

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI-ABUJA**

BEFORE HIS LORDSHIP: HON. JUSTICE BABANGIDA HASSAN

SUIT NO: CV/1262/2021

BETWEEN:

1. WIROVIC NIGERIA LIMITED }
2. MR. MONDAY WILSON ALFA }CLAIMANTS

AND

1. AL-HAKEEM CONSTRUCTION AND }
COMMERCIAL COMPANY LIMITED }DEFENDANTS
2. BESTWORTH RESOURCES LIMITED }
3. MARYAM HASSAN BELLO }
(Sued as Administrator of the Estate
of Alhaji Hassan Bello Maitaki)

JUDGMENT

By the writ of summons filed under the undefended list procedure dated the 14th day of June, 2021 whereof the claimant claims as follows:

1. The sum of N18,000,000.00 (Eighteen Million Naira) being money had and received for a failed business transaction due to the demise of the producer and alter-ego of the 1st and 2nd defendants who passed away in October, 2020.
2. Payment of the sum of 10% interest of the said amount from the date of judgment until the entire sum is fully liquidated.

The writ is supported by a sixteen paragraphed affidavit deposed to by the 2nd defendant.

The defendants upon being served with the writ, filed a Notice of Intention to Defend the action dated and filed 26th November, 2021 and an accompanying affidavit deposed to by the 3rd defendant. The counsel to the defendants also filed a written address which is not required by the Rules of this court under this peculiar procedure.

The claimants in response filed a counter affidavit and is accompanied by a written address of counsel.

It is in the affidavit in support of the writ that the deponent is the alter-ego and Chief Executive Officer of the 1st claimant and that sometime in October, 2019, the claimants who transacted with one Alhaji Hassan Bello Maitaki, who at all material time was the alter-ego and Chief Executive Officer of the 1st and 2nd defendants acting for the said defendants undertook to procure a mixed used Plot for the purpose of developing a House Estate located at Karsana East and based on the consensus of the parties, the 1st claimant transferred the sum of N7,000,000= (Seven Million Naira) on the 19th November, 2019 to the account of the 1st defendant, and another N8,000,000.00 (Eight Million Naira) was also said to have been transferred to the 1st defendant's account.

It is stated that on the 18th December, 2019, the sum of N3,000,000.00 (Three Million Naira) was remitted to the 2nd defendant's account by one Mr. Isaac Peter on the instruction of the 2nd claimant which brings the total of the funds received by the 1st and 2nd defendants to N18,000,000.00 (Eighteen Million Naira).

It is stated that sometime in October, 2020 the claimants became aware of the death of the said Alhaji Bello Maitaki and as a result of his demise as Chief Executive

Officer of the 1st and 2nd defendants, it was impossible to perform the contract, and that the 3rd defendant upon the death of Alhaji Bello Maitaki took over the administration of his estate being his wife and commenced both recovery of debts and payments to those owed by him and his companies.

It is deposed to the fact that after several effects to recover the funds from the 1st and 2nd defendants, the claimant instructed their solicitors to write a letter of demand to them through the 3rd defendant, and that the 3rd defendant responded to their letter wherein she sought for more time but since then, subsequent correspondence where disregarded and the defendants still refused to refund the money.

On the other party, it is deposed in the affidavit accompanying the notice of intention to defend that the allegation that Hassan Bello Maitaki was the alter-ego and Chief Executive Officer of the 1st and 2nd defendants was denied as untrue, and she went further to deny all the allegations of the claimants that her husband acted for the 1st defendant and that he undertook to procure any Plot of land in Karsana East or anywhere at all. The deponent further denied the claim of an agreement between her late husband and the claimants and that no funds were transferred to him as purported by the claimants.

In response to paragraph 8 of the claimant's affidavit, the deponent stated that she is indeed the widow of late Alhaji Hassan Bello Maitaki, but she is not the administrator of his estate, and that she has a defence to this action and credible evidence to counter the claimant's claims and as such, it would be in the interest of justice for the matter to be transferred to the general cause list in order to give both parties a fair hearing to present their cases on the merit.

The claimant filed a counter affidavit disputing the facts stated by the defendants in their affidavit in support of their notice of intention to defend.

Let me formulate this issue for determination in this suit to wit:

Whether, based upon the facts and circumstances of this suit as encapsulated in the affidavits of both parties, the claimants are entitled to judgment under the undefended procedure?

It is pertinent at this juncture for this court to look at the propriety or otherwise of the filing of counter affidavit by the claimants.

Thus, looking at Order 35 of the Rules of this court, there is no where counter affidavit is mentioned. The writ of summons is to be accompanied by an affidavit, and the notice of intention to defend the suit is also to be accompanied by an affidavit, and that is it, and by that, issues are joined. In the circumstances, I need not to hesitate to discountenance the counter affidavit and to strike it out. The counter affidavit filed by the claimant is hereby discountenanced and is struck out.

This court has to consider the affidavit in support of the notice of intention to defend the suit which was filed by the defendants with a view to see whether there is a triable issue which will warrant this court to transfer the suit to the general cause list. See the case of **Babington Ashaye V. E.M.A. Gen. Ent. (Nig) Ltd (2012) All FWLR (pt 645) p. 269 at 300, paras. A-B** where the court held that the provisions of the rules governing the undefended list procedure are designed as they are, in order to ensure safeguards which must necessarily be available to a defendant if those rules are followed strictly, and, if those rules are complied with,

the defendant need suffer no prejudice in his defence if himself, and, on his part, has complied with the rules.

It was also held in the cause of **Babingcon Ashaye V. E.M.A Gen. Ent. (Nig) Ltd (supra)** that situations that would give rise to a triable issue in an undefended list proceeding include the existence of disputes as to the facts which ought to be tried.

In the affidavit accompanying the notice of intention to defend the suit, it is disputed that Alhaji Hassan Bello Maitaki was the alter-ego of the 1st and 2nd defendants and has not acted for the 1st defendant. It is also disputed that there is no agreement between the claimants and the late husband of the 3rd defendant.

Among the claimants listed to be relied upon, there is no agreement which is claimed to have been entered between the claimants and Alhaji Hassan Bello Maitaki. This can only be proved when there is an investigation to be carried by this court through oral evidence. See the case of **True Grade Engr. Ltd V. Lead Bank Plc (2008) All FWLR (pt 409) p. 460 at 477, paras. F – H** where the Court of Appeal, Abuja Division held that where affidavit evidence plead before the court by both parties to an action under the undefended list conflicts on material facts, oral evidence must be called to resolve the conflict. In the instant suit, the claimant has the duty, through witnesses, to prove that by oral evidence, that there was a consensus between the claimants and Alhaji Hassan Bello Maitaki, and in addition to other evidence.

It is on the above premise, I hold the view that the claimants are not entitled to judgment under the undefended list procedure; and the suit is hereby transferred to the general cause list. I order that the parties should file pleadings.

I cannot end this judgment without looking at the propriety of filing a written address in support of the counter affidavit. As the counter affidavit goes, and so it goes with the written address. See the case of **Obadiogwu V. Loan Bank of Nig. Plc (2003) FWLR (pt 165) p. 416 at 425, paras. G – H** Per Fabiyi JCA (as he then was).

Hon. Judge
Signed
14/3/2022

Appearances:

Adomarah Oha Esq appearing for the claimants.

M. M. Bakari Esq appearing for the defendants.