

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

**BEFORE HIS LORDSHIP: HON. JUSTICE .H. MU'AZU
SUIT NO: FCT/HC/CV/7099/2023
DELIVERED: ON THE 06/02/2024**

BETWEEN:

GUARANTY TRUST BANK LIMITED.....CLAIMANT

AND

- | | | |
|--|---|-------------------|
| 1. CAPITAL NEST INVESTMENT & MULTIPURPOSE
COMPANY LIMITED | } | DEFENDANTS |
| 2. ILLAH ACHE MUSTAPHA | | |
| 3. ATIATI EMMANUEL BABA | | |

RULING/JUDGMENT

The Claimant a Commercial Bank duly registered in Nigeria alleged that the 1st defendant operates a corporate account with it with account No. **0568321970** and that the 1st defendant applied and was granted loan facility of **₦10,000,000.00** (Ten Million Naira) on 12/8/2021 for a tenor of six (6) months with **1.5%** monthly interest.

That the disbursement was made on the 12/08/2021, the expiry date was scheduled to be 11/2/2022. And that the defendants have defaulted in the repayment of the loan facility from the 11/2/2022, and has consistently continued to remain in default up to date. And that the total indebtedness of the defendants to the claimant stood at **₦11,612,243.88** (Eleven Million, Six Hundred and Twelve Thousand, Two Hundred and Forty-Three Thousand Naira, Eighty-Eight Kobo).

The claimant then took out a writ of summon under the undefended list, procedure dated and filed the 4/8/2023, and sought for the following against the defendants:-

- 1) An order declaring that the loans facility advanced to the defendant on the 12/8/2021 has become due and payable forthwith.
- 2) An order declaring that the defendants have defaulted in the repayment of the loan facility advanced to them on the 12/8/2021.

- 3) An order of this Honourable Court directing the defendants to immediately pay to the claimant the sum of **₦8,394,747.85k (Eight Million, Three Hundred and Ninety-Four Thousand, Seven Hundred and Forty-Seven Naira, Eight- five Kobo)** being the outstanding principal of a loans facility granted by the claimant to the defendant which was due and payable to the claimant as at the 11th February, 2022.
- 4) An order of this Honourable Court directing the defendants to immediately pay to the claimant the sum of **₦3,217,496.03 (Three Million, Two Hundred and Seventy Thousand, Four Hundred and Ninety-six Naira, Three Kobo)** being total unpaid interest accrued on the loan facility granted by the claimant to the defendant from the 11/2/2022, to the time of filing this writ.
- 5) An order of this Honourable Court directing the defendants to continue to pay to the claimant a

monthly interest at the rate of **₦150,000.00 (One Hundred and Fifty Thousand Naira)** from the date of filing until judgment is delivered.

- 6) An order of this Honourable Court, directing the defendants to pay to the claimant a **10%** of the judgment sum as post judgment interest on the sum awarded until final liquidate of the judgment sum.
- 7) The sum of **₦4,000,000.00 (Four Million Naira)** as damages for breach of contract.
- 8) The sum of **₦1,000,000.00 (One Million Naira)** only as cost of instituting this action.

The said writ was duly served on the 1/11/2023 and was received by one Osifoh Gabrielle who signed as the manager of the 1st defendant, but failed and or neglected to filed their notice of intention to defend the suit in line with the law.

In ***EJASCO GLOBAL INVESTMENT LTD V. INIM (2015) LPELR*** Court of Appeal held that

“In proceedings brought on the undefended list procedure, the duty of the trial court on the return date is to evaluate the affidavit evidence and determine if the Defendant who has filed a Notice of Intention to defend supported by an affidavit that condescends upon particulars in response to the Plaintiffs claim, has deposed to facts that of at least, throw some doubts on the plaintiffs’ case. If the trial court is of the view that the defendant has disclosed triable issues, the matter would be transferred to the general cause list for hearing. If no real defence has been disclosed, the matter will be heard on the undefended list and judgment entered in favour of the claimant.” See also **EKULA FARMS LTD V. UNION BANK OF NIG. PLC. (2006) 4 S.C (PT. 11).**

In the instant case, the defendant was served with the Writ of Summons and the accompanying processes on the

1/11/2023 and was received by the Gabrielle Osifoh on behalf of the defendants, with the return date of 7/12/2023 clearly endorsed on the face of the writ.

On this date, neither the defendant nor his representatives were present in the court, and no notice of intention supported by an affidavit showing cause or disclosing a defence has been filed which goes contrary to the precedent set by the Court of Appeal in ***DEUTCHES HAUS (NIG) LTD & ANOR V. UNION HOMES (2020) LPELR 50221 (CA)***. (Per Shuaibu J.C.A pp 17 paras. D)

That the only duty of the lower court on the return date is to determine whether the notice of intention to defend and the accompanying affidavit discloses a defence on the merit”

This point is further buttressed by the Supreme Court in ***BEN THOMAS HOTELS LTD. V. SEBI FURNITURE LTD (1989) 5 NWLR (PT. 123) 523 @ 529***. Thus:

“The business of the court on the return date in a matter placed under the undefended list is to ascertain if any notice of intention to defend has been filed and proceed to enter judgement if none has been filed”. That is the issue presently faced by this court.

The claim is for an order for the payment of **₦11,612,243.88 (Eleven Million, Six Hundred and Twelve Thousand, Two Hundred and Forty Three Naira, Eighty Eight Kobo)** only being total indebtedness of the defendant to the claimant which remains unpaid despite repeated demands. The claim is duly verified by a 32 paragraph supporting affidavit deposed to by Hassan Abdulquadri an employee of the claimant.

The law has remained very well settled to the effect that the essence of placing a matter on the undefended list, otherwise known as the summary judgment procedure, as in the instant case, is that such matters which borders on liquidated money demand must be quickly dealt with and disposed of by trial courts. That it is the timely and quick

dispensation of justice to the parties that is the goal of the rules of court guiding the procedure for the initiation and defence of actions that are placed on the undefended list. See *SOULUS MRF1 LTD V. AJU (2018) LPELR 46722 (CA)*. See also *MAT HOLDINGS LTD V. UNITED BANK FOR AFRICA, PLC (2003) 2 NWLR (PT. 803) @ 90*.

In view of the above therefore, the court must not fail to take note of the fact that the defendant did not file or enter any notice of intention to defend or otherwise, which makes it undoubtedly a proper case in which this court ought to enter Judgment for the claimant without the need for any need for trial.

I accordingly enter Judgment for the Claimant as follows:-

- 1) **I hereby make an order** declaring that the loans facility advanced to the defendant on the 12/8/2021 has become due and payable forthwith.

- 2) An order declaring that the defendants have defaulted in the repayment of the loan facility advanced to them on the 12/8/2021. **Is hereby granted.**
- 3) **I further make an order** directing the defendants to immediately pay to the claimant the sum of **₦8,394,747.85k (Eight Million, Three Hundred and Ninety-Four Thousand, Seven Hundred and Forty-Seven Naira, Eight- five Kobo)** being the outstanding principal of a loans facility granted by the claimant to the defendant which was due and payable to the claimant as at the 11th February, 2022.
- 4) An order of this Honourable Court directing the defendants to immediately pay to the claimant the sum of **₦3,217,496.03 (Three Million, Two Hundred and Seventy Thousand, Four Hundred and Ninety-six Naira, Three Kobo)** being total unpaid interest accrued on the loan facility granted by the claimant to the defendant from the 11/2/2022, to the time of filing this writ. **Is hereby granted.**

5) **I also ordered** defendants to continue to pay to the claimant a monthly interest at the rate of **₦150,000.00 (One Hundred and Fifty Thousand Naira)** from the date of filing until judgment is delivered.

6) **I ordered the payment of 10%** of the judgment sum as post judgment interest on the sum awarded until final liquidate of the judgment sum.

I make no further order.

SIGNED:
HON. JUDGE
06/02/2024.

APPEARANCE:

Segun Olatunji, Esq, for the Claimant.