

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

**BEFORE: HIS LORDSHIP HON. JUSTICE S.U. BATURE**

**COURT CLERKS: JAMILA OMEKE & ORS**

**COURT NUMBER: HIGH COURT NO. 32**

**CASE NUMBER: SUIT NO. FCT/HC/CV/2505/20**

**DATE: 16<sup>TH</sup> FEBRUARY, 2021**

**BETWEEN:**

MRS. GRACE ONAMUSI.....CLAIMANT

**AND**

(1). GLOBAL TRUST MCS LIMITED }  
(2). MONDAY OGEDENGBE } .....DEFENDANTS

**APPEARANCES:**

Alfred Iortyaver Esq with Haruna Wada Esq for the Claimant.

**RULING**

The Claimant filed this suit dated 24<sup>th</sup> day of July 2020 and filed on 31<sup>st</sup> July of August 2020 via undefended list claiming against the Defendants jointly and severally as follows: -

***“1. The sum of N11, 575, 000.00 (Eleven Million, Five Hundred and Seventy Five Thousand Naira only) being the Claimant’s investment and interest had and received by the Defendants.***

***(2). The sum of N1, 500, 000.00 (One Million, Five Hundred Thousand Naira Only) as the cost of this suit.***

***Or on the Alternative:-***

- (3). ***The sum of N3, 500, 000.00 (Three Million, Five Hundred Thousand Naira Only) being the amount of the Claimant's money had and received by the 1<sup>st</sup> Defendant which the 3<sup>rd</sup> Defendant solemnly undertook in writing to refund.***
- (4). ***Interest on the said sum of N3, 500, 00.00 at the rate of 5% per month from the 1<sup>st</sup> of January, 2018 till date of judgment and thereafter at the rate of 10% per annum till final liquidation of the sum.***
- (5). ***The sum of N1, 500, 000.00 (One Million, Five Hundred Thousand Naira Only) as the cost of this suit."***

The Writ is supported by a 4 paragraphed Affidavit deposed to by Alfred lortyaver, a legal practitioner in the law firm of Charis Hills Solicitors of the Claimant. Attached to the supporting affidavit are the annexures marked as Exhibits A11 to A17. Also filed along with the Writ is a Written Address dated 24<sup>th</sup> day of July 2020.

On the other hand, the Defendant filed a Notice of Intention to Defend dated 27<sup>th</sup> day of November 2020. Filed in support of the Notice of Intention to Defend is an affidavit of 19 paragraphs deposed to by Monday Ogedengbe Ayodele, the 2<sup>nd</sup> Defendant in this suit. Attached to the Affidavit is a document marked as Exhibit MIG.

I have carefully perused the Undefended List process, the Affidavit in support, the annexures attached therewith and the Written Address in support. I have equally gone through the Notice of Intention to Defend together with the affidavit. The affidavit in support and the exhibit attached therewith. I have given due consideration to the oral submissions of both Counsel and the authorities cited.

It is important to begin by saying that it is settled law that the purpose of bringing matters under the Undefended List procedure is to avail a Claimant swift justice in respect of a debt or liquidated sum by allowing a Court to give judgment without the need of going into a full trial and without calling witnesses and so as to save judicial time and expense. In this respect, see the case of ***NKWO MARKET COMMUNITY BANK (NIGERIA) LTD V OBI (2010) LPELR-2051 (SC) at page 26, paras E – G per M. MOHAMMED, JSC*** where it was held thus:

***“The Undefended List procedure is adopted when it is perceived that the Defendant could not possibly have any defence to the claim. A suit is maintainable under his procedure if it relates to a claim for a debt or liquidated money demand...”***

See also the case of ***IMONIYAME HOLDINGS LTD AND ANOR V SONEB ENTERPRISES LTD (2010) 4 NWLR (Pt. 1185) page 561. See also Order 35 Rules 1 and 2 of the Rules of Court and Procedure 2018.***

However where a Defendant intends to defend the suit, the law requires him to file timeously a Notice of Intention to defend together with an affidavit disclosing a defence on a merit and/or triable issues. This position of law was re-echoed in the case of ***NATIONAL CORDINATOR/CE V MABOL & ASSOCAITES LTD (2009) LPELR-4576 (CA) per BADA, J.C.A at page 23, paras A –B*** where it was held thus: -

***“All that a Notice of Intention to defend is required to do under the Undefended List is satisfy the Court that there is a triable issue or raise a bona fide issue for trial....”***

In addition, the term triable issue in a Defendant’s notice has been explained by the Court of appeal in the case of ***S.P.D (NIG) LTD V ARHOJOE (NIG) LTD (2006) 3 NWLR (Pt. 966) 173*** thus:

***“A triable issue or a defence on a merit under the Undefended List procedure is where a Defendant’s affidavit in support of the Notice of Intention to defend is such that requires the Plaintiff to explain certain matters with regard to his claim, or throws some doubt on the Plaintiff’s claim. A triable issue is an uncontroverted material allegation contained in the Defendant’s affidavit which cannot and should not be given a wave of the back-hand and which requires further investigation by the Court to unravel the veracity or otherwise situations that would give rise to a triable issue includes the existence of (i) dispute as to the facts which ought to be tried; or (ii) real dispute as to the amount due to the party making a claim which would necessitate taking an account to determine the amount or (iii) reasonable grounds or a fair probability of a bona fide defence...”***

Therefore, in the instant case, a careful examination of the entire depositions in the Defendants' affidavit in support of Notice of Intention to Defend, particularly paragraphs 7, 9, 11, 13 and 14 will show that the Defendants have cast doubt in the Claimant's claim, when the Defendants said inter alia that the 1<sup>st</sup> Defendant is not indebted to the Claimant to the tune of N7, 075, 000.00 neither does it owe the Claimant the sum of N11, 575.

In my opinion, this and other averments in the said affidavit in support of the Notice of intention to Defend, have raised serious triable issues. In the circumstances, the justice of this case will best be met by transferring same to the General Cause List for proper trial.

To this end and without further ado, this suit with Suit No: CV/2505/2020 filed via Undefended List is hereby transferred to the General Cause List in the interest of justice. Parties are hereby ordered to file and exchange pleadings accordingly.

**SIGNED**

**HON. JUSTICE SAMIRAH UMAR BATURE  
16/2/2021.**