

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

HOLDEN AT COURT NO. 11 BWARI, ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE O.A. MUSA

SUIT NO: CV/2963/2018

BETWEEN:

STANDARD CHARTERED BANK
NIGERIA LIMITED

CLAIMANT

AND

MRS. MODUPE LANIYAN (TRADING UNDE THE NAME
AND STYLE MODULAN ENTERPRISES) ---

DEFENDANT

JUDGMENT

DELIVERED ON THE 24th JUNE, 2021

The endorsement appearing on the Plaintiff's Writ of Summons dated the 9th day of October, 2016 but filed on the 9th day of October, 2018 are as follows:

1. JUDGMENT AND ORDER of this Honourable Court on the Defendant, jointly and severally, to pay to the Plaintiffs (sic) the sum of N33, 632, 918.64 (Thirty-three Million, Six hundred and thirty two thousand, Nine Hundred and eighteen Naira Sixty four kobo) being the outstanding on the facilities received by the Defendants (sic) from the Plaintiffs in respect of the loan and overdraft.
2. AN ORDER directing the Defendant to pay to the Plaintiffs (sic) interest of 16% per annum on the sum of N33, 632, 918.64 (Thirty-three Million, Six hundred and thirty two thousand, Nine

Hundred and eighteen Naira Sixty four kobo) sought to be recovered herein.

3. AN ORDER of payment of 10% interest per annum from the date of judgment till final liquidation of the sum.
4. And for such further or other Order as the Honourable Court may deem fit to make in the circumstances of this case

This matter was placed on the Undefended List.

5. The Defendant is the customer of the Plaintiff and maintained Loan Agreement No. 10102050308960 with the Plaintiff.
6. That on the 19th September, 2014 the Defendant applied for N80, 000, 000 overdraft facility to enable her augment her working capital. The Defendant's application is and (sic) marked as Exhibit 1
7. That the Plaintiff availed the Defendant banking facility consisting of N40, 000, 000 (Forty Million Naira). Term Loan N20, 000, 000 (Twenty Million Naira) Overdraft facility and N6, 000, 000 (Six Million Naira) seasonal short term loan at 19% interest. The Plaintiffs (sic) letters of approval of the facilities are pleaded and marked as Exhibit 2.
8. That the facilities were guaranteed personally by Mrs. Modupe Laniyan and legal mortgage on all the property located at Plot No. 1139 Ibani Close cadastral Zone B06, Mabushi Abuja. The guarantee document and the valuation report on the property are pleaded and marked as Exhibits 2 and 4 respectively.
9. That in 2016, the Defendant sought more liberal terms due to downturn in her business. The Defendants (sic) existing loan obligations were consolidated into a N29, 339, 190 (Twenty-nine

Million, Three Hundred and Thirty-One Thousand and Ninety Naira) and term loan and N5, 000, 000 (Five Million) overdraft facility at 16% interest per annum rate on the 8th November, 2016 with the same security arrangement in place.

10. That as at the date of filing this action, the total balance on the loan is N29, 619, 002.28 (Twenty-nine Million, Six hundred and Nineteen thousand, two naira, twenty-eight kobo) for the term loan and N3, 733, 668.06 (Three Million, Seven hundred and thirty-three thousand, six hundred sixty and eight naira, six kobo) for overdraft facility.
11. That the Defendant stopped her monthly repayment on 12th February, 2018 and has continued to default since then.
12. That despite repeated demands the Defendant has neglected, failed and/or refused to repay the loan. This is shown by the letter of Demand written by the Plaintiff and plaintiff's Solicitor dated 6th June, 2018, 20th July, 2018 and 4th September, 2018, is attached and marked as Exhibits 5, 6, 7.
13. That rather than pay back the balance of the loan, the Defendant wrote a letter dated 4th July, 2018 pleading to pay lesser amount than what she is owing. The letter is pleaded and marked as Exhibit 8.
14. That the Defendant wrote another letter dated 10th July, 2018 asking for another 4 months grace. The letter is pleaded and marked as exhibit 9.
15. That I know for a fact that the Defendant has no credible defense to this suit.

16. That it is in the interest of Justice to enter Judgment in favour of the Plaintiff.

Upon being served with the Plaintiff's processes, the Defendant on the 3rd day of April, 2019 filed a Notice of Intention without any affidavit.

In the written address in support, the Plaintiff raised the issue:

Whether, having (sic) to the circumstances of this suit and the surrounding facts thereof, the Plaintiffs (sic) are not entitled to recover their loan and liquidated sum by the procedure of undefended list?

The Plaintiff's Counsel in arguing the sole issue formulated for the resolution of this Court referred this Court to a string of authorities expounding the principles pointing the Court to the correct path in disposing of a matter being tried under the Undefended List procedure among which are: **OBITUDE V ONYESOM COMMUNITY BANK LTD (2014) LPELR-226693 (SC); EFFANGA V ROGERS (2003) FWLR [PT 157] 1058 CA; SENATOR EME UFOT EKAETE V UNION BANK OF NIGERIA PLC (2014) LPELR-23.**

Counsel urged the Court to save judicial time and expense by resolving the singular issue agitated in favour of the Plaintiffs and the reliefs sought.

In setting sail to resolve the sole issue identified and submitted for the resolution of the Court, I must express amazement at the attitude of the Defendant's Counsel who filed a document titled NOTICE OF INTENTION TO DEFEND SUIT without any supporting affidavit where the Defendant's own side of the story is supposed to be narrated and why the

Honourable Court should not proceed under the Undefended List procedure but transfer the matter to the General Cause List for plenary trial. What is a Notice of Intention to Defend an action if not supported by an affidavit? It is almost useless. It is a bungled opportunity for not filing an affidavit to convince the Court why the matter should go to full trial. This is because, as excellently explained by the Supreme Court in **Ataguba & Co. v. Gura (Nig.) Ltd. (2005) LPELR-584(SC)**:

One of the main problems that often arise in the undefended suit procedure is the consideration of whether the defendant's affidavit in support of notice of intention to defend discloses a defence on the merit. In this regard, it has been held that it must disclose a prima facie defence: Bendel Construction Co. Ltd. v. Anglocan Development Co. (Nig.) Ltd. (1972) 1 All NLR 153. The affidavit must not contain merely a general statement that the defendant has a good defence to the action. Such a general statement must be supported by particulars which if proved would constitute a defence: see *John Holt & Co. (Liverpool) Ltd. v. Fajemirokun* (1961) All NLR 492. It is sufficient if the affidavit discloses a triable issue or that a difficult point of law is involved; that there is a dispute as to the facts which ought to be tried, that there is a real dispute as to the amount due which requires the taking of an account to determine or any other circumstances showing reasonable grounds of a bona fide defence: *Nishizawa Ltd. v. Jethwani* (1984) 12 SC 234; *F.M.G. v. Sani* (1990) 4 NWLR (Pt. 147) 688 at 713.

As well explained by our Father in the Law, Tobi, J.S.C. (of blessed memory), for a defendant to succeed, by his Notice of Intention to Defend:

The defendant must put forward some facts which cast doubt on the claim of the plaintiff

So I am constrained to ask: where is the Defendant's affidavit in support of the Notice of Intention to Defend? What defence on the merit has the Defendant's Notice of Intention disclosed? What prima facie defence has it disclosed? What/where are the facts "***put forward some facts which cast doubt on the claim of the plaintiff***"? What are the answers of the Learned Counsel to the Defendant to this plethora of critical questions?

What the Defendant's Counsel has done in this case by what he filed in the name of Notice of Intention to Defend is an unpardonable sacrilege in the practice of law in this country such as I have never come across since I qualified as a Judex. Such lackadaisical and unenthusiastic practice approach adopted by the Defendant's Counsel is rather unfortunate, bizarre and fatal to his Defendant's case. It deserves all the chastisement of a Court of Law whose Temple witnessed such desecration and sacrilege. Its most pronounced attendant consequence is that the cherished and sacrosanct fair hearing right enuring to the Defendant and the fair hearing opportunity created by the Rules of this Honourable Court for the Defendant to tell her side of the story has been most invidiously destroyed by her Counsel beyond remedy. This is because, like the Catholic marriage, a Client is tied to his Counsel and consequently swims and sinks with Counsel's performance, good or bad.

A Litigant cannot divorce himself from the consequences of his choice of Counsel. Such is the fate, the bad omen if not the doom that have befallen the Defendant and her case in this suit. I say no more on this.

There is no doubt that the special procedure provided for by the provisions of this Court's Rules is designed to ensure quick dispensation of justice, **Bank of the North v. Intra Bank S. A. (1969) 1 All NLR 91.**

By a long line of decided authorities, the law is settled that the focal point of undefended list procedure, by which this suit was commenced, is attainment of expeditious trial and disposal of cases in justice dispensation regarding recovery of debt or claim for liquidated money demand where the defendant has no defence to the suit, **Addax Petroleum Development Nig. Ltd. v. Duke (2010) 8 NWLR (Pt. 1196) 278.** The undefended list procedure is designed to secure quick justice and avoid the injustice likely to occur when there is no genuine defense on the merits to the plaintiff's case. See **International Bank for West Africa Limited v. Unakalamba (1998) 9 NWLR (Pt. 565) 245.** The procedure is to shorten the hearing of a suit where the claim is for liquidated sum, **Co-operative and Commerce Bank (Nigeria) Plc v. Samed Investment Company Limited (2000) 4 NWLR (Pt. 651) 19.**

In other words, the object of the rules relating to actions on the undefended list is to ensure quick dispatch of certain types of cases, such as those involving debts or liquidated money claims, **Bank of the North v. Intra Bank SA (1969) 1 All NLR 91.** The case of the parties in the instant suit revolves around the undefended list procedures and

the nuances of its application. The case of **Ataguba & Co. v. Gura (Nig.) Ltd. (2005) 8 NWLR (Pt.927)429; (2005) 2 S.C (Pt II) 101; (2005) LPELR-584(SC)** presents us with a very clear lenses through which the concept and precepts of Undefended List Procedure under our civil litigation jurisprudence could be viewed and properly understood. Therein, the Supreme Court, speaking through Edozie, J.S.C. very eloquently explained the principles thus:

The object of the undefended list procedure is to enable a plaintiff whose claim is unarguable in law and where the facts are undisputed, and it is inexpedient to allow a defendant to defend for mere purposes of delay, to enter judgment in respect of the amount claimed:- see *Macaulay v. NAL Merchant Bank Ltd. (1990) 4 NWLR (Pt. 144) 283 at 324-325*. One of the main problems that often arise in the undefended suit procedure is the consideration of whether the defendant's affidavit in support of notice of intention to defend discloses a defence on the merit. In this regard, it has been held that it must disclose a prima facie defence: *Bendel Construction Co. Ltd. v. Anglocan Development Co. (Nig.) Ltd. (1972) 1 All NLR 153*. The affidavit must not contain merely a general statement that the defendant has a good defence to the action. Such a general statement must be supported by particulars which if proved would constitute a defence: see *John Holt & Co. (Liverpool) Ltd. v. Fajemirokun (1961) All NLR 492*. It is sufficient if the affidavit discloses a triable issue or that a difficult point of law is involved; that there is a dispute as to the facts which ought to be tried, that there is a real dispute as to the amount due which requires the taking of an account to determine

or any other circumstances showing reasonable grounds of a bona fide defence: *Nishizawa Ltd. v. Jethwani* (1984) 12 SC 234; *F.M.G. v. Sani* (1990) 4 NWLR (Pt. 147) 688 at 713

In his most excellent formulation of the principles, Tobi J.S.C. contributed the following passage in his supporting judgment:

The object of the rules relating to actions on the undefended list is to ensure quick dispatch of certain types of cases such as those involving debts or liquidated money claims. See *Bank of the North v. Intra Bank S. A.* (1969) 1 All NLR 91.

A defence on the merit for the purposes of undefended list procedure may encompass a defence in law as well as on fact. The defendant must put forward some facts which cast doubt on the claim of the plaintiff. A defence on the merit is not the same as success of the defence in litigation. All that is required is to lay the foundation for the existence of a triable issue or issues. See *Nortex (Nigeria) Limited v. Franc Tools Co. Ltd.* (1997) 4 NWLR (Pt. 501) 603. What will constitute a defence on the merit depends on the facts of the case. This is within the discretion of the court of trial which must be exercised judicially and judiciously after a full and exhaustive consideration of the affidavit in support of the notice to defend. See *Grand Cereals and Oil Mills Ltd. v. As-Ahel International Marketing Ltd. and Procurement Ltd.* (2000) 4 NWLR (Pt. 652) 310; *Alhaji Danfulani v. Mrs. Shekari* (1996) 2 NWLR (Pt. 433) 723; *Alhaji Ahmed v. Trade Bank of Nigeria Plc.* (1997) 10 NWLR (Pt. 524) 290; *Calvenply Limited v. Pekab International Limited* (2001) 9 NWLR (Pt. 717) 164. Under the undefended list

procedure, the defendant's affidavit must condescend upon particulars and should as far as possible deal specifically with the plaintiff's claim and affidavit, and state clearly and concisely what the defence is and what facts and documents are relied on to support it. The affidavit in support of the notice of intention to defend must of necessity disclose facts which will at least throw some doubt on the case of the plaintiff. A mere general denial of the plaintiff's claim and affidavit is devoid of any evidential value and as such would not have disclosed any defence which will at least throw some doubt on the plaintiff's claim. See *Agro Millers Limited v. Continental Merchant Bank (Nigeria) Plc.* (1997) 10 NWLR (Pt. 525) 469. To satisfy a judge in an action on the undefended list, the defendant must depose to what on the face of the affidavit discloses a reasonable defence. See *Jipreze v. Okonkwo* (1987) 3 NWLR (Pt. 62) 737.

With the above analysis in view, I have no other pedestrainable path to toe than the path of favouring the Plaintiff with the reliefs sought. The doom that has befallen the Defendant, perhaps, could have been avoided but for the offhand, lethargic and half-hearted approach of Counsel. Under our laws, when a party fails to contest the depositions in an affidavit, that party is deemed to have accepted all the contents of the affidavit as true and this Court, in the circumstances, is entitled, so long as the depositions are adjudged believable, act on the said uncontested depositions as established truth as between the parties in the contest.

In bowing to this ancient principle, I hereby enter the following Orders:

1. JUDGMENT AND ORDER of this Honourable Court is hereby entered against the Defendant, to pay to the Plaintiff the sum of ***₦33, 632, 918.64 (Thirty-three Million, Six hundred and thirty two thousand, Nine Hundred and eighteen Naira Sixty four kobo)*** being the outstanding on the facilities received by the Defendant from the Plaintiff in respect of the loan and overdraft.
2. AN ORDER is hereby made directing the Defendant to pay to the Plaintiff interest of 16% per annum on the sum of ***₦33, 632, 918.64 (Thirty-three Million, Six hundred and thirty two thousand, Nine Hundred and eighteen Naira Sixty four kobo)*** sought to be recovered herein.
3. AN ORDER is hereby made for the payment by the Defendant to the Plaintiff of 5% interest per annum from the date of judgment till final liquidation of the sum.

This shall be the judgment of this Court.

APPEARANCE

P.E. Denedo Esq. for the plaintiff.

F.U. Jarigo Esq. for the defendant.

Sign
Hon. Judge

24/06/2021