

THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 20 WUSE ZONES 2, ABUJA
BEFORE HIS LORDSHIP: HON JUSTICE A. S. ADEPOJU
THIS 19TH DAY OF FEBRUARY, 2021.

SUIT NO: FCT/HC/CV/1821/20

BETWEEN:

ISHAKU I. GARBA ESQ ----- CLAIMANT
(CARRYING ON PRACTICE AS "GARBA & OKEKE & CO")

AND

HON. BASHIR UBA MASHEMA ----- DEFENDANT

FESTUS C. C. OKOLI for the Claimant.

Defendant not in Court and not represented by counsel.

JUDGEMENT

The Plaintiff's claim was instituted under the undefended list for:

- i. The sum of ~~N~~**9,500,000 (Nine Million Five Hundred Thousand Naira)** being his legal fees due and unpaid.
- ii. The sum of ~~N~~**3,000,000 (Three Million Naira)** being professional fees paid to Claimant's legal practitioner for the recovery of the money.
- iii. Interest rate of 10% from the date of judgement until the debt is fully paid.

In compliance with the rules, the claimant deposed to a 25 paragraph affidavit with Exhibits numbered 1-7 attached. Also the Claimant in the writ of summons and the affidavit in support stated that the defendant at all material times is the member representing Jama'are/Itas Gadau Federal Constituency of Bauchi State House of Representatives in the

National Assembly having won election under the auspices of the All Progressive Congress (APC). That one Mr. Jungudo Haruna Mohammed, challenged the selection of the defendant as the candidate of the party All Progressive Congress (APC) by filing a suit at the Federal High Court, Abuja Division, and later transferred to Bauchi Division, in suit No. FHC/ABJ/CS/1325/2018. And by a letter dated 10/12/2018, the defendant instructed the All Progressive Congress (APC) to brief him to represent All Progressive Congress (APC) in the suit. Reliance is placed Exhibit 1 by the claimant. Exhibit is a letter of undertaking by the defendant to the All Progressive Congress (APC) wherein he undertook to bear the cost of the legal representation of the suit to its logical conclusion. Exhibit 2 is a letter from the office of the National Legal Adviser to the All Progressive Congress (APC) addressed to **Garba & Okeke & Co** attention Ishaku I Garba (Claimant) confirming that the defendant shall be responsible for payment of professional fees. Exhibit 3 is the Judgement of the Federal High Court, Bauchi Division. Exhibit 4A is a letter of instruction from the office of the National Legal Adviser to the Claimant, instructing that the Law Firm of **Garba & Okeke & Co** represent the All Progressive Congress (APC) at the Court of Appeal, Jos Plateau State. Exhibit 4B is the Judgement of the Court of Appeal. Exhibit 5 is a letter from the firm of **Garba & Okeke & Co** addressed to the defendant for the professional fees and signed by the Claimant. Exhibit 6A is also a letter of demand titled; ***“RE DEMAND FOR DULY EARNED PROFESSIONAL FEES OF MR. ISHIAKU I. GARBA ESQ. In the sum of ₦10,500,000 for representing All Progressive Congress (APC) upon your express instruction which you***

undertook to pay in Suit No. FHC/ABJ/CS/1325/2018 & CA/J/1244/2018 from the firm of Garba & Okeke & Co.” addresses to the defendant in this case and signed by one **Nnaemeka J. J. Okeke Esq.** Exhibit 6B is a bulk of charges addressed to the defendant **Hon. Bashir Uba Mashema** signed by the Claimant. Exhibit 6C is also a bulk of charges signed by the Claimant. Exhibit 6D are waybills evidencing shipment/delivery of letters to the Defendant. Exhibit 6E is certificate of compliance pursuant to Section 84 of the Evidence Act in respect of the courier package of demand notices and bills of charge sent to him, **Bashir Uba Mashema** at House of Representative, National Assembly Three Arms Zone, Abuja FCT. While Exhibit 7, is a further bulk of charges sent to the defendant from the firm of Garba & Okeke & Co.

The Claimant's claim is for his professional fees as stated on the face of the writ of Summons. It is liquidated demand. The essence of the provision of Order 35, Rule 1 of the FCT High Court Civil Procedure Rules is to ensure speedy dispatch of action brought vide the undefended list in the circumstance where it is glaring that the defendant does not have any defence to the plaintiff's claim. See the case of **EDER V SHELL TRUSTEES (NIG) LTD (2002) LPELR 7162 CA, G. CAPPAL V NNAEGBUNA & SONS LTD & ANOR (2009) LPELR 8349 CA** where **Okoro JCA** as he then was stated;

“The undefended list procedure as provided in Order 22 aforementioned is to enable a plaintiff to obtain summary judgement without going into a lengthy trial if he can prove his claim clearly and also if the defendant is not able to setup a bona-fide defence or raise an issue against the

claim which ought to lead to the cause being tried on its merit. See FEDERAL MILITARY GOVERNMENT V SANI (1990) 4 NWLR (PT. 147) 688, SODIPO V LEMINIKAREM O. Y. & ANOR (1989) 1 NWLR (PT. 15) 220, UTC V PARMOTEL (1989) 2 NWLR (PT.103) 244.”

The defendant in the instant case was served with the writ of summons vide an order for substituted service dated 6/10/2020. The process server affirmed that on the 11th day of November, 2020 at about 12:30pm he served upon the defendant writ of summons and court Order through the office of the Clerk, House of Representatives, National Assembly. The proof of service is as shown on the process. The defendant is expected to file a notice of intention to defend the claim of the Claimant together with an affidavit disclosing defence on the merit five (5) days to the fixed for hearing, which is the 17th of February 2021. The Defendant have failed and or neglected to file the affidavit and the notice of intention to defend in accordance with the Rule 3 of Order 35. The defendant have not advanced any defence whether on merit or otherwise. He chose to ignore the process and the claim therein.

The claim of the claimant remains undefended, unchallenged and uncontroverted by the defendant. Order 35, Rule 4 is very straight forward and directory in a situation where a defendant fails or neglects to deliver the notice of defence and an affidavit prescribed in Rule 3(1), where it states; ***‘that the suit shall be heard as an undefended suit and judgement given accordingly.’***

I have therefore gone through the affidavit in support of the undefended writ and the attached exhibits and hold that the claimant is entitled to his professional fees as claimed, and as could be gleaned from Exhibit 1 and 2 that the defendant undertook to offset the professional fees personally. The prayer of the claimant's counsel that judgement be given for the Claimant as per the writ of summons succeeds and accordingly, judgement is entered for the claimant in the terms contained in the writ of summons.

SIGNED

**HON JUDGE
19/2/2021**