

**SUPREME COURT OF NIGERIA**  
30TH APRIL, 2010, SC. 280/2002,  
**M. MOHAMMED, I. F. OGBUAGU,**  
**F. F. TABAI, C. M. CHUKWUMA-ENEH,**  
**M. S. MUNTAKA-COOMASSIE, JJSC**

NKWO MARKET COMMUNITY

BANK (NIG.) LTD

..... APPELLANT

AND

PAUL EJIKEME UWABUCHI OBI

..... RESPONDENT

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ACTIONS - Undefended list - Intention to defend - Competence - Effect of time of filing - It does not affect its competence - Where actual hearing is not commenced - Prior to five days from filing date (H1)

ACTIONS - Undefended list - Hearing thereunder - When to refuse - Where there is a conflict between the claim - And the evidence in support - That is enough to refuse the suit - Being heard under the list (H2)

***FACTS***

The plaintiff/appellant sued defendant/respondent under the undefended list procedure before the High Court of Anambra State sitting at Nnewi. Appellant's claims were for N930,162.00 (Nine hundred and thirty thousand, one hundred and sixty two naira) allegedly owed by respondent to appellant, 7.5% monthly interest on the sum till judgment is delivered, and 5% interest on the judgment debt till the sum is liquidated. Upon obtaining an order of court for substituted service, the writ was pasted on respondent's house on 7/10/97. The writ indicated that the matter would come up for hearing on 13/10/97. Respondent filed a notice of his intention to defend on 10/10/97. On 13/10/97 when the matter came up, it was further adjourned to 23/10/97 for hearing.

It was undisputed that respondent had taken two separate loan facilities from appellant on Account Nos. 5130 and 5176 respectively. It is also not in dispute that the principal sums have been repaid. The dispute between the parties is on the rate and computa-

tion of interest on the respective accounts. Though the letter of the offer of the loan on Account No. 5130 was in evidence as Exhibit B no such letter was put in evidence in respect of the loan on Account No. 5176. Moreover Exhibit B stated the applicable interest rate to be 21% per annum and not the 7.5% per month claimed by appellant. Nevertheless, trial court held that respondent had no defence and proceeded to give judgment as claimed by appellant. Aggrieved, respondent appealed to Court of Appeal which appeal was allowed. Dissatisfied, appellant has brought this appeal against the judgment of Court of Appeal. Appellant contends, *inter alia*, that the notice of intention to defend filed by respondent was invalid in that it was filed less than 5 days from the date of hearing as provided by the applicable rules of court.

### **ISSUES FOR DETERMINATION**

*"1. Whether the Court of Appeal was right in setting aside the judgment of the High Court in toto in view of the evident admission of liability by the Respondent in respect of the two accounts.*

*2. Whether a defective Notice of Intention to defend qualifies a defaulting defendant automatically to be let in to defend under the undefended list procedure of the Anambra State High Court Rules 1987".*

**HELD** (Unanimously dismissing the appeal per **MUNTAKA-COOMASSIE JSC**)

### **Undefended list - Intention to defend - Competence**

1. The fact of this case is that the matter was not heard on 13/10/97, it was further adjourned to 23/10/97 for hearing, it was this day that the hearing actually commenced.

It was not in dispute that the respondent filed the Notice of Intention to defend at least nine (9) days before the hearing of 23/10/97, and even went ahead to file further affidavit. The Appellant neither objected nor raised any issue concerning the filing at the trial court. I have no doubt in my mind that the respondent filed its Notice of Intention to defend at least 5 days before the hearing of the case commenced on the 23/10/97 and it is therefore in order and competent. (p. 1549 H)

***Undefended list - Hearing thereunder - When to refuse***

2. As I have stated earlier in this judgment that the principal amount granted to the respondent was not in dispute and in fact had been paid, what is in dispute is the interest chargeable.

In the first place the terms and conditions for the grant of facility of N600,000.00, on account No. 5176, was not attached to show the percentage of the interest agreed.

On the account No. 5130 where the sum of N1,200,000 was granted, the letter of offer of Banking Facility attached as Exhibit B, nowhere was the 7.5% per annum interest stated and neither was the said letter signed. There is apparently a conflict between the claim and the evidence in support and that is enough to refuse the suit being placed on the undefended list. (p. 1551 C/ F)

***NOTABLE POINT OF INTEREST******MUNTAKA-COOMASSIE JSC******1. An order is needed to place a matter under undefended list***

A plaintiff who wants his suit placed on the undefended list must file an affidavit at the time he is making an application for the issuance of the writ. The Affidavit must depose to facts from which the court can come to the conclusion that the defendant has no defence. It is only when the court comes to that conclusion from the facts placed before it through the affidavit that an order to place the suit on the undefended list will be made.

In the instant case, I have carefully gone through the record of proceedings and I am unable to see where the trial court made an order to enter the suit on the undefended list neither was their any application made to that effect. (p. 1550 H)

***REPRESENTATION***

B. S. Nwankwo for the Appellant with Elfrida Iruene Esq., and Sojj Omole.

Mr. Eke Obeta for the Respondent with Udeogu Obinna Esq.

***CASES REFERRED TO***

Ishola Vs. S. G. Bank (1997) 2 SCNJ 1 at 7

Haido V. Usman (2004) 3 NWLR (pt. 859) 62

S. B. N Plc V. Kyenta (1998) 2 NWLR (Pt. 536) 41

- Alfotrin Vs A-G Federation (1996) 12 SCNJ. 236 at 240  
U. B. N. Vs. Sax Ltd (1991) 7 NWLR (pt. 202) 227 at 236  
Olubusola v. Standard Bank (1975) 1 All N. L. R. (Pt. 1) 125  
Tsokwa Vs Union Bank of Nigeria (1996) 12 SCNJ 445 at 447  
Ataguba & Co. V. Gura (Nig.) Ltd (2005) 8 NWLR (pt. 927) 429  
B Associates Ltd Vs. Nigeria Merchant Bank Ltd (1996) 2 NWLR (pt. 431) 378/390  
Bendel Construction Co. Ltd. v. Anglo Development Co. (Nigeria) Ltd. (1972) All N. L. R. (Pt. 1) 153  
C Adebisi Macgregor Associates Ltd. v. Nigeria Merchant Bank Ltd. (1996) 2 N.W.L.R. (Pt. 431) 378

**RULES OF COURT REFERRED TO**

High Court Rules of Anambra State, 1988, O. 20 r. 1

D

**LEAD JUDGMENT BY MUNTAKA-COOMASSIE JSC**

The Appellant, who was the plaintiff at the trial court at Nnewi High Court, brought this action under the undefended list procedure, wherein he claimed against the Respondent in a writ of summons dated 21<sup>st</sup> day of July, 1997 as follows:-

- E (1) N930,162.00 being debt owed the plaintiff by the defendant;  
(2) 15% per month interest of the above sum till judgment is delivered.  
F (3) Thereafter 5% percent interest of the judgment debt till same is liquidated”.

On the 25/9/97, the trial court granted an order for substituted service by pasting the writ of summons and other court processes on the defendant at his house at No. 1 Josephat Street, Onitsha Road, Nnewi, and the case was adjourned to 13/10/97 for hearing. The order for substituted service was effected on 7/10/97 while the defendant filed his Notice of Intention to defend on the 10<sup>th</sup> day of October, 1997. On the 13/10/97 when the case came up for hearing  
H it was further adjourned to 23/10/97 for hearing.

The facts of this case, I think, are straight forward. The Respondent operates two accounts with the Appellant with numbers 5130 and 5176.

On the application of the Respondent he was granted Loan

Facilities in the sum of N1,200,000.00; and 600,000.00 on Account Nos. 5130 and 5176 respectively. The interest chargeable on the facilities is contained in the letter of offer titled - offer of Banking Facility as follows:-

*“DISCOUNT RATE: 21% P.A interest 1.5% processing fee, 1% legal and 5% consultancy fee shall be debited to the company account”.* B

In paragraphs 4 and 5 under the subheading “CONDITIONS PRECEDENT TO UTILIZATION” it was stated as follows:

*“4. Debt of your discount-current account with Nkwo market community Bank with the sum being, payment for the up-front interest at the rate of 5% consultancy, 1% legal and 1.5% processing fee.* C

*“5. Failure to balance at month end shall be liable to 3% penalty on 1<sup>st</sup> day of the new month 4% from 2<sup>nd</sup> to 15<sup>th</sup> and additional 3% after 15<sup>th</sup> of the month”.* D

There is no dispute as to the fact that the principal sums have been paid, what is in dispute is the amount being claimed as the interest which the plaintiff appellant put at the sum of N930,162.00 which was calculated on the basis of 15% per month interest. E

The Respondent's defence is to the effect that the 15% per month which formed the basis of the Appellant's claim was not supported by the terms of the agreement between the parties. As a result, he had earlier challenged the interest rate being charged by the Appellant at the High Court of Justice Nnewi in suit No. HN/95/95, the writ of summons and the statement of claim were attached to the Notice of intention to defend. F

In his ruling Ononiba J. granted the plaintiffs claim and ordered as follows:- G

*“In the final result, I have come to the conclusion that the defendant has not disclosed any triable issue or any defence on the merits but that is not the end of the matter plaintiff's claim is 7.5% interest per month. I do not know how the plaintiff came by that figure. The offer of banking facility-Exhibit B shows clearly that the discount rate is 21% per annum and not 7.5% per month. It is trite law that court can award less than the amount claimed by the plaintiff but not more. I therefore enter judgment for the plaintiff in the sum of N930,162.00 as claimed.* H

*Plaintiff is also awarded 21% interest on this sum from 21/7/97 to 17/12/97. Plaintiff is also awarded 5% simple interest on the judgment debt from 18/12/97 until the whole amount is liquidated .....".*  
See pages 66 - 67 of the Record of Proceedings.

Dissatisfied with the above judgment, the defendant successfully appealed to the Court of Appeal hereinafter called the court below, which set aside the decision of the trial court and ordered that the matter be transferred to the general cause list. The court below in its judgment found as follows:-

"On the facts of this case it is common ground that the respondent's claims are for accrued interest charged on the overdraft granted to the appellant by the respondent on two separate accounts, Nos. 5130 and 5176. In paragraph 6 of the affidavit supporting the respondent's writ of summons it was deposed that the facilities granted to the appellant are based on the terms of two documents signed by the appellant, Exhibits 'B' and 'B1'. But only an unmarked document on page 22 down to the half of page 23 of the record is exhibited with the affidavit. The first part of the document headed 'offer of banking facility' shows that it is in respect of N1,200,000 overdraft. It is dated 30/11/96 and contained various interest rates to 'be debited to the company's account' but the document is not signed in the signature column over which three numerical question marks are run. The second part of the same document is headed 'conditions precedent to utilization' items 4 and 5 of which contained what is described as 'up-front interest' and 'penalty': at the bottom of the column are typed on the left side 'Sgd: Nwano Agom (CDO)' and 'Sgd: Law E. Agbo (Manager)' on the right side. In the writ of summons the respondent as the plaintiff is claiming 7.5% interest per month on the overdraft on each account.

Applying the principle on the duty of a plaintiff initiating an action under the undefended list procedure who must show prima facie ground that would incline the court to the conclusion that the defendant has no defence to the action the respondent's claims leave a yawning gap. The writ of summons with the supporting affidavit suffers internal conflicts that a complete case cannot be said to have been formulated by the respondent as the plaintiff with which the Notice of Intention to defend filed by the appellant as the defendant can be matched up. For one thing the respondent who based her

*claims on agreed rates of interest contained in 2 documents signed by the appellant did not exhibit the document signed by the appellant in respect of overdraft granted on account No. 5176 for N600,000; and the document produced in respect of account No. 5130 is not signed. For another, the interest of 7.5% per month claim in the writ of summons on the N1,200,000 overdraft cannot be reconciled with the 21% interest per annum appearing in the first part of the document headed 'offer of banking facility or the numerous interests in items 4 and 5 of the second part headed 'conditions precedent to utilization'."*

Being dis-satisfied with the judgment of the court below, the plaintiff appealed to this court and filed a Notice of appeal containing three grounds of appeal, both parties filed and exchanged their respective briefs of argument. The Appellant in his brief formulated two issues for determination as follows:-

*"1. Whether the Court of Appeal was right in setting aside the judgment of the High Court in toto in view of the evident admission of liability by the Respondent in respect of the two accounts.*

*2. Whether a defective Notice of Intention to defend qualifies a defaulting defendant automatically to be let in to defend under the undefended list procedure of the Anambra State High Court Rules 1987".*

The Respondent herein also formulated two issues for determination in his brief of argument as follows:-

*"1. Whether the defendant/Respondent's Notice of Intention to defend raised triable issues to justify the order made by the Court of Appeal transferring the suit from the undefended list to the General Cause list.*

*2. Whether a plaintiff who serves a defendant with a claim under the undefended list less than five days before hearing can raise an objection to the defendant's Notice of Intention to defend filed less than five days before hearing".*

At the hearing the learned counsel to the Appellant adopted his brief of argument and urged this court to allow the appeal. On its issue No. 1, learned counsel submitted that the respondent did not deny the facilities granted him, he referred to the statement of account and the respondent's letter requesting for stoppage of further interests on the account, learned counsel referred to the letter of

offer under the conditions to utilizations of the facility, which the respondent signed; which shows that there is express agreement as to the rate of interest chargeable, the cases of *Alfotrin Vs A-G Federation* (1996) 12 SCNJ. 236 at 240. *Ishola Vs. S. G. Bank* (1997) 2 SCNJ 1 at 7, and *Tsokwa Vs Union Bank of Nigeria* (1996) 12 SCNJ B 445 at 447 were cited. Learned counsel further submitted that mere averments in the Affidavit in support of the Notice of Intention to defend does not amount to a defence on the merit, counsel cited the cases of *Nishizawa Ltd Vs Jethwani* (1984) 12 SC 234/254; and *Dan Atlantic Vs Rhen Mass* (1997) 3 SCNJ 88/90.

C On issue No. 2, learned counsel submits that by the provision of order 24 Rule 9 of the High Court Rules 1988 of the Anambra State, a defendant is required to file its Notice of Intention to defend five days before the date fixed for hearing. In the instant case, the D case was fixed for hearing on the 13/10/97 while the Notice of Intention to defend was filed on the same 13/10/97 and as such the Notice of Intention to defend filed by the Respondent is incompetent and as such the respondent has no defence before the court.

E The learned counsel to the Respondent also adopted his brief of argument at the hearing and urged this court to dismiss the appeal. In respect of his issue No. 1, counsel submitted that there was no dispute as to the amount of facilities given to the respondent, what is in dispute is the interest rate. While the Appellant claimed F N930,162.00 as interest and 15% per annum interest, whereas the interest chargeable on the two accounts are N30,635.00 as per account No. 5176 and N103,820.00 as per account No. 5130 out of which the respondent has already paid the sum N40,000.00 and N75,000.00 respectively. That it was this controversy that led the G respondent to institute suit No. HN/95/97 against the appellant, challenging the rate of interests being charged on the accounts. It was the learned counsel's submission therefore that this dispute can only be resolved if the matter is transferred to the general cause list where evidence would be given and the court can therefore make its find- H ings on the questions of what is the rate of interest chargeable on the transactions and whether the interest charged was covered by the agreement between the parties or was outrageous and excessive contrary to Central Bank regulations. It was the learned counsel's submission that the Notice of Intention to defend has disclosed de-

fence on its merit and issues capable of being tried by the trial court as required by the provisions of order 24 Rule 9 (2) of the Anambra State High Court Rules 1988.

Learned counsel also cited the case of Adebisi Macgregor Associates Ltd Vs. Nigeria Merchant Bank Ltd (1996) 2 NWLR (pt. 431) 378/390. B

It was also the counsel's submission that the rate of interest claimed by the plaintiff was not supported by the evidence attached, hence he has to proffer evidence in proof of the claim, the cases of Wayne (W.A.) Ltd V. Ekwunife (1989) 12 SCNJ, 99; Enahoro Coy Ltd Vs. Bank of West Africa Ltd (1971) 1 ALR 180, U. B. N. Vs. Sax Ltd (1991) 7 NWLR (pt. 202) 227 at 236 were cited. C

Furthermore, learned counsel submitted that the respondent denied signing and accepting offer of banking facility and the defendant did not exhibit any document relating to the overdraft of D N600,000.00 on account No. 5176.

On Issue No. 2 learned counsel submitted that the respondent was served with the writ on the 7/10/97, while the case was fixed for hearing on the 13/10/97, hence by virtue of the provisions of Order 20 Rule 1(1) (2) of the High Court Rule 1988, the Respondent was not given the required five (5) days to file the Notice of Intention to defend. E

Alternatively, the learned counsel submits that the issue was not raised at the trial court and no leave was obtained to raise it before the Supreme Court and it is therefore incompetent and should be discountenanced. F

With respect, I do not see any merit on issue No. 2 of both parties in this case. The Appellant's complaint was that the respondent filed its Notice of Intention to defend on the 13/10/97 the date fixed for hearing, while the respondent's position is to the effect that since he was served on the 7/10/97 while the case was fixed for hearing on the 13/10/97 he was not given the required five (5) days as provided in Order 20 Rule 1 (1) and (2) of the Rules hence its Notice of Intention to defend was not incompetent. ***The fact of this case is that the matter was not heard on 13/10/97, it was further adjourned to 23/10/97 for hearing, it was this day that the hearing actually commenced.*** H

***It was not in dispute that the respondent filed the No-***

***tice of Intention to defend at least nine (9) days before the hearing of 23/10/97, and even went ahead to file further affidavit. The Appellant neither objected nor raised any issue concerning the filing at the trial court. I have no doubt in my mind that the respondent filed its Notice of Intention to defend at least 5 days before the hearing of the case commenced on the 23/10/97 and it is therefore in order and competent.***

My lords, one of the main problems that often arise in the undefended list procedure is the consideration of whether the defendant's affidavit in support of Notice of Intention to defend discloses a defence on the merit. In this respect, 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. It is sufficient, if the affidavit discloses.

- (a) A triable issue or that a difficult part of law is involved;
- (b) That there is a dispute as to the facts which ought to be tried;
- (c) That there is a real dispute as 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 *Ataguba & Co. V. Gura (Nig.) Ltd (2005) 8 NWLR (pt. 927) 429 SC*; and *Federal Military Govt. Vs. Sonna (1990) 7 SCNJ 159*. It must also be stressed that in an action brought under the undefended list procedure the court is required to consider only the evidence contained in the affidavit filed by the defendant in support of the Notice of Intention to defend the suit. Once the court comes to the conclusion that the affidavit does not disclose a defence on the merit or a triable issue, then the court is to proceed with the of hearing of the suit as an undefended suit and enter judgment accordingly without calling on the defendant, even if present in court, to answer or be heard. See *Haido V. Usman (2004) 3 NWLR (pt. 859) 62*. However, where there is a conflict in the affidavits of the parties, evidence is the only way by which the conflict can be resolved and it is mandatory to enter the suit on the general cause list. See *Ebong V. Ikpe (2000) 17 NWLR (pt. 797) 504*, except where there is documentary evidence by which the conflict could be resolved.

On the other hand, a plaintiff who wants his suit placed on the

undefended list must file an affidavit at the time he is making an application for the issuance of the writ. The Affidavit must depose to facts from which the court can come to the conclusion that the defendant has no defence. It is only when the court comes to that conclusion from the facts placed before it through the affidavit that an order to place the suit on the undefended list will be made. See S. B. N Plc V. Kyenta (1998) 2 NWLR (Pt. 536) 41. B

In the instant case, I have carefully gone through the record of proceedings and I am unable to see where the trial court made an order to enter the suit on the undefended list neither was their any application made to that effect. In any event, the question that calls for resolution is whether the suit as constituted, the plaintiff has shown that the defendant has no defence as to justify the suit being placed on the undefended list. C

***As I have stated earlier in this judgment that the principal amount granted to the respondent was not in dispute and in fact had been paid, what is in dispute is the interest chargeable,*** it is in this respect that the plaintiff claimed as follows: - D

*“(a) 14930,162.00 being debt owed the plaintiff by the defendant;* E

*(b) 75% per month interest of the above sum till judgment debt is delivered.*

*(c) Thereafter 5% percent interest of the judgment debt till same is liquidated.”* F

These claims are in respect of the two accounts on which the facilities were granted. ***In the first place the terms and conditions for the grant of facility of N600,000.00. On account No 5176, was not attached 3 show the percentage of the interest agreed.*** F

***On the account No. 5130 where the sum of N1,200,000 was granted, the letter of offer of Banking Facility attached as Exhibit B, nowhere was the 7.5% per annum interest stated and neither was the said letter signed. There is apparently a conflict between the claim and the evidence in support and that is enough to refuse the suit being placed on the undefended list.*** G H

The respondent herein had challenged the interest charged as not forming part of their agreement. *Even before this action was instituted the respondent had filed an action before the same High*

*Court challenging the interest being charged by the Appellant on the facilities granted. I think this issue is clearly triable issue. This is so because a plaintiff who claims interest must prove it before it is granted. In the case of Alfotrin Vs A-G Federation (1996) 12 SCNJ 236 at 240 this court held as follows:-*

B *“The general rule at common law is that interest is not payable on a debt or loan in the absence of express agreement or some course of dealing or custom to that effect. Interest will however be payable where there is an express agreement to that effect and such agree-*  
C *ment may be enforced from a course of dealing between the parties or where an obligation to pay interest arises from the custom or usage of a particular trade or business”.*

With tremendous respect, I am not in any way saying that the respondent herein is not liable to pay interest on the facility, but what  
D was the agreed interest rate? Was it 21%, 75% or 7.5%. That court cannot act on assumption, speculation, or conjecture. There must be evidence on which the court would base its judgment. The trial court should have ordered for the suit to be entered into general cause list for trial.

E Before I end this judgment my lords, I wish to point out that the undefended list proceedings is not intended to shut out a defendant from contesting the suit brought thereunder. Where a defendant can show in his Affidavit that he has a defence on the merit, or  
F there is a serious conflict in the affidavit of the parties or raises issue that is triable, he will be granted leave to defend the suit. The defendant at this stage need not show a complete defence it suffices if the defence set up shows that there is a triable issue or that for some other reasons there ought to be a trial. Without a trial it would be  
G extremely difficult for the appellant to succeed vis-a-vis the interest claimed.

It is for the above reasons that I affirm the decision of the court below. This appeal before us lacks merit. It is a share painful waste of time of the court. Same is hereby dismissed. The order of the court  
H below made unanimously on 29/5/2000; namely that the case be heard on its own merit by another Judge of the Anambra State High Court on fresh pleadings is hereby affirmed with N50,000 costs to the Respondent.

**MOHAMMED JSC**

The Appellant in this appeal was the Plaintiff at the Anambra State High Court of Justice sitting at Nnewi where it filed its action under the undefended list of the Court against the Respondent who was the Defendant and claimed the sum of N930,162.00 being debt owed, 75% per month interest on the sum claimed until the delivery of judgment and 5% interest on the judgment debt until the same is liquidated. In accordance with the requirement of the rules of Court, the claim was supported by an affidavit and a further affidavit when it came to light that the amount being claimed covered only the interest that had accrued on the sums of N1,200,000.00 and N600,000.00 granted to the Respondent. In accordance with the provisions of Order 24 Rule 9 of the Anambra State High Court Civil Procedure Rules 1988, the Respondent/Defendant filed his Notice of intention to defend the suit and averred in the affidavit in support of the Notice that the amount being claimed represented interest said to have accrued on the sums granted as overdraft/loan to the Defendant/Respondent.

The learned trial Judge after hearing the parties refused to allow the Defendant/Respondent leave to defend the action and proceeded to enter judgment for the Plaintiff/Appellant as claimed. However on appeal to the Court of Appeal Enugu, the Defendant/Respondent's appeal was allowed, the judgment of the trial Nnewi High Court was set aside and the action was transferred to the general Cause List of the trial Court for hearing on pleadings by another Judge. The Plaintiff/Appellant is now on appeal against the decision of the Court of Appeal.

The two issues identified in the Appellant's brief of argument for the determination of this appeal are –

*“(a) Whether the Court of Appeal was right in setting aside the judgment of the High Court in toto in view of the evident admissions of liability by the Respondent in respect of the two Accounts.*

*“(b) Whether a defective Notice of intention to Defend qualifies a defaulting Defendant automatically to be let in to defend under undefended list Procedure of the Anambra State High Court Rules, 1998.”*

The Respondent in his brief of argument however saw the is-

sues arising for determination as being the following -

*“1. Whether the Defendant/Respondent’s Notice of Intention to defend raised triable issues to justify the order made by the Court of Appeal transferring the suit from the undefended list to the General Cause List?”*

B *2. Whether a Plaintiff who serves a Defendant with a claim under undefended list less than five days before hearing can raise an objection to the Defendant’s Notice of intention to defend filed less than five days before hearing?”*

C The real issue for determination in this appeal which is against the decision of the Court of Appeal, is whether that Court was right in its decision that this case ought not to have been heard and determined under the undefended list procedure of the trial Court by virtue of Order 24 Rule 9 of the Anambra State High Court Rules D 1988.

The law is in fact well settled that once a Defendant by his affidavit in support of his notice of intention to defend has shown clearly that he has issues arguable and triable therein, it is on the side of justice to let in the Defendant to defend the action by transferring E such matter to the general cause list of the Court for hearing on pleadings as was done by the Court of Appeal in the present case. See *Adebisi Macgregor Associates Ltd. v. Nigeria Merchant Bank Ltd.* (1996) 2 N.W.L.R. (Pt. 431) 378.

F In the instant case while the Defendant/Respondent does not dispute the fact that he was granted two separate loan/overdraft by the Plaintiff/Appellant in the sums of N1,200,000.00 and N600,000.00 respectively, what he disputed in his affidavit in support of his notice of intention to defend the suit, was the total amount of interest which G accrued on the loan/overdraft which was in fact the subject of the entire claim of the Plaintiff/Appellant in its action. While the claim of the Plaintiff/Appellant for the actual amounts or sums constituting the principal loan granted could be termed as liquidated claim within the requirement of the Undefended List Procedure, the claim for interest H accruing on the loan granted which must be arrived at upon calculation on the agreed rates of interest having regard to the period covered, can hardly qualify as liquidated claim under the rules. The undefended list procedure is adopted when it is perceived that the Defendant could not possibly have any defence to the claim. A suit is

maintainable under this procedure if it relates to a claim for a debt or liquidated money demand. See *Bendel Construction Co. Ltd. v. Anglo Development Co. (Nigeria) Ltd.* (1972) All N. L. R. (Pt. 1) 153 and *Olubusola v. Standard Bank* (1975) 1 All N. L. R. (Pt. 1) 125.

For the foregoing and other fuller reasons given by my learned brother Coomassie JSC in his leading judgment, I entirely agree that the Court of Appeal Enugu Division was right in its decision in remitting the Plaintiff/Appellant's action to the trial Court for hearing on pleadings by another Judge. Consequently, I also dismiss this appeal and abide by the order on costs in the leading judgment.

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**TABAI JSC**

I had the benefit of reading, in advance, the lead judgement prepared by my learned brother Muntaka-Coomassie JSC and I agree entirely with his reasoning and conclusion.

This action was commenced under the undefended list procedure by the Plaintiff/Appellant at the Nnewi Judicial Division of the High Court of Anambra State against the Defendant/Respondent. In response the Defendant/Respondent filed his notice of intention to Defend. It is clear from the affidavit in support of the claim and that in support of the intention to defend that there are triable issues which warrant a transfer of the suit to the general list so as to enable the parties file and exchange pleadings and the matter tried and determined on the merit.

In all the circumstances, I agree with and affirm the decision of the Court below that the matter be remitted back to the trial High Court to be heard and determined by another Judge of that court after the filing and exchange of pleadings. The result is that I also dismiss the appeal. I abide by the consequential orders including the order on costs in the lead judgement.

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**CHUKWUMA-ENEH JSC**

I have read the judgment prepared and delivered by my learned brother Coomassie JSC. I agree with him that there is no merit in the appeal and that it should be dismissed. I also dismiss it and endorse the order on costs as stated in the lead judgment.