

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE GWAGWALADA JUDICIAL DIVISION
HOLDEN AT COURT NO. 13 GWAGWALADA FCT
BEFORE HIS LORDSHIP HON. JUSTICE A. S. ADEPOJU
ON THE 13TH DAY OF FEBRUARY 2024**

SUIT NO: FCT/HC/GWD/CV/62/2023

BETWEEN

MRS. UCHE JACINTA NWAKAEGO CLAIMANT

AND

BAXXMORT CONSTRUCTION LIMITED DEFENDANT

*RUKAYYAH DANLADI UMAR for the Claimant
Claimant is in Court.*

JUDGMENT

The plaintiff's claim was instituted under the undefended list procedure pursuant to Order 35 of the High Court of FCT Civil Procedure Rules 2018. The Plaintiff in the particulars of claim stated that she is a professional nurse with the University of Abuja Teaching Hospital, Gwagwalada which the defendant claimed to be a contractor who had secured a contract job from the Federal Government of Nigeria and was desirous of funds to execute same. The defendant was said to have approached the claimant through a consultant named Hi- Breed Consult that made a presentation availability of funds from the federal Government of Nigeria which is being given out as loans by a syndicated group of financial institutions to interested persons. The defendant through Hi-Breed Consult Limited acquired the Claimant's personal details for the application for a syndicated loan from unnamed financial institutions. The loan when it was approved was paid into the personal salary account of the Claimant domiciled at First Bank of Nigeria Plc with number 3021403672 and the

total sum paid in was **N12,780,454.00 (Twelve Million Seven Hundred and Eighty Thousand Four Hundred and Fifty Four Naira)**. The defendant upon confirmation of the payment of the loan sum to the Claimant immediately approached the Claimant and entered into an agreement to borrow the sum of **N11,000,000 (Eleven Million Naira)** as earlier planned for crowd funding, and the parties entered into an agreement on 27th day of May, 2021, and the loan sum paid into the Defendant's First City Monument Bank Limited account number 7346036013. It was agreed that the loan sum was to be repaid back after eight (8) months and specifically to run from May 2021 to December 2021, and the defendant was to pay back the loan sum with interest speculated at between 2% to 4% to the financial institutions that granted the loan to the Claimant. That the defendant on the due period for repayment being December 2021 did not repay the loan.

The financial institution that syndicated the loan granted have put a lien on the salary account of the Claimant and have been drawing down on the repayment of the loan via the salary account of the claimant till date. Upon the failure of the defendant to pay the loaned sum and interest necessitated the claimant to undertake the services of a solicitor, Sir **Anthony O. Chukwurah**, to recover the indebtedness and a professional fee of **N200,000.00 (Two Hundred Thousand Naira)** was paid for same. The solicitor also wrote a petition to the Economic and Financial Crimes Commission dated Monday, 21 February, 2022, which was acknowledged on 23rd February, 2023.

In the instant suit the Claimant claims against the defendant as follows:

1. The sum of **N11,000,000.00 (Eleven Million Naira)** being the liquidated sum with held by the defendant as loaned sum fro crowd funding.
2. 2% to 4% interest at agreed rate from the January 2022 till judgement is delivered in this suit in respect of the liquidated sum.
3. 10% interest at Court rate from the date of judgement till the final liquidation of the debt.
4. The Sum of **N200,000 (Two Hundred Thousand Naira)** being cost incurred by the Claimant for the recovery of the indebtedness owed by the defendant.

The Claimant deposed to a 13 paragraph affidavit in support of this writ of summons and attached seven (7) exhibits marked as Exhibit UJN1 – UJN7. Exhibit UJN1 is the agreement between the Claimant and the defendant. Exhibit UJN2 – UJN4 are the debit transactions evincing transfer of the sum of **N11,000,000.00 (Eleven Million Naira)** into the account of the defendant by the Claimant. UJN5 is the official receipt of professional fee issued to the Claimant by his solicitor, **Chukwurah, Chukwurah & Co.** UJN6 is the petition receipt by EFCC, and the petition dated 21 February, 2022 to the EFCC is UJN7.

Upon the issuance and the filing of the writ of summons, the defendant was served with the writ of summons on the 29th January, 2024 to appear in Court on 5/2/2024 as endorsed on the writ of summons. The defendant was also served on 7th February, 2024, against the hearing of

today's date being 13th of February, 2024. The affidavit of service and hearing notice are attached and marked as Exhibit 2A and 2B respectively.

The action instituted under the undefended list procedure is a species of action that relates to recovery of liquidated money demand, which is usually employed when it is obvious that a defendant does not have a defence on the merit to the claim of the plaintiff. It is a fast and quick means of recovery of debt designed by the Rules. The plaintiff under the Rules is entitled to judgement if the defendant fails to file a notice of intention to defend with an affidavit disclosing a defence on the merit when the case is called up for hearing. The provision of Order 35 Rule 3 (1) states:

“Where a party served with the writ declines to respond before 5 days to the day fixed hearing a notice in writing that he intend to defend the suit, together with a defence on the merit, the court may give him leave to defend upon such terms as the court may think just.”

Rule 3 (4) states:

“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 judgement given accordingly.”

By the above provision, on the date an action filed under the undefended list is called up for hearing, the court has only one business, that is to find

out if the defendant filed an affidavit with a notice of intention to defend. If he fails, then the claimant is entitled to judgement. See the case of **KUTI V AMINU (2016) LPELR 41315 CA, G. CAPPAL PLC V NNEGBUNA & SONS & ANOR (2009) LPELR 8349 CA** where the Court held that the undefended list proceedings is designed to enable parties obtain judgement within a short time and shorten the hearing of the suit where the claim is for a liquidated sum. Thus all the technicalities associated with the filing of pleadings in a normal or formal hearing in the High Court are eliminated. See also the case of **MASSKEN NIG LTD & ORS V AMAKA & ANOR (2017) LPELR 42360 SC** where the Supreme Court held;

“It is settled law that undefended list procedure is designed and adopted for speedy trial for the recovery of debt or liquidated money demand, particularly where it is clear to the court that the defendant has no defence on the merit to the claim of the plaintiff. Where a defendant is served with a writ of summons entered under the undefended list together with an affidavit deposed to by the plaintiff as required by the Rule of the Court, and he desires to defend same, it is his duty to file a notice of intention to defend the suit together with an affidavit disclosing his defence on the merit of the claim for the liquidated money demand. On the return date, the duty of the court is to consider the affidavit of claim and defence in order to determine whether the defendant has disclosed any defence to the claim of the plaintiff so as to decide whether the case should be transferred to the general cause list to be dealt with according to the Rules of Court or enter judgement for the debt or liquidated money demand for the

plaintiff. Where it came to the conclusion that no defence on the merit has been disclosed in the affidavit of defence. It is very clear from the above description that the decision of the trial judge on the matter on the return date is strictly based on the facts as disclosed in the affidavit filed before him.” – Per **Onoghen JSC.**

I have considered the affidavit evidence of the claimant and also mindful of the fact that the defendant was duly served with the originating process, but have refused and or neglected to comply with the provision of the Rules by filing a notice of intention to defend with an affidavit showing a defence on the merit, and in compliance with Order 35 Rule 4, and the decided authorities referred to above, I hold that the plaintiff is entitled to judgement.

Consequently, I hereby enter judgement for the plaintiff in the terms contained on the writ of summons. The sum owed with interest accrued as stated in Paragraphs 2 and 3 of the claim together with the cost of action is to be paid by the defendant on or before the next thirty (30) days failure which the plaintiff shall be at liberty to levy execution on the defendants for recovery of the said sum.

Sign

**Hon Judge
13/2/2024**