

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. 14

CASE NUMBER : SUIT NO: CV/3116/2021

DATE: : WEDNESDAY 13TH APRIL, 2022

BETWEEN:

AYEYE VICTOR MAKANJUOLA..... CLAIMANT

AND

AKINTAYO ADARALEGBE
DEFENDANT

RULING

The Plaintiff initiated this Suit vide a Writ of Summons filed under Undefended List Procedure Pursuant to Order 35 Rule 3 of the Rules of this Honourable Court. The said Writ was marked undefended on the 18th of November, 2021 and 26th of January, 2022, was fixed as a returned date for hearing.

From the endorsement on the Writ, the claim of the Plaintiff against the Defendant are as follows:-

1. sum of N12,000,000.00 (Twelve Million Naira) being an outstanding balance of Defendant's indebtedness to the Claimant out of a total indebtedness of N22,000,000.00 (Twenty Two Million Naira) via a Zenith Bank Cheque dated 28th day of June, 2021, which sum the Defendant

has refused, neglected and failed to pay despite repeated demands.

2. 17% interest from November, 2021 until Judgment is delivered and 10% interest until Judgment sum is liquidated.

The case of the Plaintiff as distilled from the affidavit in support of the Writ which was deposed to by Ayeye Victor Makanjuola, the Plaintiff, is that a Tripartite Terms of Settlement Agreement was entered into in April, 2021.

A Tripartite Terms of Settlement Agreement was entered into in April, 2021, between Architrax Consult Nigeria Limited, Ayeye Victor Makanjuola and Intermediate Chemical Production Limited. The terms of Settlement Agreement is hereby attached and marked as Exhibit “A”.

That by the Terms of Settlement Agreement the Defendant agreed to pay a total sum of N67,000,000 (Six Seven Million Naira) for the transfer of interest in respect of CRD PS/SS measuring about 3.0 hectares located at Lugbe 1 Extension, Lugbe, Abuja to be paid in two installment of N45,000,000 (Forty Five Million Naira) and N22,000,000 (Twenty Two Million Naira) to Claimant.

The Defendant paid N45,000,000.00 (Forty Five Million Naira) as first installment and gave the Claimant a Zenith Bank postdated cheque of N22,000,000.00 (Twenty Two Million Naira) dated 28th day of June, 2021 as 2nd installment and to be presented for cashing at the bank on the due date. The Zenith Bank postdated cheque is hereby attached and marked as Exhibit “B”.

After the due date of the Zenith Bank cheque, the Plaintiff made demand on the Defendant on several occasion to pay same via telephone calls, text messages and whatsapp messages, but the Defendant became evasive, uncooperative and neglected, refused and failed to pay same. The text messages and whatsapp are hereby attached and marked as Exhibit “C”.

That when all effort by Plaintiff to make the Defendant pay the outstanding balance proved abortive, the Plaintiff paid the cheque into his account and was informed/notified that there was no sufficient fund in the account.

That after the bank informed him that there was no sufficient fund in the Defendant’s account, he then

briefed the law firm of Gabriel Esegine & Co. to take up the matter and recover the outstanding balance.

On 5th August, 2021, Plaintiff's counsel, wrote a letter of demand notice to the Defendant to pay the outstanding balance. Plaintiff's Counsel Letter of demand dated 5th August, 2021 was attached and marked Exhibit "D".

That after Plaintiff's Counsel wrote the demand letter to the Defendant, the Defendant's counsel wrote a reply letter to his Counsel admitting the Defendant's indebtedness of N22,000,000 (Twenty Two Million Naira) to the Claimant. The Defendant's Counsel Letter dated 11th August, 2021 was attached and marked Exhibit "E"

On 17th August, 2021, Plaintiff's Counsel wrote a reply to the Defendant's Counsel letter reiterating

his earlier demand for the outstanding payment of N22,000,000 (Twenty Two Million Naira). Claimant's Counsel Letter dated 17th August, 2021 was attached and marked as Exhibit "F".

After Plaintiff's Counsel Letter dated 17th August, 2021, the Defendant made a part payment of N10,000,000 (Ten Million Naira) out of the balance of N22,000,000 (Twenty Two Million Naira) leaving an outstanding balance of N12,000,000 (Twelve Million Naira) in flagrant breach of the agreement to pay in two installment of N45,000,000.00 (Forty-Five Million Naira) and N22,000,000 (Twenty-Two Million Naira).

The Claimant and his Counsel have made several demands on the Defendant to pay the outstanding balance of N12,000,000 (Twelve Million Naira) but

the Defendant had refused, neglected and failed to pay same. The Claimant's Counsel Letter dated 25th October, 2021 was attached and marked Exhibit "G".

That Plaintiff know as a fact that the Defendant has the means to pay the outstanding balance of N12,000,000.00 (Twelve Million Naira) but deliberately and willfully refused to pay Plaintiff.

That Plaintiff has suffered untold hardship, loss of earnings, loss of profit coupled with psychological and emotional trauma as a result of the Defendant willful refusal to pay me the outstanding balance of N12,000,000 (Twelve Million Naira).

That the Defendant will not in any way be prejudiced should this application be granted.

That it will best serve the interest of justice to grant this application.

The Defendant upon service, filed its Defendant's Notice of Intention to Defend:

The Defendant's Notice of Intention to Defend was brought on the following grounds:-

1. That the Claimant's claim is premise on Exhibit "A" and the Defendant is not party to the said Exhibit "A".
2. That the Claimant's claims are untrue, misconceived and misleading.
3. That the Defendant never entered into an agreement with the Claimant.
4. That the Defendant is not indebted to the Claimant in any way to the sum of

N12,000,000(Twelve Million Naira) or any sum being claimed.

5. That the Claimant has misrepresented material facts to this Honourable Court.
6. That the Claimant's Suit is brought mala-fide against the Defendant.

In support of the Notice of Intention to Defend is a 23 paragraph affidavit deposed to by Mana B. Phar., a legal practitioner in the law firm of Counsel to the Defendant in this Suit.

It is the averment of the Defendant, that the Claimant has not disclosed any reasonable cause of action in that the Claimant has not alleged any fact sufficient enough to support his claims or link the Defendant to his claim to the extent that the

Claimant was not a party to the Tripartite agreement (Exhibit “A”) relied upon by the Claimant.

That paragraphs 4, 5, 6, 7 – 18 of the Claimant’s affidavit are false.

That the Claimant has declined, nor shown any interest in complying with the demands of Intermediate Chemical Production Limited.

That the Defendant is not indebted to the Claimant in any way to the sum of N12,000,000 (Twelve Million Naira) being claimed or constituted.

That the Defendant will be greatly prejudiced if this application is allowed, and it is in the interest of justice that this application is refused.

Accordingly, written address in support of Defendant’s Notice of Intention to defend was filed;

wherein; sole issue was formulated for determination to-wit;

Whether the Claimant is entitled to the reliefs sought under the undefended list.

It is the submission of learned counsel, that the Claimant misled this Honourable Court, by alleging on oath, that the Defendant is indebted to him to the tune of claimed by him in his affidavit when in actual fact the Defendant is not in any way indebted to the Claimant of the said sum alleged in his affidavit.

It is further the submission of learned counsel, that the Claimant has equally failed to prove on the face of its Writ and Affidavit on oath, that the Defendant owes him the alleged sum of the N12,000,000 (Twelve Million Naira) only. The Claimant's claim

cannot therefore be said to be a liquidated money demand. It is not enough for the Claimant to allege that the Defendant is owing, the onus is on the Claimant to prove same via exhibits as the case may be.

Learned counsel also submits, that a liquidated money demand has been identified in plethora of judicial authorities to be an ascertainable sum, which is without dispute or contradiction as to the amount owed.

MAJA VS. SAMOURIG (2002) FWLR (Pt. 98) 818 SC.;

ABAYOMI VS. ATTORNEY GENERAL OF ONDO STATE (2007) ALL FWLR (391) 1683 at 1694, were cited.

Learned counsel submits, that it is settled law that where a Defendant files a Notice of Intention to defend a Suit instituted in the Undefended List, and shows that he has a defence on the merit, the Court shall transfer such a matter to the General or Ordinary Cause List and end the summary Judgment proceedings. Order 35 Rule 3(1)&(2) of the High Court of the Federal Capital Territory Abuja (Civil Procedure) Rules 2018 was cited.

Learned counsel concludes by urging this Honourable Court to strike out this instant suit or remove this action from the undefended list and place same on the general cause list.

COURT:

I have read and assimilated the Writ of Summons brought by the Plaintiff Pursuant to Order 35 Rule 3

of the Rules of this Honourable Court and duly marked undefended by this Court on the 18th of November, 2021 on one hand and the Notice of Intention to defend the action on the other hand.

Indeed, undefended list 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 SC1.

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 discloses no defence shall certainly not sway the Court into transferring the matter to general cause list for trial.

Simply put, the Defendant's affidavit must condescend upon particulars and should as much as possible, deal specifically with the Plaintiff's affidavit and state concisely what the defence is, and what facts and documents 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. JARGABA (Supra).

It is the law that for a claim to be heard under the undefended list, it must firstly be for a liquidated money demand, including account stated to cognizable under the undefended list procedure thus excluding for e.g. unliquidated damages as in claim in torts and special damages arising from any cause of action as they must be specially pleaded and proved.

Secondly, the claim for a debt or liquidated money demand must be supported by an affidavit verifying the claim; and thirdly, the affidavit must contain a

deposition to that effect that in the belief of Plaintiff, Defendant does not have any defence to the claim.

ASTC VS. QUORUM CONSORTION (2009) 9 NWLR (Pt. 1145).

It is worthy of note, that the Defendants upon been served with the Plaintiff's Writ under undefended list, filed their Notice of Intention to defend this action with affidavit in line with the provisions of Order 35 of the Rules of this Honourable Court.

It is the affidavit of the Defendant that he is not indebted to the Claimant in any way to the sum of N12,000,000 (Twelve Million Naira) being claimed. And the Claimant has no legal right to institute the instant suit against the Defendant, he has failed to disclose a reasonable cause of action; the instrument

leading to this suit was executed between Claimant and a different party other than the Defendant.

It is instructive to note, that the Claimant relied on the terms of settlement agreement, the Zenith Bank postdated cheque, Letter of demand dated 5th August, 2021, the Defendant's counsel letter dated 11th August, 2021, Claimant's Counsel letter dated 17th August, 2021 and Claimant's Counsel Letter dated 25th October, 2021 to maintain his position.

The general rule is that where the parties have embodied the terms of their agreement or contract in a written document as it was done in this case, extrinsic evidence is not admissible to add or vary, subtract from or contradict the terms of the written instrument.

***LAGARDE VS. PANAPINA WORD TRANSPORT
NIG. LTD. (1996) 6 NWLR (Pt. 456) 544.***

The law is trite regarding the bindingness of terms of agreement on parties. Where parties enter into an agreement in writing, they are bound by the terms thereof.

No Court will allow anything to be read into such agreement, terms on which the parties were not in agreement or were not ad-idem.

***LARMIE VS. DATE PROCESSING
MAINTENANCE & SERVICES (D.P.M) LTD.
(2005) 12 SC. (Pt. 1) 93 at 103.***

In deciding the terms of contract or what was agreed by the parties, it is always better to look at all the documents passing between the parties and glean from them or from the conduct of the parties

whether they were ad-idem on all material points or how they expected their relationship to be maintained.

***DIAMOND BANK PLC. VS. UGOCHUKWU
(2008)1 NWLR (Pt. 1067) 1 at Pages 23 – 24
Paragraphs H – A.***

I shall now beam my searchlight on the Terms of Settlement Agreement in arriving at a fair and just conclusion.

Page 4 of the Terms of Settlement Agreement between the parties is hereby reproduced for ease of reference.

***“2. In pursuance of this agreement and settlement
of the consideration of the sum of N67,000,000
(Sixty Seven Million Naira) only paid to
PARTY B by PARTY C to cover for all the***

vested legal or equitable interests, cost and expenses made by PARTY B on the property known as CRD/PS/SS, measuring approximately 3.0HA, within Lugbe 1 Extension, Lugbe in Abuja in two installments of N45,000,000 (Forty Five Million Naira) payment and a postdated cheque of N22,000,000 (Twenty-Two Million Naira) for the 28th day of June, 2021. Receipt of which the PARTY B acknowledges.

- 3. The PARTY B has agreed to leave the Plot of land described above in dispute and agreed that PARTY C pay him the above referred compensation described in paragraph 2 above for the development made on the said Plot of land in dispute.*

4. *That PARTY C has agreed to pay the sum N67,000,000.00 (Sixty Seven Million Naira) only to PARTY B on the Plot of land and property known as CRD PS/SS, measuring approximately 3.0 Hectares, within Lugbe 1 Extension, Lugbe in Abuja to PARTY B on solely to compensate for PARTY B's development on the land other incidental fees, levies and costs incurred on the said land and for peace to reign.*

5. *That PARTY A and PARTY B agree to allow PARTY C to enjoy peaceful and quiet possession of his land described above and undertake to vacate Plots of land described above with no intentions of returning to the said Plots of land.”*

From the above, it has crystallized that the Defendant did not comply with the terms of settlement agreement based on the affidavit evidence before me.

A party who benefits from a given state of affairs, like the Defendant in this case must not be allowed to shirk from its obligations.

The Defendant gave a postdated Zenith Bank Cheque of N22,000,000 (Twenty Two Million Naira) dated 28th day of June, 2021, as second installment but the Plaintiff paid the cheque into his account only to be informed that there was no sufficient fund in the Defendant's account.

The Defendant was initially refusing to make said payment until after series of correspondence between both parties, vide a letter dated 17th August,

2021, the Defendant made a part payment of N10,000,000 (Ten Million Naira) out of the balance of N22,000,000 (Twenty Two Million Naira) leaving an outstanding balance of N12,000,000 (Twelve Million Naira) in flagrant breach of the agreement to pay in two installments of N45,000,000.00 (Forty Five Million Naira) and N22,000,000.00 (Twenty Two Million Naira). All efforts to demand for the outstanding N12,000,000.00 (Twelve Million Naira) has proved abortive as the Defendant has simply refused to pay.

Indeed, a Defendant who has no credible defence to Plaintiff's claim, shall not be given opportunity to cheat the Plaintiff out of Judgment.

The Court is neither a wish granting factory nor a playground for professional rascality... undefended

list is a procedure founded in law, conscience, together with hard facts and materials.

I have perused the Tripartite Terms of Settlement Agreement alongside all other exhibits therein, particularly page 4 of the Agreement, Exhibits “D”, “E”, “F” and “G”. It is clearly a liquidated money demand and as such, shows no triable issues here. The Defendant in his Notice of Intention to defend has shown no credible reason nor led evidence before this Court in his defence.

Consequently, by virtue of Order 35 Rule 4 of the High Court Civil Procedure Rules, 2018, I hereby enter Judgment in favour of the Plaintiff in the sum of N12,000,000.00 (Twelve Million Naira) being outstanding balance of Defendant’s indebtedness to the Claimant out of a total indebtedness of

N22,000,000.00 Twenty Two Million Naira) via a Zenith Bank Cheque dated 28th day of June, 2021, which sum the Defendant has refused and failed to pay despite repeated demands.

Next, is interest pre-judgment interest.

Generally, a claim for interest under the Undefended List being the same principles as in a Claim under the general cause list, Plaintiff shall produce evidence whereof it was agreed in the course of the transaction that interest shall be contemplated for same to be determined under Order 35 of the Rules of this Court. I have not seen such... I shall therefore urge Claimant to lead such evidence in claim for interest at a later time and date and in a different suit.

I make no Order as to the issue of the unanticipated claim for interest. This is my ruling.

Justice Y. Halilu
Hon. Judge
13th April, 2022

APPEARANCES

Evelyn C. Nwibo, Esq. – for the Claimant.

A.A Ugboha, Esq. – for the Defendant.