

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA, ABUJA
BEFORE HIS LORDSHIP: HON. JUSTICE H. MU'AZU

ON 15th DAY OF JULY, 2021

SUIT NO: FCT/HC/CV/256/2021

BETWEEN:

JENNIFER DOUGLAS ABUBAKARCLAIMANT
(trading Under the name and style MIYETTI LAW)

AND

1. PETRO-LOGISTICS LIMITED
2. DR. UGOJI EGBUJO DEFENDANTS

JUDGMENT

The Claimant in this matter commenced this action against the Defendants under the “undefended” list procedure seeking the following reliefs.

- (i) An Order of this Honourable Court directing the Defendant to pay the Claimant the sum of Twenty-nine Million, Five hundred Thousand Naira (₦29,500,000.00) only being sum for professional fees owed since 2019.
- (ii) An Order of this Honourable Court directing the Defendant to pay to the Claimant 10%

interest on the Judgment sum from the date of Judgment until the Judgment sum is fully liquidated.

- (iii) An Order of this Honourable Court directing the Defendant to pay to the Claimant the sum of Three Million Naira (₦3,000,000.00) as cost of this suit.

The writ was filed along with an 18 paragraph affidavit deposed to by Ajiboye Muideen Olanrewaju.

In response to the claim the Defendants on the 21/06/2021 filed a Notice of Intention to defend supported by a 16 paragraph affidavit deposed to by Dr. Ugoji Egbujo (2nd Defendant).

At the hearing of the matter on the 1st of July, 2021 Counsel for the parties took their turns in urging the Court to rule in their favour.

I have weighed the averments in the affidavits of the parties and the exhibits attached thereto. The cardinal issues that calls for determination is whether or not the Defendants have made out a case to justify a grant of leave to defend the suit and for that reason transfer the suit from the undefended list procedure to the General Cause list for trial.

Order 35 of the Rules of this Court, 2018 has made provision guiding hearing and determination of a suit commenced under the “Undefended” list procedure. For clarity, Order 35 Rule 3(1) provides is:-

“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 the Rule, the action shall be removed from the Undefended List and placed on the ordinary cause list and the Court may order pleadings or proceed to hearing without further pleadings.

In this case, record of Court show the Defendant filed a Notice of Intention to defend along with an affidavit. The crucial question therefore is whether or not the affidavit discloses a defence on the merit vis a vis the Claimants claim to justify the suit being transferred to the ordinary Cause List for trial or Judgment entered for the Claimant.

The Phrase “affidavit disclosing a defence on the merit” has received judicial consideration in a number of cases. In *NYA V. EDEM* (2000) 8 NWLR (Pt.669) p.349, held thus:

“An affidavit disclosing a defence on the merit does not mean that the Defendant must show that his defence must succeed at any event or that he must show a rock proof or iron cast defence. All that it means is that the Defendant must show prime facie that he has a defence to the Plaintiff action. The

defence may fail or succeed but it is not the business of the Court to determine that at this stage. This can only be done at the trial.”

Being so guided, I shall now proceed to consider the averments in the affidavits of the parties.

In the affidavit in support of the Writ of Summons, it was averred on behalf of the Claimant that by a letter dated 11/07/2017 addressed to the Claimant, the Defendants authorized the Claimant to Act as mediators in negotiation with the ASSET MANAGEMENT CORPORATION OF NIGERIA (AMCON) as in Exhibit A. The Defendant needed services of the Claimant to restructure its debt owed ASSET MANAGEMENT CORPORATION OF NIGERIA (AMCON) to the tune of ₦9,215,284,815.97 (Nine Billion, Two Hundred and Fifteen Million, Two Hundred and Eighty four Thousand Eight Hundred and Fifteen Naira and Ninety seven kobo). The Claimant in a letter TITLED ENGAGEMENT FOR MEDIATION SERVICES WITH THE ASSET MANAGEMENT CORPORATION OF NIGERIA (AMCON) dated 11/07/2018 to the Defendant (which was acknowledged) stated its professional fees to be 3% of the final structured amount. See Exhibit B. The Claimant was able to restructure the debt of the Defendants to ₦1,000,000,000.00 (One Billion Naira) See Exhibit C. It was further averred that by virtue of the restructuring of the Defendants debt and the terms of the engagement letter, the professional fee of the Claimant stood at ₦30,000,000.00 (Thirty Million Naira). That the Defendant made a payment of ₦500,000.00 (Five Hundred Thousand Naira to the Claimant leaving a balance of ₦29,500,000.00 (Twenty

nine Million, Five Hundred Thousand Naira) unpaid necessitating the Claimant writing series of demand letters dated 15/1/2019, 30/1/2019 and 7/07/2020. See Exhibit E1, E2 & E3 respectively. The Defendant has failed, refused and neglected to pay leading the Claimant to mobilize the firm of Miyetti Law with the sum of ₦3,000,000.00 (Three Million Naira) to prosecute this suit. Exhibit F is the receipt of payment. The Claimant claims to be entitled to the sum of ₦29,500,000.00 from the Defendant as a liquidated sum as well as the cost of litigation which is ₦3,000,000.00 and honestly believe the Defendant has absolutely no defence to this suit.

In the Defendant's affidavit in support of the Notice of Intention to defend, it was averred by the 2nd Defendant that they have a valid and genuine defence to the claims of the Claimants. The Defendant engaged the Claimant to act on its behalf in negotiations with AMCON in respect of 1st Defendants outstanding indebtedness to AMCON. The terms of the engagement between the 1st Defendant and the Claimant clearly and expressly stipulated that the Claimant's main obligation under the contract was to facilitate a resolution of the loan between the 1st Defendant and AMCON as in Exhibit D1. That fact averred in paragraphs 8 and 9 of the affidavit in support of the writ are both false and misleading as the issue of the outstanding debt obligation of the 1st Defendant to AMCON is not yet fully and finally resolved. That AMCON letter to the 1st Defendant referred to as Exhibit D3 is incontrovertible evidence that the Claimant has failed to deliver on the objective of resolving the loan issue on behalf of the 1st Defendant with AMCON.

That it would be in the interest of justice to transfer this suit to the General Cause List so as to avail the Defendant the opportunity of canvassing their defence on the merit to the extent allowed by law and the rules of practice of the Honourable Court and the Claimant will not be prejudice if the suit is so transferred.

I have given serious thought to the foregoing averments of the parties. From the averments, it is apparent that though the Defendants do not dispute that the 1st Defendant engaged the services of the Claimant over debt owed to AMCON, the Defendant is contending that the Claimant had not discharged its obligation under the contract. The thrust of the Defendant's contention is that the Claimant is not entitled to the sum claimed as the debt owed to AMCON is unresolved as evidence by Exhibit D3 (which is a letter from AMCON dated 13/04/2021 advising the 1st Defendant to take urgent steps to liquidate its indebtedness standing at ₦23,383,208,235.38.

A community ready of Exhibits A, B, C, D, E1, E2 & E3 clearly reveal that the Claimant was engaged to negotiate the Debt the 1st Defendant is owing AMCON. That is to negotiate favourable pay off terms. And that it was agreed that the Claimant will be paid 3% of the total restructured amount. The loan was restructured, negotiated and/or resolved as provided in a Tripartite Novation Agreement reducing the indebtedness of the 1st Defendant from the sum of ₦9,215,284,815.97 to the sum of ₦1,000,000.000.00 (One billion naira) duly signed by parties to the Agreement and verified by the boards of Tanzila and the 1st Defendants. It is in evidence that the 1st Defendant has made a

payment of ₦500,000.00 to the Claimant in May of 2019. After two letters of demand.

As earlier stated, the contention of the Defendants is that the loan issue is not resolved, thus the Claimant is not entitled to his fees under the terms of the engagement/Agreement. The Defendants never denied the Tripartite Novation Agreement was reached and executed.

It is the view of the Court that the Tripartite Novation Agreement was brokered and reached on favourable terms as the Claimant was obligated to do. And, the fact that parties to that agreement failed to honor their commitment, under that agreement should not negate the fact that the Claimant discharged its responsibility and cannot be a defence on the merit to this suit for the Defendants.

By reason of the above findings, the Court holds that the Defendant's affidavit has not disclosed a defence on the merit to warrant the Court to grant leave for Defendants to defend the suit. I so hold.

In consequence of this and pursuant to Order 35 (4) of the Rules of this Court, 2018 Judgment is hereby accordingly entered in favour of the Claimant as follows.

- (1) The Defendants to pay to the Claimant the sum ₦29,500,000.00 being sum for professional fee.

- (2) The Defendants to pay to the Claimant 10% interest or the Judgment sum from date of judgment until judgment sum is fully liquidated.
- (3) The Defendants to pay to the Claimant the sum of ₦3,000,000.00 as cost of this suit.

This is the judgment of the Court.

SIGNED
HON. JUDGE
15/07/2021

Legal representations.

1. Adedojin Adegun, Esq, for the Claimant
2. V. C. Okwaraoha, Esq, for the Defendants