

**IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL  
TERRITORY IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT MAITAMA ABUJA  
BEFORE HIS LORDSHIP: HON. JUSTICE JUDE O. OKEKE**

**ON MONDAY 27<sup>th</sup> DAY OF JANUARY, 2020**

**SUIT NO: FCT/HC/CV/007/2019**

**BETWEEN:**

**UNITED BANK FOR AFRICA (UBA) PLC ..... CLAIMANT.**

**AND**

**(1) CHAMPION SEEDS LIMITED } ... DEFENDANTS.  
(2) SAMUEL O. NWOKORIE }**

**RULING**

On 5/2/2019, the Claimant took out a Writ of Summons under the Undefended List procedure against the Defendants.

It Claims as follows against them:-

“The Claimant’s claim against the Defendants is for the sum of ₦28,007,241.47 (Twenty Eight Million, Seven Thousand, Two Hundred and Forty One Naira, Forty Seven Kobo) only being the sum of outstanding debt and the accrued interest due to the Claimant as a result of the over draft loan facility of ₦135,000,000.00 (One Hundred and Thirty Five Million Naira)

only granted to the 1<sup>st</sup> Defendant by the Claimant under the Growth Enhancement Support (GES) scheme anchored by the Federal Ministry of Agriculture and Rural Development on the 28<sup>th</sup> of February, 2014 which has remained unpaid till date despite several demands.”

The Writ was filed along with a 26-paragraph affidavit deposed to by Tosin Ogundoro and Pre-action Counseling Certificate.

In response to the claim the Defendants on 18/10/2019 filed a Notice of Intention to defend along with a 6-main paragraph affidavit deposed to by Nwangene Faith Chinecherem.

At the hearing on 4/11/2019, Counsel for the parties relying on their affidavits took turns to address the Court for and against the application.

I have read and digested the averments in the affidavits of the parties and submissions of their Learned Counsel. The cardinal issue that calls for determination is whether or not the Claimant has made out a case to justify a grant of the reliefs sought in the Writ of Summons.

Order 35 Rules 1 to 5 of the Rules of Court 2018 makes provisions guiding claims brought under the Un defended List Procedure. Rule 3(1) and (2) provides thus:-

- 3(1) “Where a party served with the Writ delivers to registrar, before 5 day to the day fixed for hearing, a notice in writing that he intends to defend the suit, together with an affidavit disclosing a defence on the merit, the Court may give him leave to defend upon such terms as the Court may think just.
2. Where 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.”

In Rule 4 of the order it is provided that:-

“Where a Defendant neglects to deliver the notice of defence and an affidavit prescribed by Rule 3(1) or is not given leave to defend by the Court the suit shall be heard as an undefended suit and judgment given accordingly.”

A cardinal element in this provision of Order 35 Rule 3(1) is the need for a defendant who intends to defend the suit to file and serve a Notice of Intention to Defend along with an affidavit disclosing a defence on the merit. In this case as records show,

the Defendants filed a Notice of Intention to Defend along with an affidavit.

This said, the next question is whether or not the affidavit discloses a defence on the merit to justify the making of an order granting them leave to defend by transferring the suit to the Ordinary Cause List for trial or an order refusing to grant them leave and entering judgment accordingly.

The phrase the Defendants affidavit disclosing “a defence on the merit” has received judicial consideration in a number of cases. In **AKINYEMI V. GOVERNOR, OYO STATE (2003) FWLR (Pt.140) p.1821**, The Court of Appeal held that to constitute a defence on the merit, the Defendant’s affidavit must disclose either facts that raise substantial issues of law or disputed material facts that can only be resolved after a full trial. In **ATAGUGBA & CO V. GURA NIGERIA LIMITED (2005) ALL FWLR (Pt.256) p.1219**; the Supreme Court held with regard to the issue, that the affidavit in support of the notice of intention to defend must disclose a prima facie defence. It must not contain a mere general statement that the Defendant has a good defence to the claim. Such general statement must be supported by particular which if proved would constitute a defence. There is a triable issue if this affidavit posits the existence of a dispute as to the facts which ought to be tried.

Judicial authorities are also settled that a mere general denial of indebtedness will not suffice. The Defendant must give details of in case of debt, how much he initially owed, how much he has repaid to the Claimant.

**See:- I. T. V. LTD V. ONYESON COMMUNITY BANK LTD (2005) ALL FWLR (Pt.253) p.758.** Where there is allegation of fraud against the Claimant, the particulars of the fraud must be furnished. **See: - FEDERAL MORTGAGE FINANCE LTD V. RIVER STATE POLYTECHNIC (2005) ALL FWLR (Pt.260) p.9** where there are two or more heads of claim, and the Defendant raises a triable issue in one but fails in the other, the Court can enter judgment against the Defendant with respect to the one he did not raise a trial issue. **See: - IVAN V. BILANTE INT. LTD (1998) 5 NWLR (Pt.550) p.396.** Allegations that excessive interest was charged and that the Defendants account was wrongly debited are triable issues that raise a defence on the merit. **See: - EZUMA V. NKWO COMMUNITY BANK LTD (2000) FWLR (Pt.28) p.2243.** Once an issue arises that will require oral evidence to be taken, the matter should be transferred to the Ordinary Cause List. **See: - ID AND ABUJA TRANS-NATIONAL MARKET V. ABDU (2007) ALL FWLR (Pt.376) p.657.**

In this case, the Claimant averred inter alia, in its affidavit in support of the writ, that by a written request dated 21/11/2013, the 1<sup>st</sup> Defendant requested for the sum of ₦135,000,000.00 from it under the Growth Enhancement Support (GES) Scheme anchored by Federal Ministry of Agriculture and Rural Development. A copy of the letter of request is attached as Exhibit A1.

Sequel to acceptance of the request, the Claimant forwarded an offer letter dated 3/7/2014 to the 1<sup>st</sup> Defendant for the loan facility of ₦135,000,000.00. A copy of the Offer Letter is attached as Exhibit A2. In response the 1<sup>st</sup> Defendant executed a Memorandum of Acceptance affixed to the Letter of Offer.

The 2<sup>nd</sup> Defendant personally guaranteed the loan facility by executing the Guarantor's form in respect of the loans a copy of which is attached as Exhibit A3.

The 1<sup>st</sup> Defendant received the loan facility via its UBA Account No: 1017962965 and fully utilized same.

The 1<sup>st</sup> Defendant made an irrevocable undertaking dated 3/2/2014 to domicile the sale proceeds of all seeds/agro in put under the Growth Enhancement Support Scheme into the 1<sup>st</sup> Defendant's account with the Claimant. A copy of the irrevocable letter of undertaking is attached as Exhibit A4.

The parties agreed that the overdraft facility would last for a period of 12 months which period has since expired.

Despite the Claimant's several letters of demand to the Defendants for repayment of the outstanding debt after the expiration of the loan period, the Defendants have not repaid the loan. Copies the letters are attached as Exhibits A5 (i) (ii) and (iii).

In September 2018, the Claimant through its solicitors sent Demand Notices, copies of which are attached as Exhibits B1 & 2 to the Defendant to no avail.

The Defendants total indebtedness as at 26/9/2018 with the accrued interest is ₦28,007,241.47 the above indebtedness is evidence by the printed copy of the 1<sup>st</sup> Defendant's Statement of Account from 1/2/2014 to 26/9/2018 attached as Exhibit B4.

Despite several demands, the Defendants have refused, neglected and failed to pay the liquidated sum.

The Defendants have no defence to the suit.

In their affidavit filed in support of the Notice of Intention to defend, the Defendants averred, inter alia, that the Claimant's claims are not liquidated as anticipated for 2015 under the Undefended List.

The Defendants are not in a position to either admit or deny paragraphs 1 and 2 of the Claimant's affidavit as the facts are within the personal knowledge of the Claimant. The Defendants admit paragraphs 3 to 8 of the Claimant's affidavit.

The Defendants admit paragraph 9 only to the extent that the 2<sup>nd</sup> Defendant was one of the Guarantors of the facility.

The 1<sup>st</sup> Defendant made 10% equity contribution to the said facility which it had fully paid. The Nigeria Agricultural Insurance Corporation (NAIC) also secured the facility with 20% bond which it has fully paid.

The ₦135,000,000.00 facility was equally 75% guaranteed by the Nigeria Incentive based Risk Sharing System for Agricultural Lending (NIRSAL) which it has fully paid.

The Defendants admit paragraph 10 of the Claimant's affidavit only to the extent that the 1<sup>st</sup> Defendant received via its UBA Account No: 1017962965 and fully utilized for the purpose it was granted, the sum of ₦114,178,311.08 out of the total sum of ₦135,000,000.00 it applied for and which the Claimant approved against the terms of the loan.

The claimant inexplicably and wrongfully withheld, converted and or directed the balance of the agreed/approved facility in the sum of ₦20,821,688.92 for its own use, placed lien on the 1<sup>st</sup> Defendant's loan account and denied it the use of same as contracted.

The Defendant never received the whole sum of ₦135,000,000.00 the 1<sup>st</sup> Defendant applied for and which the Claimant approved for it. The Claimant failed to give any reason for shortchanging the Defendants contrary to the agreed terms of the facility.

The Defendants were as a result denied the use of the sum of ₦20,821,688.92 out of the agreed/approved ₦135,000,000.00 which the 1<sup>st</sup> Defendant applied for while the Claimant continued to calculate interest/charges on the whole of ₦135,000,000.00 not only in charging interest but in arriving at the present balance/sum the Claimant is claiming against the Defendants in this suit.

The Defendants admit paragraphs 11 to 13 of the Claimant's affidavit.

The Defendants have never failed, refused or neglected to meet their obligation under the said facility because the parties are presently not in agreement with each other on the true position of their indebtedness to each other.

As the matter stands between the parties currently, there is no consensus adidem between them on the claims the Claimant is making against the Defendants in this suit as presently constituted.

There exists presently startling under hand sharp practices on the part of the Claimant in the administration and/or management of the 1<sup>st</sup> Defendant's loan account by wrongfully debiting into the account excess charges as revealed by the investigation and/or audit report conducted by a team of Forensic experts whose services were retained by the Defendants to audit the said 1<sup>st</sup> Defendant's loan account with the Claimant.

This shows humongous excess charges on the said loan facility and interests contrary to the approved standard by the Central Bank of Nigeria.

Consequent upon the above discoveries, the Defendants have since through their Forensic Auditors sent copies of the said reports and the excess refundable charges and/or interests on the facility to the Claimant's Managing Director/and Regional Internal Auditor demanding for the refund of the excess charges/interests in the sum of ~~₦~~31,266,619.30.

Acknowledgment Copies of the reports are attached as Exhibits A and B.

The Defendants have equally written a Petition to the Central Bank of Nigeria via the office of the Director, Consumer Protection Department of CBN for regulatory intervention seeking refund of the said excess bank charges in the sum of ~~₦~~31,266,619.30. Copies of the said reports are attached as Exhibit C.

Further, the Defendants discovered that while the overdraft facility by the clear agreement between the parties was a term loan to last for 12months, the Claimant in breach of the terms and conditions of the term loan has calculated interests and/or charges beyond the agreed tenor of the facility.

The Defendants are not indebted to the Claimant in the sum of ~~₦~~28,007,741.47 or any sum whatsoever. The copy of the 1<sup>st</sup> Defendant's Statement of the loan account attached as Exhibit B4 to the Claimant's affidavit is a product of excess charges on the loan facility which the forensic experts report has already discredited.

The Defendants have never refused, neglected or failed to pay any liquidated sum to the Claimant but rather as it were presently there are irreconcilably claims and counter claims by the parties in the suit against each in respect of the subject matter of this application and the parties are presently exploring account reconciliatory procedures in order to establish the actual and/or correct indebtedness of each party to the other. Attached

as Exhibits D and E are e-mail messages exchanged by the parties in this regard dated 2/4/2019.

The Defendants have a good defence to the Claimant's suit.

It will be in the interest of justice to transfer the case to the General Cause List so that parties can prove their claims against each other.

I have given due consideration to the averments in the affidavits of the parties. A reading of the Defendants' averments vis-à-vis that of the Claimant shows they joined issues with the Claimant on many issues, notably:-

- (1) The Claimant advancing only the sum of ₦114,178,311.08 to the Defendants out of the sum of ₦135,000,000.00 the Defendants applied for and was approved as the loan sum and the Claimant proceeding to charge interest on the sum of ₦135,000,000.00 against the Defendants.
- (2) The Claimant wrongfully withholding and converting ₦20,821,688.92 out of the approved loan sum of ₦135,000,000.00.
- (3) The Defendant being denied the use of the said sum of ₦20,821,688.92.
- (4) The Claimant charging the Defendants excess charges as revealed by the investigation and audit report conducted by the Defendants to the tune of

₦31, 266,619.30 per the Defendant's Exhibits A and B.

- (5) The Claimant charging the Defendants interests on the loan contrary to the directives of the Central Bank of Nigeria.
- (6) The Defendants having raised a complaint against the Claimant to the Central Bank of Nigeria for refund of the sum of ₦31,266,619.30 wrongfully debited to their account on the loan.
- (7) The Defendants having only taken a term loan for a period of 12months but the Claimants charged interest on same beyond the 12 months tenor of the facility.
- (8) By reasons of the excess charges and wrongful deduction, there now exists irreconcilable claims and counter claim between the parties in relation to the sum being claimed in this suit.
- (9) The parties having, per Exhibits D and E gone into meetings to reconcile the differences.

There is no gainsaying the fact that by the foregoing issues raised by the Defendants (and which the Claimant did not deny in a Further Affidavit), that there are at least nine triable issues disclosed in the Defendants affidavit in support of their Notice of Intention to Defend. **NYA V. EDEM (2000) 8 NWLR (Pt.669) p.349**, the Court of Appeal while dealing with the issue

of whether or not the Defendants affidavit discloses a defence on the merit, held thus:-

“An affidavit disclosing a defence on the merit does not mean that the Defendant must show that his defence will succeed at any event or that he must show a rock proof or iron cast defence. All that it means is that the Defendant must show prima facie that he has a defence to the Plaintiff’s action. The defence may fail or succeed but it is not the business of the Court to determine that at the stage. This can only be done at the trial.”

In this case, by reasons of the above issues raised by the Defendants in their affidavit the Court is satisfied that not only did the Defendants substantially join issues with the Claimant’s claim, the Defendants did raise prima facie defence which can only be determined after trial.

In the light of the foregoing, the Court resolves the sole issue raised above in favour of the Defendants against the Claimant. In consequence, leave is pursuant to the provision of Order 35 Rule 3(1) of the Rules of Court 2018 granted to the Defendants to defend this suit. In consequence, the Claimants claim is transferred to the Ordinary Cause List for trial.

Parties are directed to file and exchange pleadings in accordance with the provisions of the Rules of Court 2018.

**SGND.  
HON. JUDGE  
27/1/2020.**

**LEGAL REPRESENTATIONS**

- (1) A. A. Ibrahim SAN for the Claimant.
- (2) S. O. Ojo Esq. for the Defendant.