

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT JABI

THIS 11th May, 2022

BEFORE HIS LORDSHIP: HON. JUSTICE A.A FASHOLA

SUIT NO: FCT/HC/CV/2654/2022

BETWEEN:

**DORCAS ORKPELA-----CLAIMANT
AND**

- 1. ROYAL EXCHANGE PREUDENTIAL LIFEPLC } DEFENDANTS
2. GOLDLINK INSURANCE PLC }**

JUDGMENT

This is a matter commenced by a writ of summons under the undefended list procedure dated and filed 13th October 2021 wherein the plaintiff claims against the defendants follows.

a) As against the 1st defendant, N1,658,561.40 (One Million, Six Hundred and Fifty Eight Thousand Five Hundred and Sixty-One Naira, Fourty Kobo) being the outstanding sum payable as death benefit under the contract of Group life insurance policy between the deceased member (Okpela Nathaniel Nyamave) and the first Defendant.

b) As against second defendant, N414,640.35(Four Hundred and Fourty Naira, Thirty Five Kobo) being the outstanding sum payable as death benefit under the contract of Group

Life insurance policy between the deceased member (Okpela Nathaniel Nyamave) and the first Defendant.

- a) As against defendants 25% (Twenty-Five percent) interest payable on the agreed sum from 17th November 2012 (the date of death) till judgment.
- b) Payment of a further post judgment interest at the court's rate 25% per annum on the judgment sum.

In support of the writ of summons is a 26 paragraph Affidavit deposed to by one Rakiya Yakubu a public officer of National Orientation Agency annexed are Exhibits marked A, B, C, D, E,

FACT OF THE CASE

The claimant avers that she is the wife of late Okpela Nathaniel Nyamure. That she obtained a letter of administration to administer his estate. That the defendant at all material time to this case was licensed by National Insurance Commission to carry out life insurance business in Nigeria. That the deceased died intestate on 17th November 2012, at Makurdi, Benue state. That prior to the death of the deceased he was a public servant of National Orientation Agency a Federal government agency. That the Federal Government took out life insurance policy for the benefits of all its staff in 2012 by virtue of the pensions perform

Act. That the defendants under the life insurance policy are liable to paying to employees estate in the event of death three times the amount of the insured annual earnings. That upon the death of the deceased, the defendant were duly notified as required by law. That the 1st defendant who is the lead insurer admitted in writing liability for the specific sum of N1,658,561.40 (One Million Six Hundred and Fifty Eight Thousand Five Hundred and sixty naira and forty Kobo) owing and due to the Estate of the deceased by virtue of the life insurance policy. That the second defendant's ten (10) percent liability from the death voucher is 414,640.35(Four Hundred and Fourteen Thousand Six Hundred and Fourty Naira and thirty Five Kobo). That the defendant failed/neglected to settle the sum due to the estate of the deceased inspite of several demands. The claimant avers that her lawyer wrote a letters of demand to the defendants which was ignored by the defendant. Annexed to the Affidavit are Exhibits.

LIST OF EXHIBITS

1. Exhibit A is a letter of administration dated 8th February 2013
2. Exhibit B is a certificate of death dated 4th January 2013
3. Exhibit C is a death notification form
4. Exhibit D is a death claim discharge voucher dated 19th March 2020
5. Exhibit E is a letter dated 5th may 2021

Upon service of the writ of summons and other accompanying processes on the defendants, the defendant did not file a notice of intention to defend neither were they represented by a legal counsel.

From the evidence before this Honorable Court, this suit raises a sole issue for determination to wit:

Whether the claimant has proved his case to be entitled to the reliefs sought against the Defendant.

For the suppose of clarity, I deem it fit to reproduce Order 35 rule 4 of the Civil Procedure Rules of the FCT High Court 2018 which states:

" Where a defendant neglects to deliver the notice of defense and an affidavit prescribed by the 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."

On the lone issue above, the Court have sufficiently expounded on what amounts to the Claimant proving his case to be entitled to reliefs sought. In the instant case the defendant failed to file any notice of intention to defend or a defense on the merit neither are they represented by counsel despite the service of Court processes on them. However, it is trite law that the Court is entitled even in an undefended case to be satisfied that the evidence adduced is credible and sufficient to sustain the claim See the case of **AYOKE Vs BELLO (1992) 1 NWLR (PT 218)387**.

In the case of **EJASCO GLOBAL INVESTMENT LTD VS INIM (2015) LPELR** the court of Appeal held that:

"In proceedings brought on the undefended list procedure, the duty of the trial court on the return date is to evaluate the affidavit evidence and determine if the Defendant who has filed a Notice of intention to defend supported by an affidavit that condescends upon particulars in response to the plaintiff's case. If the trial court is of the view that the defendant has disclosed triable issues, the matter would be transferred to the general cause list for hearing. If no real defence has been disclosed, the matter will be heard on the undefended list and judgment entered in favour of the claimant".

Also in the case of **AREWA TEXTILES PLC Vs FINETEX LTD (2003) 7 NWLR (PT 819) 322 AT 341 Paras D-9 Per Salami JCA as he then was** held:

"That the Claimant will not be entitled to judgment merely because the defendant abandoned its defence by failing to lead evidence in Support thereof. The Court would only be bound to accept unchallenged, uncontroverted and unrebutted evidence of the Claimant, if it were cogent and credible. The Court would not accept a piece of evidence which is not material and of no probative value merely because the only evidence before the Court is that of the Claimant. Even where the evidence is unchallenged and uncontradicted the trial Court has a duty to evaluate it and be satisfied that it is credible and sufficient to sustain the claim"

See the case of **GONZEE (NIG) LTD VS NIGERIAN EDUCATIONAL RESEARCH AND DEVELOPMENT COUNCIL (2005) 13 NWLR (PT. 943).**

After a careful perusal of the evidence before me, particularly the Affidavit evidence and the annexures thereof; on the strength of these legal Authorities cited above it is my considered legal

opinion that the claimant has proved his case against the defendants.

IT IS HEREBY ORDERED THAT THE DEFENDANTS SHALL:

1. The first defendant is to pay the claimant the sum of , N1,658,561.40 (One Million, Six Hundred and Fifty Eight Thousand Five Hundred and Sixty-One Naira, Forty Kobo) being the outstanding sum payable as death benefit under the contract of Group life insurance policy between the deceased member (Okpela Nathaniel Nyamave) and the first Defendant.
2. The second defendant is to pay the claimant the sum of, N414, 640.35 (Four Hundred and Forty Naira, Thirty Five Kobo) being the outstanding sum payable as death benefit under the contract of Group Life insurance policy between the deceased member (Okpela Nathaniel Nyamave) and the first Defendant.
3. 10% percent post judgment interest is awarded from the date of this judgment.

Appearances :

Parties absent

No legal representatives

Judgment read in open court

Signed
Presiding Hon Judge
11th/05/2022

