

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 20 WUSE ZONE 2, ABUJA
BEFORE HIS LORDSHIP: HON JUSTICE A. S. ADEPOJU.

ON THE 22ND DAY OF JANUARY, 2021

SUIT NO: FCT/HC/CV/46/2019

BETWEEN:

BIORESOURCES DEVELOPMENT-----CLAIMANT
GROUP LTD.

AND

- | | | |
|---|---|-----------------|
| 1. BRICKE & ATHENS LTD.
2. AHTU LIMITED.
3. TELECOM SATELLITES LIMITED.
4. BRIGHT IFECHUKWU ECHEFU . | } |DEFENDANTS |
|---|---|-----------------|

U.I. IGWENEME for the claimant appears with A.E. ADEYEYE.
Defendant is not in Court and not represented.

Counsel:- We ensured that hearing notice against today was served on them.

JUDGMENT

The plaintiff's claim is for a liquidated money demand. And in an application for summary judgment accompanying the writ of summons dated 17th October, 2019 brought pursuant to the provisions of Order 11, Rule 48 of the FCT High Court Civil Procedure Rules 2018, the plaintiff seeks for the following;

- a. The Immediate refund of the outstanding balance of the sum of **=N=50,000,000(Fifty Million Naira)** remaining unpaid on the sum of **=N=100,000,000(One Hundred Million Naira)** which the claimant invested in the **AHTY Project** of the 1st to 3rd defendants at the instance of the 4th defendant.
- b. Pursuant to clause 48 the Termination Agreement executed on 3rd August, 2017, the payment of interest at the prevailing bank rate of **13.5%** per annum on the said outstanding balance of **=N=50,000,000(Fifty Million Naira)** from 3rd September 2017 the agreed due date for its payment till the date of Judgment in this suit.
- c. Pursuant to clause 48 the Termination Agreement executed on 3rd August 2017, the payment of interest on the first installment repayment of **=N=48,000,000(Forty Eight Million Naira)** at the prevailing bank rate of **13.5% from 4th August, 2017**, the agreed due date for the repayment of the said sum, till **14th April 2018** when the sum was eventually fully paid to the claimant.
- d. **=N=5,000,000(Five Million Naira)** only, representing **10%** of the outstanding **=N=50,000,000(Fifty Million Naira)** unpaid investment fund, incurred by the claimant as the cost of maintaining this suit.
- e. **10% interest** on the total judgment sum from the date of judgment till its liquidation.

The application is supported by a 31 paragraph affidavit of one Chinyere Douglas the Director of Administration of the claimant. The plaintiff's case as stated in the affidavit is that on

or about 26th day of October, 2015, it invested the sum of **=N=100,000,000(One Hundred Million Naira)** in the **African Health Television(AHTV)** Project of the 1st and 2nd defendants. A copy of the Investor Agreement was annexed as **Exhibit BDG1**.The claimant also agreed with the defendants for a refund of its **=N=100,000,000(One Hundred Million Naira)** investment on the terms, conditions and repayment Schedule set out in an investment Termination Agreement executed by the parties on 3rd August 2017. A copy of the Termination Agreement was annexed to the affidavit as **Exhibit BDG2**. The parties further agreed that the invested fund should be refunded to the claimant on two installments of **=N=48,000,000(Forty Eight Million Naira)** immediately upon the execution of the Termination Agreement on 3rd August 2017 and the second installment to be paid within or at exactly 1 month from the date .i.e. the date of payment of the first installment. It is also the terms of the said investment Termination Agreement that any installment paid after it was due or outside the time stipulated in clause 48 the Termination Agreement shall bear percentage interest at the prevailing bank rate. Also in the investment Termination Agreement the defendant made representation and warranty to the claimant that they had enough funds available to perform their obligation to the claimant and also undertook to promptly repay the claimant's investment in accordance with the repayment installment Schedule in the agreement.

However contrary to the terms of the investment Termination Agreement, the defendant failed to pay the claimant the 1st installment of **=N=48,000,000(Forty Eight Million Naira)** immediately upon execution of the Termination Agreement on 3rd August 2017 as agreed. Rather the defendants made piece meal remittance of **=N=50,000,000(Fifty Million Naira)** which covered first installment of **=N=48,000,000(Forty Eight Million Naira)** on 3rd August, 2012, when the Termination Agreement was executed. The defendants thereafter refused, failed and or neglected to pay the second installment of **=N=50,000,000((Fifty Million Naira)** as agreed.

Consequent upon the defendants' failure to discharge the repayment obligation to the claimant under the Termination Agreement, the claimant caused various phone calls to be made and further engaged the services of **Khema Law Partners** to take steps to recover the outstanding sum and interest accruing thereon, when it seems clear that the defendants were not ready to pay. The demand letter and the shipment way bills were annexed as **Exhibits BDG3,4, and 5** respectively. Notwithstanding, the Claimant's demand the defendants have refused and or neglected to liquidate the said outstanding balance of the investment fund alongside with the interest daily accruing thereon.

The plaintiff in the affidavit in support deposed to its belief that the defendants do not have any defence to its action and therefore urged the court to grant the plaintiff's reliefs as sought. When this

matter came up on the 20th January, 2021, the attention of the court was drawn to service of the originating processes and several hearing notices on the defendants. The affidavit of service , and certificate of service of the processes as deposed to by the process server of the court are as contained in the record of the court.

The defendants were conspicuously absent from the court despite the service of the originating processes and the hearing notices. The learned Counsel to the claimant was granted leave to move its application for summary judgment and adopt the written address in support. This is a very straight forward case, the plaintiff has complied with the provisions of Order 11 Rule 1 of the High Court of FCT civil procedure Rules. The defendants have been duly served with all the necessary processes, and have chosen not to comply with Order 11 Rule 4 by filing their statement of defence and other accompanying processes as stipulated in Order 11 Rule 4 of the Rules of Court. The failure of the defendants to comply with Order 11 Rule 4 is tantamount to not having any defence to the plaintiff's claim. The essence of the summary judgment is to dispose of claim for liquidated money demand with dispatch especially where it is evident that the defendants do not have any defence. It is designed to allow for a quick dispensation of justice to avoid unnecessary clogging of the legal system with proceedings which could otherwise have been easily and quickly disposed. See the case of **Belview Airlines Ltd.**

Vs. Carter Harris(Proprietary) Ltd. (2016) LPELR 40989 CA. LEWIS VS. UBA(2016) LPELR 40661 SC, OBI VS. AKUBUEZE & ORS(2017)LPELR 42750 CA.

I have carefully perused the claims of the plaintiff and the accompanying affidavit with Exhibits attached, and the written submissions of the learned Counsel and oral adumbration in court, I am swayed to hold that the claim of the plaintiff is meritorious and undefended .

Consequently, judgment is hereby entered for the plaintiff in the terms endorsed on the writ of summons.

SIGNED

HON. JUDGE

22/01/2021.