

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT MAITAMA**

**BEFORE HIS LORDSHIP: HON. JUSTICE Y. HALILU**  
**COURT CLERKS : JANET O. ODAH & ORS**  
**COURT NUMBER : HIGH COURT NO. 15**  
**CASE NUMBER : SUIT NO: CV/710/21**  
**DATE: : MONDAY 25<sup>TH</sup> OCTOBER, 2021**

**BETWEEN:**

**SAMBO GARBA ..... CLAIMANT/RESPONDENT**

**AND**

**EDWIN MOORE MOMIFE } DEFENDANT/  
APPLICANT**

# **JUDGMENT**

By a Writ of Summons filed under Order 35 of the Rules of the High Court of FCT Civil Procedure Rules 2018, on the 9<sup>th</sup> of March, 2021, Claimant claim the following against the Defendant;

1. The sum of N12Million (Twelve Million Naira) being a refund of the sum previously advanced to the Defendant by the Claimant.
2. An Order of this Court for the cost of N5Million (Five Million Naira) being cost of retaining a Lawyer to prosecute the suit.
3. Post Judgment interest of 10% per annum on Judgment sum until the Judgment is fully liquidated.

4. And for such Order or further Orders as the Court may deem fit to make in the circumstances.

An affidavit of 12 paragraph deposed to by SamboGarba, the Claimant was filed in support of the claim.

It is the affidavit evidence of the Deponent that he lent N12Million (Twelve Million Naira) to Defendant sometime in the month of January, 2019 when Defendant approached him to enable Defendant support his business.

That he credited Defendant's account No. **0056564453** at Access Bank Plc., Wuse 2 Abuja with N12Million (Twelve Million Naira).

It is also the averment of Claimant that an agreement was executed between the parties on 15<sup>th</sup> January,

2019 indicating when Defendant shall pay back the said sum of N12Million (Twelve Million Naira) which was given interest-free. Defendant agreed to pay back the said N12Million (Twelve Million Naira) after 6 Months moratorium, by 8 quarterly instalments in 24 months period.

That the 6 months moratorium which commenced on the 15<sup>th</sup> January, 2019 when the agreement was executed have since lapsed and Defendant is yet to repay the said sum loaned him, and that he instructed his Solicitors to write to Defendant a demand letter giving Defendant 14 days to repay the loan or risk the present action.

The demand letter was dated the 19<sup>th</sup> October, 2020. Defendant admitted liability through a response by

his Solicitors in a letter dated the 28<sup>th</sup> January, 2021 but pleaded for time to pay back.

It is the deposition of Claimant that Defendant has no defence to his claim.

Documents, to-wit, copy of loan agreement, a copy of electronic transfer form evidencing transfer of N12Million (Twelve Million Naira) into Defendant's Account; Claimant's Solicitor's letter dated 19<sup>th</sup> October, 2020, Defendant's Solicitor's response dated 28<sup>th</sup> January, 2021 and Solicitor's cash receipt were annexed as Exhibits "A", "A1" "B", "B1" and "C" respectively.

Defendant upon being served with the Writ of Summons and Statement of Claim under the undefended list, filed Notice of Intention

simplita without a supporting affidavit and also filed a Notice of Preliminary Objection.

Whereas the bare Notice of Intention to defend dated 6<sup>th</sup> August, 2021 was filed on the 10<sup>th</sup> August, 2021, the said Notice of Preliminary Objection dated the 24<sup>th</sup> September, 2021 was filed on the 27<sup>th</sup> September, 2021.

The said Notice of Preliminary Objection filed by Defendant is predicated upon the fact that Defendant resides and does business in Lagos and therefore the suit ought to have been commenced at the Lagos High Court and not FCT High Court.

In support of the Preliminary Objection, an 11 paragraph affidavit was filed and a 4 page written address.

Learned counsel for the Defendant relied on Order 3 Rule 2 of the High Court Civil Procedure Rules of FCT High Court, 2018, as amended, to say that where the Defendant resides or carries on business is where the suit ought to be instituted. ***THE AUTHORITY OF OFORKURE & ANOR VS. MADUIKE & ORS (2003) LPELR – 2269 SC***, was cited in support of above proposition.

On the issue of jurisdiction, learned counsel for the Defendant/Applicant cited ***THE AUTHORITY OF S.P.D.C VS. ANARO & ORS (2015) LPELR – 24750 (SC)*** to say that jurisdiction is lifeblood of any adjudication and that any such proceedings conducted without it, is a nullity.

It is the view of learned counsel for the Defendant that this matter on the strength of his argument be struck-out for want of jurisdiction.

Upon being served with the Preliminary Objection, Claimant's counsel filed reply on points of law on the 5<sup>th</sup> of October, 2021.

It is the argument of learned counsel for the Claimant that the agreement which culminated into the disagreement hence the present legal tussle was executed on the 15<sup>th</sup> January, 2019, and that the money i.e N12Million (Twelve Million Naira) was paid into Defendant's Account Number: **0056564435** at Access Bank Plc. Wuse 2, Abuja.

Claimant's counsel further contended that the contract was executed in Abuja. Learned counsel for the Claimant also dwelled on the fact that the



operative word under Order 3 Rule 3 of this Court is “may be”. *THE AUTHORITY OF KRAUS VS. THOMSON ORG. LIMITED VS. UNIVERSITY OF CALABAR (2004)4 SC. (Pt. 1) 65 at 78 – 79* where Order 1A Rule 3 of the High Court Rules of Lagos State 1972 as amended by virtue of Order 2 Rule 3 of the 1994 Rules was discussed.

Where the contract was made; where the contract ought to have been made; and where the Defendant resides are the options to be considered for the commencement of an action for specific performance or breach of contract.

Claimant’s counsel, landed by urging the court to hold that the N12Million (Twelve Million Naira) advanced Defendant was paid in Abuja and Defendant ought to pay Claimant the said money

here in Abuja, and not as erroneously canvassed by Defendant's counsel.

Learned counsel on the whole, urged the Court to discountenance the Preliminary Objection and proceed to enter Judgment in favour of Claimant, as Defendant does not have defence to the claim.

Before I proceed to determine the Preliminary Objection in question, I wish to observe that the undefended list procedure is sui-generis. Being an affidavit bound proceedings, parties shall always ensure strict compliance with the Rules.

Therefore, regardless of the nature of the objection a Defendant desire to raise in his challenge to the claim of Claimant or jurisdiction, as done by Defendant in the present action, such a Defendant shall file his defence by filing affidavit in support of

the Notice of Intention to defend which shall be consolidated together at the hearing of the suit of Claimant.

Once the court is not in agreement with the Objector, the merits of the claims shall be determined and Judgment handed down in favour of Claimant or matter shall be transferred to the general cause list for further evidence to be led once leave is granted. See Order 35 Rule 3 (1) & (2) of the Rules of this Court.

See also the case of ***OBARO VS. HASSAN (2013) LPELR 20089 SC.***

The kernel of Defendant's Preliminary Objection is founded on the provision of Order 3 Rule 2 of the Rules of this Court..for above reason, therefore, I shall re-produce the said provision which shall serve

as our barometer in determining whether Lagos High Court and not FCT High Court has the jurisdiction to determine this matter.

Order 3 Rule 2 state as follows:-

*“All Suits for specific performance, or upon the breach of any contract, maybe commenced and determined in the judicial decision in which such contract ought to have been performed or in which the Defendant resides or carries on business.”*

Order 2 Rule 3 of the 1994 Rules of High Court of Lagos State has this to say:-

*“An action upon a breach of contract may be commenced and determined in any of the following three places;*

*Namely*

- a. Where the contract was made;*
- b. Where the contract ought to have been performed;*
- c. Where the Defendant resides...”*

The operative word in above provision is “**May be**”.

Black’s Law Dictionary, Seventh Edition at page 993 states that, where the word “**MAY**” is used in a legislation in its primary legal sense, it is permissive or discretionary. See *OKON VS. BOB (2004) 1 NWLR (Pt. 854) 378*.

It is most instructive to state at this point in time that judicial decisions are ad-idem on the fact that, Plaintiff’s claims, only, shall always be considered in the determination of jurisdiction of Court.

The Court, therefore, shall consider only the Writ and Statement of Claim in determining its jurisdictional competence.

See *OGUNBADEJO VS. ADEBOWALE (2008) ALL FWLR (Pt. 405) 1707 at 1717 Paragraphs C – D (CA), DAIRO VS. U.B.N PLC. (2007) 7 S.C (Pt.11) 97.*

Claimant averred in the opening paragraph of his affidavit in support of his claims that he is a businessman with office at No. 8 Kampala Street, Off Cairo Street, Wuse 2 Abuja; and that sometime in early January, 2019, Defendant approached him to lend him the sum of N12Million (Twelve Million Naira) to support his business which he did by crediting Defendant's Account Number:

**0056564435** at Access Bank Plc., Wuse 2, Abuja and free of interest.

A juxtapose of above averment contained in the affidavit in support of the claim of Claimant which serves as evidence under Order 35 of the Rules of this Court, shows clearly that Defendant and Claimant met in Abuja where the agreement was struck and eventual payment of N12Million (Twelve Million Naira) made by Claimant into Defendant's Account.

The choice of instituting the action in FCT High Court or going to Lagos High Court is that of the Claimant; and now that Claimant has decided to file the Suit in the High Court of FCT, Abuja, Defendant cannot be heard to complain since both the High Court Rules of Lagos and Abuja support his

position. The Preliminary Objection filed by Defendant/Applicant is clearly a waste of time and resources. Same is not supported by any shred of evidence other than empty averments. It is hereby dismissed.

With the dismissal of the Preliminary Objection, I shall now proceed to determine the merit of the claim of Claimant under the undefended list. Is it a liquidated money demand!

I wish to observe that the undefended list procedure is a truncated form of ordinary civil hearing peculiar to our adversary system where the ordinary hearing is rendered unnecessarily due in the main to the absence of an issue to be tried or the quantum of Plaintiff's claim disputed to necessitate such a hearing. It is designed to quicken justice and avoid



the injustice likely to occur where there is no genuine defence on the merits to the Plaintiff's case.

It is a procedure meant to shorten hearing of a suit where the claim is for liquidated money demand.

See *UBA PLC. VS. JARGABA (2007) 5 SC 1*.

An action begun under the undefended list, is no less a trial between the parties and where a Defendant is properly served, he has a duty to disclose his defence to the action. *ATAGUBA & CO. VS. GURA (2005) 2 SC. (Pt. 11) 101*.

However, notice of intention supported by affidavit so filed must condescend to issues stated in affidavit in support of the claim of the Plaintiff. A mere empty affidavit in support of the Notice of Intention to defend which disclose no defence shall certainly

not sway the Court into transferring the matter to general cause list for trial.

Simply put, the Defendant's affidavit must condescend upon particulars and should as far as possible, deal specifically with the Plaintiff's affidavit and state clearly and concisely what the defence is and what facts and document are relied on to support it.

Such affidavit in support of Notice of Intention to defend must be necessity disclose facts which will, at least throw some doubt on the Plaintiff's case.

A mere denial of Plaintiff's claim or liability or vague insinuation devoid of evidential value does not and will not suffice as facts, which will throw doubt on Plaintiff's claims. See ***ATAGUBA & CO. VS. GURA (NIG) LTD. (2005) 2 SC. (Pt. 11) 101.***

Permit me to again note at this juncture, that Defendant who was served the Writ of Summons and Statement of Claim under the undefended list, merely filed Notice of Intention to defend without an accompanying affidavit in support in obedience to the procedure under Order 35 Rule 3(1) & (2) of the High Court of FCT Civil Procedure Rules 2018.

What then is the implication in law!

I shall return in a bit to address the repacaution.

I have read through the depositions i.e the evidence of Claimant in the affidavit in support of his claim.

I have seen Exhibit 'B1' i.e Defendant's Solicitor's letter of response to Exhibit 'B' i.e Claimant's Solicitor's letter of Demand of Payment of the sum of N12Million (Twelve Million Naira). For the purpose of records and clarity, I shall reproduce

paragraphs 1,2 and 6 of the said letter of response by Defendant's Solicitor.

**Paragraph 1:**

*“Our Client acknowledges that he indeed received the loan of N12Million(Twelve Million Naira) from your Client and also that the terms as stated in your letter.”*

**Paragraph 2:**

*“Most regretfully, our Client has defaulted in making payment. However, the default was caused by circumstances well beyond his control. It is common knowledge that the general business environment in Nigeria has been most difficult in the past three (3) years, and our Client's business suffered particularly destabilizing setbacks within the period.”*

**Paragraph 6:**

*“In the circumstances, we plead for more patience from your Client so that the present reorganization of our Client’s operation could proceed unhindered and thus enable him to present to you by July, 2021 reasonable part payment together with a reasonable payment plan for the remainder.”*

Above paragraphs reproduced, amounts to admission against interest in law. An admission of fact by a party against his interest is admissible in evidence and need no further proof. See *AWORE VS. OWODUNNI (No. 2) 2 NWLR Pt. 57 Page 367.*

*ATANZE VS. ATTAH (1999)3 NWLR Pt. 596 Page 647.*

See *ODUTOLA VS. PAPER SACK (NIG.) LTD. (2006) 11 – 12, SC. 50 at 75 – 76.*

See also, *AGBETU & ANOR VS. AKINBOYO & ANOR (2012) LPELR – 9749 (CA).*

I have equally seen the evidence of electronic transfer aforementioned and the loan agreement executed by Defendant.

It is settled law that a Defendant who does not have any defence to the claims against him shall not be afforded opportunity to dribble and cheat a Claimant out of Judgment.

The undefended list procedure is not a game of chess or bowling where the smartest usually wins.

It is a procedure meant for people who truly have claims of money that are liquidated in nature and

therefore deserve quick justice to recover such money.

It is the law, through a long line of judicial authorities and statutes that a Defendant so served with a Writ of Summons under the undefended list, shall submit to the Registrar of Court, five (5) days to the day fixed for hearing, his Notice of Intention to defend with affidavit showing his defence on the merit.

It is upon such facts contained in the affidavit in support of Notice of Intention to defend that the Court shall then grant leave to defend or hear the Suit as undefended and Judgment entered accordingly.

See Order 35 Rule 3 (1) & (2) of the Rules of this Court, is instructive.

Suffices to say, therefore that a Defendant who fails to file affidavit in support of Notice of Intention to defend would be deemed in law to have admitted all the averments contained in the affidavit in support of Claimant claims, as averments nor countered, are deemed admitted and good to be believed by the Court and shall be acted upon. See *UGUANYI VS. NICON INSURANCE PLC. (2013) LPELR 20092 SC., EZECHUKWU & ANOR VS. I.O.C ONWUKA (2016) SC.*

I have no doubt from the embodiment of the revealing documentary evidence before the Court, that Defendant has no genuine defence to claims against him and that explains it all the reason why he failed and or ignored to file affidavit in support of his Notice of Intention to defend the claims of Claimant.



This is an expression of the fact that there is really no shame in tears.

The claims of Claimant is indeed a liquidated claim. On the whole, therefore, Pursuant to Order 35 Rule 4 of the Rules of this Court, I hereby enter Judgment for the Claimant as per first leg of its claim which is for the sum of N12Million (Twelve Million Naira) being a refund of the sum previously advanced to the Defendant by the Claimant.

Next is post Judgment interest.

It is within my statutory power to so award, once the circumstance permits. I have taken into account the circumstances under which the amount was lent to the Defendant. This is a situation deserving of the award of 10%.

I hereby award 10% post Judgment interest. I rely on Order 39 Rule 4 of the Rules of this Court.

I make no Orders as to damages and cost of this action in view of sui-generis nature of undefended list procedure.

*Justice. Y. Halilu*  
*Hon. Judge*  
*25<sup>th</sup> October, 2021*

**APPEARANCES**

SomtoOduche, Esq. – for the Claimant.

Defendant not in court and not represented.