

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. 22

CASE NUMBER : SUIT NO: CV/2123/20

DATE: : WEDNESDAY 27TH JANUARY, 2021

BETWEEN

MAJOR OLUWATOYIN ISMAIL BRAIMOH ...CLAIMANT

AND

- 1. TEMPLECOM CAPITAL & INVESTMENT LIMITED**
- 2. MR. ABIMBOLA OMONIWA**
- 

JUDGMENT

This is undefended list matter brought Pursuant to Order 35 of the Rules of this Honourable Court. The said Writ was marked undefended on the 7th September, 2020.

The claims of the Plaintiff before this Honourable Court is as follows:-

1. An Order of Court mandating the Defendants jointly and severally to pay to the Claimant, the sum of N9,800,000.00 (Nine Million, Eight Hundred Thousand Naira) only, being money had and received from the Claimant by the Defendants.

2. An Order of Court mandating the Defendants jointly and severally to pay to the Claimant the cost of prosecuting this action.
3. An Order of Court mandating the Defendants jointly and severally to pay interest at the rate of 10% per month on the Judgment Sum until same is finally liquidated.
4. And for such further Order (8) as this Honourable Court may deem fit to make in the circumstances.

In support of the application is a 19 paragraph affidavit duly deposed to by the Claimant himself.

It is the deposition of the Claimant that sometimes in early August 2019, the 2nd Defendant acting on behalf of the 1st Defendant, approached him with a proposal to invest in his company with promises of

quick returns upon investment and that the 1st Defendant is a Portfolio Manager.

The Claimant avers that he made 2 payments in the sum of N5,000,000.00 (Five Million Naira) only respectively vide Exhibit 'M1' & 'M2'.

That Pursuant to the above payment, 2 separate agreements were executed vide Exhibit 'M3' and 'M4' respectively with the tenor of the transaction to be for the period of 90 days with maturity date of 9th October, 2019.

The Claimant avers further that parties agreed for a profit of 4% of the invested sum of N10,000,000.00 and that said profit and principal sum becomes due and payable but the Defendant failed to honour the agreement despite several demands.

That upon failure by the Defendant, the matter was reported to the Police Station and later parties agreed to settle out of Police Station and terms of settlement was entered vide Exhibit 'M5'.

That the Defendants only paid N1,000,000.00 leaving the total sum of N9,000,000.00 hence this suit.

Upon service, the 1st Defendant filed a Notice of Intention to defend.

In support of the Notice is affidavit of 20 paragraph deposed to by AdebowaleAsipitan, General Manager of the 1st Defendant.

It is the deposition of the 1st Defendant that Exhibit 'M3' and 'M4' annexed by the Claimant is true.

That 1st Defendant never at any material time intentionally failed to refund the principal sum after termination of the investment agreement, but the 1st Defendant was only facing serious financial crises.

That the collaterals in Exhibit 'M5' in the Claimant's affidavit in terms of settlement is worth N7,500,000.00 (Seven Million, Five Hundred Thousand Naira).

1st Defendant avers further that the total balance owed by the 1st Defendant is not the sum of N9,800,000.00 (Nine Million, Eight Hundred Thousand as monies were paid to the Claimant vide Exhibit 'A1').

On their part, 2nd Defendant filed Notice of Intention to defend on the merit.

In support of the Notice of Intention to defend is an affidavit of 19 paragraphs deposed to by the 2nd Defendant himself.

It is instructive to note that the affidavit of the 2nd Defendant is same in content as that of the 1st Defendant. On the whole, the court was urged to transfer the matter to the general cause list.

On the part of Court, I wish to observe that the undefended list procedure is a truncated form of ordinary civil hearing peculiar to our adversary system where the ordinary hearing is rendered unnecessarily due in the main to the absence of an issue to be tried or the quantum of Plaintiff's claim disputed to necessitate such a hearing. It is designed to quicken justice and avoid the injustice likely to occur where there is no genuine defence on the merits to the Plaintiff's case.

It 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 SCI.***

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

Simply put, the Defendants affidavit must condescend upon particulars and should as far as possible, deal specifically with the Plaintiff's affidavit and state clearly and concisely what the defence is and what facts and document 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 JAGABA (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 howbeit from any cause of action as they must be specially pleaded and proved strictly.

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

See A. S T C VS QUORUM CONSORTION (2009) 9 NWLR (Pt. 1145).

The general rule is that where parties have embodied the terms of their agreement or contract in a written document as done in this case, extrinsic evidence is

not admissible to add or vary, subtract from or contradict the terms of the written instrument.

See *LAGADE VS PANALPINA WORLD 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.

This court, and indeed any other court will not allow anything to be read into such agreement, terms on which the parties were not in agreement or were not ad- idem.

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

In deciding the terms of a 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.

Per *RHODES VIVOUR CA in the case of DIAMOND BANK PLC VS UGOCHUKWU (2008) 1 NWLR (Pt. 1067) 1 at pages 23 – 24 paragraphs H-A.*

Question..Did the parties willingly executed Exhibit ‘M5’?

The above question is answered in affirmative as both Defendants mentioned and agreed with the said Exhibit in their affidavit in support of the intention

to defend the action. The 1st Defendant agreed with Exhibit ‘M5’ in it paragraph 11 whereas the 2nd Defendant is paragraph 12.

For avoidance of doubt part of Exhibit ‘M5’ is hereby reproduced;

- 1. “The Creditor acknowledges that the Debtor has paid the sum of N1,000,000.00 (One Million Naira) on the 7th of January, 2020 into the account provided.*
- 2. That the Debtor shall pay to the Creditor the sum of N1,000,000.00 (One Million Naira) on or before the 8th day of February, 2020 into an account to be provided by the Creditor.*
- 3. That payment of the remaining balance of N8,000,000.00 (Eight Million Naira) only shall be spread through a 90 days period from the*

8th February, 2020 into an account to be provided by the Creditor.

4. That the payment of the accrued interest of the sum of N800,000.00 (Eight Hundred Thousand Naira) only will be paid after the remaining principal balance is paid to the Creditor.”

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

This should not just be a matter of convenience, but I dare say a moral duty or obligation and a matter of conscience. Any agreement is useless if one party does not respect it. I won't say more.

The Defendant in attempt to shirk from its responsibility annexed Exhibit 'A1' to the effect that

the money they owed the Claimant is not up to N9,000,000.00.

A perusal of the Exhibit 'A1' would reveal that it was made before Exhibit 'M5'. If indeed, the Defendant had paid some monies, why did they agree to execute Exhibit 'M5'?

I have not seen the issues fit to be tried that have been raised or any substantial question of facts which ought to be tried by full contest.

This is not a game of chess or draft.

Defendant who has no defence to an action/claim shall not be given opportunity to dribble and cheat Claimant out of Judgment. God forbid.

The Plaintiff is therefore entitled to judgment. Consequently I hereby enter Judgment in favour of the Plaintiff, as follows:-

1. An Order of Court mandating the Defendants jointly and severally to pay to the Claimant, the sum of N9,800,000.00 (Nine Million, Eight Hundred Thousand Naira) only, being money had and received from the Claimant by the Defendants is hereby granted.
- b. Interest at the rate of 10% post Judgment interest from the date of Judgment until full liquidation of the sum is hereby granted.

Justice Y. Halilu
Hon. Judge
27th January, 2021

APPEARANCES

OYINOLA O. – for the 1st Defendant.

S.C. Enekulu – for the 2nd Defendant.

Claimant not in court and not represented.