

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT HIGH COURT MAITAMA – ABUJA**

**BEFORE: HIS LORDSHIP HON. JUSTICE S. U. BATURE**

**COURT CLERKS: JAMILA OMEKE & ORS**

**COURT NUMBER: HIGH COURT NO. 24**

**CASE NUMBER: SUIT NO. FCT/HC/CV/996/2021**

**DATE: 20<sup>TH</sup> JANUARY, 2022**

**BETWEEN:**

CHUBADO BABBI TIJJANI.....CLAIMANT

**AND**

1. HAMBALI ISHAKA ABDULLAHI }  
2. AL HAN-ISHAQ LIMITED } .....DEFENDANTS

**APPEARANCES:**

B. I. Dakum Esq for the Claimant.

**JUDGMENT**

The Claimant filed this Writ under the Undefended List claiming against the Defendants jointly and severally as follows: -

***“(1). AN ORDER of the Honourable Court directing the Defendants to immediately pay the sum of N10, 000, 000.00 (Ten Million Naira) only to the Claimant being the sum of money the Claimant lent the 1<sup>st</sup> Defendant through the 2<sup>nd</sup> Defendant to improve his business which the Defendants have failed, refused and/or neglected to refund.*”**

- (2). 10% interest on the judgment sum until the judgment sum is fully liquidated.**
- (3). Any other Order(s) this Court deem fit to make in the circumstances of this case.”**

Meanwhile, despite being duly served with the Writ of Summons and being represented by Counsel on the last adjourned date, the Defendants have refused, failed and/or neglected to file a Notice of Intension to defend together with an affidavit disclosing a defence on the merit pursuant to Order 35 Rule 3(1) of the F. C.T High Court (Civil Procedure) Rules 2018.

The Rule provides thus: -

**“Order 35 Rule 3(1) Where a party served with the Writ delivers to registrar, before 5 days to the day fixed for hearing, a notice in writing that he intends to defend the suit, together with an affidavit disclosing a defence on the merit, the Court may given him leave to defend upon such terms as the Court may think just.”**

I've carefully considered the averments in the Claimant's Supporting Affidavit particularly paragraphs 5 – 18 thereof which provide thus: -

- “(5). That the 1<sup>st</sup> Defendant approached me sometime in April, May and June, 2019 and pleaded with me to lend him the sum of N10, 000, 000.00 (Ten Million Naira) only.**
- (6). That we drafted a simple agreement with the 1<sup>st</sup> Defendant which was written in 2<sup>nd</sup> Defendant (Al Han-Ishaq Limited) letter head. The copy of the said document, titled “Letter of Agreement” is herein attached and marked EXHIBIT A.**
- (7). That I gave him the sum of N10, 000, 000.00 (Ten Million Naira) only in three instalments thus:**
  - (a). First payment N3, 000, 000 (Three Million Naira) only made on the 30<sup>th</sup> April, 2019. My statement of account showing the said transfer is herein attached as EXHIBIT B.**

- (b). **Second payment N2, 000, 000 (Two Million Naira) only made on the 9<sup>th</sup> May, 2019 (I transferred the money to one Mohammed Hambali who then transferred same to the 2<sup>nd</sup> Defendant on my instruction and my behalf). My statement of account and that of Mohammed Hambali are herein attached and marked EXHIBITS C and D respectively.**
- (c). **Third payment N5, 000, 000 (Five Million Naira) only made on the 6<sup>th</sup> June, 2019. My statement of account showing the said transfer is herein attached as EXHIBIT E.**
- (8). **That we agreed with the 1<sup>st</sup> Defendant that the interest on the principal sum of N10, 000, 000.00 (Ten Million Naira) only shall be the sum of N500, 000 (Five Hundred Thousand Naira) only to be paid monthly.**
- (9). **That the 1<sup>st</sup> Defendant undertook to pay the principal sum of N10, 000, 000.00 (Ten Million Naira) only by the end of December, 2019.**
- (10). **That since I gave the Defendants the N10, 000, 000.00 (Ten Million Naira) only, the Defendants have avoided me and refused to keep to any of the terms of the said agreement.**
- (11). **That the Defendants have never paid any interest of the N500, 000 (Five Hundred Thousand Naira) only agreed to be paid monthly and have refused to pay back the principal sum of N10, 000, 000.00 (Ten Million Naira) only.**
- (12). **That the time fixed for the payment of the principal was end of December, 2019 and same has since elapsed.**
- (13). **That I have made several oral demands calling on the Defendants to pay me the principal sum of N10, 000, 000.00 (Ten Million Naira) only but he neglected.**

- (14). That the Defendants are not willing to pay the said loan of the sum of N10, 000, 000.00 (Ten Million Naira) only to be paid monthly.**
- (15). That the agreed interest of N500, 000 (Five Hundred Thousand Naira) only has accrued for over 20 (twenty) months commencing from the month of July, 2019 to the month of February, 2021.**
- (16). That I honestly believe the Defendant does not have any defence to my claims.**
- (17). That I forgo the monthly interest of N500, 000 (Five Hundred Thousand Naira) only and only demanded for the principal.**
- (18). That I was informed by B. I. Dakum, Esq. on the 17<sup>th</sup> March, 2021 at about 1:35pm at their Law Firm; Pioneer House, Flat 4'6, Daura Close, Off Kano Street, Opp. Shagari Mosque Area 1, Section 2, Garki, Abuja which fact I verily believe him to be true as follows:**
- (a). That my claims against the Defendants could conveniently be heard and determined under the Undefended List procedure as is a liquidated money demand.**
- (b). That the Defendants have no defence to this suit whatsoever.**

Therefore, it is trite law that a Defendant who fails, refuses or neglects to file a Notice of Intension to Defend together with an affidavit disclosing a defence on the merit, is deemed to have waived the opportunity given under the rules of Court to Defend the suit.

Consequently therefore, the Court may proceed to enter judgment in line with the provisions of Order 35 Rule 4 of the Rules of this Court 2018 which provides: -

***“Order 35 Rule 4 Where a Defendant neglects to deliver the notice to defence and an affidavit prescribed by Rule 3(1) or is not given leave to defend by the Court the suit shall be heard as an undefended suit and judgment given accordingly.”***

See the cases of ***OBITUDE V ONYESOM COMM. BANK LTD (2014) 9 NWLR (Pt. 1412) 352 at 389-390, para F –A; ONDEYO V U. B. A PLC (2014) LPELR-24242 and JOEL OKUNRINBOYE EXPORT CO. LTD & ORS V SKY BANK PLC (2009) LPELR -1618 (SC) (pp. 25-26), paras. F - F*** the Supreme Court held that:

***“I consider the submission on the application of the principles of fair hearing, particularly the rule of audi alteram partem as to proceedings under the Undefended List strange because the principle of fair hearing is not only fundamental to adjudication but also a constitutional requirement which cannot be legally wished away. It is a fundamental right of universal application. The fallacy in the submission also becomes apparent when one looks at the provisions of Order 23 of the High Court (Civil Procedure) Rules 1987 earlier reproduced in this Judgment. The said Order 23 does not take away the right to fair hearing of any party to the undefended list procedure rather it confers equal right to fair hearing to the parties, in particular Order 23(3)(1) confers express right to file a notice of Intention to defend the action placed under the Undefended List by virtue of Rule 1 of Order 23, upon service of the processes on him and, the Court after going through the affidavit, may grant him leave to defend the action and remove the suit from the undefended list to the general cause list to be dealt with accordingly. If the above is not a recognition of a Defendant’s right to fair hearing under the Undefended List Procedure, I wonder that is better. It is only when the Defendant fails or neglects to avail himself of the opportunity offered him by Order 23(3) and (1) that the Court is empowered by Order 23(4) to enter judgment in the suit, in which case, it is obvious that truly the Defendant has no defence to the action of the Plaintiff. Is the failure or neglect of a Defendant to avail himself of the opportunity to be heard a denial of the right to fair hearing? I hold the view that it is not.”***  
***Per ONNOGHEN, J.S.C.***

In the light of the above, Judgment is hereby entered in favour of the Claimant against the Defendants as per the claims as endorsed on the Writ of Summons.

***Signed:***

***Hon. Justice S. U. Bature  
20/1/2022***