

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT HIGH COURT GUDU - ABUJA
ON THURSDAY THE 21ST DAY OF NOVEMBER, 2024.
BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE R. OSHO-ADEBIYI
SUIT NO. FCT/HC/CV/6047/2023

BETWEEN:

ODEMEDIA DIGITAL PRESS LIMITED ----- CLAIMANT

AND

ENGR. PONYAH IBRAHIM ----- DEFENDANT

RULING

This is an undefended list suit filed by the claimant against the defendant. The suit was filed on the 12/5/2023 and the claimant's claim against the defendant are as follows:

1. An Order of this Honorable Court directing the Defendant to pay to the Claimant, the balance sum of N6,600,000.00 (Six million, six hundred thousand Naira), representing the debt owed the Claimant by the Defendant.
2. The sum of N2,000,000.00 (Two Million Naira), as costs of this Suit.
3. 15% percent interest on the judgement sum, from the date of judgment until the judgement sum is fully liquidated.

In support of the claims, the claimant filed an affidavit of 16 paragraphs. The claimant also annexed to the affidavit several exhibits and also filed a written address in support. The defendant was served with the processes and filed a notice of intention to defend on 8/8/2024, a 15 paragraphs counter affidavit, three (3) annexures and a written address.

When the matter come up on the 3/10/2024 counsel for the parties adopted their various process in support of the claims under the undefended list and notice of intention to defend. Under **Order 35 Rule 3(1) of the rules of court** a defendant who is served with the writ of summons shall be oblige to file a notice of his intention to defend the suit in writing together with an affidavit disclosing a defense on the merit. If the court grants leave upon finding merit in the defence, it shall remove the matter to the general cause list.

The object of the undefended list procedure is to ensure the speedy disposal of cases where the matter is straightforward, uncontested and incontestable as held in **HASHIM V. ASO SAVINGS & LOANS PLC(2022) LPELR-57061(CA)**. For a defendant to deny a plaintiff from getting judgment on the undefended list, he must disclose in his notice of intention to defend a defense on the merit. The court to find if such a defence has been disclosed will only look at the facts deposed in the counter affidavit and see if they can *prima facie* afford a defense to the action. However, the defendant need not disclose a complete defense to the claimant's claim, it will be enough if the defence set up by the defendant shows that there is a triable issue or question or that for some other reason there ought to be a trial as held by the appellate court in **KASUWA V. ILIYA(2024) LPELR-62627(CA)**.

In the instant case, the defendant in his affidavit has deposed to facts indicating that there are issues which cannot be ordinarily resolved by affidavit, particularly the issues in paragraphs 4, 5, 6, 7, 11 reproduced below;

4. That I have never had any agreement or transaction with the Plaintiff, and neither do I know the Plaintiff.
5. That I did not sign the exhibit OD3 attached to the Plaintiff's affidavit and neither was the said invoice issued to me.
6. That I did not accept or did the plaintiff show that the items in its claim were delivered to me or received by me.
7. That the supposed letter dated 15th August, 2022, marked and attached as exhibit OD4 to the Plaintiff's affidavit was never served on me.
11. That I never ordered all the items stated by the Plaintiff in its claim from it.

The above issues raised need to be proved by evidence in a full-blown trial. Therefore, there is a triable issue raised and I have no difficulty in granting leave to the defendant to defend this suit.

In addition, relief 3 of the claimant's claim is for 15% interest on the judgment sum from the date of judgment until judgment sum is fully liquidated. It is apparent that the interest payable on the total sum which is liquidated has not accrued and is uncertain. This means it is not for a liquidated sum. For a suit to be maintainable under the undefended list the suit must relate to a claim for a debt or liquidated

money demand. Liquidated money demand includes a debt and means a specific amount which has accrued in favour of the plaintiff from the defendant. In **EKERETE V. UBA PLC (2005) LPELR-11153 (CA)** the court held;

"It has been determined that a trial Court, determining a claim under the undefended list procedure cannot expand its jurisdiction by assessing interest claimed in the suit, since the procedure is available for efficacious and speedy judgment on a liquidated money demand only or for debt where the defendant has no defence".

The interest claimed by the Claimant is for an uncertain sum and not liquidated hence, cannot be heard under the undefended list procedure.

Accordingly, I hereby order that the suit of the Claimant be removed from the undefended list to the general cause list for trial.

Parties: Absent

Appearances: C. I. Nkpe appearing for the Claimant. R. C. Nweke appearing for the Defendant.

**HON. JUSTICE MODUPE R. OSHO-ADEBIYI
JUDGE**

21ST NOVEMBER, 2024