

IN THE FEDERAL HIGH COURT
HOLDEN AT LAGOS, NIGERIA
ON FRIDAY THE 7TH DAY OF APRIL, 2014
BEFORE THE HONOURABLE
JUSTICE M.B. IDRIS
JUDGE

SUIT NO: FHC/L/CS/1530/13

BETWEEN

- | | | |
|--|---|-------------------|
| 1. ASHFORD INDUSTRIES
LIMITED | } | PLAINTIFFS |
| 2. MR. OKEY JUSTICE EZE | | |

AND

- | | | |
|------------------------------------|---|-------------------|
| 1. BANK OF INDUSTRY LIMITED | } | DEFENDANTS |
| 2. ENTERPRISES BANK LIMITED | | |

RULING

This is an Originating Summons filed on 4th November, 2013. The questions posed for determination and the reliefs sought are as follows:-

"ORIGINATING SUMMONS

LET Bank of Industry Limited of 23 Marina, Lagos, and Enterprises Bank Limited of Plot, 143 Ahmadu Bello Way, Victoria Island Lagos within thirty days after service of this summons on them, inclusive of the day of such service, cause, an appearance to be entered for them to this summons' which is issued upon the application of Daniel & Sophina of suite 16B, Primal Tek Plaza, Pen-Cinema who claims as follows:

1. AN ORDER OF PERTUAL INJUCTION mandating the Defendants jointly and severally to release to the Plaintiffs all the items of plant and machinery listed on the schedule to this Summons for immediate installation and use.
2. AN ORDER OF PERTUAL INJUCTION mandating Defendants to disburse to the 1st Plaintiff loan sum of N385 Million granted by the Central Bank of Nigeria from the Intervention Fund for re-financing and restructuring of Bank's loan to the Manufacturing sector.
3. N800 million Damages for loss of earning
4. N200 million general damages.

AND FOR THE DETERMINATION OF THE FOLLOWING
QUESTIONS:

1. Whether upon the interpretation of the tripartite mortgage instruments between the 1st Defendant and the Plaintiffs, the Guidelines to the Central Bank Intervention Fund for Re-financing and Restructuring of Banks' Loan to the Manufacturing Sector, and the; Defendants can on the one hand take possession and seize the items of plant and machinery purchased for the Plaintiff with all the mortgage money and on the other hand retain the mortgage properties at the same time.
2. Whether upon the interpretation of the loan offer made by the 2nd Defendant to, and duly accepted by, the 1st Plaintiff which contract has¹¹ been part performed; the 'Guidelines to the Central Bank Intervention Fund for Re-financing¹¹ and Restructuring of Banks' Loan¹¹ to the Manufacturing Sector; the 2nd Defendant is not estopped from reneging from performing the said contract.

3. Whether upon the interpretation of the loan offer made by the 2nd Defendant to, and duly accepted by the 1st Plaintiff ought not the Defendants to disburse the mortgage sum balance of N385 Million to the 1st Plaintiff after disbursements have been made to 1st Plaintiff's debit to refinance bank charges and previous loan.
4. Whether upon the interpretation of the tripartite mortgage instruments between the 1st Defendant and the Plaintiffs, the Guidelines to the Central Bank Intervention Fund for Re-financing and Restructuring of Banks Loan to the Manufacturing Sector, and the loan offer made by the 2nd Defendant to, and duly accepted by, the 1st Plaintiff it will not be unlawful for the Defendants to access intervention fund from the Central Bank of Nigeria on behalf of the Plaintiff, deduct monies accruable to them by way of sett-off and charges and then refuse to disburse the balance to the 1st Plaintiff even though the Plaintiffs have given their landed properties to the Defendants as security as

well as paid interest on the mortgage.”

The application was supported by an affidavit of 49 paragraphs and several exhibits.

The 1st Defendant filed a Counter Affidavit of 48 paragraphs and several exhibits.

The 2nd Defendant filed a Counter affidavit of 25 paragraphs.

The Plaintiff filed a Further Affidavit in response to the 1st Defendants Counter affidavit, and a Further Affidavit in response to the 2nd Defendants Counter Affidavit, in addition to a Further Affidavit in support of the Originating Summons.

Counsel filed written addresses in support of the various processes filed by them which they adopted at the hearing.

In the written address filed, Counsel for the Defendants raised issues of jurisdiction. In my view, these issues of jurisdiction should be resolved first before delving into the merits of the substantive Originating Summons. See **SENATE PRESIDENT VS. NZERIBE (2004) 9 NWLR (PT. 878) 251; DAPIALONG VS. DARIYE (2007) 8 NWLR (PT. 1036) 332; NIWA VS. STB PLC (2008) 2 NWLR (PT. 1072) 483.**

The 1st Defendant has argued that this action ought to have been begun by Writ of Summons, because the Plaintiffs claim a variety of remedies for alleged civil wrongs, and that originating summon is suitable only for the commencement of an action where the question to be determined is the interpretation of a written document or statute and there is no dispute of facts between the parties, which is not the case here. The Court was urged to make an order for pleadings.

The following cases were relied on:-

- (1) AJAGBE VS. IDOWU (2011) 17 NWLR (PT. 1270) 422.**
- (2) ODUJA INVEST. CO. LTD VS. TALABI (1997) 10 NWLR (PT. 523) 1.**
- (3) OSSAI VS. WAKMAH (2006) 4 NWLR (PT. 969) 208.**
- (4) ADEYERU II VS. AJAGBUNGBADE III (2007) 14 NWLR (PT. 1053) 2.**

In the Plaintiff's response, it was argued that having taken steps it was too late to challenge the form of commencement, and that the questions raised were those of law and not facts. That there is no dispute of facts. The

Court was urged to determine the questions posed in the Originating Summons.

The following cases were relied on:-

- (1) SANI VS. OKENE L.G.T.C. (2008) 10 MJSC 199.**
- (2) AG ADAMAWA STATE VS. AG FED. (2006) 1 MJSC 1.**
- (3) KEYAMO VS. HOUSE OF ASSEMBLY, LAGOS STATE (2002) 18 NWLR (PT. 799) 615.**
- (4) ALSTHOM VS. SARAHI (2005) 3 MJSC 125.**

In the 2nd Defendant's written address it was argued that this Court had no jurisdiction to entertain this action being a banker- customer relationship, and that having regard to the deposition of facts in the affidavit evidence of the Plaintiff and the Defendants, this suit is one that cannot be determined by Originating Summons.

It was also argued that based on the affidavit evidence of the Plaintiffs and the 2nd Defendant, the suit did not disclose any reasonable cause of action against the 2nd Defendant, and that the suit be dismissed. The following cases were relied on:-

- (1) EJIKE VS. IFEADI (1998) 60 LRCN 3999.**

- (2) **SBNL VS. MARGARIDA SALVADO DE LLUCH (2005) ALL FWLR (PT. 424) 431.**
- (3) **NDIC VS. OKEM ENT. LTD (2004) ALL FWLR (PT. 210) 1176.**
- (4) **FORESTRY RES. INT. OF NIG. VS. ENAIFOGHE GOLD (2007) 11 NWLR (PT. 1044) 1.**
- (5) **AG ADAMAWA VS. AG. FED (2005) 18 NWLR (PT. 958) 581.**
- (6) **OLOYO VS. ALEGBE (1983) 2 SCNLR 35**
- (7) **OBASANYA VS. BABAFEMI (2000) 15 NWLR (PT. 692) 1.**
- (8) **PVC LTD VS. LAWAL (2005) ALL FWLR (PT. 246) 1223.**
- (9) **NNB LTD VS. ADEMOLA (1997) 6 NWLR (PT. 507) 76.**

In response, the Plaintiff argued that this Court has the jurisdiction to entertain this action in respect of the subject matter of banker- customer relationship, and that this suit was properly commenced by originating summons.

It was argued that a reasonable cause of action had been disclosed against the 2nd Defendant.

The following cases were relied on:-

- (1) **NDIC VS. OKEM ENT. (2004) 74 MJSC 74**
- (2) **ALSTHOM VS. SARAHI (2005) 3 MJSC 125**
- (3) **NEKA VS. ACB LTD (2004) 3 MJSC 118**

I shall deal with these jurisdictional issues, before delving into the merits of the Originating Summons. See again **MOHAMMED VS. ALI (1989) 2 NWLR (PT. 762) 56; PDP VS. ADEYEMI (2002) 6 NWLR (PT. 84) 55; AHAMEKU VS. EHERUO (2002) 1 NWLR (PT. 748) 301; ONYEEMEH VS. EGBUCHULAM (1996) 5 NWLR (PT. 448) 255.**

It has been conceded by all sides in this dispute that this case arises from a dispute between an individual customer and his bank in respect of a banking transaction. It is now settled law that both the Federal High Court and the State High Court have concurrent jurisdiction in civil causes and matters arising from a dispute between an individual customer and his bank in respect of any banking transaction. See the case of **NDIC VS. OKEM ENTERPRISES LTD (2004) 4 SC (PT. 11) 77.**

The above decision was reaffirmed in the case of **SOCIETE BANCAIRE NIG. LTD VS. DE LLUCH (2004) 11-12 SC 75.** Therefore, I hold that this Court has the jurisdiction to

entertain this action based on the provision of section 251 (1) (d) of the Constitution as interpreted and applied by the apex Court in its decision supra.

There is no doubt that a dispute must signify a cause of action for a Court to have jurisdiction to adjudicate over a matter. See **SAVAGE VS. UWAECHIA (1972) 3 SC 214; AG FED VS. AG ABUBAKAR (2007) 10 NWLR (PT. 1041) 1; FRN VS. GOLD (2007) 11 NWLR (PT. 1044) 1.**

In determining the existence of a cause of action, a Court leafs through the affidavit filed, in support of the originating summons, and not a Defendants Counter affidavit. See **UBN PLC VS. UMEODUAGU (2004) 13 NWLR (PT. 890) 352; DADA VS. AINA (2008) 6 NWLR (PT. 1084) 549.**

I have perused the affidavit filed by the Plaintiffs in support of the originating summons and upon a calm and careful perusal of paragraphs 2, 16, 32, 33, 34, 35, 37, 38, 40, 43, 44, 46, and 48, I am of the view that a reasonable cause of action has been disclosed against the 2nd Defendant. It discloses the wrongful act of the 2nd Defendant which gave the Plaintiff a cause of complaint.

In the circumstances, I hold that a reasonable cause of action has been disclosed against the 2nd Defendant.

See **DAIRO VS. UBN PLC (2007) 16 NWLR (PT. 1059) 99;**
OMOWEJI VS. KOLAWOLE (2008) 14 NWLR (PT. 1106) 180.

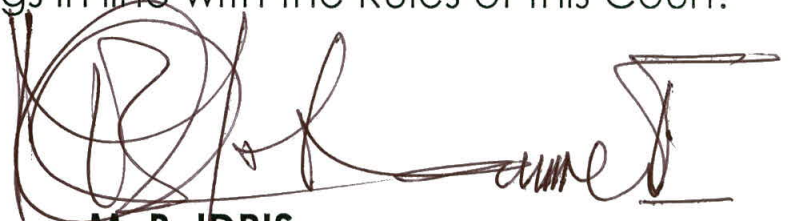
It is now settled law that originating summons is the ideal process to commence proceedings where there is no dispute on questions of facts or the likelihood of such dispute. See **EJURA VS. IDRIS (2006) ALL FWLR (PT. 313) 646;**
OYEWUNMI VS. OSUNBODE (2001) FWLR (PT. 82) 1919; NBN VS. ALAKIJA (1978) 2 LRN 78; OSUNBODE VS. OYEWUNMI (2007) ALL FWLR (PT. 368) 1004.

It is clear to me from the affidavit, Counter affidavits, and their further affidavits filed by the parties herein that there is an air of friction in these proceedings. The proceedings are not only contentious on grounds of facts but extremely hostile. It will be impossible to reconcile this dispute, especially the documentary evidence put before it by the parties herein without calling or adducing oral evidence. In my view therefore, this action ought not to have been commenced by originating summons.

In the circumstances, I shall order that pleadings be filed for a full trial on the merits. See **OSUNBADE VS. OYEWUNMI (2007) ALL FWLR (PT. 368) 1004; NDP VS. INEC**

**(2007) ALL FWLR (PT. 358) 1124; EMEZI VS. OSUAGWU (2005)
ALL FWLR (PT. 259) 1891.**

The parties herein are therefore hereby directed to file their respective pleadings in line with the Rules of this Court.



**M. B. IDRIS
JUDGE
7/4/2014**

M. Y. Jibril for the 1st Defendant

C. Igbokwe for the 2nd Defendant