IN THE HIGH COURT OF HE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT: COURT 11 JABI - ABUJA
DATE: 14TH OF JULY, 2020
BEFORE: HON. JUSTICE M.A. NASIR
SUIT NO: CV/551/16
MOTION NO: M/9214/2019

BETWEEN

HASAL MICROFINANCE BANK LTD --- CLAIMANT /RESPONDENT

AND

1. GAYI HAMDALLAH GLOBAL VENTURE LTD
2. ALH. ABDULLAHI BELLO ---- DEFENDANTS/APPLICANTS

RULING

Before this Court is a motion on notice filed on the 30/9/2019. The application is brought pursuant to Order 4 Rule 4(1), Order 5 Rule 2, Order 12 Rule 2 and 5, Order 17 Rule 6, Order 20 Rules 2 and 4 and Order 43 Rule 1(1) and (2) of the Rules of this Court, and under the inherent jurisdiction of the Court. The motion is praying for the following reliefs;

"1. An order of this Court pursuant to Order 20 Rule 2(1) of the rules of this Court requiring the claimant/respondent to admit the defendants payment of the sum of N1.5 Million in the light of its deliberate failure, refusal and neglect to issue the defendants its statement of account or respond to any of its letters dated 11/10/2017, 23/2/2018 and 10/4/2019.

2. An order of this Court for a further extension of time deeming the said defendants current (but yet to be issued) statement of account, and its letters dated 11/10/2017, 23/2/2018 and 10/4/2019 as forming the further particulars in support of the right of set off expressed in the defendants statement of defence and counter claim, and the witness statement on oath in support of the statement of defence and counter claim filed on 30/10/2019.

OR IN THE ALTERNATIVE,

3. *An order of this Court that upon the Court taking judicial notice of the following facts:*

   a. *The mischief that the establishment of Microfinance Banks sought to cure.*

   b. *The fact that the loans in issue were taken to enable the completion of the construction of a school building to the knowledge of the claimant.*

   c. *The Courts need not to pressure the defendants and other local contractors to start doing shoddy construction works because of the unpredictable nature of the Nigerian Government to promptly pay for contracts executed as at when due, whilst loans taken to execute such contracts are accruing interest.*

   d. *The claimants admission in the defendants account statement since 19/12/2013 of payment of the sum of N3.9 Million with respect to both loan facilities in issue which totaled N3.5 Million.*

   e. *The defendants final payment of N1.5 Million as the agreed total accrued interest that the claimant bank*

agreed to accept as discharging the defendants of all indebtedness; and

f. The fact that till date the claimant has refused to respond to the contents of the defendants letters dated 11/10/2017, 23/2/2018 and 10/4/2019.

This Court pursuant to Order 4 Rule (1) and Order 20 Rule 4 of the FCT High Court rules ought to discharge the defendants of all indebtedness to the claimant microfinance bank and terminate this suit.

4. And for such further order or other orders as this Court may deem fit to make in the circumstances"

The application is supported by 16 grounds and 28 paragraphs affidavit. Four exhibits were attached and a written address duly adopted by **Oluwole Adaja Esq.** In opposition, the claimant/respondent filed a 9 paragraphs counter affidavit and a written address duly adopted by **G.E. Ukaegbu Esq.** In reaction, the applicants filed what they

termed a Reply affidavit of 6 paragraphs and a written address.

Upon a perusal of the processes filed and submission of learned counsel across the divide, the issue that has risen for determination is:

"Whether this Court can grant this application"

Learned counsel to the applicant has placed reliance on Order 20 Rule 2(1) of the Rules of this Court, 2018 as the bedrock in bringing this application. Counsel also added that other rules upon which this application is brought confer the necessary powers upon the Court to grant the reliefs sought.

On his part, learned counsel to the respondent submitted that the relief sought in this application cannot be granted based on Order 20 Rule 2(1) as the provision relates to admission of documents based on a Notice filed for that purpose. He added that the facts that the Court can take judicial notice of in law are clearly provided for in Section

122 of the Evidence Act, 2011 and the matters the applicants listed do not come under the stated provision of the Evidence Act. He urged the Court not to delve into the substantive suit at this interlocutory stage as the applicants are asking the Court to dismiss the case of the respondent without a hearing.

Order 20 Rule 2(1) is unambiguously instructive, and it provides:

> *"Either party may by notice in writing file and serve, not later than 7 days before the first pre – trial conference, require any other party to admit any document and the party so served shall not later than 4 days after service give notice of admission or non – admission of the document, failing which he shall be deemed to have admitted it unless the Court otherwise orders."*

It is true that the Court is empowered with necessary jurisdiction to make orders as it relates to reliefs of this

nature. The rule relied upon by the applicants relates to admission of documents as rightly submitted by learned counsel to the claimant/respondent.

Upon a further perusal of the processes filed, it is discovered that the defendant/applicant has not filed any valid statement of defence. The applicant filed a motion No. M/2060/18 on the 22/1/2018 seeking for extension of time to file Statement of Defence and a deeming order. The motion was moved and except for the deeming order, the application was granted as prayed. The defendant/applicant did not deem it fit to file clean copies of the Statement of Defence until the 30/10/2018 9 months after the application was granted. Though that document is not proper before the Court, this Court is at liberty to have recourse to same in determining this application. This Court after going through the counter claim visa – vis the application before the Court, discovered that any attempt to determine the reliefs sought herein will lead to a determination of reliefs sought in the counter claim.

This application is aimed at determining the counter claim in limine without evidence. This is an interlocutory application and this Court cannot determine the rights of the parties in the light of the affidavits before it without more.

Furthermore, the law frowns seriously on a Court taking on substantive issues in interlocutory application. In other words, care must be taken to avoid making observations in its ruling on that application, which might appear to pre – judge the main issue in the proceedings relative to the said application. See IN RE: Abdullahi (2018) LPELR – 45202 (SC), Mortune vs. Gambo (1979) LPELR – 1913 (SC) and Buremoh vs. Akande (2017) LPELR – 41565 (SC), wherein **M.D. Muhammed, JSC,** aptly observed:

> *"A Court must avoid the determination of a substantive issue at the interlocutory stage. It is never proper for a Court to make a pronouncement in the course of interlocutory proceedings on issues before the Court. Interlocutory applications must remain the handmaid and aid that enable the Court*

reach the ultimate goal of doing substantial justice between the parties in the real issues in litigation between parties."

The merits of a matter cannot therefore be taken at an interlocutory stage because it will be tantamount to hearing the matter and impliedly determining same prematurely. See UAC of Nig. Plc vs. Sapele Okpe Communal Land Trust Association & ors (2018) LPELR – 46134 (CA).

I am at one with the submission of learned counsel to the respondent that determining the right of the counter claimant at this stage will amount to a breach of fair hearing and denying the claimant the opportunity to be heard. Order 4 Rule 4 of the rules of Court is for liquidated money demand and not applicable in this instance. This Court cannot discharge the indebtedness of the defendant/applicant without proper proof by the defendant of his non indebtedness to the claimant.

Learned counsel to the applicant submitted that the application also seeks further extension of time to deem the filed defendant statement of defence and counter claim as properly filed and served. There is no such relief on the face of the motion paper before this Court.

On the whole, this application is unmeritorious, moreso when there is no Statement of Defence on record which fact has been rightly noted by learned counsel to the claimant/respondent. The application is thus dismissed.

SIGNED

HONOURABLE JUDGE

Appearances:

G.E. Ukaegbu Esq – for the claimant/respondent

Adetutu Aderemi – Ihieri (Mrs.) with Oluwole Adaja Esq – for the defendants/applicants