

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT BWARI, ABUJA.

CLERK: CHARITY ONUZULIKE
COURT NO. 11

SUIT NO: FCT/HC/CV/480/19
M/1529/19
DATE: 20-09-2021

BETWEEN:

DUKE OIL COMPANY INCORPORATED..... CLAIMANT/APPLICANT

AND

ONTARIO TRADING SA DEFENDANT/RESPONDENT

JUDGMENT

(DELIVERED BY HON. JUSTICE SULEIMAN B. BELGORE)

By way of a written application vide a Motion on Notice number M/1529/19, the claimant/applicant – Duke Oil Company Incorporated, applied for four(4) principal orders against the Defendant/Respondent – Ontario Trading SA. The prayers are:

- (1) **AN ORDER** entering Judgement in favour of the Claimant/Applicant in the sum of **Four Million, Six Hundred and Nineteen Thousand, Six Hundred and Twenty-One Dollars, Sixteen Cent (\$4,619,621.16)**, being balance of the admitted sum for Operating and Managing of PPMC Petroleum Products and Crude Oil Exchange Contract as at the year 2015.
- (2) **AN ORDER** entering Judgment for the sum of **Three Hundred and Ninety Thousand, Seven Hundred and**

Ninety Four United State Dollars and Thirty One Cents (\$390,794.31) being balance of the sum of the sum owed by the Defendant.

- (3) **AN ORDER** entering Judgment for the interest on the Crude Oil and Petroleum Product Commission at 3% **above libor rate** from 1st December, 2019 until Judgment is delivered.
- (4) A sum of **Ten Million Naira (N10,000,000)** as cost of instituting and prosecuting this action.
- (5) **AND FOR SUCH FURTHER ORDER OF ORDERS** as this Honourable Court may deem fit to make in the circumstances.

The grounds upon which the application is predicated are as follows:

1. The 2nd Claimant sub-contracted/re-assigned an Operations and Management (O & M) PPMC Petroleum Products and Crude Oil Exchange contract to the Defendant to wit the Defendant as at 2015 owed the Claimant/Applicant a sum of **Six Million, Six Hundred and One Thousand, One Hundred and NinetySeven United States Dollars and Forty Eight Cents only (\$6,601,197.48)** as at 2015.
2. The Defendant in a letter dated 22nd July, 2015 admitted to owing the sum of **Six Million, Two Hundred and Forty Thousand, Nine Hundred and Forty One United States Dollars and Forty Seven Cents only (\$6,240,941.47)** exclusive of interest.
3. The Defendant through a credit facility paid the Claimant/Applicant a sum of **Two Million, Three Hundred and**

Ninety Three Thousand, Two Hundred and Seventy Nine United States Dollars and Ninety Six Cents only (\$2,393,279.96) being part payment of the admitted sum.

4. The balance of the admitted sum stands to the tune of **Four Million, Six Hundred and Nineteen Thousand, Six Hundred and Twenty One United States Dollars and Sixteen Cents only (\$4,619,621.16)**, which remained unpaid.
5. The Defendant is still owing the Claimant/Applicant to the tune of **Three Hundred and Ninety Thousand, Seven Hundred and Ninety Four United State Dollars and Thirty One Cents (\$390,794.31)**.
6. The Defendant has no defence to both the admitted sum and the balance as claimed by the Claimant/Applicant.
7. This Honourable Court is empowered by its rules to grant this application where the defendant has admitted either wholly or partly to the claims of the claimant.
8. That is in the interest of justice if this application is granted.

In support is a 38-paragraphs affidavits deposed to by one Abdulhakeem Ibrahim Badamasi, of 22, Ziguinchor Street, Off IBB Way, Wuse Zone 4, F.C.T. Abuja. The affidavit is dated 29/11/19 and filed same day. Annexed to the affidavit are eleven (11) exhibits, marked as A – K. They are:

Exhibit A & B: Agreements entered into by both parties.

Exhibit C: Letter written by the Claimant to the Defendant stating the total indebtedness.

- Exhibit D:** Is the Reply by the Defendant to the Claimant disputing some debt but admitting only \$6 million.
- Exhibit E:** Is the letter of indemnity by Ontario (Defendant) in favour of the Claimant.
- Exhibit F & G:** Are the correspondence between the parties in respect of the balance sum.
- Exhibit H:** A table showing the update of debt owed by the defendant to the Claimant as at 30th September, 2019.
- Exhibit I:** Letter of the Claimant's Counsel to the Defendant.
- Exhibit J:** Is the letter of Defendant pleading for time and meeting.
- Exhibit K:** Is the Claimant's Counsel's letter agreeing to a meeting in response to Exhibit J.

There is also a written address filed along with the application. It was filed by Aikhunegbe Anthony Malik SAN, of Counsel to the applicant and it is dated 29/11/2019.

The Defendant/Respondent who were served with all the Court processes did not file any response nor show up in Court.

On the 8/3/21, learned Counsel to the applicant, Mr. A. A. Malik SAN, moved the application in Court summarily. The learned Silk referred to the content of the 38-paragraphs affidavits in support; and Exhibits A – K, his written address, and placed reliance on **Order 11, Rules 1 – 5 of the FCT High Court (Civil Procedure) Rules 2018** and urged me to be persuaded by the undisputable facts placed before the Court and grant all the reliefs sought in this application.

Briefly put, the facts leading to this application as can be gleaned from the affidavit evidence are as follows:

2.1 The 1st Claimant approved a Crude Oil Product Exchange Programme in favour of the 2nd Claimant on the 10/01/11 in exchange for the supply of petroleum products of equal value.

2.2 The 2nd Claimant sub-contracted/re-assigned the said contract through an Operations and Management (O&M) Agreement to the Defendant.

2.3 The terms of the contract provides for commission on every barrel of Crude oil and Petroleum product at the rate of Eight US Cents (0.08\$) and Five US Cents (0.005\$) respectively.

2.4 The Claimants wrote severally to the Defendant on the debt owned by the Defendant to the tune of **\$6,271,682.95 (Six Million, Two Hundred and Seventy One Thousand, Six Hundred and Eighty Two Dollars, Forty Seven Cents)**exclusive of interest.

2.5 The Defendant in a letter dated 22nd July, 2015 admitted to owing the sum of **\$6,240,941.47 (Six Million, Two Hundred and Forty Thousand, Nine Hundred and Forty One Dollars, Forty Seven Cents)** exclusive of interest.

2.7 The Defendant has no defence to the amount (i.e. **\$6,240,941.47 'Six Million, Two Hundred and Forty Thousand, Nine Hundred and Forty One Dollars, Forty Seven Cents'**) admitted in his letter dated 22nd July, 2019.

The learned SAN, in his written address submitted a sole issue for determination, to wit:

“Whether in the Circumstances of this case, the Claimants are entitled to the grant of summary Judgment as sought in this Application.”

The learned SAN then proceed in paragraphs 4.0 – 5.1 of his written address to answer the question in the affirmative. Mr. Malik SAN submitted that the Respondent have no defence to the action having previously admitted the debt to the tune of **Six Million, Two Hundred and Forty Thousand, Nine Hundred and Forty One Dollars, Forty Seven Cents (\$6,240,941.47)**.

The learned Silk further submitted that **Order 11 Rule 1 – 5** can be properly invoked to meet the justice of this case. For all his submissions, Mr. Malik SAN of Counsel to the Applicant cited some cases especially the case of **OBASANJO FARMS (NIG) LTD VS. MUHAMMED (2016) LPELR-40199** where the Court of Appeal held that:

“The whole purpose of a summary Judgment procedure is to ensure justice to a Plaintiff and minimize delay where there is obviously no defence to his claim and thus prevent the grave injustice that might occur through a protracted and immensely frivolous litigation. It is to prevent sham defence from defeating the right of a Plaintiff by delay and thus causing great loss to a Plaintiff.”

Other cases relied upon by the learned SAN are: **SANTORY CO. LTD VS. A.S. ELABED (1998) 12 NWLR (PT. 578) 538; COOPERATIVE AND COMMERCE BANK (NIG) PLC VS. SAMED INVEST CO. LTD (2000) 4 NWLR (PT. 651) 19; ALHAJI A. HAIDO & ANOR VS. ALHAJI S. USMAN (2004) ALL FWLR (PT. 201) 1765.**

I have considered this simple application asking for summary Judgment. For a start, I wish to X-ray the provisions of **Order 11 Rule 1** of the Rules of this Court. That provisions provides:

“Where a Claimant believes that there is no defence to his claim, he shall file with his originating process the Statement of claim, the Exhibits, the deposition of his witnesses and an application for summary Judgment which application shall be supported by an affidavit stating the grounds for his belief and a written brief in support of the application.”

The above provision is a sine qua non provision detailing the process to be filed in order to have an award of summary Judgment in favour of the application. Has the applicant complied with this **Order 11 Rule 1**? My answer is yes. I peruse the file and I can find the following:

- (1) A statement of claim of 33 paragraphs dated 21/11/2019.
- (2) Ten (10) Exhibits or documents in form of letters and contracts documents
- (3) A further Exhibits A – K referred to earlier on in this Judgment.
- (4) A witness statement or depositions of one Adekunle Adegun of NNPC Towers, Central Business District, Herbert Macaulay Way, Garki Abuja.
- (5) An application for summary Judgment – M/1529/19.
- (6) An affidavit of 38 paragraphs with a written address in support of (5) above.
- (7) The Respondent has not filed any process in response to this application even though they are aware of the pendency of this suit in this Court.

(8) Grounds upon which this application rested are well stated.

It is trite that the provisions of our Rules must be followed in all circumstances especially where doing so will meet the justice of the case frontally and squarely. Rules of Court are meant to be obeyed. Courts are enjoined to acquit themselves with it always. After all, the Rules are made to ensure orderliness and certainty in the best way to ensure fairness and decorum in Court proceedings. Rules of Court are aids to ensure that unnecessary clogs do not endanger smooth path in Court proceedings. See **SOUTH ATLANTIC PETROLEUM LTD VS. THE MINISTER OF PETROLEUM RESOURCES (2013) LPELR-21892(SC)**.

In essence, the applicant has fully complied with the provisions of **Order 11 Rule 1** of the Rules of this Court and so effect must be given to that provision. I therefore find merit in this application. This is a proper case having regard to the facts, circumstances and the law when summary Judgment must be entered in compliance with **Order 11 Rule 1 – 5 of the High Court of Justice (Civil Procedure) Rules, 2018**.

Judgment is hereby entered summarily in favour of the applicant. All prayers 1,2, and 3 are hereby granted.

Prayer 4 asking for Ten Million Naira (**N10,000,000**) as cost of this suit is not proved and it is therefore refused.

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Suleiman Belgore
(Judge) 20-09-2021.

APPEARANCES:

OLAWUMI NWANO APPEARED WITH A. I. BADAMASI AND E. S. UMOH FOR THE CLAIMANT/APPLICANT.