

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT HIGH COURT MAITAMA – ABUJA**

**BEFORE: HIS LORDSHIP HON. JUSTICE S. U. BATURE**

<b>COURT CLERKS:</b>	<b>JAMILA OMEKE &amp; ORS</b>
<b>COURT NUMBER:</b>	<b>HIGH COURT NO. 24</b>
<b>CASE NUMBER:</b>	<b>SUIT NO. FCT/HC/CV/509/2022</b>
<b>DATE:</b>	<b>25/10/2022</b>

**BETWEEN:**

ALHAJI ABDULAZIZ YARI.....CLAIMANT

**AND**

1. PRINCE OBINNA KANU	}.....DEFENDANTS
2. KOBINOK & ASSOCIATES LTD	

**APPEARANCES:**

Nasir Saidu esq with Mukhtar B. Usman Esq for the Claimant

**JUDGMENT**

The Claimant filed this suit under the Undefended List procedure, claiming against the two Defendants as follows:-

***“(a). An Order of this Honourable Court directing the Defendants jointly and severally to refund to the Claimant forthwith the sum of N200, 000, 000.00 (Two Hundred Million Naira only) being monies fraudulently had and received by the Defendants jointly for the purchase of property known and described as No. 1, Fatai Williams Street, Asokoro, Abuja which the Defendants failed and/or refused to hand over the property or refund the money despite repeated demands by the Plaintiff.***

***(b). Post judgment interest at the rate of 10% per annum from the date of judgment until the judgment is fully liquidated.”***

The Writ is supported by an Affidavit of 21 paragraphs deposed to by one Benjamin Silas, a Litigation Secretary in the law firm of K.T. Turaki & Co, Counsel to the Claimant, and Exhibits marked A, B, C and D respectively.

By a Motion Ex-parte with Motion No: M/1792/2022, the Claimant sought and obtained leave to serve the 1<sup>st</sup> Defendant, Prince Obinna Kanu with the originating process and other processes in the suit by substituted means to wit: by pasting the said processes at the entrance gate of **No. 85, Kwame Nkrumah Street, Asokoro, Abuja.**

Affidavit sworn to that effect by the Bailiff of this Court is dated 3<sup>rd</sup> day of June, 2022. Hearing notice slated for 28<sup>th</sup> of June, 2022, 7<sup>th</sup> of July and 25<sup>th</sup> of October, 2022, (being today) were equally served on the 1<sup>st</sup> Defendant.

Meanwhile, the 2<sup>nd</sup> Defendant being a company, was served by the Bailiff of this Court as shown on the Affidavit of service deposed on 30<sup>th</sup> day of June, 2022, by leaving the Writ of Summons, hearing notice and Court Order at the premises of the company's last known address at **No. 85 Kwame Nkrumah Street, Asokoro, Abuja.**

On 13<sup>th</sup> of October, 2022 the 2<sup>nd</sup> Defendant (as well as the 1<sup>st</sup> Defendant) were equally served with hearing notices against today's proceedings.

However, non of the Defendants has appeared nor filed any notice of Intension to defend the suit pursuant to the Rules of this Court. I refer to Order 35 Rule 3 of the FCT High Court (Civil Procedure) Rules 2018 which provides:-

***“Order 35 Rule 3:***

***Where a party served with the Writ delivers to 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.”***

It is trite that the Undefended List procedure is preserved for matters which are required to be treated with dispatch, where a Defendant could not possibly have any defence on the merit.

I refer to the cases of ***ONDEYO V U.B.A PLC (2014) LPELR-24242; J.O.E LTD V SKYE BANK PLC (2006) 6 NWLR (Pt.111) 518; NKWO MARKET COMMUNITY BANK (NIG) LTD V OBI (2010) LPELR-2051 (SC).***

In this case, the Claimant deposed in paragraphs 8, 9, 10, 11, 13, 15, 16, 17, 19 and 20 as follows:

- “8. That sometime in 2010, the 1<sup>st</sup> Defendant approached and informed him that the landlord has put up the property which he was occupying as tenant for sale and being the caretaker and manager of the property has been given mandate and authorization to sell the property on behalf of landlord. Hence, he deemed it necessary to afford him the opportunity of first right of purchase and/or refusal.***
- 9. That based on the above representation by the 1<sup>st</sup> Defendant, he developed interest and offered the sum of N200, 000, 000.00 (Two Hundred Million Naira) only for the purchase of the property which the 1<sup>st</sup> Defendant accepted on behalf of the landlord.***
- 10. That upon the acceptance of his offer of N200, 000, 000.00 (Two Hundred Million Naira) only for the purchase of the property by the 1<sup>st</sup> Defendant on behalf of the landlord, he began to make payments and between 5<sup>th</sup> October, 2010 and 5<sup>th</sup> December, 2011, he paid the sum of N200, 000, 000.00 (Two Hundred Million Naira) only through his lawful agent, Alhaji Jamilu T. Jega to the 1<sup>st</sup> Defendant. Attached and marked Exhibits A and B are copies of the acknowledgment receipts dated 5<sup>th</sup> October, 2010 and 5<sup>th</sup>***

**December, 2011 respectively issued by the 1<sup>st</sup> Defendant to his lawful agent.**

- 11. That after the 1<sup>st</sup> Defendant received the payment, the 1<sup>st</sup> Defendant left the country to United States of America (USA) and all efforts to execute the necessary instruments of transfer, Deed of Assignment and Power of Attorney between him and the landlord and handover of other title documents of the property to him were aborted by the 1<sup>st</sup> Defendant.**
- 13. That he later became aware that the 1<sup>st</sup> Defendant was declared wanted by the Nigeria Police Force with respect to his fraudulent dealings and activities over the property known and described as No. 1, Fatai Williams Street, Asokoro, Abuja, the subject matter of this suit. Attached and marked Exhibit C is a copy of the Special Police Gazette Bulletin declaring the 1<sup>st</sup> Defendant wanted.**
- 15. That despite the Defendants' offer of 19<sup>th</sup> February, 2013 to refund his money the Defendants have refused and/or failed to honour or give effect to their letter of 19<sup>th</sup> February, 2013.**
- 16. That he knows as a fact that his claims against the Defendants are purely for a liquidated money demand.**
- 17. That it has become crystal clear that the Defendants are not willing to refund his money unless compelled to do so by an Order of this Honourable Court.**
- 19. That he honestly believes that the Defendants have no defence on the merits whatsoever to his claim.**
- 20. That it will be in the interest of justice to determine this suit under the Undefended List Procedure."**

The Claimant equally attached several Exhibits in support of his claims. Exhibits A and B shows acknowledgment of the amounts received dated 5<sup>th</sup> October, 2010 and 5<sup>th</sup> day of December, 2011.

Exhibit C is a certified true copy of a Special Police Gazette Bulletin declaring the 1<sup>st</sup> Defendant Prince Obinna Kanu as wanted by the office of the Assistant Commissioner of Police, Special Enquiry Bureau (S.E.B) Area 11, Garki, Abuja.

Exhibit D shows admission by the Defendants of their indebtedness to the Claimant with promise to refund the amount claimed which is dated 15<sup>th</sup> February, 2013, written and signed by one Umeh T. C. Umeh Esq of Umeh T. C. Umeh & Co, Solicitors.

Nevertheless, it is not the intension of the Undefended List procedure to shut out a Defendant, who may have a defence on the merit.

However, by the rules of Court, a Defendant who wishes to defend a suit under Order 35 of the Rules of this Court, is required to file a Notice of Intension to defend together with an Affidavit disclosing a defence on the merit at least five days to the day fixed for hearing of the suit.

Now, looking at the records of this Court, it is evidently clear that the Defendants herein were duly served with the Writ of Summons, hearing notices as well as other relevant Court processes. But have failed, refused and or neglected to file any process in accordance with the rules.

In such situations the Court faced with this, has to enter judgment in favour of the Claimant pursuant to Order 35, Rule 4 of the F.C.T. High Court (Civil Procedure) Rules 2018, for ease of reference, it provides thus:-

***“Order 35 Rule 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.”***

See also the case of ***J.O.E LTD V SKYE BANK PLC (supra)***.

Consequently therefore, on the strength of both the Claimant's Supporting Affidavit and the Exhibits annexed, the Court is satisfied that the Claimant has proved his case to be entitled to the reliefs sought.

Judgment is hereby entered for the Claimant as per the claims as endorsed on the Writ of Summons.

**Signed:**

**Hon. Justice S. U. Bature  
25/10/2022**