

IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

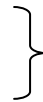
HOLDEN AT HIGH COURT MAITAMA –ABUJA

BEFORE: HIS LORDSHIP HON. JUSTICE S.U. BATURE

COURT CLERKS: JAMILA OMEKE & ORS
COURT NUMBER: HIGH COURT NO. 33
CASE NUMBER: SUIT NO. FCT/HC/CV/2066/19
DATE: 2nd JULY, 2020

BETWEEN:

- 1. ELIZABETH YEIBAKE
- 2. FEDRICK OBALAKUMO



CLAIMANTS

AND

INDUSTRIAL & GENERAL INSURANCE PLC.....DEFENDANT

APPEARANCE

Timipre Youdiowie Esq: for the Claimant.

JUDGMENT

The claimants filed this suit on the 3rd day of June, 2020 under the undefended list, claiming against the defendant as follows:

- a) ₦812,500.80 (Eight Hundred and Twelve Thousand, five Hundred Naira Eighty Kobo) being the balance and outstanding sum payable as death benefit under the contract of Group life insurance policy between the deceased member (Obalakumo Yeibake) and the Defendant.

- b) ₦5,000,000.00 (Five Million Naira) for breach of contract of insurance and breach of statutory trust.
- c) 25% (Twenty-Five percent) interest payable on the agreed sum from the date of death till judgment.
- d) Payment of a further interest at the court's rate of 10% per annum on the judgment sum.

The writ which was issued by Olugbenga Owa Esq, legal practitioner representing the Claimants, is also supported by an Affidavit of 26 paragraphs deposed to by one Mrs. Rakiya Yakubu, and employee of National Orientation Agency and specifically the desk officer in charge of their life Insurance claims and related matters. Exhibits marked Exhibits A, B, C, D and E respectively.

In addressing the court today, Claimants counsel Timipre Youdiowei Esq, urged the court to consider that the defendants despite being served with the processes in this suit, have neglected to file anything pursuant to the rules of this court. Counsel relied on the provisions of order 35 Rules 2, 3 and 4 of the FCT high Court (Civil Procedure) Rules 2018 and urged the Court to enter judgment in their favour.

First of all, let me begin by saying that it is a settled law, that the purpose of matters brought under the undefended list procedure is to avail a claimant swift justice in respect of a debt or a liquidated money demand by allowing a court to give judgment without the need of going into full trial, and without calling witnesses in order to save judicial time and expense.

Please see the case of IMONIYAME HOLDINGS LTD VS SONER ENTERPRISES LTD (2010) 4 NWLR (PT. 1185) page 56 and order 35 Rules 1 and 2 of the FCT High Court (Civil Procedure) rules 2018.

Therefore, in the undefended list Procedure, were a defendant is served with a writ of Summons such as in this case, they are required under the Rules to file a Notice of intention to defend together with an Affidavit disclosing a defence on the merit.

It is not the aim of the undefended list procedure to prevent or shut out a defendant from contesting a suit brought under the undefended list at the expense of justice.

On this premise, I refer to order 35 Rule 3 (1) of the F.C.T High Court (Civil Procedure) Rules 2011, which provides thus:-

“Where a party served with the writ delivers to the 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 terms as the court may think just.”

Consequently, it is clear from the above provision that a defendant who is served with a writ under the undefended list pursuant to the provision of order 35 (3) (1) above, he is required to deliver to the Registrar of the court before 5 days to the day fixed for hearing a written notice of intention to defend together with an Affidavit disclosing a defence on the merit.

The defendants in this suit, despite having been duly served with writ as well as hearing notice have failed, refused and neglected to file any notice of intention to defend and an Affidavit disclosing a defence on the merit pursuant to the Rules.

Now, order 35 Rule 4 of the F.C.T High Court (Civil Procedure) Rules 2018 provides:-

“Where a defendant neglects to deliver the notice of defence 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 also the case of OKAFOR VS PDP (2014 LPELR-23037 (CA) where the court held thus:-

“It is therefore clearly the law ad not disputed that by the provisions of order 21 Rules 1-5of the Federal Capital Territory (Civil Procedure) Rules 2004 a plaintiff such as the Appellant, in a claim to recover liquidated demand can

file a suit along with an affidavit stating that, in his believe the defendant has no defense to the action where the defendant in such a situation fails or neglects to file a notice of intention to defend the suit along with an affidavit stating a defence to the claim upon being served with the writ five days before the return date, the trial court can hear the suit as undefended.”

Similarly, it was held in the case of ONOEYO VS U.B. A PLC (2014) LPELR-24242 as follows:-

“The essence of suits on the undefended list is for quick dispensation of justice to the parties. Therefore, upon service of a writ of Summons in respect of a suit on the undefended suit on the defendant, the latter must deliver or file a notice of intention to defend and together with the said nostice, he must file an affidavit disclosing a defence on the merits and where the defendant fails to do so or act, then judgment may be entered against him as per the writ of Summons without necessarily calling on the plaintiff to formally prove his claim by calling witnesses to testify.”

See also the case of JOEL OKUNRINBOYE EXPORT LTD & ORS VS SKYE BANK PLC (2009) LPELR-1618 (SC).

In the instant suit, it is averred in the claimant’s supporting Affidavit particularly paragraphs 6 -20 of the Affidavit as follows:-

- 6. I am aware that 1st claimant is sister of late Yeibake Obalakumo as result of which she obtained letter of administration to administer his Estate. The 2nd Claimant is son to the deceased. The said letter of Administration State is here by attached and marked Exhibit A.***
- 7. The Defendant at all material time to this case was licensed by National Insurance Commission to carry out life insurance business in Nigeria.***
- 8. The deceased died intestate on the 21 May, 2011 at Obale-Yenagoa, Bayelsa State. The Certificate of Death is hereby attached and marked Exhibit B.***

9. ***Prior to his death, the deceased was a public servant in the employment of National Orientation Agency, a Federal Government Agency then under the Federal Ministry of Tourism and Culture.***
10. ***Under the life Insurance policy taken out by the Federal Government on behalf of its employees, the Defendant is liable to paying to the employee's estate in the event of death, three times the amount of the Insured's annual earnings.***
11. ***The group life Insurance was underwritten by a consortium of life Insurance Companies led by the Defendant. The other insurers and the proportion of their indemnity are Standard Life Assurance, Leadway Assurance, Crusader Life Insurance, and Goldlink Insurance Plc.***
12. ***Upon the death of the deceased, the defendant and all the other insurance companies were duly notified of the death of the deceased.***
13. ***All the members of the consortium contributed their portion of the entitlement of the estate of deceased to the defendant upon receipt of the notification of death.***
14. ***The total claim due to the estate of the deceased is the sum of ₦1,559,906.40 (One Million, Five Hundred and Fifty-Nine Thousand, Nine Hundred and Six Naira, Forty Kobo)***
15. ***After several demands, the defendant sometime in 2017, remitted only a part payment of the sum ₦747,405.60 (Seven Hundred and Forty-Seven Thousand, four Hundred and Five Naira, Sixty Kobo) only. Letter written in respect of same is here by attached and marked Exhibit C.***
16. ***Defendant admitted the balance of the sum of ₦812,500.80 (Eight Hundred and Twelve Thousand, Five Hundred Naira Eighty Kobo) being the balance due. The group life Claim Discharge form which is a death voucher of admitted liability of each insurer raised by the defendant on its letterhead admitting to the said sum is here attached and marked Exhibit D.***

- 17. I am aware that all the other companies have remitted their portion of liability due to them to the defendant as the lead insurer for onward remittance the Claimants. This they have failed to do.**
- 18. The said Group Life Discharge Form is a liquidated computation of the amount due to the family of the deceased.**
- 19. The defendant ignored all demands made by my office, the Insurance Brokers and the Claimants for settlement of the claims.**
- 20. I am aware that all members of the consortium have settled their portion of the claim but the defendant have consistently refused to settle the claim due the estate of the deceased.**
- 21. I am informed by the 1st Claimant vide telephone on the 13th of may, 2019 and I believe her as follows.**
 - a. That when Defendant refused to pay, he engaged his lawyers, Greyfields Legal Consultants to write a letter requesting the Defendant to settle the claim. The letter dated the 29th March, 2019 is hereby attached and marked Exhibit E.**
 - b. The defendant having received the letter did not respond officially to the lawyer's and have continued to hold unto the money.**
 - c. Based on the admission of the defendant, I believe that the defendant has no defence to this claim.**
- 22. I believe that unless compelled to by order of this court the defendant will not settle the liquidated debt and money demand.**
- 23. Based on the very clear of admission of the defendant on Exhibit D, I believe that the defendant has no defence to this claim.**
- 24. I know that the default in payment is not only wilful but also constitutes breach of trust.**

Therefore, to this extent, since the defendants have failed, refused and neglected to file any notice of intention to defend this suit together with an

affidavit disclosing a defence on the merit, having had ample opportunity to do so, and also having considered the documentary and Affidavit evidence in this suit the Application made by claimant's counsel for judgment to be entered pursuant to order 35 Rule 4 of the Rules of this court, is considered and granted as prayed.

Consequently, judgment is hereby entered in favour of the claimants against the defendant as per the claims as endorsed on the writ of Summons.

Signed

HON. JUSTICE SAMIRAH UMAR BATURE.

2/07/2020.

Youdiowei Esq: I am most grateful.