

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

(APPEAL DIVISION)

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA

BEFORE THEIR LORDSHIPS:

ON WEDNESDAY 28TH DAY OF FEBRUARY, 2024

HON. JUSTICE Y. HALILU - PRESIDING
HON. JUSTICE E. ENENCHE - MEMBER

APPEAL NO.:CVA/243/2022

SUIT NO. CV/DUT/621/2022

BETWEEN:

CRC CLEAN MOTORAS NIGERIA LIMITED..... APPELLANT

AND

KAOSY P. EZEANU RESPONDENT

JUDGMENT

This is an appeal against the monetary judgment of the District Court of the FCT in the Wuse Magistrate District, Holden at Wuse, Coram Hon. Ahmed Yusuf Ubangari delivered on the 30th August, 2022.

Kaosy P. Ezeanu the Respondent on appeal who was the Claimant at the lower court approached the court vide a civil plaint which was eventually placed under default summons upon satisfaction by the Trial Magistrate that same was for liquidated money demand.

The claim of the Respondent/Claimant was for the following:

1. Outstanding refund N2,900,000.00 (Two Million Nine Hundred Thousand Naira).
2. Incidental Damages and cost of modification N500,000.00 (Five Hundred Thousand Naira).
3. Punitive Damages N1,000,000.00 (One Million Naira).
4. Solicitor fee/cost of proceedings – N500,000.00 (Five Hundred Thousand Naira).

Affidavit in support of the Default Summons was filed in line with procedure wherein documents were exhibited.

This can be found at pages 1 – 14 of the Records of Appeal.

Appellant, who was the Defendant at the Lower Court upon service of the Court process on him, filed memorandum of conditional appearance and proceeded to file Notice of Intention to defend the suit of the Respondent/Claimant with affidavit wherein he urged the court to transfer the matter to the General Cause List.

Respondent/Claimant filed a further and better affidavit upon receipt of the Notice of Intention and affidavit in support filed by the Appellant/Defendant.

Above processes could be found at pages 19 – 30 of the Records of Appeal.

Upon consideration of the Notice of Intention to defend and affidavit in support the trial judge proceeded to enter Judgment in favour of the Respondent/Claimant on the 30th August, 2022.

Dissatisfied with the Judgment, the Appellant/Defendant then appealed to this Appellate Division of the High Court, wherein he raised the following grounds:-

FOUNDATIONS OF APPEAL

GROUND 1.

The Learned Trial Magistrate erred in law when he held that the Notice of intention to defend with the affidavit disclosing defense on merit does not disclose any defense.

PARTICULARS OF ERROR

1. The court held in its ruling that the paragraph 11 to 27 of the Defendant/Appellant's affidavit disclosing defense on merit was a hearsay which was deposed to by one of the directors in the Defendant's company.
2. The court ignored all the triable issues raised in paragraph 3 to 10 of the Defendant's affidavit disclosing defense on merit particularly paragraph 6 where the Defendant said the sum of N12,900,000.00 (Twelve Million, Nine Hundred Thousand Naira) paid by the Claimant was not paid in the Defendant's account and the refund of N10,000,000.00 (Ten Million Naira) was not also done by the Defendant/Appellant.
3. That the procedure adopted by the Trial Court was not in line with the procedures for default summons under the District Court Rules.

4. That the court failed to rule on the paragraphs 3 to 10 of the Defendant's affidavit disclosing defense on merit. This is a perversion and not supported by our law.
5. That some of the reliefs before the trial court were not for liquidated money demand, particularly the relief granted as the cost of modification of the Respondent's car.

GROUND 2.

The Learned Trial Magistrate erred in law when he failed to strike out the further and better affidavit withdrawn by the Claimant's Counsel at the Trial Court and based part of his ruling on paragraph 6 of the said withdrawn further and better affidavit.

PARTICULARS OF ERROR

1. That the failure of the Court to strike out the further and better affidavit filed the Claimant's/Respondent's counsel after it was withdrawn and based part of his ruling on paragraph 6 of the said withdrawn further and better affidavit negate the elementary principle of fair hearing and justice.
2. The Court held in its ruling that all the claims of the Defendant are purely base on matters and issues of internal governance and miscommunication which was part of the

deposition in the Claimant/Respondent's further and better affidavit already withdrawn.

GROUND 3.

The Learned Trial Magistrate erred in law when he received photocopies of evidence which was also snapped by cell phone from the Claimant/Respondent's counsel and based his ruling on the unadmitted evidence by failing to comply with the provision of Evidence Act.

PARTICULARS OF THE ERROR.

1. It is a trite law that exhibit attached to affidavit form part of the affidavit but the Court gave a contradictory ruling by not giving any evidential value to exhibit "A" of the Defendant/Appellant for not following due process in tendering the said exhibit 'A' in line with the provision of Evidence Act but admitted exhibit 'A' and 'B' of the Claimant/Respondent which were both photocopies and also an electronic evidence wherein same due process was not followed in line with the provision of Evidence Act.
2. It is an elementary law that exhibit attached to affidavit form part of the affidavit and it was wrong for the court to held

that due process was not follow in tendering exhibit 'A' of the Defendant/Appellant's affidavit disclosing defense on merit.

GROUND 4

The Learned Trial Magistrate erred in law when he failed to evaluate the evidence before the court before reaching conclusion or decision.

PARTICULARS OF THE ERROR.

1. The Defendant/Appellant through its affidavit have raised serious triable issued which the trial court did not evaluate to transfer the case to general cause list in line with the rules of the Court.
2. The Court was wrong when its allowed parties to joined issues and argued those issues before its yet still failed to transfer the case to the general cause list.
3. That the trial court without evaluation of the evidence before it's when ahead and gave judgment in respect unliquidated money demand in respect of incidental damages and cost of modification in the sum of N500,000.00.(Five Hundred Thousand Naira) There was no evidence placed before the Court in respect of the modification carried out on the

Claimant/Respondent's car to warrant the grant of the relief thereof, and or there was no compelling evidence on record to support the award of damages.

4. That the trial court without evaluation of the evidence before it's when ahead and gave judgment in respect unliquidated money demand in respect of punitive damages in the sum of N1,000,000.00 (One Million Naira) without any evidence placed before the Court to warrant the grant of relief thereof.
5. That the trial court without evaluation of the evidence before it's when ahead and gave judgment in respect of all the reliefs sought by the Claimant/Respondent, where two of the reliefs sought was not for liquidated money demand.

RELIEFS SOUGHT FROM THE APPELLANT COURT

1. An Order of this Honourable Court allowing the appeal.
2. An Order of this Honourable Court setting aside the ruling/judgment of the court below.
3. An Order of this Honourable Court ordering the transfer of the case to general cost list and the matter be heard on merit.
4. An Order evaluating and delivery judgment thereof.

Upon compilation of records and successful entering of Appeal, the respective Appellant and Respondent filed their briefs of arguments in line with procedure.

The Appellant's brief of argument which was dated the 17th February, 2023 was filed at the Appeal Registry on the same date..

In the said Appellate brief, two issues were distilled for determination, to – wit:-

- a. **Whether or not having regard to the evidence before the court, the learned Trial Magistrate was right in his conclusion not to transfer the case to the General Cause List.**
- b. **Whether or not having regard to the evidence before the court, the learned Trial Magistrate was right to award money claim for unliquidated or unascertained money demand under the Default Summons (Undefended List Procedure).**

Relying on Order V Rule 1(4) of the District Court Rules of the Federal Capital Territory, Abuja, 2021, learned counsel for the

Appellant contended that the Trial Judge erred in law when he ordered for Oral argument pursuant to Order V Rule 2.

Learned counsel for the Appellant reproduced the aforementioned provision of the District Court Rules as follows:-

Order V Rule 1(4) of the District Court Rules.

“For the purpose of this Rule, a defence on the merit means the Defendant must have put forward some facts which cast doubt on the claim of the Claimant and provides some foundation for the existence of a triable issue or issues, which calls for a full trial to determine and not anchored on mere matters of procedure, practice or form.”

Order V Rules 2.

Learned counsel contended from above provision that the Court was wrong not to have followed the provision of the law. It is further the argument of Appellant’s counsel that the court erred in law when it failed to strike – out the further and better affidavit of the Respondent/Claimant upon applying to withdraw same by the Respondent’s counsel but the court relied on the

said withdrawn further and better affidavit to arrive at its conclusion.

Learned Appellant's counsel also argued that the Trial Magistrate erred in law when he failed to transfer the suit to the General Cause List which triable issues were raised in his notice of intention to defend and affidavit showing defence.

Counsel contended that the Trial Magistrate did not evaluate evidence to arrive at the said decision.

The case of ***AROMIRE VS. AWOYEMI (1972)1 ALL NLR 102;***

BELLO VS. EWEKA (1981) 1 S.C 101 at 118 – 120 was cited.

Counsel then urge the court hold that the court was wrong to have held that paragraphs 11 – 27 of the affidavit in support of the Notice of Intention to defend were hearsay evidence when no evidencing was made, set aside the Judgment of the Trial Court.

On issue 2, it is the argument of the Appellant's counsel that the procedure under Default Summons is for liquidated money demand and that where the money is not ascertainable; Judgment would not be entered under Order V of the District

Court Rules. Counsel cited in aid, the case of ***BENDEL FEED & FLOUR MILL LTD. VS. NIMB (2000) 5 NWLR (Pt. 655) Page 29 at 43 Paragraph E.***

The court on the whole was urged to allow the appeal.

On the part of the Respondent, brief of argument was dated the 13th June, 2023 was filed on the 22nd September, 2023, where three issues were formulated for resolution..

The issues are as follows:-

- a. ***Whether the Trial Court was not right in the exercise of its discretionary powers to have refused the application of the Appellant to have his suit transferred to the General Cause List. (Distilled from Ground 1 and 2).***
- b. ***Whether the Appellant has shown with material evidence that the ratio of the Trial Court was based on the inadmissible evidence.***
- c. ***Whether having regards to the circumstance of the case and the purpose for which the Appellant attached Exhibit "A" to his "affidavit disclosing a defence on the merit" the Trial Court was not right to have held that***

said exhibit failed the mandatory condition under section 84 of the Evidence Act.

- d. **Whether the cost awarded by the Trial Court was not justified having regards to the circumstances of the case. (Distilled from Ground 3).**

On issue 1, it is the argument of learned counsel for the Respondent that upon satisfaction by the court, that the affidavit in support of Notice of Intention to Defend the action does not reveal any such Defence, the Court would enter Judgment under the Default Summons.

It is the argument of learned counsel for the Respondent that the Trial Judge was right to have to enter judgment against the Appellant in view of the fact that there are no triable issues in the said affidavit in support of Notice of Intention to Defend the action.

Counsel further argued that the Appellate could not set aside the discretionary power of a court as a general rule. ***ADEJUMO VS. AGANTAGBE (1989) 3 NWLR (Pt. 110) Page 417 at 438 Paragraph E was cited in aid.***

On issue 2, learned counsel for the Respondent argued that an Appeal must be based on the ratio of the lower court and not obiter.

It is his argument that learned trial judge refused to rely on the inadmissible documentary hearsay evidence of the Appellant/Defendant and that the Trial Judge was right in law.

On issue No. 3, learned counsel contented that an Appellate Court as a matter of practice would not interfere where a judge exercises its discretion in the award of cost where the solicitors permits. He relied on the cases of ***CHIEF ISAAC OLAKUNLADE VS. ABEGUNDE SAMUEL & ORS. (2011) 17 NWLR (Pt. 1276) at 280;***

UNIVERSITY OF LAGOS VS. AIGORE (1985) 1 NWLR (Pt. 1) Page 143..

Court was urged to dismiss the Appeal.

COURT:-

We have considered the respective briefs of arguments filed by the Appellant, on the one hand, and the Respondent, on the other hand.

We have similarly noted the issues for determination formulated by the parties which are contained in the body of this Judgment, needless, therefore, to reproduce them.. We are morethan satisfied that the issues formulated by the Appellant seem most all encompassing in resolution of this appeal, hence, hereby adopted on that of this Court for determination.

The issues are as follows:-

- i. **Whether or not having regard to the evidence before the Court, the learned Trial Magistrate was right in his conclusion not to transfer the case to the general cause list.**
- ii. **Whether or not having regard to the evidence before the Court, the learned Trial Magistrate was right to awarded money claims for unliquidated or unascertained money demand under the Default Summons (Undefended List Procedure).**

Before we proceed to determine the afore-formulate issues, we shall deal with an issue that Appellant seem to have made heavy weather of..

The issue is on the withdrawn further and better affidavit nor struck – out by the trial court.

We are compelled to note that the further and better affidavit filed by the Claimant was withdrawn on the 3rd August, 2022 and can be found at page 32 of the records of Appeal.

Eventhough there is no where were the content of the withdrawn further and better affidavit was considered, it is on record that same upon withdrawal was not struck – out.

Learned counsel for the Appellant has therefore not shown how he’s been overreached and or affected by the fact that the said further and better affidavit was not struck –out... this argument is purile and bereft of any substance. we say no more.

The Undefended List Procedure is a truncated form of ordinary civil hearing peculiar to our adversary system where the ordinary hearing is rendered unnecessary in the absence of an issue to be tried or the quantum of the Plaintiff’s claim disputed to necessitate such a hearing. Above was stated by our ***NIKI TOBI (JSC) of blessed memory in the case of UBA PLC. VS JARGABA (2007) 5 S.C 1.***

The whole essence of undefended list procedure is to enable a claimant or Plaintiff to obtain judgment against a named Defendant in a liquidated demand action or suit without recourse to any trial where it is patently and unarguably clear that the

Defendant is actually indebted to the claimant or Plaintiff on a settled amount of money and the Defendant cannot justifiably deny the existence of such debt or claim against him or them.

Undefended list procedure is put in place to obviate unnecessary waste of valuable time of the court; litigants and lawyers where it is demonstrably obvious that the Defendant cannot in law and equity dodge or escape liability to the claimant or Plaintiff.

The case of ***KELINDE VS. OKPARAONU (2013) LPELR – 21926 (CA)*** is an excellent authority to support the above position.

The Undefended List Procedure is an abridged Procedure tried on affidavit evidence and is purely designed to expedite the hearing of a suit where the claim is for a liquidated money demand.

The reason for this procedure is to obviate unnecessary wastage of time in trying a straight forward matter of debt or liquidated money demand.

Under the District Court Rules of the FCT 2021, It is provided for under Order V Rules 1, 2 and 3 2021 as amended.

There are however conditions laid down which must be met for a claim to be placed and heard under the Undefended List.

Where the suit for a debt or liquidated money demand is supported by affidavit verifying the facts of the claim and that Defendant has no defence to the claim, the registrar shall enter the suit as Undefended List.

Order V Rules 2, 3 and 4 of the District Court Rules 2021 as amended in apt.

Above procedure is akin to the Undefended List Procedure of the High Court of the FCT pursuant to Order 35 Rules 1, 2, 3, 4 and 5.

A Claimant is under an obligation to ensure strict compliance with the conditions with respect to his claim if same must be heard under Order 35 of the Rules of this court.

The conditions are that the claim must be for a liquidated money demand, including account stated to be cognizable under the undefended list procedure thus excluding for example unliquidated damages or claim in torts as special damages arising howbeit from any cause of action as same must be proved.

The claim must be supported by affidavit verifying the claim, and the affidavit must contain deposition that in the Claimant's honest belief, Defendant has no defence to his claim.

Once these conditions are met, the claim is qualified to be placed under the Undefended List. The aforementioned conditions must be fulfilled for any suit to be placed under the Undefended List. See ***ABIA STATE TRANSPORT CORPORATION & ORS VS. QUORUM CONSORTIUM LTD. (2009) 9 NWLR (Pt. 1145) 1.***

A Defendant so served with a Default Summons shall indicate whether to defend the action by filing notice of intention and affidavit showing he has defence to the action on merit.

On satisfaction that there is or are merit, the leave shall be granted on such terms as the court may think just. Where no leave is granted, suit shall be heard as undefended and entered judgment accordingly.

Under the Undefended List Procedure, a Defendant's affidavit in support of notice of intention to defend must condescend and should as far as possible deal specifically with the Plaintiff's claim and affidavit and state clearly and conclusively what the defence is and what facts and documents are relied on to support it.

The said affidavit filed by Defendant in support of its notice of intention to defend an action must of necessity disclose facts

which at least throw or cast some doubt on the case of the Plaintiff.

See ***MODEBELO VS HAJEDOC (NIG) LTD. (2010) LPELR 8977 (CA);***

AGRO MILLERS LTD. VS C.M.B (NIG) PLC. (1999) 10 NWLR (Pt. 525) 469 at 6478.

With above settled position of the law, I now gravitate to the main issue before us.

It is instructive to note that from the affidavit in support, Plaintiff/Respondent purchased Mercedes C300 2015 model from CRC Clean Motors Nigeria Limited sometimes in 2021 at the rate of N12,900,000.00 (Twelve Million, Nine Hundred Thousand Naira) and receipt to that effect was issued as annexed and marked as Exhibit "A".

He stated also that he change the car tyres, only for his attention to drawn by a professional when he wanted to effect further modification in the car that the vehicle identification number had been changed suggesting the car could have been stolen and importation was done with fake custom duty documents.

It further his averment that upon this findings, he approached the company who promptly refunded N10,000,000.00 (Ten Million naira) to him with a promise to pay him N2,000,000.00 (Two Million Naira) within a month and the balance of N900,000.00 (Nine Hundred Thousand Naira) before the end of the year as shown in Exhibit "B".

Upon default to pay, Respondent/Claimant approached the District Court under the Default Summons procedure for the payment of the balance of N2,900,000.00 (Two Million Nine Hundred Thousand Naira) being consideration of the car, N1,000,000.00 (One Million Naira) punitive damages, N500,000.00 (Five Hundred Thousand Naira) as cost for the modification on the car and incidental damages, and another N500,000.00 (Five Hundred Thousand Naira) being solicitor fee, bringing the whole claims to N4,900,000.00 (Four Million, Nine Hundred Thousand Naira).

The Undefended List Procedure is not a game of chess meant to be won by the craftiest or most intelligent. It is a procedure meant to be assessed by a Claimant whose claim is so straight and indeed uncontested liquidated money demand. It is therefore the law that a Defendant who has no defence to such claim shall

not be obliged any opportunity to dribble a Claimant who has legitimate claim, from judgment.

Similarly, once a claim is not for a liquidated money demand, it shall not be heard under Order V of the District Court Rules 2021, i.e Default Summons.

I have seen the issued receipt, invoice and the agreement to refund the unpaid balance which are all carrying the letter – headed paper of **CRC Clean Motors Nigeria Ltd.**, as revealed at pages 9, 10 and 11 of the records of appeal. I have also seen the demand notice made on the said MD of **CRC Clean Motors Nigeria Ltd.** as revealed at page 12 of the Record of Appeal.

At pages 19 – 12 of the Notice of Appeal, Defendant/Appellant filed Notice of Intention to Defend and an affidavit showing its defence in line with procedure.

It is the law that such a Notice of Intention to defend and affidavit in support must condense to the issues at stake and not vague defence all geared toward delaying the burial of a death person.

Leave shall not be granted to a Defendant who has not shown in the accompany affidavit in support of notice of intention that he has any such defence.

Defendant/Appellant has raise the issue of fraud and has mentioned the name of one Auwal as the owner of the Benz sold to the Claimant/Respondent whom he said used its receipts and invoice fraudulently.

The best form of evidence is documentary evidence. See the case of ***ODUCHE VS. ODUCE (2005) LPELR – 5976.***

Defendant/Appellant other than the allegation of Fraud which uptill the time of filing its notice of intention to defend and affidavit showing Defence has not stated the action he has taken against the said Auwal whom he alleged fraudulently used the invoice and receipt of his company i.e the Defendant/Appellant.

This line of defence is akin to wanting to shirk from obligation and liability.. this is unacceptable.

We are in agreement with the trial court that Defendant/Appellant has not by his affidavit in support of notice to defend the said action shown any such defence, and was therefore right not to have transferred this leg of claim of N2,900,000.00 (Two Million

Nine Hundred Thousand Naira) to the General Cause List, same being the unpaid balance of the consideration.

Defendant/Respondent paid for the Mercedes C300 as per the aforementioned Exhibits and the Respondent received the sum.

It is clearly a liquidated money demand.

This leg of judgment is hereby affirmed.

Next are the issue of punitive damages assessed at N1,000,000.00 (One Million Naira), cost of modification of the car and incidental damages assessed at N500,000.00 (Five Hundred Thousand Naira) and Solicitor's fee at N500,000.00 (Five Hundred Thousand Naira).

Above claim are not contemplated under Order V of the District Court Rules 2021.

Evidence shall be led to establish them hence unliquidated money demand and should have been transferred to the General Cause List by the trial judge. Accordingly, same is hereby so transferred to the General Cause List for evidence to be led.

The issue of court exercising discretionary power where the law does not contemplate one, is clearly an aberration.

The discretionary power exercised by the Trial Magistrate here, if any, is an exercise in futility as same does not conform to the provision of the law.

Issue No. 2 is resolved therefore in favour of the Appellant.

This Appeal on the whole, succeeds in part.

***Hon. Justice Y. Halilu
(Presiding Judge)
28th February, 2024***

***Hon. Justice E. Enenche
(Hon. Judge)
28th February, 2024***

APPEARANCES

U.M Dakas, Esq. – for the Appellant.

O.I Ibrahim, Esq. – for the Respondent.