

**IN THE HIGH COURT OF JUSTICE OF THE F.C.T.**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT KUBWA, ABUJA**

**ON TUESDAY, THE 7<sup>TH</sup> DAY OF FEBRUARY, 2020**

**BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA**

**JUDGE**

**SUIT NO.: FCT/HC/CV/3078/18**

**BETWEEN:**

**APOSTLE EUGENE OGU**

**CLAIMANT**

**AND**

**1. MR. LARRY OBASI**

**DEFENDANT**

## **JUDGMENT**

In a Writ of Summons filed on the 19/10/18 the Plaintiff Apostle Eugene Ogu Claims the following against Mr. Larry Obasi.

**(1). An Order directing the Defendant to pay to Plaintiff the sum of \$54,000.00 (US Dollars), being the sum transferred to the Defendant by Plaintiff for the supply of Block inter-locking moulding machine and evidenced by an acknowledgment of receipt vide an e-mail dated Monday 30<sup>th</sup> January, 2006, issued by the Defendant.**

**(2). An Order that the Defendant pay to the Plaintiff Post Judgment interest at the rate of 10% per annum until final Liquidation of the whole Judgment sum.**

The Plaintiff supported the Writ with an Affidavit of 45 paragraphs which he deposed to in person. He attached 13 documents marked as Exhibit AA 1-AA 13.

The Plaintiff made several attempts to serve the Defendant with the Originating Processes. When personal service proved abortive, they approached this Court with an application made Exparte for leave to serve the Defendant with the said Originating Processes.

The Court after due consideration of the said application, granted it on the 23/5/2019. On the 20/11/19 the Bailiff of the Court served the Defendant both the Originating Process and the Hearing Notice as per the Order of this Court. The Court subsequently serves the Defendant another Hearing notice showing that the matter was reserved for hearing on the 13/12/19. On the 21/1/2020 when this matter came up the Defendant as usual was not in Court. He had neither entered appearance in flesh and blood. He did not send any Counsel to represent him either. He did not file any process challenging the Writ of the Plaintiff.

Meanwhile because of the nature of the Claim of the Plaintiff the Writ was marked Undefended List even before it was served on the

Defendant. The Defendant did not file any Notice of Intention to Defend or that he has a prima facie defence on merit.

The Court heard the application of the Plaintiff Counsel for Court to enter Judgment summarily in favour of the Plaintiff.

Since there was no Affidavit and notice of intention to defend the Suit by the Defendant the Court heard and allowed the Plaintiff Counsel to move the application and reserved the matter for judgment.

In the Affidavit the Plaintiff had alleged that he engaged the Defendant who resides in Czech Republic to help him buy Block interlocking making machine for a company called Almabeton. At the meeting the Defendant Obasi acted as interpreter. They negotiated the price of the machine and agreed on \$200,000.00 US Dollars equivalent to N 5.4 Million of the Czech Republic currency.

That in the course of this entire he remitted the sum of \$ 70,000.00 US Dollars to the Almabeton through the Defendant as per their agreement when he went to Czech Republic. He attached the documents –receipt evidencing payment and remittances of the said money. He attached several e-mail messages to further prove the remittances made through the Defendant.

Little did he know that these monies never reached the company Almabatton or its CEO Wolfgang. But when he did not see the moulding machines after sometime he became worried and sought for an explanation. Meanwhile this moulding machine was for the Church where the Plaintiff is the general overseer.

All attempts to make the Defendant supply the machines or show evidence that the money was actually remitted to the company- Almabeton or to the CEO Wolfgang proved abortive. The Defendant

did not show any evidence of remitting the said amount to the company or any person at all.

Then the Plaintiff started demanding for the refund of the money had and obtained. The Defendant informed him that he will send, and actually sent a container with undisclosed goods. He told the Plaintiff that he should sell the contents of the container and use the proceed of sale as refund of his money.

The Plaintiff sold the container for about N850, 000.00. Meanwhile the Plaintiff had remitted \$ 4,500.00 US Dollars to the Defendant to enable him pay for the shipping of the container. After the sale of the container the Plaintiff inform the Defendant that the amount recovered there from is far less than even the amount of shipment of goods. That the amount is far cry from the amount of money sent to the Defendant for the importation of the machine for moulding inter-locking blocks. In order to intimidate the Plaintiff, the Defendant had written petitions against the Plaintiff to EFCC, COP, IGP and ICPC. In all these places the Plaintiff was exonerated from all the allegations raised in the several petition. The Security Organisations did not charge him to Court.

After all this the Plaintiff decided to come to this Court as law abiding citizens rather than taking the laws into his hand since all solicitations made by Plaintiff to Defendant to pay him failed. Hence this action which is seeking for an Order of this Court to Order the Defendant to pay him \$ 54,000.00.

Given the nature of the case it was marked under Undefined List because it is a debt. It is money had and obtained it is a liquidated money demand and as such the Plaintiff is right in seeking for summary Judgment. Because to him the Defendant has no prima facie defend to his case.

On their part the Defendant did not file any Notice of Intention to Defend. They did not enter appearance either. So the Judgment of this Court is based on only the documents-affidavit and Exhibits filed and tendered by the Plaintiff in support of their application for Court to enter Judgment summary in his favour.

The essence or purpose of undefended list procedure is to secure quick justice and shorten the often long and tedious journey often taken by hearing of a case where the Claim is on liquidated money demand or debt. Undefended procedure prevents the grave injustice often suffered in a protracted litigation.

Where there is actually no obvious defence to the Claim of a Plaintiff especially where the transaction is based on settlement of debts and contractual obligations are deliberately and intentionally dragged in order to frustrate a party, the Court uses the undefended list procedure to determine the case.

That is the decision of the apex Court in the recent case of:

**Ezeonwu Osita.I VS Nanka Micro-finance Bank Ltd (2018) ALL FWLR (pt.946) -1079 @1083 Rat.4.**

The whole purpose of the procedure under Undefended list procedure is to enable the Plaintiff who instituted the action obtain summary Judgment without trial. But to so obtain such summary Judgment, his case must be patently clear and unassailable. Such case must not be designed to shut out the defendant who can show that he has triable issue by filing a Notice of Intention to defend the Suit of the Plaintiff, a call for Undefended list procedure will fail. In that case the Defendant must with his Affidavit and Exhibit where necessary and available, create doubt in the mind of the Court about the genuineness of the Plaintiff's Claim.

But where the defendant did not file any intention to defend or create doubt in the mind of Court about the genuiness of the Plaintiff's case the Court is bond to listen to the Plaintiff and after due evaluation of the facts upon which the plaintiff's case is based and the exhibit if any attached, grant the application by hearing the plaintiff's and entering Judgment summarily for and in favour of the said Plaintiff. That is the decision of the Supreme Court in the case of:

**(1). Nishizawa Vs Jethwani (1984) S.C 124**

**(2). Amede Vs UBA Plc (2018) ALL FWLR (PT963) 1569@1573  
Ratio.3-4**

**(3). Shodipo Vs LemminKainen (1986) WLR (PT15) 229.**

In this case the defendant was duely served with the Plaintiff's Originating Processes but did not enter appearance or file any notice to defend the Suit of the Plaintiff. It is trite that where the defendant fails to file any notice to defend the Court is bond to grant the Plaintiff's relief as sought. But before the Court does so it must take a look at the facts of the plaintiff's case as contained in the averments in the affidavit as well as the documents attached in support of the application for summary Judgment. See the Supreme Court decision in the case of:

**Ezeonwu Osita Vs Nanka Micro-finance Bank Ltd @P.1082**

See also the case of:

**Ekulu Farm Vs Union Bank Plc (2006) ALL FWLR (PT.319) 895**

**Olalekan Vs Ifedapo Micro-finance Bank Plc (2010) LPELR-4560(CA)**

In the instant case a look at the documents attached puts no one in doubt that there is a business transaction between the plaintiff and

Defendant. There's also no doubt that there was money transferred to Defendant by the Plaintiff. There is no doubt that the Defendant, received and duly acknowledged the receipt of their monies.

To start with Exhibit AA1 contained a payment schedule for the project –purchase of the inter-locking moulding machine. In an e-mail of 30/1/2006 sent by the Defendant to the Plaintiff it reads.

**“Dear Rev,**

**As per your request, below is the statement of account as per the above mentioned project.**

**Profoma Invoice No. 2004 Dated 18/06/2004**

**Total value 250,000 USD**

**Payment schedule as per partnership Agreement.**

**The Defendant further stated in the e-mail thus**

**“Amount Received**

**19,882.08 USD 19/7/2004**

**29,959.52 USD 25/10/2004**

**4,956.97 USD 10/12/2004**

**Total amount received till date 54,798.57 USD**

**Balance 164,319.24-54,798.57= 109,520.67 USD**

**The message ended thus**

**God Bless you**

**Larry.**

In the Exhibit A A 2 the Defendant wrote confirming receipt of money \$ 30,000 USD from the same Reverend- the plaintiff in this case. Hear the Defendant in paragraph 1 of the e-mail of 1/11/2004

“Exhibit A A 2 para I line I

**“Hello Rev.**

**Am pleased to confirm that our company received 30,000.00 USD as deposit for the Block moulding” the fund have since been transferred to the factory-(Almabeton).”**

**Emphasis mine**

....

**Warm regards**

**Larry.”**

A cursory look at the documents Exhibit A A 5- A A 13 further confirms that there was a transactions between Plaintiff and Defendant. In these documents the amount in issues was severally referred to. The business that brought the parties together was equally referred to severally. The Defendant did not deny that this money was not sent to him. He acknowledged the receipt of the various transfers and remittance made to him. He acknowledged the fact that the money was for block moulding machines, to be purchased from Almabeton through Mr. Wolfgang. He was equally served with the Originating Process- the Writ filed by the Plaintiff. He was served with the hearing notices as per the subsisting order of the Court. He refused, neglected to respond and or file any notice of intention to defend the Suit. Probably because he has no defence to the Suit of the Plaintiff.



The question before this Court after all this is, should this Court having allowed the Plaintiff to move his application for summary Judgment in this Writ marked as Undefended list and heard under the undefended list procedure, grant the application and enter Judgment summarily in his favour, having in mind that the claim is liquidated money demand and that the Defendant was given all the ample time to respond by filing a notice of intention to defend this Suit on merit? Again will justice be seen heard, announced, tweeted, whatsapped to be done and done better for the parties, public and posterity if this Court allow the application and enter Judgment in the favour of the Plaintiff summarily.

Not answering the question seriatim, it is my humble view which I cherishingly hold that justice will be done in this case if the Court grants the application and enter Judgment summarily in favour of the Plaintiff in this case as sought and grant all his relief. After all there is no challenge and no intention to defend the Suit.

The analysis of the Court above puts no one in doubt that the Plaintiff deserves the Judgment of this Court in his favour having diligently stated the facts in his affidavit and having also attached the document EXH 1 – 13, in all to buttress the facts in the 45 paragraph Affidavit of facts in this case. Most importantly the Defendant did not deny or controvert any of those facts. He did not enter appearance even. He did challenge the Suit of the Plaintiff or have representation in the Court. Since there was no challenge of the facts even as I read this Judgment this Court is duty bound to enter Judgment in favour of the Plaintiff. No triable issue has been raised to challenge the claims of the Plaintiff. There is no doubt created about the geniuness of the Plaintiff's case. That being the case this Court hereby enters Judgment in favour of the Plaintiff, Apostle Eugene Ogu and grant the relief sought to wit:

Relief No.1 granted as prayed.

7% interest to be paid by the Defendant from date of Judgment until the Judgment sum is fully and finally liquidated.

This is the Judgment of this Court delivered today 7<sup>th</sup> day of February, 2020 by me.

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**K.N. OGBONNAYA**

**HON. JUDGE**