

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GARKI, ABUJA - FCT**

**CLERK: CHARITY ONUZULIKE
COURT NO. 10**

**SUIT NO: FCT/HC/BW/CV/206/2021
DATE: 15/3/2023**

BETWEEN:

YEMATHE INTEGRATED SERVICES LTD..... CLAIMANT

AND

BWARI AREA COUNCIL.....DEFENDANT

JUDGMENT

(DELIVERED BY HON. JUSTICE S. B. BELGORE)

In a suit marked and placed under the undefended list procedure, there are most important and germane steps or procedure that must be observed by the trial Court. The basic procedures or settled principles are:

1. When the matter under the undefended list comes up for hearing, on that day, the Court has only one duty. That duty is to see if a Notice of intention to defend with an affidavit in support was filed by the defendant, if none was filed the Court must proceed for judgment. **(BEN THOMAS HOTEL LTD VS. SEBI FURNITURE LTD) 5 NWLR (PT. 123) 523 SC.**
2. In an action brought under the undefended list procedure, the trial Court is required to consider only the evidence contained in the affidavit filed by the Defendant in support of Notice of intention to defend suit. Once the Court comes to the conclusion that the affidavit does not disclose a defence on the merit or a triable issue, 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. **HAIDO VS. USMAN (2004) 3 NWLR (Pt. 859) 65.**

It must be stated that the undefended list procedure is a *sui generis* proceedings as such it is strictly governed by their own law i.e. order 35 of the Rules of this Honourable Court. It is not to be lumped and confused with other species of civil proceedings that are expected to follow a normal procedure.

In the instant suit, this Court upon taking cognizance of the writ of summons in form 1, reading the endorsements on the writ together with the affidavit in support of same, wherein the Claimant averred that it sincerely believes that the Defendants have no defence whatsoever to the claim, marked the writ accordingly and entered it in what is called the “**undefended list**”, and in keeping faith with the rules of this Honourable Court gave 15th March 2023 a return date for hearing.

On the return date the defendant had filed no Notice of Intention to defend and refused to appear in Court.

The law is now settled beyond peradventure that the duty of the Court on the return date is to determine whether the defendants ought to be granted leave to defend or whether the suit is keeping faith with order 35 Rule 4 be heard as undefended and judgment entered accordingly.

The Claimant’s claim on the Writs of Summons is as follows:

1. An Order of the Court compelling the Defendant to pay forthwith to the Claimant, the sum of Four Million, Four Hundred and Ninety-Nine Thousand, Four Hundred and

Eighteen Naira (**N4,499,418.00**) being the total of the contract sum owned to the Claimant by the Defendant.

2. An Order of Court compelling the Defendant to pay the sum of One Million Naira (**N1,000,000.00**) for cost of action.

The Claimant's alter ego deposed to a 22-paragraphed affidavit in support of its claim in the writ of summons and annexed letter of contract award, certificate of practical completion and demand notice.

The summary of the Claimant's case, as disclosed in its affidavit, is by a letter of award of contract, the Claimant is engaged for the partial fencing of Kubwa Cemetery and Mr. Kenneth Mbaegbu fence at the sum of N4,499,418.00 (Four Million, Four Hundred and Ninety-Nine Thousand, Four Hundred and Eighteen Naira).

The Defendant as I said earlier in this judgment filed no Notice of Intention to defend and refused to appear in Court.

Let me return to the duty imposed on me by order **35 Rule (3) & (4)** of the rules of this Honourable Court to the effect that on the return that the Court should consider the notice of intention to defend together with the affidavit disclosing a defence on the merit. In the instant case, no such notice is before this Court the Defendant having been duly served with hearing notices.

The implication is that I must allow the provision of Order 35 Rule 4 of the Rules of this Court to take its cause by giving full effect to it. The said provision reads:

“Where a defendant neglect to deliver the notice of intention to defend 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.”

See the case of **BEN-THOMAS HOTEL LTD VS. SEBI FURNITURE LTD (1989) 5 NWLR (PT. 123) 523** where it was held that when a matter under the undefended list come up for hearing, the Court has only one duty. And that duty is to see if a Notice of Intention to defend with a counter-affidavit in support was filed by the defendant. If none was filed as in the instant case, the Court must proceed to Judgment.

On the strength of the provision of Order 35 Rule 4 and the Supreme Court's decision in **BEN-THOMAS HOTEL (Supra)**, I hereby enter judgment for the Claimant as per the Writ of Summons save claim two (2) which is not proved by the deposition and supporting affidavit.

This shall be the judgment of this Court.

Signed
S. B. Belgore
(Judge) 15/3/2023