

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT MAITAMA ABUJA

DATE: 7TH DECEMBER, 2021
BEFORE: HON. JUSTICE M. A. NASIR
COURT NO: 5
SUIT NO: CV/3359/2020

BETWEEN:

1. MR. AKPEJI KOLA BALOGUN }
2. MRS. BLESSING BALOGUN } ----- CLAIMANTS

AND

1. MR. INNOCENT EZEAMALU }
2. MRS. CHINYERE EZEAMALU } ----- DEFENDANTS

JUDGMENT

The Claimant filed the instant suit under the Undefended List Procedure on the 7th December, 2020. The claims of the Claimants against the Defendants are as follows:

“1. The sum of N9,000,000:00 (Nine Million Naira) being the money collected by the Defendants from the

Claimants for the failed business of importation and sale of fairly used electronics.

- 2. 10% interest per annum on the sum of N9,000,000:00 (Nine Million Naira) from 2019 until judgment and another 10% interest from the date of judgment until full liquidation thereof.*
- 3. Cost of action as may be assessed by this Honourable Court.”*

In support of the Writ of Summons is a six paragraphs affidavit deposed to by one Akogwu Egene, a Legal Practitioner. Attached to the Writ of Summons are five annexures marked as exhibits A to E respectively.

By the Order of this Court made on the 12th January, 2021 the Defendants were duly served vide substituted means with the Writ of Summons together with hearing notices but they decided to stay away and not file any process before this Court.

On the 25th October, 2021 when the case came up for hearing, A. S. Egene Esq. Counsel representing the Claimants submitted orally that the Defendants having not filed their notice of intention to defend have admitted the claims of the Claimants and urged the Court to enter judgment for the Claimants accordingly. Counsel referred this Court to the following cases:

1. Akiti vs. Oyekunle (2018)8 NWLR (Part 1620) 182 at 191 (paragraphs B –D) SC.
2. Ugwuegede vs. Asadu (2018)10 NWLR (Part 1628) 460 at 482 paragraphs F –G SC.

In a nutshell, the Claimants case is that the 1st and 2nd Defendants presented a business plan of importation and sale of 40 feet Container of fairly used electronics worth N9,000,000:00 (Nine Million Naira) to the 1st and 2nd Claimants. The Defendant's told the Claimant's that after the sale of the fairly used electronics, the Defendant's

would refund the N9,000,000:00 (Nine Million Naira) they collected from the Claimants together with accrued interest.

The Claimant's averred that they accepted the business proposal of the Defendants and transferred the sum of N9,000,000:00 (Nine Million Naira) into Fidelity Bank Account supplied by the 1st and 2nd Defendants. According to the Claimants, the Defendants having collected the sum of N9,000,000:00 (Nine Million Naira) from the Claimants did not embark on the agreed business, but converted the money to their personal use.

The Claimants finally averred that when they demanded for the refund of their N9,000,000:00 (Nine Million Naira) with interest from the Defendants, the Defendants failed and refused to refund the said money. This is why the Claimants approached this Court seeking for redress.

The law is trite that the provisions for Undefined List Procedure in various Rules of Court is usually aimed at dispensing with dispatch cases which are virtually uncontested and would readily apply to and be invoked in cases where there can be no reasonable doubt that a Claimant is entitled to judgment, and it is inexpedient to allow a Defendant to defend for the mere purposes of delay. A claim under Undefined List Procedure is an action for liquidated sum, an amount agreed upon by the parties or which can be determined or ascertained from the terms of agreement with a view to enabling the Claimant summary judgment without necessarily proceeding to full trial. See: Bell view Airlines Ltd. vs. Carter Harris (Proprietary) Ltd. (2016) LPELR - 40989 (CA), UBA vs. Jargaba (2007)11 NWLR (Part 1045) 247.

In this instance, the Defendants collected the sum of N9,000,000:00 (Nine Million Naira) from the Claimants with the understanding that the Defendants would purchase a

40 feet container of fairly used electronics worth N9,000,000:00 (Nine Million Naira). The Defendants undertook to refund the sum collected from the Claimants with interest after the sale of the fairly used electronics. This is evidenced by exhibit A. attached to the Writ of Summons showing the amount transferred to the Defendants Company account by the Claimant. By exhibit D, the 1st Defendant admitted that he collected the sum of N9,000,000:00 (Nine Million Naira) from the Claimants to invest in a business of importation or any business that may yield profit and the 1st Defendant promised to refund the money.

The 1st Defendant by exhibit E. further admitted being indebted to the Claimants and he undertook to refund same, but till date nothing has been paid.

The law is settled that where a Defendant is served with a Writ of Summons entered under the undefended list together with an affidavit deposed to by the Plaintiff, as

required by the Rules of Court, and he desires to defend same, it is his duty to file a notice of intention to defend the suit together with an affidavit disclosing his defence. See: Order 35 Rule 3(1), Rules of this Court, Masken (Nig) Ltd. & Ors. vs. Amaka & Anor. (2017) LPELR – 42360 (SC).

As observed earlier, the Defendants in this instance did not file the requisite notice of intention to defend the suit envisaged by Order 35 Rule 3(1), Rules of this Court, together with an affidavit disclosing a defence on the merit.

The law has long been settled in plethora of judicial decisions that where a Defendant under the undefended list procedure, fails or neglects to file a notice of intention to defend, the Court on the return date has only one duty which is to proceed to enter judgment against the Defendant. See:

1. Uzakah vs. Okeke (2017) LPELR – 43445 (CA).

2. Eco Int'l Bank Plc. vs. NULGE, Jalingo LGC. & Anor. (2014) LPELR – 24171 (CA).

3. Abia State Transport Corporation & Ors. vs. Quorum Consortium Ltd. (2009) LPELR – 33 (SC).

In the instant case therefore, the failure of the Defendants to file their notice of intention to defend the suit is deemed as admission of their indebtedness to the Claimants. Consequently, judgment is hereby entered for the Claimants in the sum of N9,000,000:00 (Nine Million Naira) only.

There is a claim for 10% interest per annum on the sum of N9,000,000:00 (Nine Million Naira) from 2019 until judgment and another 10% interest from the date of judgment until full liquidation thereof.

The first leg of the claim for interest being pre-judgment, the law is settled that it must be pleaded. The law is also trite that payment of interest on a debt must be strictly proved by evidence, for a trial Court will not infer payment of interest for alleged usage or custom unless such usage or custom is established by evidence. See: Dung

vs. Diamond Bank Plc. (2016) LPELR – 40181 (CA). Further, where a Plaintiff claims for award of interest, he must state precisely how his claim for interest arose and at the rate at which the claim is based. See: Himma Merchant Ltd. vs. Aliyu (1994)5 NWLR (Part 347) page 667.

It follows therefore that interest will be payable only where there is an express agreement to that effect and that such an agreement may be inferred from a course of dealing between the parties. See: Akpabuyo Local Government vs. Duke (2001)7 NWLR (Part 713)557 at 573.

In the instant case, the Claimants did not disclose any express agreement in their supporting affidavit between the parties as their basis for the award of the interest, the award of interest of 10% pre – judgment and on the principal sum cannot be sustained and same is hereby refused.

However, the claimants second leg for 10% interest post judgment, this has statutory flavour. In Order 39 Rule 4 of the Rules of this Court, it is provided as follows:

“The Court at the time of making any judgment or order or at any time after wards, may direct the time within which the payment is to be made or other act is to be done, reckoned from the date of the judgment or order, or from some other point of time, as the Court may deem fit and may order interest at a rate not less than 10% per annum to be paid upon any judgment.”

I consider this claim for 10% interest apt in the circumstance. On the whole, I hereby enter judgment for the claimant’s against the defendant’s as follows:

1. The defendants shall refund the sum of N9,000,000.00 (Nine Million Naira) being the amount owed to the claimants for the failed business of importation and sale of fairly used electronics.

2. I award 10% post judgment interest per annum on the above judgment sum, from today until the judgment debt is fully liquidated.

3. I award cost assessed in the sum of N50,000.00 (Fifty Thousand Naira) payable by the defendants to the claimants.

Signed

Honourable Judge

Appearances:

A.S. Egene Esq – for the claimants

Defendants absent and not represented