

**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/670/2021

DATE: 18TH JANUARY, 2022

BETWEEN:

YAKUBU MUHAMMADCLAIMANT

AND

1. MIKAILU MUHAMMAD ABDULFATAH }
2. NAS DOLLAR SPORTS CARS NIG LTD }DEFENDANTS

APPEARANCES:

Faisal Abubakar Esq for the Claimant.

JUDGMENT

The Claimant has filed this Writ of Summons under the Un defended List claiming against the Defendant as follows:

“(a). An Order of this Honourable Court directing the Defendants jointly and severally to refund to the Plaintiff forthwith the sum of N12, 000, 000.00 (Twelve Million Naira only) being monies had and received by the Defendants as deposit for the purchase of Peugeot 508, 2018 Model which the Defendants have failed to provide.

- (b). An Order of this Honourable Court directing the Defendants to pay 10% of the amount claimed in relief 1 as expenses occasioned on the Plaintiff payable as cost of this suit.**
- (c). Interest on the amount claimed in relief 1 at the rate of 10% per annum from the date of judgment until the judgment sum is fully liquidated.”**

The Defendants were duly served with the Writ as well as hearing notices against today's hearing. However, have failed, neglected/refused to file to Notice of Intension to Defend together with Affidavit disclosing a defence on the merit.

By the provision of Order 35 Rule 3 Rules a Defendant who is served with a Writ of Summons under the Undefended List and who has a defence on the merit, has to file a Notice of Intension to Defend together with an Affidavit disclosing a defence on the merit, and if the Court deems fit, may grant the Defendant leave to defend.

On the other hand, by Order 35 Rule 4 of the Rules of this Court 2018 where a Defendant fails, refuses or neglects to file the said Notice of Intension to Defend together with an Affidavit disclosing a defecne on the merit at least five days to the day fixed for hearing, the Court may proceed to enter judgment against the Defendant.

In the instant case, I have considered the claims of the Claimant as endorsed on the Writ of Summons, the Supporting Affidavit, particularly paragraphs 5 – 16 thereof where the Claimant states thus: -

- “(5). That I know as a fact that sometime in July, 2020, I saw a Peugeot 508 Model with Chasis Number VF3805GY7JLoo1216 at a car stand of Nas Dollar Sports Cars Nig. Ltd Abuja and indicated interest to buy same.**
- (6). That I know as a fact that I and the 1st Defendant concluded agreement for the purchase of the car at the sum of N15, 000, 000.00 (Fifteen Million Naira Only) and I made an initial deposit of N7, 000, 000.00 (Seven Million Naira) only in cash as commitment and I was immediately issued a**

receipt of the 2nd Defendant by the 1st Defendant. The receipt of payment dated 15th July, 2020 is hereby attached and marked as Exhibit A.

- (7). That I know as a fact that after the payment of the deposit stated in paragraph 6, I again caused the sum of N5, 000, 000.00 (Five Million Naira) to be transferred to the personal account of the 1st Defendant with account Number 0558321887 Guarantee Trust Bank Plc leaving the remaining balance of N3, 000, 000.00 (Three Million Naira) only. The sms debit alert evidencing transfer of the sum N5, 000, 000.00 (Five Million Naira) alongside the certificate of compliance is herein attached and marked as Exhibits B1 and B2 respectively.**
- (8). That I know as a fact that on the 16th October, 2020, I took the balance of N3, 000, 000.00 (Three Million Naira) to the 1st Defendant in order to pay off the remaining balance and take possession of the car but surprisingly, I found out that the car was taken away from the car stand.**
- (9). That the 1st Defendant could not give me satisfactory account regarding whether the car was sold to another prospective purchaser and could also not account for the money I advanced for the car till date.**
- (10). That the consequent upon the foregoing, I made several verbal demands for the immediate refund of my money but the 1st Defendant failed and refused to refund the money.**
- (11). That as a result of the persistent failure of the Defendant to refund the advance I paid for the car, I engaged the law firm of Abdulaziz Ibrahim & Co., to formally demand for the refund of the money from the 1st Defendant. The demand letter dated 29th January, 2021 is hereby attached and marked as Exhibit C.**
- (12). That I know as a fact that despite the service of the letter on the 1st Defendant, the 1st Defendant failed and refused to**

either respond to the letter of refund the sum of N12, 000, 000.00 (Twelve Million Naira only) paid to him.

- (13). That I know as a fact that it has become crystal clear that the Defendants are not willing to refund the money unless compel to do so by an Order of this Honourable Court.***
- (14). That consequent upon the foregoing, I have suffered loss and damage which include but not limited to the payment of solicitors fees writing demand letter, preparing Court processes, filing fees, payment of professional fees, transport fees and other incidental expenses.***
- (15). That I know as a fact that the professional fee payable for the recovery services was agreed to be 10% of the sum of N12, 000, 000.00.***
- (16). That I know as a fact that the 1st Defendant is currently evading and avoiding my calls and he will most likely evade any attempt to serve him with the Court processes in this case.”***

Furthermore, Claimant avers in paragraphs 18 and 19 thereof as follows: -

- “(18). That I verily and honestly believe that the Defendants have no defense to this claim.***
- (19). That it is in the interest of justice to hear this matter expeditiously under the Undefended List and order the Defendants to pay the sum of N12, 000, 000.00 (Twelve Million Naira) received from me and the 10% being cost occasioned on me as a result of the Defendants’ failure to refund the money.”***

Consequently thereof, since the matters under the Undefended List are preserved for cases which require expediency and where no defence on the merit is shown such as in this case, I am satisfied that the Claimant is entitled to the reliefs sought.

I refer to the cases of **J. O. E CO. LTD V SKY BANK PLC (2006) 6 NWLR (PT. 111) 518** and **NKWO MARKET COMMUNITY BANK (NIG) LTD V OBI (2010) LPELR – 2051 (SC) 26, Para E – G, per Mohammed JSC**, where it held thus:

“The undefended list procedure is adopted when it is perceived that the Defendant could not possibly have any defence to the claim. A suit is maintainable under this procedure for a debt or liquidated money demand.”

See also 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; JOEL OKUNRINBOYE EXPORT CO. LTD & ORS V SKY BANK PLC (2009) LPELR -1618 (SC) (pp. 25-26), paras. F –F.**

Relying on the cases cited above vis-a-vis the facts and circumstances of this case, the Defendants pointed out earlier having failed and/or neglected to file a Notice of Intention to Defend together with an Affidavit disclosing a defence on a merit as required by law, cannot turn around and complain of denial of fair hearing. In that respect, this Honourable Court has no option than to invoke Order 35 Rule 2 of the Rules of this Court 2018.

To that extent therefore, Judgment is hereby entered in favour of the Claimants against the Defendants as per the claims as endorsed on the Writ of Summons.

Signed:

***Hon. Justice S. U. Bature
18/1/2022***