

**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: CV/2411/2019**

BETWEEN:

EHUWA ORIOYE ----- CLAIMANT
(Doing Business in the Name and Style of:
ORIOYE & SONS NIG. ENTERPRISES)

AND

NATIONAL AGENCY FOR FOOD AND DRUG
ADMINISTRATION AND CONTROL ----- DEFENDANT

RULING
DELIVERED ON THE 23RD JUNE, 2021

By a Writ of Summons dated and filed on the 10th day of July, 2019, the Claimant in this matter agitated the following claims against the sole Defendant:

1. The sum of Two Million Four Hundred and Ninety-Three Thousand Seven Hundred and Fifty Thousand Naira (N2, 493, 750.00) only, as cost of items supplied to the Defendant in respect of the purchase Order she gave him on the 16th day of November, 2017.
2. Cost of N500, 000.000 (Five Hundred Thousand Naira) only for this action.
3. Pre-judgment interest of 10% per annum on the Judgment sum until when Judgment is delivered
4. Post-judgment interest of 10% per annum on the Judgment sum until when it is fully paid

5. A general damage (sic) against the defendant for unlawfully refusal (sic) and or neglect to paid (paid) the Plaintiff the cost of the supplies to (sic) the sum of Five Million Naira (N5, 000. 000. 00)
6. Any other Orders this Honourable Court may deem fit to make in the circumstances.

The Writ was supported by an affidavit to place this suit under the Undefended List. In the said affidavit deposed to by the Claimant which of 19 paragraphed, the Claimant outline his grievances against Defendant and the grounds supporting his view that the Defendant has no defence to his claims. **Paragraphs 5, 6, 7, 8, 9, 10, 11, 12 and 17 of the supporting affidavit** marshalled out the facts thus:

- 5) I know as a fact that the above mentioned items were supplied and received by the Defendant on the 22nd day of November, 2017. The delivery note signed by the two parties is hereby attached and marked as Exhibit MT
- 6) That I know as a fact that a CASH INVOICE was issued to the Defendant which was signed by both parties. A copy of the said Cash invoice is hereby attached and marked as Exhibit MT1
- 7) That I know as a fact that the items were supplied to the Defendant in good conditions and within the stipulated period in the purchase order
- 8) That I know as a fact that after the delivery of the items to the Defendant, she refused and or neglected to pay for them
- 9) As a result of the refusal of the Defendant to pay for the said items I wrote several demand letters to her on the following dates 19th July, 2018, 10th September, 2018, 28th September, 2018 and

30th January, 2019. A copy of the said letters are (sic) hereby attached and marked as Exhibit MU, MU 1, MU2, and MU3.

10) That I know as a fact that on the 11th day of December, 2018, I was asked by the Deputy Director Finance and Account to forward the company's account for upward payment which I did but up till date the payment was not made to us. A copy of the letter forwarding the account is hereby attached and marked as Exhibit MV.

11) That I also wrote a letter to the Defendant through by (sic) Lawyer, McNERRY IDUH ESQ, on the subject matter NOTICE OF INTENTION TO GO TO COURT on the 20th May, 2019. A copy of the letter forwarding the account is hereby attached and marked as Exhibit MW.

12) That the Defendant is holding unto the payment in respect of the items supplied to her, which is Two Million Four Hundred and Ninety-Three Thousand Seven Hundred and Fifty Thousand Naira (N2, 493, 750.00) only and has refused to pay same to my Company.

13) That it is in the interest of justice to order the Defendant to pay the sum of Two Million Four Hundred and Ninety-Three Thousand Seven Hundred and Fifty Thousand Naira (N2, 493, 750.00) only to the Plaintiff as cost of the items the plaintiff supplied to her.

17) That I know that the Defendant will not have any defense to this case.

In reaction and upon being served with the processes of the Claimant in this suit, the Defendant who was already out time, filed a Notice of

Intention to Defend, sought for and was granted the extension of time to file its Notice of Intention to Defend.

The said notice filed on the **22nd day of October, 2019** is accompanied by a 15 paragraphed affidavit disclosing a defence on the merit. The said affidavit was deposed to by one WILFRED SAYI, professing to be an Accountant in the Procurement Unit of the Defendant. The prominent portion of the affidavit is found at **paragraphs 4, 5, 6, 7, 8, 9, 11, 12 and 13** which I hereby reproduce word for word:

4. That I am aware that the Plaintiff was awarded a contract to supply the items listed in the Purchase Order Reference No. FA/CON/2123/123

5. That the total value of the contract is Two Million Four Hundred and Ninety-Three Thousand Seven Hundred and Fifty Thousand Naira (N2, 493, 750.00) Only.

6. That actual amount due for payment after deduction of tax is Two Million Two Hundred and Fifty-Six Thousand Two Hundred and Four Nine Naira and Ninety-Eight Kobo (2, 256, 249.98) Only and not the sum claimed by the Plaintiff in this suit.

7. That the initial delay was due to the failure of the Plaintiff to supply his Tax Identification Number (TIN) after several oral communication (sic) with him.

8. That the Plaintiff only submitted his TIN in December of 2018 along with his account number as admitted at paragraph 10 of his affidavit and as evidenced by the letter of 11th December, 2018 (Referred to as Exhibit MV but marked MW).

9. That the Plaintiff, after submitting his TIN, started insisting that payment must be the full contract sum of Two Million Four

Hundred and Ninety-Three Thousand Seven Hundred and Fifty Thousand Naira (N2, 493, 750.00) with interest. A position his Counsel also communicated in his pre-action notice of May 20, 2019.

11. That upon receiving legal advice from the Legal Service Directorate of the defendant, the plaintiff has been paid the contract sum (less tax deduction) of Two Million Two Hundred and Fifty-Six Thousand Two Hundred and Four Nine Naira and Ninety-Eight Kobo (2, 256, 249.98) Only. That a copy of the Remita Payment Advice with reference number 342520067 evidencing payment of the above sum into the First Bank Account number 2021299791 belonging to Orioye and Sons Nigeria Enterprises is hereby attached as Exhibit A to this Affidavit.

12. That reliefs 3-5 on the Writ of Summons and paragraphs 14, 15 an (sic) 16 of the Plaintiff affidavit are alien to suits under the undefended list and therefore takes this suit outside the undefended list procedure.

13. That I know as a fact that the defendant has a defense to the suit of the plaintiff.

There is a written address in support of the Defendant's Notice of Intention to defend this suit which is in line with the demands of the Rules of this Honourable Court governing the Undefended List Procedure. In the said written address of Defendant's Counsel which I have diligently read, Counsel raised a sole issue for resolution by this Court in disposal of the instant Motion thus:

Whether the defendant's Notice of Intention to Defend and the affidavit disclosing defence on the merit is sufficient to transfer the plaintiff (sic) suit to the general cause list. (sic)

ARGUMENT ON THE DISTILLED ISSUE:

Counsel submitted that the focal point of undefended list procedure 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. Relying on **Addax Petroleum Development Nig. Ltd. v. Duke (2010) 8 NWLR (Pt. 1196) 278 and Dyeris v. Mobil Oil (Nig) PLC (2010) 1 NWLR (Pt. 1175) 309.**

Counsel argued that 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 and that even 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. While not joining issues on the contract award sum, Counsel highlighted that the dispute as regarding the amount due in view of the deduction of the Claimant's tax before payment which resulted in a figure different from that which the Claimant claims he is entitled to.

Quite apart from the above, Counsel also pointed out that the claims for both pre-judgment and post-judgment interests claimed by the Claimant is strange if not alien to undefended list procedure especially on the ground that those interests as claimed by the Claimant in the Writ were never agreed to under the contract and can therefore not unilaterally claimed or granted under the undefended list procedure. Counsel also

challenged the inclusion of the Solicitor's fees which he argues cannot feature under the undefended list.

Assuming, without conceding that the Solicitor's fees can be accommodated under the undefended list procedure, Counsel submitted that there being no evidence in the form of a receipt issued by the Solicitor in support of such claim, it cannot be granted by the Court.

The above in a nutshell reflects the summation of the agitations of the Defendant through its Counsel in urging this Court to transfer this suit out of the undefended into the general cause list for trial on the merit.

RESOLUTION OF THE ISSUE CANVASSED:

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. See **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) 2 S.C (Pt II) 101; (2005) LPELR-584(SC)** presents us with a very clear window 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**. We have been thought by superior authorities 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 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. This seasoned advise I have stuck to in this Ruling by first examining the claims put forward by the parties in combat as espoused by their respective processes.

Applying the principles reviewed above to the instant case, I am inclined to believe that the facts revealed in the Defendant's affidavit in support of its Notice of Intention to Defend are compelling and have been able to meet full length the agitations of the claimant warranting this suit being transferred to the general cause list for the trial of those *still disputed portions* of the Claimant's claims excepting the portion already admitted by the Defendant, **Agwuneme v. Eze (1990) 3 NWLR (Pt. 137) 242.**

For a matter to be transferred from undefended list to the general cause list, the affidavit in support of notice of intention to defend must show or disclose enough facts to satisfy a reasonable tribunal that the defendant has a defense to the action. Such a fact must be one that will require the plaintiff to proffer explanation for certain matters with regard to his claim or which seriously questions the plaintiff's claim. Such a defense must not be a sham, frivolous, vague or fanciful or designed to delay the trial of the action. It must show that there is a dispute between the

contending parties to be tried, **UNITED BANK FOR AFRICA & ANOR V. ALHAJI BABANGIDA JARGABA (2007) LPELR-3399(SC)**.

I find as a fact that there exists a dispute regarding whether total sum due from the Defendant to the Claimant is The sum of **Two Million Four Hundred and Ninety-Three Thousand Seven Hundred and Fifty Thousand Naira (N2, 493, 750.00)** only as claimed by the Claimant or the sum of **Two Million Two Hundred and Fifty-Six Thousand Two Hundred and Four Nine Naira and Ninety-Eight Kobo (2, 256, 249.98)** Only as admitted and already paid by the Defendant. Since out of the total sum **Two Million Four Hundred and Ninety-Three Thousand Seven Hundred and Fifty Thousand Naira (N2, 493, 750.00)** claimed by the Claimant, the Defendant has already admitted its indebtedness to the Claimant to the tune of **Two Million Two Hundred and Fifty-Six Thousand Two Hundred and Four Nine Naira and Ninety-Eight Kobo (2, 256, 249.98)**.

I will enter judgment under in favour of the Claimant under the Undefended List in that sum admitted by the Defendant which is **Two Million Two Hundred and Fifty-Six Thousand Two Hundred and Four Nine Naira and Ninety-Eight Kobo (2, 256, 249.98)**. When admissions are made they are considered relevant. Under our Evidence law, no fact need be proved in any civil proceedings which the parties thereto or their agents agree to admit at the hearing or which, before the hearing they agree to admit by any writing under their hands or which by any rule or pleading in force at the time they are deemed to have admitted by their pleadings.

See: **Daniel v. Iroeri (1985) 1 NWLR (Pt.3) 541.;** **Din v. African Newspapers (1990) 3 NWLR (Pt. 139) 392.** This is because it is the prevailing law that admissions where made freely and voluntarily, they are relevant and can be relied and acted upon by the court, **Narindex Trust Ltd. v. N.I.M.B. Ltd. (2001) 10 NWLR (Pt. 721) 321.**

I find that there are triable issues which **include; (a)** whether the Balance of Two Hundred and Thirty-Seven Thousand, Five Hundred and One Naira is indeed available to the Claimant as he claims and **(b)** whether the reliefs of general damages, Solicitor's fees and pre-Judgment and post-judgments interest are available to the Claimant in the circumstances as claimed by him as per reliefs 2, 3, 4 and 5 of his Writ of Summons. In **UNITED BANK FOR AFRICA & ANOR V. ALHAJI BABANGIDA JARGABA (supra)**, the Supreme Court, through the erudite Tobi, J.S.C. (of blessed memory) teaches that:

Although the general approach of the courts is that some liberality should be brought to bear by trial courts while considering whether to grant leave to a defendant to defend an action filed against him, there has to be revealed, on the other hand, by the defendant in his affidavit in support of his notice of intention to defend, facts which will disclose the existence of triable issues. All that is required is that there should be some doubt in the mind of the trial court.

There exist some doubts in the mind of this Court triggered by the Defendant's Notice of Intention to Defend as to the suitability of those triable issues I have just identified being disposed of conveniently under

the undefended list procedure, **China Geo Engineering Co. v. Nambativ (2001) 2 NWLR (Pt. 698) 529.**

For all I have been saying, I will and hereby make an order transferring the triable issues I have already identified to the general cause list for hearing on the merit. This Defendant's Notice of Intention to Defend therefore succeeds.

This shall be my Ruling which I reserved earlier on the 9th day of December, 2020.

APPEARANCE

M. O. Iduh Esq. for the plaintiff.

O. M. Abutu Esq. for the defendant.

Sign
Hon. Judge
23/06/2021