

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

HOLDEN AT ABUJA

ON 22ND DAY OF JUNE, 2021

BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS

SUIT NO: FCT/HC/CV/135/21

MOTION NO: M/12410/2020

BETWEEN:

ACCESS BANK PLCCLAIMANT

AND

**1. NNENNA DORIS UBANI
2. NNESSCA GLOBAL SERVICE
LIMITED } DEFENDANTS**

RULING

The Claimant commenced his action under the undefended list by a writ dated and filed on the 20th January, 2021, wherein Claimant's claim jointly and severally from the Defendants.

(1) The sum of N131, 433, 683.79. Only being the outstanding indebtedness of the loan owing the claimant by the defendant at may 2nd 2017.

(2) Interest on Judgment sum calculated at the rate of 23% from May 1st 2017 until the date of judgment and thereafter at the

rate of 10% from the date of Judgment until final liquidation of the Judgment sum.

(3) 5% of the Judgment sum being payment for the recovering of defendants indebtedness to claimant together with N50,000.00 to cover logistics and incidental expenses in the course of executing the recovering instruction in line with the agreement between the parties.

Attached to this application are a 46 paragraphs affidavit deposed to by one Ndidi Ejimadu Secretary at law firm of counsel to the claimant 9 Exhibits marked A1- 9.

Defendants filed a memo of conditional appearance and a notice of intention to defend on the 26th of February, 2021. Along with a 44 paragraphs affidavit disclosing their defence.

Having reproduced in summary the position of both the Plaintiff (Claimant) and the defendant (Respondent). It is imperative to take into consideration the fundamental of the Procedure. In matters brought under the undefended list procedure the court has a duty to considered the notice of intention to defend as well as the affidavit filed in support of the Writ of Summons Even where there is no notice of intention to defend, the court still has to inquire or examine whether the Plaintiff has made out his claim in the affidavit

accompanying the writ, see **OBI VS. NKWO MARKET COMMUNITY BANK LTD (2001) 2 NWLR (PT 696)**. Also cited in **(2012) 13 NWLR P1 P113**. Thus, in consideration of an action brought under the undefended list by the Plaintiff, the trial court is faced with a decision whether to hear the case or transfer it to the general cause list.

It must have to begin with a careful scrutiny of the Plaintiff's claim and be satisfied that the action is not contentious and one that should be placed on the undefended list. The court owes it a duty to scrutinize the claim and the verifying affidavit with the attached documents, if any, to ensure that the claim is indeed suitable to be heard under undefended list procedure; otherwise, it should be transferred to the general course list. See **INTERCONTENTAL BANK VS. BRIFEINA** Suit No Sc 67/2004. **ALSO CITED (2012) 13 NWLR PT 1**. An action for recovery of debt involving account is stricky and same guidelines are instructive.

A discrepancy between the amount claimed and the figure that can be ascertained from the supporting evidence, that is the verifying affidavit, raised a contentious issues that can be resolved only by being tried. Thus, where the actual indebtedness of the defendant cannot be ascertained from the evidence available without a resort to other extrinsic accounting source, that would operate as defence

which is good enough to justify the transfer of the action to the general cause list to enable it to be tried on the merit regardless of the fact that the Defendant does not give notice of intention to defend.

See **INTERCONTENTAL BANK LTD VS. BRIFEINA LTD (SUPRA). AS ENUNCIATED IN NMCB (NIG) LTD VS. OBI (2010) 14 NWLR (PT 1213) P. 169 @ 188** the undefended list procedure is not intended to shut out a defendant from contesting the suit brought there under. Where a defendant can show in his affidavit that he has a defence on the merit or there is a serious conflict in the affidavit of the parties or raises issues that are triable, he will be granted leave to defend the suit. The defendant at this stage need not show complete defence. It suffice if the defence set up shows that there is a triable issues or that for some other reason there ought to be a trial. See **SADA VS. ACCESS BANK (2012) LPELR 43182 CA.**

IN ATALUBA & CO. VS. GUPA (NIG) LTD (2005) 8 NWLR PT 927 P. 429 @ 448. The Supreme Court held that one of the main problems that often arises in the undefended list procedure is the consideration of whether the defendants affidavit in support of notice of intention to defend discloses a defence on merit. The affidavit must not contain merely a general statement that the defendant has a good defence to the action such general statement

must be supported by particulars which if proved would constitute a defence. It is sufficient if the affidavit discloses:

- (a) A triable issue or that a difficult part of law is involved.*
- (b) That there is dispute as to the fact which ought to be tried.*
- (c) That there is a real dispute as to the amount due which requires the taking account to determine or*
- (d) Any other circumstances showing reasonable grounds of a bona-fide defence. See **SCIRROCO INT. LTD VS. UNITY BANK (PLC) 2016 LPELR 40265 (CA).***

In the instant case, there seems to be real dispute as to the amount due and dispute as to the facts which ought to be tried. See paragraphs 19, 21, 27, 29,33 of claimants affidavit in support and paragraphs 5, 8, 16, 17, 18, 23, 27 of defendants affidavit disclosing defence.

The claimants is claiming that the defendant owe them an amount which the defendant claim is way higher than what they owe the claimant see paragraph 5 of the defendants affidavit. There is also disparity about. Claimants Exhibit 5 A5 & A6 and defendants paragraph 19 of affidavit disclosing defence.

An affidavit disclosing a defence on the merit does not mean defendant must show that his defence must succeed at any event or

that he must show a rock proof or iron case defence. All it means is that he must show prima facie that he has a defence to the Plaintiff action.

I have carefully perused the affidavit filed by the parties. There are many irreconcilable facts and the only way forward is to call oral evidence. The defendant has established that there are triable issues. These issues are support grounds for the matter to be transferred to the general cause list.

See **UNN VS. ORAZUIKA TRADING CO. LTD (1989) 5 NWLR (PT 119 @ 19. OMOKEY VS. ANTIGHA (2014) LPELR 24004 CA. AGWUNEME VS. EZE (1990) 3 NWLR (PT 137) P. 542.** From the above reasons I am satisfied that in the interest of justice and fairly.

It would be just for the matter to be transfer to the general course list based on the reason stated above. I therefore, order that this case be transfer to the general course list.

Signed
Hon. Judge
22/6/2021