IN THE HIGH COURT OF JUSTICE OF THE F.C.T.
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO, ABUJA
ON WEDNESDAY, THE 22ND DAY OF JUNE, 2022
BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINI MUSA
JUDGE

SUIT NO.: FCT/HC/CV/562/2021

BETWEEN:

TOOLEY CONTRACTORS LIMITED — **CLAIMANT**

AND

1. **ZUMA METALS AND ENERGY RESOURCES LIMITED**
2. **DR. INNOCENT OZOEMENA EZUMA**

DEFENDANTS

JUDGMENT

By a Writ of Summons on the Undefended List dated and filed on the 24th of February, 2021, the Claimant commenced this action seeking the following reliefs:-

1. The sum of USD 1,500,000.00 (One Million, Five Hundred Thousand US Dollars) being money the Defendants had and received from the Claimant and which the Defendants have refused to pay back.
2. Post-Judgment interest on the amount claimed under paragraph (a) above at the rate of 20% per cent per annum from the date of Judgment until the entire judgment sum is liquidated; and
3. Cost of the action as may be assessed at the conclusion of this suit.

The Writ of Summons was supported by a 31-paragraph affidavit duly deposed to by Anzhelika Kolomiyets, a Ukrainian citizen of 59 Zhylianska Street, Apt. 1204, 01033 Kyiv, Ukraine in Ukrainian who is a Legal Advisor to the Claimant and translated into English Nos Yevgeniia Vasylivna. The affidavit, the signature and legal capacity of the deponent, as well as the signature, legal capacity and qualification of the translator were duly certified by Slipchenko Natalya Victorivna, a Private Notary of Kyiv Municipal Notarial District, Ukraine. The deponent also attached eighteen exhibits in proof of her averments.

In the said affidavit, the deponent traced the origin of the relationship between the 2nd Defendant and Mr Sergey Dyadechko, the director of the Claimant as well as Tooley Property Company Limited, a company affiliated to the Claimant, to 2008 when the 2nd Defendant advised him to invest in Nigeria's extractive industry. Pursuant to this discussion, the 2nd Defendant and Mr Dyadechko jointly incorporated a company. This was embodied in a memorandum of understanding exhibited as Exhibit TCL 1 executed on the 23rd of March, 2008. The company thus incorporated on the 31st of July, 2008 was Energy Metal Industries Limited. It was the agreement of the parties that they would nominate their respective persons to represent them in the newly formed company. To this end, Mr Dyadechko nominated Tooley Property Company Limited while the 2nd Defendant nominated the 1st Defendant.

According to the deponent, finance was a major challenge at the incipient stage of the company; to this end, therefore, Mr Dyadechko advanced short term loans to the company. In 2010, the 2nd Defendant and Mr Dyadechko also ventured into power production through Zuma EnergyNigeria Limited, a company owned by the 2nd Defendant and to which Mr Dyadechko also advanced loans. In 2014, the 2nd Defendant and Mr Dyadechko began another round of negotiations over another project for which funding was required. Because Mr Dyadechko had granted a number of loans to the companies engaged in the execution of these projects, he was unwilling to grant further loans to the 2nd Defendant; though he was willing to grant the said loan through the Claimant subject to the said loan being secured with a collateral.

It was the case of the Claimant that the parties agreed that the Claimant would advance the sum of US$4,000,000.00 (Four Million US Dollars) subject to the 1st Defendant executing a Share Sale and Purchase Agreement whereupon the 1st Defendant would transfer 50% of its shareholding in Energy and Metals Industries Limited to the Claimant. It was further agreed that the parties would execute a termination Agreement upon the repayment of the said US$4,000,000.00.

The deponent further averred that the parties agreed on the terms of the two agreements on the 6th of February, 2015 after they had exchanged several email correspondences on the subject. The agreements were prepared in Russian with an English translation. It was on the basis of these agreements the scanned

Russian copies of which the Claimant received on the 6th February, that the Claimant transferred the sum of US$1,500,000.00 from its bank to the Diamond Bank Account of the 1st Defendant. It was to the consternation of the Claimant when it discovered, on the 11th of February when the 2nd Defendant delivered the English copies of the agreements to him, that the English versions were remarkably different from the Russian versions.

The deponent swore that the Claimant immediately drew the attention of the Defendants to the discrepancies and gave them, via a letter dated the 27th of February, 2015 seven days within which to return the money already transferred. According to the deponent, the 2nd Defendant, on the 5th of March, 2015 responded that it would return the money only upon a financial closure of the power plant project. A series of meetings were held to resolve this and other disagreements involving the affiliates of the parties. The outcome of one of such meetings which held in Frankfurt, Germany, on the 21st of March, 2015 is Exhibit TCL 12. Rather than follow up the performance of this resolution, the 2nd Defendant, via a letter dated the 25th of March, 2015, resiled from same. On the 30th of March, 2015, Mr Dyadechko replied the Defendants' letter and gave them fourteen days within which to return the US1,500,000.00 already transferred to the 1st Defendant. He also sent another letter to them on the 3rd of April, 2015 making the same demand. According to the deponent, the Defendants have refused to comply with said demands, hence this suit.

In the Written address in support of the Writ of Summons on the Undefended List, learned Counsel formulated a sole issue for determination, namely "Having regards to the fact that the Claimant's claim is for a liquidated money demand for money had and received by the Defendants, whether this Honourable Court ought to enter judgment for the Claimant under the Undefended List."

In his submissions, learned Counsel referred his Court to Order 35 Rule 1(1) of the Rules of this Court which delineates the scope of the application of the Undefended List. He argued that the suit of the Claimant was one which qualified to be heard under the Undefended List procedure because the claim related to a liquidated money demand, the amount claimed is one that is arithmetically ascertainable without further investigation, the Defendants did not dispute receiving the money in question, and the Defendants have no defence to the claim.

Learned Counsel cited and relied on the cases of Digital Security Technology Ltd & Anor v. Andi (2017) LPELR-43446 (CA), Okeke v. NICON Hotels Ltd (1999) 1 NWL (Pt. 586) 216 at 222, Wema Securities and Finance Plc v. Nigeria Agricultural Insurance Corp (2015) LPELR-24833 (SC) in support of his claim that the suit of the Claimant was one that qualified for hearing under the Undefended List Procedure as the claim of the Claimant is for a liquidated money demand and the amount claimed is arithmetically ascertainable.

Arguing further, learned Counsel submitted that the Defendants, in all the communications with the Claimant, never disputed the sum involved in the main

relief in this suit. Learned Counsel referred this Court to Exhibits TCL 11, 12, 14 and 17 and added that facts admitted need no proof. He cited the case of PDP v. INEC (2012) LPELR-8409 (CA) and N.A.S. Ltd v. U.B.A. (2005) 14 NWLR (Pt. 421) at 435 and section 123 of the Evidence Act 2011.

Finally, Counsel submitted that the Defendants have no defence to the claim because there is proof in the file that the Claimant transferredthe sum of US$1,500,000.00 on the 9th of February, 2015 to the Defendants, that the Defendants admitted receiving the said sum, that demands were made for the refund of the money and that the Defendants have ignored the demand for over five years. He insisted that the Claimant was entitled to judgment for the recovery of the money had and received by the Defendants. Counsel cited the cases of Chartered Bank Ltd v. First African Trust Bank Ltd & Ors (2005) LPELR-11350 (CA), Ibe v. Ibhaze (2016) LPELR-416556 (CA) and Udemba v. Morecab Finances Nig. Ltd (2001) FWLR (Pt. 85) 317. He urged the Court, therefore, to enter judgment in favour of the Claimant under the Undefended List in terms of the reliefs sought in the Writ of Summons.

The Defendants have their respective Notices of Intention to Defend the suit of the Claimant. On the 5th of July, 2021, the 1st Defendant filed its Notice of Intention to Defend. The Notice of Intention to Defend was supported by a 41-paragraph affidavit duly deposed to by Malachy Ugwuanyi who stated that he is an in-house Counsel in the 1st Defendant. Attached to the affidavit are twelve exhibits.

According to the deponent, the Claimant deliberately misrepresented the facts of the relationship between it and the 1st Defendant, thereby misleading the Court into believing that the claim of the Claimant was for a simple loan of $1,500,000 whereas, in actual fact, the dispute was one arising from an investment relationship. The deponent traced this relationship to 2008 when Tooley Property Ltd, an affiliate of the Claimant and Mr Sergey Dyadechko, the principal partner and shareholder in the Claimant made an offer to invest in the extraction and processing of mineral resources in Nigeria. The memorandum of understanding evidencing this understanding was executed on the 23rd of March, 2008, leading to the incorporation of Energy and Metals Industries Ltd where Tooley Property Limited was allotted 50% of the shares while the 1st Defendant was allotted 50% of the shares.

The deponent further averred that under the memorandum of understanding, Mr Dyadechko was required to provide 20% of the sum of $1,500,000,000 which is $300,000,000 and £5,000,000 (Five Million Swiss Francs). In furtherance of this memorandum of understanding, the parties, according to the deponent executed further corporate investment agreements or gas fired and coal fired energy power plants.

Contrary to these agreements, the deponent asserted, Mr Dyadechko could not fulfill its part of the agreements, thereby making it difficult for the various projects to be stymied. This state of affairs impelled the 1st Defendant to write Mr Dyadechko,

on the 19th of January, 2015, reminding him of his obligations to provide funding for the projects. Pursuant to this letter of 19th of January, 2015, the Claimant advanced the sum of $1,500,000 to the 1st Defendant on the 9th of February, 2015. He insisted that this payment was a tranche credit based investment founded on the memorandum of understanding executed on the 23rd of March, 2008 and the two corporate investment agreements recoverable only at the financial closure of the project.

It is the case of the 1st Defendant that all the agreements executed by the parties embodied an arbitration clause. Since the Share Sale and Purchase Agreement and the Termination Agreement were not executed by the Claimant, the 1st Defendant insisted that the relationship of the parties was governed by the memorandum of understanding executed on the 23rd of March, 2008.

He deponent further averred that the Court lacks the jurisdiction to adjudicate the suit of the Claimant as the claim was founded on a dispute arising from the operations of the Companies and Allied Matters Act, 2020 and also on mining and minerals which are subjects within the exclusive jurisdiction of the Federal High Court. he also averred that the subject matter of the present suit are matters that have been decided by the London Court of International Arbitration, adding that the awards are also subjects of litigation before the High Court of the Federal Capital Territory, Abuja and the Federal High Court, Abuja. He insisted that the 1st Defendant had disclosed a defence on the merit and, therefore, urged the Court to

transfer the suit to the general cause list as there are triable issues to be determined therein.

In the Written Address in support of the Notice of Intention to Defend, though learned Counsel for the Claimant prayed the Court to strike out the Written Address of the Claimant on the ground that same was not provided for under Order 35 of the Rules of this Court, he however, proceeded to adopt the sole issue formulated by the Claimant and proceeded to formulate a second issue, to wit: "Whether conversely after a review of the 1st Defendant's affidavit disclosing a defence on the merit the 1st Defendant has made out a case to justify being granted leave to defend the suit and the making of a consequential order transferring the suit from the undefended list procedure to the general cause list for trial."

In his joint argument on the two issues, learned Counsel conceded that though the Claimant in an undefended list proceeding is entitled to judgment where the claim is for a liquidated money demand which is mathematically ascertainable, the Court is empowered to transfer the suit to the general cause list where the defendant has disclosed a defence on the merit in its Notice of Intention to Defend. He maintained that the defendant need not put forward a fool-proof defence, adding that all it is required to adduce is minimal evidence. Learned Counsel invited this Court to examine all the exhibits attached to the affidavits in support of the Writ of Summons on the Undefended List and the Notice of Intention to Defend and the depositions in those two affidavits. He urged the Court to hold that the 1st Defendant has made out

triable issues that can be resolved only if the suit is transferred to the general cause list.

For all his arguments on the two issues, learned Counsel cited and relied on the following authorities: SNIG Nig. Ltd v. Omoruku Nig. Ltd (2003) FWLR (Pt. 189) 662 at 675, Ibemere v. Okpala (2003) FWLR (pt. 138) 6, Nya v. Edem (2008) 8 NWLR (pt. 669) 349, Akinyemi v. Governor, Oyo State (2003) All FWLR (Pt. 1140) 1821, and Atagugba & Co v. Gura Nigeria Ltd (2005) All FWLR (Pt. 2561) 216.

On his part, the 2nd Defendant filed his Notice of Intention to Defend on the 9th of September, 2021. The Notice of Intention to Defend is supported by a 52-paragraph affidavit deposed to by Delight Eneje, an associate Counsel in the law firm of G. T. Ariolu & Co, Solicitors to the 2nd Defendant. In the affidavit in support, the deponent denied that the claims of the Claimant and insisted that the sum of US$1,500,000 was not transferred to the 1st Defendant as a loan since the Claimant was neither registered in Nigeria as a company under the Money Lenders Act to advance loans nor was it a non-governmental organization licensed in the United Kingdom to advance loans to foreign companies.

The deponent insisted that the issues evinced in the Claimant's claim arose from an investment dispute between the Claimant and the 1st Defendant with no personal involvement of the 2nd Defendant. The deponent traced the genesis of the relationship between the parties to the memorandum of understanding between Mr Dyadechko and the 2nd Defendant executed on the 23rd of March, 2008. The

depositions in the affidavit in support of the 2nd Defendant's Notice of Intention to Defend followed the same narration as the depositions in the affidavit in support of the 1st Defendant's Notice of Intention to Defend. Some of the depositions in the affidavit in support of the 1st Defendant's Notice of Intention to Defend which were repeated in the affidavit in support of the 2nd Defendant's Notice of Intention to Defend are the absence of jurisdiction of this Court to hear and determine this suit on the ground that the subject matter of the Claimant's action borders on the operation of the Companies and Allied Matters Act, 2020 and that same also relate to mining and minerals which are subjects within the exclusive jurisdiction of the Federal High Court; and also that the suit has been caught up by the doctrine of res judicata since the subject matter had been treated by the London Court of International Arbitration and the arbitral awards are subject of litigation at the Federal High Court sitting in Abuja and the High Court of the Federal Capital Territory, Abuja. She describes the placement of the suit on the Undefended List as 'abusive' and 'unwarranted' and urged the Court to move it to the general cause list as the affidavit has disclosed triable issues.

The Claimant responded to the affidavits in support of the Notice of Intention to Defend. Responding to the 1st Defendant's Notice of Intention to Defend, the Deponent, Janet Bamigbose, denied paragraphs 5, 6, 7, 8. 9, 10, 11, 12, 13 and 21 of the affidavit in support of the 1st Defendant's Notice of Intention to Defend. She insisted that Clause L of the Claimant's Memorandum and Articles of Association

empowers the Claimant to grant loans to any person on such terms it considers fit. Referring the Court to Clause 1.1 of the memorandum of understanding, she swore that the parties to the present suit were not parties to the memorandum of understanding, adding that the reference made to the memorandum of understanding was merely to establish how the relationship between the Mr Dyadechko and the 2nd Defendant came into existence. She insisted that the memorandum of association was not an extensive investment document, but a task-specific agreement which was executed for the purpose of the incorporation of Energy and Metal Industries Limited, the means through which the objective of the memorandum of understanding could be realized.

Adumbrating further, the deponent averred that Clause 5.4 requires Mr Dyadechko, and not the Claimant, to provide the logistics for the successful implementation of the business, adding that the sum of 5,000,000 Swiss Francs stated in Clause 6.1 was credit to be granted to the 2nd Defendant by Mr Dyadechko for a term of five years and that was the only credit contemplated in Clause 2.4. she insisted that the sum of US$1,500,000 sought to be recovered in this suit was different from the 5,000,000 Swiss Dollars both in terms of the designated currency and the duration of the facility.

The deponent also explained that the corporate agreement the 1st Defendant referred to in paragraphs 19 and 20 of its affidavit in support of its Notice of Intention to Defend were separate agreements distinct from the memorandum of

understanding and involving parties distinct from the parties in this suit. She added that the subject matter of this suit was meant to be governed by the unexecuted documents exhibited as Exhibits TCL 4 and 5 and that the arrangement was not subject to any arbitration agreement.

She further stated that contrary to the claim of the 1st Defendant that the subject matter of this suit had been adjudicated by the London Court of International Arbitration, the subject matter of that arbitration and the parties thereat are radically different from the present action, adding that the parties herein and the subject matter of this suit are not pending before any Court. She swore that the Claimant disclosed all material facts so as to allow the Court to dispose of the matter expeditiously. She insisted that the 1st Defendant's affidavit has not disclose any defence on the merit and urge the Court to enter judgment in favour of the Claimant.

In the Written Address in support of the Further Affidavit in support of the Writ of Summons filed in response to the 1st Defendant 's Notice of Intention to Defend, the Counsel for the Claimant noted that though Order 35 of the Rules of this Court did not provide that a process under the Undefended List must be accompanied by a written address, the same Order did not, however, proscribe the filing of same. He added that it had merely reduced in writing legal positions it would have otherwise canvassed in the open Court in the course of the hearing of the suit.

Counsel insisted that contrary to the position canvassed by the 1st Defendant in its written address, the claim of the Claimant is, indeed, for a liquidated money demand and that there is no dispute as to the sum or as to the fact that the 1st Defendant did, indeed, receive the money from the Claimant. Learned Counsel referred the Court to paragraph 25 of the affidavit of the 1st Defendant where its deponent admitted that it received the sum of US$1,500,000 from the Claimant.

It was the contention of learned Counsel that the 1st Defendant has not disclosed any triable issues. Counsel submitted that the memorandum of understanding was not relevant to the claim of the Claimant, but was exhibited so as to show how the relationship between Mr Sergiy Dyadechko and the 2nd Defendant evolved. He insisted that the preoccupation of the Court is the fact that a determinate amount of money was given to the 1st Defendant by the Claimant and that the 1st Defendant refused to return it upon demand for same. He contended that what the 1st Defendant has done is to raise disparate issues in a desperate bid to confuse this Court. describing the defence of the 1st Defendant as a sham, learned Counsel pointed out to the Court that the Claimant was not a party to the arbitration and litigation arising therefrom and that the subject matter of this present suit is not the same as the subject matter of the arbitral proceedings. He therefore urged the Court to discountenance the Notice of Intention to Defend of the 1st Defendant and to hear this suit on the Undefended List.

In its response to the Notice of Intention to Defend filed by the 2nd Defendant, the Claimant, through its deponent, Janet Bamigbose, after denying paragraphs 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 25, 28, 31, 32, 33, 36, 37, 38, 40, 41, 42, 43, 45, 46, 47, 48, 50 and 51 of the 2nd Defendant's affidavit in support of his Notice of Intention to Defend, swore in its Further Affidavit in support of the Writ of Summons that it has not misrepresented any fact in this suit , but, rather, it has placed all the material facts before the Court to enable the Court speedily dispose of the case. The deponent insisted that none of the parties in this suit were parties to the memorandum of understanding, adding that any reference in the memorandum of understanding to provision of organizational, technical and labour resources by the said Mr Dyadechko is in respect of Energy Metals Industries Limited and not any of the Defendants.

The Claimant also averred that the contemplated loan agreement, which suffered stillbirth as a result of the unilateral alterations introduced into the Share Sale and Purchase Agreement and the Termination Agreement by the 2nd Defendant, was a distinct agreement for the advancement of the sum of US$1,500,000.00 by the Claimant to the 1st Defendant. The deponent referred this Court to paragraph 43 of the 2nd Defendant's affidavit where the 2nd Defendant averred that it is the Federal High Court, and not the High Court of the Federal Capital Territory, Abuja that is vested with the jurisdiction to hear and determine the subject matter of this suit and paragraph 8 of the 1st Defendant's Exhibit ZMER 9 where the 1st Defendant swore

that it was the High Court of the Federal Capital Territory, Abuja and not the Federal High Court that had jurisdiction over the same subject matter.

The deponent swore that the subject matter of this suit has never been submitted to any adjudicatory body for adjudication, and that the parties to the arbitration proceedings at the London Court of International Arbitration are not the same as the parties in this suit. Stating that the 2nd Defendant's defence on the merits was a sham, the deponent averred that the 2nd Defendant had not disclosed any defence on the merit. She therefore invited this Court to enter judgment in favour of the Claimant as per its claims on the face of the Writ of Summons.

The above is the facts as presented to this Honourable Court by the parties in this suit. Though the 2nd Defendant is the alter ego of the 1st Defendant as can be seen from the memorandum of understanding exhibited as Exhibit TCL 1, the two defendants chose to file separate Notices of Intention to Defend the suit of the Claimant. Considering the interlinkage of the facts disclosed by all the parties herein in their respective affidavits, and the natural dovetail that ensued thereby, it becomes inevitable that I consolidate the Notices of Intention to Defend and the Claimant's responses to them and treat them together.

At this juncture, it is apposite to formulate the issue or issues that will guide this Court towards a conclusive resolution of the dispute evinced in this suit. After due consideration of the facts of this case, one issue lends itself for determination, *videlicet*: "Whether, from the facts disclosed in this suit, the Defendants have not

disclosed a defence on the merit to enable this Court exercise its powers in transferring this suit from the Undefended List to the General Cause List?"

I have taken my time to reproduce a précis of the facts relied upon by the parties herein. I shall examine, therefore, examine the law relating to undefended list proceedings and determine whether the facts relied upon by the Defendants disclose a defence on the merit.Order 35 Rules 1, 2, 3, 4, and 5 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules, 2018 provides for the Undefended List Procedure. I have reproduced the provisions for the same of clarity and immediacy:

1. (1) Where an application in Form 1, as in the Appendix is made to issue a writ of summons in respect of a claim to recover a debt or liquidated moneydemand, supported by an affidavit stating the grounds on which the claim isbased, and stating that in the deponent's belief there is no defence to it, thejudge in chambers shall enter the suit for hearing in what shall be called the"Undefended List".

(2) A writ of summons for a suit in the undefended list shall contain the returndate of the writ.

2. A claimant shall deliver to a registrar on the issue of the writ of summons, as many copies of the supporting affidavit, as there are parties against whomrelief is sought, for service.

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 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.

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 judgment given accordingly.

5. A court may call for hearing or require oral evidence where it feels compelled at any stage of the proceedings under Rule 4.

The Undefended List is a specially formulated proceeding in which the Court abbreviates the hearing in a suit where the claim is for debt or a liquidated money demand and the Defendant has no defence on the merit to the claim of the Claimant. To qualify for hearing under the Undefended List procedure, the claim of the Claimant must be for debt or a liquidated money demand. The Claimant's affidavit in support of the Writ of Summons must disclose compelling facts which fortify the Claimant's belief that the defendant has no defence to the action of the Claimant. The Courts have given ample judicial elucidation on these qualifications in a number of cases.

In **Zakhem Oil Serve Ltd. v. Art-in-Science Ltd. (2021) 18 NWLR (Pt. 1808) 341** the Supreme Court **per Abdu Aboki, JSC**held at *p. 363, paras. F-H* that "**The purpose of rules under undefended list procedure is to ensure quick dispatch of certain types of cases such as involving debts or liquidated money claims. In other words, it is to enable a plaintiff whose claim is unarguable in law and where the facts are undisputed and it is expedient to allow a defendant to defend for mere purposes of delay, to enter judgment in respect of the amount claimed.**"

Similarly, in **Asuquo v. Udoaka (2021) 15 NWLR (Pt. 1798) 177 at 188 para E – F,**Okoro JSC delivering the judgment of the apex Court, explained that

"***The various rules of courts provide for cases involving liquidated money demand to be placed on undefended list and heard expeditiously without the court having to go the whole hog of a full blown trial with attendant expenses, frustration and delay. The procedure is deliberately designed to allow for quick dispensation of justice.***"

In the instant case, the principal relief of the Claimant is for "The sum of USD 1,500,000.00 (One Million, Five Hundred Thousand US Dollars) being money the Defendants had and received from the Claimant and which the Defendants have refused to pay back." As I pointed out earlier, the Claimant exhibited eighteen documents. Of immediate relevance to the claim of US$1,500,000.00 is Exhibit TCL 4, that is, the English version of the Share Sale and Purchase Agreement dated the

6th of February, 2015. Exhibit TCL 2 is the Russian version. Clause 3.1 stipulates that "The Purchaser shall, within three (3) banking days from the date of this Agreement, make a prepayment for the Block of Shares in the amount of USD1,500,000 (One Million Five Hundred Thousand US Dollars) to the Seller's account." This exhibit is followed closely by Exhibit TCL 6, which is the printout of the SWIFT transfer code for the sum of US$1,500,000.00 which the Claimant transferred to the 1st Defendant on the 9th of February, 2015.

Following the unilateral modifications of Exhibit TCL 4 by the Defendants, giving rise to Exhibit TCL 7, the Claimant refused to execute the documents attached as Exhibit TCL 4 and Exhibit TCL 5. Specifically, the Claimant asserted that the Defendants unilaterally amended Section 3.2 by the inclusion of Clause 20 which stipulates for "payment of registration fees after 4 months from the date of receiving the USD4M." It also claimed that the Defendants amended section 3.3 by adding a condition that prevented the Purchaser from altering the contents of the agreement after its execution. Section 4.2 was altered and a clause giving the 1st Defendant the right to use, for its benefits, the resources of Energy and Metal Industries Limited, the special-purpose vehicle incorporated under Exhibit TCL 1, that is, the memorandum of understanding. Finally, the documents provided for under Clause 3.2 were post-dated to June, 2015 and not the date TCL 4 was meant to come into operation.

It was on the basis of these alterations that the Claimant demanded that the Defendants refund the US$1,500,000.00 already transferred to the bank account of the 1st Defendant. The demand is encapsulated in Exhibit TCL 10, which is a letter from the Claimant to the Defendants dated the 27th of February, 2015. On the 4th of March, 2015, the 2nd Defendant responded to the Claimant's letter where he admitted receipt of the funds; but gave reasons which make the alterations a necessity. The 2nd Defendant specifically demanded for more funds. Exhibit TCL 11 is the response of the 2nd Defendant. Originally written in Russian but translated into English. Both translations constitute Exhibit TCL 11.

The parties continued to make efforts to resolve the impasse that led to this present suit as well as other disputes in relation to the other business relationships between Mr Dyadechko and the 2nd Defendant herein. These efforts gave rise to Exhibit TCL 12. On the 25th of March, 2015, the 1st Defendant through the 2nd Defendant notified as affiliate of the Claimant, Tooley Property Company Limited, of its intention not to abide with the conditions already discussed, opting, however, to give its conditions. In response, Mr Dyadechko, through Tooley Property Company Limited, in Exhibit TCL 14, reminded the Defendants of the genesis of the troubles afflicting the joint companies of Mr Dyadechko and the 2nd Defendant. An excerpt from page 3 of this exhibit is quite illuminating. It states:

"When in searching funds for the Project company you did not manage to find any appropriate third party lender and you decided to apply to me, and this fact speaks

volumes, I confirm it, that I have not retreated from my words and our plans fixed in the protocol of the shareholders' meeting in Frankfurt signed by us mutually on the 21 of March 2015, according to which I agreed to give you (precisely to ZMER company, which belongs to you) a loan of 4 million USD in line with a REPO deal – payment versus your shares of Energy and Metal Industries Limited (EMI) in quantity of 50% belonging to ZMER. You agreed to the fact, that if you breach any conditions for repayment of this loan under agreement, then I will get these shares forever and you will do all your best to assist transferring theses shares into my property. providing timely and full repayment of the loan to me within 4 months you will get these shares back. I remind you, that you also agree to appoint me as an executive chairman of EMI within a few days of executing the agreements in order to guarantee me the security of this transaction. And if you fail to appoint me as EMI executive chairman within of specified period, I will get the shares in ownership immediately." (all grammatical errors are those of the author).

In Exhibit TCL 18, the Claimant repeated its demand for the refund of the sum of US$1,500,000.00 following the Defendants failure or refusal to refund same.

I have stated that each of the Defendants separately filed a Notice of Intention to Defend along with the supporting affidavit. The Courts have pronounced on what an affidavit in support of a Notice of Intention to Defend must contain before it a defence on the merit can be deemed to have been disclosed. In the case of **Onoeyo v. U.B.N. Plc (2015) 10 NWLR (Pt. 1466) 104**, the Court of Appeal,

following the decision in *Lewis v. UBA* (2006) 1 NWLR(Pt. 962) page 546 at pp. 563-564 paras. F-D which, in itself, followed earlier decisions of the Supreme Court in In *Sanusi Bros (Nig.) Ltd. v. Cotici C.E.I.S.A.* (2000) 11 NWLR (Pt. 679) 566 at 580 while applying its earlier decisions in *Macaulay* v. *NAL Merchant Bank Ltd.* (1990) 4 NWLR (Pt. 144) 283 and *Nishuzawa* v. *Jeshwani* (1984) 12 SC 234 laid down the following conditions which an affidavit in support of a Notice of Intention to Defend must fulfill before a defence on the merit can be made out:

For a notice of intention to raise a defence on the merit under the undefended list such a notice of intention must satisfy the following conditions:

a. **Condescend upon particulars as far aspossible, deal specifically with the plaintiffs'claim and affidavit, and state clearly andconcisely what the defence is and what factsare relied on as supporting it.**

b. **Where the defence is that the defendantis not indebted to the plaintiff, state thegrounds on which the defendant relies asshowing that he is not indebted.A mere general denial that the defendant isnot indebted will not suffice.**

c. **Where the affidavit states that the defendantis not indebted to the plaintiff in the amountclaimed or any part thereof, state why thedefendant is not so indebted, and so state thereal nature of the defence relied on.**

d. **Where the defence relied on is of fraud, state clearly the particulars of the fraud.Amere general allegation of fraud is useless.**

e. **If a legal objection is raised, state clearly thefacts and the point of law arising thereon.**

f. **In all cases, give sufficient facts andparticulars that there is bona-fide defence.**

g. **Matters of hear-say are admissible provided that the sources and grounds of informationand belief are disclosed; and**

h. **A case of hardship that creates no enforceable right e.g. past promise by plaintiff unsupported by valuable consideration, or a mere inability to pay or an allegation that the plaintiff has given time for payment which of course constitute no defence unless there be consideration, will not constitutedefence on the merit.**

How did the Defendants, in their respective affidavits, defend the claim of the Claimant under the Undefended List?In other words, have the Defendants being able to discharge the minimal burden of disclosing a defence on the merit as required by the law? In the 1st Defendant's affidavit in support of its Notice of Intention to Defend, which I have summarized above, it insisted that the dispute is not an action relating to loan, but, rather, an investment dispute. It made frequent reference to the memorandum of understanding attached to the Claimant's affidavit

as Exhibit TCL 1 and to the 1st Defendant's affidavit as Exhibit ZMER 1. I have carefully examined this piece of documentary exhibit considering that both parties referred to it in their respective affidavits. The parties to the memorandum of understanding are described as Sergey V. Dyadechko referred therein as the Investor and Innocent O. Ezuma referred therein as the Organiser. In the definition section, the authorized person or party is defined as "a legal entity which is controlled directly or indirectly by the party of the present memorandum." For the purpose of the memorandum, the authorized person of the organizer is Zuma Metal and Energy Resources Ltd while the authorized person of the Investor is Tooley Property Company Ltd.

Section 2 is the subject matter of the memorandum. It states inter alia that "The main issues on which the parties expressed the agreed intentions shall be the following: 2.1. Establishment of the company ENERGY AND METALS INDUSTRIES LTD (hereinafter referred to as the company)". Section 6 is the fulcrum of the 1st Defendant's defence. It states inter alia that "the Investor himself or through the persons connected with him shall undertake to give the Organiser (or the enterprise connected with him, the name and requisites of which will be determined expressly and informed by the Organiser to the Investor in writing) the interest-free credit for the term of 5 years in the amount 5,000,000 (Five Million) Swiss Francs". The agreed tenure of the loan was five years.

This memorandum of understanding, it should be noted, is between Mr Dyadechko and the 2nd Defendant. Its subject is the formation of a new corporate entity to be known as 'Energy & Metals Industries Limited'. The objects of the proposed company, as seen from sections 1.2 and 4 are inter alia the survey, approval of the deposits …, development and construction of plants for extraction, preparation of ore and production of metal goods therefrom as well as the acquisition of mining licences.

The Claimant claimed that the memorandum of understanding is relevant to this suit only to the extent that it seeks to establish the origin of the business relationship between Mr Dyadechko and the 2nd Defendant as well as the entities they control and how they intermingle and, specifically, the establishment of Energy & Metal Industries Limited, the special-purpose vehicle through which the object of the memorandum of understanding can be realized. The 1st Defendant, on the other hand, contended that the memorandum of understanding governs all the business relationships of the parties and that the sum of US$1,500,000 which the Claimant advanced to the 1st Defendant was part of the obligations of the Claimant to provide the finance for the projects Mr Dyadechko and the 2nd Defendant agreed to execute pursuant to the memorandum of understanding.

A clinical examination will disclose that apart from the 2nd Defendant, the other parties to this suit are not parties to Exhibit TCL 1 (same as Exhibit ZMER 1). The 1st Defendant is mentioned therein as the authorized person of the 2nd Defendant

whereas the authorized person of Mr Dyadechko is Tooley Property Company Limited, an entity distinct from the Claimant herein, though controlled by Mr Dyadechko.

As part of its defence to the suit of the Claimant on the Undefended List, the 1st Defendant averred that the subject matter has been caught up by the doctrine of *res judicata* since it was part of the subject of arbitration at the London Court of International Arbitration whose arbitral award is subject of litigation in the High Court of the Federal Capital Territory, Abuja and the Federal High Court, Abuja. It is instructive to note at this point that the issue of res judicata was part of the grounds of the 1st Defendant's Notice of Preliminary Objection which this Court deservedly dismissed.

This Court did carry out an extensive analysis of the subject because the 1st Defendant did not adduce material particulars to substantiate its assertion on this Point. It summarily discountenanced that ground by virtue of section 131(1) of the Evidence Act, 2011. Moreover, the 1st Defendant also raised the same point in its Notice of Intention to Defend and the Court, wary of pronouncing on issues raised in the substantive suit at the interlocutory stage, deferred to pronounce on same extensively in the substantive decision of the Court.

The Supreme Court, in ***Akoma v. Osenwokwu (2014) 11 NWLR (Pt. 1419) 462*** held per Galadima JSC at p. 490 para G that "We know what is *"res judicata."* Simply put, it arises where acourt of competent jurisdiction had earlier

adjudicated upon an issue and the same comes up again between the same parties or their privies." Pats-Acholonu, JSC, in his concurring Judgment in the case of **Archibong v. Ita (2004) 2 NWLR (Pt. 858) 590 at 649, paras. E-F**added that "A plea of res judicata can only be relied on where the subject matter in the previous suit and the subject matter in the subsequent suit are the same." The Supreme Court, in Mba v. Agu (1999) 12 NWLR (Pt. 629) 1 put the subject beyond all shades of confusion when it succinctly stated at p. 16, paras. D-E of the Report that "Now, *Res judicata* has three principal requirements or attributes in order to succeed, *viz:*(a)Same parties (as in the previous case); (b)Same issues; and (c)Same subject-matter."

These requirements must exist conjunctively. Has the 1st Defendant been able to satisfy these requirements? I shall return to the exhibits attached in support of the averments in its affidavit. The parties to Exhibit ZMER 1 are Mr Sergey Dyadechko and the 2nd Defendant. Exhibit ZMER 5 is the witness statement of Innocent Ezuma, that is, the 2nd Defendant herein, in the consolidated arbitration proceeding before the London Court of International Arbitration. The parties in that arbitration proceeding were Tooley Property Company Limited who was the Claimant, Energy and Metal Industries Limited, Zuma Energy Nigeria Limited, Abasa enterprises Nigeria Limited, Zuma 828 Coal Limited and Zuma Steel West Africa which were the Respondents. Apart from the 2nd Defendant herein, none of the parties in this suit were parties to that proceeding. Exhibit ZMER 6 is the Originating Motion on

Notice which the Respondents in Exhibit ZMER 5 filed at the High Court of the Federal Capital Territory, Abuja to set aside the arbitral award of the London Court of International Arbitration. Exhibit ZMER 7 is the Counter-Affidavit of Zuma Steel West Africa Limited filed in opposition to the suit of Tooley Property Company Limited in the Federal High Court, Abuja Judicial Division seeking to enforce the arbitral award of the London Court of International Arbitration. Exhibit ZMER 8 is the Counter-Affidavit of Zuma Energy Nigeria Limited to the same suit. Exhibit ZMER 9 is the Counter-Affidavit ofEnergy and Metal Industries Limited to the same suit. Exhibit ZMER 10 is the Counter-Affidavit of Abasa Enterprises Nigeria Limited to the same suit. Exhibit ZMER 11, finally, is the Counter-Affidavit of Zuma 828 Coal Limited to the same suit. In all of these exhibits, the parties in those proceedings and the parties in this proceeding before this Honoruable Court are not the same. Similarly, the subject matter of those suits and the subject matter in this suit are not the same. Finally, the issues in those proceedings and the issue in this proceeding are not the same. The plea of res judicata pleaded by the 1st Defendant falls heavily on its face with no scintilla of chance at resuscitation.

As part of its defence, the 1st Defendant challenged the jurisdiction of the Court with regards to its competence to entertain the suit considering that the operation of the Companies and Allied Matters Act, 2020, mining and minerals are subjects that are within the exclusive jurisdiction of the Federal High Court by virtue of section 251 (1) (e) and (n) of the Constitution of the Federal Republic of Nigeria 1999. This

same ground was considered by this Court in the Notice of Preliminary Objection of the 1st Defendant. The Court reiterated the time-honoured principle of law that it is the claim of the Claimant that determines the perimeter of the jurisdiction of the Court. In ***Amaechi v. INEC (2007) 9 NWLR (Pt. 1040) 504 at at pp. 533-534, paras. E-A***, the Supreme Court held that "***It is the plaintiff's claims in the writ of summons and the averments in his statement of claim that determine whether or not a given case comes within the jurisdiction conferred on a court. This is to say that in determining the jurisdiction of a court, the enabling law vesting jurisdiction in the court has to be examined in the light of the relief or reliefs sought by a plaintiff. The moment the relief sought comes within the jurisdiction of the court as portrayed by the facts of the relief sought, the court must assume jurisdiction as it then has jurisdiction to do so. Contrariwise, the moment the relief sought does not come within the jurisdiction of the court as portrayed by facts, the court must reject jurisdiction as it has no jurisdiction in the matter.***"

Similarly, in ***Seamarine Intl Ltd. v. Ayetoro Bay Agency (2016) 4 NWLR (Pt. 1502) 313***, the Court of Appeal held ***at p. 334, paras. C-G*** of the report that "***If the relief sought does not come within the jurisdiction of the court as adumbrated by the facts, the court must reject jurisdiction. It is either a court has jurisdiction in a matter or it has not. In the determination of jurisdiction of a court, the enabling law vesting jurisdiction has to be taken into***

consideration in the light of the relief or reliefs sought. The moment the relief sought comes within the jurisdiction of the court, the court must assume jurisdiction. Equally, the moment the relief sought does not come within the jurisdiction of the court, as adumbrated in the facts, the court must reject jurisdiction as it has no jurisdiction in the matter."

In this suit, the claim of the Claimant is for the sum of US$1,500,000 being money the Defendants had and received from the Claimant and which the Defendants have refused to pay back. This is a simple matter which arose from the payment by the Claimant of the stated sum to the Defendants following arrangements embodied in Exhibits TCL 4 and TCL 5. It has nothing to do with the operations of the Companies and Allied Matters Act. And, certainly, it has nothing to do with mining and minerals. The relationship between the parties in this suit, in so far as the claim in this suit is concerned, is not rooted in the memorandum of understanding, contrary to the contention of the Defendants. It was founded in the aborted Exhibit TCL 4 and Exhibit TCL 5. To further entrench this view, Exhibit TCL 14 is very relevant. I have reproduced an excerpt from this exhibit earlier in this judgment. The opening lines of that excerpt, found in the second paragraph in page 3 is very germane. "When in searching funds for the Project company you did not manage to find any appropriate third party lender and you decided to apply to me, … I agreed to give you (precisely to ZMER company, which belongs to you) a loan of 4 million USD in line with a REPO deal – payment versus your shares of Energy and Metal

Industries Limited (EMI) in quantity of 50% belonging to ZMER." The implication is that the loan was a separate transaction which the Claimant gave the Defendants as it would have given any person who approached it for loan and which it is empowered to give by virtue of Clause L of its Memorandum and Articles of Association. Would the 1st Defendant have claimed that the transaction was a matter within the operation of the Companies and Allied Matters Act 2020 if it had sourced for and obtained the loan from a third party which happened to be a corporate entity? The subject matter of this suit comes squarely within the jurisdiction of this Court. Besides, in the Counter-Affidavit of Energy & Metal Industries Limited to the suit of Tooley Property Company Limited filed at the Federal High Court, Abuja Judicial Division and exhibited to the affidavit in support of the 1st Defendant's Notice of Intention to Defend as Exhibit ZMER 9, the 2nd Defendant had averred in paragraph 8 found at page 9 as follows:-

"8. That I was informed by the Respondent's Counsel, S. I. Ameh, SAN, FCIArb at his office at No. 21, Onitsha Crescent, Gimbiya, Area 11, Garki, Abuja on 3rd of June, 2020 at 2:45pm and I verily believe him to be true and correct as follows:

a. That the Federal High Court has no jurisdiction over matters on simple contract.
b. That the purported loan agreements are matters of simple contracts.
c. That only the States High Courts and the FCT High Court have jurisdiction over simple contracts.

d. That this Honourable Court lacks the jurisdiction over this suit."

I can only say that it is disingenuous of the 2nd Defendant to hold one position at the Federal High Court and reverse position in this Court over the jurisdictional competence of this Court over matters of simple contracts and loans. This Court cannot lend itself to be manipulated in so brazen a fashion.

Following the stillbirth of Exhibit TCL 4, as a result of the modifications the Defendants introduced to the terms they had already agreed with the Claimant, which terms were already properly captured in the Russian version of Exhibit TCL 4 attached as Exhibit TCL 2, the parties cannot be said to be in consensus ad idem, as the Claimant wholly rejected Exhibit TCL 7, which is the version the Defendants unilaterally altered. That being the case, the 1st Defendant cannot be heard to argue, as it has done in his affidavit in support of itsNotice of Intention to Defend, that the Claimant ought to have comply with the arbitration clauses contained in Exhibits TCL 4 and TCL 5. Similarly, by extension, the 1st Defendant cannot be heard to argue that the Claimant ought to submit itself to arbitration pursuant to the arbitration clause contained in Exhibit TCL 1 same as Exhibit ZMER 1 before instituting this action because, as I have pointed out earlier, the parties herein were not parties to the memorandum of understanding.

Similarly, after a careful examination of Exhibit ZMER 2 titled Corporate Agreement No. ZENL/AGR/04/07/2012 between Zuma Energy Nigeria Limited Shareholders, Exhibit ZMER 3 titled Corporate Agreement No. ZENL/AGR/04/01/2013 between

Zuma Energy Nigeria Limited Shareholders, I arrive at the inescapable conclusion that the exhibits are not material to the present claim in this suit for the simple reasons that the parties thereat are not before this Court in this suit and, of equal significance, the subject matter is radically different from the subject matter of this suit. Even Exhibit ZMER 4 which the 1st Defendant contended impelled the Claimant to advance the sum of US$1,500,000 to the 1st Defendant does not help the case of the 1st Defendant. This is because, first, the letter was addressed to Tooley Property Company Limited, an entity that is distinct from the Claimant herein; second, the beneficiary of the requested funds was Zuma Energy Nigeria Limited, an entity different from the 1st Defendant herein; and, third, the subject matter for which the funds were requested is different from the subject of Exhibit TCL 4 which gave rise to the present dispute.

In all, I find that the 1st Defendant has not disclosed any defence on the merit. I am not oblivious to Exhibit ZMER 12, which is a Ruling of this Honourable Court *coram* Okeke, J. of blessed memory in respect of a suit on the Undefended List. Indeed, the 1st Defendant has invited this Court to accord the said exhibit the status of a Holy Grail. I have gone through the said exhibit. First, the authority has only persuasive effect on this Court, being the decision of a Court of coordinate jurisdiction. Secondly, and of more importance, the facts of that case are not on all fours with this case. Under the doctrine of stare decisis, a decision of a Court of

superior jurisdiction can be invoked in a subsequent case only when the facts are on all fours with the subsequent case. See===

In this case, however, the 1st Defendant has not condescended upon the particulars of the facts adduced in the affidavit in support of the Writ of Summons on the Undefended List. What the 1st Defendant has done is to depose to facts and to annex exhibits which have no material relevance to the claim of the Claimant. When the affidavit in support of the Notice of Intention to Defend is sheared of the wool of irrelevant fripperies contained therein, it becomes readily obvious that the affidavit has not met each particular averment of fact of the Claimant with superior and compelling facts. In fact, the litigatory route followed by the 1st Defendant is akin to the method adopted by the Appellant in the case of **Onoeyo v. U.B.N. Plc (2015) supra.** This is what the Court of Appeal **per ELECHI, J.C.A. at pages 119-120, paras. F-G**had to say about the facts deposed in the affidavit in support of the Appellant's Notice of Intention to Defend at the trial Court:

"The crux of the respondents case is that it granted an over-draft facility of N6,500,000.00 and a loan of N4,000,000.00 respectively to the present appellant. The grant was evidenced on a letter dated 25th June, 2002 and addressed to the appellant's Managing Director, Young Brothers Company and acknowledged same through an endorsement as shown in exhibit A. Though the appellant filed a 26 paragraph affidavit in support of his intention to defend the present suit, no mention was made either by way of denial or

contest in respect of the contents of exhibit A. Rather than admit or contest the claim of the respondent, the appellant was busy on a frolic of his own dwelling on a transaction that took place and matured before 2002 when the present cause of action arose. By so doing, the appellant has not satisfied any of the conditions specified in the authority of *Lewis v. U.B.A.* **(***supra***). Therefore, the appellant has not addressed the cause of action in this matter and the likely presumption is to say that he has not disclosed any triable issue as per his affidavit in the notice of intention to defend this claim. The contents of exhibit A is clear and what is more is that parties are bound by the content of exhibit A which was signed by them and remain binding by the clear terms of same. See** *Joseph Ifeta v. Shell Petroleum Dev. Company of Nigeria Ltd.* **(2006) 7 MJSC page 121 at 134, (2006) 8 NWLR (Pt. 983) 585.**

The appellant has therefore not disclosed in his affidavit evidence, any triable issue and therefore he has no defence to the claim."

As for the 2nd Defendant, the facts contained in the affidavit in support of his Notice of Intention to Defend follows the same trajectory as the affidavit in support of the 1st Defendant's Notice to Defend. He has contended, as the 1st Defendant has contended, that the claim of the Claimant arose out of what he called, just as the 1st Defendant has called it, investment dispute. He challenged the suit of the Claimant for non-compliance with the arbitration clauses in Exhibit ZMER 3. He also relied on all the documents exhibited by the 1st Defendant. It is my considered view, and I so

hold, that in so far as the defence on the merit of the 2nd Defendant is anchored on the depositions of facts contained in the affidavit in support of the 1st Defendant's Notice of Intention to Defend and the documentary exhibits annexed thereto, the findings of the Court on those facts shall apply to the 2nd Defendant.

The only point of divergence is the averment in paragraph 14 that "The Claimant is neither a non-governmental organization licensed in the UK to advance loans to foreign companies or registered in Nigeria under the Money Lenders Act as a Money Lender and as such cannot legally send any actual loan to Nigeria, thus accounting for the glaring absence of any form of loan agreement." The Claimant, in addressing this deposition of fact in its Further Affidavit, referred this Court to Clause L of its Memorandum and Articles of Association where it is stated that the Claimant has the powers "*to make loans or advances or give credit to any person, company or firm on such terms as may seem expedient…*"

There is no evidence that the Claimant carried out any business in Nigeria as a foreign company not registered in Nigeria. What the Claimant seeks to recover is the sum of US$1,500,000 which it paid out in furtherance of an agreement evidenced by Exhibit TCL 4; and which agreement was thwarted by the Defendants' unilateral modification of the contemplated agreement. The consideration having failed, the Claimant is entitled to recover its US$1,500,000 from the Defendants as money had and received. Section 84(b) of the Companies and Allied Matters Act provides that "***nothing in this Chapter shall be construed***

as affecting the rights or liability of a foreign company to sue or be sued in its name or in the name of its agent." It is my considered belief, and I so hold, that the 2nd Defendant has not proffered any defence on the merit to the claim of the Claimant.

According, this Court finds merit in the case of the Claimant. Judgment is hereby entered in favour of the Claimant as per the terms of the Claim as enumerated in the Writ of Summons on the Undefended List but with the following modifications:-

1. **The Defendants jointly and severally are hereby ordered to pay to the Claimant forthwith the sum of US$1,500,000.00 (One Million, Five Hundred Thousand US Dollars) being money the Defendants had and received from the Claimant and which the Defendants have refused to pay back.**
2. **That this Court hereby award 10% post-Judgment interest on the above sum from today, the 22nd day of June, 2022 following the delivery of this Judgment until the entire judgment sum is liquidated.**
3. **That the sum of ₦1,000.000.00 (One Million Naira) only is hereby awarded against the Defendants jointly and severally and in favour of the Claimant as the cost of action.**

This is the Judgment of this Honourable Court delivered today, the 22nd of June, 2022.

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HON. JUSTICE A. H. MUSA
JUDGE
22/06/2022

APPEARANCES:

FOR THE CLAIMANT:
Olujoke Aliu Esq.
D. D. Killi Esq.
Janet Bamigbose Esq.

FOR THE 1ST DEFENDANT:
James Okoh Esq.
Ogechi Nwobia Esq.
Benedict Onyolu Esq.

For the 2nd Defendant:
Benedict U. Ugorji Esq.