

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE ASMAU AKANBI – YUSUF

DELIVERED ON THE 3rd March 2021

SUIT NO: CV/1757/2020

BETWEEN

DOYE EWHERIDO CLAIMANT

AND

1. EHINEMO NOBLE LINKS LTD DEFENDANTS

2. ENENE IRABOR

JUDGMENT

By a writ of summons placed under the undefended list procedure dated and filed the 4th June, 2020, the plaintiff claims against the defendants are as follows:

- i. The plaintiff's claim is for the sum of Ten Million, Four Hundred and Ninety Thousand Naira (10,490,000.00) being the

- indebtedness of the defendants to the plaintiff arising from the investment of the plaintiff in the defendant's business.
- ii. 10% per annum on [i] above from the date of delivery of judgment until the whole sum is liquidated.

The writ is supported by a 20 paragraphed affidavit deposed to by the plaintiff; annexed to the affidavit are four exhibits. The exhibits are;

- a. Exhibit DE1 is the letter of contract award.
- b. Exhibit DE2 is the investment agreement between the plaintiff and the 2nd defendant dated 27-05-19
- c. Exhibit DE3 is the Zenith bank transfer teller evidencing the transfer of the sum of #3,000,000.00 by the claimant to the 2nd defendant
- d. Exhibit DE4 is the copy of the letter of demand from the claimant's solicitor to the defendant.

It is settled that in matters placed under the undefended list procedure, where a defendant files a notice of intention to defend and an Affidavit in support, unless the defendant's supporting Affidavit of intention to defend the suit states a good defence and the particulars are adequately set out, and they are such that if proved would constitute such a defence, the Court will transfer the suit to the General cause list and allow the defendant to defend the suit.

*“ ... The object of the Affidavit of the defendant is that of disclosing the ground for asking the Court to be allowed in to defend that action. It is to disclose or show a dispute between the parties which would need to be tried See **ECO INT’L BANK PLC VS NULGE, JALINGO LGC & ANOR (2014) LPELR – 24171 (CA) PER SANKEY JCA (P. 34 PARAGRAPHS C-E)***

The undefended list is to ensure Justice to a claimant, where there is obviously no defence to his claim and prevent the grave injustice that might occur through a protracted and ultimately frivolous litigation.

See **EDU SHELL VS TRUSTEES (NIG) LTD (2002) 5 NWLR PART 760 P. 277**. The Court must be satisfied that there are good grounds for believing that there is no defence to the claim before entering the suit in the undefended list.

Order 35 Rule (3) (1) High Court Rule 2018 states

(1)Where a party served with the writ delivers to registrar, before 5 days to the day fixed for hearing, a notice in writing that he intends to defend the suit, together with an Affidavit disclosing a defence on the merit, the Court may give him leave to defend upon such terms as the Court may think just.

(2)Where leave to defend is given under this Rule, the action shall be removed from the undefended list and placed on the ordinary cause

list; and the Court may order pleadings, or proved to hearing without further pleadings.

(3) The claim before the court must be for a debt or liquidated money demand, and must be supported by an Affidavit verifying the claim; the affidavit must contain a deposition to the effect that in the belief of the Plaintiff, the Defendant has no defence to the claim.

In the present case, the Claimant deposed to the fact that sometimes in May, 2019 the 2nd defendant approached her for the loan of #3,000,000.00 to enable her execute a local purchase order of #35,000,000.000 given to the 1st plaintiff by the Nigeria Liquefied Natural Gas Ltd; a copy of the letter of contract is attached as exhibit DE1. That on the 27th May, 2019, she entered and signed an Investment Agreement with the defendants. [exhibit DE2]; parties agreed that the defendants will refund the sum of #3,900,000.00 which is the principal sum and the accrued profit on or before the 10-Jul-2019; that parties further agreed that in case of default on the part of the defendants to repay the agreed sum of #3,900,000 on or before the 10– Jul-2019, the defendants are to pay an additional 10% of the agreed amount to the claimant. It is further the evidence of the claimant that on the 6th June, 2019 the defendant requested for an additional sum of #1,500,000.00 to enable them execute a catering contract; that it was further agreed that the defendants would refund the sum of #2,300,000. 00 on or before the 30th June 2019. The claimant stated that she performed

her own part of the bargain by crediting the 1st defendant's bank account domiciled with Guaranty Trust Bank with the sum of #3,000,000.00 on the 28th May, 2019; [see Exhibit DE3] she stated further that she paid the sum of #1,500,000.00 into the account of one Irabor Akhabue Elija domiciled with Access Bank of Nigeria on the 6th June 2019. The claimant further avers that despite her several demands to the defendants for the payment of all the amounts due to her the defendants failed and neglected to refund as agreed. The claimant said she had to engage the services of Messrs Dexes Law Consult, a firm of Legal Practitioners to write a letter of demand to the defendants; that on the 24th December, 2019 her lawyers via electronic mail sent a demand letter to the defendants; [see exhibit DE4] that despite the demand letter, the defendants still refused to repay the money. She continued that the failure of the defendants to refund the principal sum and the profit is a deliberate act. She stated that she knows as a fact that the defendants have no defence on merit.

The defendants in response to the depositions of the claimant stated as follows:

1. That I am the 2nd Defendant in this suit as well as a director in the 1st Defendant's company herein, by virtue of which I am conversant with the facts of this suit in addition to the facts, I depose to herein.
2. That I have the authority of the board of directors of the 1st Defendant company to depose to this Affidavit on behalf of the said company,

3. That it is true that the plaintiff entered into an agreement with the 1st and 2nd Defendants for the said Defendants to borrow the sum of ₦3,000,000 (Three Million Naira) only from the Plaintiff to enable the 1st Defendant execute a contract under a local purchase order.
4. It is equally true that the aforesaid agreement between the Plaintiff and the Defendants stipulates that the Defendant shall pay the Plaintiff a total sum of ₦3,900,000 (Three Million, Nine Hundred Thousand Naira) only as investment return on the 10th July, 2019 as agreed by the parties to the agreement.
5. That the Plaintiff has not placed any material before the Honourable court authorizing her to charge monthly interest on the sum of ₦3,900,000 (Three Million, Nine Hundred Thousand Naira) only she is claiming from the Defendants.
6. That the sum of ₦1,500,000 (One Million, Five Hundred Thousand Naira) only is claiming in addition from the Defendants as stated in paragraph 9 of the Plaintiff's Affidavit in support of summons sworn on 4th June, 2020 by the Plaintiff herself, was paid into account belonging to one Irabor Akhabue Elija which is domiciles in Access bank Plc, who is not a party to this suit, is hereby denied. The Defendant did not receive any such money from the Plaintiff.
7. That the name Irabor Akhebue Elija which the said ₦1,500,000 (One Million, Five Hundred Thousand Naira) only was paid has no nexus whatsoever with the Defendants as it is not identical to or the same as the names of the Defendant. The Plaintiff did not Exhibit any

material to show the connection of the name Irabor Akhabue Elija to the Defendants.

8. That it is a surprise that the Plaintiff is claiming the sum of ₦10,490,000 (Ten Million, Four Hundred and Ninety Thousand Naira) only from the Defendants, as amount which is far above the indebtedness of the Defendants to the Plaintiff.
9. That the Defendants are not indebted to the Plaintiff to the sum of ₦10,490,000 (Ten Million, Four Hundred and Ninety Thousand Naira) only as purported by the Plaintiff writ of summons.
10. That I verily believe that the interest of Justice will be better in this suit if same is transferred to the general cause list to give the Defendants the opportunity of a defence on the merit.
11. That I solemnly and conscientiously depose to the Affidavit believing same to be true and correct and in accordance with the Oath Act.

As stated earlier, the aim of an undefended procedure is to ensure justice to a party where it is clear that the defendant has no defence to the suit. In the present case, looking at the depositions of parties for and against the application, it is not in dispute that the defendant borrowed the sum of #3,000,000.00 from the claimant and further agreed to refund the sum of #3,900,000.00 to the claimant on 10th July, 2019. See paragraphs 4 and exhibit DE2 attached to the affidavit in support. The content of exhibit DE2 is clear and unambiguous and I find it pertinent to reproduce the repayment clause stated therein:

In pursuance of this agreement and in consideration of the sum of #3,000,000.00 only receipt of which the borrower hereby acknowledges, it is hereby agreed as follows:

- 1. The borrower shall pay to the investor the sum of #3,000,000.00 on or before the 10th day of July. 2019 being return of the capital investment of #3,000,000.00 and profit of #900,000.00 there from [investment return]*
- 2. In the event that the aforementioned sum is not paid on the agreed date of 10th July, 2019, the borrower shall pay the vendor a monthly interest of 10% flat on the said sum of #3,900,000.00 until it is fully liquidated.*

The 1st defendant in her affidavit disclosing defence on the merit admitted that she entered into an agreement with the claimant to borrow the sum of #3,000,000.00 from her and that it is true that she agreed to refund the sum of #3,900,000.00 only as investment return to the claimant on the 10th July, 2019. The defendant however contends that the claimant didn't place any material before the court authorizing her to charge monthly interest on the sum of #3, 900, 000, 00. The question I ask here, has the 2nd defendant repaid the sum of #3, 900, 00.00 paid into the 1st defendant's bank account by the claimant. See paragraphs 3 & 4 of the affidavit disclosing defence. The answer is No. It is not stated in the defendant's response that the sum admitted by her has been repaid and that same was paid as and when due.

At this stage I will also refer to exhibit DE2 jointly entered into by the claimant and the 2nd defendant; the defendants did not deny the existence of exhibit DE2 and a fact or allegation not denied is deemed admitted. See **EZEKIEL OKOLI v. MORECAB FINANCE NIGERIA LIMITED (2007) LPELR-2463(SC)**. It is the law that facts admitted need no further proof; it is also the law that unchallenged credible evidence is good evidence on which a Court can act. In an action placed in the undefended list where the plaintiff claims repayment of loan, the only defences open to the defendant are only two. (1) That the defendant had refunded the entire loan by the production of receipts, bank tellers or any other document showing that the debt was totally repaid or (2) That he never borrowed the money in the first place, he never applied for the loan or debt, he never obtained any money and that any purported application of the loan or receipt for the loan issued by him is a forgery. See **EZEKIEL OKOLI v. MORECAB FINANCE NIGERIA LIMITED (Supra)**

I am therefore not in doubt that parties agreed to the terms stated in the exhibit DE2 and same is binding on them. I so hold. Accordingly, judgment is hereby entered for the claimant against the defendants in the sum of #3,900,000.00 and as agreed by parties in exhibit DE2 a monthly interest of 10% is awarded to the claimant beginning from the 11th day of July, 2019 until the judgment sum is liquidated.

The defendants having denied the fact that the sum of #1,500,000.00 was paid to them and since there is no evidence of the payment placed before me, I find the issue so raised triable and same is hereby transferred to the General Cause List. Parties are to file their pleadings in accordance to the rules.

ASMAU AKANBI – YUSUF
HON. JUDGE

APPEARANCES:

Ogele Ngozi , holding the brief of Chidi Onwekpe, for the Claimant.

R.A Alhassan, for the Defendant