

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT HIGH COURT 28 GUDU – ABUJA
DELIVERED ON THURSDAY THE 15TH DAY OF OCTOBER 2020
BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE .R. OSHO-ADEBIYI

SUIT NO. CV/1227/2020

BETWEEN:

**ROYAL EXCHANGE FINANCE AND
ASSET MANAGEMENT LIMITED -----CLAIMANT**

AND

1.SENATOR JONATHAN SILAS ZWINGINA -----DEFENDANTS

2. MIDAS RESOURCES LIMITED

RULING

The Claimant filed this suit against the Defendants by a Writ of Summons under the undefended list, claiming the following: -

1. The sum of ~~₦~~22,748,633.68 (Twenty-Two Million Seven Hundred and Forty-Eight Thousand Six Hundred and Thirty-Three Naira Sixty Eight Kobo) being the balance due to the Claimant under the parties' loan agreement.
2. Interest on the said sum of ~~₦~~22, 748,633.68 at the rate of 26% per annum from August 2017 till date of judgment and thereafter at the rate of 10% per annum from date of judgment till final liquidation.

3. The sum of ₦2,500,000.00 (two million five hundred thousand Naira) as the cost of this suit.

Attached to the application is an affidavit of 5 paragraphs deposed to by one Iortyaver Alfred, a Counsel in the law firm of Charis Hills Solicitors representing the Claimant. The Claimant also attached 27 exhibits and a written address as argument in support of its application.

The Defendants filed a notice of intention to defend and attached a 24-paragraph affidavit with six exhibits, urging the Court to transfer the case to the general cause list as there are triable issues to be determined.

I have thoroughly examined the Claimant's application as well as the Defendants' notice of intention to defend. The law is settled that for leave to be granted to a Defendant who filed a notice of intention to defend a suit, his affidavit must disclose a defence on the merit. The affidavit in support of the notice of intention to defend must contain facts which are consistent, credible and materially contradict the relevant facts which the plaintiff's claim is based and thereby raising a fair, bonafide and genuine dispute. See *Nwankwo V. Kay-Kay Construct* (2014) LPELR-24336 (CA)

The summary of the facts that gave rise to this suit is that sometime in 2014, the 1st Defendant applied to the Claimant for a loan of ₦20,000,000.00 (Twenty Million Naira only) from the Claimant wherein a loan agreement was executed by parties to that effect which embodied the terms and conditions. That the loan was guaranteed by the 2nd Defendant with a property situate at Plot 608 Cadastral Zone B04 covered by Statutory Right of Occupancy as well

as 30 million units of shares in IEI-Anchor Pensions which was provided by the 1st Defendant as security for the loan.

That after the expiration of the 90 day tenor of the loan as provided in the agreement the Claimant wrote to the Defendants demanding the liquidation of the loan and despite several request since 2014, it was only between mid 2017 and 2018 that the 1st Defendant made payments totalling ₦20,000,000.00 and by this time, the principal and interest had accrued to the sum of ₦40,748,633.60. That two million Naira from the ₦20,000,000.00 paid by the Defendants was used to pay a recovery agent as stated in the loan agreement. That the money left unpaid by the Defendants is the sum of ₦22,748,633.68 and the Defendants have failed to liquidate the outstanding sum despite several demands.

The question that begs to be answered is whether the Defendants have disclosed a defence or whether their affidavit has created doubt in the mind of the Court not to enter judgment in favour of the Claimant under the undefended list. The Defendants in their affidavit attached to their notice of intention to defend did not deny that they entered into a loan agreement with the Claimant. The Defendants from paragraphs 10,11,12 and 13 are stating that from the payments made from April 2014 to August 2018 they have fully liquidated the loan including the interest and in-fact, paid in excess as the Claimant omitted to reflect some of the payments made in liquidation of the debt, which are exhibits 2,3,4 and 5 (copies of bank checks made in favour of the Claimant).

Exhibit R which is the statement of account tabulating Defendants loan and payment, reflects the sum of ₦18,000,00.00 lump sum

credited to Defendants to offset the debt; while Claimant contended that the sum of ₦18,000,000.00 was never paid as a lump sum but paid via the EFCC in different drafts of ₦1,000,000.00, ₦7,000,000.00 and ₦10,000,000.00 totalling ₦18,000,000.00. Defendants on the other hand is claiming that the sum of ₦1,000,000.00, ₦10,000,000.00, ₦7,000,000.00 and ₦2,000,000.00 were omitted by the Claimant in the said Exhibit R. Claimant is however contending that the monies Defendants are Claiming was omitted was actually part of the money that made up the ₦18,000,000.00 lump entry, hence Defendants ought not rely on those payments as distinct from the ₦18,000,000.00. Both parties have raised triable issues as regards the origin of the ₦18,000,000.00, whether it was paid in a lump sum as evidenced in Exhibit R or whether different cheques for various sums culminated into ₦18,000,000.00 or whether Claimant omitted ₦1,000,000.00, ₦10,000,000.00, ₦7,000,000.00 and ₦2,000,000.00 as said sums are indeed not represented in Exhibit R.

Moreover, the Defendants in paragraph 8a stated that:

“I verily believed it to be correct and true that the Claimant had been fraudulently charging me with unjustifiable interest and commissions far in excess of the 26% interest rate per annum (₦5,200,000.00 per year) provided for in the loan contract. A calm review of the Claimant’s Exhibit R bears out that the Claimant charged us excessive interest thus:

- i. between April 2014 to March 2015 total interest of ₦5,881, 826.64;*
- ii. between April 2015 to March 2016 total interest of ₦6,881,355.47;*
- iii. between April 2016 to March 2017 total interest of ₦8,665,275.65;*

iv. From April-June 2017 further interest of ₦2,530, 932.34. All totalling a whopping ₦23,959,390.1 are far in excess of the agreed interest rate of 26% per annum”

A fundamental condition upon which the loan facility was granted was that the interest on the facility would either be 2% per month or 26% per annum whichever is higher. Going by this and the facts as stated by the Defendants in their affidavit, as well as that stated by the Claimant, the figures which has accumulated as interest is being disputed by both parties. The Court has held in the case of *BENDEL FEED & FLOUR MILL LTD V. NIMB* (2000) 5 NWLR pt.655 pg.29 at 43, para E that the amount claimed must be clear, ascertainable, certain and unambiguous. When the amount claimed under the undefended list procedure and the crucial documents in support are clearly at variance, this renders the claim uncertain and judgment will not be granted under the undefended list.

It is therefore my considered view that this suit cannot sufficiently be determined under the undefended list as the Defendants in their affidavit have raised triable issues. This case is hereby transferred to the general cause list and parties are to file pleadings.

Parties: Parties are absent.

Appearances: Alfred Iortyaver, Esq., for the Claimant. No representation for the Defendants.

**HON. JUSTICE MODUPE .R. OSHO-ADEBIYI
JUDGE**

15TH OCTOBER 2020