

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/3214/2021
DATE: 22ND SEPTEMBER, 2022

BETWEEN:

MOHAMMED ABDULAZEEZ.....CLAIMANT

AND

AHMED SHITU.....DEFENDANT

APPEARANCES:

E. O. Abadaki Esq for the Claimant.

Vincent Eromose Esq Holding brief of Anthony Agbonlahor Esq for the Defendant.

JUDGMENT

By a Writ of Summons taken out under the Undefended List procedure, the Claimant herein, claims against the Defendant as follows:-

- “(1). A DECLARATION of the Honourable Court that the Defendant is indebted to the Claimant in the sum of N35, 200, 000.00 being a liquidated money demand.***
- (2). AN ORDER directing and compelling the Defendant to pay the Claimant the liquidated and ascertain sum of N35, 200, 000.00 being sum of money collected from the Claimant and having been over due for repayment or refund.***

- (3). ***AN ORDER for interest on the N35, 200, 000.00 at the rate of 22% per effective from 13th March 2021 till judgment is entered.***
- (4). ***AND FOR SUCH ORDER OR FURTHER ORDER(S) the Honourable Court may deem fit to make in the circumstances of this suit.”***

The Writ was issued by E. O. Abadaki Esq, of E. O. Abadaki and Company, Counsel to the Claimant. The Writ is supported by an affidavit of 25 paragraphs deposed to by the Claimant himself. Annexed are Exhibits marked as Exhibits 3(a), 3(b), 3(c), 4, and 5 respectively. Also filed in support of the Writ is a Written Address dated the 22nd November, 2022.

From the records of the Honourable Court, the Defendant was served with the Writ of Summons and other accompanying processes in this suit by substituted means via an order of this Honourable Court dated the 25th day of January, 2022.

Upon being served, the Defendant filed a Memorandum of Appearance on the 16th February, 2022. Equally filed by the Defendant is a Notice of Intention to Defend dated 16th February 2022 along with an Affidavit in support of the Notice of Intention to Defend.

Addressing the Court on 30th June 2022, learned Counsel to the Claimant, E. O. Abadaki Esq adopted their processes and urged the Court to enter judgment in favour of the Claimant as per the claims as endorsed on the Writ of Summons less N700, 000.00. He referred the Court to the cases of ***IFEANYI CHUKWU TRADING INVESTMENT LTD VS ONYESOM COMMUNITY BANK (2015) VOL. 7 NWLR (Pt.1487) Pg 1 at 37; MACAULEY VS NAL MERCHANT BANK (1990) 4 NWLR (Pt. 144) 283.***

On the other hand, the Defendant's Counsel while addressing the Court stated that the Defendant is not denying owing the Claimant but that in the interest of justice he urged the Court to hear his own side.

In the said Written Address filed by the Claimant, the learned Counsel formulated a sole issue for determination to wit:

“Whether the Claimant/Applicant herein has made out a case for grant of the reliefs sought in this matter under the Undefended List.”

In arguing the issue, Counsel stated that by virtue of Order 35 Rule 1 of the High Court of the Federal Capital Territory Civil Procedure Rules 2018, it is instructive to note that the object of Undefended List Procedure is designed to secure quick justice and to avoid the injustice likely to occur when there is no genuine defence on the merits to the Claimant’s case.

Counsel stated further that it is trite law that undefended list procedure was well designed to relieve the Court of the rigour of pleadings and burden of hearing tedious evidence or sham defence and to avoid Defendant’s tactics of dribbling the Court where glaringly there is no defence on the merits of the suit. Counsel referred the Court to the case of ***AKAHALL & SONS LTD V NIGERIA DEPOSIT INSURANCE CORPORATION (2017) 7 NWLR (Pt.1564) Page 194 at 211- 212, Para A-C per Nwaeze JSC.***

Furthermore, Counsel argued that a careful perusal of the Affidavit in support of the Undefended List application will reveal to the Honourable Court that the Defendant has no defence on the merit to the Claimant’s claims.

Finally, Counsel stated that, it will serve the interest of justice to enter summary judgment against the Defendant as per the reliefs sought/claimed in the Writ of Summons.

I have carefully perused the Writ of Summons filed via undefended list, the reliefs sought, the supporting affidavit, the annexures attached therewith, the Written Address and the oral submission of Counsel to the Claimant urging the Court to enter judgment in favour of the Claimant. I have carefully gone through the Defendant’s Notice of Intention to Defend with Affidavit disclosing defence on the merit and the Counsel’s oral submission.

Therefore, it is my humble view that the issue for determination is thus:

“Whether considering the facts and circumstances of this case, the Claimants’ suit can be sufficiently heard under the undefended list.”

It is trite law that the undefended list procedure is fashioned to take care of cases relating to simple uncontested debts or liquidated money demand or monetary claims. In this respect, I refer to Order 35 Rule 1(1) of Rules of this Court. I shall reproduce same hereunder. It provides thus:

“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 money demand, and stating that in the deponent’s belief there is no defence to it, the Judge in Chambers shall enter the suit for hearing in what shall be called the undefended list.”

See also the case of ***H.R. LTD V F. INV. LTD (2007) 5 NWLR (Pt. 1027) 326 at 346, Para C*** where it was held thus:-

“The undefended list procedure is a special procedure designed for quick dispensation of justice in a claim for a liquidated money demand.”

A liquidated money demand is in the nature of a debt, it is a specific sum of money due and payable under or by virtue of a contract. It is liquidated when the sum is easily ascertainable.

Having said this, in the instant case the Claimant is claiming against the Defendant as endorsed on the Writ of Summons and deposed in the supporting affidavit among other things, that the action is for a liquidated money demand and the Defendant has no defence to this action.

At this juncture, the onus is on the Defendant under the undefended list procedure to show by their affidavit evidence that they have a defence on the merit to warrant the transfer of the suit to the general cause list. This is in line with the provision of Order 35 Rule 3(1) and (2) of the Rules of this Court. For clarity and ease of reference, I shall reproduce the provision hereunder. It 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 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.”

Now, let me evaluate the affidavit of the Defendant to see whether he meets the requirements of law.

In the affidavit disclosing defence on the merit filed by the Defendant together with Notice of Intention to Defend, it was deposed therein among other things that the total sum of N35, 200, 000.00 (Thirty Five Million, Two Hundred Thousand Naira) was paid to him in different tranches which payment he acknowledged on 17th August, 2021 as monies had and received by him for the purchase of the seven (7) vehicles, that he made a refund of N700, 000.00 (Seven Hundred Thousand Naira) only to the Claimant on or about September 2021, and that he cannot deny his indebtedness to the Claimant but is only seeking to be allowed to repay the debt in instalments.

At this point, I must say that having examined all the averments in the affidavits in support of the Notice of Intention to Defend vis-à-vis the entire depositions in the supporting affidavit to the Claimant’s claim particularly depositions in paragraphs 5, 15, 17, 18 and 22 as well as exhibit 4 attached thereto, I am of the strong view that the Defendant has failed to show any defence on the merit and/or raise any triable issue as required by law to warrant the transfer of this suit to the general cause list. In this respect, I refer to the case of ***AMEDE V. UBA PLC (2018) 6 NWLR Pt.1614 per Galinije JSC at PP: 38 – 39, Para F – A*** and held that:-

“In an action brought under the undefended list procedure, the Court is required to consider only the evidence contained in the affidavit filed by the Defendant in support of the Notice of Intention to Defend the suit. Once the Court comes to

conclusion that the affidavit does not disclose a defence on the merit or a triable issue, then the Court is to proceed with the hearing of the suit as an undefended suit and enter judgment accordingly without calling on the Defendant even if present in Court to answer or be heard.”

In the instant case, the Defendant has clearly acknowledged his indebtedness as claimed by the Plaintiff. To this end, I hereby resolve the issue for determination in favour of the Claimant and hold very strongly that the Defendant has failed to disclose a defence on the merit via his affidavit in support of the Notice of Intention to Defend.

However, the Claimant having admitted the deposition in paragraph 4(f) to the effect that the Defendant had made a refund of N700, 000.00 (Seven Hundred Thousand Naira) on or about September, 2021, this Honourable Court has taken judicial notice of same.

Consequently and without further ado I hereby enter judgment in favour of the claimant as per his claims as endorsed in the Writ of Summons less N700, 000.00 for the reason stated herein and on the claim for pre-judgment interest, I hereby award 10% interest on the judgment sum per annum from today till the judgment sum is fully liquidated.

Signed:

**Hon. Justice S. U. Bature
22/9/2022**