

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**HOLDEN AT ABUJA**

**ON WEDNESDAY THE 9TH DAY OF MARCH 2022**

**BEFORE HIS LORDSHIP: HON JUSTICE O. A. ADENIYI**

**SITTING AT COURT NO. 8 MAITAMA-ABUJA**

**SUIT NO: FCT/HC/CV/3279/2020**

**BETWEEN**

TOTAL NIGERIA PLC ... .. CLAIMANT

**AND**

ETA ZUMA GROUP W/A LIMITED ... .. DEFENDANT

**JUDGMENT**

The Claimant commenced the instant action under the Undefended List Procedure vide Writ of Summons, supported with an affidavit and filed in this Court on 26/11/2020.

The Claimant's claim is for liquidated sum of **N49,400,137.00 (Forty-Nine Million, Four Hundred Thousand, One Hundred and Thirty-Seven Naira)** being the outstanding indebtedness of the Defendant to the Claimant arising from supply of petroleum products to the Defendant by the Claimant at the material time to this suit.

In an action filed pursuant to the Undefended List provisions of **Order 35** of the Rules of this Court, the Court has a role to perform, which is to examine the affidavit purporting to disclose a defence filed by the Defendant where one is filed, in order to determine whether or not facts deposed in the affidavit discloses prima facie defence. Where the Court comes to the conclusion that the affidavit discloses prima facie defence, the matter shall be transferred to the General Cause List for the suit to be tried by Pleadings. Otherwise, the Court is bound to enter judgment in favour of the Claimant with respect to the liquidated claim.

The case of the Claimant is straight forward. Between the months of May 2018 and June, 2019, she supplied various petroleum products to the Defendant, amounting in value to the sum of **N57,877,048.55**. Parties exchanged email communication whereby the Claimant demanded for payment of the debt. The Defendant paid part of the debt in the sum of **N5,199,000.00**. The Claimant continued to press for payment of the outstanding debt whereof in her mail of June 1, 2020, the Defendant admitted the debt of **N49, 400,137.50** and attributed the delay in settling the sum to border closure and the Covid-19 pandemic which, according to her, had affected her business. The Defendant, in the said mail, pleaded with the Claimant to exercise patience, that once business picked up, she shall schedule the payments accordingly. I make specific reference to the email attached as **Exhibit T6** to the affidavit in support of the Writ.

The Defendant failed to make good her promise to settle the outstanding debt. As a result the Claimant, through her solicitors, made a formal demand for the payment of the admitted sum, by letter doted

11 November, 2020, attached as **Exhibit T8** to the affidavit in support of the writ. Despite the letter, the Defendant remained recalcitrant and refused to settle the admitted debt. Hence the instant action. I had carefully examined the facts deposed in the affidavit filed to support the notice of intention to defend the action. The Defendant did not deny that the Claimant supplied her with petroleum products. The Defendant did not also deny that the debt was admitted in the mail of June 1 2020. Her only contention is that the staff that issued the mail had no instruction of the company to so admit the sum. But then, when the Claimant, several months later, formally demanded for settlement of the debt through her Solicitors, vide **Exhibit T8**, attached to the Writ, the Defendant did not respond to the letter to contest the debt.

I further note that the same officer of the Defendant who wrote the mail, **Exhibit T6**, had previously on behalf of the Defendant, exchanged several other mails with the staff of the Claimant, wherein the issue of the outstanding payments were discussed. The Defendant did not disclaim any of those mails, all of which were attached as Exhibits to the affidavit in support.

In an action for recovery of a liquidated debt under the Undefended List Procedure, the proposed defence of the Defendant must be predicated on substantial and bonafide grounds. Such defence must touch on the substance of the debt in its particulars, either showing by credible evidence that the amount claimed has been paid, or partly paid; or that the amount due requires taking of account. See **DURUMUGO RESOURCES LTD VS. ZENITH BANK PLC (2016) LPELR - 40487 (CA)**.

In the present case, the Defendant is unable to satisfactorily dislodge the admitted claim. The law is trite that an admission is the best evidence in determining a party's liability. See **AKANINWO VS. NSIRIM (2008) ALL FWLR (Pt. 410) 610 @ 663.**

From the deposition in the Defendant's affidavit, which I had carefully examined, the purported defence put up by the Defendant has not disclosed any triable issues or cast any doubt whatsoever on the Claimant's claim.

The Rules guiding the procedure under which the instant suit is filed are designed to relieve the Courts of the rigours of Pleading and the burden of hearing tedious evidence or sham defences mounted by Defendants who are just determined to dribble and cheat Claimants out of reliefs they are normally entitled when their cases are patently clear and unassailable.

In my view, this is one of such cases in which the Defendant's attempt at a defence can at best be described as cosmetic, a contrivance and indeed a sham. I so hold.

In the final analysis, hold that the affidavit filed by the Defendant to support her Notice of Intention to defend this action purporting to disclose a defence on the merit has failed to meet the requirements and standards of a prima facie defence. Her own admission spoke glowingly against her.

**Accordingly, the Claimant's claim must succeed and the same is hereby granted.**

I hereby enter judgment in favour of the Claimant in the sum of **N49,400,137.00** being the Defendant's outstanding debt arising from supply of petroleum products to her by the Claimant between the months of May 2018 and June, 2019, which sum the Defendant failed, refused and neglected to pay.

On the issue of post-judgment Interest, it is trite that the provisions of **Order 39 Rule 4** of the Rules of this Court empower the Court to grant post judgment interest on liquidated judgment-debt not exceeding **10%** per annum whether or not the interest is claimed.

In the present case am satisfied that the Claimant is entitled to the relief for post judgment interest.

Accordingly the Defendant shall pay the judgment debt at the rate of **10%** per annum from the date of this Judgment up until the same is finally liquidated.

I award costs of the action, in the sum of **N200,000.00** in favour of the Claimant against the Defendant.

**OLUKAYODE A. ADENIYI**

**(Presiding Judge)**

**09/03/2022**

**Legal representation:**

**Paul O. Eshiemomoh, Esq.** (with **Dorcas O, Anaja, Esq.**) for the Claimant

**James Okoh, Esq.** (with **Benedict Ugoji, Esq.**) for the Defendant