

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

SUIT NO: CV/473/2023

BEFORE HIS LORDSHIP: HON. JUSTICE BABANGIDA HASSAN

BETWEEN:

AEK BDC LIMITED.....CLAIMANT

AND

AMINU AHMED.....DEFENDANT

JUDGMENT

The claimant filed this suit before this court under undefended procedure and claims the sum of N8,200,000.00 from the defendant and the sum of N1,000,000.00 as cost of this suit.

The writ was filed along with an affidavit.

It is in the affidavit that was deposed by one Chimezie Hyginus Anozie, the managing director of the claimant that the defendant is a company engaging in the purchase and selling of foreign currency (forex) and that sometimes in July, 2020, the defendant approached the claimant with a business plan and requested for the sum of N\$20,000 (Twenty Thousand Dollars) which would be paid before the end of the month. The deponent stated that at the expiration of the period of one month, the defendant failed to pay the sum and it was after several requests that he made payment in the sum of N7,000,000.00 (Seven Million Naira) which was made within a period of one year six months.

It is stated further that upon the failure of the defendant to pay the balance of N8,200,000 (Eight Million, Two Hundred Thousand Naira), he instructed his solicitors to serve a letter of demand on the defendant wherein the sum of N10,250,000 (Ten Million, Two Hundred and Fifty Thousand Naira) was due from the defendant.

The deponent stated that the defendant through his solicitors admitted the debt in the sum of N8,200,000.00 (Eight Million, Two Hundred Thousand Naira). That the defendant failed to pay the amount owed to the claimant which has led to legal and economic expenses and that the amount he sought is unliquidated and he believes the defendant has no defence to the suit and it will be in the interest of justice to grant the claim.

The defendant filed a Notice of his intention to defend the action accompanied by an affidavit and in the affidavit, it is deposed to the fact that contrary to paragraph 4 of the affidavit in support, he is not a company engaged in the purchase and selling of foreign currency (Forex) and that he denied approaching the claimant in 2020 with any business plan but rather, as a businessman, the defendant introduced the claimant to a business and contract where both of them now make profit to help their businesses wherein the claimant parted with some money and the defendant also parted with some money in partnership.

The defendant stated that the business was frustrated as both of them were scammed of a huge amount of money running into millions that which they both reported the matter to the Inspector General of Police Special Tactical Squad (STS) section or department which is in charge of such crimes for investigation and this investigation is still ongoing.

It is stated that despite the fact that the contract was frustrated by scammers, the claimant demanded that he pays him the money or he would be sure the defendant was blacklisted in business. It is stated that the defendant then paid him some money and shortly afterwards all the company accounts the defendant run and his personal

bank accounts were frozen because of the source of the money is suspicious and because of the ongoing investigation of the scam by STS and that he has a defence to the claims of the claimant and he shall be urging the court to dismiss the suit for it being frivolous, vexatious and an abuse of court process.

The defendant stated that the writ of summons filed by the claimant has no seal of a legal practitioner and therefore offends Rule 10 of the Rules of professional conduct and is therefore incompetent.

Thus, the object of the undefended list procedure is to enable a plaintiff whose claim is unarguable in law and where the facts are undisputed and it is inexpedient to allow a defendant to defend for mere purpose of delay to enter judgment in respect of the amount claimed. See the case of **Ataguba & Co V. Gura Nig. Ltd (2005) All FWLR (pt 256) p. 1224 at 1230 paras. F-G.**

The procedure under the undefended list is regulated and guided by Order 35 of the Rules of this court 2018 which provides:

“(i) Where an application is for I, as in the Appendix is made to issue a writ of summons in respect of a claim to recover a debt or liquidated money demand, supported by an affidavit stating the grounds on which the claim is based, and stating that in the deponent’s belief there is no defence to it, the judge in chambers shall enter the suit for hearing in what shall be called the “undefended List”.

Based upon the above quoted Rule, it is incumbent to ascertain whether the claim falls within undefended list procedure. See the case of **Onadeko V. U.B.N Plc (2005) All**

FWLR (pt 250) p. 61 at 77, paras. E-F. In the instant case, the defendant in his affidavit to defend the action did not respond to the claim of the claimant rather delved into having a transaction to which they were scammed and they reported to police and investigation is ongoing. The question is:

Could this be a defence on this merit?

A liquidated money demand includes a debt and means a specific amount which has accrued in favour of the plaintiff from the defendant. The sum due and described as liquidated must have accrued and it must be ascertained. See the case of **Onadeko V. U.B.N Plc (supra)** in the instant case the claimant is specific about N8,200,000.00 he is claiming and the defendant in his affidavit did not reveal any fact about the claim, and certainly the defence must be a sham defence. See **Ataguba & Co. V. Gura Nig. Ltd (supra)** where the Supreme Court held that the defendant's affidavit in support Notice of intention to defend must disclose a prima facie defence. The affidavit must not contain merely a general statement that the defendant has a good defence to the action. It is sufficient if the affidavit discloses a triable issue or that a difficult point of law is involved that there is a real dispute as to the amount due which requires the taking of an account to determine or any other circumstances showing reasonable grounds of a bonafide defence. In the instant case, the defendant did not show how they were scammed and did not show anything whether there is that amount that was given to him or not. See the case of **Kabiru V. Ibrahim (2005) All FWLR (pt 240) p. 100 at 115, paras. D-E** where the Court of Appeal held that a defendant who has no real defence to the action should not be allowed to dribble and frustrate the plaintiff in order to deprive him of

the summary judgment he would legitimately be entitled to by way of delay tactics instead of offering any real defence to the plaintiff's action.

In the instant case, I found no real defence to the claims of the claimants and I therefore so hold.

The defendant is therefore find liable to the claim and he is hereby ordered to pay the claimant the sum of N8,200,000.00 (Eight Million, Two Hundred Thousand Naira) within the period of three weeks from the date of this judgment.

The claim of cost of action is not one that can be claimed under the undefended list procedure and it is hereby refused. See the case of **Federal Polytechnic Offa V. U.B.A Plc (2014) All FWLR (pt 737) p. 739.**

The defendant raised the issue that the counsel to the claimant did not affix his NBA stamp, and I looked into the case file at page three and I discovered that the stamp was affixed, and therefore argument goes to no issue.

Hon. Judge

Signed

6/6/2024

Appearances:

O.G. Boladeoku Esq appeared for the claimant.