

**IN THE HIGH COURT OF JUSTICE OF THE 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/1641/20**

**MOTION NO: M/7086**

**DATE: 24<sup>th</sup> FEBRUARY, 2021**

**BETWEEN:**

**MS. CHINASA ANYANWU..... CLAIMANT**

**AND**

**1. TEMPLECOM CAPITAL & INVESTMENT LTD**  
**2 MR. ABIMBOLA OMONIWA,** } .....DEFENDANTS

**APPEARANCES:**

**Nafisa Ali Esq. for the Claimant.**

**Shalom Enejulu Esq. for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.**

**RULING**

By a writ of summons under the undefended list procedure dated the 22<sup>nd</sup> day of May 2020 and filed same day, the Claimant filed this matter claiming the following against the defendants:

1. A order of this honorable court entering judgment in favor of the 2<sup>nd</sup> claimant and against the defendant jointly and severally in the principal sum of **₦ 49,815,913.43 (FORTY NINE MILLION, EIGHT HUNDRED AND FIFTEEN THOUSAND, NINE HUNDRED AND THIRTEEN NAIRA, FORTY THREE KOBO)** only, being the principal sum and interest outstanding, undisputed, unsatisfied and admitted debt the defendants owed the claimant as balance of funds disbursed to the Defendants as the investment sum which the defendants duly acknowledged and confirmed by virtue of the email correspondence of the 17<sup>th</sup> January 2020 and letter dated 27<sup>th</sup> January 2020.
2. An order awarding monthly interest on aggregate sum adjudged due in relief 1 above at the agreed interest rate of 4% per month from 27<sup>th</sup> November 2019 when the defendants ceased to calculate the entitlements of the claimant per statement of account schedule, until the date of the delivery of judgment herein.
3. An order awarding post judgment interest on the aggregate sum adjudged due reliefs 1 and 2 at the rate of 10% per anum, from the date of delivery of judgment in this suit until full satisfaction of the judgment
4. Cost of this action and counsel feel in the sum of ₦ 2,000,000 (Two Million, Naira) only.

In paragraph 6 to 9 of her affidavit, the claimant averred that, sometime in 2018, the 1<sup>st</sup> defendant through the 2<sup>nd</sup> defendant approached her and represented herself as a portfolio manager engaged in the business of hosting and managing investments on behalf of both individual and corporate investors and paying returns on

the investments and requested that she invest in the company, following the assurances of the 1<sup>st</sup> and 2<sup>nd</sup> defendants, the claimant invested a total sum of N35,000,000.00 (Thirty five million naira) in three trenches comprising: N 15,000,000.00 (Fifteen million naira). 10,000,000.00 (ten million naira) and 10,000,000.00 (Ten million naira) with the defendant on agreed ROI at the interest of 4% per month, evidence of the agreement marked as **Exhibit 1**.

The payment of the 1<sup>st</sup> trench, that is, **15,000,000.00** was in three trenches, that is, (**3,500,000.00** on 23<sup>rd</sup> October 2018, another **3,500,000.00** on 24<sup>th</sup> October 2018 and **8,000,000.00** made on 25<sup>th</sup> October 2018). A separate cash payment of **10,000,000.00** was further made to the defendants on 27<sup>th</sup> October 2018 and another **10,000,000.00** on 27<sup>th</sup> January 2019 all cumulating to the sum **35,000,000.00**. These payments were immediately updated on the claimant's schedule (detailing her entitlements) which the 2<sup>nd</sup> defendant sent to the claimant by the 2<sup>nd</sup> defendant vide his email of 6<sup>th</sup> March 2019 marked as **Exhibit 3**.

In paragraph 10, the claimant averred that, the 2<sup>nd</sup> defendant acknowledged the above payment in writing vide an investment agreement of 8<sup>th</sup> November 2018, the agreement were further consolidated into a single investment agreement dated 1<sup>st</sup> march 2019 made sequel to the last payment made by the claimant on 27<sup>th</sup> January 2019, said agreement is marked as **EXHIBIT 4**.

The claimant also averred that, she withdrew the sum of **N5,348,379.14** from her investment bringing the principal amount and accrued interest standing to her to an aggregate sum of **N49,815,913,43** and by a letter dated 14<sup>th</sup> January 2020, the claimant reminded the defendants

to liquidate her investments and make all payment of her entitlement as agreed into a designated bank provided by her (marked as **Exhibit 5**). However, the defendants vide a letter dated 27<sup>th</sup> January 2020 requested for a thirty days extension within which to liquidate the claimant's entitlements under the investment, however, the claimant by a letter dated 3<sup>rd</sup> of February 2020 declined the request for extension of time and demanded immediate payments of her investment, the copies of the defendant's letter and the claimant's reply are marked as **Exhibit 6**.

She finally averred in paragraph 14 of the affidavit that, the 30 days extension sought by the defendants have elapsed and despite expressly admitting their indebtedness, the defendants have continued to deprive her of her hard earned money. That having admitted the debt, the defendants have no defense to this proceeding and that it is in the interest of justice that this suit be heard under the undefended list procedure and the relief sought be granted expeditiously.

On the other hand, the 1<sup>st</sup> and 2<sup>nd</sup> defendants filed a notice of intention to defend dated the 10<sup>th</sup> day of July 2020, the affidavit is deposed to by Mr. Abimbola Omoniwa, the 2<sup>nd</sup> defendant in this suit who is also the managing director of the 1<sup>st</sup> Defendant in this suit. In paragraph 6 and 7 of his affidavit, the defendant averred that, paragraph 7 of the claimant's affidavit is incorrect and that the total sum she invested was the sum of twenty-five million naira. That paragraph 8.3 of the claimant's affidavit is also false as he only collected the sum of ten million naira on behalf of the 1<sup>st</sup> defendant only once at the claimant's office as against the twice mentioned by the claimant.

Furthermore, he averred in paragraph 8 that, as at the time of the transaction between the 1<sup>st</sup> Defendant and the claimant, he, that is the 2<sup>nd</sup> defendant only acted as a representative of the 1<sup>st</sup> defendant and not in his own capacity, he further added that, he has since been advised by the 1<sup>st</sup> defendant by her board resolution sometime in December 2019 to resign as the managing director and chief executive officer of the 1<sup>st</sup> defendant. The copy of the resignation letter is marked exhibit A1.

In paragraph 9 of his affidavit, the 2<sup>nd</sup> defendant averred that paragraph 10 of the claimant's affidavit is incorrect, the 1<sup>st</sup> defendant never consolidated any agreement with the claimant and cannot remember signing any consolidated agreement and further added that there are disparities between the shades of signatures in the first agreement and the alleged consolidated agreement.

In paragraphs 10 to 12, the 2<sup>nd</sup> defendant averred that the 1<sup>st</sup> defendant is not indebted to the claimant at the tune claimed by the claimant in her claim because the only entered the agreement for the two installments of the investments, that he is not in any way indebted to the claimant, he only carried his duties for the 1<sup>st</sup> defendant as the time of the transactions while he was the managing director and chief executive officer. That in addition to the five million, three hundred and seventy-nine naira, fourteen kobo paid to the claimant by the 1<sup>st</sup> defendant, the 1<sup>st</sup> defendant also paid a sum of three million naira only to the claimant which the claimant failed to capture in her affidavit, he referred to the evidence of payment and statement of account and evidence of payment of same seen at page 12 of the bank statement paid on the 13/9/2020 in two installments. The bank statement is marked as **Exhibit A2**.

In paragraph 13, the first defendant reached a special resolution that, the interest accruing on the said investment be suspended as a result of the financial crisis being faced by the 1<sup>st</sup> defendant due to some unforeseen circumstances beyond the control of the 1<sup>st</sup> defendant and same was communicated to the claimant. A copy of the resolution is marked as **Exhibit A3**

Finally, the 2<sup>nd</sup> defendant argued that the 1<sup>st</sup> defendant has in no way admitted being indebted to the claimant to the tune of the ambiguous figure claimed by the claimant, that it is in the interest of justice that the suit be placed on the General Cause List.

The 1<sup>st</sup> and 2<sup>nd</sup> defendants filed a written address in support of their counter affidavit where they raised a lone issue for determination, to wit;

**WHETHER CONSIDERING THE CIRCUMSTANCES OF THIS CASE, THE CLAIMANT'S SUIT CAN BE SUFFICIENTLY HEARD UNDER THE UNDER THE UNDEFEDED LIST.**

In arguing this case, counsel referred to order 35 rule 1-5 of the high court of the federal capital territory Abuja. He also referred to the case of **MAJA V SAMOURIG (2002) FWLR (PT 98) 818 SC** where the court defined liquidated money demand as “...As ascertained or specific amount, meaning that there is nothing to further done to determine the quantum or extent of the defendant's liability.”

Counsel also cited the case of **ABAYOMI V AG OF ONDO STATE (2007) ALL FWLR (391) 1683 @1694, Dr. JBO ADEWUNMI V ADEBEST TELECOMMUNICATIONS NIGERIA LIMITED (2011) LPELR 9087 (CA)** and further argued that, in this scenario, the amount in contention between parties

cannot be said to be ascertainable or unliquidated since there exist some disparities in the figures and facts places before this honorable court by both parties which requires proof and reading. Counsel also cited **ORDER 3(1)(2) OF THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY ABUJA (CIVIL PROCEDURE) RULES 2018** which state and argued that, what the rules requires from the defendants to show that he has a reason to defend this suit by filing affidavit showing real fact and documents in support. The defendants have filed an intention to defend and an affidavit in support disclosing a triable issue on the merit and stating cogent grounds and reasons why the suit does not qualify to be on undefended list since there are obvious disparity in the figures presented before the court, and it has been shown in the affidavit the money is not ascertainable in the face of it. Counsel also referred to the case of **OLUBUSOLA STORES V STANDARD BANK (1975) LPELR 2610 (SC)**, stating that, it is the discretion of the court to transfer the case to the general cause list and prayed this honorable court to exercise its discretion in their favor. He further argued that, this proceeding is not intended to shut out the defendant and stample on his right to fair hearing but to ensure that justice is done by hearing both parties and giving the defendants opportunity to defend the suit filed against him. Counsel cited **NMCB (NIG) Ltd V. Obi (2010)14 NWLR (PT 1213) 169 SC**.

Finally, counsel argued that, the affidavit of the defendants has clearly shown that there is a triable issue since there are huge disparities in the figures of the documents presented before the court as seen in **Exhibit A1 and A3**. Counsel humbly urged this court to remove this suit from the undefended cause list and transfer it to the general cause list in the interest of justice and fairness.

I have carefully gone through the writ of summons filed via undefended list, the reliefs sought, the supporting affidavit, the annexures attached therewith and the oral submissions of the counsel to the claimant urging the court to hear the matter undefended and enter judgment. I have equally gone through the defendant's notice of intention to defend, the supporting affidavit, the exhibit attached therewith and the Written Address in support. Consequent upon this, I formulate a lone issue for determination, to wit;

**1. Whether from the arguments of parties and affidavit evidence adduced herein, the matter be transferred to the general cause list.**

Firstly, I must begin by referring to **Order 35 Rule 1 (1)** of the High F.C.T Court Civil Procedure Rules which provides thus

**“Where an application in form 1 as in the appendix is made to issue a writ of summons in respect of a claim to recover a debt or liquidated money demand, and stating that in the deponent's belief there is no defense to it, the judge in chambers shall enter the suit for hearing in what shall be called the “undefended list”.**

I must also add here that the object of undefended list as captured in the case of **H.R LTD V. F INV. LTD (2007) 5 NWLR @ PG 346 para C** where it was held thus:

**“The undefended list procedure is a special procedure designed for quick dispensation of justice in a claim for a liquidated money demand...”**

I will pause here to explain what a liquidated money demand is, in the case of **EPE L.G V KESHINRO (2009) 4 NWLR PG 421 (Para H)**



**“...A liquidate money demand is in the nature of a debt, it is a specific sum of money due and payable under or by virtue of a contract. It is liquidated when the sums are easily ascertainable. In the instant case.”**

**Again, in the case of NWANKO v. EDCSUA (2007) 5 NWLR (PG 413-414 PARAS G-B )**

**“The object of the rules providing for the undefended list procedure is to ensure quick dispatch of certain types of cases, such as those involving debts or liquidated money claims. In other words, the object is to enable a plaintiff whose claim is not unarguable in law and where the facts are undisputed and it is inexpedient to allow a defendant to defend for mere purposes of delay...”**

In the instant case, the defendant averred in paragraph 6 of his affidavit that, paragraph 7 of the claimant’s affidavit stating she has invested a total sum of 35,000,000.00 is incorrect, that the total sum she invested is twenty-five million naira as opposed to the sum of 35 million naira contended by the claimant. The 2<sup>nd</sup> defendant also averred in paragraph 7 of his statement of defense, that he only collected the sum of 10 million naira on behalf of the 1<sup>st</sup> defendant once, at the claimant’s office as against twice stated by the claimant in paragraph 8.3 of her affidavit.

Furthermore, the defendants also averred that, in addition to the sum of ~~N5,348,379.14~~ withdrawn by the Claimant as captured in paragraph 11 of her affidavit the 1<sup>st</sup> Defendant paid the sum of ~~N3,000,000.00~~ only to the claimant which she failed to capture in an affidavit counsel referred page 12 of a bank statement evidencing the said payment marked as **Exhibit A2**.

Now, it's my humble view that, from the above paragraphs of the parties' affidavits and exhibits adduced to support same, it can be explicitly gleaned that, there are disparities as to the sum of money owed by the defendants as well as interests. On the issue of what the court will look at in order to ascertain whether a defendant has a prima facie defense, **BA'ABA JCA**. Held in the case of **H.R LTD V F.INV. LTD (2007) 5 NWLR P. 345 PARAS B-D**, that:

**"...under the undefended list procedure, what is required is simply to look at the facts deposed to in the counter affidavit or indeed the facts averred in the statement of defence, where applicable, and see if they can prima facie afford a defence to the action. In that regard, a complete defence need not be shown. It will suffice if the defence set up shows that there is a triable issue or question or that for some reason there ought to be trial..."**

Again, in **ADDAX PEROLEUM DEVELOPMENT NIGERIA LIMITED V. DUKE (2010)8 NWLR 278 (@ PG 304 PARAS H-D)**, Per Omokri JCA held thus:

**"where a defendant to a suit on the undefended list files a notice of intention to defend in good time together with an affidavit in support of same, the court should as matter of duty subject the affidavit to close scrutiny. If it discloses even the slightest defence on merits, the judge is duty bound to have the suit transferred from undefended list to the ordinary cause list for a full trial to take place. In other words, where from the generality of the disposition of the defendant in the affidavit in support of the notice of intention to defend a suit on the undefended list, there is obviously some reasonable contest, it is better for the trial court to play safe and have the matter transferred to the undefended list to the general cause list.**

In light of the above, it is my considered opinion that, in the present case, there is a triable issue as the Defendants have raised questions and concerns that poses some questions and doubts to ascertain the exact sum and interests accruing to the claimant.

On how triable issues are resolved under the undefended list procedure, I refer to the case of **ADDAX PEROLEUM DEVELOPMENT NIGERIA LIMITED V. DUKE (SUPRA) (PG303, PARA H), PER OMOKRI J.C.A**, Held thus;

**“Undefended list procedure, where triable issues are raised, which need to be resolved, the only way they can be fairly and reasonably resolved, is transferring the case to general cause list and calling oral evidence, which implies trial on the merit”**

In conclusion, it is my humble view that this matter be transferred to the general cause list to enable the parties answer the questions and clear doubts raised in this suite. I so hold. Consequently, I hereby resolve the issue for determination in favor of the 1 & 2 Defendant against the claimant. As such, this suit with Suit No. CV/1641/2020 brought via undefended list procedure is hereby transferred to the general cause list for trial on the merit. Parties are hereby ordered to file and exchange pleadings accordingly.

*Signed*

**HONORABLE JUSTICE S.U.BATURE**  
**24<sup>th</sup>/2/2021**