

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT JABI, ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS

COURT:28

DATE: 12TH MAY, 2022

FCT/HC/CV/3046/2021

BETWEEN:

ADEBUSOLA OPANUBI -----

CLAIMANT

AND

AGRILET LIMITED-----

DEFENDANT

JUDGMENT

The Claimant brought this action by way of a writ of summons dated 15th November, 2021 and filed on the same date. accompanying the writ of summons is an affidavit in support of claims deposed to by the Claimant herself. The Claimant claimed to have invested the sum of ₦5,000,000.00 with the Defendant following their on-line advert. The Claimant claim that the Defendant promised to compensate her with 25% return on investment in 6 months which would yield a total ₦6,259,000.00 at the end of the stated period. However at the expiration of the 6 months maturity period the Defendant refused and or neglected to make the expected payment of the sum of ₦6,250.00 to the Claimant. Therefore the Claimant seeks among other reliefs an

order of the Court directing the Defendant to pay forthwith the sum of ₦6,250,000.00 and interest at the rate of 10% per annum from June 30th, 2021 till date. Attached to the Claimants affidavit are four exhibits marked exhibits A-D exhibit. The Defendant filed a notice of intention to defend and affidavit in support of notice to defend dated and filed on 23rd February, 2022. The Defendant in his counter affidavit admitted to have received the sum of ₦5,000,000.00 from the Claimant, but are however contending that the said amount was not an investment, but was a mere contribution to their business based on a purported partnership agreement between the Claimant and the Defendant and that following a destruction of their farm they were unable to repay the Claimant.

The Defendant did not exhibit the purported partnership agreement but merely exhibited pictures of a thick bush which they claim was attacked and the crops destroyed by herders in Nassarawa State. It is trite that under the undefended list procedure, the Defendant to have the matter transferred from the undefended list to general cause list by the trial Court, he must show a triable issues in the notice of intention to defend and its supporting affidavit showing the defence see ***BEFEREEN PHARMACY LTD AND ALB LTD (2005) LPELR 5398 CA.***

I am not persuaded by the Defendant affidavit of intention to defend as they have not categorically denied owing the Claimant. On the otherhand the story of the attack on their farm and the insurance company's refusal to compensate them is not sufficient to warrant the transfer of this case to the general cause list.

It is pertinent to state in this judgment that in matter brought under the undefended list procedure the Court has to consider the notice of intention to defend as well as the affidavit filed in support of the writ of summons. Even when there is no notice of intention to defend the Court still has to inquire or examine whether the Plaintiff has made out his claim in the affidavit accompanying the writ see ***OBI VS NKWO MARKET COMMUNITY BANK LTD (2001) 2 NWLR (PT 696) INTERCONTINENTAL BANK LTD VS BRIFANA LTD (2012) 13 NWLR,***

Thus in consideration of an action brought under the undefended list by the Plaintiff the trial Court is faced with a decision whether to hear the case or transfer it to the general cause list. It must have to begin with a careful scrutiny of the Plaintiff claim and be satisfied that the action is not contentious and one that should be placed on the undefended list. The Court owes it a duty to

scrutinize the claims and verifying affidavit with the attached documents if any, to ensure that the claim is indeed suitable to be heard under undefended list procedure. Otherwise, it should be transferred to the general cause list see ***INTERCONTINENTAL BANK LTD VS BRIFARM LTD (supra)***. From the above judicial authorities and more particularly the affidavit in support of the application brought under the undefended list made this Court to enter judgment partly. Consequently judgment is hereby entered in favour of the Claimant against the Defendant. However this judgment is in respect N5,000,000.00 admitted by the Defendant in their counter affidavit, while in respect of the other claim I hereby grant that this case be transferred to the general cause list for the Claimant to proof the remaining claim or other interest contain therein. This judgment is fundamentally based on the affidavit evidence of the Claimant and the inability of the Defendant to defend same.

HON. JUSTICE M.S IDRIS
(Presiding Judge)

Appearance

Hon. Justice M.S Idris

R.O Ogba:- For the Claimant