

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

**IN THE GWAGWALADA JUDICIAL DIVISION**

**HOLDEN AT NYANYA- ABUJA**

**DATED THIS THURSDAY THE 3<sup>RD</sup> DAY OF OCTOBER, 2024**

**BEFORE HIS LORDSHIP: HON. JUSTICE ALIYU YUNUSA SHAFI**

**SUIT NO: FCT/HC/GWD/CV/145/2024**

**BETWEEN:**

**AZUBUIKE UGOCHUKWU..... CLAIMANT  
(PRINCIPAL SOLICITOR UGOCHUKWU AZUBUIKE & CO)**

**AND**

- 1. MR ALON NELKEN**
- 2. HADASSA INVESTEMENT SECURITY LTD.....DEFENDANTS**

**RULING/JUDGMENT**

This is a ruling on a motion on notice with motion No. GAR/M/1525/2024 brought pursuant to order 9 rule 5 and order 56 rule 1 and 2 of the FCT High Court (civil Procedure) rules and under the inherent powers and jurisdiction of this honourable court. The motion seeks for:

- 1. An order extending time within which the 1<sup>st</sup> and 2<sup>nd</sup> defendant/Applicant may file his memorandum of appearance, notice of intention to defend and other processes in this suit.**
- 2. An order deeming the process already filed as properly filed and served.**
- 3. And for such further order(s) as this honourable court may deem fit to make in the circumstance of this application.**

The application is supported by a 10 paragraph affidavit deposed to by one Salahudeen Taofeek Esq. a legal practitioner of No. 2 Mochika Street Area 11, Garki Abuja. The said application is also supported by a written address of 3 pages.

The applicant counsel in moving the said motion placed reliance on all the averments in the supporting affidavit and urged the court to grant the order sought therein.

The claimant counsel in response to the motion filed by the defendant informed that a careful perusal of the said motion on notice dated the 18/2/24 which he chose to reply on point of law, in urging the court to dismiss same, reasons being that the said affidavit was brought in order to cure the said intention to defend which is way out of time.

That the said affidavit to cure it, argued on two points.

- 1. Rules governing the affidavit evidence**
- 2. Rules of professional conduct 2007-2023**

On this he submit that he relied purely on section 70(4) of the legal practitioner rules and referred this court to the case of Akeledo & ors Vs INEC (2020) 17 NWLR part 1754 & 439 & 448.

That in the light of this submits that this affidavit is incurably defective because it was deposed to by the counsel to the defendant and urged the court to set it aside. That the paragraphs of the affidavit is in breach of the section 20(4).

Secondly, that the court is in line to say No they have filed their further and better affidavit in response to the undefended list.

The further affidavit was deposed to by one Barr. Azubuike Ugochukwu of suit No 99 De-Avalon Plaza Plot 483, Abuja Adeosun Crescent Utako Abuja, of 7 paragraphs attached same with annexures marked as exhibit AZ12, AZ20, AZ21, AZ22, AZ23, AZ24, AZ, 35 & AZ28.

A careful perusal of the process therein I wish to state thus:

The position of the law is to effect that the Supreme Court has barred counsel from deposing to an affidavit in a matter he is handling. This bar includes counsel in the same firm as the counsel appearing for a party in a matter. In the case of Akinlade & Anor VS INEC & ors (2019) LPELR-550 90(SC) 6-7, paragraph F-D,

per EjembiEko JSC (as he then was) held that a counsel cannot depose to an affidavit or act as a witness for his client in a contentious matter.

Also in owners of the MT “Marigold “(Purity Company Naveenra S.A) V NNPC &Anor (2022) 7 NWLR (Part 1828)165 at 196-197, paragraph E-A, his Lordship Ejambieko JSC (as he then was) evolved the jurisprudence in his concurring Judgment and placed a general bar on counsel deposing to an affirmative in a matter that he is handling.

This is the scenario with regard to the current matter filed by the defendant and deposed to by MrSalahudeenTaofeekesq. Who is the lawyer handling the said suit without giving adequate reasons why none of the defendants or staff of the defendant is to depose to the affidavit in respect of the matter.

In light of this, the motion filed before this court is incompetent as there is no affidavit properly brought in support of motion GAR/M/1525/2024. The motion is hereby struck out on the basis of it being incompetent.

Having struck out the motion for being incompetent, I hold that the affidavit filed to disclose/defence on the merit cannot also stand.

As shown clearly on the further affidavitfilled by the claimant counsel.

Hence I shall proceed to deliver my judgment as the application filed is telling the court to stop itself from proceeding to deliver it’s judgment. I.e. arresting the judgment of this court.

In NewswatchComm Ltd V Ata (1999) LPELP- 6717 (CA)

The court laid down the procedure as follows and stated as follows

“The procedure for arrest of judgment is now hardly known in our civil jurisprudential system. It is the act of staying and giving or refusing to render judgment in an action at law in criminal cases. After some intrinsic matter appending on the face of the record which would render the judgment if given erroneous or reversible.

Under the old common law rule the procedure for arrest of judgment was not peculiar it was available in civil cases under the old harmonised law rules, but the procedure is Alien to the rules of court and does not Apply in civil matters see Bob-Manuel V Briggs (1995) 7 NWLR(part. 409) 537 Per Mustapher JCA CP.22paragraph C-F.

Assuming but not conceding, if this court is even inclined to hearing the motion filed by the defendant despite the fact it is not allowed by our laws, the reason given by the defendant for his absence in filing the defence to the matter which falls under undefended list procedure is not cogent enough to warrant this court not to proceed to deliver it's judgment as the affidavit/hearing of the defendant does not show any cogent reason why they failed to obey the law or file their processes within time it is in the record that the defendants were given ample opportunity to defend the suit and cannot turn around to accuse this court of denying them fair hearing.in this case, more also when the matter falls under undefended list procedure that has definite time within which the defendant is allowed to file his notice of defence.

It is trite law that the court is enjoined to always bear in mind that rules of court must prima-facie be obeyed. And that to justify the exercise of the courts discretion, there must be some concrete material upon which to base such exercise of discretion in this instant case. None. See Longjohn& ors VsBlakk& ors 91998) LPELR-1791 SC PerIgoth JSC PP19-20 paragraph G-A

In view of the forgoing therefore I shall refuse the application file by the defendant counsel and proceed to deliver my judgment.

This is my ruling.

### **JUDGMENT**

The claimant by way of writ of summons dated 22-05-2024 filed dated the same date claims the following from the defendant severally.

- 1. An order of court for the payment of the balance of #20,000,000.00 (Twenty Million Naira) out of #25,000,000.00 (Twenty Five Million Naira) agreed for solicitors work covering Zenith Bank Petition to EFCC over alleged fraud committed by the defendant in selling the properties used for the loan (Nine Hundred and Seventy five Million Naira) and other representation including CBN which bill of charge was given dated 1<sup>st</sup> February, 2019.**
  - i. An order of court for the payment of 10% pre-judgment interest on the balance of N20, 000,000.00 (Twenty Million Naira which has become a debt since 26/6/2029 till Judgment.**

- ii. **An order of court for the payment of 10% post-Judgment interest on the said #20,000.00 (Twenty Million) Naira from the date of Judgment till liquidation.**
2. **An order of court for the payment of the balance of #19,250,000.00 (Nineteen Million Two hundred and Fifty thousand Naira) in suit No. CV/1341/18 between AlonNelken & 1 or Vs Zenith Bank Plc & 1 or out of the agreed sum of #20,250,000.00 which bill of charges was given dated 1<sup>st</sup> February, 2019**
    - i. **An order of court for the payment of 10% pre-judgment interest on #19, 250,000.00**
    - ii. **Nineteen Million, Two hundred and Fifty thousand Naira which has become a debt since 26/6/2019 till Judgment.**
    - iii. **An order of court for the payment of 10% post-Judgment interest on the said #19,250,000.00 (Nineteen Million Two hundred and Fifty thousand Naira from the date of Judgment till liquidation.**
  3. **An order of court for the payment of the balance of #12,250,000.00 (Twenty Million, two hundred and Fifty thousand Naira only in suit No. CV/1511/18 between Zenith Bank Plc and AlonNelken & 1 or based on agreement dated 25<sup>th</sup> September, 2017 out of the agreed fees of #25,000,000.00 (Twenty Five Million Naira only which brief was terminated via a letter of disengagement dated the 7/11/2019.**
    - i. **An order of court for the payment of 10% pre-judgment interest on N12,250,000.00 (Twenty Million Two hundred and Fifty Naira only which has become debt 26/6/2019 till Judgment**
    - ii. **An order of court for the payment of 10% past judgment interest on the said N12, 250,000.00) Naira only from the date of Judgment till liquidation.**
  4. **An order of court in the payment of the balance of N23,000,000.00 (Twenty Million naira) being balance of the professional fees under the new agreement dated 10<sup>th</sup> February 202 for cases to wit**
    - a. **CV/151/18 AND APPEAL No. CA/A1990/18 between Zenith Bank Plc. Vs AlonNelkan and & 2 ors which bill of charges dated 2018 March, 2024 had been issued.**
      - i. **An order of court for the payment of 10% pre-judgment interest on n23, 000,000.00 (Twenty three Million) which become debt since July, 2023 till Judgment.**

- ii. **An order of court for the payment of 10% post -Judgment interest on the said N23, 000,000.00 (Twenty three Million and from the date of Judgment till liquidation.**
- 5. **An order of court for the payment of N300, 000.00 (Three Hundred Thousand Naira being sum owed firm from the transaction for appearance, in Appeal No. CA/a/990/18 SINCE 2020 AS PER the new agreement dated 10/2/2020 of the rate of N25,000.00(12 times) as contained in the bill of charges dated 20<sup>th</sup> March, 2024**
- 6. **An order of court for the payment of N550, 000.00 (Five Hundred and fifty Thousand Naira being from owed to the firm for transportation for appearance suit No. CV/1511/18 since 2020 as per the new agreement dated 10/2/2020 at the rate of N25, 000, 00 (22time) as contained in the bill of charges dated 20<sup>th</sup> March, 2024.**
- 7. **An order of court for the payment of N20, 000.00 (Twenty Thousand Naira being payment for cost awarded against the defendant on 6/7/2022 No. CV/1511/2018 paid by our firm as contained in the bill of charges dated 2018 March, 2024**
- 8. **An order of court for the payment of 10% part-payment interest from claims number 5 t the last claim till liquidation.**
- 9. **The sum of N10, 000.00 (Ten Million )as cost of the suit.**

Accompanying the writ of summons is an affidavit of 73 paragraphs deposed to by Barrister AzubukeUgochukwu of suite 99,Dew Avalon Plaza Plot 483, AjoseAdeogun Crescent Utako Abuja, the affidavit 3-70 is reproduced below:

- 3. **That the 1<sup>st</sup> defendant is an Israeli and the Managing Director/Chief Executive Officer of the 2<sup>nd</sup> defendant company.**
- 4. **That the 2<sup>nd</sup> defendant is a registered company under the Company and Allied Matters Act and doing business in Nigeria, whose address of business is No. 7 Thomas Sankara Street, Asokoro, Abuja.**
- 5. **That the 1<sup>st</sup> defendant is also a Managing Director of so many others companies to wit: Hadassa Investment Limited, Main Global Logistics Services Limited, Mega Investment Limited, to name but a few.**

- 6. That on or about 5<sup>th</sup> of September, 2017, the 1<sup>st</sup> defendant contacted the claimant during a Golf Tournament at IBB Golf and Country Club and narrated his ordeal with Zenith Bank of Nigeria Plc, concerning a loan facility his company secured called Hadassa Investment Limited which he has been unable to pay back. The said loan facility secured by the defendants from Zenith Bank Plc. is hereby attached and marked as Exhibit AZ 1.**
- 7. That after the discussion, he invited me and one accountant to his office situated then at No. 76 Yakubu Gowon Street, Asokoro, Abuja.**
- 8. That at the agreed date, he showed me the loan facility agreement which he admitted he secured from the Bank for the financing of a contract with the Ministry of Defence for the supply of a moving vehicle called Sumo Motors which purpose was for the fighting of insurgency in Nigeria.**
- 9. That the said Sumo Motors supply which he secured from the Ministry of Defence was financed by Zenith Bank Plc. but could not secure the payment from the Ministry of defence as a result of discrepancy in the supply chain.**
- 10. That the said Sumo Motors agreement he had with the Ministry of Defence was for the supply of German product but he supplied Chinese product which made the Ministry of Defence to reject same and so could not pay for the supply.**
- 11. That it was the said rejection from the Ministry of Defence of the supply of the Sumo motors which the defendants later sold to Lagos State Government that incapacitated the defendants company in paying back the loan to the Bank.**
- 12. That the inability in paying back the loan to Zenith Bank Plc. which was to the tune of N975,000,000.00 (Nine Hundred and Seventy Five Million Naira) led to the bank setting machineries in motion for the recovery of**

same and therefore needed the services of the claimant Law Firm to rescue him.

13. That after several days of discussion with the 1<sup>st</sup> defendant, it was agreed that the entire matter will be handled in phases depending on how the bank shows up as the case also incorporates other companies which the 1<sup>st</sup> defendant is the Managing Director.
14. That in pursuant to the said understanding, the claimant responded to the first letter written by the bank through its counsel Samuel Zibiri (SAN) on the 9<sup>th</sup> day September, 2017 admitting the said loan transaction and called for settlement for same. The said letter is hereby attached and marked as Exhibit AZ 2.
15. That after the claimant had written the first letter on behalf of the defendants, the board of the company held a meeting in which it was decided to deny the said loan on the second letter 26/9/2017 so that the bank would prove their case in a court of law which led to the agreement between both parties dated 25/9/2017. The said letter is hereby attached and marked as Exhibit AZ 3.
16. That prior to the second letter written by the claimant on behalf of the defendants on the 26<sup>th</sup> day of September, 2017 in response to the Zenith Bank letters, the 1<sup>st</sup> defendant on behalf of the defendants entered into a binding agreement for the sum of N25, 000,000.00 (Twenty Five Million Naira) for the purpose of handling the said matter with the bank. The said agreement dated 25/9/2017 is hereby attached and marked as Exhibit AZ 4.
17. That in the course of handling the said matter, the bank through their counsel petitioned the defendants to ECONOMIC AND FINANCIAL CRIME COMMISSION (EFCC) over fraud concerning other of 1<sup>st</sup> defendant companies over the said loans transactions. The said petition of Zenith Bank alleging fraud and other crimes against the defendants is hereby attached and marked as Exhibit AZ 5.

- 18. That in the course of defending the defendants at ECONOMIC AND FINANCIAL CRIME COMMISSION (EFCC), it was discovered that the defendants also sold the properties used in securing the loan situated at 19A & B Idowu Martins Street, Lagos to One Berkeley Holdings Limited & Co. thereby complicating the matter. The said letter from Berkeley Holdings Limited is hereby attached and marked as Exhibit AZ 6.**
- 19. That the claimant in the course of ECONOMIC AND FINANCIAL CRIME COMMISSION (EFCC) matter on behalf of the defendants took the 1<sup>st</sup> defendant on bail and signed all necessary papers on behalf of the 1<sup>st</sup> defendant for purposes of securing his bail which was obliged by the authorities of ECONOMIC AND FINANCIAL CRIME COMMISSION (EFCC). The bail bond and invitation letter of EFCC is hereby attached and marked as Exhibit AZ 7.**
- 20. That the claimant also in furtherance of handling the said matter at EFCC for the 1<sup>st</sup> defendant proceeded to Central Bank of Nigeria and procured several documents to wit: Central Bank of Nigeria (Anti-Money Laundering and combating the financing of terrorism in the banks and other financial institutions in Nigeria) Regulation 2013. The said acknowledgement from CBN dated 8/5/2018 is hereby attached and marked as Exhibit AZ 8.**
- 21. That in recognition of the effort of the claimant and the immense legal advise briefed him to handle another case against the Zenith Bank Plc. which led to Suit No: CV/1341/18. The judgment of the said suit is hereby attached and marked as Exhibit AZ 9.**
- 22. That after the victory over Zenith Bank Plc and ECONOMIC AND FINANCIAL CRIME COMMISSION (EFCC) in Suit No: CV/1341/18, the claimant moved to ECONOMIC AND FINANCIAL CRIME COMMISSION (EFCC) and rescued his papers used in securing the bail bond of the 1<sup>st</sup> defendant.**

- 23. That the Zenith Bank Plc. unable to use the ECONOMIC AND FINANCIAL CRIME COMMISSION (EFCC) to further their purpose on the criminal aspect against the 1<sup>st</sup> defendant which was stoutly defended by the claimant proceeded to institute an action against the defendants to the tune of N1, 035,000,000,000.00 (One Billion and Thirty Five Million Naira) in Suit No: CV/1511/18 over the said loan transaction. The Amended statement of claim is hereby attached and marked as Exhibit AZ 10.**
- 24. That while Suit No: CV/1511/18 was ongoing, and having successfully defended the defendants through Suit No: CV/1341/18, the character of the 1<sup>st</sup> defendant suddenly showed up.**
- 25. That while the claimant was unable to ascertain what was the cause of the change in character of the 1<sup>st</sup> defendant towards him, the claimant got wind of the complain of the 1<sup>st</sup> defendant concerning the N500, 000,000.00 (Five Hundred Million Naira) won in Suit No: CV/1341/18 which was as the result of the effort of the claimant.**
- 26. That the claimant in respect to his professional calling issued bill of charges on the 1<sup>st</sup> of February, 2019 and posted same to the 1<sup>st</sup> defendant which he acknowledged and called for settlement of the issues. The said receipts of DHL and the acknowledgement from the 1<sup>st</sup> defendant are hereby attached and marked as Exhibit AZ 11 and AZ 12 respectively**
- 27. That at the said meeting for the settlement of the bill of charges duly forwarded and acknowledged by the 1<sup>st</sup> defendant in the presence of his Manager Mr. Valentine Oni and Francis Affi accepted an agreed fees on the various jobs carried out for him which were captured in the bill of charges to wit:**
  - a. Bill of charges with respect to solicitors work dated 1<sup>st</sup> February, 2019.**

- b. **Bill of charges with respect to Suit No: CV/1341/18. The said bill of charges are hereby attached and marked as Exhibit AZ 13 and AZ 14 respectively.**
28. **That at the said meeting held on the 11/3/2019, the 1<sup>st</sup> defendant accepted to pay the sum of N20,250,000.00 (Twenty Million, Two Hundred and Fifty Thousand Naira) over CV/1341/18, while he also accepted to pay the sum of N25,000,000.00 (Twenty Five Million Naira) over the solicitors work bill of charges as a result of the various defence put up at ECONOMIC AND FINANCIAL CRIME COMMISSION (EFCC) and the defence of the criminal aspect over the alleged illegal sale of the properties used for the loan transaction situate at No. 19A & B, Idowu Martin Street, Victoria Island, Lagos.**
29. **That in furtherance of the 1<sup>st</sup> defendant acceptance of the various bill of charges, issued cheques of N5,000,000.00 (Five Million Naira) in respect of solicitors work bill of charges and issued a cheque of N1,000,000.00 (One Million Naira) in respect of CV/1341/18 bill of charges. The receipts of both the solicitors work and the CV/1341/18 receipts are hereby attached and marked as Exhibit AZ 15 and AZ 16 respectively.**
30. **That at the said meeting also on the 11/3/2019, the 1<sup>st</sup> defendant also accepted that Suit No: CV/1511/18 shall be honoured over the agreement dated 25/9/2017 and issued a cheque of N5,000,000.00 (Five Million Naira) in respect to that which receipt was also issued leaving a standing balance of N12,250,000 (Twelve Million, Two Hundred and Fifty Thousand Naira). The said receipt is hereby attached and marked as Exhibit AZ 17.**
31. **That while the claimant had hoped that all the issues were resolved on the 11/3/2019 meeting, unknown to the claimant the 1<sup>st</sup> defendant had consulted several lawyers for the purpose of terminating the brief of the claimant which most of the lawyers declined on the ground that the outstanding bills had to be paid before they could come into the case having been receipted and outstanding agreement in place.**

- 32. That the claimant on 7/11/2019 received a disengagement letter from the 1<sup>st</sup> defendant informing him of his disengagement and that his new Counsel is A. U. Mustapha (SAN). The various disengagement letters over the cases are hereby attached and marked as Exhibit AZ 18 and AZ 19 respectively.**
- 33. That the claimant having gotten the said letters of disengagement from the 1<sup>st</sup> defendant on the 7/11/2019 immediately responded with five (5) different letters to the 1<sup>st</sup> defendant acknowledging the disengagement and also informing him to do the needful over the various cases handled by our law firm for a proper handover. The said letters are hereby attached and marked as Exhibit AZ 20, AZ 21, AZ 22, AZ 23 and AZ 24.**
- 34. That bill of charges was never issued over CV/1511/18 prior to the disengagement letter of 7/11/2019 which was covered with the agreement of 25/9/2017 because it was still ongoing before the disengagement.**
- 35. That the claimant before the disengagement had worked hard to ensure that the Chief Justice of FCT has the case CV/1511/18 re-assigned to another judge in that my noble Lord who was in charge of the case previously had passed on to the world beyond.**
- 36. That the Chief Justice of FCT in October 2019 had the case re-assigned to my noble Lord Peter Afen J. (As he then was) before the termination of the brief of the claimant by the 1<sup>st</sup> defendant.**
- 37. That also before the termination of the said brief in November, 2019 the claimant had also filed respondent brief in respect to Appeal No: CA/A/990/18 which was the Appeal Number of Suit No: CV/1341/18 which the claimant won at the lower court which led to the crises as a result of huge sum of N500, 000,000.00 (Five Hundred Million Naira) awarded by the lower court to the 1<sup>st</sup> defendant.**
- 38. That on the 19<sup>th</sup> day of November, 2019, A. U. Mustapha (SAN) appeared on behalf of the 1<sup>st</sup> defendant in Suit No: CV/1511/18 before**

**my noble Lord Peter Afen J. (As he then was). The said progress letter written to the 1<sup>st</sup> defendant by A. U. Mustapha & Co informing the 1<sup>st</sup> defendant that the case was adjourned to 13/1/2020 is hereby attached and marked as Exhibit AZ 25.**

- 39. That on 13/1/2020 having not received his payment from the 1<sup>st</sup> defendant over the various sum receipted, the claimant appeared in court over Suit NO: CV/1511/18 before my noble Lord Afen J. (As he then was) who frowned at the appearance of two counsels over the same case and counseled over the matter.**
- 40. That on the 13/1/2020, A. U. Mustapha & Co through his counsel who was present in court informed the court that his boss the (SAN) had informed the 1<sup>st</sup> defendant to pay the claimant the balance of his fees, and also assured the court that before the next adjourned date that the balance of the fees of the claimant shall be paid.**
- 41. That on 13/1/2020, My noble Lord Afen J. (As he then was) instructed A. U. Mustapha & Co. to advice their client to do the needful as the various sums have been receipted for there to be a proper handover for the sake of keeping with the professional rules of lawyers which the counsel on behalf of A. U. Mustapha & Co duly obliged.**
- 42. That on the same 13/1/2020 after the case in the court, the claimant got a call from the 1<sup>st</sup> defendant having been briefed by his Manager and his Finance director over what transpired in the court and initiated a meeting for the purpose of settling the issues.**
- 43. That the claimant accepted the call for the meeting and attended the said meeting on the 14/1/2020 where the 1<sup>st</sup> defendant accepted to pay his outstanding fees and wishes to re-engaged him again as he could not afford to pay the fees of A. U. Mustapha (SAN).**
- 44. That on the 16/1/2020 the claimant received a re-engagement letter from the 1<sup>st</sup> defendant asking the claimant to state his terms for the re-**

**engagement. The said re-engagement letters over the various cases are hereby attached and marked as Exhibit AZ 26 and AZ 27 respectively.**

- 45. That the claimant on the 17/1/2020 responded to the said letter of the 1<sup>st</sup> defendant dated 16/1/2020 and unequivocally stated his terms for the re-engagement while making it clear that the previous fees which stood at N51,500,000.00 (Fifty One Million, Five Hundred Thousand Naira Only) over the various cases must be paid. The said response letter from the claimant over the re-engagement letters is hereby attached and marked as Exhibit AZ 28.**
- 46. That in compliance with the response letter from the claimant dated 17/1/2020, the 1<sup>st</sup> defendant called a meeting of his staffs and accepted to pay the outstanding sum of N51, 500,000.00 (Fifty One Million, Five Hundred Thousand Naira Only) in presence of his Manager and his Finance director and also agreed that the re-engagement should start afresh with new fees and new agreement which was done on 10/2/2020 inclusive of transportation fees and the mode of payment of the new fees. The said new agreement is hereby attached and marked as Exhibit AZ 29.**
- 47. That after the re-engagement and the agreement dated 10/2/2020; the claimant filed a notice of change of counsel dated 11/2/2020 before the High Court in Suit No: CV/1511/18. The said notice of change of counsel is hereby attached and marked as Exhibit AZ 30.**
- 48. That while the new agreement was kept with respect to professional fee mode of payment throughout the entire 2020 with exception to the transportation fee, the 1<sup>st</sup> defendant reneged on the said agreement of paying both the transportation money and the professional fee immediately he found out that my noble Lord Afen J. (As he then was) has been elevated to the court of Appeal.**
- 49. That throughout the entire 2021, the 1<sup>st</sup> defendant again started shopping for new lawyers to take over the case in order not to meet up with his obligations. One of the lawyers approached is Mr.**

**RidwanAbubakar who later fell out with him and filed a law suit against him. The said law suit instituted against the 1<sup>st</sup> defendant by Mr. RidwanAbubakar in Suit No: CV/2755/23 pending at court 53 were in paragraph 7 of the Affidavit he made clear the instruction of the 1<sup>st</sup> defendant to him concerning the claimant is hereby attached and marked as Exhibit AZ 31.**

**50. That other various jobs assigned to the claimant by the defendant in the 2021, 2022 which he paid are as follows:**

**i. Various letters of demand on behalf of the 1<sup>st</sup> defendant to Alain Zoghzy dated 17/6/2021 and 23/6/2021 is hereby attached and marked as Exhibit AZ 32.**

**ii. Letter to Sky Sapience Ltd/ Bank Hapoalim Israel over a contract he secured with Zamfara State Government to the tune of N700 million dated 17/6/2021 is hereby attached and marked as Exhibit AZ 33.**

**iii. Letter of AlonNelken to our firm terminating the said brief requesting for our services over the indebtedness of Alain Zoghzy dated 23/6/2021 is hereby attached and marked as Exhibit AZ 34.**

**iv. Payment receipts issued to AlonNelken in respect of the aforementioned job after agreement is hereby attached and marked as Exhibit AZ 35.**

**51. That on May 11<sup>th</sup> 2022, the high court dismissed the said N1,035,000,000,000.00 (One Billion and Thirty Five Million Naira) debt in Suit No: CV/1511/18 in favour of the 1<sup>st</sup> defendant as a result of the effort of the claimant defence filed on behalf of the 1<sup>st</sup> defendant.**

52. That immediately the suit was dismissed in favour of the 1<sup>st</sup> defendant, the 1<sup>st</sup> defendant unleashed the said money from where he had kept it in a property in Guzape, Abuja after selling the Sumo Motors which was rejected by Ministry of Defence sponsored by Zenith Bank and entered into deed of partition over plot 76 Yakubu Gowon Street, Asokoro with the owner Alhaji Mohammed Mansur Dan-Ali for the purpose of building his personal house. The said deed of partition is hereby attached and marked as Exhibit AZ 36.
53. That the 1<sup>st</sup> defendant took six months to build the said mansion at Plot 76 Yakubu Gowon Street, Asokoro beginning from June 2022 to December 2022 and also paid off the balance of his mortgage house in Florida-USA where his family is residing but refused to pay the claimant his outstanding fees despite all pleading by the claimant who has helped him in the hours of his need.
54. That on 30/10/2023, the claimant reminded the 1<sup>st</sup> defendant of his legal obligation via an update after the court of appeal sitting, over the outstanding professional fees of N23, 000,000.00 (Twenty Three Million Naira) as contained in the agreement dated 10/2/2020 and the transportation cost in which he responded by inviting the claimant for a meeting on the 10/11/2023 via phone call. The said letter of 30/10/2023 is hereby attached and marked as Exhibit AZ 37.
55. That on the said letter of 30/10/2023, the claimant informed the 1<sup>st</sup> defendant on the numbers of times he appeared on his behalf at the High Court over Suit No: CV/1511/18 which numbers of time and dates are herein provided to wit: 20/2/2020, 18/3/2020, 19/3/2020, 6/4/2020, 6/5/2020, 4/6/2020, 25/6/2020, 13/7/2020, 17/9/2020, 11/11/2020, 19/1/2021, 24/2/2021, 25/2/2021, 15/3/2021, 27/4/2021, 17/5/2021, 28/6/2021, 22/11/2021, 1/2/2022, 7/3/2022, 6/7/2022, 1/12/2022 thereby bringing the total number to 22 times at the rate of N25,000.00 (Twenty Five Thousand Naira) which is the agreed rate as contained in the 10/2/2020 agreement to the total sum of N550,000.00 (Five Hundred and Fifty Thousand Naira). Some of the previous letters to name but few written in respect to transportation fees over CV/1511/18 in 2020 and

2021 are hereby attached and marked as Exhibit AZ 38 and AZ 39 respectively.

56. That once again on the said letter of 30/10/2023, the claimant informed the 1<sup>st</sup> defendant on the numbers of times he appeared on his behalf at the Court of appeal in Appeal No: CA/A/990/18 which numbers of times and dates are herein provided to wit: 14/4/2020, 26/11/2020, 15/6/2021, 31/5/2022, 28/9/2022, 24/11/2022, 26/4/2023, 26/9/2023, 3/10/2023, 30/10/2023, 11/1/2024, 14/3/2024 thereby bringing the total number to 12 times at the rate of N25,000.00 (Twenty Five Thousand Naira) which is the agreed rate as contained in the 10/2/2020 agreement to the total sum of N300,000.00 (Three Hundred Naira) only.
57. That the claimant also paid the sum of N20,000.00 (Twenty Thousand Naira) to Zenith Bank Lawyers on behalf of the 1<sup>st</sup> defendant which he has refused to pay back despite demand as a result of the 1<sup>st</sup> defendant travelling to Florida-USA and the cost was awarded against him for not being in court on the 6/7/2022, the record of proceedings is hereby attached and marked.
58. That on 10/11/2023 in the said meeting, the 1<sup>st</sup> defendant under the watchful eyes of his manager Mr. Valentine Oni who has been with the 1<sup>st</sup> defendant for the past 23 years and who receives all correspondence on his behalf as his manager covenanted once again to meet all his legal obligation including the old legal fees of N51, 500,000.00 (Fifty One Million, Five Hundred Thousand Naira Only) which had been receipted since 2019.
59. That despite the said meeting of 10/11/2023, the 1<sup>st</sup> defendant refused/neglected to pay both the transportation fees and the legal fees which made the claimant to plead with the manager of the 1<sup>st</sup> defendant to intercede on his behalf in order to avoid a legal show down between the two parties.

- 60. That the claimant has completed the cases assigned to him by the 1<sup>st</sup> defendant despite the 1<sup>st</sup> defendant not meeting his obligations which were duly covenanted on the new agreement dated 10/2/2020 and also the transportation fees to wit:**
- i. Suit No: CV/1511/18 which the court had dismissed in favour of the 1<sup>st</sup> defendant thereby setting him free from over N1, 035,000,000,000.00 (One Billion and Thirty Five Million Naira) debt which he took from the bank and in deed he took. The said ruling dismissing the case inclusive of records of proceedings is hereby attached and marked as Exhibit AZ 40.**
  - ii. The court of Appeal judgment/ruling in Appeal No: CA/A/990/18 on various issues canvassed by the court. The said court of Appeal judgment/ruling is hereby attached and marked as Exhibit AZ 41.**
- 61. That other various correspondences forwarded to the 1<sup>st</sup> defendant in respect to the cases assigned to the claimant on the 10/2/2020 are hereby attached and marked as following Exhibits AZ 42, AZ 43 and AZ 44 respectively.**
- i. Letter dated 2/6/2023 informing the 1<sup>st</sup> defendant of the good news of the dismissal of Suit No: CV/1511/18 instituted by Zenith Bank Plc.**
  - ii. Letter dated 18/1/2024 informing him of the progress of the case at Court of Appeal and his indebtedness to our law firm over transportation fees since 2020 and the Certified True Copies (CTC) of the various court judgment and ruling which fees stood at N150,000.00 (One Hundred and Fifty Thousand Naira) to wit:**

- a. **Certified True Copies (CTC) of Court of Appeal ruling dated 24/11/2022 over a motion filed by Zenith Bank PLC on the issue adducing new evidence at the court of appeal which was rejected at the cost of N50,000.00 (Fifty Thousand Naira).**
    - b. **Certified True Copies (CTC) of ruling/record of proceedings in CV/1511/18 at the cost of N50, 000.00 (Fifty Thousand Naira).**
  - iii. **Letter dated 19/3/2024 informing him of the judgment at court of appeal and also the demand to pay our transportation fees and all others outstanding fees and Certified True Copies (CTC) of Judgment of Court of Appeal dated 14/3/2024 at the cost of N50,000.00 (Fifty Thousand Naira).**
- 62. That the claimant on the 7/12/2022, duly issued a receipt under the new agreement dated 10/2/2020 of the total sum of N22, 000,000.00 (Twenty Two Million Naira) paid by the 1<sup>st</sup> defendant over period of time between 2020-2022 under the agreed professional fees of N45, 000,000.00 (Forty Five Million Naira) leaving a balance of N23, 000,000.00 (Twenty Three Million Naira). The said receipt is hereby attached and marked as Exhibit AZ 45.**
- 63. That in compliance to the rules of legal practitioners, the claimant duly issued bill of charges to the 1<sup>st</sup> defendant over the new agreement dated 10/2/2020 despite serving the 1<sup>st</sup> defendant all updated letters to the various cases in court and its completion. The said bill of charges and its demand letter is hereby attached and marked as Exhibit AZ 46.**
- 64. That after the expiration of the bill of charges and the demand to pay same, the claimant duly issued pre-action notice to the 1<sup>st</sup> defendant. The pre-action notice is hereby attached and marked as Exhibit AZ 47.**

- 65. That the defendants have deliberately refused to liquidated their indebtedness to the claimant.**
- 66. That despite acknowledging receipt of numerous correspondences inclusive of letter of demand, the defendants has failed, refused and neglected to respond to same nor pay the said professional fees.**
- 67. That the defendants has the financial capacity to settle the professional fees but he has refused to pay same, rather, he has chosen to take the claimant through the rigour of having to engage litigation in order to recover the professional fees from the defendants despite the huge relief of N1, 035,000,000,000.00 (One Billion and Thirty Five Million Naira) loan he took from Zenith Bank Plc and which the claimant successfully defended.**
- 68. That the refusal of the defendant to settle the professional fees is daily inflicting untold economic loses and inconveniences on the claimant.**
- 69. That if the defendants is not compelled by this honourable court, he has no intention whatsoever of paying the said legal fees as he does not respond to any correspondence from the claimant despite such services on him either through documentary or phone calls most especially since May 2022 when Suit No: CV/1511/18 was dismissed in his favour.**
- 70. That I know of a fact that this suit is in respect of a claim to recover a Liquidated Money Demand.**

Pre-action counseling certificate.

Attached to the affidavit are exhibit marked as exhibit

- 1. A21- (Offer of credit facilities)**
- 2. A211- Re-Demand letter in respect of indebtedness of Hadassa Investment Ltd to Zenith Bank Plc. Amounting to N945,000,213.57 dated 9<sup>th</sup> September, 2007 address t M. partner El-Shaddia Chamber.**
- 3. A23- Re-demand letter in respect of indebtedness of Hadassa Investment for Zenith Bank Plc amounting o N945,909.213.57 address to Managing partners El-Shaddei Chambers**

4. **A24- Memorandum f understanding between AlonNelken and UgochukwuAzuibuke**
5. **5. Exhibit A25- letter dated the 18<sup>th</sup> December, addressed to EFCC Chairman by El-shaddai Chambers.**
6. **Exhibit A26-letter from Berkeley dated the 14<sup>th</sup> November, 2018 addressed to Mr. AlonNelkan.**
7. **Exhibit A27 (investigation activities by EFC.**
8. **Exhibit A28- letter from CBN dated the 8/05/2018 addressed to UgochukwuAzuibuke& Co.**
9. **Exhibit A29 CTC Judgment from FCT, High Court in motion No. CV/M/4534/18 dated the 9<sup>th</sup> October, 2018.**
- 10.**Exhibit A210- amendments statement of claim in the case between Zenith Bank Plc V AlonNelkan& or suit No. CV/1511/2018.**
- 11.**Exhibit A211- DHL terms and conditions of carriage.**
- 12.**Exhibit A212 – Re-bill of charges from AlonNelkan addresses to Barr. UgochukwuAzuibuke& Co. DATED THE Feb, 2019.**
- 13.**Exhibit A213- Bill of charges from UgochukwuAzuibuke addressed to AlonNelkan dated the 1<sup>st</sup> February, 2010**
- 14.**Exhibit A214- letter from UgochukwuAzuibuke and addressed to AlonNelken dated 1/2/2019 with bill of charges attached.**
- 15.**Official receipt from UgochukwuAzuibuke& Co dated 14/2/2016 -2019 received from AlonNelkan**
16. **Exhibit A216- official receipt dated 21-06-2019 from UgochukwuAzuibuke received from AlonNelkan**
- 17.**Exhibit AZ17 official receipt dated 21-06-2019**
18. **Exhibit A218 letter from Hadassa investment Nig Ltd to the Principal Partner UgochukwuAzuibuke dated the 7 November, 2018.**
- 19.**Exhibit A219 letter from Hadassa investment Nig Ltd address to the principal partner caption Re-disengagement as our solicitor in respect of suit No. CA/A/998/18 Zenith Bank Plc v AlonNelkan and another.**
- 20.**Exhibit A220 Re- Disengagement as solicitors in respect of suit No. CA/A/990/2018 between Zenith Ban Plc V AlonNelkan& 1 or**
- 21.**Exhibit A221- Re-disengagement as solicitors in respect of suit No. CA/1522/14, between Zenith Bank Plc. VsAlonNelkan& 1ors**

22. **Exhibit A2.22 Re-disengagement as solicitors in respect of suit No. CA/151/18, BETWEEN Zenith Bank Plc V AlonNelkan& 1 or and Demand for balance of N12,25,000.00.**
23. **Re-disengagement as solicitors in respect of suit No. CA/a/990/18 between Zenith Bank plcVsAlonNelkan& or and demand for Balance of N10,250,000.00**
24. **Re-disengagement as solicitors in respect of suit No. CV/1511/18 between Zenith Bank Plc V AlonNelkan& ors and demand for balance of N20,000,000.00 being debt owed to us over solicitors work wick covers EFCC, CBN, Solicitors letter which bill of charges has already been given dated 1-02-2019.**
25. **Re-suit No. CV/1511/19- Zenith Bank PlcVsAlonNelkan 7 ors progress report.**
26. **Re- engagement to legally represent Alon-NelkanHadassa Investment Nig Ltd in suit No. CV/1511/18 BETWEEN Zenith Bank Plc V AlonNelkan& ors**
27. **Exhibit A227 Re-engagement to legally represent Alon in suit No. CV/A/1990/18, between Zenith Bank Plc&AlonNelkan& 3 ors**
28. **Exhibit A228 Re-engagement over suit No. CV/1511/18 between Zenith Bank Plc V AlonNelkan& ors and Appeal No. CA/A/1990/18.**
29. **29 Exhibit A229- Memo of understanding between AlonNelkan and UgochukwuAzuibuke& Co.**
30. **Exhibit A230 Notice of change of counsel**
31. **Exhibit A231 Affidavit in support of claim under undefended list.**
32. **Exhibit A232 demand for payment of the outstanding sum of N8,000.00 (Eight Million Naira ) being part of N22,500,000.00 (Twenty Two Million five hundred thousand Naira owed to Mr. AlonNelkan over Memo of settlement entered by both parties on 5<sup>th</sup> February, 2021 dated 17/06/2021**
33. **Exhibit 33- letter from UgochukwuAzubuike& Co. addressed to Slay Sapence Ltd/ Bank HapoalinIsreal dated 17-06-2021.**
34. **A234 Re-letter of demand for payment from MrAlaim dated June, 23-2021**
35. **Exhibit A235 office receipt dated 30/06/2022 from UgochukwuAzubuike& Co. being payment for solicitors work to wit two letter to AlaimZoghzogly.**

- 36. Exhibit A236 deeds of partition Alhaji Mohammed Mansur Dan- Ali and Mr Alon Nelkan**
- 37. Exhibit A237- update on suit No. FCT/CV/1511/18, Appeal No. CA/A/1990/18 and Appeal No. CA/A/28/m/2019 Zenith Bank Plc V Alon Nelkan & Co and demand for the sum of N90,000.00 (Nine Hundred Naira only ) being total cost for both Transportation fare and certified true copy (CTC) of court rulings dated 30/10/2023**
- 38. Exhibit A238 re-suit No CV/1511/18 Zenith Bank Plc V Alon Nelkan & Co. dated 26-06-2020**
- 39.29 Exhibit A239 Re-No FCT/CV/1511/18 between Zenith Bank Plc V Alon Nelkan & Co Demand for payment dated the 21-June 202.**
- 40. Exhibit A240 ruling/Judgment in suit No. FCT/HC/CV/1511/18 MOTION No. FCT/HC/M/772/2022 DELIVERED BY Hon. Justice A. O. Olawka.**
- 41. Exhibit A241- ruling in suit No. CA/A/990/2018 delivered by Hon. Justice Ugochukwu Anthony Ogakwu dated 24-11-2022 and judgment delivered by Hon. Justice Joseph Olubunmi KAYODE Oyewole (JCA) in suit No. CA/A/990/2028 DATED 14<sup>TH</sup> March, 2024.**
- 42. Exhibit A242 update on suit No. FCT/CV/1511/18 between Zenith Bank Plc V Alon Nelkan & ors dated 2-June 2023**
- 43. Exhibit A243- Re- Appeal No. CA/A/990/18 BETWEEN Zenith Bank Plc Vs Alon Nelkan & Co. dated 18/01/2024.**
- 44. Exhibit A244- Re- Appeal N. CV/A/990/18 between Zenith Bank Plc V Alon Nelkan dated 19/03/2024**
- 45. Exhibit A245 official receipt dated 07/12/2022 from Ugochukwu Azubuike**
- 46. Exhibit A246 Bill of charges dated 20/3/2024 from Ugochukwu Azubuike addressed to No. Hadassa investment Ltd.**
- 47. Exhibit A247 Pre-action notice over failure to pay the legal fees and the transportation cost with respect to cases handled by our firm to your organization since 2017 and demand to pay same from Ugochukwu Azubuike & Co for MD Hadassa Investment Security Ltd dated 22-04-2024.**

Before I proceed I wish to state that, this suit was commenced under the undefended list procedure in accordance with order 35 of the High court of FCT Abuja civil Procedures rules 2018 order 35 provides thus:

- 1. Where an application in turn 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 applicant's beliefs there is no defence, to it the judge in chambers shall enter the suit for hearing in what shall be called the undefended list" 35(3) (1) 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 such terms as the court may think just.**
- 2. Where leave to defend is given under this rule, the action shall be removed from the undefended list and placed on the ordinary cause list and the court may order pleadings or proceed to hearing without further pleadings**

**35(4) 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**

**A careful perusal of the processes filed before this court dated the 25-05-2024 it is crystal clear that the defendants were served with the writ of summons dated the 07-06-2024 acknowledged by one Valentine Oni of No. 7 Thomas Sankara Street Asokoro, proof of service filed before the court, the service as I said was acknowledged by one Valentine Ani a Director operations with the defendant's Company.**

**Upon service of the writ of summons the defendant wrote a letter captioned: Request for adjournment of Hearing in case No.**

**FCT/HC/GWD/CV/145/24 between AzubuikeUgochukwu and MrAlonNelkan and Hadassa Investment Security Ltd dated June, 19 2024 same addressed to the Registrar of High court of FCT, court 48 then his suit was adjourned for hearing to the 24<sup>th</sup> June, 2024.**

**On the 24-June, 2024 when this suit came up for hearing the claimant counsel one A. O. Ugochukwu who appeared for himself informed the court that, he received a letter seeking for 120 days over an undefended list within which to serve a legal representation . Thus he urged this court to discountenance the said letter as that is unknown to the procedure under undefended list.**

Reference to order 35 (1) (2)(3) of the rules of this court. The said order is reproduced in this judgment for ease of reference.

**Furthermore, that this court having marked it under undefended list before service was made, this rules have been complied with by this court as the defendants have 5 days to file a notice of intention to defend and file an affidavit and that the service date being 7-6-2024 which was served by the bailiff of this court and admitted that via the letter of adjournment dated June, 19 2024. In the light of this urged this court to discountenance same, being the letter seeking for 120 days as the letter is not allowed within the rules.**

**This court having carefully listened to the oral application made by the learned claimant counsel granted the order sought as the said letter is naturally not intended with the rules of this court i.e. order 35 rules (1)(2)(3) of the rules of this court and ordered the claimant counsel to proceed with his suit in accordance with order 35 (4) of the rules of this court as reproduced in this judgment.**

**It is trite law that where the claimant/defendant under the undefended list fails to disclose a defence on the merit, the trial court will set the suit down for hearing in accordance with order 35(4) of the rules of this court, and on the return for hearing, the trial court would then proceed to enter judgment without calling on the claimant/defendant even if present in court, to answer or be heard. See Theobros Auto-link Ltd Vs B. I. A.E. Co. Ltd (2013) 2 NWLR (part 1338) pg. 337 and Haida V Usman (2004) 3 NWLR (part. 859)65.**

I have carefully gone through the claimant's claim, on this I wish to state that, the undefended list procedure is not for all manner of claims but specifically in respect of a claim to recover a debt or a liquidated money demand. See Fortune Int. Bank Plc V city express Bank Ltd (2012) the NWLR (part 1319)p 86 (CA).

However, the various states' rules of court have provided for award of post Judgment interest which should not be more than 10% of the Judgment on this order 39(4) of the rules of this court provides thus:

**“The court at the time afterwards, may direct the time within which the payment is to be made or other act is to be done, reckoned from the date of the judgment or order or from some**

**other point of time, as the court may deem fit and may order interest at a rate not less than 10% Per annum to be paid.**

A careful perusal of the following claims. 1(ii), 2(ii), 3(ii), 4(ii) and 8 are not grantable by this court as there is no place in our laws i.e. rules that allows the court to grant 10% post judgment interest, hence those claims are not grantable by this court, hence shall be treated as has having been abandoned.

I so hold.

On claim 9 being claim of N10, 000,000.00 (Ten Million Naira) cost of the suit. On this I wish to state that, the award of cost is solely at the discretion of the trial curt to award. In awarding the cost, the court will look at the cost incurred on the prosecution of the action and award costs accordingly; such an award must be done judiciously and judicially.

It is also trite law, that cost follows events and a successful party should not be deprived of his costs unless for good reasons.

The essence of cost is to compensate the successful party for part of the loss incurred in litigation. Costs cannot cure all the financial loss sustained in the litigation. It is not meant to be a bonus to a successful party, and not to be awarded on sentiment. See *Ero V Tinubu* (2012) 8 NWLR (prt. 1301) p. 104 (CA).

In view of foregoing I shall award the sum of N2, 000,000.00 (2 Million naira) only as cost against the defendants.

In the final analysis, I hold that the claimant has fulfilled all the requirements under order 35 of the rules of this court hence judgment is entered for the claimant as follows:

- 1. Claim 1(i), 2(i), 3(i), 4(i), 5, 6, 7 and as per claim 9 I award the sum of N2, 000,000.00 as cost.**

This is my Judgment.

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**Hon Justice A. Y. Shafa**

**Appearance:**

1. AzubuikeUgochukwu for the claimant
2. SalahudeenTaofeek for the defendant with J .O. Inalegwu