

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY,
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 7 APO, ABUJA.
BEFORE HIS LORDSHIP: HON. JUSTICE O. A. MUSA.**

SUIT No: FCT/HC/BW/125/2021

BETWEEN:

NWANGWA UZONNA

CLAIMANT/APPLICANT

AND

1. FIRST MULTIPLE MICROFINANCE BANK
2. MR. ODEH ADEKA (MANAGING DIRECTOR)
3. NENE ODUNZE
4. BABADOKA MOHAMMED

} DEFENDANTS/
RESPONDENTS

AND

1. ACCESS BANK PLC
2. ASO SAVINGS & LOANS PLC
3. Central Bank of Nigeria
4. CITIBANK NIGERIA LIMITED
5. ECOBANK OF NIGERIA PLC
6. FIDELITY BANK PLC
7. FIRST BANK PLC
8. FIRST CITY MONUMENT BANK PLC
9. GUARANTY TRUST BANK PLC
10. HERITAGE BANK PLC
11. KEYSTONE BANK PLC
12. POLARIS BANK LTD
13. STANBIC IBTC PLC
14. STANDARD CHARTERED BANK PLC
15. STERLING BANK PLC
16. SUNTRUST BANK NIGERIA LIMITED
17. UNION BANK OF AFRICA PLC
18. UNION BANK PLC
19. UNITY BANK PLC
20. WEMA BANK PLC
21. ZENITH BANK PLC

} GARNISHEES

RULING

DELIVERED ON THE 23RD FEBRUARY, 2022

This is an undefended list suit filed by the claimant against the 1st to 4th defendants. The suit was filed on the 30/3/2021 and the claimant claim against the defendants jointly and severally as follows:

1. An Order of the Honourable court setting aside the entire proceeding/hearing in this matter for lack of service of the Originating process on the 1st and 2nd Applicant.
2. An Order of the Honourable court setting aside the entire proceeding/hearing in this matter for lack of Jurisdiction.
3. An Order of the Honourable court setting aside an order of the Honourable court made on the 22nd June, 2021 for want of Jurisdiction and service.
4. An Order of the Honourable court vacating the lien placed on all the account of the applicants maintained with the Respondents Banks forthwith and pending the determination of the substantive suit.

In support of the claims, the claimant filed an affidavit of 29 paragraphs. The claimant also annexed to the affidavit several exhibits. The defendants were served with the processes and the 1st and 2nd defendants filed a notice of intention to defend on 16/11/2021. In the interim the claimant on 22/6/2021 obtained a mareva injunctions against the defendants. When the defendants were served they filed a motion on notice on 29/11/2021 seeking in the main an order of the court. Setting aside the mareva injunctions made against the 1st in defendant. The application is supported by a 17 paragraphs affidavit and in compliance with the rules of court they also filed a written address. The

claimant purported filed a counter affidavit to the motion on 15/7/2021 with a written address thereto.

When the matter come up on the 2/12/2021 counsel for the parties adopted their various process both in support of the claims under the undefended list and a notice of intention to defend. Parties also adopted their processes relating to the motion to set aside the mareva injunctions. I have carefully perused the entire gamut of the processes filed by the parties. There is before the court two applications. The first is the suit under the undefended list which this court is call upon to enter judgment summarily. The second is an application to set aside the mareva injunctions issued by this court. If this court finds merit in the claimants claim on the undefended list, it will proceed to entering judgment in it favor. If on the other hand find merit in the defense filed by the defendants in it notice of its intention to defend, then the court will transfer the matter to the general cause list. In that case, it will then give consideration to the application to set aside the mareva injunction filed by the defendants. I shall proceed to consider the matter under the undefended list. Proceeding under the undefended list is regulated by order 35 of the rules of court. Under order 35 rule I, a claimant who believes that he has a claim to recover a debt or liquidated money demand and believes that in his opinion that the defendant has no defense to his claim, may approach the court to enter judgment in his favor in what is call undefended list.

Under order 35 Rule 3(1) of the rules of court a defendant who is served with the write of summons on the undefended list shall be oblige to file a notice of his intention to defend the suit in writing together with an affidavit disclosing a defense on the merit. If the court grant leaves upon finding merit in the defense, it shall remove the matter to the

general cause list for a full plenary trial. By order 35 rule 4 where the defendant failed to file any processes, that is a notice of intention to defend together with an affidavit disclosing a defense, the court will try the matter under the undefended list and enter judgment accordingly in the instant case the 3rd and 4th defendant did not deliver to the court a notice of intention to defend and an affidavit. To my mind, they do not have any defense to the claimant's case. The claim of the claimant in this suit against the defendants is brought jointly and severally. In the light of this I enter judgment against the 3rd and 4th defendant in favor of the plaintiff.

I shall now turn my attention to the notice of intention to defend filed by the 1st and 2nd defendants to see if it discloses a defense on the merit. The object of the undefended list procedure is to enable the plaintiff whose claim is unarguable in law, when the facts are undisputed to obtain judgment expeditiously see the (2000) 8 Newly (pt 669) 349. For a defendant to deny a plaintiff from getting judgment on the undefended list, he must disclose in his notice of intention to defend a defense on the merit the court to find if such a defense has been disclosed will only look at the facts deposed in the counter affidavit and see if they can prima facie afford a defense to the action.

In this regard, the defendant need not disclose a complete defense to the claimant's claim it will be enough if the defense set up by the defendant shows that there is a triable issue or question or that for some other reason there ought to be a trial see F.M.G.N V Sani (1990) 4 NWLR (pt 147) 658. In the instant case, the 1st and 2nd defendants in their affidavit have deposed to facts indicating that there are issues which cannot be ordinarily resolved by affidavit particularly the issue of fraud. Where there is an issue of fraud raised it needs to be proved by evidence

in a full blown trial which can only be disentangle by hard core voice evidence in a witness box. to my mind, there is a friable issue raised and I have no difficulty in granting leave to the 1st and 2nd defendants to defend this suit. I therefore order that the suit of the plaintiff be removed from the undefended list to the general cause list for trial.

As I said earlier, the 1st and 2nd defendants filed an application urging this court to set aside the mareva injunctions made against them by the court. Mareva injunction is a special injunction it can be made by the court ex parte pending the determination of the suit. See *Seven Up Bottling CO Ltd Vanilla and Sons (Nig) Ltd* (1995) 3 NWLR (Pt383) 527. The purpose of a mareva injunction is to restrain a defendant and/or dealing with or removing monies standing to the credit of the defendant within the jurisdiction of the court even before judgment is entered against him. See the case of *Stamina V Ocean Steamship (Nig) Ltd* (1992) 5 NWLR (Pt239) 1.1 with the rules of fair hearing the order of mareva injunction should not be made ex parte as it infringes on the right of the other party. In whatever way it is look at a mareva injunction is an interlocutory injunction pending the determination of a suit. Due to its very draconian nature it cannot take life ex parte, it must of necessity be in place when granted ex parte pending the determination of motion on notice.

Where no such motion is file or serve on the defendant and the order of mareva injunction at the ex parte stage is made to last until the final determination of the suit, it certainly will amount to a breach of the defendant fundamental right to fair hearing see the cases of *extraction system and commodity services ltd Nigel merchant bank Ltd* (2005) 7 NWLR (pt924) 215; *Akapo V Hakeem-Habeeb* (1992) 6 NWLR (Pt247) 266 and *Sotuminu V Ocean Steamship (Nig) Ltd* (1992) 5 NWLR

(pt239)1. A court faced with such dilemma should not hesitate to discharge such order as to keep same will work in contradiction of the guaranteed constitutional right of fair hearing. In the instant case the order of mareva injunction was made exporter. It was made to last to the determination of the plaintiff's case. It was not made subject to the determination of a motion on notice. Infacts the plaintiff did not file any motion on notice for a mareva injunction.

On the whole, hence am certified with the authorities and decision cited above by counsel I hold that in the interest of fair hearing and justice, this suit be and it's hereby transferred to the general cause list for hearing on its merit. I so hold.

APPEARANCE

L. K. Onyempa Esq. for the Claimant.

A. P. Samson Esq. for the 1st & 2nd Defendants.

Sign
Hon. Judge
22/02/2022