

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT MAITAMA ABUJA

DATE: 17TH OF APRIL, 2024
BEFORE: HON. JUSTICE M.A. NASIR
COURT NO: 5
SUIT NO: CV/6509/2023

BETWEEN

ABDULAZEEZ SHEIKH UMAR

-----CLAIMANT

AND

ABUBAKAR ISMAIL RUMAH

-----DEFENDANT

JUDGMENT

The claimant instituted this action against the defendant on the 16/6/2023 under the undefended list procedure. The claimant is praying the Court for the sum of N28 Million being balance of the sum of N33 Million borrowed to the defendant.

The claimant sometime in April, 2018 advanced the sum of N33 Million to the defendant to further invest in his Bureau De Change business on the condition that it will be refunded to him when needed. In November, 2022, the claimant demanded for the refund but the demands were to no avail. The claimant then instructed his solicitor to serve

the defendant with demand notice. Upon receipt of the demand notice, the defendant made a payment of N5 Million leaving a balance of N28 Million. The defendant's solicitor also wrote a letter to the claimant acknowledging indebtedness and pleading for time to make the refund. The claimant has averred that the defendant has no defence to the suit.

Order 35 of the Rules of Court 2018 has made provisions guiding commencement and determination of matters commenced under the undefended list procedure. Rule 3(1) of the Order provides:

“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.”

Now the defendant herein was served with the Writ of Summons marked 'undefended' on the 12/7/2023 with the Return date being 16/11/2023. The defendant filed the Notice of Intention to Defend on the 17/10/2023 together with a motion seeking to join another party to the suit. It is pertinent to state that the defendant was not in Court on the date for hearing despite the service of hearing notice on his counsel A.U. Dobi Esq. The motion seeking for joinder of another party filed by the defendant having not been moved is therefore deemed abandoned and it is hereby discountenanced.

In the determination of the suit, this Court will have recourse to the Notice of Intention to Defend wherein the defendant admitted refunding the sum of N5,000,000.00 (Five Million Naira) to the claimant. And that the sum of N170,000,000.00 (One Hundred and Seventy Million) together with the amount claimed had been disbursed to a third party, one Maxwell Odum Chizi on the claimants

instruction. That the (defendant) can only refund the sum borrowed from the claimant when the third party pays back the debt.

Learned counsel to the claimant **Amos Menina Esq** while adopting the written address submitted that the essence of undefended list procedure is to quicken access to justice and to discourage frivolous defence by the defendant. That the defendant in this instance has no defence on the merit. He urged the Court to enter judgment for the claimant. He made reference to the following:

- Maja vs. Samouris (2002) LPELR – 1824 (SC)
- Ikpong vs. Udobong (2007) 2 NWLR (part 1017) 184 at 190
- Ataguda & Co. vs. Gura (Nig) Ltd (2005) 8 NWLR (part 927) 429
- Nepa vs. Aminu Ibrahim & Co. (2018) 12 NWLR (part 163) 262
- F.M.F Ltd vs. River State Poly Bori (2005) 9 NWLR (part 930) 257 at 260.

- Okoli vs. Morecab Finance (Nig) Ltd (2007) 14 NWLR (part 1053) 37 at 44.

The purpose of the procedure under the undefended list is to enable the plaintiff obtain Summary Judgment without trial where his case is patently clear and unassailable. See **Fadopo vs. Lemminkainen & Ors. (1986)1 NWLR (Part 15) page 220**, **Din vs. Olaose (2014)16 NWLR (Part 1432) 124 at 128**.

The cardinal issue for determination in this matter is whether or not the defendant has disclosed a defence on the merit to justify a grant of leave to defend the suit and consequently transfer the suit from the undefended list to ordinary cause list for hearing in line with the provisions of Order 35 Rules (1) and (2) of the Rules of Court.

The requirement that the defendant's affidavit should disclose a defence on the merit has received judicial consideration in a number of cases. In **Nya vs. Edem (2000)**

3 NWLR (part 669) page 349, the Court of Appeal explained the requirements in these words:

“An affidavit disclosing a defence on the merit does not mean that the defendant must show that his defence must succeed at any event or that he must show a rock proof or iron cast defence. All that it means is that the defendant must show PRIMA FACIE that he has a defence to the plaintiffs action. The defence may fail or succeed but it is not the business of the Court to determine that at this stage. This can only be done at the trial.”

Before I proceed to examine the affidavit of the defendant to determine whether or not a defence on the merit has been disclosed, it is pertinent to recall the condition for placing a suit under the undefended list for placing a suit under the undefended list procedure is that the claimant’s claim must be liquidated or be based on an ascertained debt recovery. The phrase *“liquidated money*

demand” is defined as the sum of money agreed upon by the parties to a contract where the action is based on a breach of contract. See **Mortex Nig. Ltd vs. Frame Tools Co. Ltd (1997) 4 NWLR 9part 501) 603, Maja vs. Samouris (2002) FWLR.**

In this case, the claimant advanced the sum of N33,000,000.00 (Thirty Three Million Naira) to the defendant. Only the sum of N5,000,000.00 (Five Million Naira) was refunded after demands were made leaving a balance of N28,000,000.00 (Twenty Eight Million Naira). The above was not controverted.

The defendant claimed that the sum advanced was transferred to a third party with the knowledge and consent of the claimant.

Exhibit B is the demand letter written by the claimants counsel. It states:

“14/4/2023

Abubakar Ismail Rumah

Bureau De Change

Wuse Zone 4,

FCT – Abuja

Dear Sir,

DEMAND LETTER FOR PAYMENT OF DEBT

The above subject refers:

We are solicitors to Abdulazeez Sheikh Umar hereafter referred to as ‘our client’ and on whose behalf and instructions we write.

It is our brief that you (Abubakar Ismail Rumah) is indebted to our client to the sum of N33,000,000.00 (Thirty Three Million Naira) only.

Moreover, it is on record that on 25th November, 2022 you enter into an agreement witnessed by one Sanusi Yusuf Pandi, in which you promised to pay the above stated sum of money on or before January, 2023.

However, as of the time of writing this letter, you have not made any payment to our client and no reason was adduced whatsoever.

In the light of the above breach of agreement, we hereby give you 7(seven) days ultimatum from the date of service of this letter on you, to either pay the sum of money to our client or we will be compelled to take legal action against you.

Be assured of our esteemed professional curtsey.

Yours faithfully,

Signed

A.K. Shamaki Esq

The Principal Partner

Neighborhood and Associates”

The above was collected personally by the defendant and in response, his solicitors replied vide Exhibit B1. Exhibit B1 is as follows:

“18/4/2023

A.K. Shamaki Esq

Principal Partner

Neighborhood and Associates

No. 10 1st Floor, Gimbiya Street, Garki

Abuja

Sir,

RE: DEMAND LETTER FOR PAYMENT OF DEBT

The above subject refers:

We are solicitors to Abubakar Ismail Rumah herein referred to as our client on whose behalf we write this letter.

Our client is in received of your letter dated 14/4/2023 demanding from our client for the payment of the sum of N33,000,000 (Thirty Three Million Naira) belonging to your client (Abdulazeez Ismail Rumah).

It is our client believe that he maintained a good relationship with your client and is willing to pay your client his monies.

Your client is aware of the business crisis that our client falled into therefore, request for extension of time within which to pay back the said monies.

Our client offered to your client two (2) houses situate at Life Camp Abuja for him to buy in other

to settle this matter amicably, however your client declined and rejected the offer.

In the light of the above our client is pleading with your client to give him 7 (seven) month within which to pay back this monies.

Accept our assurance of esteemed regards.

Signed

A.U. Dobi, Esq.”

For an action to be transferred from the undefended list to the general cause list, there must be a defence on the merit and details and particulars of defence must be set out. It must not be a half – hearted defence. It must not be a defence which is merely fishing for skirmishes all over the place. See **Diamond Bank Plc vs. GSM Agro Allied Ind. Ltd. (1999)8 NWLR (Part 616) 558.**

In **Okoli vs. Morecab Finance (Nig.) Ltd. (2007)14 NLWR (Part 1053) page 37**, the Apex Court held that:

“a defendant who has no real defence to an action under the undefended list should not be allowed to dribble and frustrate the plaintiff and cheat him out of a judgment he is legitimately entitled to by delay tactics aimed, not at offering any real defence to the action but at gaining time within which he may continue to postpone meeting his obligation and indebtedness.”

It is obvious in this instance that the claim is for liquidated sum, and the defendant has no defence on the merit but only fishing for skirmishes where none exist. There is nothing to show that the claimant was privy to any arrangement made between the defendant and Mr. Maxwell Odum mentioned in the Notice of Intention to Defend. To the extent that the amount advanced by the claimant was admitted, I hold that the defendant has not disclosed a defence on the merit with regard to the refund of the

amount claimed. Leave cannot therefore be granted to the defendant in that regard.

On the other hand, the claimant is entitled to have judgment entered on his behalf. Judgment is therefore entered for the claimant in terms of prayer No. 1 endorsed on the Writ of Summons marked 'undefended'.

In effect the defendant having paid back the sum of N5,000,000.00 (Five Million Naira) shall now refund the remaining sum of N28,000,000.00 (Twenty Eight Million Naira) to the claimant.

- Post judgment interest of 10% per annum is also awarded on the judgment sum in favour of the claimant, from the date of judgment until final liquidation.

Hon. Justice M.A. Nasir

Appearances:

Amos Menina Esq – for the claimant

A.U. Dobi Esq – for the defendant

