

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

HOLDEN AT COURT NO. 11 BWARI, ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE O.A. MUSA

SUIT NO: FCT/HC/BW/M/94/2021

BETWEEN:

ERIC ABAKPORO

CLAIMANT

AND

ATTORNEY-GENERAL OF THE FEDERATION ---

DEFENDANT

RULING

DELIVERED ON THE 18TH MARCH, 2021

By a Motion Ex-parte dated the 8th day of February but filed on the 11th day of February, 2021, the Claimant in this suit sought and was granted leave on the 17th day of February, 2021 to issue the Writ in this suit and to place the suit on the "Undefended List" and marking the Writ of Summons accordingly. Thereafter the matter was adjourned to the 15th day of March, 2021.

The Writ of Summons in this suit was supported with a twenty-four (24) paragraphed affidavit, deposed to by the Claimant himself, bedecked with several exhibits (all documentary) and marked serially as;

- (a) **Exhibit P1** (found at paragraph 4)
- (b) **Exhibits P2 and P3** (found at paragraph 5)
- (c) **Exhibits P4 and P5** (found at paragraph 6)
- (d) **Exhibit P6** (found at paragraph 7)
- (e) **Exhibit P7** (found at paragraph 8)
- (f) **Exhibit P8** (found at paragraph 9)

(g) **Exhibits P9, P10 and P11** (found at paragraph 14)

(h) **Exhibit P12** (found at paragraph 18)

It is on the footing of the above affidavit with the attached exhibits that the Claimant beseeched this Honourable Court to favour him with the reliefs which he tabled thusly:

(A) AN ORDER directing the Defendant to pay the Claimant, the sum of \$3, 000. 00 Dollars due and payable to the Claimant as professional fees sequel to the clear and unequivocal instructions of the Defendant to the Claimant for defending the interest of Nigeria in a legal action relating to property known as 'Nigeria House' located and being at 828 Second Avenue, New York, NY, 10017 instituted by the City of New York against the Federal Republic of Nigeria in Suit No (Index No 10 CIV 0198) which has since been effectively, effectually resolved and completed by the Claimant

(B) Interest on the sum mentioned in relief (a) above at the rate of 25% per annum from 29th of May, 2015 until judgment and thereafter at 10% per annum until judgment sum is totally liquidated.

(C) Cost of this action.

Upon being served on the 22nd day of February, 2021 with the Claimant's Writ of Summons marked as Un defended, the Defendant, on the 12th day of March, 2021 greeted the Claims of the Claimant with protestation by filing a Notice of Intention to Defend this suit accompanied with an affidavit of six (6) paragraphs in support, which was deposed to by one **Friday Atu**, who is said to be a Litigation Officer in the Chambers of the Honourable Attorney-General of the Federation. In contestation of the

Claimant's reliefs, the Defendant's affidavit in support of his Notice of Intention to Defend this suit saliently agitated thusly:

That the Plaintiff was jointly instructed to represent the Defendant alongside with Oluwale Afolabi, Esq. The Plaintiff alone is not entitled to the sum of \$3, 000, 000 as the Defendant will only approve a joint fees which has not been done because both the Plaintiff, Oluwale Afolabi and the Defendant are yet to come to conclusion on the amount payable.

That the Defendant is not in receipt of EXHIBITS P4-P12

That the Defendant did not at any time plead with the Plaintiff to exercise patience on account of paucity of funds.

That the Plaintiff has received payments from the Defendant on account of other cases assigned to him.

That the Defendant has a defence on the merit to this case.

That the Plaintiff's claim of interest shows that the amount due to him is not certain and is also not a liquidated money demand

That it is in the interest of justice to transfer this suit to the General Cause List.

That the Plaintiffs (sic) will not be prejudiced if this suit is transferred to the General Cause List

It is resting on the Defendant's affidavit, especially the portions reproduced above and found particularly at **paragraphs 3 (g-l), 4 and 5 of the supporting affidavit**, that the Defendant expresses his desire that this matter be transferred to the General Cause List to be accorded a plenary hearing where parties would have the opportunity to deploy the forensic tools of cross-examination, re-examination and the rest to

separate chaffs from the grain and epistemologically winnow truth from falsehood by subjecting each individual's case to merciless scrutiny.

This matter came up for hearing before this Honourable Court on the 15th day of March, 2021. D. A. Awosika, SAN (with him, N. F. John, Miss) appeared for the Claimant while v. u. Ohabuithiro, Esq. appeared for the Defendant. The Learned SAN urged the Court to enter judgment under the undefended list in favour of the Claimant as per the terms prayed on the face of his Writ of Summons, which I have endeavoured to reproduce above. In adumbration, the Learned Silk identified his processes and dwelt on the nitty-gritty of the depositions found in the Claimant's supporting affidavit which chronicled the relationship between the Claimant and the Defendant, the professional engagement of the Claimant by the Defendant, the evidence suggesting that the Claimant has performed his professional obligation by successfully defending Nigeria's interest and the justifications for the claim of his professional fees which he alleges remains unpaid up to the point of instituting the instant proceedings. Learned Senior Advocate extrapolated on the guiding principles that illuminate the path of the Court in coming to a decision whether or not a matter should be heard under the undefended list. While acknowledging the affidavit in support of the Notice of Intention filed by the Defendant, the Learned Silk stridently derided the said affidavit as a sham mounted to frustrate the Claimant from judgment seat and unduly prolong his achievement of justice. On behalf of the Honourable Attorney-General of the Federation, it was submitted in opposition that following the demands of fair hearing enshrined in the Constitution, the Defendant should be allowed by this Court to properly ventilate his defence to this suit through a full hearing. The Court is

urged to exercise its discretion and transfer this matter away from the Undefended List to the General Cause List for trial in the interest of justice. The crucial question to which this Court is to address its mind now is:

Whether the defendant's Notice of Intention to Defend and the affidavit disclosing defence on the merit is sufficient to transfer the Claimant's suit to the general cause list?

Returning a well-thought out answer to this question as framed above, in my humble view, will effectively put a damper on the agitations of the parties to this forensic contest.

By a long line of decided authorities, the law is settled that the focal point of undefended list procedure, by which this suit was commenced, is attainment of expeditious trial and disposal of cases in justice dispensation regarding recovery of debt or claim for liquidated money demand where the defendant has no defence to the suit, **Addax Petroleum Development Nig. Ltd. v. Duke (2010) 8 NWLR (Pt. 1196) 278**. The undefended list procedure is designed to secure quick justice and avoid the injustice likely to occur when there is no genuine defense on the merits to the plaintiff's case. See **International Bank for West Africa Limited v. Unakalamba (1998) 9 NWLR (Pt. 565) 245**. The procedure is to shorten the hearing of a suit where the claim is for liquidated sum, **Co-operative and Commerce Bank (Nigeria) Plc v. Samed Investment Company Limited (2000) 4 NWLR (Pt. 651) 19**. In other words, the object of the rules relating to actions on the undefended list is to ensure quick dispatch of certain types of cases, such as those involving debts or liquidated money claims. See **Bank of the North v. Intra Bank SA (1969) 1 All NLR 91**. The case of the

parties in the instant suit revolves around the undefended list procedures and the nuances of its application. The case of **Ataguba & Co. v. Gura (Nig.) Ltd. (2005) 8 NWLR (Pt.927)429; (2005) 2 S.C (Pt II) 101; (2005) LPELR-584(SC)** presents us with a very clear lenses through which the concept and precepts of Undefended List Procedure under our civil litigation jurisprudence could be viewed and properly understood. Therein, the Supreme Court, speaking through Edozie, J.S.C. very eloquently explained the principles thus:

The object of the undefended list procedure is to enable a plaintiff whose claim is unarguable in law and where the facts are undisputed, and it is inexpedient to allow a defendant to defend for mere purposes of delay, to enter judgment in respect of the amount claimed:- see *Macaulay v. NAL Merchant Bank Ltd. (1990) 4 NWLR (Pt. 144) 283 at 324-325*. One of the main problems that often arise in the undefended suit procedure is the consideration of whether the defendant's affidavit in support of notice of intention to defend discloses a defence on the merit. In this regard, it has been held that it must disclose a prima facie defence: *Bendel Construction Co. Ltd. v. Anglocan Development Co. (Nig.) Ltd. (1972) 1 All NLR 153*. The affidavit must not contain merely a general statement that the defendant has a good defence to the action. Such a general statement must be supported by particulars which if proved would constitute a defence: see *John Holt & Co. (Liverpool) Ltd. v. Fajemirokun (1961) All NLR 492*. It is sufficient if the affidavit discloses a triable issue or that a difficult point of law is involved; that there is a dispute as to the facts which ought to be tried, that there is a real dispute as to the

amount due which requires the taking of an account to determine or any other circumstances showing reasonable grounds of a bona fide defence: *Nishizawa Ltd. v. Jethwani* (1984) 12 SC 234; *F.M.G. v. Sani* (1990) 4 NWLR (Pt. 147) 688 at 713

In his most excellent formulation of the principles, Tobi J.S.C. contributed the following passage in his supporting judgment:

The object of the rules relating to actions on the undefended list is to ensure quick dispatch of certain types of cases such as those involving debts or liquidated money claims. See *Bank of the North v. Intra Bank S. A.* (1969) 1 All NLR 91.

A defence on the merit for the purposes of undefended list procedure may encompass a defence in law as well as on fact. The defendant must put forward some facts which cast doubt on the claim of the plaintiff. A defence on the merit 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 or issues. See *Nortex (Nigeria) Limited v. Franc Tools Co. Ltd.* (1997) 4 NWLR (Pt. 501) 603. What will constitute a defence on the merit depends on the facts of the case. This is within the discretion of the court of trial which must be exercised judicially and judiciously after a full and exhaustive consideration of the affidavit in support of the notice to defend. See *Grand Cereals and Oil Mills Ltd. v. As-Ahel International Marketing Ltd. and Procurement Ltd.* (2000) 4 NWLR (Pt. 652) 310; *Alhaji Danfulani v. Mrs. Shekari* (1996) 2 NWLR (Pt. 433) 723; *Alhaji Ahmed v. Trade Bank of Nigeria Plc.* (1997) 10 NWLR (Pt. 524) 290; *Calvenply Limited v. Pekab International Limited* (2001) 9 NWLR (Pt. 717) 164. Under the undefended list

procedure, the defendant's affidavit must condescend upon particulars and should as far as possible deal specifically with the plaintiff's claim and affidavit, and state clearly and concisely what the defence is and what facts and documents are relied on to support it. The affidavit in support of the notice of intention to defend must of necessity disclose facts which will at least throw some doubt on the case of the plaintiff. A mere general denial of the plaintiff's claim and affidavit is devoid of any evidential value and as such would not have disclosed any defence which will at least throw some doubt on the plaintiff's claim. See *Agro Millers Limited v. Continental Merchant Bank (Nigeria) Plc.* (1997) 10 NWLR (Pt. 525) 469. To satisfy a judge in an action on the undefended list, the defendant must depose to what on the face of the affidavit discloses a reasonable defence. See *Jipreze v. Okonkwo* (1987) 3 NWLR (Pt. 62) 737.

There is no doubt that the special procedure provided for by the provisions of this Court's Rules is designed to ensure quick dispensation of justice, **Bank of the North v. Intra Bank S. A. (1969) 1 All NLR 91**. But that is not at the expense of fair hearing, **S.C. Eng. Nig. v. Nwosu (2008) 3 NWLR (Pt. 1074) 288 at P. 308. paras. C – D**. In other words, the purpose of the undefended list procedure is not to shut out the defendant from being heard, **Nishizawa Ltd. v. Jethwani (1984) 12 SC 234**. The undefended list procedure does not have as one of its objects to shut out a defendant or drive him away from the judgment seat. Courts called upon to entertain a matter under the undefended list procedure shoulder the responsibility of creating

opportunity for fair hearing between parties and to do substantial justice, **Dyeris v. Mobil Oil (Nig) PLC (2010) 1 NWLR (Pt. 1175) 309.**

We have been thought by our forebears that an action begun under the undefended list is no less a trial between the parties, **Alhaji Ahmed v. Trade Bank of Nigeria Plc. (1997) 10 NWLR (Pt.524) 290** and when a defendant, as here, is properly served, he has a duty, to disclose his defence to the action, **Grand Cereals and Oil Mills Ltd. v. As-Ahel International Marketing Ltd. and Procurement Ltd. (2000) 4 NWLR (Pt.652) 310.** It is the exhortation of the Supreme Court, **Ataguba & Co. v. Gura (Nig.) Ltd. (supra)** to all courts below it including this Court that to ascertain whether the defendant's affidavit in support of the notice of intention to defend disclosed a defence on the merit in line with the principles stated above, it is desirable to examine the case put up by each party. I have demonstrated fidelity to this sacred instruction of the Supreme Court in this Ruling by first examining the claims put forward by the parties in hostility as espoused by their respective processes.

In view of all I have said above and against the backdrop of the italicized portions of the Defendant's affidavit which I reproduced earlier, I find justifications for allowing the Defendant in this matter to be given a wider platform in defending this suit. Transferring this matter to the General Cause List will meet this end. I order that this matter be transferred to the General Cause List for a hearing on the merit.

I am being mindful of the interlocutory nature of this Ruling so as to effectively avoid any pronouncement capable of affecting the substantive hearing or the judgment eventuating from same.

Before signing off this Ruling, I note that the depositions of the *Claimant at paragraph 5 of his affidavit* wherein it is shown that the Defendant engaged him to defend Nigeria's interest (by dint of **Exhibit P2** and **Exhibit P3** respectively) were not effectively denied by the Defendant and therefore deemed admitted, thereby entitling the Court to act on that established fact. Yet again, it has manifested from a clinical investigation of the agitations of the parties that the Defendant is not in denial of his indebtedness to the Claimant but his argument is that "**the Plaintiff alone is not entitled to the sum of \$3, 000, 000** as the Defendant will only approve a joint fees which has not been done because both the Plaintiff, OluwaleAfolabi and the Defendant are yet to come to conclusion on the amount payable"

Shorn of all scintilla of equivocation, the above quoted portion of the Defendant's affidavit shows an admission of indebtedness to the Claimant but to a *'yet to be ascertained'* amount. Viewed from this angle, it is within my province to surmise that the facts and circumstances leading to the suit trace their ancestry to the year 2010. We are now in 2021.

That is more than ten years. Having bent backwards so as to accommodate the Defendant, this Court must also be alive to its constitutional responsibility of not just doing justice to all manner of people that come before it, but also doing so timeously. Against this background, I shall and hereby make an Order for expeditious trial of the instant suit. I consequentially fix this matter for definite hearing on the **14th and 15th of April, 2021.**

Parties are to ensure that their witnesses are ready for the days of trial when they are needed.

This is the Ruling of the Court.

APPEARANCE

N.F. John Esq. for the plaintiff.

Oyin Koleosho Esq. with me V.U Ohabughiro Esq. for the defendant.

Sigh

Hon. Judge

18/03/2021