

SUPREME COURT OF NIGERIA
FRIDAY 15TH, JANUARY, 2016. SC. 143/2006
CORAM:- M. U. PETER-ODILI, O. ARIWOOLA,
K. M. O. KEKERE-EKUN, J. I. OKORO, A. SANUSI, JJSC

B. O. LEWIS APPELLANT
AND
UNITED BANK FOR AFRICA PLC RESPONDENT

BANKING - Employee - Loan agreement - Repayment of - Terms for repayment stated in Exhibit B still remain - Hence appellant cannot unilaterally opt out of the contract - And cannot be relieved of the obligation to repay the loan (H1)

CONTRACTS - Terms - Binding nature of - Parties are bound by the contract they entered into - And the terms and conditions must be respected by court (H2)

COURTS - Summary judgment - Validity of - Court of Appeal rightly agreed that the summary judgment was proper - Since trial Judge found that appellant's affidavits were bereft of material evidence (H3)

FACTS

This action was instituted at the High Court of Lagos State by plaintiff/respondent against defendant/appellant. Respondent claim among other things, the sum of N1,349,671.54 being the total outstanding principal and interest in respect of loans granted to appellant by respondent. Respondent's contention is that it granted loans to appellant in the course of his employment with respondent. Upon the termination of appellant's employment, respondent seeks to recover the outstanding sum of money in respect of the loans. Appellant's defence is that by reason of the termination of his employment by respondent, he is no longer in a position to repay the outstanding sums of money in respect of the loan. He argued that respondent has by its action frustrated the loans agreement and as such has discharged him from responsibility therein.

In his counter-claim, appellant claims damages for wrongful termination of his employment. This is because contrary to the terms

and conditions of his employment, no notice was given to him before the termination. The court heard the parties and in its judgment, struck out appellant's counter-claim on the basis that the same could not be conveniently tried with the substantive claim of respondent. Appellant's entire defence was rejected and judgment was entered for respondent. Dissatisfied, appellant appealed to the Court of Appeal Lagos Division. The appeal was allowed in part. The court only faulted the trial court's order striking out the counter-claim. The appeal was eventually dismissed as lacking in merit. Aggrieved further, appellant appealed to the Supreme Court.

ISSUES FOR DETERMINATION

1. Whether the Court of Appeal was right to have determined the liability of the Appellant in respect of the car loan within the context of Exhibit B alone when the agreement between the Appellant and the Respondent was reduced to a form of series of documents/correspondence including Exhibits C and D1.

2. Whether in the circumstances of this case, the Court of Appeal was right in holding that the Appellant's effort as contained In the Statement of Defence and Affidavit showing cause was a sham and as such he was not entitled to the leave to defend the action.

HELD (Unanimously dismissing the appeal per **PETER-ODILI JSC**)

BANKING - Employee - Loan agreement - Repayment of

1. There is nothing in the language of the contractual agreement that removes the appellant from liability of repayment of the loans, the fact of the termination of his service by the Respondent notwithstanding. That is to say that the terms and conditions of the contract in respect of its repayment still remain as were stated in Exhibit B and the attempt by the Appellant to unilaterally opt out of that contract he voluntarily entered into would remain for all time an attempt that cannot materialise in a change of the contractual terms or to relieve him of the obligation to pay back what is due in the loan agreement.

That is the fabric on which the two Courts below made their concurrent findings and nothing is afoot to persuade this

Court into a different reasoning since credible evidence on record support the findings and no inadmissible evidence brought in and the evaluation of the evidence and the probative value ascribed appropriately by those two Lower Courts. Also there being no miscarriage of justice, the natural consequence is for me to go along. (p. 367 G)

CONTRACTS - Terms - Binding nature of

2. It is evident in the final analysis that the parties being bound by the contract they entered into which herein is Exhibit B, the terms and conditions must be respected by Court and so this issue is resolved in favour of the Respondent and against the Appellant. (p. 368 G)

COURTS - Summary judgment - Validity of

3. In this I agree with learned counsel for the Respondent that the factual situation representing the Appellant's defence does not constitute a good defence on the merit to the claim of the respondent as the appellant did not dispute the fact that he took the loans and so had the obligation to repay or show cause why the loan cannot be repaid. It can be said that the trial judge having considered the Appellant's Affidavit showing cause and the accompanying exhibits was on firm ground that they were bereft of material evidence on those two prongs. In this, the Court of Appeal agreed that the summary judgment was the right way to go and there was no need beating about the bush.

I have no difficulty in resolving the two issues in favour of the Respondent. (p. 371 C)

REPRESENTATION

Ayodele Akintulide for Appellant and with him: I. Olokun and N. Anoruo (Miss)

Fred Onuobia for the Respondent and with him: Ogechi Ogbonna

CASES REFERRED TO

SPDC v. Jammal Engineering (Nig.) Ltd. (1974) 4 SC 33

Ejuetami v. Olaiya (2001) 18 NWLR (pt. 746) 572

- Nneji v. Nachem Con. (Nig.) Ltd (2006) 12 NWLR (pt. 994) 297
Awolaja v. Seatrade GBV (2002) 4 NWLR (pt. 758) 524
Jeric (Nig.) Ltd. v. UBN Plc. (2000) 15 NWLR (pt. 691) 447
Fashanu v. Adekasa (1974) 6 SC 83
Ogun v. Akinyelu (2004) 18 NWLR (pt. 905) 362
B Otun v. Otun (2004) 14 NWLR (pt. 893) 381
Adebisi Macgregor Ass. Ltd v. NMB Ltd. (1996) 2 NWLR (pt. 431) 378
Macaulay v. NAL Merchant Bank Ltd. (1990) 4 NWLR (pt. 144) 283
Bulls v. Miles (1968) 3 All ER 632
C R. G. Canter Ltd. v. Clarke (1990) 2 All ER 209
Afribank v. Alade (2000) 13 NWLR (pt. 685) 591
Davis Contractors Ltd. v. Fareham U.D.C. (1956) AC 696
Ogundiyon v. The State (1991) 3 NWLR (pt. 181) 519

D

STATUTE & RULES REFERRED TO

Evidence Act, ss. 131(1), 132(1)
High Court of Lagos State (Civil Procedure) Rules 1994, O. 11 rr. 1, 2

E

BOOK REFERRED TO

Chitty on Contracts 26th ed, p. 534 para. 534

LEAD JUDGMENT BY PETER-ODILI JSC

F

This is an appeal against part of the judgment of the Court of Appeal, Lagos Division delivered on the 22nd of June, 2004 affirming the decision of the High Court of Lagos State entering a summary judgment against the Appellant under Order 11, Rules 1 and 2 of the High Court of Lagos State (Civil Procedure) Rules 1994.

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Dissatisfied with the decision, the Appellant has through a Notice of Appeal filed on the 21st of September, 2004 appealed to this Court.

FACTS

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By an Amended Statement of Claim dated 4th January 2001, the Respondent as Plaintiff sued the Appellant as Defendant in the Lagos High Court for among other things the sum of N1,349,671.54 being the total outstanding principal and interest in respect of loans granted to the Appellant by the Respondent. The claim is that a loan

of N1,550,000.00 was granted to the Appellant in the course of his employment to purchase a car. The Respondent asserted that monthly deductions were made from the Appellant's salary to repay the loan and the sum of N1,116,293.15 was outstanding at the time the Appellant's employment was terminated. Also that an ordinary/personal loan of N300,000.00 was granted to the Appellant in the course of his employment and monthly deductions were being made from his salary to repay the loan and at the time his employment was terminated, the sum of N233,378.39 was outstanding making the outstanding sums total of N1,349,697.54.

The Appellant filed a Statement of Defence and Counter- Claim (See pages: 9 - 11 of the record) and the Respondent filed a Defence to counter claim (See pages 12 - 14 of the record). The respondent then filed a summons for judgment under Order 11, Rules 1 and 2 of the High Court of Lagos State (Civil Procedure) Rules 1994, for summary judgment. The terms and conditions of the purported loans are contained in Exhibits B, C, D, E1, E2 and E3 attached to the Respondent's application.

The Appellant then filed an Affidavit Showing Cause. In the affidavit, the appellant raised, among other facts that the car was purchased under a transportation scheme for officers in his cadre and that neither he nor any beneficiary under the scheme was required to make any monetary payments to the Respondent for cars obtained under the transportation scheme and that no deductions were being made from the Appellant's salary to repay the purported car loan except the sum of N4,363.25 representing the extra amount paid to him over and above his entitlements under the scheme. He tendered Exhibit AA3 his monthly slip to show that no money was being deducted from his salary as alleged in respect of the car loan. He stated that by agreement, the Respondent had an absolute lien on the car and the respondent did not exercise its absolute lien when his appointment was determined.

With respect to the ordinary/personal loan, he stated that by agreement, the Respondent was deducting monthly payments from his salary but that when the Respondent terminated his employment, the payment of the loan from his salary became impossible of performance thereby frustrating the agreement and discharging him there from. The Appellant has not secured any other employment since

leaving the services of the Respondent and the Hyundai Sonata (2.0 litres) car is still in his possession.

The Appellant also claimed damages for wrongful termination because the Respondent terminated his employment without giving him the required notice in breach of the terms and conditions of his employment.

After considering arguments of counsel to the parties, the High Court of Lagos State, Lagos Division (Coram: Oyefesobi J.) ruled that the Appellant's counter-claim could not be conveniently tried with the substantive claim of the Respondent and struck it out. The learned trial judge then ruled that the whole defence was a sham and entered final judgment in favour of the Respondent. (See pages 37 - 41 of the record).

Dissatisfied with the decision of the High Court of Lagos State, the Appellant appealed to the Court of Appeal, Lagos Division.

The Court of Appeal in delivering its judgment on 22nd day of June, 2004 allowed the appeal in part and found that except as to the Lower Court's order striking out the Appellant's counter-claim the appeal lacked merit and the same was dismissed. Aggrieved by the decision, the Appellant has come before the Supreme Court to ventilate his grievance.

Learned counsel for the Appellant on the 20th day of October 2015 adopted the Appellant's Brief settled by Ayodele Akintunde Esq. filed on 31st day of January, 2007 and deemed filed on the 2nd day of May, 2007. Also a Reply Brief filed on 1/4/10. In Appellant's Brief he distilled four issues for determination, which are as follows:-

1) Whether the Court of Appeal was right to have determined the liability of the Appellant in respect of the car loan within the context of Exhibit B alone when the agreement between the Appellant and Respondent was reduced to a form of series of documents/correspondence including Exhibits C and D.

2) If the Court of Appeal was right to have determined the liability of the Appellant in respect of the car loan within the context of Exhibit B alone, did the Court of Appeal properly apply the terms and conditions of Exhibit B in determining the liability of the Appellant?

3) Whether the termination of the Appellant's employment made it impracticable and impossible to perform the agreements

governing the personal loans i.e. Exhibits E1, E2 and E3 since the source of repayment by the contract, which was the Appellant's salary no longer existed?

4) Whether in the circumstances of this case, the Court of Appeal was right in holding that the Appellant's effort as contained in the statement of Defence and affidavit showing cause was a sham and as such he was not entitled to leave to defend the action. B

Learned counsel for the Respondent adopted its Brief of Argument settled by Fred Onuobia, filed on 24th day of July 2007 and deemed filed on the 9th day of July, 2008. Respondent's counsel adopted the issues as crafted by the Appellant except for Issue No. 2 which he left off. C

I see it better to utilise the three issues accepted by the Respondent. However, Issue 2 stemming from outside the grounds of appeal is incompetent, also being a fresh issue introduced by the Appellant without leave is hereby discountenanced as of no purport. D

Therefore, I shall restructure the valid issues now as 1, 2.

ISSUE NO. 1

Whether the Court of Appeal was right to have determined the liability of the Appellant in respect of the car loan within the context of Exhibit B alone when the agreement between the Appellant and the Respondent was reduced to a form of series of documents/correspondence including Exhibits C and D1. E

For the Appellant, was submitted that the liability of the Appellant in respect of the car loan could not have been determined within the context of Exhibit B alone because the complete agreement between the Appellant and the Respondent is embodied in a series of documents/correspondence namely: Exhibits B, C and D and the Court of Appeal should have seriously examined each and everyone of the documents until it was able to see through the terms and conditions of the car loan agreement between the Appellant and the Respondent and not just stop at Exhibit B. That where documents form part of a long drawn transaction, they should be read and interpreted together, not in isolation but in the context of the totally of the transaction in order to fully appreciate their legal support and find out the real intention of the parties. He cited *Shell Petroleum Development Company v. Jammal Engineering (Nig.) Ltd* (1974) 4 SC 33 at 72; *Ejuetami v Olaiya* (2001) 18 NWLR (Pt. 746) 572; *Nneji v* F G H

Nachem Con. (Nig.) Ltd (2006) 12 NWLR (Pt.994) at 297.

Learned counsel for the Appellant went on to further contend that the Court of Appeal wrongly followed the trial Court in applying the provisions of Section 131 (1) (2000) 132 (1) of the Evidence Act to exclude other written terms and conditions of the agreement when Exhibit B incorporated by reference the terms and conditions of the agreement between the parties were reduced to the form of a series of documents/correspondence other than Exhibit B that since Exhibits B, C and D incorporated by reference, their terms and the terms of the conditions of the scheme, the documents form part of a series of documents evidencing the agreement between the parties and the ground rule under Section 132 (1) Evidence Act does not apply to exclude the documents. He relied on *Awolaja v Seatrade GBV* (2002) 4 NWLR (Pt. 758) 524 at 534; *Chitty on Contracts* 26th Edition, Page 534 para. 534.

For the Respondent, it was canvassed that the terms and conditions of the contract in respect of its repayment still remain as they are in Exhibit B. That the relevant document on the Appellant's liability to repay the loan is Exhibit B, the contract document upon which the car loan transaction was founded. That since parties are bound by their contract, the Appellant cannot unilaterally opt out of a contract he voluntarily entered into. He said the concurrent findings of facts by the two. Lower Courts should not be disturbed. He referred to *Jeric (Nig.) Ltd v UBN. Plc* (2000) 15 NWLR (Pt. 691) 447; *Fashanu v Adekasa* (1974) 6 SC 83, etc.

Respondent stated on that the Appellant's point of view is that the Court below applied the provisions of Section 132 (1) of the Evidence Act to other terms of the agreement to exclude Exhibits C and D and the conditions of the Scheme. Also that the Court of Appeal failed to strictly interpret the terms and conditions of Exhibits B and E1, E2 and E3 in determining the liability of the Appellant in respect of the car loan and personal loans respectively, which was not correct.

The Respondent's reaction is that this Court should go along with the concurrent findings of the two Courts below which findings were supported by the evidence led, properly evaluated and the probative value adequately ascribed thereto by them. That there being no miscarriage of justice, this court should not deviate.

The learned trial judge after evaluation of the affidavit and documentary evidence before it stated thus:-

“The Defendant was not required under the circumstance to make any repayment on the car. I do not accept this submission this is contrary to agreed upon and in consideration of which agreement the Bank (The Plaintiff) provided the loan this is contained in Exhibit B which provides “That the bank shall have absolute lien on the vehicle until repayment has been effected that in the event of my leaving UBA for any reason before the loan is fully repaid to pay the outstanding balance and for this purpose authorise you any fund (sic) held by the bank for me if there subsequently remain any outstanding balance I will deliver the car to the bank”.

The Court of Appeal per Mohammed JCA (as he then was) said:

“One cannot agree more. The liability of the Appellant in respect of the car loan must be determined within the context of Exhibit B”.

On what the Court of trial based its findings, learned counsel for the Respondent appropriately brought out clearly and that is that Exhibits C and D being correspondences between the parties formed part of the contractual documents with respect to the loan transaction and the terms and conditions in Exhibits C and D and their effect were not in dispute between the parties. These express terms of a contract cannot therefore be varied or modified by anything outside of those terms and in that regard both the car and personal loans having been reduced in writing in the matter for repayment in the circumstance of the discontinued employment of the Appellant cannot be separated or jettisoned on account of the change occasioned by the termination of the employment. Again to be said is that ***there is nothing in the language of the contractual agreement that removes the appellant from liability of repayment of the loans, the fact of the termination of his service by the Respondent notwithstanding. That is to say that the terms and conditions of the contract in respect of its repayment still remain as were stated in Exhibit B and the attempt by the Appellant to unilaterally opt out of that contract he voluntarily entered into would remain for all time an attempt that cannot materialise in a change of the contractual terms or to relieve him of the obli-***

gation to pay back what is due in the loan agreement.

That is the fabric on which the two Courts below made their concurrent findings and nothing is afoot to persuade this Court into a different reasoning since credible evidence on record support the findings and no inadmissible evidence brought in and the evaluation of the evidence and the probative value ascribed appropriately by those two Lower Courts. Also there being no miscarriage of justice, the natural consequence is for me to go along. I place reliance on *Ogun v. Akinyelu* (2004) 18 NWLR (Pt. 905) 362; *Fashanu v. Adekasa* (1974) 6 SC 83; *Otun v Otun* (2004) 14 NWLR (Pt. 893) 381.

The case of *Shell B. P. Petroleum Development Company v Jammal Engineering (Nig.) Ltd* (1974) 4 SC 33 at 72, cited by Appellant a judgment of the Supreme Court per Coker JSC did not offer any assistance to the Appellant as he wanted, rather, the authority supports the Respondent's position. I shall quote it for effect and that is:

In *Shell B.P. Petroleum Development Company v Jammal Engineering (Nig.) Ltd* 1974 4 SC 33 at 72, the Supreme Court per Coker JSC observed:

"The final exercise of judgment must of necessity involve a consideration of all the correspondence tendered in order to establish the case and all that was produced in order to disprove the existence of the contract. It is only after such detailed consideration that a tribunal can fairly come to a conclusion as to whether or not the parties actually arrived at an agreement - See Thomas Hussey v John Horne - Payne (1879) 4 App, Car. 311. "The task of analyzing the several letters and attempts to reconcile the one with the other is undoubtedly a very difficult one calling for the most serious examination of each and everyone of several documents until whether: the tribunal is able to say that indeed a contract has been established".

It is evident in the final analysis that the parties being bound by the contract they entered into which herein is Exhibit B, the terms and conditions must be respected by Court and so this issue is resolved in favour of the Respondent and against the Appellant.

ISSUE NO. 2

Whether in the circumstances of this case, the Court of Appeal

was right in holding that the Appellant's effort as contained In the Statement of Defence and Affidavit showing cause was a sham and as such he was not entitled to the leave to defend the action.

Arguing for the Appellant, learned counsel said that under Order 11 of the High Court of Lagos State (Civil Procedure) Rules 1994 that a Defendant can only be allowed to defend an action where B he is able to satisfy the judge by his Statement of Defence or Affidavit that:

- a) He has a good defence on the merits to the case, or
- b) Such facts as may be deemed sufficient to entitle him to C defend the action generally, or
- c) The Claim does not come within the purview of Order 3, Rule 4.

He cited *Adebisi Macgregor Ass. Ltd v NMB Ltd* (1996) 2 NWLR (Pt. 431) 378 at 387; *Macaulay v NAL Merchant Bank Ltd* D (1990) 4 NWLR (Pt. 144) 283 at 325.

That to satisfy itself as to whether there are facts sufficient to entitle the Respondent to defend, the Court of Appeal should have looked at all the papers filed i.e. the Respondent's Amended Statement of Claim, the Defence to Counter-claim, the Respondent's Statement of Defence and Counter-claim and the Respondent's Affidavit E showing cause together with all the exhibits annexed to them.

For the Appellant was further submitted that the Appellant has shown in the papers filed that there are issues in dispute which ought to be tried and there are reasons for a trial and he ought to have F been given leave to defend the action. That the summary judgment given against the Appellant by the Court below was erroneously made as there was a plausible dispute between Respondent and Appellant for which leave should have been granted the Appellant by the Court G of Appeal to defend the action. He cited *Bulls v Miles* (1968) 3 All ER 632 at 637; *R. G. Canter limited v Clarke* (1990) 2 All ER 209 at 212 - 213.

In response, learned counsel for the Respondent contended that the factual situation representing the Appellant's defence did not constitute a good defence on the merit to the claim of the Respondent. He referred to *Afribank v Alade* (2000) 13 NWLR (Pt. 685) 591. That the Appellant's Affidavit showing cause and the accompanying Exhibit were bereft of material evidence on those above-men-

tioned points and so the Court of Appeal was right in affirming the summary judgment of the trial court. That the fact that a borrower is unable to repay a loan does not make the loan agreement frustrated in law.

The stance of the appellant that his continued retention in the employment of the Respondent is a condition precedent to his repayment of the personal loans and his employment having been terminated by the Respondent, the enforcement of the personal loans had been frustrated is not sustainable either in the context of the facts of this case or the prevailing law. This is because the contracts of employment and personal loans between the Appellant and the Respondent are two distinct contracts having distinct subject matters and their duration not co-existent nor can it be said one is dependent on the other or that the right to terminate the contract of employment by either party could operate as a condition precedent to the repayment of the personal loan or balance thereof.

A refresher to the situation is that the Respondent had fully performed his obligation under the contract for the personal loan by making available the said sums and the next step is the obligation for repayment by the Appellant within the conditions of the loan agreement and this obligation does not cease because his employment has ended. This is because mere hardship, inconvenience or other unexpected turn of events which have created difficulties though not contemplated cannot constitute frustration to release Appellant from that obligation. A situation of which not even the death of the Appellant grave as that might be, would not alter the course of events of the repayment as his estate would bear the liability. I anchor on the case of Davis Contractors Ltd. v. Fareham U.D.C. (1956) AC 696.

Again the grouse of the Appellant on the summary judgment made by the trial Court which Appellant posits was in error.

On this Order 11 of the High Court (Civil Procedure) Rules 1994 of Lagos State would be of assistance and so stated hereunder:-

Order 11 of the High Court of Lagos State (Civil Procedure) Rules 1994 provided that:

“Whether the Defendant appears to a writ of summons specially indorsed with or accompanied by a statement of claim under Order 4, Rule 4, the plaintiff may on affidavit made by himself or by

any other person who can swear positively to the facts, verifying the cause of action and the amount claimed (if any liquidated sum is claimed), and stating that in his belief there is no defence to the action except as to the amount of damages claimed, if any apply to a judge in Chambers, for liberty to enter judgment for such remedy or relief as upon the statement of claim the plaintiff may be entitled to. B
The judge thereupon, unless the defendant shall satisfy him that he has a good defence to the action on merits or shall disclose such facts as may be deemed sufficient to entitle him to defend the action generally, may make an order empowering the plaintiff to enter such judgment as may be just, having regard to the nature of the remedy C
or relief claimed”.

**In this I agree with learned counsel for the Respondent that the factual situation representing the Appellant’s defence does not constitute a good defence on the merit to the claim D
of the respondent as the appellant did not dispute the fact that he took the loans and so had the obligation to repay or show cause why the loan cannot be repaid. It can be said that the trial judge having considered the Appellant’s Affidavit E
showing cause and the accompanying exhibits was on firm ground that they were bereft of material evidence on those two prongs. In this, the Court of Appeal agreed that the summary judgment was the right way to go and there was no need beating about the bush. See Afribank v Alade (2000) 13 NWLR F
(Pt. 685) 591.**

I have no difficulty in resolving the two issues in favour of the Respondent.

In conclusion therefore, all the issues resolved in favour of the Respondent and clearly the appeal lacking in merit, I hereby dismiss G
the appeal as I see no reason to upset the concurrent findings of the two Courts below. I uphold the judgment of the Court of Appeal in its affirmation of the judgment of the, trial High Court.

I award N100,000.00 costs to the Respondent to be paid by H
the Appellant.

ARIWOOLA JSC

I had the privilege of reading before now, in draft, the lead

judgment of my learned brother, Peter-Odili, JSC, just delivered. I am in total agreement with the reasoning that led to the conclusion of my learned brother, that the appeal lacks merit and substance. It is liable to dismissal.

As I have, nothing more to add, I too will dismiss the appeal B for the same reasons advanced in the lead judgment.

Appeal is dismissed.

I abide by the consequential order including that on costs.

C

KEKERE-EKUN JSC

I have had the benefit of reading before now the judgment of my learned brother, MARY U. PETER ODILI, JSC just delivered. I agree with the reasoning and conclusion that the appeal lacks merit D and should be dismissed.

This is an appeal against concurrent finding of fact by the two lower courts affirming the appellant's liability to the respondent in the sum of N1,349,671.54 being the outstanding amount due to it in respect of the car loan and personal loans obtained by the appellant in the course of his employment with the respondent, which sum became due and payable when his employment was terminated.

The attitude of the Supreme Court to concurrent findings of fact has been reiterated in a plethora of authorities. In Ogundiyin Vs The State (1991) 3 NWLR (Pt. 181) 519 @. 528-529 H-A this court F held per Obaseki, JSC:

"without any clear evidence of errors in law or fact leading to or occasioning miscarriage of justice, this court will not interfere with the concurrent findings. It is settled law that there must be clear proof G of error either of law or fact on the record which has occasioned miscarriage of justice before the Supreme Court can upset or reverse concurrent findings of fact."

Per Nnaemaka-Agu, JSC in Ogoala Vs The State (1991) 2 NWLR (Pt. 175) 509 @:

H *"It is settled that where there is sufficient evidence to support the findings of fact by two lower courts/such findings should not be disturbed unless there is a substantial error apparent on the record: that is, the findings have been shown to be perverse, or some miscarriage of justice or some material violation of some principle of law or*

procedure is shown.”

See also: Iyaro Vs The State (1988) NWLR (Pt. 69)256; Nasamu Vs the State (1979) 6-9 SC 153; Mainagge Vs Gwamma (2004) 14 NWLR (Pt. 893) 323; Gbadamosi Vs Dairo (2007) 3 NWIR (Pt. 1021) 282.

The appellant herein thus has an uphill task of satisfying the court that the concurrent findings are perverse. B

In the instant case after the exchange of pleadings the respondent (as plaintiff at the trial court) brought an application for summary judgment under Order 11 Rules 1 and 2 of the High Court of Lagos State (Civil Procedure) Rules 1994. The summary judgment procedure is for disposing of cases which are virtually uncontested with dispatch. It applies to cases where there can be no reasonable doubt that the plaintiff is entitled to judgment and where it is, inexpedient to allow a defendant to defend for mere purposes of delay. It is for the plain and straight forward, not for the devious and crafty. See U.B.A. Plc v Jargaba (2007) 11 NWLR (Pt. 1045) 247 @ 270 F-H per LT. Muhammad, JSC; Sochipo Vs Leminkainen Vs (1986) 1 NWLR (Pt. 15) 230; Adebisi Macgregor Ass. Ltd. Vs N.M.B. Ltd (1996) 2 NWLR (Pt. 431) 378; (1996) 2 SCNJ 72 @ 81. C D E

Furthermore, an affidavit showing cause why a defendant should be granted leave to defend an action must disclose a defence on the merit setting out the details and particulars of the defence. The popular expression is that the affidavit must “condescend upon particulars.” The affidavit showing cause must disclose facts which will at least throw some doubt on the plaintiff’s case. See U.B.A. Plc Vs Jargaba (Supra); Macaulay Vs NAL Merchant Bank Ltd (1990) 4 NWLR (Pt. 144) 283; Nishizawa Ltd Vs Jethwani (1984) 12 SC 234. F

In the instant case the appellant averred in his affidavit to show cause that he benefited under the management staff transportation scheme of the respondent by being provided with the cost of a brand new Hyundai Sonata (2.0 Litres) car over which the appellant had a lien and that his interest was noted on the insurance policy. It was his further contention that neither he nor any other beneficiary under the scheme was required to make any monetary payment to the plaintiff (now respondent) for any car obtained under the scheme. He also contended that the plaintiff (respondent’s) right of lien over the car only becomes exercisable when a beneficiary leaves the plain- G H

tiff's (respondent's) service voluntarily. It was his further contention that the termination of his appointment frustrated the agreement between the parties on the ground that without employment he had no resources with which to repay the loans. He also postulated that the repayment of the personal loans which he received was tied to his continuing to be in the plaintiff's (respondent's) employment.

The trial court rejected this argument on the ground that it is contrary to the condition agreed upon in Exhibit B. The court below agreed.

Exhibit B is at page 21 of the record. It reads:

"NAME: B.O. LEWIS ... Grade Level 3

DEPT/BRANCH: P.I.S.

DATE: 7/4/95

The Assistant General Manager (Personnel)

United Bank for Africa Limited

Head Office

Lagos.

TRANSPORT ARRANGEMENTS FOR OFFICERS WHOSE CONDITIONS OF SERVICE ARE DECIDED INDIVIDUALLY BY GENERAL MANAGEMENT

I wish to apply for a loan of N1,500,000.00 to purchase a car under the condition of the above.

The details of the car are as follows:-

Make: Peugeot ... Model: 405 Year: 1995 .. Cost: N1,450,000.00

Delivery charges N4,000.00

5% VAT N72,700.00

Conditioner N.....

TOTAL N1,526,700

Proforma invoice for the car is enclosed.

In Consideration of the Bank agreeing to grant me the loan, I hereby agree that the Bank shall have an absolute lien on the vehicle until repayment has been effected; to have the Bank's interest noted on the Insurance Policy;

Not to sell, hire or dispose in any way of the vehicle without consent of the Bank while the loan remains unamortised, and in the event of sale with the consent of the Bank, to repay the amount outstanding by means of one payment,

That in the event of my leaving the U.B.A. for any reason

before the loan is fully repaid; to pay the outstanding balance and for this purpose authorize you to use any funds held by the Bank for me. If there subsequently remains any outstanding balance I will deliver the car to the Bank.

Credit the monthly allowance for running costs to my Current Account NO.204054279.

MARWA-WEST Branch

Yours faithfully,

Signature of applicant

UNITED BANK FOR AFRICA LIMITED”

(Emphasis mine)

In the construction of a contract, the meaning to be placed on it is that which is the plain, clear and obvious result of the terms used. A contract or document is to be construed in its ordinary meaning. When the language of a contract is not only plain but admits of one meaning, the task of interpretation is negligible. See: Union Bank of Nig. Ltd & Anor Vs Nwaokolo (1995) 6 NWLR (Pt. 400). 127; Aouad & Anor Vs Kessrawani (1956) 1 FSC 35; Nwangwu Vs Nzekwu & Anor (1957) 3 FSC 36; Orient Bank (Nig) Plc Vs Bilante Int. Ltd (1997) 8 NWLR (Pt. 515) 37 @ 78 B-D.

It is my view that the highlighted words in Exhibit B clearly indicate that the loan was to be repaid.

I agree with my learned brother in the lead judgment that there is nothing in Exhibits C and D that relieves the appellant of the duty to repay the loans or that alters the plain words used in Exhibit B.

For these and the more comprehensive reasons given in the lead judgment, I find no merit in the appeal and dismiss it accordingly. I abide by the consequential orders made including the order as to costs.

OKORO JSC

I was obliged before now a copy of the lead judgment of my learned brother, Mary Ukaego Peter-Odili, JSC Just delivered. I am in agreement with the reasons marshalled to reach the conclusion that this appeal lacks merit and ought to be dismissed. I adopt the facts as ably summarized in the lead judgment.

The findings of the learned trial judge which were affirmed by

the court below is that the terms of the contract between the appellant and the respondent are contained in Exhibit B and that the court must give effect to these terms. Now part of the terms in Exhibit B states:

B *“That the bank shall have absolute lien on the vehicle until repayment has been effected that in the event of my leaving UBA for any reason before the loan is fully repaid, to pay the outstanding balance and for this purpose authorize you any fund (sic) held by the bank for me if there subsequently remain any outstanding balance I will deliver the car to the bank.”*

C In this case, the appellant neither repaid the loan nor deliver the car to the respondent as contained in Exhibit B the contract document. The argument of the appellant that Exhibits C and D ought to be taken into consideration in determining the terms of the contract did not fly at all. The general rule is that where the parties have embodied the terms of their agreement or contract in a written document as it was done in this case, extrinsic evidence is not admissible to add to, vary, subtract from or contradict the terms of the written instrument: See *Mrs. O. D. Layode v Panalpina World Transport NY Ltd* (1996) 6 NWLR (pt 456) 544, *Glaoye v Balogun* (1990) 5 NWLR (pt 148), *Union Bank of Nigeria Ltd v Ozigi* (1994) 3 NWLR (pt 333) 385.

F I hold the view that Exhibit B was the contract document between the parties herein. Exhibits C and D being correspondences between the parties cannot add to or vary the content of Exhibit B. Although the court below did not use the word “alone” in its judgment with reference to Exhibit B, I think the two courts below were right to base their findings and judgments on Exhibit B.

G It is on this note and the more detailed reasons adumbrated in the lead judgment that I agree that this appeal lacks merit. It is also dismissed by me. I abide by the consequential orders made in the lead judgment, that relating to costs, inclusive.

H

SANUSI JSC

This appeal is against the judgment of the Court of Appeal, Lagos Division (now to be referred to as “the Court below”) delivered on 22nd of June 2004, which affirmed the decision of High

court of Lagos State (“the trial court” for short) which entered summary judgment against the appellant under Order 1 Rule 1 and (2) of High Court (Civil Procedure) Rules 1994. The facts of the case which gave rise to the appeal by the appellant to court below and later to this court, have been ably adumbrated in the lead judgment.

Suffice it to say, that after the trial court considered the arguments of both parties in the suit, the trial court found in favour of the respondent. It held, *inter alia*, that the appellant’s counter claim could not be tried with the substantive claim of the defendant/respondent and it struck it out. The trial court ultimately in its judgment, found that the whole defence posed by the appellant was a sham. Aggrieved by the trial court’s decision, “the appellant appealed to the Court of Appeal, Lagos Division, which after hearing the appeal, delivered its judgment on 22nd June, 2004 allowing the appeal in part when it faulted the trial court’s order striking out the appellant’s counter claim and held that the substantive appeal lacked merit and dismissed same. Piqued by the decision of the court below, the appellant further appealed to this court.

My noble lord had duly considered the issues raised and argued by the parties’ learned counsel and had arrived at a conclusion that is entirely agreeable to me. I shall however chip in few comments of mine even if they will merely serve the purpose of emphasis or amplification.

To my mind, the core or main Issue that the plaintiff/respondent hinged its case on revolved on Exhibit B which is the Car loan Agreement which said agreement was duly executed by both the Plaintiff/Respondent on one part and the defendant, (now appellant) on the other part. Part of the terms of the agreement in Exhibit B is to the effect that:-

“in consideration of the Bank agreement to grant the loan that the Bank shall have an absolute lien on the vehicle until payment has been effected; to have the Bank’s interest noted on the insurance policy.

Not to sell, hire or dispose of in anyway, the vehicle without consent of the bank while the loan remains unauthorised and in the event of sale with the consent of the Bank to repay the amount outstanding by one payment;

In the event of my leaving the UBA for any reason before the

loan is fully repaid, to pay the outstanding balance and for this purpose authorise you to use my funds held by the Bank for me. If there subsequently remains any outstanding balance, it will deliver the car to the Bank”(emphasis supplied)

From the above conditions agreed upon by the appellant, I feel the Bank/Respondent upon terminating the appellant’s employment, had the right to recover the outstanding balance of the car loan or in the alternative recover its car which it obviously had lien in. It is preposterous in my view, for the appellant to claim that because his appointment was terminated by the respondent/bank, the latter will loose the outstanding balance of the car loan it gave him. The view the appellant holds supra is not in accord with justice and equity.

Thus, for these few comments and the detailed reasons advanced in the lead judgment of my learned brother Mary Peter-Odili, JSC, I too agree that this appeal lacks merit and deserves to be dismissed. While dismissing this appeal for want of merit, I accordingly affirm the judgment of the court below in which it also affirmed, rightly too, the decision of the trial court.

I abide by the Order on costs made in the lead judgement.

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