

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS

COURT: 28

DATE: 9TH February, 2023

FCT/HC/CV/2091/2022

BETWEEN

SALIHI DAWAKI -----

CLAIMANT

AND

PEACEFUL PEACE IMPORT AND EXPORT LTD-----

DEFENDANT

JUDGMENT

This is a suit commenced by way of summary judgment procedure. The writ as well as motion for summary judgment was filed on 20th June, 2022.

The story of the Claimant is that the defendant proposed an investment arrangement to him and based on that, he paid the total sum of Nineteen Million One Hundred and Sixty Four Thousand Naira (~~N~~19, 164,000.00). The Claimant exhibited two First Bank transfer receipts dated 4th and 11th January 2021, showing how the Claimant made a transfer of ~~N~~4, 164,000.00 and ~~N~~15,000,000.00 respectively into a First Bank Account bearing the Defendant's name with a description of the transfer as "*investment*"

According to the Claimant, upon payment of the said sum to the Defendant, the Defendant willingly and blatantly refused to carry out its obligation based on the arrangement they had, by failing to pay any returns on investment to him. As a result, the Claimant through his solicitor, Mohammed A. Yunusa Esq, wrote a letter of demand to the defendant, mandating the defendant to return the investment sum to the Claimant, which the defendant refused.

Because of the facts illuminated above, the Claimant has now approached this court seeking for the following reliefs:-

1. An Order of this Honourable Court directing the Defendant to pay the sum of Nineteen Million One Hundred and Sixty Four Thousand Naira (~~₦~~19, 164, 000.00) being the sum owed by the Defendant to the Claimant based on the proposed investment arrangement.
2. An Order of this Honourable Court awarding the sum of Ten Million Naira only (~~₦~~10,000,000.00) against the Defendant in favour of the Claimant as general damages.
3. An Order of this Honourable Court awarding the sum of Five Million Naira only (~~₦~~5,000,000.00) to the Claimant as cost of this action.
4. An Order of this Honourable Court directing the defendant to pay the Claimant 10% as post judgment interest from the date of delivering judgment till when the judgment sum is fully satisfied.
5. And for such further order or other orders as this Honourable Court may deem fit to make in the circumstances.

Pursuant to an order of this court, the Defendant was served with the originating processes as well as all hearing notices, but no appearance was entered by or on its behalf, neither did it file any notice of intention to defend the suit. Consequently, on 17th January 2023, the Claimant moved his application for summary judgment, and the matter was slated for judgment today.

In the written address filed in support of the Claimant's application for summary judgment, the Claimant through his counsel argued that the Claimant is entitled to summary judgment against the Defendant in accordance with Order 11 Rule 1 of the Civil Procedure Rules of the High Court of FCT. Counsel relying on the case of *U.B.N PLC V. GAP CONSULTANTS LTD (2017) 11 NWLR (PT. 1577)357* and several other authorities, submitted that there is no defence to the claimant's suit and urged the court to enter a summary judgment in favour of the Claimant.

The summary judgment procedure, which is akin to and like the undefended list procedure, is a unique procedure put in place to enable an expeditious disposal of simple claims for liquidated sum or money demand to which, from the facts presented before the Court, the Defendant either expressly admits indebtedness or has no real defence in law to the claim, without the rigorous of the often, time and resource wasting procedure of a normal trial. In the procedure, usually, the matter is determined based on the Affidavit evidence placed before a Court by the parties which contain all the relevant and material facts of the claim with specific and sufficient particulars to enable the Court to determine it without the need for oral evidence or proof.

While I believe that the payment made by the Claimant to the Defendant in this case was for the purpose of investment as can be seen from the description on the receipts exhibited by the Claimant, it is however instructive to note that the Claimant did not tender any document where there was an express agreement by the parties as to the rate of the returns on investment, when the investment sum was to be repaid and other terms of the investment arrangement. What we have before the court are mere receipts of payments made to the Defendant.

However, the refusal /failure of the Defendant to to file any process to react, respond and to defend the claim even after being notified of same, leavesthis courtwith no other option than to enter judgment as provided for and in line with the provision of Order 11 of the Rules of this Honourable Court.

As a result of theDefendant’s failure to file pleadings to challenge or controvert the facts contained in the Claimant's Statement of Claim and did not also file a Counter Affidavit to dispute and controvert the facts deposed to in the Claimant's Affidavit in support of the motion for judgment and so deemed to have admitted all those facts, the issue or question of proving the terms of the investment agreement do not arise since the law is that a fact admitted requires no further proof. See Section 123 of the Evidence Act 2011; *OKESUJI V. LAWAL (1991) 1 NWLR (PT. 170) 661*; *AJOMALE V. YADUAT (NO.2) (1991) 5 NWLR (191) 266*; *JIKANTORO V. DANTORO (2004) 5 SC (PT. II) 1*; *AKPA V. STATE (2008) 7 MJSC, 77*; *REG. TRUSTEES V. MEDICAL & HEALTH (2008) 3 MJSC, 121*; *NNPC V. OLAGBAJU (2006) ALL FWLR (PT. 334) 1855*; *DUZU V. YUNUSA (2010) 10 NWLR (PT. 1201) 80*.

The Court of Appeal in the case of *DWELLSPACE LIMITED V. TEXTWORTH NIGERIA LIMITED & ANOR (2018) LPELR-4111(CA)*, gave an wholesome description of how the trial Court ought to determine whether a summary judgment should be given, where per Abubakar JCA, it held thus: -

"In an application for summary judgment, while the Court must always bear in mind that the purpose of Order 11 is to enable a Plaintiff obtain summary judgment without trial if he can prove his claim clearly and if the Defendant is unable to set up a bonafide defence or raise an issue against the claim which ought

to lead to the case being tried on the merit. It is also necessary that the trial Court looks at the facts put forward by the Defendant in the various documents filed by him and see if the facts put together may, prima facie afford a defence to the Plaintiff's claim. "

The implication of the above is that the Defendant has an important role to play, because it is through his notice of intention to defend, or statement of defence that the court will determine whether or not there is a triable issue.

In the light of the foregoing, I am compelled to grant relief A in favour of the Claimant. An Order is hereby made directing the Defendant to pay the sum of Nineteen Million One Hundred and Sixty Four Thousand Naira (~~₦~~19, 164, 000.00) being the sum owed by the Defendant to the Claimant.

On the Claim for cost of action and general damages also sought by the Claimant in this suit, I must state that in the absence of any prior agreement on payment of solicitor's fee, it remains an unliquidated claim which ought not to be readily granted under the summary judgment procedure.

A claim for unliquidated damages does not become a liquidated claim merely because the claimant has put a figure to it. **ABUJA CAPITAL MOTORS LTD v. ALHAJI ABDULAZEEZ BELLO ALIYU (2017) LPELR-42865(CA)**. Moreover, summary judgment procedure concerns itself purely with liquidated money demand against the defendant based on the transaction between the Claimant and Defendant. Cost of action and general damages has no place in a summary judgment procedure.

A claim is said to be liquidated (or made clear) whenever the amount to which a claimant is entitled can be ascertained by calculation or fixed by

any scale or other positive data; but when the amount to be recovered depends on all the circumstances of the case and on the conduct of the parties and is fixed by opinion or by an estimate, the damages are said to be unliquidated.

See *ODGERS ON THE COMMON LAW (1927) 3RD ED., VOL. 2, P. 654, NWORAH V. AFAM AKPUTA (2010) 42 (PT. 1) NSCQR 322 - 323 AND MAJA V. SAMOURIS [2002] 7 NWLR (PT 765) 78, (2002) LPELR (1824) 1* wherein the Supreme Court (per Iguh JSC) sounded a note of caution at pp. 25 - 26 thus:

"It cannot be over-emphasized that a Court is not entitled to enter summary or default judgment on a claim based on a relief for payment of unliquidated pecuniary damages without taking evidence for the assessment of the amount of damages that may be proved, as such a claim must be established by credible evidence. This is so because it is not enough for the Court to simply award damages in an unliquidated pecuniary damages claim without giving any reasons as to how it arrived at what in its opinion amounted to reasonable damages." See also UMUNNA v. OKWURAIWE (1978) 6-7 SC 1 at 8 and OLUROTIMI v. IGE [1993] 8 NWLR (PT 311) 257 at 266"

The rationale for this is not farfetched. The law, as I have always understood it, is that any allegation that a party has suffered damage, or as to the amount of damages, is deemed to be traversed unless specifically admitted, such that no denial of damage is necessary. This applies whether the damage is alleged general or special and even where the alleged damage is not

part of the cause of action. See *OKE V. AIYEDUN [1986] 2 NWLR (PT. 23) 548 AT 563.*

In the light of all the analysis set out above, judgment is hereby entered in favour of the Claimant on reliefs A and E, while reliefs B to D are hereby refused.

HON. JUSTICE M.S IDRIS
(PRESIDING JUDGE

APPEARANCE

Jessey Jacob:- For the Claimant