

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT KUBWA, ABUJA
ON TUESDAY, THE 21ST DAY OF FEBRUARY, 2020
BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA
JUDGE

SUIT NO.: FCT/HC/CV/1961/19

BETWEEN:

JOHN MICHAEL ----- **PLAINTIFF**

AND

SIMS NIGERIA LIMITED ----- **DEFENDANT**

RULING

On the 21st day of May, 2019 in a Writ of Summons Mr. John Michael approached this Court seeking for:

1. An Order directing the Defendant Sims Nigeria Limited to pay him a cumulative sum of Five Hundred and Ninety Seven Thousand, Five Hundred Naira (N597, 500.00) only being cumulative sum of repairing his 2012 model Black Sedan Toyota Corolla with Registration No: YAB 99 BW, damaged by the Defendant's Truck with Registration No: GWA 650 YE, driven by its employee on the 24th day of December, 2018.
2. An Order for the Defendant to pay 10% interest per month on the Judgment sum from date of Judgment till final liquidation.
3. One Hundred Thousand Naira (N100, 000.00) only as cost of the suit.

He also filed a Motion on Notice on the same day, claiming the following reliefs:

1) An Order of the Court entering Judgment summarily against the Defendant in the sum of Five Hundred and Ninety Seven Thousand, Five Hundred Naira (N597, 500.00) only, which since has become due for payment.

2) Omnibus prayer.

The ground is based on the fact that his claim is a liquidated money demand and a debt.

That it is his belief that the Defendant has no defence to his Suit, as his claim is founded or based on the promise and undertaking made by the Defendant to refund all cost expended on the repair of his car damaged by the Defendant's truck.

He supported the application with an Affidavit of 16 paragraphs which he deposed to in person.

In the Suit the Plaintiff claimed that the truck belonging to the Defendant and driven by the driver in the employ of the Defendant rammed into his vehicle on the 24th day of December, 2018 at about 1:30pm.

That the Defendant agreed to bear the cost of the repair. But that after he had repaired the vehicle and had expended money - Five Hundred and Ninety Seven Thousand, Five Hundred Naira (N597, 500.00) only the Defendant refused to live up to the promise it made on the day of the Road Traffic accident.

He attached several Receipts and invoices including the invoice of shipping documents from Amazon. Of Note is the letter from the Defendant signed by Chijionwu Emeka the Abuja Branch Manager of the Defendant. He had attached a letter written by his Solicitor – Benjamin Solicitor, dated 20/2/19, requesting for the payment of the said sum for the repairs.

In the letter he detailedly stated the items used/bought for the repair and their respective prices. To him he believes that the claim is a debt and that the Defendant has no defence on merit. He had urged Court to enter Judgment in his favour summarily.

To the Defendant it believes that it has a defence to the Suit of the Plaintiff. Again that the matter is not a debt that requires summary Judgment. And most importantly that the matter should not be heard and decided summarily. That Court should allow parties to exchange pleadings and call evidence since the amount the Plaintiff is claiming is totally different from the amount the Defendant agreed to pay for the repairs, going by EXH 1 which they attached to their Counter Affidavit.

In their Written Address the Plaintiff had raised an Issue for determination which is:

“Whether given the facts of this case the Claimant has established enough grounds to warrant the Court to hear this matter under summary Judgment procedure”.

He submitted that by his Affidavit and accompanying Documents he has been able to establish that the Defendant has no defence to his claim. That by EXH JM2 the Defendant admitted it crashed into and damaged

his car and undertook to bear the cost of repairs, totaling Five Hundred and Ninety Seven Thousand, Five Hundred Naira (N597, 500.00) only. He submitted that he is entitled to a refund of the said sum from Defendant by virtue of the Exhibit JM1. That he has an ascertainable claim which is liquidated going by the Exhibit – Receipts and Invoices he attached – EXH JM10. He referred to the case of:

**Sen. Ufot Ekaete V. Union Bank
(2014) LPELR – 23**

That the subject matter in this case is arithmetically determined being the total cost incurred by the Plaintiff for repair of the said car which the Defendant has reneged to pay. He referred to the case of:

**Chanchangi Airlines Nigeria Limited V. African Petroleum
PLC**

He urged the Court to hear this matter summarily and avoid delay in delivering the justice to the Claimant who is entitled to the refund of the said amount since Defendant has no defence to his case.

In their Written Address the Defendant raised an Issue for determination which is:

**“Whether the Plaintiff has satisfied the condition for
summary Judgment in this case”.**

They submitted that the Plaintiff has not been able through his Affidavit to convince or establish with cogent facts that the Defendant has no defence to his action. That the Defendant only undertook to pay Two Hundred and Fifty Two Thousand Naira (N252, 000.00) only for the repair and not Five Hundred and Ninety Seven Thousand, Five Hundred Naira (N597, 500.00) only.

That the statement by Plaintiff that Defendant agreed to pay the said sum of Five Hundred and Ninety Seven Thousand, Five Hundred Naira (N597, 500.00) only is false, grossly misleading and a figment of the Plaintiff's imagination.

He cited the case of:

**Ibrahim V. Gwandu
(2015) 5 NWLR (PT. 1451) 1 @ 25 Paragraph B – D**

That the Plaintiff has not satisfied the Court that the Five Hundred and Ninety Seven Thousand, Five Hundred Naira (N597, 500.00) only was the amount agreed by the Defendant to pay for the repair of the damaged car. That issue of Summary Judgment can only be on the agreed sum and not the sum conceited by the Plaintiff. That this Suit is not suitable for Summary Judgment procedure because of the disparity in the amount undertaken by the Defendant. He urged the Court to so hold.

COURT

Summary Judgment is used when the amount is ascertainable via a simple calculation done arithmetically. Once there is a disparity between the amount claimed and the amount agreed to be owed, the Court will not grant the application and will not enter Judgment summarily. See the case of:

Ibrahim V. Gwanda (Supra)

To merit Summary Judgment the Applicant must ensure that he states the fact and support such fact with credible evidence showing that the Respondent has no defence in the case. The money must also be in very

liquidated form. Once that is the case, the Court will grant same and enter Judgment accordingly in the interest of the Applicant, then the case ends. There will not be the rigors of exchange of pleading and calling of evidence.

In this case the Plaintiff has alleged that the Defendant undertook to pay for the repair of the damaged car. But a look at the document – Undertaking by the Defendant made on the 24th day of December, 2018 shows that the Defendant undertook to pay a specified amount of money – Two Hundred and Fifty Two Thousand Naira (N252, 000.00) only and not the total cost of the repair as Plaintiff claims.

In paragraph 2 of the letter the Defendant stated that:

“I ... on behalf of the company undertake that the company will take full responsibility of the repair of the car. You may go ahead and repair the vehicle and submit the invoice for the repair to us and all replaced parts will be returned to us.

A copy of the estimated cost valued at Two Hundred and Fifty Two Thousand Naira (N252, 000.00) only is attached”.

The above is self explanatory. Again the Defendant had in their Affidavit at paragraph ----- stated that both parties called a mechanic who gave the estimate for the repair and that it was that estimate that the Defendant agreed to pay for the repair. The Plaintiff also attached the said undertaken served on it by the Defendant on which is attached the said estimate. The Defendant did not deny that assertion.

Without further ado the question before the Court is, should the Court grant this application and enter Judgment Summarily in favour of the Plaintiff or should this Court allow parties to further expatiate on their respective stance by calling evidence since there is a fundamental difference from the estimated amount for the repair and the claimed amount expended on the repair of the vehicle?

It is my humble view that there is need to allow parties to call evidence to explain the disparity in the amount for the repair and agreed amount for the repair. After all the purpose of Summary Judgment is not to foreclose a Defendant who can show that there are triable Issues.

At this stage the Court is not to determine whether or not the defence has been established. That is what this Court holds.

Summary Judgment is not granted.

Matter adjourned to the 2nd day of April, 2020 for hearing.

This is the Ruling of this Court.

Delivered today the —— day of —— 2020.

K.N. OGBONNAYA

HON. JUDGE