

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT GUDU - ABUJA

ON THURSDAY THE 28TH DAY OF APRIL 2022.

BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE OSHO -ADEBIYI

SUIT NO. CV/2607/2021

NEW SKIES SATELLITE ----- CLAIMANT/APPLICANT

B.V. NETHERLANDS

AND

1. ASWANI NETWORKS LIMITED

2. MR. RAVI ASWANI ----- DEFENDANTS/RESPONDENTS

RULING

By a motion dated 27/9/21 with No. M/6562/21 but filed on 28/9/21 by Claimant/Applicant brought pursuant to Order 11 Rule (1) and Order 20 Rule 4 of the Rules of this Court seeking the following reliefs: -

1. AN ORDER of this Honourable Court entering Final Judgment in the sum of \$400, 000.00 (Four Hundred Thousand United States Dollars) on the ground that the Defendants/Respondents do not have a defence to this suit.

AND/OR in the alternative:

2. AN ORDER entering Judgment on admission in the sum of \$400, 000.00 (Four Hundred Thousand United States Dollars) on the grounds that the 1st and 2nd Defendant have expressly admitted owing the Claimant in the sum of \$400, 000.00 (Four Hundred Thousand United States Dollars).

3. AND FOR SUCH FURTHER ORDERS as this Honourable Court may deem fit to make in the circumstances of this case.

In support of the Motion is an affidavit of 25 Paragraph deposed to by Omodele Omopariola, an International Claims Executive in the Law firm of Messrs; Esezobor & Partners, Counsel to the Claimant with Exhibits attached. Also filed a further affidavit of 28 paragraphs dated 29/3/2022 deposed to by Adenike Ogunjenyo and a reply on points of law. Also filed a Written Address and adopts the said Address in urging the court to grant the application. The content of the supporting affidavit is essentially that a Masters Services Agreement and Service Orders 026722-0400 and 026722-0500 was entered into by and between the Claimant and the 1st Defendant on the 28th of June, 2012 and the 18th of March, 2014 respectively. That based on the Agreements, the 2nd Defendant issued an UNRESTRICTED PERSONAL GUARANTY dated June 30, 2014 for the amount of \$617,286.60 (Six Hundred and Seventeen Thousand, Two Hundred and Eighty-Six United States Dollars, Six Cents) in favour of the Claimant with respect to the outstanding invoices for services provided by the Claimant to the 1st Defendant. That in the UNRESTRICTED PERSONAL GUARANTY, the 2nd Defendant agreed to be held liable in the event that the 1st Defendant fails to fulfil any of its obligations set forth in the Agreements. That the UNRESTRICTED PERSONAL GUARANTY issued by the 2nd Defendant was invoked following the failure of the 1st Defendant to pay the sum of \$617,286.60 (Six Hundred and Seventeen Thousand, Two Hundred and Eighty-Six United States Dollars, Six Cents) due and owed to the Claimant for the satellite services rendered by the Claimant. That the 2nd Defendant paid the sum of \$200,000.00 (Two Hundred Thousand United States Dollars) towards the Guarantee, leaving a balance of \$400, 000.00 (Four Hundred Thousand United States Dollars) with a payment plan that the \$400, 000.00 (Four Hundred Thousand United States Dollars) will be paid in the following manner, \$50,000.00 (Fifty Thousand Dollars) monthly from March, 2019

to October, 2019 and then \$150,000.00 (One Hundred and Fifty Thousand Dollars) in March, 2020. That due to non-compliance of the Defendants MESSRS ESEZOBOR & PARTNERS solicitors to the Claimant sent demand letters via email to the Defendants. That the Claimant's Solicitors were in communication with the 2nd Defendant via several phone calls and email correspondences wherein the 2nd Defendant further admitted to the indebtedness and requested for more time to liquidate the outstanding debts owed to the Claimant. That the Law firm of Esezobor & Partners again sent a letter of final demand to the 2nd Defendant, demanding for the liquidation of the balance sum failing which the Claimant shall seek redress before this Honourable Court. That upon receipt of the Statutory Demand/ Memorandum of Claim, the 2nd Defendant was given Twenty-One (21) days after receipt of the final demand (as communicated therein) to offset all outstanding balances owed to the Claimant, and the Defendants have still failed to comply with the final demand by failing/refusing to offset their debts. That till date the Defendants have remained uncooperative, neglected and/or refused to pay the Claimant the debt owed. That the Defendants have admitted to owing these debts and do not have a defence to this suit. And in its further affidavit Claimant vehemently denies paragraphs 4 to 29 of the Defendants counter affidavit as they are not a complete representation of the actual facts of this case.

In the Written Address of Claimant/Applicant only (1) issue was submitted for determination and that is;

“Whether in the circumstances of this case, the Claimant/Applicant is entitled to the grant of the prayers sought in the motion paper”.

Learned counsel submitted that it is trite that in an action at the High Court with respect to debt where the Claimant believes that there is no defence to his claim, he can bring an application for Summary Judgment stating the grounds of his belief and the Judge may thereupon enter Judgment for the Claimant. Summary judgment is given in favour of a party without recourse to full trial of the action in straightforward cases

where the Defendant obviously has no defence to the action. See: **SODIPO V. LEMMINKAINEN (1986) 1 NWLR 20; MACGREGOR ASSOCIATES V. NMB (1996) 2SCNJ 72.** That Summary Judgment procedures are designed to relieve the Courts of the rigor of pleadings and burden of hearing tedious evidence on sham defences mounted by Defendants who have no defence but are only determined to dribble and cheat the Claimant out of reliefs that would normally accrue to them. See: **UBA V. JARGABA (2007) 43 WRN 1 SC, UTC V. PATMOTEI (1989) 3 SCNJ 79, NBN LTD V. SAVOL WEST AFRICAN LTD (1994) 3 NWLR PT 333, 435 and MACAULAY V. NAL MERCHANT BANK (1990) 4 NWLR PT 144, 283.** Counsel submitted that from the facts of the present case, affidavits in support of this application and the exhibits annexed thereto, the Claimant/Applicant has clearly shown that the Defendants/Respondents has no defence to the suit and urged this Honourable Court to so hold. In conclusion counsel submitted that the Claimant/Applicant have a straightforward case as the Claimant/Applicant has fulfilled the condition precedent to the grant of an order for Summary Judgment and Judgment on admission. Consequently, counsel urged this Court in the interest of justice, to grant the prayer sought by the Claimant/Applicant by entering final Judgment in favour of the Claimant/Applicant.

On their reply on points of law, counsel submitted that the Defendants/Respondents failure to specifically deny the Claimant's averments will draw this Honourable court to the irresistible conclusion that the claimant's facts not being expressly denied are deemed admitted and urged the court to hold so and grant the claimant's prayers as sought. Counsel submitted that the Defendants have not disclosed any defence in its counter affidavit as a mere intention to defend without an actual defence on the merit will not entitle the Respondents to be granted leave to defend suit. He cited **PAN ATLANTIC SHIPPING & TRANSPORT AGENCIES LTD VS. RHEIN MASS UND SEE SCHIFFARTS KONTOR GMBN (1997) SCNJ 88 and UTC (NIG) LTD V.**

PAMOTEI (1982) 2 NWLR (PT 103) 244. Counsel further submitted that mere general denial of claim is not a sufficient ground for a defendant to be granted leave to defend. He cited **COTIA COMMERCIO EXPORTACCO E. IMPORTACCO S. A. V. SANUSI BROTHERS (NIG) LTD (2000) SCNJ 453; NISHIZAWA LTD V. JETHWANI (1984) 12 SC 234.** Counsel submitted that the Respondents are not entitled to be granted leave to defend this suit and urged this Honourable court to enter judgment for the Applicant.

In response, Defendant filed a counter-affidavit of 29 Paragraph on 23/3/2022 deposed to by Ravi Aswani, the 2nd Defendant with exhibits attached. Also filed a Written Address and adopts it in urging the court to dismiss the application. The crux of the defendants opposition as averred in their counter affidavit is that relationship between the claimant and the 1st defendant commenced from June 2012, when the subsidiary company to the defendant, Map Infotel (Nigeria) Limited, wrote a letter captioned 'CHANGE OF CONTRACT NAME', in which it informed the claimant that the VSAT activities of Map Infotel (Nigeria) Limited was taken over by the 1st defendant, which takeover included the ownership of VSAT equipment called "Shiron HUB, then in the custody of the claimant at Woodbine, Mt. Airy, USA. That the defendants deny any liability for payment of the sum of \$617,28660 and contend that the demand was based on a contract whose consideration has failed. That the claimant had no right to "invoke" against the 1st defendant as the consideration for the said right under the personal guarantee failed, as from 15th April, 2015, when the claimant served notice on the 1st defendant concerning immediate cessation of transmission to the satellite and making a payment of US\$91 1,053.80. he further averred that assuming the sum of US\$911,053.80 did indeed accrue from the 1st defendant to claimant, from June 2013 through to April 2015, but without admitting any liability for payment of the said outstanding sum, the defendants contend that the claimant had failed to provide the 1st defendant the services that the 1st defendant had contracted,

particularly from June 2013 to December 2013, during which it billed the 1stdefendant the sums ofUS\$52,494.01 (25/06/13),US\$52,494.01 (25/06/13), US\$52,494.01 (25/06/13), US\$52,494.01 (31/08/13) and US\$52,494.01 (09/30/13), totaling US\$262,470.05, which amount the 1stdefendant avers that the claimant did not provide the consideration for, in terms of services. That the down time was caused by the claimant, for refusing to secure the VSAT services it rendered to the 1stdefendant (i.e, denying the defendant to use private IPS in its HUB at the initial stage, as against the claimant's public IPs, until the services were attached, which disrupted the services rendered to the 1stdefendant), resulting in hamperingthe ability of the 1stdefendant to provide quality VSAT services to its customers. That the down time caused by the claimant constitutes a breach of condition of contract for the VSAT services that the 1stdefendant had contracted from the claimant. That the termination of the Master Service Agreement by the claimant constitutes a wrongful termination as against the 1stdefendant and that the guarantee sought to be enforced by the claimant cannot be enforced through the court of law in Nigeria same being illegal.

In the Written Address of Defendants/Respondents a sole issue was submitted for determination to wit;

“Whether in the circumstances of this case, the applicant is entitled to the grant of the prayers sought in the motion paper”.

Learned counsel submitted that the Respondents have fulfilled the conditions provided in **Order 11 Rule 4 (a-e) of the Rules of this Court** by filing each and every document listed from (a) to (e) and that pursuant to this, they are entitled to the powers of court vested in **Order 11 Rule 5 (l) of the Rules of this Court** which is an order granting the Respondents the leave to defend the suit by the claimant, thereby dismissing the application of the said claimant. Counsel submitted that the case of **Sodipo v. Lemminkainen (1986) INWLR 20; MacGregor Associates v. NME (1996) 2SCNJ 72**, which the Applicant has cited can only avail the Applicant where there is no defence on the part of a Defendant. Also,

that the case of **UBA v. Jagaba (2007)** and **UTC v. Patmotei (1989) 3 SCNJ 79** do not avail the Applicant. Counsel further submitted that in view of the reasonable defence put forward to the action against the Respondents by the Claimant the case of **Macaulay v. NAL Merchant Bank (1990) 4 NWLR PT 144, 283** is not of help to the case of the Applicant herein. In conclusion counsel submitted that the Applicant is not entitled to the prayers on its motion papers and therefore pray the Honourable court to dismiss the application for summary judgment against the Respondents and grant the Respondents the opportunity to defend the action against them by the Claimant as doing so will not only be in the interest of justice, but a recognition and an application by this Honourable court of the constitutional rights of fair hearing, as enshrined in the **1999 Constitution of the Federal Republic of Nigeria (as amended)**. Cited **Section 36 (1) of the Constitution of the Federal Republic of Nigeria** and the case of **Akile v. Director-General SSS (2014) 2NWLR (Pt. 1392) 443 CA**.

First and foremost, the Claimant/Applicant while moving its motion raised issues that the defendants had filed an application seeking extension of time to file their defence and counter affidavit to motion for summary judgment. That both processes were attached as proposed copies and that there was no deeming order. Counsel further submitted that the counter affidavit served on them is substantially different from the proposed counter affidavit attached to the Defendants/Respondents motion for extension of time to file their defence and counter affidavit to the motion for summary judgment and urged the court to expunge same.

Firstly, deeming orders are necessary where the said process for which leave to file is sought has already been filed and served on the other party without the leave of court. In this instance the said counter affidavit and statement of defence was filed and served on the Claimant/Applicant after the Defendants/Respondents had obtained the leave of court, hence there was no need for a deeming order. Secondly, I

cannot see how the said counter affidavit difference to the proposed copy attached to the motion for extension of time prejudiced the Claimant in any way. The said filed counter affidavit was served on the Claimant on 23/3/2022 and the Claimant has filed a further affidavit and a reply on points of law in reaction to the counter affidavit thereby acknowledging the counter affidavit. A party who responds to an irregular process cannot allege noncompliance. See **COOPERATIVE & COMMERCE BANK NIG. PLC V. A/G ANAMBRA (1992) 8 NWLR Pt. 261 Pg. 528 @ 554 Para. C-G Per Karibi-Whyte JSC** where the court held that a party who responds to an irregular process but turns around to allege non-compliance of the same process with the rules of court is deemed to have taken fresh steps in the proceedings after he became aware of the non-compliance complained of. He is therefore prevented from raising the alleged non-compliance.

Moreover, the summary judgment procedure is a very delicate procedure where parties at this stage ought to be given fair hearing. It would have been a different scenario if the Defendant failed to file a counter affidavit. Defendant in this case has filed a counter affidavit and the general principle of law is that all application in the court file must be heard as it is only equitable to give all parties the opportunity to be heard before a decision is given. Considering the delicate nature of a summary Judgment procedure, it is only logical to invoke the principle of fair hearing as enshrined in the constitution which demands that all parties be heard and any breach of the principle of fair hearing will nullify the proceedings. Although rules of court are made to be obeyed, non-compliance will not be tolerated by the courts except if as in this case non compliance is minimal.

I have carefully considered the submission of both counsel for and against the grant of this application, the authorities cited and Exhibits annexed and finds that only (1) issue calls for determination and that is:

“Whether the Claimant/Applicant have made out a case to warrant the court to enter summary judgment in their favour”.

Order 11 of the Rules of this Court makes Provision for summary judgment procedure. Its purpose is for disposal of cases which are virtually uncontestable and it applies to cases where there can be no reasonable doubt that a Plaintiff is entitled to judgment and where it is inexpedient to allow the Defendant to defend for mere purpose of delay. It is for plain and straight forward matters, not for the devious and crafty cases as held in **Lewis Vs UBA Plc (2016) LPELR - 40661 (SC)**. In an application for summary judgment, as in the instant, the Claimant must state in his affidavit in support of his application facts and beliefs that the Defendant has no defence to the claim and the grounds for his belief, **Order 11 Rule 1 of the Rules of Court**. And when a Claimant applies for summary judgment, the burden is on the Defendant to satisfy the court that he has a good defence or to disclose other facts entitling him to defence and when it appears to court that the Defendant has a good defence and ought to be permitted to defend, may grant leave to Defendant to defend the suit. See **DAVE EGBEJULE (T/A DEVKON VENTURES) & ANOR v. FORTHRIGHT SECURITES AND INVESTMENT LIMITED (2017) LPELR-43540(CA)**. What the court looks for when determining whether or not to grant leave to defend a suit are facts which raise triable issues and it is not necessary for the trial judge to consider whether the defence has been proved, the merit of the defence would be determined at the substantive trial. See the case of **DAVE EGBEJULE (T/A DEVKON VENTURES) & ANOR v. FORTHRIGHT SECURITES AND INVESTMENT LIMITED (Supra)**.

In this instant case, the Claimant/Applicant is seeking the Order of court to place the Writ of Summons and other court processes under summary judgment and enter final judgment against the Defendants and deposed to facts that the Defendant has no defence to their claim and also attached 5 Annexures as Exhibits in support of their claim against the Defendants. The Defendants has by their affidavit denied the claim of the Claimant/Applicant and have gone ahead with leave of court to file Joint Statement of Defence and Counter Claim.

I have critically perused the facts as stated in the affidavit evidence of Claimant/Applicant and the attached annexures in their application for summary judgment in relation to the facts as stated by the Defendants/Respondents and I am of the firm view that the Defendants/Respondents by the affidavit evidence has disclosed triable issues requiring this suit to be heard on the merit. The facts as stated by Claimant/Applicant and Defendants/Respondents and their documents annexed as Exhibits require explanation on the part of both parties and this cannot be achieved except evidence is called. Issues raised by the Defendants are such that this court would not be able to evaluate at this substantive stage. It is on this basis I shall exercise my discretion in favour of Defendants/Respondents by granting Defendants/Respondents leave to defend this suit and in consequence dismiss the application of Claimant/Applicant for summary judgment. It is hereby ordered that this suit be placed on the general cause list.

Parties: Absent

Appearances: Stephanie O. Oboh appearing with V. I. Tee for the Claimant. Ahmed Maiwade appearing with Ikeazo Igbokwe for the Defendants.

HON. JUSTICE M. OSHO-ADEBIYI
JUDGE
28TH APRIL, 2022

