

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 4, MAITAMA ON THE
19TH DAY OF OCTOBER, 2022

BEFORE HIS LORDSHIP: HON. JUSTICE U. P. KEKEMEKE

SUIT NO. FCT/HC/CV/1259/2021

COURT CLERKS: *JOSEPH ISHAKU BALAMI & ORS.*

BETWEEN:

MR. INNOCENT UBAKA **CLAIMANT**
(Trading under the name and
style of SOPUL-C ENTERPRISES)

AND

GUARANTY TRUST BANK
DEFENDANT

JUDGMENT

The Claimant's Originating Summons is dated the 24th day of June, 2021 and filed on the same date. It posited four (4) issues for determination:

1. Whether having regard to the legal, valid, lawful and subsisting Order of the Chief District Judge of the Federal Capital Territory, Abuja dated 25/03/2021

granting a reversal of the sum of ₦1,350,000 only wrongly transferred on the 11th of March 2021 from Zenith Bank Account No. 1016938420 belonging to Sopul-C Enterprises (Innocent Ubaka) the Claimant to Guaranty Trust Bank Account No. 0164498438 belonging to Ejide Ayinde Enterprises, the Defendant is right and correct not to have effected the reversal Order immediately after the service of the said Order of Court on the 25th of March, 2021 on the Defendant.

2. Whether in view of the legal, valid, lawful and subsisting Order of the Chief District Court of the Federal Capital Territory, Abuja granting a reversal of the sum of ₦1,350,000 only wrongly transferred on the 11th of March 2021 from Zenith Bank Account No. 1016938420 belonging to Sopul-C Enterprises (Innocent Ubaka) the Claimant to Guaranty Trust Bank Account No. 0164498438 belonging to one Mr. Hammed Afolabi Jamiu, which sum was initially meant to be transferred to GTB Account No. 0164498438 belonging to Ejide Ayinde Enterprises, the said Order having been granted since the 25/03/2021 and duly served on the Defendant

on the same date. The Defendant's blatant refusal and neglect to comply with the said Order of Court from the 25th of March 2021 to date does not amount to a flagrant, cruel and contemptuous disobedience and disregard of a valid, lawful, legal and subsisting Order of Court.

3. Whether in view of the blatant refusal and neglect of the Defendant to obey the legal, valid, lawful and subsisting Order of the Chief District Court of the Federal Capital Territory, Abuja granting a reversal of the sum of ₦1,350,000.00 wrongly transferred on the 11/03/2021 from Zenith Bank Account No. 1016938420 belonging to Sopul-C Enterprises (Innocent Ubaka) the Claimant to Guaranty Trust Bank Account No. 0164498438 belonging to Ejide Ayinde Enterprises has not caused the Claimant loss of profit, untold hardship, damages to business reputation and trauma.
4. Whether in the entire circumstances of this action it will not meet the justice and fairness of this case to grant

punitive and exemplary damages against the Defendant for its blatant refusal and neglect to obey the legal, valid, lawful and subsisting Order of the Chief District Court of the Federal Capital Territory, Abuja granting a reversal of the sum of ₦1,350,000.00 wrongly transferred on the 11th of March 2021 from Zenith Bank Account No. 1016938420 belonging to Sopul-C Enterprises (Innocent Ubaka) the Claimant to GTB Account No. 0164498438 belonging to Hammed Afolabi Jamiu which sum was initially meant to be transferred to GTB Account No. 0164489438 belonging to Ejide Ayinde Enterprises which Order of Court was served on the 25/03/2021.

Succinctly, the Claimant prays for the following reliefs:

- (1) A Declaration that the Defendant was wrong not to have immediately obeyed the legal, valid, lawful and subsisting Order of the Chief District Court.

- (2) A Declaration that the Defendant's blatant refusal, neglect and disobedience to comply with the said Order amounts to contempt.
- (3) An Order granting Claimant 35% interest on the said sum of ₦1,350,000 from the 25/03/2021 when the Order was served on the Defendant until it is fully complied with.
- (4) ₦50 Million Naira against the Defendant for damages caused to business reputation and integrity of the Claimant, loss of profit and psychological and emotional trauma.

The Affidavit relied on in support of this Summons is sworn to by one Lawrence Ojo-Gabriel. He deposes that the Claimant is a businessman trading under the name of Sopol-C Enterprises dealing in food stuffs at the Garki Ultra-Modern Market in Abuja.

On the 11/03/2021, the Claimant wanted to pay off the balance of goods he purchased from Ejide Ayinde

Enterprises in the sum of ₦1,350,000 via bank transfer from Sopul-C Enterprises Zenith Bank Account No. 1016938420 to GTB Account No. 0164489438 belonging to Ejide Ayinde Enterprises.

That while doing the transfer, the Claimant mistakenly transferred the money into a GTB Account No. 0164498483 belonging to one Hammed Afolabi Jamiu instead of GTB Account No. 0164489438 belonging to Ejide Ayinde Enterprises.

That immediately after the transfer was effected, the Claimant noticed the mistake pursuant to which he quickly notified his Account Officer at Zenith Bank Plc. The GTB Plc. was also duly notified of this error. The GTB Plc. said the reversal can only be done upon a valid Order of Court.

That consequent upon the Order, the Claimant filed an originating action at the District Court of the Federal Capital Territory. It is Exhibit A. The Court granted an Order for the immediate reversal of the wrongful transferred sum. The Order dated 25/03/2021 is Exhibit B.

The Order was duly served on the Defendant but it failed, refused and or neglected to obey same.

That on 7/04/2021, the Claimant's Solicitor further wrote to the Defendant demanding a reversal but it still refused.

That Claimant was subjected to psychological and emotional trauma.

The Claimant's creditor, Ejide Ayinde Enterprises who was yet to receive payment invited the Police to arrest Claimant. That well-wishers contributed to pay the debt.

That Defendant caused Claimant colossal loss both in profit, business reputation and integrity. That it will be in the interest of justice to grant the reliefs sought.

Upon being served with the Originating Summons and all other processes above, the Defendant filed and served a Notice of Preliminary Objection dated 6/09/2021. It is brought pursuant to Order 43 Rule 1 (1) & (2) of the High

Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules, 2018 and Order 2 Rule 25 of the Judgment Enforcement Rules.

It prays the Court to strike out or dismiss the Claimant's suit for lack of jurisdiction and abuse of Court process. That Issues 1 and 2 for determination border on failure to obey Court Order and contempt.

That Issues 3 and 4 are ancillary. That the Originating summons is a gross abuse of Court process.

I have read and considered the Written Address of Learned Counsel. I have also read the Claimant's Reply to the Defendant's Notice of Objection.

The issues for determination is ***whether having regard to the questions/issues for determination, the facts upon which the suit is predicated on, the reliefs sought in the Claimant's Originating Summons dated***

the 24th of June 2021 and the relevant laws, whether this Court has jurisdiction to entertain same.

The question of jurisdiction of Court is a radical and crucial question of competence because if a Court has no jurisdiction to hear and determine a case, the proceedings are and remain a nullity *ab initio* no matter how well conducted and brilliantly decided they might be, because a defect in competence is not intrinsic but extrinsic to the entire process of adjudication.

Jurisdiction is therefore the nerve centre of adjudication, the blood that gives life to an action in a Court of law in the same way that blood gives life to the human being.

See **DAPLANLONG vs. DARIYE (2007) 8 NWLR (PT. 1036) 332 SC.**

The issues formulated for the determination of this Court have to do with the order of the Chief District Court of the Federal Capital Territory.

The first question is whether the Defendant is right and correct not to have effected the reversal Order immediately after the service of the said Order.

The second issue is like unto the first. It is whether or not the Defendant's flagrant disobedience is not contemptuous. Issues 3 & 4 are ancillary to Issues 1 & 2.

The Order sought to be declared contemptuous was issued by the Chief District Court. The Claimant failed to go back to the said Court to complain that the Order of Court was not obeyed. He also did not file a contempt proceedings before that Court.

I have taken a cursory look at the pleadings before me, i.e. the Originating Summons, the Affidavit in support and the Counter Affidavit.

This matter did not come to this Court by way of an appeal. It is the Lower Court that should determine whether its Order has been flouted by a party. It is the same Court that ought to determine whether a party is in contempt of its Order.

Rushing to the High Court to determine same is to my mind strange. The suit in this Court is an extension of the suit in the Chief District Court.

The Chief District Court which issued the Order is seized of jurisdiction. It is capable of enforcing its Orders or any other matter incidental to it.

I agree with Learned Counsel to the Defendant that Order 2 Rule 25 of the Judgment Enforcement Rules apply in this case.

Its unequivocal terms ousts the jurisdiction of this Court in this matter. The Claimant's right to access this Court is taken away by the Sheriff and Civil Process Act.

I do not agree with Claimant's Counsel's argument that this present action does not form part of the proceedings of the District Court. Aside the above, from the records, the substance of the suit, disobedience and contempt have been knocked out.

The Order has been obeyed even though Claimant refused to disclose same. The subject matter is dead.

In my humble view, the suit filed in this Court is an abuse of Court process. The Defendant's Notice of Objection succeeds and the suit is dismissed.

In case I am wrong in coming to the above conclusion, which I do not concede, I have read the Counter Affidavit. I have also considered the Written Addresses of Counsel. The issue for determination is whether considering the valid, lawful, legal and subsisting Order of Court, the Defendant can still continue to blatantly and contemptuously hold unto

the Claimant's money thereby depriving him of the use of same.

I have weighed the Affidavit evidence of parties. There is no doubt that Claimant also contributed largely to his problems by not being diligent in transferring the above sum.

However, the Defendant agreed that it was served with the Court Order. The Order has been obeyed. The Claimant did not controvert same.

The Defendant had deposed that, it had to do due diligence to ensure that the Order served on it is genuine and valid. That the delay was also due to JUSUN Strike.

The Claimant did not file a further Affidavit to debunk those averments. The interest claimed is pre-judgment interest.

There is no evidence of an agreement between Claimant and Defendant to pay interest.

There is no direct relationship between the Claimant and the Defendant. There are no materials to suggest that a mercantile relationship exists between Claimant and Defendant. The sum is third party's property.

In respect of relief 4, the Claimant did not prove that the refusal to pay timeously was malicious being a claim for punitive and exemplary damages.

There is scanty or no evidence as to the loss, nature of loss and the quantum periodically.

In totality, the Claimant failed to prove its case. The questions posed for determination are resolved in the negative. The suit fails and it is dismissed.

HON. JUSTICE U. P. KEKEMEKE
(HON. JUDGE)
19/10/2022

Parties absent.

Lawrence Ojo Gabriel, Esq. for the Claimant.

Ifekwaba Aleke, Esq. with Eyang Takon, Esq. for the
Defendant

COURT: Judgment delivered.

(Signed)

HON. JUDGE

19/10/2022