

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP: HON. JUSTICE Y.HALILU

COURT CLERKS : JANET O. ODAH & ORS

COURT NUMBER : HIGH COURT NO. 22

CASE NUMBER : SUIT NO: CV/1306/2020

DATE : TUESDAY 8TH DECEMBER, 2020

BETWEEN

**1. RELIABLE THRIFT & CREDIT
SOCIETY LTD
2. AMINU ALIYU**

PLAINTIFFS

AND

GAMBO IDIRS AHMED

DEFENDANT

JUDGMENT

The Claimants approached this Honourable Court vide a writ under the undefended list procedure pursuant to Order 35 of the Rules of this Honourable Court claiming the following:-

1. An Order of this Honourable Court mandating the Defendant to pay the sum of N3,000,000.00 (Three Million Naira) to the Claimants as the principal sum of the credit facility advanced to the Defendant by the Claimants by the agreement of parties dated the 1st March, 2019.
2. An Order of this Honourable Court mandating the Defendant to pay the sum of N12,275,563.01 (Twelve Million, Two Hundred and Seventy – Five Thousand, Five Hundred and Sixty Three Naira, One Kobo) to the Claimants as the

interest accruing from the credit facility as by virtue of the agreement between the parties dated 1st March, 2019.

In support of the application is an affidavit of 24 paragraphs duly deposed to by the 2nd Claimant himself.

It is the deposition of the Claimant that the Defendant approached the 1st Claimant through the 2nd Claimant for a credit facility of the sum of N3,000,000.00 (Three Million Naira) only sometime in March, 2019. Membership Account opening form was annexed as Exhibit “1” and the loan application is attached as Exhibit “2”.

Claimants further annexed the following documents;

c. Authority to date and narrate Cheques as Exhibit “3”

- d. Photocopy of staff Identity Card as Exhibit “4”
- e. Photocopy of valid means of identification as Exhibit “5”
- f. E-pay advice slip as Exhibit “6”
- g. Letter of guarantee as Exhibit “7”
- h. Another letter of guarantee as Exhibit “8”
- i. Offer of credit facility as Exhibit “9”

It is further the deposition of the Claimant that the credit facility of N3,000,000.00 was advanced to the Defendant on 1st March, 2019 for a tenor of one month at 15% interest, and that Defendant has refused and/or neglected to make any payment of his loan. Claimant averred that Defendant issued three different cheques at different times for the purpose of repaying part of the loan but the account were not

funded. Copies of the cheque were annexed as Exhibit RT10A, 10B and 10C respectively.

Claimants aver further that letters of demands were written to the Defendant but to not avail and the claimant further wrote to the Human Resource department of the Defendant's employer. Copies of the letter were annexed as Exhibit "11", "12" and "13" respectively.

That the Defendant currently has an accumulated outstanding interest of the sum of N12,275,563.01 (Twelve Million, two Hundred and Seventy Five Thousand, Five Hundred and Sixty Three Naira One Kobo) bringing it to the total indebtedness of N15,275,563.

That the Defendant has no defence to this application.

The Defendant who was served with the marked writ has failed and or neglected to file his defence to the writ.

I need only state the trite principle of general application that when a case entered on the undefended list comes up on the return date, the court has only one duty, namely to see whether the defendant has filed a notice of intention to defend and an affidavit disclosing a defence on the merit. It is on the basis of the materials so provided that the court exercise its powers under order 35 Rule 3 (1) and (2) and Rule 4 to grant leave to defend or hear the suit as undefended and judgment given accordingly.

There is therefore no mandatory requirement or provision under our applicable rules of court under the undefended list for oral address or submissions on amplification of facts stated in the affidavit before the court decides whether or not to grant leave to the Defendant to defend or in alternative enter judgment in the undefended list.

I find support for this in the decision of ***C. R. P. D & CO LTD VS OBONGHA (2000) 8 NWLR (pt. 670) 751 AT 762*** where the court of Appeal in construing provisions that are in pari-materia with our applicable rules observed instructively as follows:-

“Although the trial court has discretion under order 23 Rule 5 to hear evidence at any stage of the proceedings under Rule 4, that cannot be

translated into an obligation or a mandatory requirement.

The court has to exercise its discretion judicially and judiciously on the basis of the materials before it and in accordance with the rules. The primary objects of the court is to attain substantial justice according to law. It must be emphasised that under Order 23 aforesaid, there is no mandatory provision for oral address or oral submission by the parties or their counsel.”

Assuming without conceding that a defendant’s affidavit disclosing his defence on the merit is deficient, will the oral address or submission of counsel from the Bar improve deficient affidavit?

My answer is absolutely no. In NWODOBE VS NWOKEDI (1973) 3 E C S L R (Pt. 2) 633, it was held that a deficient affidavit cannot be supplemented by counsel's statement in open court or at the Bar.

I do not agree therefore with the learned counsel for the appellant that the parties or their counsel have a right to address the court on their affidavit evidence when a suit is brought under the undefended list which comes up for hearing.”

See also *UNION BANK OF NIGERIA PLC VS EDAMKUL & ANOR (2005) NWLR (Pt. 925) 520 at 539.*

I also wish to restate the age long principle governing the undefended list procedure at this juncture.

The three requisite that must be available for a suit to be placed under the undefended list are as follows:

- a. That the claim must be for liquidated money demand including account stated to be cognisable under the undefended list excluding for example unliquidated damages as in claims in torts and special damages arising from any cause of action as they must be specially pleaded and strictly proved.
- b. The claim must be supported by affidavit verifying the claim; and

c. The affidavit must contain deposition to the effect that in the honest belief of the Plaintiff, Defendant has no defence to the claim of the Plaintiff.

Once these conditions are met, the claim is qualified to be placed on the undefended list. See ***ABIA STATE TRANSPORT CORPORATIONS & ORS VS QUORUM CONSORTIUM LTD (2009) 9 NWLR 1 SC.***

Furthermore, I wish to also instructively state that in an action brought under the undefended list, once a Defendant has been served with the claims of the Plaintiff in line with Order 35 of the Rules of the High Court of FCT 2004, he has a duty to disclose his defence to the action. See ***ATAGUBA AND***

***COMPANY VS GWIA NIGERIA LIMITED (2005)
2 SC (Pt. 11) 101.***

In the circumstances, I shall proceed to the merits of the case, in view. In the court's considered opinion, only one issue arises for consideration from the materials placed before the court, to wit: **whether Plaintiff on the strength of his affidavit is entitled to judgment as per his writ.**

Trial courts have no duty to go unto the merits of the case when a Defendant's affidavit in support of his notice of intention to defend an action is being considered. All that is required is to see whether the defence has issues requiring or necessitating a full contest of the action. See ***U. N.N. VS ORAZULIUE TRADING & CO. LTD (1989) 5 NWLR (Pt. 119) 19 at 29.***

Poser: *What then is the implication of non-filing of notice of intention to defend and affidavit disclosing defence?*

The claim of Plaintiff against Defendants as endorsed on the writ of summon are as follows;

1. An Order of this Honourable Court mandating the Defendant to pay the sum of N3,000,000.00 (Three Million Naira) to the Claimants as the principal sum of the credit facility advanced to the Defendant by the Claimants by the agreement of parties dated the 1st March, 2019.
2. An Order of this Honourable Court mandating the Defendant to pay the sum of N12,275,563.01 (Twelve Million, Two Hundred and Seventy – Five Thousand, Five hundred and Sixty Three Naira, One Kobo) to the Claimants as the

interest accruing from the credit facility as by virtue of the agreement between the parties dated 1st March, 2019.

The said writ was marked undefended on the 25th June, 2020. Defendant was duly served the said writ of summons in line with law and procedure.

Defendants neglected and or ignored to file notice of intention to defend this action in line with Order 35 Rule 3(1) of the Rules of this Court.

This leaves the Court with an uncontested claim which has been duly marked “undefended” having met the basic criteria under Order 35 of the Rules of this Court.

Usually and procedurally speaking, matters brought under Order 35 are determined by affidavit evidence.

Where a party served with the writ of summons under the undefended list by virtue of Order 35 Rules 1 and 2 of the Rules of this Court, intends to defend the action, he shall within 5 days to the day fixed for hearing, deliver to the registrar notice of intention to defend the action with accompanying affidavit disclosing defence on the merit.

Where the said notice of intention to defend the action with affidavit does not disclose any defence on the merit, the Court shall not give such leave, but proceed to hear the suitas undefended and give judgment as such under Order 35 Rule 4 of the Rules of this Court.

The rule governing an unchallenged deposition in an affidavit is very trite.

As stated by Makhtar JSC, in the case of ***REGISTERED TRUSTEES OF NATIONAL ASSOCIATION OF COMMUNITY HEALTH PRACTITIONERS VS MEDICAL AND HEALTH WORKERS UNION OF NIGERIA & ORS (2008) VOL. 37 WRN 1 at 39 lines 10 – 15 SC, “affidavit evidence that is neither challenged nor debunked remain good and reliable evidence which ought to be relied upon by a Court”***.

In the absence of any Notice of Intention to defend and an affidavit in support, and after a calm analysis of the facts of this case and guided by sound reasoning and wisdom, I have no doubt that Plaintiff is entitled to the judgment of this court.

I must observe that parties to a contract are bound by the clear words of the contract.

In view of the fact that there is no such affidavit in support of notice of intention to defend for this court to see whether there are triable issues raised or any substantial question of facts which ought to be tried by full contest, I shall therefore enter judgment in favour of the Plaintiff pursuant to Order 35 Rule 4 of the Rules of this court.

Judgment is hereby entered in favour of the Applicant as per the writ.. In summation, judgment is hereby entered in favour of the Plaintiffs, as follows:-

1. An Order of this Honourable Court mandating the Defendant to pay the sum of N3,000,000.00 (Three Million Naira) to the Claimants as the principal sum of the credit facility advanced to

the Defendant by the Claimants by the agreement of parties dated the 1st March, 2019.

2. An Order of this Honourable Court mandating the Defendant to pay the sum of N12,275,563.01 (Twelve Million, Two Hundred and Seventy – Five Thousand, Five Hundred and Sixty Three Naira, One Kobo) to the Claimants as the interest accruing from the credit facility by virtue of the agreement between the parties dated 1st March, 2019.

Justice Y. Halilu
Hon. Judge
8th December, 2020

APPEARANCE

JOSHUA BOYEDE – for the Claimant.

Defendant not in court.