

IN THE HIGH COURT OF JUSTICE, EDO STATE OF NIGERIA
IN THE BENIN JUDICIAL DIVISION
HOLDEN AT BENIN CITY

BEFORE HIS LORDSHIP, THE HON. JUSTICE V.O. EBOREIME, JUDGE
SITTING IN HIGH COURT NO. 10, BENIN CITY
THIS TUESDAY THE 24TH DAY OF JUNE, 2014

SUIT NO.B/501/2013

B E T W E E N:-

OAR NIGERIA LTD

í .

CLAIMANT

VS.

FREDRICK AGBONZEBETA

....

DEFENDANT

J U D G M E N T

The Writ of Summons in this case was filed by the Claimant on the 19th day of September, 2013. It was accompanied with a Statement of Claim, whereof the Claimant claimed against the Defendant as follows:

öThe sum of ₦6,895,000.00 (Six Million, Eight Hundred and Ninety Five Thousand Naira) being the money paid by the Claimant to and received by the Defendant to purchase and deliver 60,000 liters of DPK from Swift Oil and gas ltd which the Defendant failed to supply and ₦80,000.00 (Eight Thousand Naira) being payment by the Claimant to the Defendant for transporting the 6,000 liters (sic) of DPK and interest of 10% thereon from the date of judgment until final payment is made.ö

Also supporting the Writ of summon was a list of witness, list of documents to be relied on and a Motion on Notice for summary judgment.

When the Claimant could not serve the Defendant the above processes, he brought a Motion Ex-parte for substituted service on the wall or door of the Defendant's last known place of abode being at No.310, Benin Agbor Road, NNPC Benin Depot, Ikpoba Hill, Benin City which was granted by this Court on the 3rd day of December, 2013. Afterwards, the Defendant was served the originating processes in this suit on the 30th day of January, 2014 by pasting by the Bailiff of this Court. This proof of service is at page 52 of the case file.

When this matter came up for hearing on the 20th day of May, 2014, the parties were absent. J. U. Osemwingie, Esq., Counsel for the Claimant moved the Claimant's Motion dated on the 18th day of September, 2013 and filed on the 19th day of September, 2013. He relied on the 21-paragraph affidavit in support of the Motion, the attached Exhibits "A", "B" and "C" and his written address and urge Court to grant his application. In the written address in support of the Motion on Notice, Learned Counsel canvassed an issue for determination as follows:

"My Lord, we submit that the sole issue for determination is whether this Honourable (sic) should grant this application."

Learned Counsel further submitted that the prayers of the Claimant are predicated on the facts contained in paragraphs 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20 of the affidavit in support of the Motion on Notice

and Exhibits 5A, 5B and 5C; that the above gave cogent reasons why summary judgment should be entered for the Claimant/Applicant. He relied on the following authorities:

1. SPDC (NIG) LTD VS ALAPUTA (2005) 9 NWLR (part 931) 475.
2. NIGERIA VICTORY ASSURANCE COMPANY LTD VS GRAINS PROCESSING COMPANY LTD (1995) 3 NWLR (part 386) 671.
3. DANKO VS UBN PLC (2004) 4 NWLR (part 862) 123 Ratio 4 at 130
4. NIGERIA DYNAMICS LTD VS IBRAHIM (2000) 8 NWLR (part 678) 63.
5. MORECAB FINANCE NIG. LTD (2007) all F.W.R.L (sic) (part 369) 1164.

In conclusion, Learned Counsel urged this Court to grant the reliefs sought by the Claimant.

COURT:

I have carefully considered the Writ of Summons, the Statement of Claim, List of Witness, List of Documents to be Relied on by the Claimant, the

Motion on Notice and the address in support in this case. The lone issue to be decided in this case is as follows:

“Whether the Claimant is entitled to the reliefs he seeks in this application for summary judgment.”

The application was brought pursuant to Order 11 Rule 1 of the Rules of this Court and under the inherent jurisdiction of this Court. It is reproduced as follows:

“Where a Claimant believes that there is no defence to his claim, he shall file with his originating process the Statement of Claim, the Exhibits, the depositions of his witness and an application for summary judgment which application shall be supported by an affidavit stating the grounds for his belief and written brief in respect thereof.”

The above provision forms part of Order 11 which is a special Order which is aimed at giving the Claimant judgment without the necessity of him calling his witness or witnesses to testify in the normal course of trial. This aspect of the law has enjoyed quite a lot of judicial pronouncements in our legal jurisprudence. In the case of UNITED BANK FOR AFRICA PLC AND ANOR VS JARGABA (2007) NSCQLR Vol. 31 page 145, Muhammad, JSC held at page 158 thus:

Summary Judgments are resorted to by Courts and given to the Plaintiff without the necessity of a plenary trial of an action. They are devices available for prompt and expeditious disposal of controversy without trial when there is no dispute as to either material fact, or inferences to be drawn from undisputed facts, or if only question of law is involved.

(Emphasis supplied by me).

Without much ado, it should quickly be answered whether the Claimant complied with Order 11 Rule 1. What processes did he file? They are as follows:

1. Writ of Summons.
2. Statement of Claim.
3. Claimant's Statement on Oath.
4. List of Documents.
5. Motion on Notice for Summary Judgment which was accompanied with:
 - (i) Affidavit in Support of Motion
 - (ii) Exhibits A, B and C
 - (iii) Written address in Support of Motion.

The above is in substantial compliance with Order 11 Rule 1. And I so hold.

Another question worthy of being asked is whether a Claimant is entitled to the grant of his application for Summary Judgment as a matter of Course. The answer is no. By the Rules of this Court, a Defendant served with the Claimant's process who intends to defend the action has a duty to file his processes as stipulated by Order 11 Rule 4 of the Rules of this Court. It provides that:

“Where a party served with the processes and documents referred to in Rule 1 of this Order intends to defend the Suit he shall, not later than the time prescribed for defence, file his:

- (a) Statement of defence;
- (b) Depositions of his witnesses;
- (c) Exhibits to be used in his defence; and
- (d) Written brief in reply to the application for Summary Judgment.”

Having not done the above, the Court now has a duty under Rule 5 of the said Order 11 to decide whether the Defendant has good defence and ought to be permitted to defend the Claim or if the Defendant has no defence to make, the Court may enter judgment in favour of the Claimant or to decide if judgment

should be for the Claimant to the part the Defendant does not have a good defence.

In the absence of the Defendant complying with the above Rule, the Court has but one option. That is to look at the processes in the Court file, especially the affidavit evidence of the Claimant.

In the case at hand, the Defendant, who was served with the originating process of the Claimant and every other process on the 30th day of January, 2014, has failed to comply with Order 11 Rule 4. He has chosen not to come to Court or file any process.

The Claimant in his written address in support of the Motion for Summary Judgment has relied on paragraphs 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20 of Claimant's affidavit and Exhibits A, B and C in support of his application. While Exhibits A, B and C are the Claimant's Diamond Bank Statement of Account from January, 2012 to 30th June, 2012; Claimant's Solicitors letter dated 24th April, 2012 and titled: RE: FRAUDULENT DIVERSION OF 60,000 LITERS OF DPK BELONGING TO MR ROMEO A DOMOKAI and Defendant's Solicitor's letter to the Claimant dated 27th June, 2012 and titled RE: FRAUDULENT DIVERSION OF 60,000 LITERS OF DPK BELONGING TO MR. ROMEO ADOMOKAI respectively, paragraphs 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20 are the

facts upon which the Claimant anchored his application and the are reproduced below:

3. That I know the Defendant/Respondent. He is a transporter and distributor of petroleum products to individuals and companies and corporate bodies.
4. That the Defendant/Respondent has been the Claimant/Applicant's depot agent who usually assists it in loading the products from the depot to its customers.
5. That the Defendant/Respondent has been Claimant's agent for more than two years.
6. That sometime in January and February, 2012, I, on behalf of the Claimant/Applicant, issued two separate cheques of N3,360,000.00 (Three Million, Three Hundred and Sixty Thousand Naira) and N3,535,000.00 (Three Million Five Hundred and Thirty Five Thousand Naira) respectively to the Defendant/Respondent to buy on behalf of the Claimant/Respondent (sic) and as its agent, 60,000 liters of DPK from Swift Oil and Gas Ltd.
7. That the first cheque of N3,360,000.00 (Three Million, Three Hundred Sixty Thousand Naira) with reference No.

000031007388 was presented for payment by the Defendant/Respondent and he was paid the sum on 18/1/2012 by the bank.

8. That the second cheque of N3,535,000 (Three Million, Five Hundred and Thirty Five Thousand Naira) with reference no. 000031007391 was also presented for payment by the Defendant/Respondent and he was paid on 13/02/2013 (sic) by the bank. The Claimant/Applicant's Diamond Bank Statement of Account for the period of 1st January, 2012 to 30th June, 2012 is herein attached as "Exhibit A".
9. That the Defendant/Respondent paid the total sum of N6,895,000.00 (Six Million, Eight Hundred and Ninety Five Thousand Naira) being the total value of the two cheques above, to the said Swift Oil and Gas Ltd for the supply of the products.
10. That when the Defendant/Respondent was meant to convey the products to the Claimant, he complained to me that his truck was faulty and that he needed some money to fix same so as to convey the first 30, 000 litres of the product.

11. That I consequently gave the Defendant/Respondent the sum of N80, 000.00 (Eight Thousand Naira) as an upfront payment for the transportation expenses.
12. That the Claimant/Applicant waited for some time but did not receive any delivery from the Defendant/Respondent who told me that Swift Oil and Gas Ltd had not supplied the products.
13. That I embarked on a fact-finding mission to Swift Oil & Gas Ltd and I was informed that the company had long delivered the 60,000 litres of DPK to the Defendant/Respondent who failed to deliver same to the Claimant.
14. That I instructed the Claimant/Applicant's solicitors, O. R. Adisa & Co to write a letter of demand for refund of the sum of N6,895,000.00 (Six Million, Eight Hundred and Ninety Five Thousand Naira) being the monetary value of the 60,000 liters and N80,000.00 (Eight Thousand Naira) being the upfront payment for transportation expenses. A copy of the Claimant's Solicitor's letter dated 24/04/2012 is herein attached as Exhibit B.

15. That the Defendant/Respondent replied through his solicitor's letter dated 27/04/2012 admitting the indebtedness and promising to pay the sum of N6,384,000.00 (Six Million, Three Hundred and Eight Four Thousand Naira) less N500,000.00 (Five Hundred Thousand Naira) which he claimed to be loan I took from him which is not true. The letter dated 27/4/2012 written by Defendant/Respondent's solicitors, Peter Arnold Umweni & Associates is herein attached as "Exhibit C".
16. That until date, the Defendant/Respondent has neither supplied the 60,000 liters of DPK nor paid the value of N6,895,000.00 (Six Million, Eight Hundred and Ninety Five Thousand Naira) and the N80,000.00 (Eight Thousand Naira) for transportation despite repeated demands.
17. That Claimant/Applicant has suffered losses occasioned by the unlawful conduct of the Defendant in holding on to the Claimant/Applicant's money and refusing to supply the 6,000 liters of DPK.
18. That the Defendant/Respondent will not pay the said sums unless compelled by this Honourable Court.

19. That the Defendant/Respondent has no defence to this suit.

20. That it is in the interest of justice to grant this application.ö

The above paragraphs remain unchallenged and uncontroverted. The law is quite trite that facts in an affidavit not controverted are deemed admitted and the Court is bound to accept those facts as established. See the Supreme Court case of THE HONDA PLACE LTD VS GLOBE MOTORS HOLDINGS NIG. LTD (2005) NSCQLR Vol. 23 page 74 where Katsina-Alu, JSC held at pages 88-89 that:

öThe law is that where the facts in an affidavit remain unchallenged and uncontroverted, the Court is bound to accept those facts as established as those facts were deemed to have been admitted. No Counter-Affidavit was filed by the Respondent with the result that the facts deposed to in support of the application were neither challenged nor disputed by the Respondent. What this means is this. Those facts remain unchallenged and uncontroverted. The inevitable consequence is that those facts deposed to in the affidavit filed by the Applicant must be deemed to have been admitted by the Respondent and must also be taken as true by the Court unless they are obviously false to the knowledge of the Court.ö

From the totality of the process before me therefore, especially the unchallenged affidavit evidence of the Claimant, I can only answer the lone question for determination in favour of the Claimant and against the Defendant. The Claimant is therefore entitled to his claim of the sum of N6,895,000.00 (Six Million, Eight Hundred and Ninety Five Thousand Naira) being the money paid by the Claimant to and received by the Defendant to purchase and deliver 60,000 liters of DPK from Swift Oil & Gas Ltd which the Defendant failed to supply and N80,000.00 (Eight Thousand Naira) being payment by the Claimant to the Defendant for transporting the 60,000 liters of DPK and interest of 10% thereon from today until final payment is made.

HON. JUSTICE V. O. EBOREIME
JUDGE
24th June, 2014

COUNSEL:

J. U. Osewingie for Claimant

