

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

THIS 7TH DAY OF JULY, 2021

BEFORE HIS LORDSHIP: THE HON. JUSTICE A.A FASHOLA

SUIT NO: CV/215/2021

BETWEEN

AMBROSE UMEIKE NNABUIFE-----CLAIMANT

AND

INSHA ALLAHU ASSET MANAGEMENT INVESTMENT LIMITED..... DEFENDANT

RULING

This is an undefended list application commenced by a writ of summons dated the 28th day of January 2021 and filed on the same day.

WHEREIN The claimant claims as follows:

- i. AN ORDER OF THIS HONOURABLE COURT** Mandating the defendant to pay the sum of **N 44,000,000.00(forty four million Naira Only)** being the outstanding debt owed in respect to investment Capital and Return of investment made by the claimant.

- ii. The sum of **N2,000,000.00(Two million Naira Only)**being the sum of money paid to the claimant's
- iii. The sum of **N500, 000, 00(Five hundred thousand Naira Only)** being the cost of proceedings.

Attached to the writ is a 17 paragraph affidavit deposed to by Ambrose umeike Nnabuife the claimant equally annexed to the affidavit are exhibits marked as Exhibits A to D

1. Exhibit A is an Agreement dated 22nd of October 2019
2. Exhibit B is letter dated the 28th may 2020
3. Exhibit c is Demand letter dated 21st January 2021

As for Exhibit D that was mentioned in paragraph 13 of the claimant's affidavit however upon a diligent perusal of the document before me, no such Exhibit was annexed to the process.

At the hearing of the suit on the 22nd of March 2021, learned counsel to the claimant informed the court that the matter is brought under the undefended list procedure and that the claimant is making a claim of a deposit sum and accrued Interest.

On the other hand, learned counsel to the defendant informed the court that they have a motion for extension of time dated the 16th day of March 2021 and filed on the same day. The said motion was granted as prayed.

The defendant filed a 17 paragraph affidavit dated 16/03/2021 deposed to by one Samson Ezekiel Atimary and annexure Marked as Exhibit D1 and a written address wherein learned counsel to the defendant though did not formulate any issue for determination canvassed heavily that the matter should be transferred to the general cause list. Learned counsel relied on the following authorities.

1. DR-OLADIPO MAJA Vs MR COSTA S AMOURIS (2002)FWLR (PT.98)818837,839.S.C
2. IMONIYAME HOLDING LTD &ORS Vs SONEB ENTERPRISES LIMITED & ANOR (2002)FWLR (PT 90)1445
3. HIMTERLAND RESOURCESS LTD Vs FIFTY INVESTMENT LTD (2007)ALL FWLR
4. MACAULAY Vs MR MECHANT BANK LTD
5. OKPARA Vs GUSAU (2009) ALL FWLR (PT 460) 801 (a) 803 ratio3
6. SODIPO Vs LEMMINKAINEM 01 (1986)1NWLR (PT 15)2020(a) 224.

The defendant in their affidavit disclosing a merit avers that the claimant had two investments with the Defendant in the sum of N5,000,000.00 and N15,000,000.00 respectively based on the agreement stated in A and B attached by the Claimant in his affidavit. He further stated that contrary to the claimant's position the claimant has been receiving his return of investment from the defendant as at when due until sometimes in December 2020 when the Security and Exchange Commission made it mandatory to obtain investment certificate from them before Defendant continue operation. That the Claimant's Guaranty Trust Bank

plc Account Number 0218304148 was credited six times for the return of investment in the sum of N1,000,000.00 and that the same account number has been credited the sum of N3,000,000.00 as return on investment for the N15,000,000.00. And that the defendant always calls the claimant each time return on investment is made.

At the hearing leaned, counsel to the claimant argued that the defendant in paragraph 4 of his affidavit admitted paragraph 3,4,7, and 8 of the claimants affidavit in support of his undefended list summons. And that in paragraph 4 of Exhibit D 1 which the defendant annexed, They admitted owing the claimant the sum of N4, 000,000.00 (four million naira only) he further contends that the defendant equally admitted in their averment that they are owing the claimant the sum of N20, 000,000.00 (Twenty million naira only) He further argued that as a result they are abandoning the claim of N44,000,000.00 and now claiming the sum of N24,000.000.00 Twenty four million naira.

I have considered the application before me and upon a diligent juxtaposition of the affidavit from both sides it is my humble legal view that this application raises a lone issue for determination of this Honourable court, to wit:

1. Whether the defendant in his affidavit and written address has placed before this court a defence on the merit?

On the lone issue above, the courts have given legal interpretations and judicial blessing as to what amounts to a

defence on the merit. A clear perusal of the affidavit of the claimant and defendant crystallly shows that there is a conflict on both sides see the case of **JIPREZE Vs OKUNKWO (1987)3 NWLR (PT.62)737.**

In the case of **OKOLI VS MORECAB FINANCE (NIG) LTD (2007) 14 NWLR (PT. 1053) 37 @ 65** the Supreme Court held:

“The law is settled that in an action filed under the undefended list, before the defendant’s application for a transfer of the action from the undefended list to the general list could succeed, he must present a defence to the action on the merit. It is not enough for the defendant merely to deny the claim or aver that some payments he made were not taken into account. He must set out the details and particulars of all such payments. Failure of a defendant to set out a good defence satisfactory to the trial court, his application would be considered as rightly and justifiably refused”

Again in the case of **RICHFIELD (NIG) LTD & ANOR VS TRAVEX LTD (2018) LPELR-46014(CA) Per Abdu Aboki** the Court of Appeal held:

“.....The affidavit in support of the notice of intention to defend must of necessity disclose facts which will at least throw some doubts on the case of the plaintiff, a mere general denial of the plaintiff’s claim and affidavit is devoid of any evidential value as such would not disclose any defence”

From the evidence before me both oral and documentary it is a clear that there is an agreement between the parties as evidenced in Exhibit A and B before this Honourable court.

Exhibit B particularly, which is the investment agreement between the parties dated 28th day of May stated that the agreement terminates on the 27/05/2021, which in Arimetical calculation is yet to elapse before the filing of this suit.

Paragraph 7 of the defendant affidavit alluded to this fact the age long principle of law is that parties are bound by their agreements.

It is therefore my humble legal view that this falls under the purview of matters that ought and should be adjudicated and decided on the merit; consequently this suit is transferred to the general cause list. See **NBN Vs WEIDE & CO NIG LTD (1996) 8 NWLR (PT 465) 150**

I so hold.

Appearances: Parties absent:

Christabel Ayuk for the claimant

Defendant is absent and not represented.

Ruling delivered in open court.

Signed
Hon. Presiding Judge
07/07/2021

