

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT KUBWA, ABUJA

ON TUESDAY, THE 6TH DAY OF NOVEMBER, 2020

BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA

JUDGE

SUIT NO.: FCT/HC/CV/BW/438/2019

BETWEEN:

ASO SAVINGS & LOANS PLC } ----- CLAIMANT

AND

ANTHONY EDEH } ----- DEFENDANT

RULING

On the 12 of February, 2020 the Plaintiff – Aso Savings & Loan Plc, a Public Limited Company which solely carries out banking activities instituted this action against Mr. Anthony Edeh, a staff of the Claimant who had according to him served Claimant for about eighteen years.

Sometimes ago while in the service of the Claimant the Defendant took a loan. According to him the loan was for Forty Five Million Naira (N45, 000,000.00) while the Claimant (here-in-after called the bank)

claimed that Mr. Edeh took a loan of Fifty Five Million Naira (₦55, 000,000.00) only.

The bank claimed that the Defendant has not cleared or repaid in full the loan facility before he left the bank.

Based on that, they decided to institute this action in order to recover the money owed. They therefore claimed the following:

- 1. The sum of One Hundred and Twenty Two Million, Eight Hundred and Forty One Thousand, Five Hundred and Fifty Five Naira, Forty Kobo (₦122, 841,555.40) only being the debt due and owed the Claimant by the Defendant as at 5th December, 2019. The sum of Fifty Five Million Naira (₦55, 000,000.00) being the sum of the Loan Agreement and the accumulated interest on the said sum in line with the agreement as at 5th December, 2019. The said loan was for the acquisition of House No.5, Plot 966 CAD Zone CO2 Gwarimpa, Abuja which was used as security for Personal Loan.**
- 2. 10% interest on the Judgment sum from date of Judgment until the said Judgment sum is fully liquidated.**

Being a debt the Court marked it Undefended. The Defendant was served with the Writ. The Bank believed that the Defendant has no Prima Facie defence to the Suit. But upon receipt of the Writ the

Defendant filed a Notice of Intention to defend the Suit. He also filed an Affidavit of 4 paragraphs disclosing defence on merit. The Defendant had claimed that he took a loan of Forty Five Million Naira (₦45, 000,000.00) and not Fifty Five Million Naira (₦55, 000,000) as the Bank alleges. Both parties have attached documents in support of their claims and defence respectively.

The Bank attached copy of the Loan Agreement. The Defendant attached Statement showing the amount that was actively credited to his account as the Loan. The bank claims the outstanding balance of the loan and accrued interest. The Defendant denied owing at all having paid all that he owed before leaving the Bank.

The Bank claimed that going by EXH B in page 1 & 2 that Fifty Five Million Naira (₦55, 000,000) was given and not Forty Five Million Naira (₦45, 000,000.00). That other payments totaling One Hundred and Sixteen Million, Eight Hundred and Thirty Seven Thousand, Seven Hundred and Ninety Six Naira (₦116, 837,796.00) with respect to the mortgage was given.

That there is no evidence of the Defendant paying back any money or even the interest. They urged Court to discountenance the Notice to Defend and enter Judgment in Plaintiff's favour.

In reply to the Issue of EXH B, the Defendant submitted that EXH B cannot be read in isolation. That EXH C & D are documents that shows that Forty Five Million Naira (~~₦~~45, 000,000.00) was paid back with full interest. He urged Court to look at all the documents before it.

That EXH B contains several other transactions. That there is no where EXH B was translated to One Hundred and Sixteen Million, Eight Hundred and Thirty Seven Thousand, Seven Hundred and Ninety Six Naira (~~₦~~116, 837,796.00). That it does not refer to single transaction of Forty Five Million Naira (~~₦~~45, 000,000.00). He urged Court to hold that he has a prima facie defence and so transfer the case to the General Cause List.

COURT:

Once a matter is predicated on a debt or liquidated money demand, the Court will as a matter of course mark the Writ Un defended. In that case the Claimant must show in its Affidavit that the Defendant has no prima facie defence to its claim and so the Court is urged not to transfer the case to the General Cause List but to enter Judgment Summarily in the Claimant's favour. This is what the Court decided in the case of:

Nanka Community Bank V.

Musa V. UBA

(2018) 11 NWLR

**Dange Shuni LGA Council V. Okonkwo
(2008) All FWLR (PT. 415) 1757**

**Ekulo Farms Limited V. UBN
(2006) 4 SCNJ 164**

**Bona Textiles Limited V. ATM PLC
(2013) 2 NWLR (PT. 1338) 357**

Once a Claimant files the Suit predicated on a claim for debt, liquidated money demand, supports it with Affidavit of facts, the Defendant is expected, upon receipt of the Writ file a Notice of Intention to defend if it has any within a given number of days – (5 days) or with leave for extension of time after 5 days. The Defendant must also file an Affidavit of facts showing why Judgment should not be entered stating that it has prima facie defence and urge the Court to transfer the case to the General Cause List allowing parties to call evidence to state their respective stances. This is captured in the provision of Order 35 of the FCT High Court Rules 2018. That is also what the Court decided in the Supreme Court case of:

**Intercontinental Bank V. Brifina limited
(2012) 13 NWLR (PT. 1316) page 1**

The Court is bound to consider such Notice of Intention to Defend and Affidavit in support of the application. Even where there is no Notice to Defend the Court has a right where it fees that there is a defence, transfer the matter to the General Cause List

so that parties can be heard. In that case, there will be no Summary Judgment.

It is important to point out and reiterate that once there is a disparity between what is allegedly owed and what was paid, the best thing to do in the interest of justice is to transfer the case to the General Cause List so that Court will hear both parties before it can come up with its final decision. By so doing justice will be better served.

In this case, the Bank claimed that they gave a loan of Fifty Five Million Naira (₦55, 000,000.00). The Defendant claimed that he received a loan of Forty Five Million Naira (₦45, 000,000.00) and not Fifty Five Million Naira (₦55, 000,000.00) as Plaintiff claims. He had stated that he is no longer indebted in any way to the Bank. There is very clear evidence that there is a disparity in the story of the parties as regards the amount of the loan paid and amount received as well as the amount repaid by the Defendant and the outstanding claimed by the Bank – Plaintiff. There is therefore a dire need to transfer this case to the General Cause List so that the Court can ascertain who owes what and who paid what and the outstanding if any as well as who is indebted to what and amount involved. By so doing the Court will get to the justice of the case and allow parties to make their full submission for and against as the case may be.

That means that entering Summary Judgment as the Bank sought will not be in the interest of justice of this case. So this Court hereby Order that the matter be transferred to the General Cause List because the Defendant Anthony Edeh has a prima facie defence to the case of the Plaintiff – Aso Savings & Loans Plc.

Parties are therefore ordered to file and exchange their pleading before the next adjourned date.

This is the Ruling of this Court.

**Delivered today the ___ day of _____ 2020 by
me.**

**K.N. OGBONNAYA
HON. JUDGE**