

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
BEFORE HIS LORDSHIP: THE HON. JUSTICE ELEOJO ENENCHE
THIS 23rd DAY OF February, 2023

SUIT NO:
FCT/HC/CV/338/2022

BETWEEN

LAWAL BUSOLA

.....

PLAINTIFF/APPLICANT

AND

ADEWALE ALADEJANA

.....

DEFENDANT/CLAIMANT

JUDGEMENT

This matter was commenced via a writ of summons dated and signed on the 4th February 2022 and brought pursuant to Order 35 of the High Court of the F.C.T Civil Procedure Rules 2018.

The Claimant's claim against the Defendant is reproduced hereunder as follows:

- a. AN ORDER OF THIS HONOURABLE COURT MANDATING** the Defendant to pay the Claimant the sum of ₦3,000,000 (Three Million Naira) only as the Claimant's Return on Investment (RoI) on the capital investment of ₦2,000,000 (Two Million naira) only, invested by the Claimant in the Defendant's

business of sale of rare fragrances such as Oud, frankincense, myrrh and Amouage oils by virtue of the Memorandum of Understanding dated 12th day of April, 2018, for the periods of November, 2018 – April, 2019, May, 2019- October,2019, November, 2019- April, 2020,May, 2020- October, 2020, November, 2020-April, 2021,and May, 2021- October,2021 (at #500,000.00 ROI per 6months) which sum has crystallized as a debt payable by the Defendant to the Claimant.

- b. AN ORDER OF THIS HONOURABLE COURT MANDATING** the Defendant to pay to the Claimant the sum of #2,000,000.00 (Two million Naira) only as the Claimant's capital investment in the Defendant's business of sale of rare fragrances such as Oud, Frankincense myrrh and Amouage oils by virtue of the Memorandum of Understanding dated 12th day of April, 2018 which sum is refundable to the Claimant and has crystalized as a debt payable by the Defendant to the Claimant.
- c. AN ORDER OF THIS HONOURABLE COURT COMMANDING** the Defendant to additionally remit to the Claimant her entitlement under the Memorandum of Understanding dated 12th day of April, 2018 from December, 2021 till the full liquidation of the judgment sum which sum is a debt payable by the Defendant to the Claimant.
- d.** 15% interest on the said total sums of money per annum from the date of judgment until the full liquidation of the judgment sum.

e. And the cost of filing and prosecuting this suit.

The Writ of Summons was supported by a 5 paragraph affidavit deposed to by Ebenezer Ismaila. Alongside five annexures tagged Exhibit BL1 to BL5 respectively.

The Writ of Summons was brought under the undefended list procedure pursuant to order 35 of the Rules of this court and being guided by the provisions of this order a trial judge must hear a suit as undefended where it is crystal clear that there is nothing to defend as there is no dispute between the parties. **OZIEGBE AMEDE V. UNITED BANK FOR AFRICA PLC (2018) LPELR 47994 (SC).**

Be it as it may, it is not the aim of the undefended list procedure to shut out a defendant who wants to contest a suit brought out under the undefended list merely in order to obtain a speedy trial at the expense of justice. See **MACAULAY V. NAL MERCHANT BANK LTD (1990) 4 NWLR (prt. 144) 283.** However, the Defendant in this matter though served Court processes failed to file notice of intention to defend, did not show up in court nor was he duly represented. It is established in plethora of judicial decisions that where a defendant neglects to file notice of defence and affidavit, the suit shall be heard as an undefended suit, and judgment given thereon, without calling upon the plaintiff to summon witnesses before the Court to prove his case formally. See **Diamond Bank V G. S. M. Agro- Allied Ltd (1999) 8 NWLR (pt. 616) 558 at 559, Ben Thomas Hotel Ltd V Sebi Furniture Co. Ltd**

The facts as made out from the originating process in summary is, that the Claimant invested the sum of two Million naira (2,000,000), as evidenced in annexure BL2 i.e bank statement, in the defendant's business of sale of rare fragrances and by virtue of their Memorandum of Understanding, herein annexed and marked EXh BL1 dated 12th April 2018, the defendant was bound to pay the Claimant the sum of two million naira (#2,000,000.00) which is her invested sum capital and an additional five hundred thousand naira (#500,000) which is her return on interest after 6 months.

It is Claimant's averment that the Defendant paid her once after six months but did not refund the capital sum being two million naira (#2,000,000.00) now, being that the Defendant, has defaulted from the month of November 2018 to the Month of October 2021, the Claimant is now praying the Court mandates the Defendant to pay accumulated return on interest in the sum of Four million naira (#4,000,000.00) which she i.e Claimant strenuously believes has crystallized as a debt payable by the defendant.

Having reviewed the affidavit and the accompanying annexures, I believe that the starting point in the resolution of this matter is to hinge my judex mind on the content of the agreement.

It is informative to note, that in paragraph seven(7) of the agreement, parties had agreed

“in the case of any grievance or dispute between the parties, the parties shall settle amicably and where this proves abortive, it shall be settled by mediation and where same proves abortive, parties shall proceed to a court of competent jurisdiction”.I am

fully convinced that this condition which I have reproduced above is written in clear, simple and straight forward language which requires no interpretation. Consequently, i am persuaded by Claimant’s averment in paragraph 3(p)(q), further supported by annexure **EXH BL3** and **EXH BL4** respectively that Claimant has exhausted alternative options in resolving the dispute, thus this suit.

However, under the column cited as “Obligations of the parties” of the agreement herein annexed, it is stated and I quote

“The principal been desirous to expand its business has agreed that the investor invests a sum of Two million naira (#2,000,000) only for a period of 6months”.The indication of this quoted part of

the agreement, in my mind, is that the agreement between parties is for a specified period. However, clause 5 provides that the investor choose to reinvest his funds into the principal's business or simply walk away with his invested capital and interest at the end of the 6 months however the investor must give the principal a notice of one month if he chooses to walk away with his invested capital and interest after the agreed 6 months .

I do not see any indication that the investor exercised the option of retrieving the funds as such, I must imply that the sum invested was therefore reinvested.

Accordingly, judgment will be and is hereby entered in favour of the Claimant as claimed in the following terms;

a. AN ORDER OF THIS HONOURABLE COURT is hereby made

MANDATING the Defendant to pay the Claimant the sum of ~~₦~~3,000,000(Three Million Naira) only as the Claimant's Return on Investment (RoI) on the capital investment of #2,000,000(Two Million naira) only, invested by the Claimant in the Defendant's business of sale of rare fragrances such as Oud, frankincense, myrrh and Amouage oils by virtue of the Memorandum of Understanding dated 12th day of April, 2018, for the periods of November, 2018 – April, 2019, May, 2019-October, 2019, November, 2019- April, 2020, May, 2020-October, 2020, November, 2020-April, 2021, and May, 2021-October, 2021 (at #500,000.00 ROI per 6 months) which sum has crystallized as a debt payable by the Defendant to the Claimant.

b. AN ORDER OF THIS HONOURABLE COURT MANDATING

the Defendant to pay to the Claimant the sum of #2,000,000.00 (Two million Naira) only as the Claimant's capital investment in the Defendant's business of sale of rare fragrances such

as Oud, Frankincense myrrh and Amouage oils by virtue of the Memorandum of Understanding dated 12th day of April, 2018 which sum is refundable to the Claimant and has crystalized as a debt payable by the Defendant to the Claimant.

- c. AN ORDER OF THIS HONOURABLE COURT COMMANDING** the Defendant to additionally remit to the Claimant her entitlement under the Memorandum of Understanding dated 12th day of April, 2018 from December, 2021 till the full liquidation of the judgment sum which sum is a debt payable by the Defendant to the Claimant.
- d.** 10% interest on the said total sums of money per annum from the date of judgment until the full liquidation of the judgment sum.
- e.** I assess the costs of this action at ~~N~~200,000.00 (Two Hundred Thousand Naira) in favour of the Claimant against the Defendant.

IT IS SO ORDERED.

(Signed)
ElejoEneche
HON. JUDGE
23/02/23

