IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GARKI, ABUJA - FCT

CLERK: CHARITY ONUZULIKE
COURT NO. 10

SUIT NO: FCT/HC/CV/764/2020
DATE: 16/3/2023

BETWEEN:

GEORGINA GAMBO……CLAIMANT

AND

1. **GAMBO IDRIS AHMED**
2. **FIDELITY BANK PLC**
3. **NIGERIAN NATIONAL PETROLEUM CORPORATION**

DEFENDANTS

JUDGMENT
(DELIVERED BY HON. JUSTICE S. B. BELGORE)

The Claimant commenced this suit by a Writ of Summons dated January 6, 2020, under the Undefended List procedure. On October 26, 2020, the Claimant filed an application for default judgment and prayed the Court to set the matter down for hearing and give judgment as per the Writ of Summons. However, the Court in its wisdom refused the application on the grounds that some of the prayers could not be granted under the undefended list procedure. The honourable Court ordered the parties to file pleadings.

The Claimant filed a Statement of Claims on January 5, 2021, and served same on all the Defendants.

On March 8, 2021, the Plaintiff opened her case and closed same on June 23, 2021. She provided oral testimonies and tendered documents admitted as Exhibits A – Q. The matter was adjourned to July 5 for Defence. It was further adjourned to October 27, 2021, when neither of the Defendants came to Court.

On October 26, 2021, the 2nd Defendant filed an application to enter an unconditional appearance out of time, which application was granted on February 2, 2022. They rested their Defence on the case of the Claimant. The 1st and 3rd Defendants were foreclosed and the matter was adjourned to May 12, 2022 for adoption of Written Addresses.

Only the Claimant's Counsel, Mr. David Ashaolu filed final written address. The 2nd Defendant's Counsel, Mr. Austin Dimonye filed no written address. He relied on the address and arguments of Mr. David Ashaolu as his words "I have nothing to urge in favour of the 2nd Defendant".

Mr. Ashaolu had earlier adopted his written address and urged me to give judgment in line "with our claims in the statement of claim".

It is instructive to note that 1st and 3rd Defendants did not appear throughout trial and did not file any response. The Claimant's Counsel submitted a sole issue for determination to wit:

> ***"Whether the Claimant is entitled to the grant of the reliefs sought in her Statement of Claims"***

I too adopt it as the sole issue for determination.

EVIDENCE AND RESOLUTION OF THE SOLE ISSUE

The Claimant called a witness who tendered documents. The Defendants failed to cross-examine PW1, neither did they provide

any evidence to the contrary. Interestingly, the 2nd Defendant which entered an appearance late rested their case on the case of the Claimant. By virtue of **Order 21 Rule 9 of the Civil Procedure Rules of this Honourable Court, 2018,** and a plethora of judicial decisions, the Claimant is entitled to judgment as per her Statement of Claims due to their lack of defence, which is tantamount to an admission of all the facts presented by the Claimant in this case.

During the trial of this case on March 8, 2021, the Claimant adopted her Witness Statement on Oath as her oral testimony before the Court. She also tendered about 17 documents admitted in evidence and marked as Exhibits A – Q. It is on record that there is no objection or denial of the facts before this honourable Court in proof of the averments in the Statement of Claim. The facts are deemed admitted and facts admitted need no further proof.

However, a perusal of Reliefs A – E of the Claimant's Statement of Claim shows that some of the prayers are declaratory in nature. The position of the law as stated succinctly in **ADAMA VS. K.S.H.A (2019) 16 NWLR 501** is as follows:

> ***"The success or failure of a declaratory relief is dependent on the judicious and judicial exercise of discretion by the trial Court. A declaratory relief will only be granted on the strength of the Claimant's case. It will not be granted in default of defence or even on admission. The trial Court must be satisfied, when all the facts are considered, that the Claimant is fully entitled to the exercise of the Court's discretion in his favour. He cannot rely on any admission in the defendant's pleading or even a failure to file a defence.***

In view of the foregoing, an evaluation of the evidence before this honourable Court is necessary to answer the question in issue in this Written Address.

The Claimant stated in her oral testimony at paragraph 6 of her statement on oath that during the course of their marriage, she loaned the 1st Defendant monies at different times which he had promised to pay back. She claimed further that when he obtained loans and credit from other creditors, she had provided money to him to repay them on the understanding that he would repay the debt to her.

She stated at paragraph 8 and 9 that she had to sell her properties and also took monies from her business to loan the 1st Defendant. Her business is now ruined as he loaned out her entire capital. She avers that the Defendant failed to pay her back. All these facts are uncontroverted, thus, admitted as proved.

In paragraphs 10, 11, 13, 14, 15 and specifically, 21, she proved, without challenge, that the 1st Defendant admitted in writing that he is indebted to her in the accumulated sum of N25,529,595.00 (Twenty Five Million, Five Hundred and Twenty Nine Thousand, Five Hundred and Ninety-Five Naira) only.

In consideration of all the loans he had obtained from her, he wrote a "Letter of Undertaking" on October 19, 2019, **tendered and admitted as Exhibit F.** In the document, he admitted that he owes her the stated sum, and undertook to pay her the amount "in full" by February 28, 2020. He gave her security for the loan repayment by granting her a right of lien on his gratuity that shall be paid by the 3rd Defendant into his account with the 2nd Defendant, "effective January 15, 2020". He stated that the money should be paid to the Claimant's account at Stanbic IBTC, account number 0009987837. This document was tendered and admitted in evidence without any objection.

This was not the only Letter of Understanding he gave her. In fact, about 5 of such letters were admitted in evidence and marked **Exhibits B – F & R,** spanning between 2013 to 2019. In a Letter of Undertaking written on June 17, 2013, **tendered and admitted as Exhibit 'B',** he undertook to pay her the sum of N34,400,000.00 (Thirty Four Million, Four Hundred Thousand Naira) only "in the event of separation". In the same letter, he separately acknowledged that he was owing her N13,131,235.00 (Thirteen Million, One Hundred and Thirty-One Thousand, Two Hundred and Thirty-Five Naira) as at that time which he promised to pay back from the proceeds of a loan he was sourcing from Heritage Bank. That loan was never paid, but he continued to accumulate more indebtedness till it grew to over N25,000,000.00 in October 2019.

This promise in **Exhibit 'B'** to pay the sum of N34 million was made by the 1st Defendant as consideration for them being separated as husband and wife. He termed the money as "settlement". According to uncontroverted evidence before the Court, he made this promise when she expressed fear that he would refuse to pay her and leave the marriage. Thus, instead of assuring her that he would stay with her till the end as their marriage vows dictated, he elected to place the above monetary value on the consideration of them separating as husband and wife, as someone who already know he had plans to leave the marriage sometime in the future.

The Claimant avers in paragraphs 23 and 24 of her oral testimony before this Court that he left the matrimonial home on November 15, 2019, and filed a petition for the dissolution of their marriage on November 27, 2019. These acts are overt acts of separating from the Claimant with no intention to come back to her. In furtherance, he wrote an Internal Memorandum to the Group General Manager of the Human Resources Department of the 3rd Defendant **Exhibit Q1,** confirming that his matrimonial relationship with the Claimant had ended by reason of the dissolution proceedings he instituted, and thus, her name should be removed as his next of kin on record. This is a clear indication that he intended to defraud her and prevent her from enforcing his

promises. He has therefore triggered the condition for the performance of the **Letter of Undertaking of June 17, 2013, Exhibit B.**

Having established that the Letters of Undertaking amount to Promissory Notes, do these documents meet the conditions for their enforcement? The Court of Appeal examined the conditions for the enforcement of a promissory note in the case of **NAHMAN VS. WOLOWICZ (1993) 3 NWLR (Pt. 282) 443** where they held that, ***"A promissory note qualifies as an agreement between two or more consenting parties, and it must therefore be construed in accordance with the laid down rules for the construction of agreements.*** "Thus, a Promissory Note will not be enforceable if there is no offer, acceptance, consideration, intention to create legal relations and capacity to contract.

From the foregoing, therefore, it is clear the so-called "Letters of Undertaking" meet the definition of a Promissory Note as defined in the above cited authority. They were intended by both parties to be regarded as such. They are both unconditional promises made by the 1st Defendant in writing to the Claimant, signed by him, engaging to pay at an ascertainable future (and at the occurrence of a certain event), a sum certain in money. The Court of Appeal held that it is a contract of a conditional payment of debt which accrued upon the occurrence of the events as agreed by the parties. In the case of **Exhibits D & F,** he provided security for the said payment. The security in **Exhibit D** was a Keystone Bank cheque which was dishonoured, while that of **Exhibit F** was a lien on his gratuity.

In **F.A.T.B. Ltd. VS. PARTNERSHIP INV. CO. LTD (2003) 18 NWLR at page 77,** the Supreme Court held that "***A person to whom a promissory note is given cannot maintain any claim by way of action on the promissory note if he never gave any consideration for the note. In other words, a payee under a promissory note which appears on the facts before a Court to be voluntary, cannot have any claim as a creditor on the basis of the note."***

Applying the foregoing principles to the case of the Claimant, therefore, I hold that the Claimant is well suited to maintain the current claim. This is because, on both notes, all the elements of a valid and enforceable contract are present. One, there were offers which were accepted. On **Exhibit B,** the offer was the payment of the said sum in the event of marital separation, while the offer in **Exhibit F** was the repayment of the loan. The Claimant accepted both offers by collecting the promissory Notes from the 1st Defendant without complaints.

Secondly, consideration passed between both parties. The Claimant parted with money and other valuables which the 1st Defendant received and acknowledged. He stated copiously in **Exhibit B – F & R** that he owed her the money he was promising to pay back. He also listed her personal properties he undertook to replace in **Exhibits B & C.** In exchange for the promise to pay from his terminal benefits in **Exhibit R,** and further lien to be placed on same in **Exhibit F,** the Claimant did not institute any action against him for the recovery of the said monies, until he left their matrimonial home and filed a Petition for the dissolution of their marriage. Further, he undertook to pay the N34,400,000.00 "as compensation" for a separation in **Exhibit B.** This connotes that it is in exchange for the separation, regardless of who initiates same, and regardless of through which medium the parties became separated. If she would lose her marriage which she held dear, she would be compensated for it. As facts before this Court reveal, he initiated the separation, which further makes him complicit.

Thirdly, both parties intended that the relationship would create legal relations. This is obvious from the wordings of both Promissory Notes. On **Exhibit B,** the 1st Defendant used the word "undertake to pay". He also stated that it would be "compensation", thereby giving rise to a right that can be claimed through judicial means.

In more specific language, he stated in **Exhibit E** that he was willing to submit to law enforcement agents to ensure that he would stay true to his promises and even requested that the Nigerian Police informs the 3rd Defendant of his liabilities and write the 2nd Defendant to pay the Claimant his outstanding obligations to her. In **Exhibit F,** he expressly placed a lien on his gratuity to be paid to the 2nd Defendant by the 3rd Defendant in the Claimant's favour, in the event that he does not pay as agreed in February of 2020. On other like undertakings which are before this Court unchallenged, including **Exhibit D,** he had agreed that where he fails to pay as promised, any action including legal actions may be initiated against him by the Claimant to recover the said money.

The clear intentions of the parties as stated here obviously overrides any presumption of lack of intention in a domestic contract. Specifically, in **Exhibit R,** the 1st Defendant acknowledged that the "various sums of money" owed the Claimant as at March 26, 2018, had totalled N20,175,785.00 (Twenty Million, One Hundred and Seventy-Five Thousand, Seven Hundred and Eighty-Five Naira) only, which he again promised to pay back by his retirement date of January 15, 2020. He stated that if he did not pay by that day, the said sum should be deducted from his terminal benefits. He again authorized that all necessary actions should be taken against him where he fails to pay as promised. He stated clearly that the undertaking was given "knowing the implications of [his] failure to comply with it. "There is no doubt whatsoever that the 1st Defendant wanted to be bound by the undertakings he made.

Finally, both parties had the legal capacity to enter the contracts at the times they did. They were both adults at the time and were not illiterates. In **Exhibit R,** he stated that the undertaken "is also given freely by [him], devoid of any pressure or harassment. "In fact, a Promissory Note does not require the concurrence or signature of the beneficiary to be enforceable by them. There is no doubt whatsoever about the legal capacity of the 1st Defendant when the Notes were made. Tellingly, **Section 90 of the Bills of Exchange**

Act, 2004, states expressly that the 1st Defendant is precluded from denying the existence of his then capacity to endorse at the time of signing the Undertaking.

Further, the Supreme Court's decision in **F.A.T.B Ltd VS. PARTNERSHIP INV. CO. LTD (2003) 18 NWLR (Part 851) at page 35** is instructive on this issue. They held at pages 74-75 as follows:

> ***"Where the consideration for which a party signed a bill of exchange or promissory note consists of a definite sum of money or of something the value of which is definitely ascertained in money, and it was either originally absent or had subsequently failed, whether totally or in part, the sum, if any, which a holder standing in immediate relation to such party is entitled to receive from him is naturally reduced protanto. <u>However, a remote party who has given value for the instrument may be entitled to receive payment in full.</u>"*** *(underlined for emphasis)*

It seems clear to me that the considerations in the above **Exhibits B – F & R,** which culminated in **Exhibit F,** consist of 2 respective definite sums of money in (a) something of value of which is definitely ascertained in money, that is, marital separation, upon which a figure of **N34.4 million** was placed by the 1st Defendant and (b) accumulated debt owed, in the sum of **N25,529,595.00.** I hold that the Claimant has given value for both instruments and is thus entitled to receive payment in full. I so hold.

In the absence of a defence, how do we establish that the Claimant has indeed given valuable consideration for the promises to warrant the grant of the Declaratory Orders? The Supreme Court in the above cited case at pages 72-3, explained thus:

> ***"By virtue of section 30(1) of the Bills of Exchange Act, 1990, every party whose signature appears on***

> ***a bill is prima facie deemed to have become a party thereto for value. Accordingly, there is a rebuttable presumption that bills of exchange and promissory notes, unlike other forms of simple contract, stand upon the basis of a valuable consideration. Consequently, anybody who alleges that value was not received for a bill of exchange or a promissory note has the burden of proving same; and where he does so, the presumption under the section ceases to operate."*** *(Underlining ours for reference).*

It therefore follows that upon making, signing and delivery of the Notes herein to the Claimant by the 1st Defendant, there is a presumption that valuable consideration has passed. Also, the 1st Defendant is estopped by statute from denying legal capacity. Any contest or objection to the validity or enforceability of the Promissory Notes in this case can, and as a matter of law, must come in the form of a Defence to this suit.

By virtue of the foregoing authority, upon presenting the Promissory Note, the burden of proof placed on the Claimant is satisfied and discharged. The burden then shifts to the 1st Defendant to deny that consideration indeed passed. Once the burden of proof is discharged, the Claimant is deemed to have proved her case on the balance of probability. It is no longer a matter of default of defence or admission.

It is therefore my strict view that a declaratory order pursuant to a Promissory Note can therefore be obtained where the Defendant fails to contest the enforceability of the Note, or fails to defend the action. The 1st – 3rd Defendants, having failed to defend this suit or call any evidence to rebut the statutory presumption, are deemed to have admitted same.

In order to establish her rights, the Claimant wrote the 3rd Defendant in Exhibit Q2, informing them of her priority claims and her right of lien. However, instead of the 3rd Defendant to respect

the undertaking of the 1st Defendant, they responded with Exhibit Q1, which claims references her removal as his next-of-kin in light of the dissolution petition he initiated. She then wrote them another letter in Exhibit Q3, advising them that her rights as staed in the Promissory Notes are not dependent on her remaining as his wife or next-of-kin. Despite the elaborate assertion of her rights, the 3rd Defendant refused to give any effect to them.

In paragraph 33 of her oral testimony, the Claimant informed the Court that the 1st Defendant is yet to sign his final clearance at the 3rd Defendant's office, a step which necessary for the release of his entitlements and gratuities, even though he had no issues which could impede a smooth clearance. The 3rd Defendant cannot therefore give any effect to the letter of undertaking and other promissory obligations of the 1st Defendant except he signs his clearance.

It is therefore obvious that the 1st Defendant has made himself unavailable deliberately in order to prevent the Claimant from enforcing her rights under the Promissory Notes he had given her. Thus, the Claimant prays this Court in paragraph 37 (F) of her Statement of Claim, to order the 3rd Defendant to disregard the 1st Defendant's failure to sign his clearance and pay his entitlements to the 2nd Defendant without any delay. As she stated, and as not been denied or controverted, there is no impediment or inhibition preventing his smooth clearance. Without an order of this honourable court, the 1st Defendant will successfully defraud the Claimant and prevent her from claiming her rights as per his Promissory Notes. This should not be allowed to happen.

Without equivocation, I hold that this issue has been established in favour of the Claimant in line with the requirements of statutory provisions, case law and the Evidence Act. I grant all the prayers of the Claimants in her Statement of Claim.

In conclusion, and by way of repetition having regard to the uncontroverted evidence led and admitted in this suit by the

Claimant, I hold that the Claimant has proved her case. Judgment is therefore entered in her favour as per her claims in her statement of claims. For avoidance of doubt, it is hereby ordered as follows:

A. **A DECLARATION** that the 1st Defendant is indebted to the Claimant in the sum of **N25,529,959.00** (Twenty-Five Million, Five Hundred and Twenty-Nine Thousand, Five Hundred and Ninety-Five Naira) only is hereby made.

B. **A DECLARATION** that the Claimant is entitled to the sum of **N34,400,000.00** (Thirty-Four Million, Four Hundred Thousand Naira) only as compensation for separation of both parties from their marriage by virtue of the suit for dissolution instituted by the 1st Defendant at the High Court of the FCT is hereby made.

C. **A DECLARATION** that the Claimant has priority over the 1st Defendant's entitlements from the 3rd Defendant, including his gratuity and other entitlements, emoluments, pension, benefits, yearly upfront payment, salaries, contributions or dues up to the amount required to settle the 1st Defendant's indebtedness and other financial obligations to the Claimant is hereby made.

D. **A DECLARATION** that the 3rd Defendant is mandated to pay the 1st Defendant's gratuity and other entitlements, emoluments, pension, benefits, yearly upfront payment, salaries, contributions or dues into the 1st Defendant's account with the 2nd Defendant, that is, Account Number 4020813885 is hereby made.

E. **A DECLARATION** that the Claimant is entitled to place a lien, effective 15th January 2020, on Account Number **4020813885** of the 1st Defendant with the 2nd Defendant Bank, until the 1st

Defendant's debt to the Claimant and other financial obligations are satisfied is hereby made.

F. **AN ORDER** mandating the 3rd Defendant to disregard the 1st Defendant's failure to sign his final clearance and pay all accrued entitlements and retirement benefits of the 1st Defendant, including his salaries, emoluments, gratuity, pension, contributions, retirement benefits, yearly upfront payment and all other payments or incentives due to him to his account at Fidelity Bank Plc, that is, Account Number **4020813885** is hereby made.

G. **AN ORDER** placing a lien on the 1st Defendant's account at the 2nd Defendant's bank, that it, Account Number **4020813885,** effective January 15, 2020, until the Claimant's debt and other financial entitlements are satisfied is hereby made.

H. **AN ORDER** restraining the 2nd Defendant from recognizing or honouring any debit request or other instrument whatsoever on the 1st Claimant's account from any person or authority except for the satisfaction of the Claimant's claims, until the 1st Defendant's indebtedness and other responsibilities to the Claimant have been satisfied is hereby made.

I. **AN ORDER** restraining the 1st Defendant from closing, withdrawing or taking any monies, or otherwise dealing with any money domiciled in the said Fidelity Bank Account Number **4020813885,** until the Claimant's claims are satisfied is hereby made.

J. **AN ORDER** mandating the 2nd Defendant to pay to the Claimant, the sum of **N25,529,595.00** (Twenty-Five Million, Five Hundred and Twenty-Nine Thousand, Five Hundred and Ninety-Five Naira) from the 1st Defendant's Account Number **4020813885,** in satisfaction of the debt he owes the Claimant is hereby made.

K. **AN ORDER** mandating the 2nd Defendant to pay to the Claimant, the sum of **N34,400,000.00** from the 1st Defendant's Account Number **4020813885,** as compensation for his separation from her as her husband is hereby made.

L. **AN ORDER** compelling the 1st Defendant to pay to the Plaintiff post judgment interest at rate of 10% of the entire sum per annum from the date of judgment till the entire judgment sum is fully liquidated is hereby made.

Signed
S. B. Belgore
(Judge) 16/3/2023