

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO, ABUJA
ON TUESDAY, THE 18TH DAY OF SEPTEMBER, 2024
BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINI MUSA
JUDGE

SUIT _____ **NO:**
FCT/HC/CV/1468/2024

BETWEEN:

DR BITRUS POGU

Trading and doing business as
(INTAMEC ENGINEERING NIGERIA LTD)

CLAIMANT

AND

MR BANKOLE PAUL OGUNMUYIWA

Trading and doing business as
(BROMINE OIL AND GAS)

DEFENDANT

RULING

This Ruling is on the Un defended list procedure brought by the Claimant against the Defendant.

The Claimant's claim against the Defendant is for the sum of **\$38,401,90 (Thirty-Eight Thousand, Four Hundred and One Dollar, Ninety Cents)**, being the exact sum the Claimant paid the Defendant *vide* a bank transfer evidenced by an Access Bank receipt dated 6th of February 2023.

The Writ of Summons is supported with 21-paragraph affidavit deposed to by the Claimant himself, with three exhibits attached and marked as **Exhibits A, A1 and Exhibit 2** respectively. These exhibits are, bank teller and receipts

issued by Access bank and an affidavit filed in suit number FCT/HC/CV/8143/2023.

Briefly, the facts deposed to in the affidavit in support of the Writ of Summons is that sometime in January 2023, the Claimant decided to invest in the entertainment sector by building an event center. To this end, he contacted a Chinese company that manufactured collapsible event halls. The Claimant then negotiated the price and agreed with the Company to pay the sum of **\$37,801.90 (Thirty-Seven Thousand Dollars, Eight Hundred and One Dollar, Ninety Cents)** for the said event halls. He then proceeded to look for a professional to handle the payment to the Chinese company since, according to him, it was a foreign transaction. The Claimant was then introduced to the Defendant by a business colleague as an expert in that type of transaction. After several meetings held between the Claimant and the Defendant, they agreed the Defendant could handle the transaction using his professional expertise.

The Claimant averred that he then transferred the total sum of **\$38,401,90 (Thirty-Eight Thousand, Four Hundred and One Dollar, Ninety Cents)**, *videa* bank transfer from his corporate account with Access Bank with bank name, Inyamec Engineering Nig. Ltd to the Defendant's corporate account with Access Bank, with bank name Bromine Oil and Gas Services. The evidence for this transfer is contained in the bank teller and receipt issued to the Claimant by Access bank is attached as **Exhibit A and A1**. The Claimant also stated that the Defendant admitted in an affidavit he filed for the

enforcement of his fundamental rights that he collected the sum of **\$37,801.90 (Thirty-Seven Thousand, Eight Hundred One Dollars, Ninety Cents)** from the Claimant.

It was further averred by the Claimant after the Defendant collected the said money he refused to transfer the money to the Chinese company thereby failing to discharge the terms of his agreement between him and the Claimant. After several demands for refund, the Claimant reported the matter to the Police as the Defendant's actions portrayed criminal intentions. This report made by the Claimant to the Police made the Defendant to admit collecting the money but he, the Defendant, shifted the blame of failure to pay the Chinese company to a third party. The Claimant swore that the Defendant did not intend to refund the said money unless compelled by this Court and the Defendant did not have a defense to his claim.

Consequently, upon service of the Court processes on the Defendant, the Defendant filed his Notice of Intention to Defend together with an Affidavit of thirty (30) paragraphs disclosing a defense on the merits, duly deposed to by the Defendant himself. Attached in support of the Affidavit disclosing a defense are two exhibits, which are, a copy of the Defendant's Providus Bank account showing transfer to an Ahmed Abubakar, marked as **Exhibit A**, and a copy of a petition dated 17th August 2023 against the Ahmed Abubakar to the EFCC by the Defendant's lawyer, marked as **Exhibit B**.

The Defendant swore in his affidavit that he was a bureau de change businessman and not the owner of Bromine Oil and Gas Company. It was the case of the Defendant that the Claimant had been doing business with the Defendant for up to two years and during the course of their business he, the Defendant, had always given the Claimant the Naira equivalent of the foreign currencies the Claimant brought to him. He stated that he was not indebted to the Defendant in the sum of **\$38,401.90 (Thirty-Eight Thousand Four Hundred and One Dollars, Ninety Cents)**, or any amount at all.

He averred that on the 6th of February 2023, the Claimant intended to sell to the Defendant some United States Dollars in exchange for its Naira equivalent but the Defendant told the Claimant that he did not have such money in his account but could help him achieve his purpose being a long-standing customer. The Claimant agreed and the Defendant then contacted one of his colleagues, one Ahmed Abubakar who was also in the bureau de change business, to help with the transaction. The said Ahmed Abubakar then provided the account details of Bromine Oil and Gas Services and the money was transferred to the bank account. This Ahmed Abubakar then transferred the sum of money to the Defendant's Providus Bank account. According to the Defendant, the Claimant was aware of this transfers.

It is also the deposition of the Defendant that afterwards the Claimant told him that he wanted him to transfer the said sum of money to a Chinese Company as payment for some goods he purchased from the company. The Defendant told the Claimant that he had no direct link for such payment and the Claimant

requested for the Defendant to get someone to do the payment for him. The Defendant swore that he then discussed the request of the Claimant with the same Ahmed Abubakar who said he could help with the payment to the Chinese Company and with the consent of the Claimant, the Defendant then transferred the Claimant's money to the same Ahmed Abubakar. According to the Defendant, the Ahmed Abubakar then forwarded a receipt dated 9th of August 2023 purporting to have paid the said sum to the intended Chinese company in China and same receipt was forwarded to the Claimant.

The Defendant averred that about two weeks later, the Claimant called him and stated that he had confirmed that no money was paid to the Chinese company on his behalf and this led to the Defendant demanding a refund from the said Ahmed Abubakar to which the Ahmed Abubakar promised to refund back the money. And on the strength of Ahmed Abubakar's promise to refund back the money, the defendant promised to refund the Claimant his money. After months of continuous failed promises from Ahmed Abubakar, the Defendant stated that he wrote a petition to the EFCC against Ahmed Abubakar, though the Claimant had also lodged a complaint to the Police against the Defendant, leading to the Claimant's arrest on the 30th of August 2023 and detention for nine days. The Defendant averred that he made a statement at the Police headquarters, leading to Ahmed Abubakar's arrest. Upon investigation, the said money of the Claimant was traced from Ahmed Abubakar's bank account to the bank account of one

AlhassanAlhajiSani who was discovered to be in the EFCC custody in Kano as at the time of the Defendant's detention.

Finally, the Defendant swore that during his arrest by the Police, he was asked to refund to the Claimant the commission that had accrued to him which was about **\$200 (Two Hundred Dollars)** which he did through the Police. The Defendant swore that the Claimant's money was not in his possession but he was doing everything lawful within his powers to ensure that the Claimant got his money in order to maintain the customer relationship between him and the Claimant.

Counsel to the Claimant filed his Written Address in support of the Writ of Summons to which he submitted his arguments succinctly. Counsel to the Defendant also filed his Written Address in support of the Notice of Intention to Defend and formulated these issues for the determination of this Court. The issues are:

- 1. Whether by the constitution of this case the proper parties are before this Honorable Court to enable the Court adjudicate on this suit?*
- 2. Whether by the constitution of this suit, the Claimant has the locus standi to institute this suit?*
- 3. Whether by the affidavit of the Defendant triable issues have not been raised to warrant transferring this suit to the general cause list?*

Counsel to the Defendant argued these issues thoroughly, citing case law and statutes.

The above are the cases for the parties in respect of this application. Clearly what this Court is invited to determine is this issue:

“Whether the Defendant has not disclosed a defence on the merit to enable the court transfer the suit on the undefended list to the general cause list?”

Before I proceed to consider and determine the claims of the Claimant *vis-a-vis* the notice of intention and the affidavit disclosing a defense, I will dwell briefly on the nature of the Undefended List Procedure is all about. The Undefended List Procedure is provided for in Order 35 of the Federal Capital Territory, Abuja (Civil Procedure) Rules, 2018. It provides as follows:

“Where an application in form 1 as in the appendix is made to issue a writ of summons in respect of a claim to recover a debt or liquidated money demand, supported by an affidavit stating grounds on which the claim is based and stating that in the deponent’s belief there is no defense to it, the judge in chambers shall enter the suit for hearing in what shall be called the Undefended list”

The Undefended List Procedure is resorted to for quick and speedy recovery of debt or liquidated money demand, especially in cases relating to simple, uncontested debt or liquidated money demand or monetary claims. In the case of ***NEMA SECURITIES AND FINANCE v. N.A.I.C (2015) LPELR-24833***

(SC) 67-70 E-C, (2015) 16 NWLR (Pt 1484) 93 at page 140-141 paras B-C,
the Supreme Court held that:

“...the undefended list procedure is a truncated form of the civil litigation process peculiar to the adversarial judicial system. Under the said procedure, ordinary hearing is rendered unnecessary due, in the main, to the absence of an issue to be tried. U.B.A. & Anor v. Jargaba (2007) LPELR-3399 (SC), (2007) 11 NWLR (Pt. 1045) 247; Agwuneme v. Eze (1990) 3 NWLR (Pt. 137) 242. Essentially, therefore, it is designed to secure quick justice and to avoid the injustice likely to occur when there is no genuine defence on the merits to the plaintiff’s case. International Bank for West Africa Limited v. Unakalamba (1998) 9 NWLR (Pt. 565) 245.

“It is, usually, meant to shorten the hearing of a suit where the claim is for a liquidated sum. Cooperative and Commerce Bank (Nig.) Plc v. Samed Investment Co. Ltd. (2000) 4 NWLR (Pt. 651) 19.”

A suit qualifies for hearing under the Undefended List Procedure upon the fulfilment of certain conditions. First, the sum due and claimed must be a liquidated sum, that is, it must be a certain and definite sum and same must have accrued. Second, the Claimant must believe that the Defendant has no defence on the merit to the suit. This belief must not be subjective, but, rather,

must be borne out of the facts of the suit as disclosed in the affidavit in support of the Writ of Summons. Where these conditions are satisfied, the Court will mark the Writ of Summons as “Undefended” and place it on the Undefended List. But, by virtue of Order 35 Rule 3 of the Rules of this Honorable Court, a Defendant who wishes to defend an action on the Undefended List shall before five (5) days to the day fixed for hearing of the suit, file a Notice of Intention to Defend with an affidavit disclosing a defence on the merit. If the Court is satisfied with the defence on the merit disclosed in the affidavit in support of the Notice of Intention to Defend, it will order that the suit be transferred to the General Cause List. The affidavit in support of the Notice of Intention to Defend must disclose a triable issue or a defence on merit. See the case of **AMEDE v UBA (2008) 8 NWLR (Pt 1090) pg 623 at paras A-B**, Abba-Aji JCA, where the court held as follows:

“A triable issue or defence on merit under the undefended list procedure is disclosed where a defendant’s affidavit in support of the notice of intention to defend is such that the plaintiff will be expected to explain some certain matters with regard to his claim or where the affidavit throws a doubt on the plaintiff’s claim”

In resolving the issue formulated by the Court to determine this matter, the Court must look at the Rules of this Court which has made provisions guiding the hearing and determination of a suit commenced under the Undefended List Procedure. See Order 35 Rule 3(1) and Rule 4 of the 2018 Rules of this Court.

In this case, the Defendant filed their Notice of Intention to Defend; so the crucial question is if the Defendant's affidavit discloses a defense on a merit *vis-a-vis* the Claimant's claim to justify the suit being transferred to the Ordinary Cause List for trial or judgement in favor of the Claimant. The phrase "*affidavit disclosing a defense on merit*" has received a lot of judicial consideration in several cases. See the cases of ***DELTA HOLDINGS NIGERIA LTD v. ROBERT ATIMI OBORO (2013) LPELR-21242 (CA)***, ***ATAGUBA & CO v. GURU (NIG) LTD (2005) LPELR-584 (SC)*** and ***NISHIZAWA LTD v JETHWANI (1984) 12 SC 234***.

Furthermore, an affidavit showing cause why a Defendant should be granted leave to defend an action must disclose a defence on the merit setting out the details and particulars of the defence. The popular expression is that the affidavit must "condescend upon particulars". The affidavit showing cause must disclose facts which will at least throw some doubt on the plaintiff's case. See the cases of ***U.B.A. PLC v. JARGABA (2007) 11 NWLR (PT 1045) 247***, ***MACAULAY v. NAL MERCHANT BANK LTD (1990) 4 NWLR (PT 144) 283*** and ***NISHIZAWA LTD v. JETHWANI (1984) supra***.

In the light of the guidance from the authorities mentioned above, the Court will now examine the averments in the affidavits of the parties. In the affidavit of both parties, there is no contention as to the Claimant's sum of money. In paragraph 2 of the Defendant's affidavit in support, he stated that he does not trade or carry out business as Bromine Oil and Gas services. He also stated in paragraph 11 of his affidavit that after he had told the Claimant of not having

enough money to carry out the transaction of the Claimant, that he would contact one of his colleagues, an Ahmed Abubakar, to help out with the transaction. The Claimant agreed to this and the Claimant transferred the money to Ahmed Abubakar who gave an account detail of Bromine Oil and Gas Services for the money to be put there. It is before this Court that the Claimant did the transfer to the said Bromine and Oil and Gas Services' bank account. In paragraph 16 and 17 of the Defendant's affidavit, the Defendant swore that after the Claimant had told him he wanted him to transfer the funds to a Chinese company for payment of goods, the Defendant informed the Claimant that he did not have a direct link for such transaction but he would seek the help of the same Ahmed Abubakar to do the transfer. This the Claimant agreed too again and the Defendant transferred money to the Ahmed Abubakar. This transfer is annexed as **Exhibit A** of the Defendant's affidavit. In paragraphs 22 to 26 of the Defendant's affidavit, he stated that Ahmed Abubakar failed to transfer the money of the Claimant to the Chinese company which made the Defendant petition Ahmed Abubakar through the EFCC. This is seen as **Exhibit B** annexed to the Defendant's affidavit. The failure to transfer the Claimant's money to the Chinese company led to the Police arresting the Defendant on the orders of the Claimant. This arrest led to the arrest of Ahmed Abubakar as well. The Police carried out their own investigation and found out that Ahmed Abubakar had transferred the Claimant's money to another party.

In order to adjudicate on the case before me properly, this Court is of the opinion that the Defendant should not be the only party to this matter. There are triable issues and crucial questions the Court is required to consider to enable it aid the cause of justice. It is my respectful opinion that the involvement of Ahmed Abubakar in this case makes him a necessary party. It is trite law that in determining whether a person should be made a party in a matter, certain conditions must be met. See the case of ***Aiyedogbon v. Kolawale (2022) LPELR-58582 (CA) at pp 28-29 paras B-C***, where the Court held that:

"By all odds, the law is now well settled that for a person to be joined in an action, he must be someone whose presence is necessary as a party. What makes a person a necessary party is not, of course, merely that he has relevant evidence to give on some of the questions involved. That would only make him a necessary witness but not a necessary party. It is also not merely that the person has an interest in the correct solution of some questions involved and has thought of some relevant arguments to advance. That would mean that an infinite variety of persons could claim to be entitled to be heard in a case. The only reason which makes it necessary to make a person a party to an action is that he should be bound by the result of the action and his presence before the Court may be necessary in order to enable the Court effectively and completely adjudicate

upon and settle all the questions involved in the cause or matter. See AMON vs. RAPHAEL TUCK & SONS LTD (1956) 1 Q.B. 357 at 380, PEENOK INVESTMENT LIMITED vs. HOTEL PRESIDENTIAL (1982) 12 SC 1, IGE vs. FARINDE (1994) 7 NWLR (PT 354) 42 at 50, JIA ENTERPRISES LIMITED vs. BRITISH COMMONWEALTH INSURANCE CO. LIMITED (1962) 1 ALL NLR (PT 2) 363, BELLO vs. INEC (supra) and UKU vs. OKUMAGBA (1974) All NLR (PT 1) 475." Per UGOCHUKWU ANTHONY OGAKWU, JCA (Pp 28 - 29 Paras B - C)"

See also the Supreme Court cases of **CBN v. Interstella Communications Ltd & Ors (2017) LPELR-43940**, and **Babayevu. Ashamu (1999) 9 NWLR (PT 567) 546 at 555 paras A-B**. In the Supreme Court case of **Okontav. Phillip (2010) 18 NWLR (PT 1225) page 320**, His Lordship Adekeye JSC held at page **326 paras F** that, and I quote:

“the fundamental reason which makes it necessary to make a person a party to an action is to make him bound by the results of the action”

The Defendant has clearly stated in his averments of his affidavit in support of the Notice of Intention to Defend and the exhibits attached that Ahmed Abubakar is clearly involved in the transaction of the Claimant's money and this involvement is with the consent and full knowledge of the Claimant. It is instructive to state here that the role played by Ahmed Abubakar is crucial in the final determination of this matter.

Let me also state that in an Undefended List Procedure, where a Defendant files a Notice of Intention to Defend with an affidavit in support, the facts deposed to in the affidavit does not have to disclose an iron cast or rock proof defense. All that is required is a *prima facie* defense upon which trial will have to be concluded. See the case of *Ataguba&Co v.Guru Nig. Ltd (2005) supra*, where the Supreme Court held that and I quote:

“One of the main problems that often arise in the undefended suit procedure is the consideration of whether the defendant’s affidavit in support of the notice of intention to defend discloses a defence on merit. In this regard, it has been held that it must disclose a prima facie defence. The affidavit must not contain merely a general statement that the defendant has a good defence to the action. Such general statement must be supported by particulars which if proved would constitute a defence. See John Holt & Co Ltd v. Fajemirokun (1961) All NLR 492. It is sufficient if the affidavit discloses a triable issue or a difficult point of law is involved, that there is dispute to the facts which ought to be tried, that there is a real dispute to the amount due which requires the taking of an account to determine or any other circumstances showing reasonable grounds of a bona fide defence. See Nishizawa Ltd v. Jethwani (supra); F.M.G v Sani (1990) 4 NWLR (Pt 147) 688 at 713.”

After a full and exhaustive consideration of the affidavit in support of the Claimant's Writ of Summons and the Defendant's Notice of Intention to Defend, and consistent with the provisions of Order 35 Rule 3(1) of the Rules of this Honorable Court 2018, the Court resolves the sole issue in favor of the Defendant. I find that there are triable issues that have been disclosed. I therefore order the matter to be transferred to the General Cause List for hearing. Parties are directed to file and exchange pleadings. Further to this, I hereby *suo moto* order that the named Ahmed Abubakar be joined to this suit as a Defendant. Upon the filing of their pleadings in this suit, the Claimant and the Defendant shall serve the named Ahmed Abubakar with all copies of their processes filed in this suit.

This is the Ruling of this Court delivered today the 18th day of September, 2024.

HON. JUSTICE A.H. MUSA
JUDGE
18/09/2024