

IN THE HIGH COURT OF JUSTICE
FEDERAL CAPITAL TERRITORY OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO – ABUJA
ON, 15TH DAY OF NOVEMBER, 2021.
BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.

SUIT NO.: -FCT/HC/CV/1176/2020

BETWEEN:

ACCESS BANK PLC:.....PLAINTIFF

AND

1) AKOTEX ENERGY LIMITED
2) MP LIFTS NIGERIA LIMITED }**DEFENDANTS**
3) MR. AKOMOLAFE BARNETH }

TundeOgundare for the Plaintiff.
Miracle K. Agbontien for the Defendants.

JUDGMENT.

By a Writ of Summons under the undefended list dated the 19th day of February, 2020 and filed on the 20th day of February, 2020 and later renewed by the order of Court on the 10th day of November, 2020, the Claimant took out this action against the Defendants claiming as follows:

1. An order of this honourable Court directing the Defendants to pay the sum of N37,000,000.00 (Thirty Seven Million Naira) being the total outstanding instalments owed by the Defendants to the Claimant in respect of credit facility granted to the Defendants by the Claimant as at 31st December, 2011.
2. An order of this honourable court directing the Defendants to pay the Claimant a post-judgment interest at the rate of

10% per annum from the date of judgment till judgment sum is finally liquidated.

The Claimant's claim as per its supporting affidavit is that sometime in October, 2007, the 1st Defendant applied to the Claimant for a credit facility of Seventy-Six Million Four Hundred and forty Thousand Naira (N76,440,000.00) for business expansion to refinance the purchase of ten (10) DAF trucks. The Claimant averred that the said credit facility was ratified by the resolution of the Board of Directors of the 1st Defendant while the 3rd Defendant, being the Managing Director and alter ego of the 1st and 2nd Defendants, executed a Guaranteed Bond, undertaking his personal repayment of the loan. That the Defendants also executed an irrevocable Domiciliation of Payment Agreement wherein they undertook to domicile all payments from sales or proceeds of supply of diesel accruing to them in the account maintained by them with the Claimant as a further security for the repayment of the loan.

The Claimant averred that as a prelude to the disbursement of the loan, the Defendants executed a Deed of Transfer of the Ownership of all the ten (10) DAF trucks and two (2) pedlars to the Claimant as a means of further securing the repayment of the loan but maintained possession of the trucks. It stated that it approved the loan and disbursed the fund to the 1st Defendant after being satisfied of the genuineness of the loan application. That after the disbursement of the loan and its drawdown, the Defendants started paying the loan and stopped after one year and disappeared with all the vehicles which purchase were financed via the loan granted by the Claimant.

The Claimant averred that the debit balance of the Defendants in the account in respect of the principal sum and interest is the sum of N73,052,502.72k as at 31st December, 2009. That it

wrote a petition through its solicitors in August, 2017 to the EFCC against the Defendants after its search for the Defendants yielded no fruits, following which the Defendants came out of their hiding upon invitation by the commission.

The Claimant stated to the effect that the parties re-negotiated the Defendants' indebtedness at the auspices of the EFCC; the Claimant rejecting the offer of N48,068,757.29 made by the Defendants as full and final payment of their indebtedness and instead accepting that the Defendants pay the sum of N50,000,000.00 as full and final payment of their indebtedness.

Also, that the Defendants offered that the 2nd Defendant, MP Lifts Nigeria Limited, a sister company to the 1st Defendant, would take the responsibility of repaying the outstanding loan, the 1st Defendant having gone out of operations.

The Claimant further stated that since after the negotiated agreement with the Defendants, the Defendants have only paid a total sum of N13,000,000.00 between January to June 2018 to the Claimant out of the N50,000,000.0 agreed by the parties, leaving a total balance of N37,000,000.00.

That since then, the 2nd Defendant has earned and received up to N20,000,000.00 through her account with the Claimant, with the 3rd Defendant quickly withdrawing same through online platform without the knowledge of the Claimant, and refusing to pay even the instalments agreed upon by the parties.

From the records of this Court, there is no competent notice of intention to defend the suit by the Defendants notwithstanding due service of the originating processes and hearing notices on them.

Be that as it may, by the nature of the Claimant's suit, being undefended, the presence or absence of the Defendants is immaterial for the determination of the suit.

In **Atguba and Company v. Gura Nigeria Limited (2005) LPELR-584(SC)**, the Supreme Court, per Edozie, J.S.C held that;

“The object of the undefended list procedure is to enable a Plaintiff whose claim is unarguable in law and where the facts are undisputed, and it is inexpedient to allow a defendant to defend for mere purposes of delay, to enter judgment in respect of the amount claimed.”

Also in **UBA & Anor v. Jargaba (2007) LPELR-3399(SC)** the Apex Court, per Tobi, J.S.C. held thus;

“The undefended list procedure is a truncated form of ordinary civil hearing peculiar to our adversary system where the ordinary hearing is rendered unnecessary due in the main to the absence of an issue to be tried or the quantum of the Plaintiff's claim disputed to necessitate such a hearing”.

Having carefully and painstakingly gone through the Claimant's affidavit in support of the Writ of Summons and the accompanying exhibits, and in the absence of any competent notice of intention to defend, I am convinced that the claims of the Claimant in this suit are liquidated and suitable to be heard under the Undefended List procedure.

The ordinary hearing of this suit under the General Cause List is therefore, rendered unnecessary as same can only amount to mere delay and waste of judicial time.

It is the finding of this Court from the affidavit and documentary evidence before this Court, that the debt of N73,052,502.72k owed to the Claimant by the Defendants, was renegotiated by the parties with the Claimant accepting to be paid the sum of N50,000,000.00 by the Defendants as full and final settlement of the entire debt.

It is also the finding of this Court that pursuant to the renegotiated agreement, the Defendants took steps and paid a total sum of N13,000,000.00 leaving a balance of N37,000,000.00 which they have left unpaid.

It is the further finding of this Court that the Defendants have no defence to the claims of the Claimant.

Accordingly, this Court enters judgment to the Claimant as follows:

1. The Defendants are by the order of this Court directed to pay the sum of N37,000,000.00 (Thirty Seven Million Naira) only to the Claimant being the total outstanding instalments owed by the Defendants to the Claimant in respect of the credit facility granted to the Defendants by the Claimant at 31st December, 2019.
2. The Defendants are ordered to pay to the Claimant a post-judgment interest at the rate of 10% per annum from the date of this judgment until the judgment sum is finally liquidated.

Cost awarded against the Defendant as out of pocket expenses is N200,000.00 (Two Hundred Thousand Naira).

HON. JUSTICE A. O. OTALUKA
15/11/2021.

