

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY,
IN THE ABUJA JUDICIAL DIVISION,
HOLDEN AT COURT NO. 7 APO, ABUJA.
BEFORE HIS LORDSHIP: HON. JUSTICE O. A. MUSA.**

SUIT NO. FCT/HC/CV/376/2021

BETWEEN:

PRINCE ARTHUR EZE CLAIMANT

AND

1. MGSL MORTGAGE BANK PLC
2. DR. MRS. VIRGINIA ANOHU DEFENDANTS

JUDGMENT

DELIVERED ON THE 6TH DECEMBER, 2021

The claimant commenced this suit by a Writ of summons filed on the 11th day of February 2021, claiming against the defendants jointly and severally as follows:

1. The outstanding sum of \$1,361,783.69 or \$1,917,819.19 respectively upon the refund of N500,000,000(Five Hundred Million Naira) paid at either the IFEM(Intra-bank Foreign Exchange Market) of N305.21 to USD1 or the BDC(Bureau de Change)exchange rate of N462.03 to USD1.

OR ALTERNATIVELY,

2. The Naira equivalent sum of the defendant's liquidated debt of \$1,361,783.69 or \$1,917,819.19 respectively at the extant exchange rate of N380 per USD1 as published by the

Central bank of Nigeria on its website(cbn.gov.ng/rates/ExchRateByCurrency.asp) as at 2-2-2021 which is: \$1,361,783.69 at N380 per USD1=N517,477,802 OR \$1,917,819.19 at N380 per USD1=N728,771,292.

3. Ten Percent (10%) post Judgment interest from the date of Judgment till the date of final liquidation of the Judgment sum.

The claimant in support of the Writ of summons taken out under the Undefended List Procedure filed a 38 Paragraph affidavit deposed to by Prince Ikechukwu Eze, a staff of Atlas Petroleum International Limited. The claimant relied on all the paragraphs of the affidavit. The claimant in support relied on five exhibits marked PAE 1 – 5

The pertinent paragraphs 7 – 33 of the claimant affidavit in support of the writ of summons which I reproduce as follows:-

7. Sometimes in August, 2014, the 2nd Defendant, on behalf of the 2nd Defendant, met with me to book an appointment with the Claimant to discuss about the possibility of investing the sum of \$18, 348, 623 (Eighteen Million, Three Hundred and Forty Eight Thousand, Six Hundred and Twenty-Three Dollars) in purchasing the shares of the 1st Defendant.

8. The 2nd Defendant's request was granted and I subsequently fixed a date sometime in the first week of August, 2014, for the 1st Defendant to meet with the Claimant. I was present in the meeting and I took notes as the Claimant and the 2nd Defendant discussed on the possibility of buying the 1st Defendant's shares worth of \$18, 348, 623 (Eighteen Million, Three Hundred and Forty Eight Thousand, Six Hundred and Twenty-Three Dollars).
9. In the course of the meeting, the 2nd Defendant proposed to the Claimant to purchase the 1st Defendant's shares worth of \$18, 348, 623 (Eighteen Million, Three Hundred and Forty Eight Thousand, Six Hundred and Twenty-Three Dollars) but the Claimant insisted that he was willing to purchase 1st Defendant's shares in tranches with the first shares worth of \$3, 000, 000.00 (Three Million Dollars) only.
10. The 2nd Defendant further proposed to the Claimant that the Claimant would cumulatively invest the said sum of \$18, 348, 623 (Eighteen Million, Three Hundred and Forty Eight Thousand, Six Hundred and Twenty- Three Dollars) and accordingly, the 2nd Defendant brought the 1st Defendant Application Form which the Claimant signed.
11. In pursuance of the above on 2-10-2014, the 2nd Defendant presented the 1st Defendant account details

domiciled with Access Bank Plc via a letter written by that Bank which the Claimant minute upon and instructed his account officer in his bank (Mr. Kunle Uriel of Guaranty Trust Bank (UK) Ltd) to remit the sum of \$3, 000, 000.00 (Three Million Dollars) to the 1st Defendant's domiciliary account with Citi Bank New York for final credit to 1st Defendant's account in Access Bank Plc, which was for the first phase of the purchase of the 1st Defendant's shares. The document minute upon is herein attached as Exhibit PAE 1 While the Transform Form is herein attached as Exhibit PAE 2.

12. On 3-10-2014, the 1st Defendant wrote a letter to the Claimant signed by the 2nd Defendant, which was received through me, acknowledging the receipt of the sum of \$3, 000, 000.00 (Three Million Dollars) in the 1st Defendant's domiciliary accounts. The letter dated 3-10-2014 is herein attached as Exhibit PAE 3.

The breach of contract, trust and duty of care:

13. After about one year of signing the application form and crediting the 1st Defendant's account, the Claimant did not receive any notification or Confirmation of the purchase or allotment of the 1st Defendant's shares.

14. Curiously, the Claimant and his members of staff made lots of entities and inquiries from the Defendants about the status of the Claimant's application and the funds transferred to the 1st Defendant's account. The Defendants refused, neglected and failed to communicate with the Claimant on the status of his application or the fund paid to the 1st Defendant for its shares.
15. Upon the failure of communication and refusal to respond to the Claimant's inquiries on the status of the Claimant's application, the Claimant in January, 2016, instructed his Counsel, the Law Firm of Oke, Ajana & Co to take up the matter.
16. After the exchange of correspondences between the Claimant's Counsel and the Defendants, it became very clear to the Claimant that the Defendants had breached the contract between him and the 1st Defendant, the trust reposed in the 2nd Defendant and duty of care the 1st Defendant owed to the Claimant.
17. It became more explicit to the Claimant that the 1st Defendant never allotted any shares to the Claimant and that there was no certificate of allotment of shares issued in favour of the Claimant.

Demand for the refund of \$3, 000, 000:

18. On 12-01-2016, the Claimant's Counsel by a letter to the 1st Defendant requested for a meeting with the Defendants on the Claimant's fund and by a correspondence dated 19-01-2016 addressed to the Claimant, the Defendants apologized for the incommunicado.
19. In reply by to the 1st Defendant's letter of 19-01-2016, the Claimant's Counsel by a letter dated 28-01-2016, demanded for the refund of the Claimant's \$3, 000, 000.00 (Three Million Dollars) payable in the same currency it was paid to the 1st Defendant's account with accrued interest.

Petition report to EFCC for a case of fraud:

20. When the Defendants were not responding favourably to the demand made by the Claimant's Counsel, the Claimant's Counsel wrote a petition to the EFCC to investigate the Defendants fraud and breach of trust.
21. Sequel to the petition, the Claimant was always maintaining his stand before the EFCC through all communications had that that the refund of the Claimant's \$3, 000, 000.00 (Three Million Dollars) would be in the same currency it was paid to the Defendants or at the then prevailing exchange rate of the US Dollar to Naira.

The Claimant buttressed this fact via correspondences of 10-01-2016 and 4-03-2016 with the EFCC addressed to the Head, CTGI Unit of the EFCC.

Part payment of N500, 000, 000.00:

22. On about 16-08-2016, the Claimant was informed by the EFCC by a letter that the Defendants had refunded the sum of N500, 000, 000.00 (Five Hundred Million Naira) only. Sequel to this letter, on 16-08-2016, the EFCC paid the sum of N500, 000, 000.00 into the Claimant's account.
23. In acknowledging the payment of the N500, 000, 000.00 (Five Hundred Million Naira) via a letter dated 16-08-2016, the Claimant received it with a proviso that the total money to be refunded by the Defendants was the Naira equivalent of \$3, 000, 000.00 (Three Million Dollars) paid to the 1st defendant based on the prevailing exchange rate in August, 2016.

Prevailing exchange rate in August, 2016:

24. As at August, 2019 when the refund of N500, 000, 000.00 (Five Hundred Million Naira) was made, the exchange rate of USD1 to Naira as published by the Central Bank of Nigeria on its website (cbn.gov.ng/rates/exrates.asp?year=2016) in line with IFEM (Intra-Bank Foreign Exchange Market) was N305.21

to USD1; and in line with the BDC (Bureau de Change), it was N462.03 to USD1. A print out of the CBN website disclosing the exchange rates then is herein attached as Exhibit PAE 4.

25. As at August, 2016, by the CBN exchange rate of IFEM (Intra-Bank Foreign Exchange Market), the N500, 000, 000.00 (Five Hundred Million Naira) was exchanged at the official rate of N305.21 to USD1 or for N462.03 to USD1 in line with the BDC (Bureau de Change) exchange rate.

Defendants' liquidated debts to the Claimant:

26. By calculation, the sum of N500, 000, 000.00 (Five Hundred Million Naira) divided by the IFEM (Intra-Bank Foreign Exchange Market) of N305.21 to USD1 is equal to \$1, 638, 216.31 and when divided by BDC (Bureau de Change) exchange rate of N462.03 to USD1, it is equal to \$1, 082,180.81.
27. The equivalent sum of \$1, 638, 216.31 or \$1, 082,180.81 was refunded by the Defendants to the Claimant out of the \$3, 000, 000.00 (Three Million Dollars) paid by the Claimant to the 1st Defendant for its shares. The outstanding balance from the \$3, 000, 000.00 (Three Million Dollars) is equal to \$1, 361, 783.69 or \$1, 917, 819.19 respectively.

28. The balance of \$1, 361, 783.69 or \$1, 917, 819.19 respectively remains unpaid by the Defendants.

29. The Defendants are indebted to the Claimant to the tune of the liquidated balance of \$1, 361, 783.69 or \$1, 917, 819.19 respectively.

The current CBN exchange rate - Naira equivalent of Defendant's debt:

30. As at 2-2-2021, the extant exchange rate of the United States Dollar as published by the Central Bank of Nigeria on its website (cbn.gov.ng/rates/Exch_Rate_ByCuurrency.asp) is N380 per USD1. A print out of the website is herein attached as Exhibit PEA 5.

31. As at 2-2-2021, the Naira equivalent of the Defendant's liquidated debt of \$1,361, 783.69 or \$1, 917, 819.19 respectively is:

\$1, 361, 783.69 at N380 per USD1 = N517, 477, 802

\$1, 917, 819.19 at N380 per USD1= N728, 771, 292

32. The Defendants have no defence to the Claimant's claims.

33. The Claimant's claim is a liquidated money demand.

The defendant after received of service, on the 15th day March 2021, file a notice of intention to defend on merit with 27 paragraph and with 16 annexure marked as Exhibit 1 – 15 (1) –

(15) and 16, also a 16 paragraph submission of law in support of the notice of intention to defend and further affidavit of another 16 paragraphs affidavit in support of the notice of intention to defend.

The substratum of the Defendant notice of intention to defend the pertinent paragraph are paragraph 9 – 23 of the notice of intention

Thus:-

9. Paragraphs 5, 6, 7, 8, 9, 10 and 12 of the deposition of Prince Ikechukwu Eze are false in their entirety:

1) In specific reaction to paragraph 5, the Second Defendant made no representations to the Claimant regarding the institutional status of the First Defendant. Rather, it is within the Public domain that:

(i) The financial institution now called MGSL Mortgage Bank Limited (the first Defendant herein) was previously called Mortgage Guaranteed Bank International Limited; Mortgage Guaranty Savings and Loans Limited and FINBANK Homes Limited and was originally incorporated as a limited liability company in Nigeria under the Companies and Allied Matters Act and on 5 November 1992. Herewith attached and marked Exhibits 1, 2, 3 and 4 are the following

- (a) A Certificate of Incorporation by the Corporate Affairs Commission of MGSL Mortgage Bank Limited RC 208220 dated 24 December, 2013 (Exhibit 1);
 - (b) A Certificate of Incorporation of Mortgage Guarantee Bank International Limited dated 21 October 2013 and certified by the Corporate Affairs Commission (Exhibit 2);
 - (c) A Certificate of Incorporation dated 27 May 2009 of FINBANK Homes Limited Certified by the Corporate Affairs Commission, (Exhibit 3); and
 - (d) A letter of approval dated 30 December 2013 vides reference OP1/COH9/BFA/GEN/01/92 by the Central Bank of Nigeria approving the Change of Nigeria, (Exhibit 4).
- (ii) The Second Defendant never at any time on behalf of the First Defendant met the deponent to book an appointment with the Claimant to discuss about the possibility of investing the Sum of \$18,348,623 (Eighteen Million Three Hundred and Forty Eight Thousand, Six Hundred and Twenty Three Dollars)

in purchasing shares of the First Defendant as alleged.

- (iii) Rather, the Claimant on his own volition applied through a private placement application form dated 9 August 2014 and duly signed by Prince Arthur Eze (the Claimant Personally) subscribed to 3 Billion ordinary shares of A1:00 per share.
- (iv) Prince Arthur Eze (Claimant herein) made no payment to any individual towards any personal benefit either to the Second Defendant or to anybody and made no cash deposit to the bank either for savings or deposit or as a current account holder which the bank could refund to him at any time of his choice.
- (v) Prince Arthur Eze (Claimant herein) is not a customer of the bank and there is no banker-customer relationship between the Claimant and the First Defendant in respect of which he has a deposit yielding interest or to be refunded at current rates of the Dollar to the Naira or to be adjusted as Naira slumps against the Dollar and Vice Versa.

(vi) Prince Arthur Eze (Claimant herein) invested as a shareholder of MGSL Mortgage Bank Limited. Herewith attached and marked (Exhibit 5) of the application for private placement of 6,000,000,000 ordinary shares of N1 each and 6,000,000,000 preference shares of N1:00 personally subscribed by the Claimant and stating that he had read a copy of the Investment Memorandum of the MGSL Mortgage Bank Limited and confirmed his interest to participate in the private placement.

(vii) On 3 October 2014, Prince Arthur Eze (Claimant herein) made a part payment of N500,786,250 (Five Hundred Million, Seven Hundred and Eighty Six Thousand, Two Hundred and Fifty Naira) out of the N3 Billion Naira (Three Billion Naira) which he subscribed, leaving a balance of N2,499,213,750.00 (Two Billion, Four Hundred and Ninety Nine Million, Two Hundred and Thirteen Thousand, Seven Hundred and Fifty Naira) which he has yet to pay.

(viii) Part of the conditions in the Investment Memorandum of MGSL Mortgage Bank Limited approved by the Central Bank of Nigeria which the Claimant herein agreed he had read and accepted

was that the investment funds from the Claimant and other Shareholders shall be used to increase the Minimum Share Capital of the bank to a minimum of NS Billion for National Primary Mortgage Banks as prescribed by the Central Bank of Nigeria. Herewith attached and marked Exhibit 6 is a copy of the circular reference FRR/DIRICIR/GEN/0/621 Dated 15 February 2012 wherein the Central Bank of Nigeria required all primary mortgage Banks in Nigeria to increase its share capital and Exhibit 7 circular dated 14 December 2012 with reference OFI/DIR/SIR/GEN/01/08 also issued by the Central Bank recognizing the above requirements.

- (ix) The options approved by the Central Bank of Nigeria for raising of capital to meet the minimum capital requirement include the following:
- (i) Rights issue;
 - (ii) Private Placement
 - (iii) Public Offer; or
 - (iv) Any business combination including mergers, acquisitions and takeovers.

- (v) The Claimant on his volition accepted to subscribe for the shares of the First Defendant through Private Placement as authorized by the Central Bank of Nigeria and accepted between the Claimant and the First Defendant.
- (vi) As required by law and extant Banking Regulations, the First Defendant on 21 October 2014 notified the Central Bank of Nigeria about the ANS00, 786,250 (Five Hundred Million, Seven Hundred and Eighty Six Thousand, Two Hundred and Fifty Naira) capital injection into the Share Capital of the Bank by the Claimant, clearly notifying the Central Bank of Nigeria and clearly stating that the exact amount be recognized as capital injected by the Claimant. Herewith attached and marked Exhibit 8 is an acknowledgement copy of the said letter to the Central Bank of Nigeria dated 21 October 2014 which followed up an earlier letter dated 17 September 2014.
- (vii) From the foregoing, the nature of the investment (acquisition of shares through a private placement) made by the Claimant must pass through regulatory approvals that are not within the control of the First Defendant.

- (viii) The prescribed statutory procedure is that upon the subscription of a shareholder, the Central Bank of Nigeria is notified as was duly done by the First Defendant and in all other investments involving other investments.
- (ix) Thereafter, the Central Bank of Nigeria verified the funds using their statutory and regulatory set criteria, Accordingly, on 14 July 2015, the Central Bank of Nigeria by its letter dated the same 14 January, 2015 vide reference OFI/COP9/GEN/PNG/01/004 and herewith attached and marked as Exhibit 9 to the First Defendant, the Central Bank of Nigeria confirmed approval of the subscriptions made by the Claimant and another investor totaling N750, 786,250 (Seven Hundred and Fifty Million, Seven Hundred and Eighty Six Thousand, Two Hundred and Fifty Naira).
- (x) The Central Bank of Nigeria recognized and granted approval for the Naira value of the subscription, not United States Dollars as the currency of Nigeria remains the Naira not the United States Dollars and the subscription was

made in Nigeria under the currency regime of the Naira, not the United States Dollars.

(xi) The shares the Claimant subscribed were documented in Naira at the Naira value at the time of the investment, not in the United States Dollars.

(xii) The next process in corporate management and governance prescribed by statute was for the First Defendant to hold the necessary statutory meetings, file the corporate changes with the Corporate Affairs Commission and issue Share Certificates to the subscribers.

(xiii) Thereafter the Claimant was allotted 500,786,250 ordinary shares of MGSL Mortgage Bank Limited (the first Defendant) representing the N500,786,250 (Five Hundred Million, Seven Hundred and Eighty Six Thousand Two Hundred and Fifty Naira) part payment he made out of the N3 Billion subscribed. Herewith attached and marked Exhibits 10, 11 and 12 are the following:

(i) Share Certificate No. 025 certifying allotment of 500,786,250 shares to the Claimant as fully paid ordering shares of N1.00 per share in MGSL Mortgage Bank Limited subject to the

Memorandum and Articles of Association of the Company Exhibit 10 and also showing the shares held by all other shareholders.

- (ii) Return on allotment of shares of MGSL Mortgage Bank Limited confirming the registration of 500,786,250 ordinary shares of MGSL Mortgage Bank Limited in the name of the Claimant, Prince Arthur Eze with the Corporate Affairs Commission (Exhibit 11).
- (iii) Extract of the extra ordinary General Meeting of the first Defendant held on 20 January 2015 and duly filed with the Corporate Affairs Commission (Exhibit 12).
- (iv) Copy of the statement to be published by Banking and Insurance Company and deposit provident or benefit society made pursuant to Section 553 of the Companies and Allied Matters Act 2004, the applicable statute to the transaction at the material time of the transaction and duly filed with the Corporate Affairs Commission and the Central Bank of Nigeria.

(v) From the foregoing, and up to the 11 February 2021 when the Claimant instituted this action, the Claimant was and remains a shareholder of the first Defendant having 500,786,250 (Five Hundred Million, Seven Hundred and Eighty Six Thousand Two Hundred and Fifty) shares of the first Defendant, duly registered and duly authorized by both the Corporate Affairs Commission and the Central Bank of Nigeria.

(xiv) The current share capital of the first defendant is N5,610,786,250 comprising 5,610,786,250 ordinary shares of N1.00 each. Herewith attached and marked Exhibit 13 is a copy of the Certificate of Registration of increase in share capital issued by the Corporate Affairs Commission on 1st April 2016.

10. In specific reaction to paragraph 6 of the affidavit of Prince Ikechukwu Eze, the Defendants hereby state that the second Defendant is a minor shareholder of the first Defendant having only 227,003,297 (less than 5 percent of the entire shares of the first Defendant) along with 20 others including the Claimant who, after extorting NS00,786,250.00 (Five Hundred Million, Seven Hundred and Eighty Six Thousand Two Hundred and Fifty Naira)

from the first Defendant using harassment and intimidation by the Economic and Financial Crimes Commission still maintains ownership of the shares to that value which is more than 100 (one hundred) percent of the shares held by the second Defendant and which the Claimant still holds up to the date of this affidavit.

11. In other words, the Claimant after extorting from the Defendants the sum he invested still retains ownership of the same shares against the law and good conscience.
12. In further reaction to paragraphs 11 and 12 of the affidavit of Prince Ikechukwu Eze, the Defendants state that the Claimant subscribed to shares of the first Defendant as an investor/shareholder and gave no loan and made no cash deposit with the first Defendant that is refundable at any time as exchange rates fluctuates or as the Claimant decides.
13. Paragraphs 13 and 14 of the affidavit of Prince Ikechukwu Eze are false. The Defendants challenge the Claimant to show particulars of any such 'entreaties and enquires' said to be made by the Claimant to the Defendants. Rather, on several occasions, the Defendants attempted to reach the Claimant without success with a view to updating him with the progress being made with regulatory approvals in raising the minimum share capital of the first Defendant

and securing regulatory approvals for his subscription. The Claimant was never available and never attended any meeting of the first defendant nor sent a representative despite his promises to do so.

14. In specific reaction to paragraph 15 of the affidavit of Prince Ikechukwu Eze, the Defendants state that when they received a communication from the law firm of Oke, Ajara & Co, the principal solicitor, Chief Olusola Oke fixed a meeting in his office with us on 18 January 2016 but neither Mr. Olusola Oke nor anyone else from his Chambers showed up for the meeting.
15. In specific reaction to paragraphs 16 and 17 of the affidavit, the Defendants state that the Claimant was duly issued with 500,786,250 shares of the first Defendant duly approved by the Central Bank of Nigeria and registered by the Corporate Affairs Commission as earlier averred. Accordingly, paragraphs 16 and 17 of the affidavit of Prince Ikechukwu Eze are false in their entirety.
16. In specific reaction to paragraphs 18 and 19 of the affidavit of Prince Ikechukwu Eze, the Defendants hereby:
 - (i) Repeat paragraph 13 above and further challenge the Claimant to produce the letter therein referred to. The Defendants maintain that they had made

several efforts to reach the Claimant without success and the Claimant failed to attend meetings of the first Defendant or to visit the offices of the first Defendant despite so promising.

- (ii) The claim to refund of \$3,000,000.00 (Three Million Dollars) payable in the United States Dollars is baseless as the Claimant subscribed to the shares of the first Defendant dominated in the Naira, not United States and paid a sum amounting to N500,786,250.00 (Five Hundred Million, Seven Hundred and Eighty Six Thousand Two Hundred and Fifty Naira) at the material time which were applied towards share subscription to the benefit of the Claimant.
- (iii) The rights and liabilities of shares of the shareholders, including the Claimant are clearly defined in the Memorandum and Articles of Association of the first Defendant, the Private Placement Investment Prospectus containing the terms of the subscription duly agreed to by the Claimant and further governed by the Companies and Allied Matters Act and Regulations made under the Act as well as the Investments and Securities Act 2007 and Rules and Regulations made by the

Securities and Exchange Commission from time to time.

(iv) None of the rights include a refund of USD3,000,000.00 payable in the United States Dollars at any time the subscriber changes his mind or wishes or at any time the Naira fluctuates or succumbs to the pressure of the United States Dollars or any other currency.

(v) On 19 February 2016, the Claimant with the second Defendant and with other officers of our company in his residence at 12 Chari Close, Maitama, Abuja wherein he confirmed his decision to divest from the shareholding of the first Defendant. The letter dated 19 February 2016 of the first Defendant to the Claimant is hereby annexed as Exhibit 14.

17. In specific reaction to paragraphs 20-25 of the affidavit of Prince Ikechukwu Eze, the Defendants hereby state as follows:

(i) Paragraph 20 is false. The Claimant initiated a false and malicious complaint to the Economic and Financial Crimes Commission alleging pretentiously that the first and second Defendants obtained money from him using false pretenses.

- (ii) Using the might, force, harassment and intimidation by the Economic and Financial Crimes Commission, the Claimant extorted from the first and second Defendants the sum of N500,786,250 (Five Hundred Million, Seven Hundred and Eighty Six Thousand Two Hundred and Fifty Naira) which, at the material time of forced payment was not due to be paid to the Claimant. Herewith attached and marked Exhibits 15 (1) -(16) are copies of the cheques totaling N500,786,250.00 (Five Hundred Million, Seven Hundred and Eighty Six Thousand Two Hundred and Fifty Naira) obtained from the first and second Defendants by force of harassment and intimidation using the Economic and Financial Crimes Commission.

Particulars of extortion, Fraud and Illegality by the Claimant

- (i) The Claimant personally subscribed to become a shareholder of the first Defendant and made a payment of N500, 786,250.00 (Five Hundred Million, Seven Hundred and Eighty Six Thousand Two Hundred and Fifty Naira) which went through the regulatory approvals of both the Central Bank of Nigeria and the Corporate affairs Commission.

- (ii) The Claimant was issued 500,786,250 shares of the Claimant.
- (iii) Despite keeping other investors away having subscribed to N3 Billion shares, he paid only NS00,786,250.00 (Five Hundred Million, Seven Hundred and Eighty Six Thousand Two Hundred and Fifty Naira) and breached the terms of the subscription contained on the application form he duly signed and on the prospectus of the private placement.
- (iv) The Claimant also breached the terms of the Memorandum and Articles of Association of the Company on ownership subscription of shares and payment of dividends when declared by the Company.
- (v) The Claimant further breached the provisions of the Companies and Allied Matters Act which clearly state that his rights and liabilities attaching to the shares of the Company were dependent to the terms of the issue and the Company's Articles and on the provisions of the First Schedule to the Act.
- (vi) As at 15 June 2016 when the Claimant visited the Economic and Financial Crimes Commission to extort

the said sum from the Defendants, the Claimant remained a shareholder of the first Defendants, refusing to divest or follow the procedure allowed by statute for transferring the shares to some other willing investors.

(vii) The Claimant has approached this Honourable Court with dirty hands of extortion and cheating.

(viii) Using EFCC which the Claimant admitted in paragraphs 20-31 of the affidavit of Prince Ikechukwu Eze is not one of the methods prescribed by the governing statutes, Rules and Regulations and the Articles of Association of the company for recovery of subscription funds made to a company for subscription of its shares.

(ix) The Defendants suffered huge embarrassments, disruption of their businesses by the Economic and Financial Crimes Commission used by the Claimant and admitted by him. The first Defendant is entitled to be refunded the sum of N500,786,250.00 (Five Hundred Million, Seven Hundred and Eighty Six Thousand Two Hundred and Fifty Naira) extorted from them using the EFCC when the returns on the Claimant's investments were not due and when the

Claimant had yet to divest his ownership of the shares. The Defendants are also entitled to be paid damages for embarrassments, and disruption of their business by the Claimant using the EFCC assessed to at least N10 Billion.

(x) The Claimant was only entitled to receive dividends when declared by the first Defendant or to divest his shareholding by selling the shares or directing the first Claimant to offer his shares to other shareholders at the current market value in and only thereafter, will be free to reconvert to the United States.

18. The Claimant's claim to breach of contract, trust and duty of care alleged in paragraphs 13-17 of the affidavit on his behalf are false and pretentious, rather it is the Claimant that has breached the terms of the share subscription with the first Defendant which he claimed he read and perfectly understood and breached the terms of the Company's Articles of Association as well as the provisions of statute governing subscription, ownership and divestment from shareholdings

19. In specific reaction to paragraphs 24-33 of the affidavit deposed to by Prince Ikechukwu Eze on behalf of the Claimants, the Defendants hereby state as follows:

- (i) In specific reaction to paragraph 22 of the said affidavit of the Defendants repeat paragraph 16(viii) and 16(ix) above and further state that the Claimant's admitted usage of EFCC due to his might power and connection is malicious and in conflict with the laid down procedure for recovery of funds invested in subscribing to shares of limited liability companies in Nigeria.
- (ii) The issue of alleged proviso of receiving N500,000,000.00 (Five Hundred Million Naira) out of a total money to be refunded being \$3,000,000.00 (Three Million US Dollars) was false and pretentious as there was no such agreement between the Claimant and the Defendant.
- (iii) The question of exchange rates by the Central Bank on exchange rates between the Naira and the United States Dollars did not arise at all.
- (iv) Neither the first nor the second Claimant is indebted to the Claimant to the sum of USD3,000,000.00 (Three Million US Dollars) or the sum of US1,361,783.69 or US1,917,819.19 claimed by the Claimant or to any sum at all.

- (v) The claim of the Claimant is false, pretentious, malicious and having nothing to do with a liquidated debt as claimed by the Claimant in paragraphs 26-33 of the affidavit of Prince Ikechukwu Eze on behalf of the Claimant.
- (vi) It is the Claimant that is indebted to the first Defendant for the following:
 - (i) The sum of N500, 786,250.00 (Five Hundred Million, Seven Hundred and Eighty Six Thousand, Two Hundred and Fifty Naira) extorted from the Defendants using force and intimidation of the Economic and Financial Crimes Commission when his investment in the shares of the first Defendant remain intact till the date of filing this defence and when the Claimant has refused to divest from the company following laid down civil and statutory procedures clearly laid down by his subscription contract with the first Defendant, the Articles of Association of the Company and the statutes and Regulations governing the nature of the transaction.
 - (ii) Interest at the rates approved by the Central Bank of Nigeria from 15 June 2016 when the

Claimant extorted the sum until date of payment and thereafter to not less than 10 percent of the sum after Judgment as allowed by Order 39 Rule 4 of the Rules of this Court until payment.

(iii) The sum of N10 Billion name assessed as general damages for breach of contract by the Claimant and embarrassments, harassments, intimidations suffered in the hands of the Claimant.

20. It will in the very interest of Justice for this Honourable Court to either non- suit the Claimant or to order pleadings in this matter for the Plaintiff to prove:

- (i) the contract which he claimed were breached by the Defendants;
- (ii) the duties which he claimed were breached by the Defendants;
- (iii) the trust, which he claimed were breached by the defendants;
- (iv) the terms and conditions upon which he subscribed for the shares of the first Defendant and how the first Defendant breached the prospectus of the offer, the Articles of Association of the Company and the

provisions of the Companies and Allied Matters Act, the Banks and Other Financial Institution Act, the Investments and Securities Act and Regulations made by the regulators governing subscription, ownership and sale or recovery of funds tied to shares;

- (v) the terms and conditions wherein the Defendants agreed with him that returns on shares denominated in Naira and registered in Naira by Nigerian regulatory authorities will be made in United States Dollars and will be made at any time he changes his mind or at any time the Naira goes down or up; and
- (vi) the cause of action against the second Defendant or personal liability of the second Defendant other than acting as an officer of the first Defendant in respect of an investment made by Claimant in the shares of the first Defendant, amongst several others.

21. Should this Honourable Court order for pleadings, the Defendant shall file a counter claim against the Claimant for -

- (i) Extortion of the sum of NS00,786,250.00 (Five Hundred Million, Seven Hundred and Eighty Six Thousand, Two Hundred and Fifty Naira) from the

Defendants by the Claimant when returns on his investment were not due and when he has yet to divest his ownership of the shares of the Company.

(ii) Interest at the rates prescribed by the Central Bank of Nigeria from 15 June 2016 on the sum of NS00,786,250.00 (Five Hundred Million, Seven Hundred and Eighty Six Thousand, Two Hundred and Fifty Naira) when the Claimant extorted the said sum from the Defendants until judgment and interest of at least 10 percent from the date of Judgment until payment by the Claimant as allowed by Order 39 Rule 4 of the Rules of this Honourable Court.

(iii) N10 Billion damages for breach of contract by the Claimant and for the embarrassments, harassments and intimidation suffered in the hands of the Claimant.

22. It will also be in the very interest of Justice to either non suit the Claimant or order pleadings and have the matter transferred to the ordinary cause list in which case:

(i) The Defendants shall furnish evidence of the custom and usage applicable in the investments, securities and corporate governance industry on subscription of shares, return of subscription funds on investment

made in Nigeria and sale as well as transfer/divestment of shares in support of its defence and counter claim that shall be filed.

The court ordered the parties to address the court on the whole matter before this court.

The learned Silk A. Awomolo (SAN) adopt all the process filed by the 1st& 2nd Defendants in support of the notice of intention to defend on merit. Learned silk further made his submission and argued his position and state that all the affidavit and further affidavit of the defence have not been controverted or denied, they are deemed in law to have been admitted, the court is urged to rely on the counter affidavit and to act on them as the true of the matter. Also urged the court to order for pleading.

On the part of the clamant counsel C. P. Oli Esq. Submitted that this matter deserved to be heard under undefended list procedure has taken out the merit of the case, the claimant claims is supported by 38 paragraphs affidavit and also exhibited that the sum of three Million (3,000,000.00) USD was transferred from the account of the Claimant he refer the court to exhibit P1 and P2. In which the Defendant refund part of the sum which is Five Hundred Million Naira (~~₦~~500,000.000.00) part of the Three Million (3,000,000.00) USD to the Defendant and urged the court to look in to the process and deliver Judgment.

As a foundation the undefended list procedure under Civil Procedure Rules of FCT High Court 2018 in order 35 Rule 1 stated thus:-

“Where an application in Form 1, as in the Appendix is made to issue a writ of summons in respect of a claim to recover a debt or liquidated money demand, supported by an affidavit stating the grounds on which the claim is based, and stating that in the deponent's belief there is no defence to it, the judge in chambers shall enter the suit for hearing in what shall be called the "Undefended List".

It is a unique and peculiar procedure in the determination of Civil cases which aims to fasten and quicker decision without going through the rigours of a normal or usual trial by pleadings and calling for oral evidence in proof of claims made therein. The general primary purpose is to enable the court to decide expeditiously claim for liquidated money demands ascertained or fixed amount of money determined and agreed to by the parties.

The procedure is one by which a court can enter Judgment in favour of the Plaintiff as per the claims endorsed on the writ or affidavit in any one of the following situation Viz:

1. Where a defendant did not file a notice of intention to defend accompanied by an affidavit disclosing a defence on merit.
2. Where after a consideration of the notice of intention to defend along with the affidavit supporting it, the court finds or holds that a defence on the merit was not disclosed by the Defendant.

In the case of G. M. ON & S. CO LTD Vs. AKPUTA (2010) 1 NWLR (Pt. 1200) pg 443 at 478. The trite law is that in determining whether a Defendant has a good defence or has disclosed such facts would or may be deemed sufficient to entitle him to defend, it is not necessary for court to decide at that stage whether the Defendant disclosed in the affidavit has been established. All that is required is simply to look at the facts deposed to and see if it can prima facie afford a defence to the action. See the case of RICH FIELD (NIG) LTD & ANOR Vs. TRAVEX LTD (2018) LPELR – 46014 (CA).

I have restated enough, the general principle of law applicable to the undefended list procedure. Now it is apt to consider whether the Defendant's affidavit in support of notice of intention to defend disclosed a defence or triable issues to the respondent claim. At paras 9 – 26 as stated earlier.

The defence put up by the Defendant, I must state straight away and without much ado, is of no moment to the issue of the claims of the Claimant before me. The depositions in the stated

paragraphs of the Defendant affidavit in support of notice to defend do not deny the germane fact that the Claimant issue or transferred to the Defendant Access Bank account the sum of Three Million (\$3,000,000.00) USD only, which the part payment by the Defendant to the Claimant justified the Claimant claim.

The affidavit in support of the notice of intention to defend does not constitute a defence on the merit. Now for an affidavit to constitute a defence on merit the Defendant must set out the defence in the affidavit and not simply say that he has defence. The affidavit must show reasonably grounds of defence, that there is some dispute between the parties requiring to be gone into. See the case of OSIFO Vs. OKOGBO COMMUNITY BANK LTD (2006) NWLR (Pt 1002) pg 260.

A mere general denial of the Claimant's claim and affidavit is devoid of any evidential value and as such would not have disclosed any defence which will at least throw some doubt on the Claimant's claim. See DELTA HOLDINGS (NIG) LTD Vs. OBORO (2014) 13 NWLR Pt 1425 pg 590 and case of RICH FIELD (NIG) LTD Vs. TRAVEX LTD (supra).

A case is only transferred to the general cause list as a matter of course or routine but on proper scrutiny of the averment in the affidavit in support of the notice of intention to defend for this purpose no fanciful or frivolous defence adduce to prolong the case or play for time will suffice. It must be a real defence on the merits

and not a caricature of it. See RICH FIELD (NIG) LTD & ANOR Vs. TRAVEX LTD (SUPRA).

From the totality of the foregoing I hold the view that this notice of intention to defend is wholly unmeritorious and ought to be dismissed. I accordingly dismiss same.

Now back to the Claimant's claim from the evidence so adduce i.e P1 and P2 and also the payment made to the Claimant by the Defendant of Five Hundred Million Naira (N500,000,000.00) only which same was evidenced by the Defendants in paragraph 17 (ii) and exhibit 15 (1) – (16). I am satisfied that the Claimant has prove his claim against the Defendant and entitle to Judgment, Judgment is enter in favour of the Claimant against the Defendant and all the relief sought is granted except relief 3 and 4, parties to bear their cost.

1. It is hereby ordered that the Defendants jointly and severally pay the Claimant the sum of \$1,917,817.19 USD being the outstanding indebtedness of the Defendants to the Claimant.
2. And also the mareva order earlier made had become absolute against the Defendants in satisfaction to the debtedness against the 1st and 2nd Defendants.

I so hold.

APPEARANCE

Christian Nduka, Esq. for the Claimant

A. Awomolo (SAN) with him Akinyotoye Arosanyan, Esq. and Kelvin Ugiagbe, Esq. for the Defendant.

Sign

Hon. Judge

6/12/2021