

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

**BEFORE HIS LORDSHIP: HON. JUSTICE M.S IDRIS  
COURT NUMBER: HIGH COURT NO. 28  
DATE: 6<sup>th</sup> JUNE, 2021**

**FCT/HC/CV/131/2021**

**BETWEEN:-**

**GUARANTY TRUST BANK PLC-----**

**PLAINTIFF**

**AND**

**OLUMORIN FUNSHO EMMANUEL-----**

**DEFENDANT**

**RULING**

The suit was instituted by the Plaintiff vide a writ of summon brought under the undefended list and pursuant to order 35 of the High Court of the FCT( Civil Procedure Rules 2018). It was dated and filed on the 20<sup>th</sup> January, 2021 and prays the Court for the following orders :-

1. An order for immediate repayment by the Defendant of the sum of ₦5,388,854. 34 (Five Million, Three Hundred and Eight -Eight Thousand, Eight Hundred and Fifty- Four Naira, Thirty-Four Kobo)only, being the outstanding indebtedness of the Defendant to the Plaintiff as at 15<sup>th</sup> day of September, 2020, in respect of the loan facility granted to the Defendant by the Plaintiff.
2. Pre-judgment interest on the said amount sum of ₦5,388,854. 34 (Five Million, Three Hundred and Eight -Eight Thousand, Eight Hundred and Fifty- Four Naira, Thirty-Four Kobo)only, at 19% per annum from the date of filing this suit, till the delivery of judgment.

3. 10% post judgment penalty from the date of judgment till liquidation of the judgment sum.
4. Cost of this suit.

In support of this suit the Plaintiff filed a 6 paragraph affidavit deposed to by one Habila Danladi, a litigation secretary in the law firm acting as Counsel to the Plaintiff and on the 10<sup>th</sup> January, 2021. The affidavit contains among others, the following facts:-

1. That the Defendant is a customer of the Plaintiff and vide a loan request from and applied for a credit facility of ₦1,3000,000.00.
2. That the Plaintiff vide an offer letter of banking facility dated the 3<sup>rd</sup> day of June, 2014 granted the credit facility to the Defendant, which the Defendant accepted.
3. That the credit facility was secured by an understanding from the defendant's employer to domicile the customer's salary and terminal benefits to settle any unpaid obligation on the credit facility.
4. That subsequent the defendant started defaulting in his repayment obligation as the employer stopped paying salaries to the defendants employment had been terminated and the Defendant was notified of the termination.
5. That as at the 1<sup>st</sup> day of September, 2020, the defendant indebtedness to the Plaintiff stood at ₦5,388,854.34k due to interest accrued.
6. That the Defendant has refused to make payment to the Plaintiff despite all efforts made.
7. That this writ of summons is brought under the undefended list.

The undefended list procedure is provide under order 35 of the High Court Civil Procedural Rules of the FCT 2018 and also order 35(4) of the same rules.

I have gone through the affidavit in support of the writ and the prayers contained therein. Although the Defendant was duly served by way of substituted means. I am strongly of the view that application brought was not only the principal sum but the interest accrued overtime inclusive . from the entire process filed and the affidavit attached to the application it becomes imperative on the part of the Court to take into consideration the essential features of the procedure. An action for recovery of debt involving accounts is tricky and same guidelines are instructive. A discrepancy between the amount claimed and the figures that can be ascertained from the supporting evidence, that is the verifying affidavit, raises 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 a defence which is good enough to justify the transfer of the action to be general cause list to enable it to be tried on the merit regardless of the fact that the Defendant did not give notice of intention to defend see ***INTERNATIONAL BANK LTD VS BRIFINA LTD* suit No SC. 67/2004. Also cited in (2012) 13 NWLR P. 1.** Essentially the basic requirement of this procedure have not been complied with by the Plaintiff in this case at this juncture is not the issue of obtaining judgment by way of undefended list or the matter being transferred to the general cause list. But the issue is whether the object of this application have been complied with. This Court is bound by my decision pranced by the superior Court whether rightly or wrongly. I have checked the entire

record filed by the Plaintiff am strongly of the view that the Plaintiff have failed to comply with the basic requirement of this application in ***JTCADS (NIG) LTD & ANOR VS STANBIC IBTC BANK (2017) LPELR 42786 (CA)***,

There cannot be a right or course of action in a bank/customer relationship regarding recovery of debt until a demand for recovery has been made. If no demand is made a course of action does not arise. ***See ISHOLA VS S.G BANK (1997) 2 SCNJ, KOLO VS FIRST BANK OF NIG. PLC (2003) FW.L.R (pt 179) 1303 AT 1316. ANGU VS MALAMI (1992) 9 NWLR (pt614) 244 at 255 and JOHNSON VS SOBAK (1968) 2 ALL NLR 282.*** From the decision of the above judicial authorities. This Court is left with no option than to strictly complied with the above decision .

Accordingly the application is hereby refused in its entirety the Plaintiff shall go back and do the needful. For the purpose of clarity i would like to add in this ruling in paragraph 4 sub N. That all effort to recover the 16<sup>th</sup> June, 2021.

Plaintiff money such as several falls to the defendant and correspondence served on the defendant had proven abortive i have not see any correspondence in that respect. Even if there is the basic requirement of such an action to be filed 1<sup>st</sup> in the issuance of demand notice there is.

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**HON. JUSTICE M.S IDRIS**  
**(PRESIDING JUDGE)**  
**16/6/2021**

Charles Aniebonam:- For the Claimant  
Court:- Ruling reads in open Court.  
Charles:- We are grateful for the ruling.

**Sign**  
**Judge**  
**16/6/2021**