

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP: HON. JUSTICE Y.HALILU

COURT CLERKS : JANET O. ODAH & ORS

COURT NUMBER : HIGH COURT NO. 22

CASE NUMBER : SUIT NO: CV/845/2020

DATE : WEDNESDAY 27TH JANUARY, 2021

BETWEEN

**1. AHMED SANI BELLO
2. MUSTAPHA SANI BELLO
3. MUHAMMED SANI BELLO** } **CLAIMANTS/
APPLICANTS**

AND

**1. UMAR I. MOHAMMED
2. COMRADE AIR SERVICES LTD
3. COMRADE GROUP LCC** } **DEFENDANTS**

RULING

The Claimants approached this Honourable Court vide a writ of summons under the undefended list procedure pursuant to Order 35 of the Rules of this Honourable Court praying this court for an Order for payment of the sum of \$2,008,000.00 (Two Million, Eight Thousand Dollars) only to the Claimant against the Defendants being sum loaned from the Claimant in several installments which the Defendants undertook to refund to the Claimant.

In support of the writ is affidavit of 4 paragraphs duly deposed to by one Sandra U. Odigbo, a legal practitioner in the law firm of the counsel for the Claimant.

It is the affidavit of the Claimants that sometime in 2008, the 1st Defendant approached the Claimants

for the establishment of a company to provide commercial airline services which the Claimants gave the sum of N2,200,000.00 (Two Million, Two Hundred Thousand Naira) but the company was never incorporated rather the 1st Defendant informed the Claimants that he incorporated another company which he claimed to have made the claimants directors.

Claimants aver that they spent over \$6,000,000.00 (Six Million Dollars) for the purchase of the plane to be used for the company.

That the 2nd Claimant and the 1st Defendant were directors in comrade LCC but the business relationship later went sour, but that before it went sour, 1st Claimant loaned 2nd Defendant the sum of

\$700,000.000.00 (Seven Hundred Thousand Dollar vide Exhibit “PS1”).

That the 1st Claimant gave further loans of \$250,000,.00 (Two Hundred and Fifty Thousand US Dollars) to the 1st Defendant on the 13th April, 2014 vide Exhibit “PS2” and another loan of \$785,000.00 (Seven Hundred and Eighty Five Thousand US Dollars) vide Exhibit “PS3”.

Claimants aver further that 1st Claimant gave another loan of \$273,000.00 (Two Hundred and Seventy Three Thousand US Dollars) to the 1st Defendant vide Exhibit “PS4”.

That all these loans adding up to \$2,008,000.00 (Two Million, Eight Hundred Dollars) was given to the Defendants who have failed to refund same despite repeated demand.

That it will be in the interest of justice to grant the relief sought by the Claimant.

Upon service, the Defendant file a Notice of Intention to Defend on the merit and counter claim.

In support of the notice is an affidavit of 53 paragraphs duly deposed to by the 1st Defendant himself.

It is the deposition of the Defendants that sometime around 2014, the 1st Defendant set up an Air Service Company known as Comrade Air Services Nigeria Limited and the 1st Claimant was invited to join the company as an investor. The certificate of Incorporation is attached as Exhibit “1”.

That shortly afterwards, parties felt it would be economically viable to purchase an aircraft for the business instead of leasing one and decided to

purchase an aircraft. A substantial part of the funds needed was through a loan from Investec Bank (Mauritius) Limited and the borrower was to be Comrade Group LLC through Comrade Holding LLC, a corporate entity registered under the laws of Delaware USA.

That Parties agreed that all these payments would be made from the income generated from the business and that was the basis upon which the 1st Claimant, acting for an on behalf of the other Claimants invested money into the business. A bundle of documents itemizing the money spent on the aircrafts was annexed as Exhibit “3”.

That it is not true that money was given to the Defendant by the Claimants as the money invested into the business was to be considered as Director’s

loans on the records of the 2nd Defendant and were paid directly by the Claimants into the accounts of the service providers to ensure the takeoff of the business. The resolution between them was that the money invested would be repaid from the proceeds of the operation of the aircraft by the 2nd Defendant and this was being done before the dispute arose between the parties. A bundle of documents showing the payments made to the Claimants from the proceeds of the business was attached as Exhibit “4”.

It is further the averment of Defendants that sometimes around May 2017, one of the officers of Investec Bank (Mauritius) Limited called the 1st Defendant to know why he transferred his interest in Comrade Holdings LLC to Mustapha SaniBello

without their knowledge contrary to the agreement they had.

That he was thoroughly shocked at this revelation and immediately denied the assertion. He then sent a mail to the bank stating emphatically that he did not transfer his interest in the company to anyone. A copy of the mail was attached as Exhibit “8”.

Defendant counter claim against the Claimants as follows:-

- a. A Declaration that the 2nd Claimant Forged the signature of the 1st Defendant on the LLC Membership Interest Transfer Agreement, and the Unanimous Consent of the Manager and Members of Comrade Holdings LLC both dated 10th March, 2017.

- b. A Declaration that the 2nd Claimant who has forged the signature of the 1st Defendant is unfit and is not a proper person to be a director of any company in Nigeria.
- c. A Declaration that the Terms of Settlement filed in this Suit on 11th February, 2020 is null and void as it was obtained by duress, coercion and unconscionable bargain.
- d. An Order of the Honourable Court setting aside:
 - i. The LLC Membership Interest transfer agreement dated 10th March, 2017.
 - ii. The unanimous consent of the manager and members of Comrade Holdings LLC dated 10th March, 2017, and

- iii. All steps taken by the claimants relying on the forged documents.
- e. An Order setting aside the Terms of Settlement filed in this suit on 11th February, 2020.
- f. An Order directing the Claimants/Defendants to counter claim to immediately surrender to the Defendants, the Aircraft Bombardier Challenger 604 with serial No. 5427 belonging to the 3rd Defendant.

IN ALTERNATIVE TO PRAYER F

An Order directing the Claimants/Defendants to Counterclaim to pay to the Defendants the sum of \$8,000,000 USD being the cost of the Bombardier Challenger 604 with Serial No. 5427 belonging to the 3rd Defendant.

- g. An Order directing the Claimants/Defendants to Counterclaim to pay the sum of \$200,000.00 for every month being the legitimate proceeds the Defendants would have made from the use of the aircraft beginning from, and including the 1st May, 2017, until Judgment in this suit, and thereafter, the same sum is due until either the return of the aircraft or the payment of its monetary value.
- h. Damages of Ten Million Dollars on the footing of the pain, embarrassment, intimidation and conspiracy to cause Economic harm and injury.
- i. Cost of this action.
- j. 10% post judgment interest from the date of the Judgment until the Judgment sum is fully liquidated.

The Defendant again filed a further affidavit wherein they stated that the 1st Defendant contracted a forensic document examiner to analyse his signature as well as the disputed signature on the LLC membership interest transfer agreement and unanimous consent of the manager and members of Comrade Holding LLC.

That the signatures have been examined by examiner who certified that the disputed signatures were not signed by the 1st Defendant. The Report is annexed as Exhibit “II”.

On the whole, court was urged to transfer the matter to the general cause list.

COURT:-I wish to observe that the undefended list procedure is a truncated form of ordinary civil hearing peculiar to our adversary system where the

ordinary hearing is rendered unnecessarily due in the main to the absence of an issue to be tried or the quantum of Plaintiff's claim disputed to necessitate such a hearing. It is designed to quicken justice and avoid the injustice likely to occur where there is no genuine defence on the merits to the Plaintiff's case. It is a procedure meant to shorten hearing of a suit where the claim is for liquidated money demand see ***UBA PLC VS JARGABA (2007) 5 SCI.***

An action begun under the undefended list, is no less a trial between the parties and where a Defendant is properly served, he has a duty to disclose his defence to the action. ***ATAGUBA & CO. VS GURA (2005) 2 SC (Pt. 11) 101.***

However, notice of intention supported by affidavit so filed must condescend to issues stated in affidavit

in support of the claim of the Plaintiff. A mere empty affidavit in support of the Notice of Intention to defend which disclose no defence shall certainly not sway the Court into transferring the matter to general cause list for trial.

Simply put, the Defendants affidavit must condescend upon particulars and should as far as possible, deal specifically with the Plaintiff's affidavit and state clearly and concisely what the defence is and what facts and document are relied on to support it.

Such affidavit in support of Notice of Intention to defend must of necessity disclose facts which will, at least throw some doubt on the Plaintiff's case.

A mere denial of Plaintiff's claim or liability or vague insinuation devoid of evidential value does

not and will not suffice as facts, which will throw doubt on Plaintiff's claim. ***UBA PLC VS JARA GABA (Supra)***.

I have gone through the affidavit of Claimants in support of its claim brought under the undefended list pursuant to Order 35 of the Rules of this Court. I have also gone through the affidavit in support of Notice of intention to defend this action filed in compliance with Order 35 Rule 3(1) of the Rules of this Court.

The facts averred in affidavit in support of Claimants case are such that if put side by side with those of the Defendants certainly the reliefs claimed by Claimants cannot be resolved under Order 35 of the Rules of this Court.

This especially can be seen from the bundle of documents annexed by the Defendants and allegation of fraud made by the Defendants cum their counter claims.

By the power conferred on me therefore, I hereby transfer this suit to general cause list under Order 35 Rule 3 (2) of the Rule of this Court.

Parties by this are encouraged to file pleadings or lead evidence in support if their respective claim before the court.

Justice Y. Halilu
Hon. Judge
27th January, 2012

APPEARANCE

U.S Odigbo – for the Claimants.

Defendants not in court and not represented.