 (Two Hundred and Fifty Million Naira) only or for its payment thereof.**
- k. That the Defendant vehemently and vigorously disputes the Claimant's claims as constituted vide this suit and urges this Honourable Court to transfer the same to the general cause list for trial.**
- l. That he knows as a fact that the instruction conveyed vide Exhibit AMLP1 was on behalf of Kano State Government.**
- m. That he contends by way of objection that this Honourable Court Lacks Jurisdiction to entertain this suit against him and that he is not liable to the claim of the claimant, if any, having acted for and on behalf of Kano State Government.**

I have carefully gone through the affidavit in support of writ of summon especially paragraph 10 of the said affidavit and that of paragraph 3(g) of the defendant show clearly shows by exhibit AMPL1, being a letter of instructions sent to the claimant by the Defendant this is conclusive evidence that the Defendant was briefed by the claimant and the update as contained on exhibit AMLP1 and exhibit AMPLR 3 being the acknowledgment copy of the invoice dated the 17/2/2023.

On paragraph 11 of the claimant affidavit where in the said paragraph he stated thus

It was agreed by the defendant and that for the successful completion of the suit, the defendant would pay me two Hundred and fifty Million Naira (250,000.00) only.

Upon exhibit AMLP3 paragraph 13 of the claimant is clear on the nature of the claims. Where in paragraph 14 of the claimant it provides thus:

I successfully instituted and prosecuted the suit at the supreme court on behalf of the defendant and the supreme court delivered it Judgement in favour of the defendant Exhibit AMLP4 being a certify true copy of the judgment of the supreme court in suit No: SC/CV/200/2023.

And following the compilation of the agreed suit, the claimant sends several demands a letter of 17/2/2023, the defendant had refused to pay the agreed sum consequently upon this sent a bill of charges dated the 15/05/2023 to the defendant. The said bill of charges was received at the office of the defendant dated the 15/05/2023 exhibit AMLP5.

From the foregoing the argument of the defendant in paragraph 3(i) (j) (k) (i) cannot hold and is an afterthought.

In view of the foregoing, I have accordingly hold that the claimant is entitled to the claim as the defendant had not disclosed any reasonable defence on the merit enjoying this court on the grant of the reliefs (1) one. Sought by the claimant. I so hold.

On claim 2 being award of the sum of N10,000,000.00 (Ten Million against the defendant and in favour of the claimant being the cost of instituting the instant suit on this a careful perusal of the entire affidavit there is absolutely no basis to situate the amount claimed here for cost of action. Cost is not awarded as a largesse and it is not granted as matter of course.

Under the provision of order 56 rule 38 6 & 11 provides thus:

Rule 3: a claimant ordinarily resident out of the Jurisdiction may be ordered to give security for costs, though he may be temporarily resident within the Jurisdiction.

Sub rule 6: subject to the provisions of any application law and these rules, the cost incidental to all proceedings in the High Court, including the administration of Estates and trust shall be at the discretion of the Judge, and he shall have power to determine by whom and the cost's to be paid”

56 rule 11 also provides thus:

The court as to cost, shall take into account any offer or contribution made by any of the parties, payment into court, and the amount of such payment.

The law is also that, the claim for cost should have been specifically proven before it can be awarded.

Here in the instant suit, it is not clear whether the sum claimed is legal fees paid by the claimant to his counsel or as fees paid to court or out of pocket expenses.

Take into account the entire circumstances of this case, the sum of N500,000,00 (Five Hundred Thousand Naira) only will appear to me reasonable as cost in the circumstance. I say this based of two cases below:

1. Devine Ideas Ltd V Umoru (2007) ALL FWLR (pt. 380) at 1509 paragraph A-D the court of appeal Abuja Division held thus
 - i. **“cost of action on solicitor’s fees are in the realm of special damages, which must be specifically pleaded and strictly proved.**
 - ii. **In the instant case, the appellant did not specifically and specially plead the details of the amount of money expended by it in the trial court. It also did not adduce any evidence in proof of this. It is also deemed that this none specific claim has been abandoned. The appellant is therefore not entitled to be awarded any amount as several damages and for costs of the action in the trial court.**

Also in the case of GuinnessNig Ltd V Nweke (2000?) 15 NWLR (pt. 689) 140 at 150 paragraph. C Per Ibiyeye JCA held thus:

“it is unethical and an affront to public policy for a litigant to pass on the burden of his solicitors fees to his opponent in a suit”

It is based on the above as stated that I considered granting the sum of N500,000.00 as costs against the defendant. So I hold.

On the claim of 10% interest on the judgment sum. This is one granted at the discretion of the court pursuant to the provisions of order 39 rule 4 of the rules of the court.

On a claim consideration of the facts of this suit this relief is availing.

In summation and for avoidance of doubt, I proceed to entered judgment infavour of the claimant against the defendant.

Judgement is hereby entered for the claimant against the defendant as follows:

- 1. The sum of (N250,000,000.00) Two Hundred and Fifty Million) Naira only against the defendant being professional fees owed by the Defendant to the claimant for instituting an action in suit No: SC/CV/200/2003 in Attorney General of Kano State V Attorney General of the Federation and prosecuting same to completion of the supreme court of Nigeria on behalf of the defendant.**
- 2. N500,000.00 (Five Hundred Thousand as cost of this action.**
- 3. I award 10% interest Per Annum of the Judgement sum from the date of Judgement until it is fully liquidated.**

This is my Judgement.

.....

Hon Justtice A. Y. Shafa

Appearance:

1. M. J. Numa (SAN) with B. J. Tabai Esq, Q. M. Jim Ogbolo Esq and Aminu Sani Yakasai for the Claimant.
2. Chief Samson Okpetu for the Defendant.