

**IN THE HIGH COURT OF JUSTICE OF THE F.C.T.**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT APO, ABUJA**  
**ON WEDNESDAY, THE 30<sup>TH</sup> DAY OF JUNE 2021**  
**BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINI MUSA**  
**JUDGE**

**SUIT NO.: FCT/HC/CV/003/2021**

**BETWEEN:**  
**IFEANYI OKWUOSA**

**CLAIMANT**

**AND**

- 1. NACENN NIGERIA LIMITED**
- 2. AFAM EZULIKE**
- 3. GOZIE EZULIKE**
- 4. NNADI EZULIKE**

**DEFENDANTS**

**JUDGMENT**

By a Writ of Summons dated and filed on the 4<sup>th</sup> of January 2021 and brought under the Undefended List, the Claimant claimed against the Defendants as follows:

- 1) *AN ORDER directing the Defendants to comply with the agreement executed on 25<sup>th</sup> of September 2017 to pay to the Claimant 5% of the total sum of **Two Billion Naira (₦2,000,000,000.00)** approved by the Federal Government of Nigeria through the Minister of Finance, Federal Ministry of Finance.*

2) *AN ORDER directing the Defendants to immediately pay to the Claimant the sum of (₦21,333,333.35) **Twenty-One Million, Three Hundred and Thirty-Three Thousand, Three Hundred and Thirty-Three Naira, thirty-five kobo, being the unpaid balance for the sum of (₦100,000,000.00) **One Hundred Million Naira representing the agreed 5% of Two Billion Naira (₦2,000,000,000.00).*****

The Writ was supported by a 44-paragraph affidavit deposed to by the Claimant, Ifeanyi Okwuosa. Attached to the affidavit were 11 documents labeled **Exhibits A – K**.

According to the case of the Claimant as disclosed in the facts deposed to in the affidavit in support of this action, the late Chief Executive Officer of the 1<sup>st</sup> Defendant, the deceased Engr. Ndubueze Gregory Ezulike, retained him as a contract manager of the 1<sup>st</sup> Defendant for the purpose of recovering the sum of ₦2,000,000,000.00 (Two Billion Naira) only being the judgment debt owed the 1<sup>st</sup> Defendant by the Federal Government. This instruction was embodied in a letter of authorization, which also served as an agreement embodying the terms of the contract between the Claimant and the 1<sup>st</sup> Defendant. Under the terms of the agreement, the Claimant would be entitled to 5% of the total sum he would recover. See paragraph 13 of the affidavit in support of the Writ of Summons.

Pursuant to the terms of the contract, the Claimant retained the services of Professor Yemi Akinseye-George SAN as a facilitator to secure the payment of the said judgment debt. Through the efforts of Professor Akinseye-George SAN, the Federal Government through the Federal Ministry of Justice paid

the 1<sup>st</sup> Defendant the sum of ~~₦~~250,000,000.00 (Two Hundred and Fifty Million Naira) only. Accordingly, the 1<sup>st</sup> Defendant paid the sum of ~~₦~~12,500,000.00 (Twelve Million Five Hundred Thousand) only being 5% of the sum of ~~₦~~250,000,000.00 recovered to the Claimant. See paragraphs 14, 15 and 16 of the affidavit.

Anxious to recover the balance of the judgment debt from the Federal Government, the 1<sup>st</sup> Defendant prevailed on the Claimant to retain the services of another facilitator to assist in the process of recovering the outstanding sum. Acting on a letter of authority from the Chief Executive Officer of the 1<sup>st</sup> Defendant mandating the Claimant to negotiate and execute the terms of agreement on behalf of the 1<sup>st</sup> Defendant, the Claimant retained the services of the law firm of Henry Iheanacho & Co. (Utako Chambers) to facilitate the payment of the outstanding balance of the sum of ~~₦~~1,750,000,000.00 (One Billion Seven Hundred and Fifty Million Naira) only. See paragraphs 18, 19 and 20 of the affidavit.

Following the intervention of Henry Iheanacho & Co. (Utako Chambers) and its negotiation with the Federal Government through the Federal Ministry of Finance, the law firm successfully secured the payment of the outstanding balance of ~~₦~~1,750,000,000.00 (One Billion, Seven Hundred and Fifty Million Naira). This sum was paid in installments in the following order: (i) ~~₦~~500,000,000.00 (Five Hundred Million Naira) only in November, 2019, (ii) ~~₦~~416,666,666.67 (Four Hundred and Sixteen Million, Six Hundred and Sixty-Six Thousand, Six Hundred and Sixty-Six Naira, Sixty-Seven Kobo) only in May, 2020, (iii) ~~₦~~416,666,666.67K (Four Hundred and Sixteen Million, Six Hundred and Sixty-Six Thousand, Six Hundred and Sixty-Six Naira, Sixty-Seven Kobo) only on the 19<sup>th</sup> of June, 2020, and (iv) ~~₦~~416,666,666.67K

(Four Hundred and Sixteen Million, Six Hundred and Sixty-Six Thousand, Six Hundred and Sixty-Six Naira Sixty-Seven Kobo) only in September, 2020. The Defendants, in accordance with the terms of the agreement, paid the agreed 5% commission to the Claimant save the 5% commission on the last payment. This 5%, which is the sum of ~~₦~~21,333,333.35K (Twenty-One Million, Three Hundred and Thirty-Three Thousand, Three Hundred and Thirty-Three Naira, Thirty-Five Kobo) and which the Defendants have refused to pay to the Claimant, is the subject of this suit. See paragraphs 21 – 30 of the affidavit.

Whereas the Defendants failed, refused and neglected to pay this last tranche of 5% to the Claimant, they admitted in a letter to the Claimant that they owed the Claimant this 5%. Interestingly, they, in another breath, threatened to frustrate the efforts of the Claimant to recover this 5% from them, boasting that they had the means to fight whatever case the Claimant would bring up to the Supreme Court. Consequent upon this intransigent refusal of the Defendants to pay this money to the Claimant, the Claimant brought this action under the Undefended List Procedure to recover the said ~~₦~~21,333,333.35 (Twenty-One Million, Three and Thirty-Three Thousand, Three Hundred and Thirty-Three Naira, Thirty-Five Kobo) being the 5% of the last installment of ~~₦~~416,666,666.67 (Four Hundred and Sixteen Million, Six Hundred and Sixty-Six Thousand, Six Hundred and Sixty-Six Naira, Sixty-Seven Kobo) paid to the 1<sup>st</sup> Defendant by the Federal Government through the efforts of the Claimant. See paragraphs 32 – 43 of the affidavit.

In support of his depositions in the affidavit, the Claimant attached 11 exhibits which he marked **Exhibits “A” – “K”**. These exhibits respectively are (i) the letter of authorization to recover the sum of ~~₦~~2,000,000,000.00

(Two Billion Naira) only due the 1<sup>st</sup> Defendant from the Federal Government which letter also operated as an agreement between the Claimant and the 1<sup>st</sup> Defendant, (ii) letter of authority to negotiate and sign the terms of agreement on behalf of Nacenn Nigeria Limited issued to the Claimant by the 1<sup>st</sup> Defendant, (iii) letter of approval from the Federal Ministry of Finance for the payment of the balance of ~~₦~~1,750,000,000.00 (One Billion, Seven Hundred and Fifty Million Naira) only to the 1<sup>st</sup> Defendant, (iv) Access Bank Statement of Account evidencing the payment by the 1<sup>st</sup> Defendant to the Claimant of the sum of ~~₦~~25,000,000.00 (Twenty-Five Million Naira) only being the 5% of the first installment of ~~₦~~500,000,000.00 (Five Hundred Million Naira) only paid to the 1<sup>st</sup> Defendant by the Federal Government, (v) the certificate of compliance with the provisions of section 84 of the Evidence Act, 2011 relating to computer generated evidence, (vi) the approval from the Honourable Minister of Finance, Budget and National Planning for the payment of ~~₦~~416,666,666.67 (Four Hundred and Sixteen Million, Six Hundred and Sixty-Six Thousand, Six Hundred and Sixty-Six Naira, Sixty-Seven Kobo) only, (vii) the statement of account evidencing the payment of the sum of ~~₦~~10,416,666.65 (Ten Million, Four Hundred and Sixteen Thousand, Six Hundred and Sixty-Six Naira, Sixty-Five Kobo) being 2½% of the sum of ~~₦~~416,666,666.67K (Four Hundred and Sixteen Million, Six Hundred and Sixty-Six Thousand, Six Hundred and Sixty-Six Naira, Sixty-Seven Kobo) being the second installment from the Federal Government to the 1<sup>st</sup> Defendant, (viii) the statement of account evidencing the payment of the sum of ~~₦~~31,250,000.00 (Thirty-One Million, Two Hundred and Fifty Thousand Naira) only representing the sum of the outstanding 2½% from the second installment and the 5% of the third installment of ~~₦~~416,666,666.67 (Four Hundred and Sixteen Million, Six

Hundred and Sixty-Six Thousand, Six Hundred and Sixty-Six Naira, Sixty-Seven Kobo, (ix) certificate of judgment in Suit No. CV/1720/2020 as proof that the Defendants have been in the habit of breaching valid contracts, (x) letter from the Defendants to the Claimant admitting they were owing the Claimant the 5% payment from the last tranche of money paid to the 1<sup>st</sup> Defendant by the Federal Government, and (xi) the printout of a text message from the Defendants to the Claimant threatening to frustrate the efforts of the Claimant to recover his money.

This matter first came up for mention on the 2<sup>nd</sup> of February 2021, where the Learned Counsel for the Claimant moved his two Motions *Ex Parte* for leave of the Court to issue and serve the Writ of Summons outside the jurisdiction of the Court and for leave to serve the Defendants by substituted means respectively. The prayers in the two applications were granted, and the matter was adjourned to the 16<sup>th</sup> of March, 2021 for hearing. On the 16<sup>th</sup> of March, 2021, the Learned Counsel, C. Dim Izunobi Esq., appeared for the Claimant, but the Defendants were neither in Court nor were they represented by Counsel notwithstanding that they were served with the Court processes and hearing notices. Learned Counsel, therefore, proceeded to present the case of the Claimant, and urged the Court to grant the reliefs sought by the Claimant. The Court then adjourned the matter to the 20<sup>th</sup> of April, 2021 for judgment and ordered that hearing notices should be served on the Defendants.

As I pointed out at the beginning of this judgment, this action was brought under the Undefended List Procedure. The Undefended List Procedure is provided for in Order 35 of the FCT High Court (Civil Procedure) Rules 2018. Rule 1(1) of the Order provides that:-

*“Where an application in Form 1, as in the Appendix is made to issue a Writ of Summons in respect of a claim to recover a debt or liquidated money demand, supported by an affidavit stating the grounds on which the claim is based, and stating that in the deponent’s belief there is no defence to it, the judge in chambers shall enter the suit for hearing in what shall be called the “Undefended List”.”*

The Undefended List Procedure is resorted to for the quick and speedy recovery of debt or liquidated money demand, especially in cases relating to simple, uncontested debt or liquidated money demand or monetary claim. See the case of ***Massken (Nig) Ltd v. Amaka (2017) 16 NWLR (Pt. 1592) S.C. 438 at 450 paras G-H per Onnoghen, CJN, 453-454, paras F-B per Kekere-Ekun, JSC.*** See also the case of ***Akahall & Sons Ltd. V. N.D.I.C. (2017) 7 NWLR (Pt. 1564) 194 S.C. at 210-212 paras H-D per Nweze, JSC.*** In ***Wema Securities and Finance Plc v. N.A.I.C. (2015) LPELR-24833 (SC) 67 – 70, E-C, (2015) 16 NWLR (Pt. 1484) 93 at page 140-141, paras B-C,*** the Supreme Court per Nweze, JSC held that:-

*“...the undefended list procedure is a truncated form of the civil litigation process peculiar to the adversarial judicial system. Under the said procedure, ordinary hearing is rendered unnecessary due, in the main, to the absence of an issue to be tried. U.B.A. & Anor v. Jargaba (2007) LPELR-3399 (SC), (2007) 11 NWLR (Pt. 1045) 247; Agwuneme v. Eze (1990) 3 NWLR (Pt. 137) 242. Essentially, therefore, it is designed to secure quick justice and to avoid the injustice likely to occur when there is no genuine defence on the merits to the*

***plaintiff's case. International Bank for West Africa Limited v. Unakalamba (1998) 9 NWLR (Pt. 565) 245.***

***“It is, usually, meant to shorten the hearing of a suit where the claim is for a liquidated sum. Cooperative and Commerce Bank (Nig.) Plc v. Samed Investment Co. Ltd. (2000) 4 NWLR (Pt. 651) 19.”***

A suit qualifies for hearing under the Undefended List Procedure upon the fulfillment of certain conditions. First, the sum due and claimed must be a liquidated sum, that is, it must be a certain and definite sum and same must have accrued. Second, the Claimant must believe that the Defendant has no defence on the merit to the suit. This belief must not be subjective, but, rather, must be borne out of the facts of the suit as disclosed in the affidavit in support of the Writ of Summons. Where these conditions are satisfied, the Court will mark the Writ of Summons as “Undefended” and place it on the Undefended List.

I have carefully listened to the Counsel for the Claimant in Court argue the merits of the suit of the Claimant. I have also studied the originating processes, the exhibits attached thereto and the reliefs sought in this matter. The facts as deposed to in the affidavit in support and the exhibits annexed to the affidavit are consistent and in consonance with the claims of the Claimant. Specifically, the Claimant deposed in paragraphs 38 – 40 of the supporting affidavit as follows:-

*(38) That my claim is a liquidated money demand.*

*(39) That it is my belief the Defendant does not have defence to this suit.*



*(40) That this suit should be heard under the undefended list.*

In paragraph 43(b) the Claimant claims as follows:

*“An Order directing the Defendants to immediately pay to the Claimant the sum of ₦21,333,333.35K (Twenty-One Million, Three Hundred and Thirty-Three Thousand, Three Hundred and Thirty-Three Naira, Thirty-Five Kobo) being the unpaid balance of the sum of ₦100,000,000.00 (One Hundred Million Naira only) representing the agreed 5% of ₦2,000,000,000.00 (Two Billion Naira) only.”*

It is my considered view, therefore, that this suit as presently constituted, is properly commenced under the Undefended List Procedure. First, the claim is for a liquidated monetary demand. Second, there is no defence on the merit.

By virtue of Order 35 Rule 3 of the Rules, a Defendant who wishes to defend an action on the Undefended List shall before 5 days to the day fixed for hearing of the suit, file a Notice of Intention to Defend with an affidavit disclosing a defence on the merit. If the Court is satisfied with the defence on the merit disclosed in the affidavit in support of the Notice of Intention to Defend, it will order that the suit be transferred to the General Cause List.

The Defendants in this case have not filed any Notice of Intention to Defend. The provisions of Order 35 Rule 4 of the Rules of this Honorable Court would therefore apply. The said Order 35 Rule 4 provides as follows:

*“Where a defendant neglects to deliver the notice of defence and an affidavit prescribed by Rule 3 or it is not given leave to defend*

*by the court, the suit shall be heard as an undefended suit and judgment shall be given accordingly.”*

In ***Akahall & Sons Ltd v. N.D.I.C., supra***, the Supreme Court per Aka’ahs JSC held at page 209, paras C-G that:-

***“A Defendant’s failure to deliver a notice of intention to defend a suit on the undefended list means the defendant has no defence to the plaintiff’s claim. Therefore, the failure to file or deliver a notice of intention to defend as provided by the rules of court is tantamount to an admission by the defendant of the plaintiff’s claim. And facts admitted need no proof. In this case, since the respondent failed to file its notice of intention to defend the appellant’s suit, the appellant was not bound to lead evidence to prove the debt [F.B.N. v. Khaladu (1993) 9 NWLR (Pt. 315) 44; NAL Merchant Bank Ltd. V. Macaulay (1986) 5 NWLR (Pt. 40) 216.”***

It is settled law that service either of court processes or hearing notices is a fundamental requirement to any adjudication as it is an integral part of the right to fair hearing. In other words, service of an originating process or any other process is a condition precedent to the exercise of jurisdiction by the court from whose registry the process has been issued. That means that where a case is heard without all or one of the parties having been served, the entire proceedings and any order made consequent thereon, will be a nullity. In the case of ***Societe General Bank Nig Ltd v. Adewunmi (2003) 10 NWLR (Pt 829) 526*** Katsina-Alu JSC (as he then was and of blessed memory) said ***“...it is now a trite law that failure to serve process, where***

***service of process is required, is a failure which goes to the root of the case.”***

In the instant case, there is ample evidence in the case file that the Defendants were served with all the court processes in this case, including hearing notices; yet, for reasons best known to them, they refused to enter appearance or file a Notice of Intention to Defend.

It must be noted, however, that while it is the duty of litigants and their Counsel to ensure that processes of court are served on their adversaries, and the duty of the Court to ensure that this duty is dutifully carried out to the letter, it is not the responsibility of the Court to compel an unwilling litigant to appear in Court or to respond to the claim against them. See ***Mekwunye v. Imoukhuede (2019) 13 NWLR (Pt. 1690) 439 SC at 496, paras D-F per Abba Aji, JSC; Ukwuyok v. Ogbula (2019) 15 NWLR (Pt. 1695) 308 SC at 324 – 326, paras H-A, 326, paras C-D, 327, paras B-C per Okoro, JSC; Segun Akinsuwa v. The State (2019) 13 NWLR (Pt. 1688) 161 at 195-196, paras H-D.***

Once a party to an action in Court has been served with the Court processes and is aware of the days the matter has been fixed, but chooses not to file any process in response or to appear in Court to tell their own side of the story, the action of the Claimant and the evidence relating thereto will be treated as unchallenged and uncontroverted. It is a settled principle of law that averments in an affidavit that are neither controverted or challenged are deemed admitted. The Court must, therefore act on same as long as it is reasonable, credible, cogent and compelling. That is to say, as far as the affidavit evidence does not appear to be notoriously and patently wrong, the

Court is duty-bound to accept same. See the case of ***Okonkwo v. FRN (2011) LPELR-4723 CA***. See also the cases of ***Akin Adejumo & 2 Others v. Ajani Yusuf Ayantegbe (1989) 6 S.C. 61 at page 89 or (1989) 3 NWLR (Pt. 110) 417 Ratio 19 at page 424 or 435 per Nnaemeka-Agu JSC; Alhaji Abdullahi Baba v. Nigerian Civil Aviation Training Centre, Zaria & Another (1991) 7 SCNJ (Pt. 1) 1 at pages 5-6 and pages 22-23, per Nnaemeka-Agu JSC; Ajomale v. Yaduat & Anor (1991) LPELR-306 (SC) per Nnaemeka-Agu JSC; Ogojeifo v. Ogojeifo (2006) LPELR-2308 (SC); Ramawa v. NACB Consultancy & Finance Co. Ltd. & Anor (2006) LPELR-7606(CA); Odiong v. Assistant Inspector-General of Police (2013) LPELR-20698(CA) and JMG Ltd v. Israel & Ors (2020) LPELR-50585(CA)***.

It is settled law that where matters are decided on the basis of affidavit evidence, the failure of the Respondent to file a Counter-Affidavit in response to the averments in the affidavit of the Claimant is deemed to be an admission of the facts deposed to in the affidavit in support of the action. See the case of ***NB Plc v. Akperashi, (2019) LPELR-47267 (CA)***, where the Court of Appeal at pages 33 – 35 paras A – F per Otisi, JCA held that, ***“It is trite law that any fact in an affidavit which is neither challenged nor contradicted is undisputed and is deemed admitted by the adversary and the Court will so hold and act thereon...See also Jim Jaja v. COP Rivers State & Ors (supra), (2012) LPELR-20621(SC)***. In the case of ***The Honda Place Limited v. Globe Motor Holdings Nigeria Limited (2005) LPELR-3180(SC)***, Edozie, JSC succinctly stated, at page 33 of the E-Report that: ***“The position of the law is that when in a situation in which facts are provable by affidavit, one of the parties deposes to***

***certain facts, his adversary has a duty to swear to an affidavit to the contrary, if he disputes the facts. Where such a party fails to swear to an affidavit to controvert such facts, they may be regarded as duly established.***

I am satisfied, based on the affidavit evidence and the exhibits attached thereto, that this case eminently qualifies to be placed on the undefended list and heard as such. I am also satisfied that the Claimant, in the absence of a Notice of Intention to Defend from the Defendants disclosing a defence on the merit, has discharged the minimal duty placed on it under the law to prove his case. The Court will have no option than to invoke Order 35 Rule 4 of the FCT Rules of Court 2018 to give judgment to the Claimant. The responsibility of this Honourable Court in this regard is made particularly easier by the failure or refusal of the Defendants to file a Notice of Intention to Defend.

Furthermore, the content of **Exhibit J** wherein the Defendants admitted that they are yet to pay the Claimant the 5% of the last tranche of payment he recovered for the 1<sup>st</sup> Defendant reinforced the veracity of the claim of the Claimant. Section 123 of the Evidence Act, 2011 provides that facts admitted need not to be proved. In ***Uzor v. Daewoo (Nig.) Ltd. (2019) 10 NWLR (Pt. 1680) 207 SC***, the Supreme Court per Okoro, JSC held that ***“where a defendant in an undefended list procedure, admits a liquidated debt in writing, he has afforded the plaintiff good ground for instituting the procedure.”*** See also ***Eldorado (Nig.) Ltd. V. Jimfat (Nig.) (1973) 3 CCHCJ 93***. This Court is therefore left with only the affidavit evidence of the Claimant and the exhibits attached thereto to arrive at its decision.

There is no doubt in my mind that the failure and refusal of the Defendants to pay to the Claimant his entitlement is deliberate. **Exhibit K** which is the printout of the text message the Defendants sent to the Claimant wherein they boasted that they would fight the case of the Claimant “all the way to the Supreme Court” is an evidence that the refusal of the Defendants to pay to the Claimant the 5% on the last tranche of money he recovered for the Defendants is deliberate and willful. A labourer is worthy of his wages. It is therefore wicked, immoral, reprehensible and unlawful of the Defendants to hold on to the lawful entitlement of the Claimant, especially in the face of a subsisting agreement between them.

Therefore, it is the considered opinion of this Honorable Court that the averments in the affidavit in support of the Writ of Summons on the Undefended List are the true situation of events, same having been served properly on the Defendants and with no Counter-Affidavit filed by the Defendants disclosing any defence on the merit. I so hold. However, I must point out that the 5% of the last tranche of money recovered by the Claimant for the Defendants, that is, ~~₦416,666,666.67K~~ (Four Hundred and Sixteen Million, Six Hundred and Sixty-Six Thousand, Six Hundred and Sixty-Six Naira, Sixty-Seven Kobo) only is not ~~₦21,333,333.35K~~ (Twenty-One Million, Three Hundred and Thirty-Three Thousand, Three Hundred and Thirty-Three Naira, Thirty-Five Kobo) only but, rather, ~~₦20,833,333.33K~~ (Twenty Million, Eight Hundred and Thirty-Three Thousand, Three Hundred and Thirty-Three Naira, Thirty-Three Kobo) only.

In view of the foregoing, therefore, I find this suit meritorious and, accordingly, grant all the reliefs sought therein as follows:

1. That an Order is hereby made mandating the Defendants to comply with the agreement executed on the 25<sup>th</sup> of September, 2017 to pay the Claimant 5% of the total sum of ₦2,000,000,000.00K (Two Billion Naira) only approved by the Federal Government of Nigeria as a result of the efforts of the Claimant.
2. That the Defendants are hereby ordered to pay the Claimant the sum of ₦20,833,333.33K (Twenty Million, Eight Hundred and Thirty-Three Thousand, Three Hundred and Thirty-Three Naira, Thirty-Three Kobo) only being the unpaid balance of the sum of ₦100,000,000.00 (One Hundred Million Naira) only representing the agreed 5% of the sum of ₦2,000,000,000.00 (Two Billion Naira) only recovered for the Defendants through the efforts of the Claimant.
3. That 10% post-judgment interest is hereby ordered to be paid on the judgment sum from the day of this judgment till it is finally liquidated.

This is the Judgment of this Honourable Court delivered today the 22<sup>nd</sup> day of June, 2021.

**HON. JUSTICE A. H. MUSA**  
**JUDGE**  
**22/06/2021**

**APPEARANCES:**

**FOR THE CLAIMANT:**

C.Dim Izunobi Esq.

B. Etu Esq.

**FOR THE DEFENDANTS**

**No legal representation.**