

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT JABI, ABUJA**

**BEFORE HIS LORDSHIP: HON. JUSTICE D. Z. SENCHI  
HON. JUDGE HIGH COURT NO. 13  
COURT CLERKS: T. P. SALLAH & ORS**

**DATE: 17/02/2020**

**FCT/HC/CV/2340/19**

**BETWEEN:-**

**NAFIU ABUBAKAR & 54 ORS..... CLAIMANTS**

**AND**

**GALAXY TRANSPORTATION AND  
CONSTRUCTION SERVICES LTD. .... DEFENDANT**

**RULING**

This suit was commenced under the undefended list procedure of this Honourable Court. By a Writ of Summons (supported by a 15-paragraphs affidavit with exhibits) the Claimants are claiming the following reliefs against the Defendant:-

1. A declaration that the Defendant breached the business/contract agreements between it and the Claimants herein.
2. An order directing the Defendant to refund and pay back the 1-22 Claimants the sum of Seventy One Million, Nine Hundred (N71,932,500) only, being payment for sand contract sum and the agreed profit not paid by the Defendant the agreed duration having elapsed.
3. An Order directing the defendant to refund and pay back the 1,8,9,11,12,14,19 and 23 – 38 Claimants the sum of Eighteen Million, Five Hundred and Sixty Nine Thousand, Four Hundred Naira only (N18,569,400.00) only being amounts due for

payment by the Defendant arising from Tipper/Bus business/contract entered into with the Defendant which payment was defaulted by the Defendant.

4. An order directing the Defendant to refund and pay back the 1, 3, 6, 8, 9, 12, 14, 20, 23, 24, 32, 34 and 39 – 55 Claimants the sum of One Hundred and Twenty One Million Five Hundred and Two Thousand Five Hundred Naira (N121, 502,500) only, being amounts paid as capital and agreed profit for the sand investment as agreed and paid for by the Claimants to the Defendant the agreed period having elapsed.
5. An order directing the Defendant to pay the cost of filing this suit.

The writ of summons and other accompanying processes were served on the Defendant on 5<sup>th</sup> November, 2019. A hearing notice was also issued and served on the Defendant. The Court Bailiff then deposed to an affidavit of service as having served the Defendant by delivering the process to one Ngu Grace, Assistant Human Resources Officer, on behalf of the Defendant.

On the 10<sup>th</sup> December, 2019, the matter came up for hearing. The Defendant's Counsel informed the Court that they have filed a motion on notice for extension of time to file their notice of intention to defend but that the application is not before the Court.

In view of the circumstances of this suit, the following is the issue for determination with which this Honourable Court is faced:-

*"Whether Judgment ought to be given in favour of the Claimants in this suit under the undefended list procedure."*

By virtue of **Order 35 of the High Court of the FCT, Abuja (Civil Procedure) Rules 2018** where a party served with a writ under the undefended list intends to defend the suit, he shall within five days before the date fixed for hearing, deliver to the Registrar a notice in writing that he intends to defend the

suit together with an affidavit disclosing a defence on the merit. The Court may then grant him leave to defend the action by removing same from the Undefended List and transferring the action to the ordinary Cause list. Where such party neglects to deliver the aforementioned processes as required, the suit shall be heard as an undefended suit and judgment given accordingly. – See particularly the provisions of **Order 35 Rules 3 and 4**. See also the cases of **KABIRU V. IBRAHIM (2004) 2 NWLR (pt. 857) P. 326 at P. 346 paragraph C-H** and **HAIDO V. USMAN (2004) 3 NWLR (PT. 859) P. 65 at P. 83 paragraph C-D**.

Although the Defendant was served with the writ placed on the undefended list in this case, it failed to file a notice of its intention to defend the suit and an affidavit. The ordinary implication of this is that the suit ought to be heard as an undefended one and judgment delivered unceremoniously.

It must however be emphasized that this Court has jurisdiction to entertain and grant the Claimant's claim under the undefended list **ONLY** where same is for *recovery of debt or for liquidated money demand*. See **NIPOST V. IRBOK (NIG.) LTD. (2006) 8 NWLR (PT. 982) P. 323**. Being a matter of jurisdiction, whether or not a claim can be heard under the undefended list is not an issue that can be ignored or glossed over by the trial Court. See **BRIFINA LTD. V. INTER-CONT. BANK LTD. (2003) 5 NWLR (PT. 814) P. 540 at P. 573 paragraphs G-H**. Where a suit placed on the undefended list is not one in respect of which judgment can be given under the undefended list, it behoves the Court to transfer the suit to the general cause list under which it can be properly determined.

The very first relief of the Claimants' Writ of Summons in the instant case is for a declaration that the Defendant breached the business/contract agreement between it and the claimants herein

It is settled that the fundamental requirement of a declaratory relief is to satisfy the Court that the claimant is entitled in law to the relief claimed. See **CHUKWUMA V. SHELL PETROLEUM (1993) 4 NWLR (PT. 289) P. 538**. Declaratory reliefs should only be granted based on evidence adduced by the Plaintiff and not in default of defence or appearance. – see **OGOLO V. OGOLO (2006) 5 NWLR (PT. 972) P. 173**. Summary judgment cannot be given in claims for declaratory reliefs as the Court cannot make declaration of right either on admission or in default of defence without hearing evidence which entitles the Plaintiff to the declaration he is seeking. – see **NIGERIA AIRWAYS V. AHMADU (1991) 6 NWLR (PT. 198) P. 992, ILOBI V. UZOEGBU (2005) ALL FWLR (PT. 285) P. 595 and OGOLO V. OGOLO (SUPRA)**.

In the case of **CHEVRON (NIG.) LTD. V. WARRI NORTH L.G.C. (2003) 5 NWLR (PT. 812) P. 28** the Court of Appeal held per Rowland JCA (delivering the lead Judgment) **at PP. 44 – 45 paragraphs. E-A** as follows:-

*"I am not in doubt that any defect in competence is fatal, for the proceedings are a nullity however well conducted and decided, the defect is extrinsic to the adjudication.*

*Order 23 of the Bendel State High Court (Civil Procedure) Rules, 1988 applicable in Delta State provided as follows:*

*"1. Whenever application is made to a Court for the issue of a writ of summons in respect of a claim to recover a debt, liquidated money demand or any other claim and the application is supported by an affidavit setting forth the grounds upon which the claim is based and stating that in the deponent's belief there is no defence thereto, the Court shall, if satisfied that there are good grounds for believing that there is no defence thereto, enter the suit for hearing in what shall be called the "undefended list" and mark the writ of summons accordingly, and enter*

*thereon a date for hearing suitable to the circumstances of the particular case.”*

*It should be noted that Plaintiff's main case is for a declaratory relief.*

*It is not a claim for recovery of a debt or liquidated money demand within Order 23. Plaintiff's declaratory action in this case cannot therefore be brought under the undefended list procedure. Such a procedure for a declaratory relief rendered the Court incompetent. Judgment in such circumstance can be set aside by the same Judge.”*

In the instant case, it follows therefore that the first relief of the Claimants' writ of summons cannot be entertained under the undefended list and cannot be granted thereunder.

My attention is also drawn to the fifth relief of the instant writ of summons which is for cost of the instant suit. The position of the law has been made clear that such a claim for cost cannot be entertained under the undefended list procedure. – see the case of **LONESTAR DRILLING NIGERIA LIMITED V. NEW GENESIS EXECUTIVE SECURITY LIMITED(2011) LPELR-4437(CA)**.

In view of the fact that the first and fifth reliefs of the Claimants' writ of summons are not claims for which Judgment can be given by this Court under its undefended list procedure, the instant suit must thus be transferred to the general cause list.

It doesn't matter that the other reliefs claimed are such as can be entertained under the undefended list. The position of the law is that there can be no room for separation of reliefs being claimed by a Plaintiff in an undefended suit. It is either the whole suit is heard as an undefended suit or the whole suit, where it has some features barring it from being heard as an undefended suit, should be transferred to the general cause list for hearing after the exchange of pleadings. – see the case of

**A.I.B. LTD. V. PACKOPLAST (NIG.) LTD. (2003) 1 NWLR  
(PT. 802) P. 502.**

In the instant case therefore, the suit is incompetent to be heard under the undefended list as this Honourable Court has no jurisdiction to hear part of the claims but the claims must be heard as a whole. Thus, the suit of the claimants are hereby transferred from the undefended list to the general cause list. Pleadings are hereby ordered to be filed and exchanged between the parties.

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**HON. JUSTICE D. Z. SENCHI  
(PRESIDING JUDGE)  
18/02/2020**

Parties:- Absent.

No legal representation.

Court:- Case adjourned to the 27<sup>th</sup> April, 2020 for hearing. Hearing notices be issued and served on parties/Counsel.

**Sign  
Judge  
18/02/2020**