

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT JABI

THIS 17TH MARCH, 2022

BEFORE HIS LORDSHIP: HON. JUSTICE A.A FASHOLA

SUIT NO: FCT/HC/CV/1155/2022

BETWEEN:

MR EMMANUEL R. EJEH-----CLAIMANT

AND

ANTHONY ALI -----DEFENDANTS

JUDGMENT

This is a matter commenced by a writ of summons under the undefended list procedure dated 18th June 2021 and filed on the same date. The suit is brought pursuant to order 35 of the high court civil procedure Rules of the Federal Capital Territory Abuja 2018. Wherein the Claimant Claims against the defendants as follows:

- 1. AN ORDER OF COURT** directing/compelling the defendant to immediately pay the sum of S94,166.67(Ninety-four Thousand One Hundred & Sixty Six US Dollars, Sixty-Seven US Pennies) being the Total sum owed to the claimant
- 2. AN ORDER OF COURT** directing the defendant to pay to the claimant the sum N2,000,000.00 (Two Million Naira) only being the legal fees paid by the claimant in prosecuting this suit.

In support of the writ of summons is a 13 paragraphs affidavit deposed to by one Emmanuel R Ekeh the claimant herein. Attached to the affidavit are annexures marked as Exhibit A,B,C, and D respectively.

The claimant avers that sometimes in 2008, the defendant who happens to be his cousin borrowed the sum of \$100,000.00 (One Hundred Thousand and US Dollars from him saying that he wanted the money to expand his business in the united state of America. The claimant avers that he sourced for some money he then borrowed the defendant the amount he requested for, which is the sum of \$100,00.00 (One Hundred Thousand US Dollars).that the defendant took out & 10,000.00(Ten thousand US Dollars) that he (the claimant) gave the balance of \$90,000.00 (Ninety Thousand US Dollars)to the defendant's elder brother named Prince George Ali to enable him send it to the defendant since the defendant would be unable to travel with the whole sum because of the amount involved in the presence of one Edward Ekeh who later facilitated the transfer of the money to the defendant's business and personal bank accounts in the united state of America (USA). The claimant avers that the total sum borrowed the Defendant in 2008, between the period of 26th March 2018 to 29th March 2018 and November 2018, the defendant was only able to pay back the sum of N2,100,000.00 (Two Million One Hundred Thousand Naira) which is \$5,833.33 (five Thousand Eight Hundred & thirty three US Dollars and thirty-three US pennies) in file equal installment of N500,000.00 (Five Hundred Thousands Naira Only) paid through his son Paul Oche. The claimant avers that the balance of \$94,166.67(Ninety Four

Thousand One Hundred and Sixty –Six Us Dollars Sixty-Seven US pennies) is yet to be paid despite repeated demands and promises of payment from the Defendant. That the defendant deposed to an affidavit in Arizona, United State of America stating the amount owed and the intention to pay same.

The following are the list of Exhibits annexed

1. Exhibit A are copies of UBA transaction Bank Statement
2. Exhibit B are printed copies of communication between the claimant and the defendant
3. Exhibit c is an affidavit deposed to by the defendant
4. Exhibit D is a certificate of compliance

At the hearing on the 15th December 2021, learned counsel to the claimant stated that the defendant has been served with the originating processes and hearing notice. The defendant has not filed any notice of intention to defend or an affidavit on the merit. Learned counsel urged the court to enter judgment in favour of the claimant.

From the evidence before me, this suit raises a lone issue for determination to wit:

1. WHETHER THE CLAIMANT HAS PROVED HIS CASE TO BE ENTITLED TO THE RELIEFS SOUGHT AGAINST THE DEFENDANT.

For the suppose of clarity, I deem it fit to reproduce Order 35 rule 4 of the Civil Procedure Rules of the FCT High Court 2018 which states:

" Where a defendant neglects to deliver the notice of defence and an affidavit prescribed by the rule 3(1) or is not given leave to defend by the Court the suit shall be heard as an undefended suit and judgment given accordingly."

On the lone issue above, the Courts have sufficiently expounded on what amounts to the Claimant proving his case to be entitled to reliefs sought. In the instant case the defendant failed to file any notice of intention to defend or a defence on the merit neither are they represented by counsel despite the service of Court processes on them. However it is the Law that the Court is entitled even in an undefended case to be satisfied that the evidence adduced is credible and sufficient to sustain the claim See the case of **AYOKE Vs BELLO (1992) 1 NWLR (PT 218) 387**.

In the case of **EJASCO GLOBAL INVESTMENT LTD VS INIM (2015) LPELR** the court of Appeal held that:

"In proceedings brought on the undefended list procedure, the duty of the trial court on the return date is to evaluate the affidavit evidence and determine if the Defendant who has filed a Notice of intention to defend supported by an affidavit that condescends upon particulars in response to the plaintiff's case. If the trial court is of the view that the defendant has disclosed triable issues, the matter would be transferred to the general cause list for hearing. If no real defence has been disclosed, the matter will be heard on the undefended list and judgment entered in favour of the claimant".

Also in the case of **AREWA TEXTILES PLC Vs FINETEX LTD (2003) 7 NWLR (PT 819) 322 AT 341 Paras D-9 Per Salami JCA as he then was** held:

"that the Claimant will not be entitled to judgment merely because the defendant abandoned its defence by failing to lead evidence in Support thereof. The Court would only be bound to accept unchallenged, uncontroverted and unrebutted evidence of the Claimant, if it were cogent and credible. The Court would not accept a piece of evidence which is not material and of no probabtive value merely because the only evidence before the Court is that of the Claimant. Even where the evidence is unchallenged and uncontradicted the trial Court has a duty to evaluate it and be satisfied that it is credible and sufficient to sustain the claim"

See the case of **GONZEE (NIG) LTD VS NIGERIAN EDUCATIONAL RESEARCH AND DEVELOPMENT COUNCIL (2005) 13 NWLR (PT. 943)**

On the issue of Solicitor's fees paid by the Claimant's in this suit, It is trite law that the burden of solicitors fee shall not be passed on the other party. The courts have held that "*it is unethical and affront to public policy to pass the burden of solicitors fee to the other party*" See the case of **GUINNESS NIG PLC V EMMANUEL NWOKE(2000) 15 NWLR (pt 688) 135**

The courts have also held that cost which includes solicitors fees if properly pleaded and proved are usually paid. See **BAUDE V SIMON (2014) ALL FWLR (PT 753) C.A 1878**

In the instant suit, the cost of solicitors' fee has not been proved. Prayer number two is hereby refused.

I have carefully perused the evidence before me, particularly the Affidavit Evidence and the annexures thereof On the strength of

these legal Authorities cited above it is my considered legal opinion that the claimant has proved its case against the defendant.

IT IS HEREBY ORDERED THAT THE DEFENDANT SHALL:-

1. The defendant is hereby ordered to immediately pay the sum of S94,166.67(Ninety-four Thousand One Hundred & Sixty Six US Dollars, Sixty-Seven US Pennies) being the Total sum owed to the claimant.
2. No cost is awarded.

Appearances:

Parties absent

R.A Bajam for the plaintiff

Defendant not represented by any legal counsel

Judgment read in open Court

Signed
Presiding Hon Judge
17th March 2022