

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA

SUIT NO: FCT/HC/CV/2869/2022

JUDGMENT DELIVERED ON: 12th January 2023

BETWEEN

ROYAL EYE HOSPITAL LIMITED

(Formerly Fortress Eye Hospital & Medical Center)CLAIMANT

AND

ABUJA ELECTRICITY DISTRIBUTION COMPANY
PLC.....DEFENDANT

JUDGEMENT

This suit is between Royal Eye Hospital Limited (formerly known as Fortress Eye Hospital and Medical Center) and the Abuja Electricity Distribution Co. Plc. (AEDC). It was entered for hearing on the Undefended List pursuant to Order 35 of the High Court of the FCT (Civil Procedure) Rules, 2018. The claim against the Defendant as endorsed on the Writ of Summons dated and filed on the 30/08/22 is as follows:

1. A DECLARATION that the Claimant is entitled to the payment of the aggregate sum of ₦25,626,630.00 (Twenty-Five Million, Six Hundred

and Twenty-Six Thousand, Six Hundred and Thirty Naira) being accumulated and outstanding bill for medical services rendered by the Claimant to the members of staff/employees and enrollees of the Defendant from 2019 to June 30, 2022.

2. AN ORDER directing the Defendant to pay the Claimant the aggregate sum of ₦25,626,630.00 (Twenty-Five Million, Six Hundred and Twenty-Six Thousand, Six Hundred and Thirty Naira) being accumulated outstanding bill for medical services rendered by the Claimant to the members of staff/employees and enrollees of the Defendant from 2019 to June 30, 2022.
3. Post judgment interest at **11%** interest per annum on the judgment sum of ₦25,626,630.00 from the date of judgment until the liquidation of the judgment sum in its entirety.
4. Cost of prosecuting this suit.

The writ of summons is supported by a 47 paragraphed affidavit deposed to by one Inedu Anibe, who is the Head, Finance & Accounts of the Claimant.

On the other hand, the Defendant caused to be filed in court, a Notice of Intention to Defend dated 23/11/22 and supported by a 16 paragraphed affidavit deposed to by one Ifeanyi Alonu, a Legal Officer in the Legal Department of the Defendant.

At the Hearing of the matter on 24/11/22 Sunny Ajala SAN for the Applicant relied on the affidavit in support of the application and contended that the claim of the Claimant is as endorsed on the writ. Learned Senior Counsel contented

that the Notice of intention to defend did not disclose a defence as required by the law. He submitted that the affidavit failed to disclose any evidence to dislodge the affidavit evidence of the Claimant as demonstrated in the 12 Exhibits attached. Citing the case of **TILLYGYADO & CO. LTD V. ACCESS BANK (NWR) (PT 1669) AT 399** and **SLAYMIT MOTORS LTD. V. UBA PLC. (2021) (NWR) (PT 1768 AT 123)** I was urged to enter judgment in favour of the Claimant.

On behalf of the Defendant Joy Onyekwulje relied on the Notice of Intention to Defend and the deposition in the affidavit in urging me to find that the Defendant has a good defence. To so argue, she submitted that the Claimant is unknown to the Defendant and that assuming that there is a relationship between them, the terms in Exhibit “1 were not adhered to. Counsel argued that it can be seen from the bills filed that the Claimant was charging different sums for the same procedure conducted on different patients. Council submits that there is a dispute as there are discrepancies in the bills filed and urged me to transfer the matter to the general cause list. For all this, I was called to consider the following cases, **WEMA SECURITIES & FINANCE PLC. V. NAIC (2015) 16 NWLR (Pt 1484) at 145 PARA A –C** & **KWARA STATE GOVT. V. GUTHRIE (2022) 13 NWR (PT 1846) 189 AT 205.**

The Claimant’s case is that it used to be Fortress Eye Hospital and Medical Center but in 2021 changed and transferred its trade and medical services to Royal Eye Hospital Limited. On the 1st of August 2017, by a letter, the Defendant retained the services of the Claimant for the medical care of all staff of the Defendant and their dependents. The letter was attached and marked as Exhibit **REH-2**. Claimant contends that it provided sundry medical services to

numerous staff of the Defendant and it is the payment for those services that the Claimant sought to enforce through this action. Claimant made these assertions supported by documentary evidence attached to the affidavit in support of the Writ as follows; January 2019- December 2019 **Exhibit A1-12**, January – December 2020 **Exhibit B1-12**, January 2021- December 2021, **Exhibit C1-C12**, and January 2022-April 2022 **Exhibit D1-4**. Claimant’s financial summary sheet showing the indebtedness for each of the period was equally attached as exhibit and marked as “**REH-3**”, “**REH-4**”, “**REH-5**” and “**REH 6**” respectively. The total claim is for ₦25, 626,630:00 (twenty- five million, six hundred and twenty-six thousand, six hundred and thirty naira) representing the accumulated bill from 2019 -June 20, 2022.

In the affidavit supporting the Notice of Intention to Defend, it was deposed that the Defendant entered into a contractual agreement with Fortress Eye Hospital and Medical Center and thus, that the Claimant is not known to the Defendant. In any case, it is the contention of the Defendant via the said affidavit that the conditions of the retainerhip were contained in the letter of approval dated 1st August 2017 and that Fortress Center has consistently flaunted those terms and conditions. Defendant maintains that going by the stated letter, for cases bordering on surgical operations, official confirmation and approval must be obtained before such cases are attended to but that Fortress Center failed to adhere to that requirement when it performed surgical operations on some staff of the Defendant as listed in paragraph 10 (a) 1 of the affidavit. Furthermore, it was averred that Fortress Center was meant to avail the Defendant a list of all their services and price list but that instead they continued to present arbitrary bills to the Defendant, finally, Defendant asserts that because Fortress Center refused to provide information on their price list they continued to present different outrageous and ununiformed bill for the same/similar medical

procedures performed on different individuals examples of which were highlighted in paragraph 10 (c) i- vii of the affidavit in support of the Notice of Intention to Defend.

Finally, the affidavit alleges that part of the terms of engagement is that the original referral for each staff the Claimant treated should be retained by them and then forwarded along with the monthly bills and also that the bill of any of their staff on whom treatment was carried out must be sighted and signed by that patient but that both conditions were never complied with.

Undefended List is a unique procedure designed for the expeditious disposal of cases involving debts or liquidated money demands where the issue is straightforward, uncontested and incontestable. It is a truncated form of civil hearing, which saves the Court the tedium of hearing evidence and sham defences mounted by a Defendant who has no genuine defence to an action. See generally *UBA PLC v JAGARBA [2007] 11 NWLR (PT 1045) 247 at 272;* *AGUNEME v EZE [1990] 3 NWLR (PT 137) 242* and *BANK OF THE NORTH LTD v INTRABANK SA (1969) 1 ALL NLR 91*. Where this is so, the court proceeds to enter judgment for the Claimant as provided in *Order 35 Rule 4 CPR* without calling upon the Claimant to formally prove his case by calling witnesses. However, the speedy disposal of a case under the Undefended List is short-circuited where the Defendant is able to disclose a defence on the merit, in which case the court is obligated to transfer the matter to the ordinary cause list for plenary trial. See *JOS NORTH v DANIYAN [2000] 3 WRN 60* and *UBA PLC v MODE NIGERIA LTD [2001] 13 NWLR (PT. 730) 335*. A defence on the merits is an issue raised by way of defence, which *prima facie*, sounds plausible and which would necessitate the court to require further explanation from the Claimant. In *FMG v SANI [1990] 4 NWLR (PT 147) 688 at 699*, *Uwais, JSC* (as he then was) described a defence on the merit as a triable

issue. In *DALA AIR SERVICES v SUDAN AIRWAYS [2005] 3 NWLR (PT 912) 394 at 410 and 413*, a defence showing a triable issue was described as facts, which if established, would defeat the claim of the Claimant or exonerate the Defendant from the claim. The point must be made that in determining whether a defence on the merits has been disclosed, it is not necessary for the court to consider whether the defence has been proved: a complete defence need not be shown at this stage. It suffices if the defence set up shows that there is a triable issue or question or that for some other reason there ought to be a trial. See *OKAMBAH v SULE [1990] 7 NWLR (PT 160) 1* and *YAHAYA v WAJE COMMUNITY BANK [2001] 46 WRN 87 at 96*. It is not necessary that the Defendant's affidavit disclosing a defence on the merits should provide a cast-iron defence before the case is transferred to the general cause list. See *V. S. STEEL (NIG) LTD v GOVT. OF ANAMBRA STATE [2001] 8 NWLR (PT 715) 454*. What is more, the courts are liberal in considering whether a defence on the merits has been disclosed [*see* *IMONIYAME HOLDINGS v SONEB ENTERPRISES LTD [2002] 4 NWLR (PT 758) 618*], but it is not enough to merely assert that there is a good defence without furnishing full particulars of the actual defence. See *ACB v GWAGWADA [1994] 5 NWLR (PT 342) 25 at 36*; *PLANWELL WATERSHED LTD v OGALA [2003] 12 SC (PT II) 39 at 43-44*. Where particulars of actual defence are given, it must condescend on particulars: the defence must be clearly and concisely stated with facts supporting it. See *NISHIZAWA v JETHWANI (1984) 12 SC 234 at 260*; *MACAULAY v NAL MERCHANT BANK LTD [1990] 4 NWLR (PT 144) 283 at 306 - 307* and *PLANWELL WATERSHED LTD v OGALA supra at 47*. It is not enough for the Defendant to merely deny the claim without more [*see* *FRANCHAL (NIG) LTD v N. A. B. LTD [1995] 8 NWLR (PT 412) 176 at 188*], and the defence must not be a sham that is designed to frustrate and

dribble the Claimant. See **BATURE v SAVANNAH BANK [1998] 4 NWLR (PT 546) 438.** A defence on the merits may encompass a defence in law as well as on the facts. The Defendant must put forward some facts which cast doubt on the claim of the Claimant. A defence on the merits is not the same as success of the defence in litigation. All that is required is to lay the foundation for the existence of a triable issue or issues. See **ATAGUBA & CO. v GURA (NIG) LTD supra at 456 - 457.**

In applying the principles to the facts of this matter, the question that arises is whether the matter is straightforward, uncontested and incontestable and whether there is a plausible defence on the merits. I shall begin with the arm of the defence by which the Defendant tried to deny knowing the Claimant. On this score it was averred that the contract was between the Defendant and Fortress Eye Hospital and Medical Center and not Royal Eye Hospital Limited. It occurs to me that this is precisely the form of defence that the Undefended List procedure seeks to obviate and which the courts have consistently referred to as a sham defence. It is clear from Exhibits **REH 1** and **REH2** that the transaction started when the Claimant still bore the moniker Fortress Eye Hospital and Medical Center and that the retainership was entered into under that name. However, the affidavit in support of the writ succinctly indicates that the Claimant changed its trade and Medical services sometime in 2021 to Royal Eye Hospital Limited. Now, I find it preposterous that the Defendant will at this time attempt to deny knowing Royal Eye Center when it is clear that in furtherance of the retainership agreement between them its staff continued to attend the Hospital and derived the benefits of various services and medical procedures. I note that from the exhibits before me beginning from the month of July 2021, the bills submitted to the Defendant clearly was from the

Royal Eye Hospital and Medial Center. The bills include the bills for the month of July 2021 through to April 2022. In computing time, one would see that there are about 9 months between July 2021 and April 2022 and that for the whole of that period, the staff of the Defendant continued to attend the facility of the Royal Eye Hospital in clear continuation of the relationship that existed between Fortress Eye Hospital and Medical Center and the Defendant. Further to this exhibits **REH 8** is a letter of demand written by the Claimant to the Defendant to settle the accumulated aggregate outstanding medical bills of ₦22,903,130:00 owed for sundry medical care and services to staff of the AEDC from 2019- 2022. That letter dated May 13th 2022 was written as a follow up to an earlier letter of 8th March 2021. While the letter of 8th March exhibited as **REH-7** was written under the moniker of “Fortress”, exhibit **REH -8** bore Royal Eye Hospital and at no time did the Defendant then deny knowing the Claimant. Not when they enjoyed the services rendered or when the Demand letters were written. It will seem to me therefore that this is a mere afterthought and a disingenuous attempt to escape liability.

The second arm of the defense which was sought to be put forward is that the Claimant in performing the medical procedures did not follow the agreement as contained in the letter of engagement. This to me does not amount to a defence on the merit as anticipated by law. A crucial point to emphasise is that the law on a notice of intention to defend disclosing a defence on the merit requires that such a defence must be a genuine, real and fair defence to the claims made. Once the notice of intention to defend shows reasonable grounds for setting up a defence or even a fair probability that a bona fide defence exists, leave to defend would be granted and the matter transferred to the ordinary cause list for plenary trial and determination. However, the material details and particulars of the defence must be fully and clearly set out in the affidavit in support of the

notice to enable the court determine if a defence on the merit is disclosed. See MARGERORY v N.M.B. (1996) 2 SCNJ 72, PETER TRIWELL NIG. LTD v. INLAND BANK NIG. LTD [1997] 3 NWLR 408, KNIGHTBRIGE v. ATAMAKO [2000] 2 NWLR (645) 387. In the case at hand, other than the mere *ipse dixit* of the deponent to the affidavit accompanying the notice of intention to defend, no material details and/or particulars are set out in the affidavit in support of notice of intention to defend to undergird the alleged 'defence' of unjustifiable and unsubstantiated bills. It is curious in the least that bills were submitted to the Defendant as far back as 2019 to which they remained mute and made no attempts to raise the complains herein made that the Claimants, did not comply with the terms of engagement and yet the staff who were beneficiaries of the service rendered continued to attend the medical facility unperturbed. The affidavit in paragraph 11 tried lamely, in my opinion, to assert that the Defendant has always disputed their alleged indebtedness to the Claimant and always maintained that the payments they made so far to the Claimant is more than enough to cover the medical services rendered to them but this averment is unsubstantiated as there is nothing before me to show that the Defendant had ever before the institution of this action raised any concern or query against the bill or the procedure engaged by the Claimant in attending to its staff. This averment is barebone, rustic and bleak.

I will permit myself to underscore the point that it seems to me curious in the extreme that there is not even a single correspondence from the Defendant to the Claimant despite all the bills and letters emanating from the Claimants to them. There is nothing which shows, even remotely, that the Defendant raised the issues herein at anytime with the Claimant from 2019 and only to raise it now. This is precisely to me a sham defense and my conclusion inescapably is

that the issues raised by the Defendant as 'defence' are an afterthought. The Defendant has obviously not succeeded in its efforts at disclosing any triable issue and/or genuine defence on the merit, but merely seeks to dribble and frustrate the Claimant by dragging in into the ping-pong of litigation. This is therefore a proper case in which the court ought to proceed to enter judgment for the Claimant pursuant to *Order 35 Rule 4 CPR* without the tedium of conducting a plenary trial and I so hold.

In the light of everything that has been said in the foregoing, judgment will be and is hereby entered in favour of the Claimant against the Defendant in the following terms:

1. I hereby declare that the Claimant is entitled to the payment of the aggregate sum of ₦25, 626,630:00 N25,626,630.00 (Twenty Five Million, Six Hundred and Twenty Six Thousand, Six Hundred and Thirty Naira) being the accumulated and outstanding bill for medical services rendered by the Claimant to the members of staff/ employees and enrollees of the Defendant from 2019 to June 30th 2022.
2. The Defendant is hereby directed to pay the Claimant the aggregate sum of ₦25,626,630:00 N25,626,630.00 (Twenty-Five Million, Six Hundred and Twenty-Six Thousand, Six Hundred and Thirty Naira) being the accumulated and outstanding bill for medical services rendered by the Claimant to the members of staff/ employees and enrollees of the Defendant from 2019 to June 30th 2022.
3. The total judgment sum in (2) above shall attract post-judgment interest at the rate of 10% per annum with effect from today until the same is liquidated in full.

4. The Claimant is entitled to the costs of this action which I assess and fix at ~~₦~~250,000.00 (two hundred and Fifty Thousand Naira) only.

Elejo Enenche

12/01/23

Judge

ROYAL EYE HOSPITAL LIMITED (FORMERLY FORTRESS EYE HOSPITAL & MEDICAL CENTER) & ABUJA ELECTRICITY DISTRIBUTION COMPANY PLC