

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. 14

CASE NUMBER : SUIT NO: CV/231/2024

DATE: : THURSDAY 4TH APRIL, 2024

BETWEEN:

NOBLE SHEIK & SHEHU GLOBAL NIG. LTD. .CLAIMANT

AND

**TEXICOM INTERNATIONAL GENERAL } DEFENDANT
TRADING LTD. }**

JUDGMENT

The Claimant vide a Writ of Summons dated 15th March, 2024 and filed 26th March, 2024, commenced this action under the Undefended List Procedure against the Defendant claiming the following reliefs:-

1. An Order of the Honourable Court mandating the Defendant to pay the Claimant the sum of ₦945,000,000.00 (Nine Hundred and Forty-Five Million Naira) only being the Nigerian Naira equivalent for the sum of \$1,400,000.00 supplied to the Defendant by the Claimant.
2. Cost of this suit.

In support of the Application is a 23 paragraph affidavit deposed to by Ibrahim Isa Sheik, Chairman and CEO of the Claimant. It is the deposition of the Claimant, that sometime in early 2023, the Defendant, through its Chairman, approached him and requested for \$1,400,000.00 (US) (One Million, Four Hundred Thousand Dollars) only to enable him meet up with demands from his foreign business partners. The Defendant followed this up with a letter of request to that effect. Copy of the letter of request is herewith attached and marked Exhibit "A".

That following the Defendant's request as aforesaid, the Claimant made a formal offer for the supply of the sum of \$1,400,000.00 to the Defendant at the prevailing exchange rate at the time, which was N675.00 per dollar. Copy of the letter of offer dated 21st February, 2023, is herewith attached and marked Exhibit "B", and that by another letter dated 24th February, 2023, the Defendant formally accepted the offer in Exhibit "B" above. Copy of the Defendant's formal acceptance is herewith attached and marked Exhibit "C".

That having unequivocally accepted the Claimant's on the terms stated in the offer, the Claimant contacted his business associates and Bureau de Change Operators in Abuja and raised the said sum of \$1,400,000.00, raised an invoice and supplied same to the Defendant in full. Copy of the invoice is herewith attached and marked Exhibit "D".

That the Defendant took delivery of the full sum of \$1,400,000.00 and acknowledged receipt of same on its letter headed paper on 3rd March, 2023. Copy of the acknowledgment is herewith attached and marked Exhibit "E".

That under the terms of the agreement, the Defendant was to pay to the Claimant the naira equivalent of the said sum of

\$1,400,000.00, which is N945,000,000.00 (Nine Hundred and Forty-Five Million Naira) only within two (2) weeks of receiving same, and that the two (2) weeks tenor allowed for repayment elapsed, but the Defendant failed, neglected and/or refused to make the repayment.

That he personally made several verbal demands on the Defendant to pay up so he could in turn settle the business partners he sourced the funds from, but all to no avail, and that from the time the money was paid to the Defendant till now, the dollar has appreciated exceedingly, as against the Nigerian Naira, thus leading to severe loss in business to the Claimant.

That following the Defendant's persistent refusal to pay the debt upon demand, the Claimant made a formal demand on the Defendant vide a letter dated 30th March, 2023. Copy of the letter is attached and marked Exhibit "F".

That in response to the Claimant's letter aforesaid, the Defendant wrote back and asked for two (2) months' grace period. Copy of the Defendant's reply dated 3rd April, 2023, is attached herewith and marked Exhibit "G".

That the Claimant granted the Defendant's request for two months' grace period, but the Defendant still failed to pay,

notwithstanding the grace period allowed the Defendant by the Claimant, and that following the Defendant's promise-and-fail tactics, the Claimant instructed her solicitors to make another formal demand on the Defendant but the Defendant still refused to pay the debt, notwithstanding the formal demand from the Claimant's Solicitors. Copy of the Claimant's Solicitor's letter is herewith attached and marked Exhibit "H".

That at all times material to the bringing of this suit, the Defendant is indebted to the Claimant in the sum ₦945,000,000.00 (Nine and Forty-Five Million Naira) being the Naira equivalent of the sum of \$1,000,000.00 (One Million Dollars) supplied to the Defendant in 2023, and that to the best of his knowledge and belief, the Defendant has no defence to the Claimant's claims in this suit.

That the conduct of the Defendant in failing to repay within the time agreed upon by the parties has led to business and goodwill losses by the Claimant, and that it is in the interest of justice to grant the reliefs sought in this suit by the Claimant.

In line with law and procedure, written address was filed wherein sole issue was formulated for determination to-wit;

"Whether given the peculiar facts and circumstances of this case, especially having regard to the depositions in the supporting affidavit and the exhibits attached thereto, this suit ought to be heard as undefended and, whether the reliefs sought in the suit ought to be granted."

Learned counsel submits, that they answer the above issue in the affirmative, namely: that given all the facts and circumstances of this case, especially having regard to the depositions in the supporting affidavit, this suit ought to be heard as undefended, and the reliefs sought therein granted, for a number of reasons.

Learned counsel cited and made reference to Order 35 Rules 1 and 4 of the Rules of this Honourable Court to buttress his point.

Learned counsel contends, that from the documents attached to the supporting affidavit, it is very clear that the Defendant has admitted all the claims of the Claimant and was only asking for time to pay the debt and, even when she was given the time she requested for, she still failed to pay up the debt. This amounts to admission on the part of the Defendant, and what is admitted needs no further proof.

Learned counsel further contended, that the law is now settled that on the day fixed for hearing the suit on the Undefended List, the Trial Court has only one duty, namely; to examine the claims of the purported defence, if any, and if there is no defence, or the notice of intention to defend does not disclose a defence on the merit, then the Court should enter Judgment in favour of the Claimant. On this, Counsel humbly refer the Honourable Court to ***JULIUS BERGER NIG. LTD. VS. A.P.I LTD. (2002)11 NWLR (Pt. 1841) 201, at 254 et seq.;***

KWARA STATE GOVERNMENT VS. GUTHRIE NIG. LTD. (2022)13 NWLR (Pt. 1846) 189, at 211.

Learned counsel submits, that from the case put forward by the Claimant, the Claimant has satisfied all the conditions required of her under the law to be entitled to Judgment under the Undefended List Procedure, and is therefore entitled to the reliefs sought in the suit.

Learned counsel concludes by urging this Honourable Court to resolve the sole issue above in favour of the Claimant and grant the reliefs sought in this suit.

COURT:-

It is instructive to note that Defendant was duly served the said Writ of Summons containing the claims of the Claimant.

It is equally important to state that Defendant did not file any process by way joining issues with the Claimant.

Generally, Undefined List Procedure falls under the committee of summary judgment procedure. They are cases which are virtually uncontested and meant to be disposed with dispatch. It also applies to cases where there can be no reasonable doubt that a Plaintiff is entitled to judgment and where it is inexpedient to allow a Defendant to defend for mere purpose of delay. It is for the plain and straight forward, not for the dubious and crafty. See ***U.B.A. PLC. V. JARGABA (2007) 11 NWLR (PT.1045) 247; SODIPO V. LEMINKAINEN (1986) 1 NWLR (PT.15) 220; ADEBISI MACGREGORASS. LTD. N.M.B. LTD. (1996) 2 NWLR (PT.43) 378, (1996) 2 SCNJ 72 AT PAGE 81.***

Order 35 of the FCT High Court Civil Procedure Rules, 2018 is designed to relieve Courts of the rigours of pleadings and burden of hearing tedious evidence on sham defences mounted by defendants who have no defence and are just determined to

dribble and cheat plaintiffs out of reliefs they are naturally entitled to.

The procedure to be employed in commencing action under the Undefended List is very clear. The steps under the procedure starts with the filing of an application by a Plaintiff to court for the issuance of a writ of summons in respect of a claim to recover a debt, liquidated money demand or any other claim. The application must be supported by an affidavit setting forth the grounds upon which the claim is based and stating that the Applicant believes there is no defence thereto. If the court is satisfied that indeed there are good grounds for believing that there is no defence thereto, it shall enter the suit for hearing under the undefended list and cause the writ of summons to be so marked appropriately. The court shall also enter thereon the hearing date as the circumstances of each case deserves. The marked writ of summons with the affidavit in support shall thereafter be served on the defendant who if he desires will be required to file a notice of intention to defend together with a supporting affidavit within 5 (five) days to the day fixed for hearing setting out the grounds of his defence. See Order 21 Rule 3 (1) and the case of ***NATIONAL ASSEMBLY V. C.C.I. CO. LTD***

(2008) 5 NWLR (PT. 1081) 519 AT P. 537, PARA F; P. 539, PARAS. A - D; PP. 540 - 541, PARAS. H – A.

The steps the Defendant(s) can take after service on him/them of the writ, to avoid the case being heard on the date fixed for hearing (return date) is as provided for under Order 35 Rule 3(1), that is by filing a notice of intention to defend the action together with an affidavit disclosing a defence on the merit. It is when the court goes through the affidavit and comes to the conclusion that it discloses a defence on the merit that it would give leave to the Defendant to defend the action and remove the suit from the undefended list to the general cause list to be dealt with according to the rules of Court.

It is clear from the above that the filing of the notice of intention to defend together with an affidavit disclosing a defence on the merit must be done on or before the date fixed for hearing, otherwise, the Defendant would be out of time in doing so. In other words, where a Defendant fails or neglects to file the Notice of Intention to defend together with an affidavit disclosing a defence on the merit on or before the date fixed for the hearing of the case, the court shall enter judgment in favour of the plaintiff as the suit would truly be undefended pursuant to Order 35 Rule 4.

In the instant case, Defendant who was represented by his Counsel, (Basse Enwang, Esq.) admitted the fact that the claims of Claimant is unchallenged and that Judgment be entered for Claimant.

Pursuant to Order 35 Rule 4 of the Civil Procedure Rules of the High Court of the FCT, 2018, on the one hand, and the express admission of the said indebtedness by the Defendant through their Lawyer, on the other hand, I hereby enter Judgment as per the claims of Claimant endorsed on the Statement of Claim.

In summation, **I hereby enter Judgment** as follows:-

1. An Order of the Honourable Court mandating the Defendant to pay the Claimant the sum of ~~₦~~945,000,000.00 (Nine Hundred and Forty-Five Million Naira) only being the Nigerian Naira equivalent for the sum of \$1,400,000.00 supplied to the Defendant by the Claimant.

Justice Y. Halilu
Hon. Judge
4th April, 2024

APPEARANCES

B.T. Jija, Esq. – for the Claimant.

Bassey Enwang, Esq. – for the Defendant.