IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

(APPEAL DIVISION)

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA

BEFORE THEIR LORDSHIPS:

HON. JUSTICE Y. HALILU - PRESIDING

HON. JUSTICE S.U BATURE - MEMBER

APPEAL NO.:CVA/729/2021

PLAINT NO.: AB/SDC/C/73/2020

BETWEEN:

1. AKANDE TITILAYO APPELLANTS

2. KATIEB GLOBAL CONCEPT LTD.

AND

1. ERIC EDET PETER RESPONDENT

2. RIGO GLOBAL RESOURCES LTD.

JUDGMENT

This is an Appeal against the Judgment of the District Court of the Federal capital Territory Abuja, holden at Wuse Zone 2, Abuja Coram Hon. Musa I. Jobbo delivered on the 21st January, 2021.

The case of the Respondent before the trial Court was for the Claim of the Sum of N1,900,000.00 (One Million Nine Hundred Thousand Naira only) being indebtedness of Defendants to the Claimants as rent and equipment. The 2nd Relief was N500,000.00 (Five Hundred Thousand Naira) only as the cost of the suit.

Judgment was entered in favour of the Respondents.

The Appellants being dissatisfied with the decision of the lower court filed an appeal to this Honourable Court and raised the following grounds of Appeal;

Ground 1

The trial court erred in law by not according the Appellants their constitutional rights to fair hearing before delivering its judgment.

PARTICULARS:

The lower court admitted that there were discrepancies in the amount of money the Appellant admitted to be owing the Respondent but the trial Court, without calling for evidence, went ahead to give default judgment against the Appellants in contravention of Section 36 of the

Constitution of the Federal Republic of Nigeria, 1999 (as amended).

Ground 2

The Lower Court erred in law when it went ahead in contravention of the Default summons procedure, to refuse the transfer of the matter to the general cause list when the Appellants had filed their notice of intention to defend the suit.

PARTICULARS:

That despite the enormous conflicts in the averments in support of the Default summons and the Appellants' Notice of Intention to defend, the Lower Court still went ahead to give Judgment against the Appellants without transferring the matter to the general cause list which would have

afforded the Appellants an opportunity to give evidence before the Court.

The Appellants in their brief of argument formulated two (2) issues for determination to-wit:-

a. ***Whether considering the claims of the Respondent at the trial Court and the provisions of Section 36 of the 1999 Constitution of the Federal Republic of Nigeria, the Honourable Trial Judge was right to have gone ahead without calling for evidence, to give default Judgment against the Appellants after admitting that there were discrepancies in the amount of money the Appellant admitting to be owing the Respondent.***

b. Whether considering the claims of the Respondent at the Trial court and the provisions of Section 36 of the 1999 Constitution of the Federal Republic of Nigeria, the Honourable Trial Judge was right to have gone ahead despite the enormous conflicts in the averments in support of the default summons and the Appellants' Notice of Intention to defend, to give Judgment against the Appellants without transferring the matter to the General Cause list which would have afforded the Appellants an opportunity to give evidence before the court.

c. Whether the Trial Judge was right to have placed reliance on an unsigned agreement in

delivering his Judgment against the Appellants.

On issues 1 and 2, afore-formulated, learned counsel posited that, the decision of the Trial Court to go ahead and give judgment in favour of the Respondent even in the face of several inconsistencies and discrepancies which the Court duly acknowledged was erroneous and same ought to be upturned. It is his argument that the evidence before the Court, even in the absence of any additional evidence, the Court ought to have known that the matter was one which could not be resolved by way of default Judgment.

Counsel further argued that the agreement which was relied upon by the Respondent was manifestly

defective in that neither of the parties signed that agreement. The Appellants in their Notice of Intention to defend clearly stated the circumstances which led to the disagreement which further culminated into their refusal to sign the agreement.

After finding that the issues before the Court for determination were so contentious that same could not be summarily determined by way of default summons, counsel is of the well-considered view that the Court below ought to have transferred the said matter to the general cause list in order to enable the Court extract more evidence by way of Examination and cross-examination of witnesses. ***MOPAH VS. OKAFOR (2021) LPELR 5463 (CA);***

MCGREGOR ASSOCIATES LTD. VS. NIGERIAN MERCHANT BANK LIMITED (1996) 2 NWLR (Pt. 431) 378 at 389 – 390 (SC);

DANIEL VS. SAMUEL NIGERIA LIMITED (1997) 7 NWLR (Pt. 514) 673 at 681 were cited.

It is also the submission of learned counsel that, they are also of the view that transferring the matter to the general cause list would have accorded the Appellant fair hearing in accordance with Section 36 of 1999 Constitution of Federal Republic of Nigeria (as amended) and that failure to do so amounts to a denial of the Appellants' right to fair hearing. It is similarly his argument that this submission is predicated on the fact that fair hearing entails so much in the judicial process. As a matter of law, it is the pivot upon

which the entire judicial process or the administration of justice revolves.

KANTIN KWARI MARKET TRADERS ASSOCIATION & ORS VS. LABARAN & ORS (2016) LPELR – 41329 (CA) was cited.

Learned counsel submits, that in view of the above decisions, he is of the firm view that the Appellants were not given fair hearing in that they were not given ample opportunity to present their case before the Court went ahead to give default judgment. In the circumstances of the case at the Trial Court, it would have been more fair and just for the matter to be transferred to the general cause list or more evidence would have been called by the Court before going ahead to rely on a

defective and worthless agreement to give judgment against the Appellants.

On issue 3,***whether the Trial Judge was right to have placed reliance on an unsigned agreement in delivering his Judgment against the Appellants.***

Learned counsel submits that, the Appellants contended and the Court below attested to the fact that the agreement placed before it was unsigned. The Appellants also went ahead to state the circumstances which led to a disagreement which ultimately culminated into their refusal to sign the agreement which the Respondents relied upon. Unfortunately, the Court still went ahead to give Judgment relying on the unsigned agreement. The

effect of an unsigned document is very elementary in law.

GOLAN VS. MOHAMMED (2018) LPELR – 47100 (CA);

KWARA INVESTMENT CO. LTD. VS. GARUBA (2000) 10 NWLR (Pt. 764) 25 – 39 Paragraph G were cited.

Counsel humbly urge the court to find merit in this appeal and to resolve all the issues in favour of the Appellants.

Respondents on their part, filed their brief of argument and distilled the following issues for determination to wit;

Issues for determination

a. ***Whether considering the claims of the Respondent at the Trial Court and the provisions of section 36 of the 1999 Constitution of Federal Republic of Nigeria, the Honourable Trial Judge was right to have gone ahead without calling for evidence, to give default judgment against the Appellant after admitting that there are discrepancies in the amount of money the Appellant admitted to be owing the Respondent.***

b. ***Whether considering the claims of the Respondent at the Trial Court and the provisions of section 36 of the 1999 Constitution of Federal Republic of Nigeria, the Honourable Trial Judge was right to***

have gone ahead despite the enormous conflicts in the averment in support of the Default Summons and the Appellant's notice of intention to defend, to give judgment against the Appellant without transferring the matter to the General Cause List which would have afforded the Appellants an opportunity to give evidence before the court.

c. ***Whether the Trial Judge was right to have placed reliance on an unsigned agreement in delivering his Judgment against the Appellants.***

Arguing issues 1 and 2 conjunctively, learned counsel submits that the Trial Court was right to have entered Judgment in favour of the Claimants/Respondents under the Default

Summon Procedure. The law is that the Defendants/Applicants must enter defense on the merit and not mere denial. It is not enough for the Defendants to merely deny the Claim; the Defendants must also set out the details and particulars of defense.

TAVIR VS. UDEAGBALA HOLDING LTD. (2004) 2 NWLR (Pt. 857) was cited

Leaned counsel submit that the Defendants/ Appellants on receiving the draft copy of the agreement on the 19th of December, 2018, which clearly states that tenant takes all that property together with the appurtenances, at the rent of N5,000,000.00 (Five Million Naira) only and also allowed the Defendants/Appellants to make two instalmental payment of N2,000,000.00 (Two

Million Naira) and N3,000,000.00 (Three Million Naira). The Defendants/Appellants went ahead on that same day to deposit the sum of N2,000,000.00 (Two Million Naira) in the Claimants/Respondents' account and issued a post-dated cheque of N3,000,000.00 (Three Million Naira) in compliance with the draft Agreement.

ADEGBITE VOGUNFAOLU & ANOR (1990) LPELR – 93 (SC);

KALIO VS. WOLUCHEM (1985) 1 NWLR (Pt. 4) 610;

OKAGBUE VS. ROMAINE (1982) 5 SC 133. "PER WALI, J.S.C (PAGE 15 PARAGRAP E – F were cited.

Counsel submits that the Defendants/Appellants did not exhibit any document to support their defense even the sums later advanced to the Claimants/Respondents, there is nothing before the Court to show the payment except the admission of the Claimants/Respondents of the sum of N1,100,000.00 (One Million, One Hundred Thousand Naira), which they would have denied if they were dubious as there is no evidence of the payment before the court but mere averment of the payment.

On issue 3,***whether the Trial Judge was right to have placed reliance on an unsigned agreement in delivering his Judgment against the Appellants.***

Learned counsel argued that, the above assertion by the Defendants/Appellants is erroneous as the court would agree with him that the issuance of the N3,000,000.00 (Three Million Naira) post-dated cheque was the only reason the Claimants/ Respondents vacated the premises with the equipment in it for the Defendants/Appellants. The Draft Agreement was the intentions of the parties put into writing for parties to see and agree on it. On receiving the Draft Agreement the Defendants/Appellants on that same day paid the sum of N2,000,000.00 (Two Million Naira) to the Claimants/Respondents and issued a post-dated cheque for the balance of N3,000,000.00 (Three Million Naira), which means they accepted the terms of the Draft Agreement. The Defendants/

Appellants are estopped by their conduct from not paying the balance sum to the Claimants/ Respondents as they made the Claimants vacate the premises in the believe that the N3,000,000.00 (Three Million Naira) post – dated cheque issued was in compliance with their agreement. So the trial court did not rely on the unsigned draft agreement but on all the events that played out in the matter.

PINA VS. MAI-ANGWA (2018) LPELR – 44498 (SC) EVIDENCE ESTOPPEL;

CMB BUILDING MAINTENANCE & INVESTMENT CO. LTD. VAMOLADE (2019) LPELR – 47302 (CA) EVIDENCE – ESTPPEL BY CONDUCT were cited.

Learned counsel humbly urge the Court to dismiss the Appeal for lack of merit and to uphold the judgment of the trial Court.

COURT:-

We have considered the grouse of the Appellants and Respondents in the appeal in issue.

The gravements of the Appellants and Respondents is as stated in the afore-reproduced respective briefs of arguments arising from what transpired at the Lower Court which is contained in the Records of Appeal.

The matter which gave rise to the instant appeal arose from the Judgment entered against the Appellant under the default summons procedure.

It is instructive to note that the Default summons procedure is a special procedure designed to provide a quick channel for the recovery of debts or liquidated money claims.

See ***AKWA IBOM STATE GOVERNMENT & ANOR VS. NAMAH CONSTRUCTION LTD. (2015) LPELR – 24640 (CA).***

The procedure is governed by the District Court Rules.

See Order V Rule 1(1) of the District Court Rules of the FCT – Abuja.

By this procedure, the case is fought and won on the basis of affidavit evidence. A party so served with a default summons which is supported with affidavit

stating the case of the Claimant, shall correspondingly file Notice of Intention to defend the action with affidavit stating the nature of such defence which as a matter of procedure and law shall condescend to the issues at stake… any such Notice of Intention to defend so filed which is vague and imprecise shall be ignored by the Court.

This is so because a Defendant who does not have any good defence to an action shall not be afforded opportunity to dribble and cheat a party out of Judgment he/she richly deserve.

See ***AFRICAN TIMBER & PLYWOOD NIG. LTD. VS. DARLING PETROLEUM NIG. (LTD) 2015 LPELR – 25585 (CA).***

Indeed the procedure is not a game of chess where only the craftiest wins.

We have considered the issues formulated by both Appellants and Respondents as afore-reproduced in the preceding part of this Judgment.

The issues to our mind, are hook, line and sinker the same.

The issues are as follows:-

a. ***Whether considering the claims of the Respondent at the trial Court and the provisions of Section 36 of the 1999 Constitution of the Federal Republic of Nigeria, the Honourable Trial Judge was right to have gone ahead without calling for evidence, to give default Judgment against the Appellants after admitting that there were discrepancies in the amount of money the***

Appellant admitting to be owing the Respondent.

b. ***Whether considering the claims of the Respondent at the Trial court and the provisions of Section 36 of the 1999 Constitution of the Federal Republic of Nigeria, the Honourable Trial Judge was right to have gone ahead despite the enormous conflicts in the averments in support of the default summons and the Appellants' Notice of Intention to defend, togive Judgment against the Appellants without transferring the matter to the General Cause list which would have afforded the Appellants an opportunity to give evidence before the court.***

c. ***Whether the Trial Judge was right to have placed reliance on an unsigned agreement in deliveringhis Judgment against the Appellants.***

For the due determination of this case, wehereby adopt the three (3) issues formulated by both Appellants and Respondents for determination as issues to be considered by the Court. All issues shall be taken jointly in the resolution of this appeal.

Indeed the law is clear on the procedure of Default Summons Procedure as stated afore. The Defendants/Applicants must enter defense on the merit and not mere denial. It is not enough for the Defendants to merely deny the Claim; the Defendants must also set out the details and particulars of defense.

From the evidence of PW1 (Respondents) as contained in page 3 of the Records of Appeal, He stated that the 1st Appellant approached him to sublet property and equipment for the sum of N5,000,000 (Five Million Naira). An agreement was entered wherein N3,100,000.00 (Three Million, One Hundred thousand Naira) was paid to the Respondentsinstallmentally. He made efforts to retrieve the outstanding balance vide Exhibit "D" on page 18 of the Records of Appeal but the 1st Appellant only gave different excuses to avoid accountability.

On the other hand, the 1st Appellant (Defendants) stated before the Trial Court as shown in page 24 of the Records of Appeal, that the terms of the written agreement between the 1st Respondent needed to be renegotiated before it will be signed,because the

equipment obtained from the Defendants were not fit for use, as opposed to the initial impression that he gave. That resources were expended to repair the equipment and property that the Claimant (1st Respondent) sublet to the Defendant and such, several steps i.eExhibit “E” on page 20 of the Records of Appeal have been taken to reach out to him to discuss pending issues and make necessary amends to the contract but all to no avail. Hence the reason for withholding the outstanding balance of the money aforementioned. That the Claimant (1st Respondent) is saying that only N3,100,000.00 (Three Million, One Hundred Thousand Naira) was paid to him, but the Defendant (1st Appellant) insists that N3,200,000.00 (Three Million, Two Hundred Thousand Naira) was paid instead.

The above are encapsulated in the averments in support of the Default summons and the Appellants' Notice of Intention to defend contained in pages 5 – 30 of the Records of Appeal.

Though the Defendants(Appellants) partly admitted to the claims of the Claimant (Respondents), they also did not accompany the Notice of Intention to Defend with proof that indeed the outstanding sum is not as the Claimants (Respondents) claimed.

As stated from the preceding part of this Judgment, a Defendant who does not have any good defence shall not be given opportunity to dribble and cheat a Claimant out of Judgment.

We wish to note that under the Default Summons procedure, claim of a Claimant must be for a sum ascertained i.e liquidated.

The claims of the Respondents as contained in the Default Summons supported by affidavit is very certain from the unsigned tenancy agreement. The discrepancy alluded to by the Appellants is clearly a conscription within Appellants' imagination to distort records and hold unto both rent and possession of Respondents' property. We so hold.

On the issue of lack of fair hearing Pursuant to Section 36(5) of the 1999 Constitution (as amended), the argument of Appellants is most spurious and unfounded… this is not a situation where Appellants shall raise the issue of lack of fair hearing when all facts and evidence have been duly placed before the Court vide affidavit evidence.

The issue of fair hearing clearly is a smoke-screen for allintents and purposes. We refuse to give value to this issue… it is resolved against the Appellant.

Next is the issue of reliance on unsigned agreement.

We will pause here and discuss briefly the effect of an unsigned document.

In law, what gives life to a document is indeed signature… an unsigned document therefore in law commands no judicial value or validity.

See ***KEKI & ANOR VS. AGBER (2014) LPELR – 22653 (CA).***

It is however the law that it is the pleadings and or deposition and claims of a party that would determine the use to which evidence; including documents, can be put to at the trial… therefore, if

the pleading or deposition of a party shows that a document given to him or handed over by him was unsigned, then such an unsigned document is admissible in proof of what is alleged by the party. It is therefore not in every situation or circumstance that an unsigned document is useless or worthless or inadmissible.

See ***AKINREMI & ANOR VS. SULEIMAN & ORS (2022) LPELR – 56903 (CA).***

Applying the decision in Akinremi (Supra) to the present appeal, it is most clear that Appellants upon receipt of the tenancy agreement which had in it terms and conditions meant to govern the tenancy relationship proceeded to make the part payment of N2,000,000.00 (Two Million Naira), N3,000,000.00(Three Million Naira) post-dated

chequecash payments to the total of N1,100,000.00 (One Million, Hundred Thousand Naira) even when the said agreement had not been signed.

The Defendants (Appellants) are estopped by their conduct from not paying the balance sum to the Claimants (Respondents) as they made the Claimants vacate the premises with the hope that the N3,000,000.00 (Three Million Naira) post – dated cheque issued was in compliance with their agreement. All the elements needed for a contract to be legally valid and enforceable have been fulfilled,thus, making the contract binding.

We have no reason disturbing the findings of the Learned Trial Magistrate on the three (3) issues aforementioned and formulated for determination.

We resolve the three (3) issues against the Appellants and in favour of Respondents.

On the whole therefore, we shall allow the decision of the LowerCourt to remain unshaken, same having been found to be well grounded in law.

Consequently, Appeal **No.CVA/29/2021**is hereby dismissed.

HON. JUSTICE Y. HALILU
(PRESIDING JUDGE)
16th September, 2022

HON. JUSTICE S. U. BATURE
(HON. JUDGE)
16th September, 2022