

**IN THE HIGH COURT OF JUSTICE OF THE
FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI - ABUJA**

BEFORE: HON. JUSTICE O. C. AGBAZA

COURT CLERKS: UKONU KALU & GODSPOWER EBAHOR

COURT NO: 10

SUIT NO: FCT/HC/CV/972/2019

BETWEEN:

SENATOR HADI SIRIKA.....CLAIMANT

VS

1. BANI MBAKA INVESTMENT LTD

2. MOHAMMED .M. LAWAL.....DEFENDANTS

RULING

This matter was for Continuation of Hearing after the Claimant close his case on 23/3/2020. It was adjourned to 26/5/2020 for the Defendants to open their Defence. The Defendants, however, filed a No Case Submission pursuant to Order 38 of the Rules of Court which is subject of this Ruling.

In the Defendants written submission on No Case to Answer filed on 15/9/2020, M.I Tola Esq. Counsel for Defendants, raised a sole issue for determination and that is;

“Whether the Plaintiff has established a prima facie case against the Defendants that will warrant the Defendants entering its Defence”

And submits, in summary, that where Claimant conclude its case and Defendants is of the view that from evidence adduced Claimant have not made out a prima facie case against Defendants, the Defendants may

apply that the matter be struck out, refer also to Order 33 of the Rules. That in the instant case, Defendants are of the view that Claimant have not made out a case that will make them enter Defence. Submits for Claimant to be said to have made out prima facie case against Defendants, would have established all the material ingredients required to be prove in an action for breach of contract. Submits for the matter to be competent before court, Defendants must have breached the Terms and Conditions stipulated by Exhibit "A" tendered by Claimant.

Submits this matter is premature in view of the content of Exhibit "A" and that the Agreement reached by parties by virtue of Exhibit "A" is inconclusive. That where parties agreed they will enter into formal Agreement in due course, they are bound by the Terms of that Agreement and its only when the Terms have been breached that the matter will be justifiable. That in the instant case, parties have not reached Terms and Conditions that will governed their Agreement. And its only when the Terms and Conditions of the Agreement have been breached by parties that court can assume jurisdiction. That any form of interpretation given to Exhibit "A" by court will mean the court re-writing the Agreement for parties in as much as there is no any Terms and Conditions reached. Further submits that a look at Exhibit "A" "B" "C" tendered by Claimant will observe parties are not agreeable as to how, when and at what rate money given to Defendants will be paid back and its for Claimant to prove any other Terms and Conditions reached aside Exhibit "A". That its trite where a document is clear and unambiguous parole evidence cannot be led to contradict or vary it. Therefore where an Agreement has been reduced into

writing as in Exhibit "A", it is that document and no other that constitutes the guide for its interpretation by court since court has no power to restructure the Agreement or form another Agreement for parties. That the PW1 had admitted that aside Exhibit "A", no other Agreement executed by parties and by strict construction of Exhibit "A", the Agreement of parties is inconclusive and therefore unenforceable without the Terms and Conditions being reached by parties. In all of these submission commend the court to several judicial authorities; Niger Care Dev. Co. Ltd Vs A.S.W.B (2008) 9 NWLR (PT. 1093) 498, @ 527, Ajibola Vs Sogeke (2003) 9 NWLR (PT. 826) 494 @ 533, UBN PLC Vs Awmar Properties Ltd (2018) 10 NWLR (PT. 1626) 64 @ 91-92, Zakari Vs Nigerian Army (2015) 17 NWLR (PT. 1487) 77 @ 98, B F I Group Corp. Vs B P E (2012) 18 NWLR (PT. 1332) 209 @ 238 – 239, A. I Investment Ltd Vs Afribank Nig. Plc (2013) 9 NWLR (PT. 1359) 380 @ 408 – 409, Afrotech Tech. Services (Nig) Ltd Vs M. I. A & Sons Ltd (2000) 15 NWLR (PT. 692) 720 @ 788, EFCC Vs Chidolue (2019) 2 NWLR (PT. 1657) 442 @ 462 NBA Vs Ogboli (2019) 6 NWLR (PT. 1669) 596 @ 612, Baliol Nig Ltd Vs Naucam Ltd (2010) 16 NWLR (PT. 1220) 619 @ 630, Julius Berger (Nig) Plc Vs T. R. C. B Ltd (2019) 15 NWLR (PT. 1665) 219 @ 246 – 247.

In opposition to the Defendants No Case Submission, Claimant on 18/9/2020 filed a Reply on Points of law. In the said Reply, O.H Okene Esq. of Counsel formulated three (3) issues for determination namely;

1. Whether in the light of the oral testimony, documentary evidence and the admission made by the 2nd Defendant in the affidavit attached to the document admitted as Exhibit "C" before this

Hon. Court, a prima facie case has been established against the Defendants requiring the Defendants to enter their Defence.

2. Whether the No Case Submission filed by the defendants is not an abuse of court process as the relief sought by the Defendants is the same as the relief earlier sought in a notice of Preliminary Objection that had earlier been struck out by this Hon. Court on the 13th of November, 2019.
3. Whether the Written Address filed by the Defendants which is deficient and incompetent in the absence of Motion on Notice stating the grounds relied upon by the Defendants can take the place of evidence.

On issue 1, submits the admissions in Paras 8,9,11,12,14,27,39 of the affidavit of Defendants sworn to by 2nd Defendant in the document tendered by Claimant and admitted in evidence as Exhibit "C" is binding on Defendants and requires no further proof. Further that by the admissions, the contention of Defendants that Claimant has not established prima facie case against Defendants fails. Refer court to Section 123 Evidence Act, 2011 and cases of Biezan Exclusive Guest House Ltd Vs Union Homes Savings and Loans Ltd (2011) 7 NWLR (PT. 1246) @ 285, Orient Bank of Nigeria Plc Vs Bilante Int'l Ltd (1997) 8 NWLR (PT. 515) 37, Ipnlaye II Vs Olukotun (1996) 6 NWLR (PT. 453) 148 (SC), Onyege Vs Ebere (2004) 13 NWLR (PT. 899) 20, Atobatele Ali Vs UBA (2014) LPELR – 22635.

On issue 2, submits a court becomes functus officio once it has given a decision in a matter as it would amount to sitting on appeal over its

decision if application on similar facts are presented before it a second time. That the relief sought by Defendants is founded on same argument canvassed by Defendants in their Notice of Preliminary Objection which was struck out.

On issue 3, submits the application of Defendants did not comply with the Provisions of Order 43 (1) of Rules of Court which prescribes the presentation of application of this nature by filing a Motion stating grounds relied upon with attach affidavit and Written Address. That the filing of Written Address as Defendants have done alien to the Rules, Practice and Procedure of Court.

Having carefully considered the submission of both Counsels, the Judicial and Statutory Authorities cited, the court finds that two (2) issues calls for determination namely;

1. Whether or not a prima facie case has been made by Claimant against the Defendants in this case.
2. If the issue 1 is answered in the affirmative whether the No Case Submission by the Defendants does not constitute an Abuse of Court or Judicial Process.

On issue 1, the expression "Prima Facie Case" is no where defined in our law or the English Law and as such it has received Plethora of judicial definitions. What it means is that there is a good ground for proceeding. In other words, something has been produced to make it worthwhile to continue with the proceeding. However, Prima Facie case is not same thing as proof which comes later when the court will find whether or not a

Claimant have proved its case or the accused guilty or not guilty. See the case of Ubanatu Vs C. O. P (2000) LPELR – 3280 (SC). See also Agbo Vs the State (2010) LPELR – 4980 (CA) and Akala Vs FRN (2014) LPELR – 22930 (CA). In determining whether or not a prima facie case have been established, recourse must be had to the records of court and this the court is empowered to do. See the case of Agbareh Vs Mimra (2008) All FWLR (PT. 409) 559 @ 564. In this instant case, I have taken a considered look at the Writ of Summons and Statement of Claim of the Claimant wherein he claim an outstanding sum of \$150,000.00 (One Hundred & Fifty Thousand Dollars owed him by Defendants for the purpose of transacting Bureau De Change business. I have also perused the Exhibit “SHSI” of Claimant and all other Exhibits annexed and found that the Claimant indeed have made a prima facie case against the Defendants in this case that will require the Defendants to enter Defence.

On issue 2, having answered the issue 1 in the affirmative, the No Case Submission filed by the Defendant, in the view of court, amounts to abuse of court or judicial process. I say so because the issue raised by the Defendants which is basis for its No Case Submission are same issues Defendants raised in its Notice of Preliminary Objection earlier filed in this matter which this court in a considered Ruling dismissed on 13/11/2019. In particular, the issue that this suit is premature, not competent before court and as such the court cannot assume jurisdiction because the parties did not reach the Terms and Conditions that will govern their relationship in line with the Exhibit “A” tendered in evidence by the Claimant. In my view, what Defendants has done here is to bring before the court same issues

they earlier presented via a Notice of Preliminary Objection which the court in a considered Ruling on 13/11/2019 had decided on in another form by way of a No Case Submission.

It is on the basis of the above consideration I hold that the No Case Submission filed by the Defendants is without basis, lacks merit and it is hereby dismissed.

This matter, therefore, is adjourned to 9/3/2021 for continuation of hearing.

I made no orders as to cost.

HON. JUSTICE O. C. AGBAZA

Presiding Judge

17/12/2020

APPEARANCE:

EMMANUEL EDU ESQ. – FOR THE DEFENDANTS/APPLICANTS

O.H OKENE ESQ. – FOR THE CLAIMANT