

**IN THE HIGH COURT OF JUSTICE OF THE
FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI - ABUJA**

BEFORE: HON. JUSTICE O. C. AGBAZA

COURT CLERKS: UKONU KALU & GODSPower EBAHOR

COURT NO: 11

SUIT NO: FCT/HC/CV/3142/18

BETWEEN:

EMEX OIL NDAWTA NIG LIMITED.....CLAIMANT

VS

1. MR. EMMANUEL IDOKO

(Sued as THE ADMINISTRATOR OF THE ESTATE OF JOSEPH IDOKO
[Deceased])

2. FIRST CITY MONUMENT BANK PLC

3. THE PROBATE REGISTRAR,

HIGH COURT OF THE FCT.....DEFENDANTS

JUDGMENT

By an Amended Writ of Summon dated 26/10/2018 and filed on 29/10/18,
under the "Undefended List", the Claimant claims against the Defendants
as follows;

- (1) An Order of this Honourable Court directing the 2nd Defendant
to forthwith, give effect to and, or release to the Claimant the
sum of \$20,000 USD being the value of the bank draft No.
002508 dated 29/1/2014 same having been intended for the

refund of the said sum prior to the death of Joseph Idoko, the issuer.

- (2) An Order of this Honourable Court attaching the sum of \$20,000 USD in the 1st Defendant's Account No. 0913323028 which is in custody of the 2nd Defendant and as contained in the Bank Draft with No.002508 issued in favour of the Claimant.
- (3) The cost of this suit as this Honourable Court may deem fit in the circumstance.
- (4) Interest on the above sum at the rate of 10% per annum until the Judgment is obtained and the sum is fully liquidated.
- (5) And for such further Order(s) as the Honourable Court may deem fit to make in the circumstances.

Accompany the Writ of Summons is a 42 Paragraph affidavit deposed to by one Ismail Abdulgaffar, with eleven(11) Exhibits attached, Exhibit "A" – "K". By Order of Court of 25/9/2019, the said Writ of Summons was Amended and consequent upon the Order of Court, was served on the Defendants. The 1st Defence Counsel confirm receipt of the process served, but do not opposed the application of the Claimant, hence did not file any Notice to Defend in line with the Order 35 Rule 4 of the Rules of Court. The second Defence Counsel, submits that, though the filed a Notice of Intention to Defend, ordinarily would not be opposed, but for the Reliefs 3, and 4 of the claim.

Consequent upon the submission of the 2nd Defendant Counsel, the Claimant Counsel prayed the court to have the relief 3, and 4 struck out, and this application was not opposed. The court having granted the prayer sought the reliefs 3 and 4 were hereby struck out and the 1st/2nd Defendant Counsel at this stage, reaffirm their position not to object to the grant of the reliefs sought in the main.

The 3rd Defendant were duly served with the processes, and Hearing Notice but failed to file the requisite notice to defend as required by Order 35 Rule 3 of the Rules.

G.A. Ubah Esq. Claimant submission in brief, adopts their Amended Writ of Summons, in urging the court to grant as prayed. The 1st/2nd Defence Counsel in court says that they are not opposed to the grant of the prayers of the Claimant.

In this instant application, the Claimant is praying this court for the reliefs under the Undefended List Procedure. The 1st/2nd Defendants through their Counsels are not opposed to the application as the 3rd Defendant did not file any requisite Notice to Defend. The implication of all of these it is that the court can proceed to enter Judgment in line with Order 35 Rule 4 of the Rules of Court, as Undefended and conceding to the claim of the Claimant. See *Ekiti Local Government Auth Vs Aje Printing (Nig) Ltd* (2009) 4 NWLR (PT. 1131) 304 @ 313.

Having carefully considered the processes before the court, that is the unchallenged and uncontroverted affidavit evidence, the court finds that the facts as stated were true and correct and will act on it.

Accordingly, Judgment is hereby entered in favour of the Claimant as follows:-

- (1) The 2nd Defendant is hereby directed to forthwith, give effect to and, release to the Claimant the sum of \$20,000 USD being the value of the Bank draft with No.002508 dated 29/1/2014 same having being intended for refund of the said sum prior to the death of Joseph Idoko, the issuer.
- (2) And Order of this Honourable Court attaching the sum of \$20,000 USD in the 1st Defendant's Account No.0913323028 which is in custody of the 2nd Defendant and as contained in the Bank draft with No.002508 issued in favour of the Claimant.
- (3) Reliefs 3 and 4 are hereby refused having earlier been struck out.

This is the Judgment of the Court.

HON. JUSTICE O. C. AGBAZA

Presiding Judge

12/3/2020

APPEARANCE:

G.A. UBAH ESQ. FOR THE CLAIMANT

J.G. ITODO ESQ. FOR THE 1ST DEFENDANT

SEGUN ADEOTI ESQ. FOR THE 2ND DEFENDANT

NO APPEARANCE FOR THE 3RD DEFENDANT.