

THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY ABUJA  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT COURT NO. 13 WUSE ZONE 2, ABUJA  
BEFORE HIS LORDSHIP: HON JUSTICE A. S. ADEPOJU.

ON THE 18<sup>TH</sup> DAY OF NOVEMBER, 2021

SUIT NO: FCT/HC/CV/0275/2017

BETWEEN:

AUSTIN AJENU.....CLAIMANT

AND

SADIQ ONAJA.....DEFENDANT

**A.J. Genesis for the plaintiff**, counsel apologize for his absence.

**OSAZE .E. Esie** for the defendant.

Defendant is present in court.

**JUDGMENT**

The plaintiff's claim against the defendant is for the sum of Six Million naira(N6,000,000) only being the total indebtedness to him by the defendant. In support of the undefended writ is a 14 paragraph affidavit deposed to by the plaintiff himself. In paragraph 3-8 of the affidavit, the deponent averred as follows per 3" that sometime the 25/07/2012, the defendant contacted him and requested for thirty Thousand (30,000.) Liters of AGO diesel worth Three Million Naira nine Hundred and ninety Thousand Naira(N3,990,000.00) and was issued with an Intercontinental Bank cheque dated 25/08/2012. A copy of the cheque is attached as Exhibits A. That two weeks later the defendant came back and requested for another supply of (AGO) diesel valued at Two Million Three Hundred and Twenty Thousand naira (N2,320.000) and paid One Million naira (N1,000,000) and was issued with an

Intercontinental Bank cheque with no. 08878381 at the tune of one Million Three Hundred and Twenty Thousand naira(N1,320,000) dated 25/08/2012 for the balance. A copy of the cheque is attached to Exhibits B. That also a week later the plaintiff also came back requesting for another supply of Fifteen Thousand (15,000) liters of AGO diesel worth One Million Nine Hundred and Fourteen Thousand naira(N1,914,000.00) and issued another Intercontinental Bank Plc. Cheque with no. 08878383 dated 15/09/2012 in the tune of One Million Nine Hundred and Fourteen Thousand naira(1,914,000.00) . a copy of the cheque is attached as Exhibit C. That when he presented the first and second cheques dated 25/08/2012, they were marked "DAR" by the bank and returned unpaid as the bank told him that the account was not funded. That when he also presented the cheque dated 15/09/2012, the bank also marked it "DAR" and told him that the account was not funded. When he reported all these to the defendant, he told him he was very sorry and they and agreed on the amount owing to be Six Million naira(N6,000,000). After this the defendant wrote a letter to his debtors asking them to pay him the sum of N6,000,000(Six Million naira). His debtor also did not pay him any money whatsoever. He attached the letter as Exhibit D. The defendant he stated has remained adamant, and has refused and neglected to take any step towards paying the sum despite repeated plea. He stated his believe that the defendant has no defence to this suit.

The defendant filed a notice of intention to defend dated 12<sup>th</sup> September 2021 with a 25 paragraph Counter-affidavit.

The defendant's counter denied paragraphs 3,4,5,6,7,8,9,10,11,12,13, and 14 of the affidavit in support of the writ of summon and observed

them as false, misleading and calculated attempt to mislead this Honourable court.

The defendant further averred to the following facts, that he had never at any point in time contacted the claimant to supply him diesel and the claimant did not at any point in time supply diesel to the defendant. He also stated that the defendant only entered into an oral partnership agreement with a company known as Vebis Nigeria Ltd. who is not a party to this suit that the defendant and the company would supply diesel to Starcoms Nigeria Ltd. Sometime in 2017 as a result of which the defendant issued cheques in favour of the Vebis Nigeria Limited and not the claimant in this suit. That after the oral partnership agreement between the defendant and Vebis Nigeria Limited and before the supply of the diesel to starcoms Nigeria Limited, Starcoms Nigeria Ltd became bankrupt as a result of which the diesel could not be supplied.

That surprisingly the claimant surfaced to start claiming for money for diesel whereas no diesel was supplied. That when the defendant requested the claimant to produce evidence that he supplied diesel to him, the claimant absconded only for him to come to this Honourable Court to start claiming money for diesel he was not asked to supply and which he did not supply. That there is no contract whatsoever either oral, verbal, express or by necessary implication between the claimant and the defendant. That the defendant did not ask the claimant to supply him diesel or any petroleum products whatsoever. He urged the court to transfer the matter to the general cause list.

The duty of the court in an action filed under the undefended writ is to examine the affidavit in support of the notice of intention to defend whether it discloses a defence on the merit. In other words, the court is to see determine whether the facts contained in the affidavit raise triable issues. See ***NWORAH & SONS LTD. VS. AKPALA ESQ.(2010) 4 SCM 31 Government of Gombe State & Anor V. Saleh(2017) LPELR 43142 CA. ATAGUBA & CO. V. GURA(NIG) LTD(2005) LPELR 584 SC. ERIOBU & ANOR V. FIRST CITY FINANCE CO. LTD(2002) LPELR 12172 CA. IMMONIYAME HOLDINGS LTD & ANOR V. SONEB ENTERPRISES LTD. & ORS (2010) LPELR 1504 SC.***

The court is to scrutinize the facts contained in the affidavit evidence of the defendant. The claim of the defendant as contained in paragraph 10 of his affidavit was that he had oral partnership agreement with a company known as Vebis Nigeria Limited, who is not a party to this suit that the company and the defendant would supply diesel to Starcoms Nigeria Ltd sometime in 2017 and as a result the defendant issued cheque in favour of Vebis Nigeria Limited and not the claimant in this suit. The question that poses and beg for answers are

- (a) who is the owner of Vebis Nigeria Limited.
- (b) Where is the request for supply of the diesel indicating the name of the defendant.
- (c) The cheques issued in favour of Vebis Nigeria Limited what was it meant for?
- (d) And where is the proof that the said cheques were issued in the name of Vebis Nigeria Limited and not the claimant?
- (e) If the defendant is saying that he issued cheques to Vebis Nigeria Limited for the supply and there was no supply of the diesel to Starcoms because it went bankrupt, did the defendant request

for a return of the cheque, or money value from the said Vebis Nigeria Limited and if he did where is the proof?

For a court to transfer matter to the general cause list, the defence raised by the defendant in the affidavit must condescend on facts, both oral and documentary. The affidavit must disclose a reasonable defence. The defence put up by the defendant appeared to be very unreasonable and inchoate, why would the defendant claim that he issued a cheque to a company called Vebis without stating when the cheque was meant for.

In my view, the defendant is not stating the entire whole truth about the transaction.

As far as I am concerned, the defendant have the admitted that there was a transaction between him and the claimant, there is nothing in the affidavit showing that the defendant had a deal with Verbis Nigeria Limited on the supply of the diesel to Starcoms Nigeria Limited.

The facts contained in paragraphs 10,11,12, and 13 of the affidavit in support are unreasonable, a sham and do not constitute a defence on merit to warrant transferring this action to the general cause list.

On what constitute a defence on the merit, the Supreme Court in the case of WEMA SECURITIES FINANCE PLC V. NIGERIA AGRICULTURAL INSURANCE CORPORATION (2015) LPELR 24833 SC. stated thus “ In all what will constitute a defence on the merit will depend on the facts of the case. This is within the discretion of the trial court. A discretion which must be exercise judicially and judiciously after a full and exhaustive consideration of the affidavit in support of notice of intention to defend, ***Grand Cereal an Oil Mills V. AS-ahel***

***International Marketing Ltd and Anor(2000) 4 NWLR(pt 652) 310. Alhaji Danfulani V. Shekaro (1996) 2 NWLR PT (433) 223 Alhaji Ahmed V. Trade Bank Plc.(1997) 10 NWLR PT. 524 290, Calvenphy Limited V. Pekas International Limited(2001) 9NWLR(pt 717) 164.***

On the whole, having carefully scrutinized the entire facts contained in the affidavit in support of the notice of intention to defend, I find and hold that the facts therein raise no triable issues. Consequently the plaintiff's claim succeeds, and judgment is hereby entered for the plaintiff as contained in the undefended writ of summons.

Signed

Hon. Judge

18/11/2021