

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**HOLDEN AT JABI ABUJA**

DATE: 22<sup>ND</sup> DAY JUNE, 2021  
BEFORE: HON. JUSTICE M. A. NASIR  
COURT NO: 8  
SUIT NO: CV/2004/2020

**BETWEEN:**

AMEX STAFF (OWERRI NORTH) FARMERS  
MULTI-PURPOSE COOPERATIVE SOCIETY LTD. ----- CLAIMANT

**AND**

1. UZOCHUKWU OKONKWO  
(Also Known As Uzochukwu Ogonna Okonkwo) -----  
DEFENDANTS  
2. GLOBAL SMARTFIT NIGERIA LTD.

**RULING/JUDGMENT**

The Claimant commenced this suit under the Undefended List Procedure. The Claimant claims against the Defendant are as follows:

1. The sum of N2,500,000: (Two Million, Five Hundred Thousand Naira) only being the principal loan (sum) obtained from the Claimant by the 1<sup>st</sup> Defendant for the benefit(s) of the 2<sup>nd</sup> Defendant on the 18<sup>th</sup> December, 2014.

2. The accrued 10% monthly interest on the said 2014 since January, 2015 till the principal loan (sum) and the accruing interest are paid and or recovered from the Defendants (as a result of the Defendants' default to pay the loan (sum) jointly and or severally as agreed/undertaken with the Claimant (one monthly interest of the sum of N250,000: (Two Hundred and Fifty Thousand Naira) only for the month of December, 2014, having been paid by the Defendants and same having been deducted under this claim.
3. The sum of N2,500,000: (Two Million, Five Hundred Thousand Naira) only being the principal loan (sum) obtained from the Claimant by the 1<sup>st</sup> Defendant for the benefit of the 2<sup>nd</sup> Defendant on the 14<sup>th</sup> January, 2015.
4. The accrued 10% interest on the said 2015 loan since February, 2015, till the principal loan (sum) and the accruing interest thereon are paid and or recovered

(as a result of the Defendants' default to pay the loan (sum) jointly and or severally as agreed/undertaken with the Claimant (one monthly interest of the sum of Two Hundred and Fifty Thousand Naira ) N250,000: only for the month of January, 2015, having been paid by the Defendants and same having been deducted under this claim.

In support of the writ of Summons is a six paragraphs affidavit duly deposed to by one Ubong Stanley Chijioke, a member of the claimant. Also, attached to the Writ of Summons are five annexures marked as exhibits A – E respectively.

The 1<sup>st</sup> and 2<sup>nd</sup> Defendants were duly served with the Writ of Summons together with hearing notices but they elected not to appear or file any process before this Court. On the 16<sup>th</sup> February, 2021, the case was heard and Mr. Hameed Ajibola Jimoh Esq. Counsel representing the Claimant urged this Court to enter judgment for the Claimant in the interest of Justice.

On the other hand, one Kene Obiezu Esq. who appeared for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants informed the Court that eventhough the Defendants did not file any Notice of intention to defend, counsel prayed the Court to transfer the case to the general cause list.

Briefly, the facts of the Claimant's case as contained in their supporting affidavit is that being a registered cooperative society in Nigeria, sometime in the year 2014, the 1<sup>st</sup> Defendant approached the Claimant to obtain a loan in the Sum of N2,500,000: (Two Million, Five Hundred Thousand Naira) only for and on behalf of the 2<sup>nd</sup> Defendant. That both the Claimant and the 1<sup>st</sup> Defendant executed a written agreement for the said loan. The Claimant averred that they paid the sum of N2,500,000: (Two Million, Five Hundred Thousand Naira) only by inter - bank transfer into the 2<sup>nd</sup> Defendant's bank details supplied to the Claimant by the 1<sup>st</sup> Defendant. The Claimant further averred that the Defendants also agreed to pay 10% monthly on the said

loan upfront until the principal sum of N2,500,000: (Two Million, Five Hundred Thousand Naira) only is paid up.

Further, in the event of any default, in prompt payment of the monthly 10% interest, the Defendants agreed that they shall pay a compound interest for the entire period of default, as well as cost incurred by the Claimant in recovering the debts.

According to the Claimant, despite this agreement the Defendants only paid the sum of N250,000: (Two Hundred and Fifty Thousand Naira) only as the 10% monthly, interest which was paid at the beginning when obtaining the said loan and covered the month of December, 2014 only. That apart from the said N250,000: only, paid by the Defendant as the 10% monthly interest for the month of December, 2014, the Defendants have failed and neglected to pay either the principal sum or the accruing interest despite several demands made by the Claimants.

Furthermore, it is also the case of the Claimant that sometime in the year 2015, the 1<sup>st</sup> Defendant again approached the Claimant to obtain another loan in the sum of N2,500,000: (Two Million, Five Hundred Thousand Naira) only for and on behalf of the 2<sup>nd</sup> Defendant in order to complete payments in Lagos and to transport the 2<sup>nd</sup> Defendant's machinery and raw materials to their Abuja Factory.

That both the Claimant and Defendants entered into another written agreement for the said loan on the 14<sup>th</sup> January, 2015. According to the Claimant, like in the first transaction, the Defendants apart from the sum of N250,000: (Two Hundred and Fifty Thousand Naira) only paid at the time of obtaining the loan for the month of January, 2015, the Defendants have failed and neglected to pay the principal sum and accruing interest despite several demands by the Claimant to that effect. The above is what gave rise to the instant suit.

Generally, the law is settled that a claim under the Undefended list, by the very nature thereof, is an action for liquidated sum an amount agreed upon by the parties or which can be determined or ascertained from the terms of agreement thereof, with a view to enabling the Claimant get summary judgment without necessarily proceeding to full trial. In essence, an undefended list Procedure is aimed at a quick disposal of usually uncontested cases. See: Abdullahi vs. Buhari (2004)7 NWLR (Part 902) 278, Wilson Obioha & Sons Ltd. & Anor vs. Inamsco Multi Concepts Ltd. & Anor. (2017) LPELR – 42332 (CA).

The apex Court in Massken (Nig.) Ltd. & Ors. vs. Amaka & Anor. (2017) LPELR – 42360 (SC), held thus:

*“It is settled law that Undefended List Procedure is designed and adopted for speedy trial for the recovery of any debt or liquidated money demand particularly, where it is clear to the Court that the Defendant has no*

*defence on the merit for the claim of the Plaintiff. Where a Defendant is served with a Writ of Summons entered under the Undefended List together with an affidavit deposed to by the Plaintiff, as required by the Rules of Court, and he desires to defend same. It is his duty to file a notice of Intention to defend the suit together with an affidavit disclosing his defence on the merit of the claim for the liquidated money demand. On the return date, the duty of the Court is to consider the affidavits of claim and defence in order to determine whether the Defendant has disclosed any defence to the claim of the Plaintiff so as to decide whether the action should be transferred to the General Cause List to be dealt with according to the Rules of Court or enter judgment for the debt or liquidated money demand for the Plaintiff.”*

The Supreme Court in the above decision gave a concise nature of Undefended List Procedure and what is required of a trial Court. In the instant case, the Claimant by exhibit A and B attached to the Writ of Summons clearly showed the existence of two separate loan agreements between the Claimant and the Defendants.

Firstly, by exhibit A which is an agreement executed between the Claimant and 1<sup>st</sup> Defendant made on the 18<sup>th</sup> December, 2014, the Sum of N2,500,000: (Two Million, Five Hundred Thousand Naira) only was granted to the Defendants by the Claimant. From the face of exhibit A, parties agreed that 10% monthly interest should be paid on the loan until the principal sum is completely paid up. Also, parties agreed further that in the event of any default in the payments the defendant shall pay a compound interest for the entire period of default.

Secondly, exhibit B was executed also between the Claimant and 1<sup>st</sup> Defendant on the 14<sup>th</sup> January, 2015, wherein the Claimant granted the Defendants another

loan in the Sum of N2,500,000: (Two Million, Five Hundred Thousand Naira) only. Like in the first agreement, the Defendants in this agreement also undertook to pay 10% monthly interest and a compound interest in the event of any default for the entire period of the default. In both loans the Claimant stated that the Defendants only paid the initial 10% interest of the first months which were invariably deducted from the principal sum.

By exhibit E, the Defendants vide a letter written by their Counsel, one Emeka Onyeaka Esq. admitted being liable to the Claimant and even requested for more time to settle the Claimant.

It should be noted that by Order 35 Rule 3(1), Rules of this Court, a Defendant is entitled, if he so wishes to contest the claim, to file a notice of intention to defend together with an affidavit disclosing a defence on the merit.

In the instant case, there is no such notice of intention to defend the suit, filed within five days in accordance with Order 35 Rule 3(1), Rules of this Court, inspite of the fact that the Defendants were served with the Writ of Summons. In fact, the Defendants were represented by counsel in Court but decided not to file the requisite notice of intention to defend.

In Eco Int'l. Bank Plc. vs. Nulge, Jalingo LGC & Anor. (2014) LPELR - 24171 (CA) the Court held as follows:

*“By the procedure under the Undefended List, where a Defendant, as in the instant appeal the Respondents, fails or neglects or refuses to file a notice of intention to defend, the resultant duty on the Court below was to proceed to enter judgment against the Respondents.”*

Thus, in this instance, in the absence of any notice of intention to defend filed by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, the Claimant shall be entitled to judgment.

Accordingly judgment is entered for the claimant in the following terms:

- The defendant shall refund the sum of N2.5 Million being the principal sum borrowed from the claimant on the 18/12/2014. 10% interest (being the sum of N250,000) shall be paid on that sum from January 2015 until the principal sum is fully liquidated.
- The defendants shall further refund the sum of N2.5 Million being the principal sum borrowed from the claimant on the 14/1/2015. 10 % interest (being the sum of N250,000) shall be paid on the above sum from February, 2015 until the principal sum is fully liquidated.

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**Hon. Justice M.A. Nasir**

**Appearances:**

Hameed Ajibola Esq – for the claimant

Kene Obiezu Esq, with him Favour Okorie Esq and Gift Oraka Esq – for the defendants