

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT GUDU – ABUJA**  
**DELIVERED ON WEDNESDAY THE 20<sup>TH</sup> DAY OF MAY, 2020**  
**BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE .R. OSHO-ADEBIYI**

SUIT NO. CV/3108/2019

BETWEEN:

BIZFIELD NIGERIA LTD -----CLAIMANT

AND

FORTIS MICRO FINANCE BANK PLC -----DEFENDANT

**JUDGMENT**

The Plaintiff filed this application against the Defendant under the undefended list, claiming the following:-

1. An order of this Honourable Court directing the Defendant to pay over to the Claimant forthwith, the sum of ₦120,791,711.71 (One Hundred and Twenty Million, Seven Hundred and Ninety One Thousand, Seven Hundred and Eleven Naira, Seventy One Kobo) being outstanding payment due to the Claimant.
2. An order of this Honourable Court awarding interest at the rate of 10%per annum on the judgment sum until judgment is executed.

In support of the application, Claimant filed an affidavit of 44 paragraphs deposed to by Biodun Animashaun, the Managing Director of the Claimant. Also attached are 20 exhibits and a pre-action counselling certificate.

The exhibits attached to the Claimant's application are as follows: -

1. A copy of notice of transfer for the sum of ₦25,000,000.00 dated the 14<sup>th</sup> day of June, 2017 marked as Exhibit A.
2. A copy of fixed deposit certificate with certificate number 0011608 dated 17<sup>th</sup> June, 2017 marked as Exhibit B.
3. Copy of notice of Transfer for the sum of ₦25,000,000.00 dated the 20<sup>th</sup> day of June, 2017 marked as Exhibit C.
4. A copy of fixed deposit certificate with certificate number 0011612 dated 20<sup>th</sup> June 2017 marked as Exhibit D.
5. Copy of notice of transfer of ₦60,000,000.00 dated 20<sup>th</sup> June 2017 marked as Exhibit E.
6. Copy of fixed deposit certificate with certificate number 0011613 dated 20<sup>th</sup> June marked as Exhibit F.
7. Copy of fixed deposit certificate with certificate number 0011642 dated 20<sup>th</sup> July 2017 marked as Exhibit G.
8. Copy of fixed deposit certificate with certificate number 0011641 dated 20<sup>th</sup> July 2017 marked as Exhibit H.
9. Copy of fixed deposit certificate with certificate number 0012111 dated 22<sup>nd</sup> August 2017 marked as Exhibit I.
10. Copy of fixed deposit certificate with certificate number 0012134 dated 21<sup>st</sup> September 2017 marked as Exhibit J.

11. Copy of fixed deposit certificate with certificate number 0008605 dated 23<sup>rd</sup> October 2017 marked as Exhibit K.
12. Copy of fixed deposit certificate with certificate number 0008644 dated 28<sup>th</sup> December 2017 marked as Exhibit L.
13. Copy of fixed deposit certificate with certificate number 0009353 dated 29<sup>th</sup> January 2018 marked as Exhibit M.
14. Copy of fixed deposit certificate with certificate number 0009363 dated 28<sup>th</sup> February 2018 marked as Exhibit N.
15. Copy of fixed deposit certificate with certificate number 0009387 dated 29<sup>th</sup> April 2018 marked as Exhibit O.
16. Copy of rollover instruction on investment dated 28<sup>th</sup> March 2018 marked as Exhibit P1.
17. Copy of rollover instruction on investment dated 5<sup>th</sup> April 2018 marked as Exhibit P2.
18. Copy of Official Gazette of the Federal Republic of Nigeria revoking the licence of the Defendant, marked as Exhibit Q.
19. Copy of CAC notice of change of Directors of Defendant marked as Exhibit R1.
20. Copy of CAC return of allotment form marked as Exhibit R2.

Learned Counsel to the Defendant did not file a memorandum of appearance, nor file a notice of intention to defend this suit despite the service of processes and hearing notices on the Defendant since the 30<sup>th</sup> day of November, 2019. The Defendant was served by substituted means with the leave of Court, to wit by pasting at the Court premises and the last known address of the Defendant at Medife House, Plot 2135, Herbert MacauleyWay, Wuse Zone 5 Abuja and

also by pasting at the last known addresses of its Directors, Achibiri Felix of Plot 106, Ebitu Ukiwe, Street, Jabi, Abuja, Kunle Oketikun of House 27, BUA Court Estate, Darressalam Street, Behind 805 Restaurant, Wuse 2, Abuja and Suleiman Danjuma of 1815 Mahamatir Mohammed Street, Asokoro, Abuja, yet, the Defendant filed no process in this suit nor were they represented by counsel of their choice.

Learned Counsel to the Claimant subsequently moved his suit under the undefended list and urged the Court to enter judgment for the Claimant accordingly.

I have carefully considered the processes filed in this suit, the submission of Claimant's counsel and the affidavit evidence in support of the claim, inclusive of the attached Exhibits. The issue to be determined is

“Whether the Claimant has established a case deserving for judgment under the Undefended List”.

By the provision of **Order 35 Rule 3 (1) of the 2018 FCT High Court (Civil Procedure) Rules**, a Defendant served with a Writ of Summons under the “Undefended List” has five (5) clear days to file his Notice of Intention to Defend along with an affidavit disclosing a defence. In this instant, the records of court shows that the Defendant was duly served with the Originating Processes and has failed to take steps in line with **Order 35 Rule 3 (1) of the Rules**. The implication is that the Defendant is either indifferent to the action or has no defence to the suit. See the **case of Ekiti Local Government Area Vs Aje Printing (Nig) Ltd (2009) 4 NWLR (PT.1131) 304 @ 313**. Consequently, the

court can enter judgment subject to the satisfaction to court in proof of the Plaintiff's case from the affidavit. See **Udoaka Vs Asuquo (2008) NWLR (PT.1091) 15 @ 18 and Section 131 (1) of Evidence Act 2011 as Amended**. By the Provision of Order 35 Rule 4, where a Defendant fails to file a Notice of Defence in line with Order 35 Rule 3 (1) as prescribed, the court shall consider the suit and proceed to enter judgment.

I have carefully considered the claim of the Claimant vis-a-vis the affidavit evidence, and Exhibits "A", to "R2". Exhibits "A , C and E" are letters of transfer of funds from the Claimant to the Defendant for fixed deposit. Exhibits "B, D, F, G, H, I, J, K, L, M, N and O", are "Fixed Deposit Certificates" issued by the Defendant to the Claimant. Exhibits "P1 and P2" are letters for Roll over instruction for investment maturing 30/3/2018. Exhibit "Q" is a Federal Republic of Nigeria Official Gazette on revocation of the Operating License of the Defendant. Exhibit "R1" is Form CAC 7A "Notice of Change of Directors" and Exhibit "R2" is Form CAC 2A "Return of allotment".

The Claimant has by paragraphs of the supporting affidavit stated the facts that the Claimant commenced banking business with the Defendant through its branch at Lobito Crescent Wuse II, Abuja on the 14<sup>th</sup> of June, 2017. That the Claimant made several fixed deposit with the Defendant from the period of June 2017 to May 2018, which said fixed deposit inclusive of the interest accrued on all transactions as evidenced in the Exhibits A to O, accumulates to the sum of ₦133,156,628.38 (One hundred and thirty three million Naira, One Hundred and fifty six thousand, six hundred and twenty eight naira, thirty eight kobo). That it arrived at this sum by adding fixed deposit for the month

of April 2018 and the interest on the said sum at maturity on the 29<sup>th</sup> May, 2018. That it made several attempts to liquidate the fixed deposit but the Defendants kept on dishonouring his request until the 5<sup>th</sup> of May, 2018 when it received a text message from the Defendant notifying it that a management committee has been set up by Central Bank of Nigeria (CBN) and Nigeria Deposit Insurance Company (NDIC) with a mandate to review and put process in place for settlement of outstanding claim by customers of the bank. That the Claimant held a meeting with the said committee and thereafter it received the sum of ₦12,364,916.67 (Twelve Million, Three Hundred and Sixty Four Thousand Naira, Seventy One Kobo) on the 11<sup>th</sup> of December, 2018. That it has the outstanding sum of ₦120,791,711.71 (One Hundred and Twenty Million, Seven Hundred and Ninety One Thousand, Seven Hundred and Eleven Naira, Seventy One Kobo) to claim from the Defendant. That it was after it received the sum that it became public knowledge that the Central Bank of Nigeria had revoked the license of the Defendant. That the Claimant's investment with the Defendant exceeds two years and that unless this Honourable Court enters Judgment in Favour of the Claimant, it may never recover its investment from the Defendant. In all of these, the Defendant who was duly served with the processes, failed to file any processes in line with the Rules. It is trite that where facts contained in an affidavit remains unchallenged or uncontroverted; the court should act on it. See **NB PLC v. AKPERASHI & ANOR (2019) LPELR-47267(CA)**.

Exhibit Q, which is a Federal Republic of Nigeria Gazette duly signed by the Governor of the Central Bank revoked the operating license of the Defendant, hence, Defendant can no longer carry out nor practice the business of micro

finance bank in Nigeria but Exhibit R1 which was obtained from Corporate Affairs Commission (CAC) shows that Defendant is still a corporate legal entity and still in corporate existence. In a nutshell, Exhibit Q has not in anyway affected the corporate legal existence of the Defendant. As a separate legal entity, Defendant in the eyes of the law is termed a “human being” who can sue and be sued. It should be noted that the Claimant from Corporate Affairs Commission (CAC), obtained Exhibit R1 on 4/3/2019, hence, Defendant is still registered and recognized by CAC as a legal entity. It is trite that upon incorporation, a company becomes an artificial person with perpetual succession and until its liquidation and dissolution; the company exists as a legal entity. In NDIC Vs. QUALITEM PHARMACY LTD (2018) LPELR-46726 (CA) (pp.29-30; para F) Yakubu JCA held

*“I duly considered the appellants contention that even though the original defendant bank had gone under, it is not dead in the eyes of the law. That is a correct statement of law. That is, the mere revocation of a bank’s license, without more, does not render the bank as dead. The revocation of the license notwithstanding, such a bank remains alive and its legal personality remains intact and extant, hence it can sue and be sued in its corporate name in appropriate legal proceedings.*

Also, Mohammed JSC in RE: AMOLEGEB (2014) 8 NWLR (Pt.1408) 76 @94 held:

*“.....mere revocation of banking license of a bank without more, cannot bring to an end, the juristic life of a bank or corporation. Likewise, where a bank or corporation ceases to operate or closes its business, that does not determine the legal existence of such a bank or corporation”.*

From the evidence before me, Defendant is still a thriving and vibrant corporate entity as opposed to winding up, which involves the liquidation of the Company/Banks assets. Being a legal entity, I am of the opinion and I so hold that it can sue and be sued.

Having perused the processes, the court finds that the Defendant apparently has no defence to this suit and its settled that in such circumstances and in line with the Provisions of Rules of Court, the court should proceed to enter judgment. In this instant case, the Defendant having failed to enter defence in line with Order 35 Rule 3 (1) of the Rules. I shall enter judgment for the Claimant in this instant suit.

The Claimant is also claiming interest on the principal sum of ₦120,791,711.71 (One Hundred and Twenty Million, Seven Hundred and Ninety One Thousand, Seven Hundred and Eleven Naira, Seventy One Kobo) at the rate of 10% per annum till liquidation of the debt. Interest claimed is a consequential order, which Plaintiff is seeking from this Court per adventure this Court finds merit in his case and awards him the principal sum. The guiding principle as regards the award on interest was aptly elucidated in the case of **LONESTAR DRILLING NIG LTD VS. NEW GENESIS EXEC.**



**SECURITY LTD (2011) LPELP 4437 (CA) P.12 para C-E )**Per EKO JSC had this to say on the guiding principle as regards the award of interest:

*“The claim for 10% per annum on the judgment sum until finally liquidated was slotted in as a consequential order the trial court may make in the event of its awarding the sums claimed. The trial judge is permitted to make this consequential order (under High Court Civil procedure Rules). He is entitled to order as he deems fit, that ‘interest at a rate not less 10% per annum be paid upon any judgment sum until the said sum was finally liquidated.”*

From the above, it is logical to conclude that Claimant is indeed entitled to 10% interest on the principal sum by operation of law and I therefore Hold same. Judgment is entered against the Defendant as follows:-

**IT IS HEREBY ORDERED THAT:**

1. The Defendant is hereby ordered to pay to the Claimant FORTHWITH the liquidated sum of ₦120,791,711.71 (One Hundred and Twenty Million, Seven Hundred and Ninety One Thousand, Seven Hundred and Eleven Naira, Seventy One Kobo) being outstanding payment due to the Claimant on its investment with the Defendant.
2. The Defendant is hereby Ordered to pay the Claimant 10% interest on the Judgment sum of ₦120,791,711.71 (One Hundred and Twenty Million, Seven Hundred and Ninety One Thousand, Seven Hundred and

Eleven Naira, Seventy One Kobo) from the day of Judgment until the judgment sum is liquidated.

**PARTIES:** Claimant representative (Biodun Animashaun) present.

**APPEARANCES:** Samuel Ogalla, Esq., for the Claimant. Respondent not represented.

**HON. JUSTICE M. OSHO-ADEBIYI**

**JUDGE**

**20<sup>TH</sup> MAY, 2020**