

**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. 14**

**CASE NUMBER : SUIT NO: CV/2942/2023**

**DATE: : WEDNESDAY 8<sup>TH</sup> NOVEMBER, 2023**

**BETWEEN**

**THE CHIEF REGISTRAR, HIGH  
COURT OF THE FEDERAL  
CAPITAL TERRITORY**

**PLAINTIFF**

**AND**

**FIRST BANK PLC. ....**

**DEFENDANT**

## **RULING**

The Claimant by Writ of Summons brought under the Undefended List Procedure, claims the following from the Defendant.

- a. The sum of **N258,550,760.00 (Two Hundred and Fifty Eight Million Five Hundred and Fifty Thousand Seven Hundred and Sixty Naira)** only being the money credited by the Defendant into the account of the High Court of the FCT, Maintained with the Defendant (First Bank Plc.) and for which a mandate raised on the 8<sup>th</sup> August to credit the judgment creditor was not honored in a clear violation of banker/customer relationship.

In support of the writ is a 15 paragraphs affidavit duly deposed to by one Shamsuddeen Uban Doma, in the employment of the Claimant.

It is the deposition of the Claimant that an Order absolute was made by coram. Hon. Justice S.B Belgore on the 4<sup>th</sup> July 2022 mandating the Defendant to pay the sum of \$565,340.00, N12,500,000.00 and N12,000,000.00 respectively to the Judgment Creditor in **Suit No. FCT/HC/CV/322/2020.**

(Copy of the Order Absolute dated 14<sup>th</sup> July, 2022 is attached and marked Exhibit “A”).

He also averred as follows; that the Defendant refused to obey the Order of the Court despite request from the office of the Claimant, that in compliance to the order of this Honourable Court, he

led a team of enforcement officers to the Defendant's office on the 4<sup>th</sup> August, 2022 to enforce the judgment sum in aggregate of **N258,550,760.00 (Two Hundred and Fifty Eight Million, Five Hundred and Fifty Thousand Seven Hundred and Sixty Naira)** only in the case of **FCT/HC/CV/322/2022 between CLEAR CUT OIL AND GAS NIG. LTD. VS. MUTUAL COMMITMENT COMPANY** and that in compliance to the Order of this Honourable Court alongside approved writ of attachment that the properties of the Defendant were attached and moved to the custody of the Claimant.

That he was reliably informed by the Claimant on the 5<sup>th</sup> August, 2022 by 2:00pm at the High Court of the Federal Capital Territory, Maitama Abuja as follows:-

That the Defendant's legal manager in Abuja Area Office identified as Ifeanyi Chukwu Ezeah visited the Claimant say that the Defendant had complied with the Order of the Court to pay the judgment sum into the account details – 2027804272 (FCT High Court Litigation Account) maintained with the Defendant. (Copy of the Defendant's letter dated 14<sup>th</sup> August, 2022 is hereby attached and marked Exhibit "A2".); that the amount of **N258,550,760.00 (Two Hundred and Fifty Eight Million Five Hundred and Sixty Naira)** only was credited by the Defendant into the FCT High Court Litigation Account details 2027804272 (FCT High Court Litigation Account).

He further avers that in reliance on the lodgment of the sum of N258,550,760.00, the Director

Enforcement and the Claimant issued a mandate on the Defendant that the sum of money be paid in the Judgment Creditor bank details. (Copy of the letter dated 8<sup>th</sup> August, 2022 with Ref. No. HCJ/2022/No.14 issued from the Claimant is hereby attached and marked Exhibit “A3”).

He similarly stated that the Defendant refused and failed to honor the mandate directive signed by the Director Enforcement on behalf of the Claimant to release the said **N258,550,760.00 (Two Hundred and Fifty Eight Million, Five Hundred and Fifty Thousand Seven Hundred and Sixty Naira)** in the account of the FCT High Court maintained with the Defendant. (Copy of the said letter dated 16<sup>th</sup> August, 2022 hereby attached and marked as Exhibit “A4”).

He further contended that the said sum of **N258,550,760.00 (Two Hundred and Fifty Eight Million, Five Hundred and Fifty Thousand Seven Hundred and Sixty Naira)** is reflecting in the account of the FCT High Court Account as shown in the statement of account dated 14<sup>th</sup> August, 2022 and annexed as Exhibit “A5”; that further directive of the Director Enforcement and Claimant mandate was issued on the Defendant to credit the sum of **N258,550,760.00 (Two Hundred and Fifty Eight Million, Five Hundred and Fifty Thousand Seven Hundred and Sixty Naira)** into favour of the Judgment Creditor but same was not honored as shown in the letter dated 15<sup>th</sup> February, 2023 with ref. **No. HCJ/2023/No.4 and annexed Exhibit “A6”**.

The Claimant avers further that, the Defendant's willful and intentional act on the account of the High Court of the FCT is a breach of bank and customer relationship and has caused the judgment creditor grave injustice.

Claimant conclusively states that he strongly believes Defendant have no defence to the claim.

That it is in the interest of justice to enter judgment in favour of the Claimant in this Writ of Summons in view of the facts stated herein are not in dispute.

Upon service, the Defendant filed Notice of Intention to defend the action with 37 paragraph affidavits duly deposed to by one Jerry Joe Monye, a Legal/Practitioner in the employment of the Defendant.



It is the deposition of the Defendant that on 16<sup>th</sup> July, 2020 the Defendant was served a Garnishee Order Nisi dated 15<sup>th</sup> July, 2020 issued by Hon. Justice S.B Belgore (of the FCT High Court) in suit **No. FCT/HC/CV/5322/2020 and M/8493/2020 – CLEAR CUT OIL AND GAS NIG. LTD. VS. MUTUAL COMMITMENT COMPANY LTD. & ORS** directing the garnishees (which has the Defendant herein as the 3<sup>rd</sup> Garnishee) to attach the accounts of the judgment debtor Mutual Commitment Company Limited (and its named of subsidiaries) with the garnishees. The Garnishee were further directed to show cause why the Order Nisi should not be made absolute against them. Copy of Garnishee Order Nisi is attached herewith and marked as Exhibit “FBN1”

The Defendant avers that the Order Nisi directed the Garnishees “to show cause why the judgment sum should not be satisfied,” the Order Nisi did not state any amount whatsoever as the judgment sum. However, the Order directed the Garnishees “to pay the sum of **N12,000,000.00 (Twelve Million Naira)** only as cost of proceedings.”

The Defendant states that at the time the Defendant (3<sup>rd</sup> Garnishee therein) was served the Order Nisi, the Defendant had about **N12,000,000.00 (Twelve Million Naira)** in the account maintained by the Judgment Debtor with it.

That on 19<sup>th</sup> July, 2020, the Defendant instructed its counsel to file affidavit to show cause on its behalf stating that it had the sum of **N12,000,000.00** as stated in the Order Nisi. Copy of the Defendant’s

email to its counsel on 19<sup>th</sup> July, 2020 is attached herewith and marked Exhibit “FBN2”.

That the Defendant was served with a Garnishee Order absolute on the 5<sup>th</sup> July, 2022 directing it to pay the judgment sum of US **\$565,340.00**, **N12,500,000.00** cost of Arbitration Award and the sum of **N12,000,000.00** cost of the Garnishee Proceedings. Copy of the Garnishee Order Absolute is attached herewith and marked Exhibit “FBN3.”

The Defendant contends that the judgment sum of US **\$565,340.00** and **N12,000,000.00** cost of Arbitration Award were not mentioned or contained in the Garnishee Order Nisi served on the Defendant.

The Defendant further added that the said judgment sum of US **\$565,340.00** and **N12,000,500.00** cost of

Arbitration Award were not part of the sum of **N12,000,000.00** which the Defendant instructed their solicitors to disclose in their affidavit to show cause.

The Defendant further stated that upon being served the Order Absolute, it promptly filed a Motion on Notice dated 6<sup>th</sup> July, 2022 vide Motion No. **M/9022/2022 – CLEAR CUT OIL AND GAS NIGERIA LTD. VS. MUTUAL COMMITMENT COMPANY LTD. & ORS** seeking among others for an Order to vary the Garnishee Order Absolute.

The Defendant avers that it exhibited the statement of accounts of the judgment debtor showing the balances in the accounts that it did not have such sums belonging to judgment debtor under its custody to cover the judgment sum of US **\$565,340.00** and

**N12,500,000.00** Cost of Arbitration Award at the time it received the Order Nisi. Copy of the Motion on Notice to vary the Order Absolute is attached and marked Exhibit “FBN4”.

The Defendant further contends that notwithstanding the application to vary Order Absolute pending before the court and same was duly served on Judgment Creditor, the Claimant herein and the Director of the Enforcement Unit, on 4<sup>th</sup> August, 2022, the Judgment Creditor – Clear Cut Oil and Gas Nig. Ltd. and Enforcement team of the Claimant invaded the Defendant’s premises at Abuja main Branch in the purported execution of the Order Absolute. Copies of the writ of attachment and inventory of items carted away by the Judgment Creditor and agents of the Claimant are attached and marked as Exhibits “FBN5 & 6”.

The Defendant states that on the same date he approached the court and lodged a complaint about the execution carried out while the motion to vary out the Garnishee Order Absolute (in which the judgment creditor was a party and had indeed joined issues) was still pending before the court.

The Defendant further states that it was advised to pay the judgment sum of N258,812,760.00 in protest into the court's account in the custody of the Claimant. The Defendant on this promise paid the judgment sum in protest into the Claimant's account domiciled with the Defendant.

The Defendant avers that it communicated to the Claimant that the payment was made in protest vide its letter of 4<sup>th</sup> August, 2022. Copies of the statement of account evidencing payment of the purported

judgment sum and Defendant's letter to the Claimant are attached and marked as Exhibits "7 and 8".

That Defendant on 8<sup>th</sup> August, 2022 filed **Suit No. FCT/HC/CV/2622/2022 FIRST BANK PLC. VS. THE CHIEF REGISTRAR HIGH COURT OF THE FCT, ABUJA & ANOR** against the Claimant and the Judgment Creditor seeking amongst others for orders to restrain the Claimant from paying the aforesaid sum of **N258,817,760.00** to the Judgment Creditor pending the hearing and determination of the suit. The suit is still pending before this Honourable Court. Copy of the Writ of Summons is attached and marked Exhibit "FBN9."

The Defendant further contends that it lodged an appeal against the Garnishee Order Absolute to the Court of Appeal Abuja division vide a Notice of

Appeal with **Appeal No. CA/ADJ/CV/951/2022. FIRST BANK PLC. VS. CLEAR CUT OIL & GAS NIG. LTD. & ORS.** Copy of the Notice of Appeal is attached and marked Exhibit “FBN10.”

The Defendant states that this Honourable Court heard the Defendant’s Motion on Notice to vary the Garnishee Order Absolute and dismissed it. Being dissatisfied with the ruling, the Defendant lodged an Appeal to the Court of Appeal Abuja Division vide a Notice of Appeal in **Appeal No. CA/ABJ/CV/952/2022.** Copy of the Notice of Appeal dated 22<sup>nd</sup> August, 2022 is attached and marked as Exhibit “FBN11.”

Defendant further added that, the Appellant (Defendant herein) also filed Appellant’s Brief of Arguments in the Appeal. Copy of the Appellant



Brief of arguments is attached and marked Exhibit “FBN14”.

The Defendant states that notwithstanding the pendency of the Appeal, the Judgment Creditor who is the 1<sup>st</sup> Respondent in Appeal **No. CA/ABJ/CV/951/2022** and 2<sup>nd</sup> Defendant in suit **No. CV/2622/2022** filed forms 48 and 49 seeks amongst others for an Order committing the Defendant’s Managing Director to prison for failure to comply with the Claimant’s intention to pay the aforesaid sum of **N258,812,760.00** to the Plaintiff. The contempt proceeding is still pending before this court. Copies of the forms 48 and 49 are attached and marked Exhibit “FBN 16”.

The Defendant avers that on 8<sup>th</sup> August, 2022 the Claimant issued an instruction to the Defendant for

the transfer of the Judgment sum (which was unequivocally paid in protest as mentioned above and Defendant in its letter dated 20<sup>th</sup> February, 2022 responded to the and reminded to the Claimant of the pendency of Appeal. Copy of the Defendant's letter to the Claimant are attached and marked as Exhibit "FBN 19 and 18A".

The Defendant states that filing of this suit notwithstanding the pendency of Appeals and the contempt proceedings amounts to multiplicity of actions.

That this suit constitutes an abuse of the process of this Honourable Court.

That the Claimant will not be prejudiced if the Defendant is granted leave to defend this suit.

That this Honourable court is vested with the inherent powers to grant the Defendant leave to defend this suit.

## **COURT**

The Undefended List Procedure is a truncated form of ordinary civil hearing peculiar to our adversary system where the ordinary hearing is rendered unnecessary in the absence of an issue to be tried or the quantum of the Plaintiff's claim disputed to necessitate such a hearing. Above was stated by our ***NIKI TOBI (JSC) of blessed memory in the case of UBA PLC. VS JARGABA (2007) 5 S.C 1.***

The whole essence of undefended list procedure is to enable a claimant or Plaintiff to obtain judgment against a named Defendant in a liquidated demand action or suit without recourse to any trial where it is

patently and unarguably clear that the Defendant is actually indebted to the claimant or Plaintiff on a settled amount of money and the Defendant cannot justifiably deny the existence of such debt or claim against him or them.

Undefended list procedure is put in place to obviate unnecessary waste of valuable time of the court; litigants and lawyers where it is demonstrably obvious that the Defendant cannot in law and equity dodge or escape liability to the claimant or Plaintiff.

The case of ***KELINDE VS. OKPARAONU (2013) LPELR – 21926 (CA)*** is an excellent authority to support the above position.

There are however conditions laid down which must be met for a claim to be placed and heard under the Undefended List.

Where the suit for a debt or liquidated money demand is supported by affidavit verifying the facts of the claim and that Defendant has no defence to the claim, the registrar shall enter the suit as Undefended List.

Under the High Court of the FCT Civil Procedure Rules 2018, specifically Order 35 Rules 1, 2, 3, 4 and 5, the Procedure a Claimant shall adhere to are clearly provided.

A Claimant is under an obligation to ensure strict compliance with the conditions with respect to his claim if same must be heard under Order 35 of the Rules of this court.

The conditions are that the claim must be for a liquidated money demand, including account stated to be cognizable under the undefended list procedure

thus excluding for example unliquidated damages or claim in torts as special damages arising howbeit from any cause of action as same must be proved.

The claim must be supported by affidavit verifying the claim, and the affidavit must contain deposition that in the Claimant's honest belief, Defendant has no defence to his claim.

Once these conditions are met, the claim is qualified to be placed under the Undefended List. The aforementioned conditions must be fulfilled for any suit to be placed under the Undefended List. See ***ABIA STATE TRANSPORT CORPORATION & ORS VS. QUORUM CONSORTIUM LTD. (2009) 9 NWLR (Pt. 1145) 1.***

A Defendant so served with a marked writ placed under the Undefended List shall within five days to the date fixed for the hearing of the matter deliver to the registrar of the court his notice of intention to defend the action with affidavit disclosing a defence on the merit.

On satisfaction that there is or are merit, the leave shall be granted on such terms as the court may think just. Where no leave is granted, suit shall be heard as undefended and entered judgment accordingly. I rely on Order 35 Rules 1, 2, 3 and 4 of the High Court of the Federal Capital Territory (Civil Procedure Rules) 2018.

Under the Undefended List Procedure, a Defendant's affidavit in support of notice of intention to defend must condescend and should as

far as possible deal specifically with the Plaintiff's claim and affidavit and state clearly and conclusively what the defence is and what facts and documents are relied on to support it.

The said affidavit filed by Defendant in support of its notice of intention to defend an action must of necessity disclose facts which at least throw or cast some doubt on the case of the Plaintiff. See ***MODEBELO VS HAJEDOC (NIG) LTD. (2010) LPELR 8977 (CA);***

***AGRO MILLERS LTD. VS C.M.B (NIG) PLC. (1999) 10 NWLR (Pt. 525) 469 at 6478.***

I have seen the Notice of Intention to defend the suit of the Claimant by the Defendant and equally read the content of the affidavit in support of the said notice.



It is the law that all matters brought under Order 35 of High Court Civil Procedure Rules 2018 of the FCT High Court, must be for liquidated money demand.. once there is evidence of money received and or the fact that work was executed for an agreed contract sum, such can conveniently be sought for under the liquidated money demand hence undefended list.

It is not in doubt that the Defendant was ordered vide a competent Order of the FCT High Court pursuant to an Order Absolute made on the 4<sup>th</sup> July, 2022 to pay the sum mentioned in the said Order.

Defendant/Garnishee's moveable properties were attached when they failed to comply with Order Absolute which forced them to comply with the Order of Court by crediting the account of the FCT

High Court in the sum of **N258,550,760.00 (Two Hundred and Fifty Eight Million, Five Hundred and Fifty Thousand, Seven Hundred and Sixty Naira)**. Despite the fact that the amount is reflecting in the said FCT High Court account, Defendant/Garnishee failed to act on the mandate sent to them by the Claimant directing them to credit the account of the Judgment Creditor from the High Court Account where the money has been Credited into but Defendant/Garnishee has failed to so comply with the customer (Claimant) directive.

Before I proceed to deal with the substantive claim, I shall first dwell on the issue of abuse of process of court by instituting the instant action. I am minded to state that abuse of court process has no particular definition. Where the process of court is not used

bonafide, it can amount to abuse. Proper or improper use of Court Process can result in abuse.

See *SARAKI & ANOR VS. KOTOYE (1992) NWLR (Pt. 264) 156.*

It is the argument of learned counsel for the Defendant that an appeal challenging the decision of the court's failure to set aside its initial order is pending and that therefore this instant suit is an abuse.

I find this line of argument most spurious and laden with toxic that has the potency of suffocating our institution and all we stand for.

The decision of the Claimant to approach the court was borne out of the fact that Defendant failed to honour the mandate sent by Claimant to them in their daily relationship of Customer and Banker. I

make bold to say that there is nothing showing anything stopping Claimant from transacting in its account, hence no process is being abused.

This line of argument on abuse is in itself an abuse.

This argument is refused and dismissed.

With the dismissal of the issue of abuse which is jurisdictional in nature, I now proceed to look at the gamut of the Claimant's claim.

It is given that the Claimant maintains and operates an account with the Defendant (First Bank Plc.) once it is shown that an individual or corporate body has a bank account with a named Bank, the relationship then without much ado becomes contractual and the parties are clearly bound by the terms of their contract. In view of the nature of the relationship, the customer of the bank neither has authority nor

the control of monies standing in credit in an account with the Bank. What the customer has is a contractual right to demand repayment of such monies. The case of ***WEMA BANK PLC. VS. OSIARU (2007) LPELR 8960 (CA)*** is instructive here.

Clearly in the ordinary cause of banker and customer, their relationship depends either entirely or mainly upon an implied contract but governed by an obligation.

Bank accepts money from and collect cheque for their customer and place them to their credit, they also honor cheques or orders drawn on them by their customers when presented for payment and debit. ***OLAM NIG. LTD. VS. INTERCONTINENTAL BANK (2009) LPELR 8275 (CA) was cited.***

It is not in doubt that the sum of **N258,550,960.00** was credited to the Claimant's account by the Defendant and also maintained by same Defendant in compliance with Order Absolute vide Exhibit "A1."

It is also an undisputed fact that a mandate was raised by the Claimant on the 8<sup>th</sup> August, 2022 to credit the judgment creditor the sum of **N258,550,760.00** but same was not honored by the Defendant.

The Claimant stated in paragraph 8a in its affidavit that the Defendant's legal manager in Abuja Area Office identified as Ifeanyichukwu Ezeah visited the Claimant, that the Defendant had complied with the order of the court to pay the judgment sum into the Claimant's account maintained by the Defendant.

It is further the claim of the Claimant in paragraph 8c of its affidavit that the said sum credited to the Claimant's account has reflected in its account maintained by the Defendant.

On the part of the Defendant, there's no evidence in its affidavit controverting or contradicting the foregoing evidence of the Claimant.

It is the defence of the Defendant in paragraphs 16 – 17 of its counter affidavit that the Defendant was advised to pay the judgment sum in protest into the Claimant's account domiciled with the Defendant, and that the said sum of **N258,550,760.00 (Two Hundred and Fifty Eight Million, Five Hundred and Fifty Thousand Seven Hundred and Sixty Naira)** was credited to the Claimant vide a letter of 4<sup>th</sup> August, 2022 evidencing payment.

What more? Despite all the foregoing evidence in the Claimant's affidavit, Defendant failed and neglected to honor the mandate raised by the Claimant to credit the said sum into the judgment creditor's account.

What then is the implication of such conduct in law?

In ***FCMB PLC. VS. BENBOK LTD. (2014) LPELR – 23505***, the Court of Appeal has this to say on Customer/Banker relationship..

***“The relationship of a banker and her customer is founded on contract. In Banker and Customer by W.W Wood, 3<sup>rd</sup> Edition, revised by James Russell, page 14, the learned author puts the matter as follow: “Primarily the relationship is one of contract. There is in the mere receiving of money***



*to be credited to a customer's account the essential element of contract – namely, offer and acceptance: offer by the customer on his part of the money as a loan, despite the fact that the motive of deposit for safe keeping may be present, and acceptance of the money by the bank under the implied condition that it will be repaid on demand to the customer's order.”*

Having failed to honor Claimant's instruction contained in the said mandate and for unexplained reasons, Defendant is clearly in breach of the contractual fiduciary relationship.. what is more is the law on unchallenged depositions.

The rule governing unchallenged depositions in an affidavit is very trite as stated by Mukhiar JSC in the case of ***REGISTERED TRUSTEES OF NATIOAL***

***ASSOCIATION OF COMMUNITY HEALTH PRACTITIONER VS. MEDICAL AND HEALTH WORKERS UNION OF NIGERIA & ORS. (2008) VOL, 37 WRN 1 at 39, Lines 10-15 SC was cited. “Affidavit evidence that is neither challenged nor debunked remains good and reliable evidence which ought to be relied upon by a court.”***

Indeed, the Defendant who does not have any defence under the Undefended List Procedure shall not be allowed to put a whimsical or halfhearted defence with a view to frustrating the court and Claimant by delaying the cause of justice.

On whether there is pending Appeal in respect of this matter, I have gone through the Notice of Appeal annexed by the Defendant, I must observe that the matter before this Court is a fresh suit filed

before this court by the Claimant under Order 35 of the FCT High Court Civil Procedure, 2018.

It is trite law that appellate Court only sits on appeal on matters tried and dissatisfied by either or both parties in the lower Court.

See section 240 (1999) Constitution as amended.

The Court is under an obligation to ensure a Defendant who has no defence is not allowed to dribble, frustrate and cheat Claimant out of Judgment he is legitimately entitled to see ***BATIVE VS. SAVANNAH BANK OF NIG. (1990) 4 NWLR (Pt. 546) 43 at 446 was cited.***

The Undefended List Procedure is not a game of chess or scrabble meant to be won by skillful and crafty players.

In the instant case therefore, I have not seen the issue fit to be tried that have raised any substantial question of facts which ought to be tried by full contest.

In the absence of any swaying deposition in the counter affidavit and after a calm analysis of the facts of this case and guided by sound reasoning and wisdom, I have no doubt that the Claimant is entitled to the judgment of this court as per the amount sought and prayed for.

In summation, I hereby enter Judgment in favour of the Claimant against the Defendant, to honor the mandate raised by the Claimant and credit the sum of **N258,550,760.00 (Two Hundred and Fifty Eight Million, Five Hundred and Fifty Thousand Seven Hundred and Sixty Naira)** to Judgment

Creditor's account being the money credited to the Claimant's account domiciled with the Defendant.

*Justice Y. Halilu*  
*Hon. Judge*  
*8<sup>th</sup> November, 2023*

## **APPEARANCES**

**J.O Ajayi, Esq. with R.A Liman, Esq. - for  
Claimant.**

**Godswill D. Nwani, Esq. - Defendant**