

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT HIGH COURT MAITAMA – ABUJA**

BEFORE: HIS LORDSHIP HON. JUSTICE S.U. BATURE

COURT CLERKS: JAMILA OMEKE & ORS

COURT NUMBER: HIGH COURT NO. 32

CASE NUMBER: SUIT NO. FCT/HC/CV/1448/14

MOTION NO. FCT/HC/M/98661/20

DATE: 24TH FEBRUARY, 2021

BETWEEN:

HASAL MICROFINANCE BANK LIMITED.....PLAINTIFF

AND

- | | | |
|---|---|---------------|
| (1). DEO GRATIAS INTERNATIONAL SCHOOL LTD | } | ...DEFENDANTS |
| (2). DR. GEORGE ODABI | | |
| (3). DANLADI OTHMAN | | |

APPEARANCES:

Agnes Zephania Esq for the Claimant.

Claimant represented.

RULING

By a Motion on Notice with motion No. M/8661/2020, dated 13th day of July, 2020 and filed on 25th July 2020, the Defendants/Applicants herein, prayed the Court for the following: -

- “(1). An Order of Court directing the Banker’s Operation Department of the Central Bank of Nigeria to conduct a forensic Audit of the account of the 1st Defendant with account no. 001302000442 maintained with the Claimant.***
- (2). An Order of Court granting leave to the Defendants/Applicants to call one Additional witness to wit: EMMA AZUBUIKE and to file Consequential Witness Statement on Oath for the said additional witness.***
- (3). An for such further/other Order(s) as this Honourable Court may deem fit to make in the circumstance.”***

The grounds upon which the application was brought are as follows: -

- “(i). The 1st Defendant maintains a current account with account no. 001302000442 with the Claimant.***
- (ii). The 1st Defendant secured a loan facility and have been repaying the loan but not to the satisfaction of the Claimant.***
- (iii). That the Claimant commenced this suit sometime in 2014 against the Defendants.***
- (iv). That upon the service of the originating process on the Defendants, the Defendants entered appearance and filed their Joint Statement of Defence.***
- (v). That the Defendants observed that the amount of money the Claimant claims that the Defendant is indebted to her is way off the mark.***
- (vi). That there is need to conduct a forensic Audit as the Defendant feels that his account has not been subjected to the best of banking and accounting practices.***
- (vii). That in the course of the proceedings it was discovered that the 1st Defendant/Applicant’s Account officer’s physical presence was required to prove certain facts in the Defendant’s case.***

- (viii). That at the time of filing this suit, the witness being sought to be called was not readily available and could not be listed in the list of witnesses.**
- (ix). That the leave of the Honourable Court is required for the Defendants/Applicants to call additional witness and file additional Witness Statement on Oath so as to proffer the necessary information and clarification required for the just determination of this suit.**
- (x). That the additional facts sought to be deposed to will not alter the nature of the case neither will it spring any surprise as the said additional facts are already captured in the Defendants' Joint Statement of Defence.**
- (xi). That none of the parties will be prejudiced by the grant of this application.**
- (xii). That it will be in the interest of justice to grant this application."**

The application which is brought pursuant to Order 43 Rule 1 of the High Court of the Federal Capital Territory (Civil Procedure) Rules 2018 and under the inherent jurisdiction of this Honourable Court; is supported by an Affidavit of seven paragraphs deposed to by Evelyn Ihuarulam, a litigation clerk in the law firm of Ikechukwu Ezechukwu, SAN & Co the Counsel to the Defendants/Applicants in this case; as well as a Written Address dated 13th day of July, 2020.

On the other hand, the Plaintiff/Respondent filed an address on points of law in opposition to the Applicant's Motion on Notice dated 30th September 2020.

In the Defendants/Applicants' Written Address in support of Motion on Notice, a sole issue for determination is formulated by learned Applicant's Counsel Ifeanyi M. Nriaike Esq, as follows: -

"Whether the Defendants/Applicants are entitled to the grant of the reliefs sought in this application."

In arguing the sole issue, learned Counsel submitted that the mandate of the Central Bank of Nigeria to promote a stable financial system underscores the need for the Bank (Banker's Bank) to develop and

implement a consumer protection framework that ensures the protection of the consumer's right. That to enhance focus on the consumer agenda and to ensure that consumers of financial services are protected and treated fairly, the Central Bank of Nigeria recognized the need to develop an effective and overreaching regulatory consumer protection framework. That this framework is a product of extensive engagements and consultations with critical stakeholders, sets out the minimum standards for financial consumer protection and is developed in conformity with international good practices standards.

That with respect to Section 2(d) of the CBN Act, 2007 and Section 57 of BOFIA Act, the Central Bank can carry out financial Consumer Protection in accordance with the powers granted to it by the aforesaid legislations. That it is the Central Bank's duty to adopt proactive supervisory approach in assessing the consumer protection practices of financial institutions. It is submitted that it is the procedure that when examining financial institutions, the Central Bank shall adopt a risk-focused approach to identify activities and practices that pose high risk to consumers.

That the Claimant is not transparent in her dealings with the Defendants in respect of a facility obtained with the bank and that the appropriate thing to do in the circumstances is to apply to the Operation Department of the Central Bank to hold the Claimant to account and insist she keeps her books of account honestly and transparently and to sanction same if the Claimant defaults.

That by so doing, it is mandatory for forensic Audit of the 1st Defendant's account with account no. 001302000442 with the Claimant.

That the Central Bank being a Banker's bank has the powers to order or compel the Claimant to conduct a forensic audit of the 1st Defendant/Applicant's bank account as same will help to achieve justice of this case.

Reliance was placed on Section 6(6)(a) and (b) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and Order 43(1) of the Rules of this Court giving wide powers to the Court to make an order in that regard.

That the leave sought by the Defendants/Applicants is to bring in facts which will proffer further information for the just and expeditious determination of this suit. That it is necessary that these missing facts

are deposed to in an additional Witness Statement on Oath and adopted so that all the materials requisite for discovering the truth and doing justice are placed before the Court.

That the Defendants' Counsel may have blundered when he left out some facts proposed to be let in through the additional Witness Statement on Oath.

That Courts have through the years taken a stand that however negligent or careless may have been slips, however late, the proposed amendment, it ought to be allowed, if it can be done without injustice to the other side.

Reliance was placed on the case of **ADEKEYE V. AKINOLUGBADE (1987) 2 NWLR (Pt. 60) 214, per Oputa JSC.**

Learned Counsel submitted further that the additional Witness Statement on Oath of the Defendants/Applicants seeks to bring in became necessary because of the need to bring in facts which the Claimant's witness who has already testified is not in the position to give.

That the material for the Court to exercise its discretion in favour of the Defendants/Applicants is before the Court and finally urged the Court to so exercise and to grant this application in the interest of justice.

Meanwhile, in the Plaintiff/Respondent's address on points of law in opposition to this Motion on Notice, learned Respondent's Counsel Agnes N. Zephaniah Esq, submitted on functions of the Central Bank of Nigeria, that Section 1 of the Banks and other Financial Institution Act (1991) (as amended) provides for the functions, powers, and duties of the Central Bank of Nigeria.

Reference was also made to Section 2 of the CBN Act 2007, which provides for the objectives of the CBN; learned Counsel, however argued that none of the said objectives include conducting of forensic audit of the individual account. The Court is therefore urged to so hold and reject the Applicant's prayer 1 with huge cost.

On amendment of pleadings, learned Counsel submitted that Order 25 of the High Court of the FCT (Civil procedure) Rules 2018, provides for an opportunity to amend and procedure to be adopted. That the main

purpose of amendment is to enable the Court determine the real question or issue in controversy between the parties.

Reference was made to the case of ***MOBILE V NABSON (1995) 7 NWLR (Pt. 407) 256.***

Learned Counsel submitted, that by virtue of sub (3) an additional Witness Statement on Oath sought to be filed should have been attached to this application failure of which renders the application incompetent. That this is to avoid springing of surprises and raising extraneous matters that will occasion injustice and delay justice in the trial.

The Court is therefore urged to discountenance the Defendant's application and throw it out with punitive cost for being grossly incompetent and an aberration in law.

That the matter is brought under fast track procedure and should be heard expeditiously without any further delay.

Now, I have carefully considered the grounds predicated the application, the supporting Affidavit and the Written Address in support of same.

In the same vein, I have equally given due consideration to the Plaintiff/Respondent's Address on points of law in opposition to the Motion on Notice.

Having considered all that, I too adopt the sole issue for determination as formulated in the Defendants/Applicants' Written Address.

First of all let me begin by considering the first relief sought by the Defendants/Applicants as it appears on the face of the motion paper.

Now, by the averments contained in the Defendants/Applicants Affidavit particularly paragraph 3 i – vi thereof, it is averred among other things that the 1st Defendant maintains a current account with account no. 001302000442 with the Claimant.

That consequent upon a loan facility secured by the 1st Defendant and which 1st Defendant has been repaying but not to the satisfaction of the Claimant, the Claimant commenced this suit in 2014 against the Defendants.

That the Defendants upon being served with the originating process observed that the amount of money which Claimant claims against the Defendants is off the mark.

Whereupon, the 1st Defendant feels that there's need to conduct forensic audit on the said account as he feels his account has not been subjected to the best banking and accounting practices.

In paragraphs 4, 5 and 6 thereof, it is averred that none of the parties will be prejudiced by the grant of this application and that it will be in the interest of justice to grant the application.

I've considered both the oral and written submissions of Counsel on both sides with regard to the issue as to whether the CBN should conduct a forensic audit on the account in question.

That being the case, I have noted that in the oral submissions of Respondent's Counsel, he did say he agrees with the Applicant's that CBN has a duty to promote a sound financial system in Nigeria.

This no doubt is clearly reflected in Section 2(c) of the CBN Act 2007.

Likewise, a close look at the contents of Section 1 of the Banks and other Financial Institutions Act (1991) (as amended), will show that the Central Bank of Nigeria has clearly wide powers, duties and functions.

Furthermore, in relation to Section 2(c) of the CBN Act 2007, that is promoting a sound financial system in Nigeria, for instance in the Central Bank of Nigeria, Regulatory and Supervising Guidelines for Development of Financial Institutions in Nigeria, in particular Part 2.0 sub d (iii), (v) provides for prescribing permissible activities and conducting on-site and off-site supervision as one of the powers and duties of the Central Bank of Nigeria, in line with the relevant provisions of BOFIA and CBN Act, Laws of the Federation of Nigeria (LFN) 2010 (herein referred to as the CBN Act).

Likewise, pursuant to Section 57(2) of the Banks and other Financial Institutions Act, Chapter B3, Laws of the Federation of Nigeria 2004, CBN guidelines were issued to financial institutions to ensure that the financial institutions provide consumers with all material and relevant information regarding their business relationships in a clear and transparent manner.

This in my humble view is geared towards effective consumer protection.

Therefore, since 1st Defendant/Applicant feels that there's a need for a forensic audit and that his account has not been subjected to the best of banking and accounting practices, it is my considered opinion that the CBN has the requisite power to conduct a forensic audit on the account in question for transparency and accountability pursuant to its guidelines under Section 57(2) of the BOFIA Act (supra). I so hold.

On the supervisory role of the CBN, I hereby refer to the case of ***ORIENT PHOTO NIG LTD V ECO BANK PLC (2018) LPELR – 44764 (CA)*** where the Court held that the Central Bank of Nigeria has the exclusive jurisdiction to examine the books of account of the Respondent (Eco Bank) and to compare and contrast the Central Bank of Nigeria's findings and that of the Respondent (Eco Bank) in order to tilt their decision in favour of the appellants.

I shall now move to consider relief no 2 which the Defendants/Applicants seek in this application.

It is averred particularly, in paragraph 3 viii – x of the supporting affidavit that there's need for the Defendants/Applicants to call additional witness and to file additional Witness Statement on Oath so as to proffer the necessary information and clarification required for the just determination of this suit. That at the time of filing this suit the witness being sought to be called was not readily available and could not be listed in the list of witnesses.

That the additional facts sought to be deposed will not alter the nature of the case neither will it spring any surprise as the said additional facts are already captured in the Defendant's Joint Statement of Defence.

Now, although the Respondent has not filed a Counter Affidavit in response to the averment contained in the supporting Affidavit of the Defendants/Applicants. I've carefully considered the line of arguments canvassed in the Address on points of law. That is to say that the additional Witness Statement on Oath was not filed along with this application failure of which renders the application incompetent.

Well, I have put this into consideration along with the submissions of learned Applicant's Counsel in paragraph 3.05 of the Address, in which the Court is urged to invoke its powers pursuant to Section 6(6)(a) of CFRN 1999 (as amended) and Order 43(1) of the Rules of this Court in

order for the Court to discover the truth by allowing the additional witness to be called and to file consequential Witness Statement on Oath.

Therefore, even though the Defendants/Applicants have not filed the said additional Witness Statement on Oath along with this application, I see it in my humbly view as a mere irregularity. On this premise, I refer to Order 5 Rule 1(2) of the Rules of this Court which provides as follows:

“Where at any stage in the course of or in connection with any proceedings there has by reason of anything done or left undone been a failure to comply with the requirements as to time, place, manner or form, such failure may be treated as an irregularity. The Court may give any direction as it thinks fit to regularize such steps.”

In the circumstances and on the whole it is my considered opinion that the whole essence of the present application is for transparency, accountability and fairness. Therefore, it is my humble view that the Defendants/Applicants have made out a case to be entitled to the reliefs sought.

Consequently, I resolve the sole issue for determination in their favour and accordingly grant the reliefs sought as prayed on the motion paper. In addition, the Defendants/Applicants are ordered to expeditiously file their additional Witness Statement on Oath and serve same on the Plaintiff/Applicant in order for the matter to be heard speedily bearing in mind that this is a fast track matter in line with Order 37 of the Rules of this Honourable Court. CBN is to forward its findings to this Court on or before the 11th of May 2021.

Signed:

Hon. Justice Samirah Umar Bature