

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT MAITAMA ABUJA

DATE: 13TH DECEMBER, 2021
BEFORE: HON. JUSTICE M. A. NASIR
COURT NO: 5
SUIT NO: CV/2813/2020
MOTION NO: M/3507/2021

BETWEEN:

MOMODU ISIMEME JOSEPH ----- CLAIMANT
(Trading Under the name and style of
Model Law Associates)

AND

1. MR. OLUSOLA MUDASIRU
2. DR. MRS. OGHOGHO MUDASIRU ----- DEFENDANTS

RULING

Before this Court is a Motion on Notice dated the 1st April, 2021 and filed on the 17th June, 2021. The Applicant is praying this Court for the following reliefs:

“1. An order of Court entering final Judgment on admission in favour of the Claimant/Applicant in the sum of N320,000:00 (Three Hundred and Twenty Thousand

Naira only) being 40% of the sum of N800,000:00 (Eight Hundred Thousand Naira only) of Judgment sum on the grounds that the 1st and 2nd Defendants/Respondents have made an express admission of this debt in the pleadings before this Court.”

The Application is supported by 9 paragraphs affidavit deposed to by the Applicant himself. Also, attached to the application are two documents marked as exhibit's A and B respectively. Also in support is a written address wherein a sole issue was raised for determination as follows:

“Whether the Claimant/Applicant is entitled to the grant of an order for judgment on admission against the Defendants/Respondents.”

Counsel submitted on the trite position of the law that facts which have not been categorically denied in documentary evidence are deemed admitted. Counsel also submitted that where there is an admission by a party of

part of a claim of the adverse party, it is the duty of the Court to grant part of the claim admitted.

He finally submitted that in the instant case, the Defendants/Respondents have admitted being indebted to the Claimant/Applicant in the pleadings, and therefore bound by such admission. Counsel cited the following authorities:

1. Adesina vs. The Commissioner, Ifon/Ilobu Boundary Commission, Osogbo (1996)4 SCNJ, 111.
2. Ojukwu vs. Onwudiwe (1984)2 SC 15 at 88.
3. Kenfrank (Nig.) Ltd. vs. U.B.N. Plc. (2002)8 NWLR (Part 789)46.
4. Salamatu vs. Biba (1975) NWLR 176.
5. Salawu & Anor. vs. Yusuf & 2 Ors. (2007) 5 SC 38 at 60.

Upon receipt of the Motion on Notice, the Defendants/Respondents filed a Counter affidavit of 4

paragraphs on the 24th June, 2021. The Counter affidavit is deposed to by one John Danjuma, a litigation clerk in the law firm representing the Respondents. Learned counsel also filed a written address which was duly adopted.

Counsel cited the Supreme Court case of Braithwate vs. Dalhatu (2016)13 NWLR (Part 1528) page 57 Paragraphs C–E where the Court emphasized the duty of every counsel as an officer in the temple of justice not to hinder the smooth administration of justice by filing needless interlocutory applications.

Counsel finally urged the Court to dismiss the application for being frivolous and lacking in merit with cost of N100,000:00 (One Hundred Thousand Naira only).

From the affidavit evidence before the Court and the written submissions of Counsel across the divide, the only issue arising for determination is

“Whether the Claimant/Applicant is entitled to the relief sought in this application.”

Briefly, the contention of the Claimant/Applicant is that the Defendants/Respondents never at any point in time or in any manner denied engaging the Applicant as their Counsel in suit No. CV/2542/2017 between Dr. (Mrs) Oghogho Mudashiru vs. Samuel Agbolor.

The Applicant averred that the Defendants/Respondents contention in the substantive suit is that the 40% commission claimed by the Applicant is from monies “recovered” and not monies “ordered” by the Court in the same suit.

The Applicant further averred that the Defendants/Respondents have by their pleadings clearly and unequivocally admitted that the sum of N800,000:00 (Eight Hundred Thousand Naira only) has been recovered by the Claimant/Applicant. That by this admission, the

applicant is entitled to be paid 40% of N800,000:00 (Eight Hundred Thousand Naira) only which amounts to N320,000:00 (Three Hundred and Twenty Thousand Naira). That parties can proceed with trial on the remaining part of the claim.

The Defendants/Respondents vehemently denied the Claimant's entitlement to any fees claimed and alleged breach of contract, obstruction of justice, professional misconduct and fraud against the persons of the Defendant's/Respondent's.

Now, the primary objective of a summary judgment procedure is to ensure justice to a Plaintiff and minimize delay where there is obviously no defence to his claim and thus prevent the grave injustice that might occur through a protracted and immensely frivolous litigation. See: Futo vs. AMCON & Ors. (2019) LPELR - 47327 (CA).

Order 20 Rule (4) of the FCT HIGH COURT Civil Procedure Rules, 2018 provides for judgment or order upon admission of facts. The rule provides thus:

“The Court may, on application, at a pre-trial conference or at any other stage of the proceedings where admissions of a fact have been made, either on the pleadings or otherwise, make such judgment as upon such admissions a party may be entitled to, without waiting for the determination of any other question between the parties.”

It is clear that for the above provision to apply there must be an admission in the pleadings or otherwise by a party or parties to enable the Applicant apply for summary judgment. Further, even where the admission exists or is proved, the trial Court has a discretion to give judgment or grant an order as may appear just to the Court. See: NBN

Ltd. vs. Guthrie (Nig.) Ltd. & Anor. (1993) LPELR - 1952
(SC).

The Defendants/Respondents repeatedly contend in their pleadings that the 40% commission which the Claimant/Applicant is entitled to in the substantive suit is from monies recovered and not monies ordered by the Court in suit No. CV/2542/17. In fact, at paragraph 9 of the 1st and 2nd Defendant's Joint Statement of defence, the Respondents stated as follows:

9. "The 1st Defendant avers that it was however not in doubt between parties, that the payment of the 40% was on the recovered sum and it becomes due upon recovery of the judgment debt."

Now, the rule guiding judgments on admissions specifically provides that admission of fact must have been made either in the pleadings or otherwise. The rule also places much discretionary power to the trial Court to

exercise such power judicially and judiciously. Similarly, for an admission to qualify as basis for entering a judgment under the rule, it must directly and unequivocally touch upon or relate to the relief or reliefs in the matter. See: Ibacehm Ltd. vs. Visa Investment & Securities Ltd. & Anor. (2009) LPELR – 4273 (CA).

Taking the above highlighted principles into consideration, the Defendants/Respondents repeatedly denied any financial liability towards the Claimant/Applicant. Furthermore, the Defendant's/Respondent's clearly and unequivocally counter claimed that the Claimant/Applicant is not entitled to any relief sought in the statement of claim.

It is quite clear that for an Applicant to succeed for a summary judgment upon admission, there must be an unequivocal admission in the pleadings or otherwise. Therefore contrary to the claim of the Applicant herein that the Respondents had admitted expressly in their pleadings

entitling the Applicant the sum of N320,000:00 only being 40% of N800,000:00 (Eight Hundred Thousand only), what is contained therein is the denial of the claim.

The law is trite that if an application of this nature is brought for judgment on admission and there is no clear admission or where there is admission which is not specific and categorical, such application cannot be granted. See: Kenlink Holdings Ltd. & Anor.vs. Realistic Equity Investment Ltd. & Anor. (1997) LPELR 6308 (CA).

Consequently, in the absence of a clear and unequivocal admission in the pleadings of the Defendant's/Respondent's, I hold that the instant application with Motion No. M/3507/2021 lacks merit and it is hereby dismissed.

Hon. Justice M.A. Nasir

Appearances:

Ehizogie Esezobor Esq – for the claimant

A.A. Sijuwade – Peretz Esq – for the defendants