

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

**BEFORE HIS LORDSHIP: THE HON. JUSTICE PETER O. AFFEN**

**THURSDAY, FEBRUARY 6, 2020**

**SUIT NO. FCT/HC/CV/813/2019**

**BETWEEN:**

1. MR. KERIAN ONWUZURIKE } ... .. CLAIMANTS  
2. CORDEK GLOBAL RESOURCES & INV. LTD }

**AND**

ABBAS UMAR ... .. DEFENDANT

**R U L I N G**

1. This suit was entered for hearing on the Undefended List by the *Judge-in-Chambers* pursuant to **Order 35 Rule 1** of the *High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules, 2018* (hereinafter "CPR"). By a writ of summons issued out of the Registry of this Honourable Court on 17/1/19, the Claimants claim against the Defendant the following reliefs:

1. AN ORDER directing the Defendant to pay the Plaintiff[s] the sum of ₦8,000,000 (Eight Million Naira) only being the outstanding balance on the transaction of sale of land dated 17<sup>th</sup> April, 2017 (sic).
2. AN ORDER directing the Defendant to stop all construction activities on the land until the outstanding balance of ₦8,000,000 (Eight Million Naira) is full paid.
3. AN ORDER directing the Defendant to pay to the Plaintiff[s] the cost of action.
4. AN ORDER for 10% interest of the total judgment sum per annum from the date of judgment till full satisfaction of same.

5. And for such order(s) as this Honourable Court may deem fit to make in the circumstances of this case.
2. At the hearing, *C. E. Ezugwu, Esq.* of counsel for the Claimants relied on the 22-paragraphed affidavit in support of the writ deposed on 17/1/19 by the 1<sup>st</sup> Claimant [*Kerian Onwuzurike*] as well as Exhibits A - E annexed thereto, and urged the court to enter judgment in favour of the Claimants, insisting that no defence on the merits is disclosed in the notice of intention to defend. On his part, *E. J. Omale, Esq.* of counsel for the Defendant relied on the notice of intention to defend dated 27/3/19 but filed on 28/3/19 and the accompanying 25-paragraphed affidavit deposed by the Defendant [*Abbas Umar*] as well as Exhibits A, A1 – A6 and Exhibit BB1 annexed thereto, and urged the court to transfer the suit to the ordinary/general cause list for plenary trial.
3. The Claimants' case [as can be gleaned from the affidavit in support of writ of summons] is that the 1<sup>st</sup> Claimant acquired equitable interest in Plot No. 116, Cadastral Zone B11, Kaura, FCT, Abuja (File No. OY 61050N) measuring 1477.84 sqm from one *Hally Adekunle Abdulazeez* as evidenced by a Deed of Assignment and Power of Attorney dated 1/12/11; that due diligence search conducted at AGIS and FCDA prior to the acquisition revealed that the plot was actually allotted to *Hally Adekunle Abdulazeez* who duly informed the 1<sup>st</sup> Claimant of a pending litigation in *Suit No: CV/480/2011: Musa Mohammed v. Hally Adekunle Abdulazeez & 3 Ors*; and that judgment was eventually entered in his favour as shown in the certified copy of the judgment dated 31/3/17.
4. It is further averred that the 1<sup>st</sup> Claimant disclosed intention to dispose his equitable interest to his friend, *Engr. Emmanuel Monye* who introduced one *Tahir Umar* to him as a Property Developer/Sales Representative; that

*Engr. Emmanuel Monye and Tahir Umar* visited him at No. 8 Haile Sellasie Street, Asokoro, Abuja, and he duly informed *Tahir Umar* of the pending case and showed him the report of searches conducted at AGIS and FCDA, whereupon *Tahir Umar* promised to contact his friends and colleagues in the property business and subsequently introduced the Defendant (*Abbas Umar*) as prospective purchaser and it was agreed that the purchase price of ₦30m would be paid in instalments; that upon being satisfied with the title, the Defendant transferred ₦20m into the 2<sup>nd</sup> Claimants' Access Bank Account No. 0019448477 in two tranches of ₦10m on 17/4/14, and undertook to pay the balance of ₦10m on or before 17/6/14 as shown in the Sales Agreement dated 17/4/14 (para. 2 thereof); that the Defendant made a further transfer of ₦1m on 6/5/14, and another ₦1m on 22/5/14 as shown in the 2<sup>nd</sup> Claimant's Account Statement; and that every effort to prevail on the Defendant to pay the balance of ₦8m has proved abortive; that the 1<sup>st</sup> Claimant discovered during a visit to the property on 25/2/18 that the land was being developed by the Defendant and the construction of a multi-story building was on-going; that at a meeting held on 26/2/18 at Kebbi House, Central Business District, Abuja, the Defendant complained of losing his phone/contacts, and pleaded with the 1<sup>st</sup> Claimant to be patient until completion and sale of the block of flats under construction to enable him pay the outstanding balance of ₦8m on the purchase price; that the said meeting did not yield any result as the 1<sup>st</sup> Claimant did not accept the Defendant's proposal; that the parties met again on 3/3/18 at Wuye District Road Junction by Eternal Filing Station where the Defendant agreed orally to pay the balance on or before 31/5/18 but failed to do so, claiming he had no money whilst heavy construction is still ongoing at the site; and that the Defendant has no defence whatsoever to this suit.

5. The Defendant deposed in the affidavit in support of notice of intention to defend that it was in the course of looking for land to develop for off-takers who deposited money with him that he was introduced to the 1<sup>st</sup> Claimant by his agent, *Pastor Joel* and was accompanied by one *Tahir Umar* to inspect the Claimants' land at Plot 116 Cadastral Zone B11, Kaura, FCT Abuja; that he indicated interest in the land and requested for the title documents but the 1<sup>st</sup> Claimant claimed to be allottee and assured him that he had long been in possession of the land which had no encumbrance; that he felt deceived when the 1<sup>st</sup> Claimant eventually produced title documents in the name of *Hally Adekunle Abdulazeez* and requested to see the said *Hally Adekunle Abdullazeez* but the 1<sup>st</sup> Claimant claimed that it was a pseudonym used to acquire the plot; that they entered into negotiations and agreed on ₦30m as purchase/sales price payable on instalments; that he then conducted a Land Search at AGIS which revealed no registered caveats, whereupon he made initial payment of ₦20m into the 2<sup>nd</sup> Claimant's account which was forwarded to him by the 1<sup>st</sup> Claimant; that he immediately put up a fence which was pulled down mysteriously the very next day, but it was when he queried why he was misled into buying a disputed land that the 1<sup>st</sup> Claimant pleaded with him and disclosed for the first time that it was soon after he made payment for the land on 31/12/13 that he too discovered that one *Musa* had sued *Hally Adekunle Abdullazeez*, and that being of Hausa origin, it was best for him [i.e. Defendant] to confront *Musa*; that at that point, he was no longer interested and requested the immediate refund of the part-payment made, including the cost of land excavation, development fee paid to the Department of Development Control as well as the cost of the borehole he had drilled on the land which was uprooted by unknown persons; that it was when he went to lodge a complaint at the Development Control Department that he was made to realise that there was a pending litigation on the land sold to him; and that the 1<sup>st</sup> Claimant

sold the plot to him by deceit. The Defendant itemised the following as “particulars of deceit” – (a) the 1<sup>st</sup> Claimant was aware of the pending litigation on ownership of the land; (ii) the 1<sup>st</sup> Claimant bought the land on 31/12/11 but there was a law suit filed on 1/11/2011; (c) the 1<sup>st</sup> Claimant did not inform him of the existing encumbrance; and (d) the agreement between them contained a recital to the effect that “...the Vendor has agreed to transfer their title to the purchaser without any encumbrance”.

6. The Defendant further averred that the Claimants failed to carry out due diligence as the suit between *Musa Muhammed v Hally Adekunle Abdulazeez & 2 Ors* was initiated whilst the 1<sup>st</sup> Claimant retained possession; and that he made [further] payments more than twice in that he transferred ₦2,250,000.00 into the account of *Cordex Global Resources and Investment Ltd* [2<sup>nd</sup> Claimant] as well as the 1<sup>st</sup> Claimant’s personal account No. 0043546287 at Guaranty Trust Bank, as well as a transfer of ₦500,000.00 to 1<sup>st</sup> Claimant’s account in addition to other cash deposits of ₦750,000.00 as evidenced by bank tellers annexed as Exhibits A, A1 A2, A4 and A5; that he demanded ‘indemnification’ for causing him to make payments to Development Control Department, Architect, Civil Engineer, Structural and Electrical Engineer in the sum ₦2,250,000.00 and for the fence and borehole uprooted by [Musa] who obtained an injunction against him for developing the property during the pendency of litigation; that it was agreed at a meeting held during the pendency of the suit that considering how long the case could last and since it was unclear who will eventually win, he should be indemnified by way of set-off if the Claimants were victorious, and if otherwise the consideration will be refunded to him; that he is consequently no longer indebted to the Claimants in respect of the sale/purchase of Plot No. 116 Cadastral Zone B11, Kaura, FCT, Abuja because he had to wait from

March 2014 until 31<sup>st</sup> March 2017 when the litigation ceased and the development fee paid by him [which was to last for two years] had since expired; that he commenced development to avoid interference whilst monitoring the court proceedings as well as an appeal being launched; and that he had to resort to bank and co-operative loans to offset and make refunds to off-takers who had deposited money with him and who subjected him to constant harassment, including police actions.

7. Now, the foregoing are the depositions in the Claimants' affidavit in support of writ of summons, and the Defendant's affidavit in support of notice of intention to defend. Undefended list is a unique procedure designed for the expeditious disposal of cases involving debts or liquidated money demand where the issue is straightforward, uncontested and incontestable. It is a truncated form of the civil litigation process peculiar to the adversarial judicial system under which ordinary hearing is rendered unnecessary due, in the main, to the absence of an issue to be tried. Essentially, therefore, it is designed to secure quick justice and to avoid the injustice likely to occur when there is no genuine defence on the merits to the plaintiff's claim. See **INTERNATIONAL BANK FOR WEST AFRICA LIMITED v UNAKALAMBA [1998] 9 NWLR (PT. 565) 245**. The undefended list procedure spares the court the tedium of hearing evidence and sham defences mounted by a defendant who has no genuine defence to an action. See generally: **WEMASEC v NAIC [2015] 16 NWLR (PT. 1454) 93**, **UBA PLC & ANOR 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 2018** without calling upon the claimant to formally prove his case by calling witnesses.

8. 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 & 413**, a defence showing a triable issue was described as facts, which if established, would defeat the claim or exonerate the defendant. The point must be made that in determining whether a defence on the merit 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 merit 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** and **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 plaintiff. 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 plaintiff. 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(s). See **ATAGUBA & CO v GURA (NIG) LTD supra at 456 - 457**.

9. In applying the above 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 merit. From the affidavit in support of the notice of intention to defend, there is no divergence between the parties that the 1<sup>st</sup> Claimant and the Defendant entered into negotiations sometime in March 2014 and eventually agreed on the sale/purchase of Plot No. 116 Cadastral Zone B11, Kaura, F. C. T., Abuja [with title documents in the name of one *Hally Adekunle Abdulazeez*] at a consideration of ₦30m, out of which sum the Defendant made an initial payment of ₦20m on 17/4/14. But whereas the Claimants allege that the Defendant only made a further payment of ₦2m through bank transfers of ₦1m each on 6/5/14 and 22/5/14 respectively and has failed or neglected to pay the outstanding balance of ₦8m till date despite repeated demands and failed promises, the Defendant insists that



he made further payments beyond what was acknowledged by the Claimants and that he is no longer indebted on the sale/purchase of the plot which was the subject of litigation and he had to wait from March 2014 till 31/3/17 when the litigation was eventually determined, and that it was agreed at a meeting held during the pendency of the suit that he would be indemnified on the basis of set-off for various expenses incurred and losses suffered.

10. A careful examination of the exhibits annexed to the Defendant's affidavit in support of notice of intention to defend reveal the further payments conceded by the Claimants, as well as other payments not so conceded by them. Specifically, there is *prima facie* evidence of fund transfers of ₦250,000 into the 2<sup>nd</sup> Claimant's account on 22/5/14 which is not reflected in the account statement exhibited by the Claimants. There is also *prima facie* evidence of fund transfers of ₦500,000 and ₦250,000 made to the 1<sup>st</sup> Claimant on 23/5/14. This makes a total of ₦1m not acknowledged by the Claimants, for which some explanation from the parties becomes imperative. As stated hereinbefore, a defendant is only required to lay the foundation for the existence of a triable issue in order to be granted leave to defence. See **ATAGUBA & CO v GURA (NIG) LTD *supra***. He need not establish a complete or iron-cast defence at this stage: it suffices if the defence set up shows that there is a triable issue or that for some other reason there ought to be a trial. See **OKAMBAH v SULE *supra***, **YAHAYA v WAJE COMMUNITY BANK *supra***, **V. S. STEEL (NIG) LTD v GOVT. OF ANAMBRA STATE *supra***, **DALA AIR SERVICES v SUDAN AIRWAYS *supra*** and **MACAULAY v NAL MERCHANT BANK *supra***.
11. But more crucially, the Defendant has alleged that owing to the fact that he was misled into purchasing a law suit and the attendant expenses incurred and losses suffered during the pendency of Suit No.

FCT/HC/CV/480/11 between *Musa Mohammed v. Hally Adekunle Abdulazeez & Ors* which lasted until 31/3/17, including but not limited to destruction of the fence he erected on the plot as well as the borehole drilled by him (which is evidenced by a receipt), the development fee paid to the Department of Development Control which has expired, and bank and cooperative loans he was constrained to take in order to refund moneys deposited by off-takers who subjected him to constant harassment, etc., he demanded indemnity from the 1<sup>st</sup> Claimant whereupon it was mutually agreed that he was entitled to a set-off against the Claimants, and he is consequently no longer indebted as claimed in this suit. These are weighty assertions that cannot be lightly wished away. The law is now well settled that where the court finds that there is a set-off or counterclaim in an action initiated under the undefended list procedure, the action should be removed from the undefended list and placed on the ordinary cause list, in which case the court should either order that pleadings be filed and exchanged or proceed to hearing without further pleadings. See **BISONG v EKPEYONG [2003] 5 NWLR (PT. 812) 156** and **SHEMA NIG LTD v MOKT INDUSTRIES LTD (2001) LPELR- 8871 (CA)** at 32 –per *Orji-Abadua, JCA*. It therefore seems to me that the expeditious disposal of this matter under the undefended list procedure has been short-circuited, and leave ought to be given to the Defendant to defend this action.

12. By Order 35 Rule 3(2) CPR 2018, “[w]here leave to defend is given under this Rule, the action shall be removed from the Undefended List and placed on the ordinary Cause List; and the Court may order pleadings, or proceed to hearing without further pleadings”. As this suit has already suffered some delay, I do not intend to order further pleadings but will proceed with the hearing on the basis of the processes already filed and exchanged by the parties.

13. I accordingly record an order removing this suit from the Undefended List and place same on the ordinary cause list for plenary trial without further assurance. IT IS SO ORDERED.

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**PETER O. AFFEN**  
Honourable Judge

**Counsel:**

***C. E. Ezugwu, Esq.*** for the Claimants.

***E. J. Omale, Esq.*** for the Defendant.