

**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/2207/2021

DATE: 19/5/2022

BETWEEN:

DAVID C. OGBONNAYA.....PLAINTIFF

AND

(1). FAMZHI INTERBIZ LTD
(2). HAJIA MARIAM SULEIMAN }DEFENDANTS

APPEARANCES:

Adetola Olulenu Esq for the Plaintiff.
Defendants absent.

JUDGMENT

The Plaintiff filed this suit under the Undefended List claiming against the Defendants as follows:-

“(a). The sum of N8, 600,000.00 (Eight Million, Six Hundred Thousand Naira) only being the total cost of investment/contribution made/paid by the Plaintiff into the business of the Defendants and which he is entitled to be refunded.

- (b). Twenty (20%) percent interest from June 2020 till judgment is delivered.**
- (c). Ten (10%) percent post judgment interest until judgment is finally liquidated.**
- (d). The sum of N1, 000, 000.00 (One Million Naira) only as cost of filing and prosecuting this suit.**
- (e). And for such further Order or Orders as the Honourable Court may deem fit to make in the circumstances.”**

Meanwhile, the Defendants despite being duly served with the Writ of Summons and hearing notice against today's hearing, have failed refused or neglected to file their notice of intension to defend together with an affidavit pursuant to the Rules.

In particular Order 35 Rule 3 provides: -

“When 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 give him leave to defend upon such terms as the court may think just.

2) where leave to defend is given under this Rule, the action shall be removed from the Undefended List and placed on the ordinary cause list; and the Court may order pleadings, or proceed to hearing without further pleadings.”

The Undefended List Procedure is preserved for treating cases with dispatch i.e summarily, without the need for calling witnesses.

In the instant case, Plaintiff avers in paragraphs 5, 6, 7, 10, 11, 17, 22 and 24 as follows.

“Paragraph 5

That of fact, I did invest various sums of money totalling N8, 600, 000.00 (Eight Million, Six Hundred Thousand Naira) only which said amount was paid at various times from 13th of March 2019 to 19th of March 2020 respectively. Attached herewith is a copy

of an Upgrade Form issued by the Defendant Company to the Plaintiff as well as the email receipts of transactions evidencing the various payments made by the Plaintiff all marked as Exhibits 'D1' and 'D2' respectively.

Paragraph 6

That as of fact the above sums were paid through the 1st Defendant's account No. 4242858013 domicile with FCMB Bank Plc and evidence of the transaction (transfer) sent to my email address at ogbizle@gmail.com already attached above.

Paragraph 7

That as of fact the said total sum was invested after the 1st Defendant company through the 2nd Defendant had represented to me that it was into the legitimate business such as Agro-Allied, which involves fisheries, poultries, and animal husbandry, Security Guards, Real Estates etc through its various subsidiaries such as Famzhi Agro Investment Ltd, Famzhi Security Ltd, and Famzhi Garden City respectively which samples were shown to me for confirmation before I made my contributions.

Paragraph 10

That as of fact since June 2020 the Defendant Company had refused, failed, and/or refused to fulfil its own part of the obligation and agreement entered into between both parties.

Paragraph 11

That as of fact I discovered that all possible lines of communication which had hitherto been used by me to reach the Defendant Company such as whatsapp, emails, and telephone calls have be barred by it without any reason or explanation; moreso, the Defendant Company had since shut down its only office in Abuja FCT in apparent bid to avoid refunding investors funds. As such, all possible efforts at recovering my entitlements on this investment have proved abortive since June 2020 leaving me with no choice but to recall my capital investment.

Paragraph 17

That I know as of fact that notwithstanding the above paragraph, my solicitor made a second attempt to deliver the letter at the aforesaid office address of the Defendant and same was later accepted and acknowledged. Attached herewith is a copy of the acknowledgement copy of the letter dated August 12, 2021 marked as Exhibit 'D5'. But in spite of the receipt of the said letter, the Defendants have failed, neglected, and/or refused to comply with the demands contained therein.

Paragraph 22

That I know as of fact that I have suffered untold hardship, huge financial losses, psychological trauma, and set back in my practice and other related businesses as a result of the Defendants' refusal to pay my returns or my capital investment which I now need for my personal use.

Paragraph 24

That I strongly believe the Defendants have no defence to this action and the Court ought not to allow the Defendants to dribble her into doing otherwise."

It must be noted however, that it is not the nature of the undefended list to shut out a Defendant who wishes to defend the suit on the merit. However, from the provision of Order 35 Rule 3 of the FCT High Court (Civil Procedure) Rules, 2018, a defendant who is served with the Writ under the Undefended List must file his Notice of Intension to defend together with an affidavit disclosing a defence on the merit.

However, where a Defendant fails to do so, or is not given leave to defend, the Court shall hear the suit as undefended and proceed to enter judgment. In accordance with order 35 Rule 4 of the Rules (supra). For ease of reference, the rule provides thus:

"Order 35 Rule 4: Where a Defendant neglects to deliver the notice of 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 judgement given accordingly."

In the circumstances therefore and without further ado, Judgment is hereby entered for the Plaintiff against the Defendants as per the claims as endorsed on the Writ of Summons.

Signed:

***Hon. Justice S. U. Bature
19/5/2022.***