

SUPREME COURT OF NIGERIA
15TH JUNE, 2012. SC. 228/2004
CORAM:- M. MOHAMMED, M. S. MUNTAKA-
COOMASSIE, J. A. FABIYI, B. RHODES-VIVOUR,
N. S. NGWUTA, JJSC

1. MC INVESTMENTS LTD
2. TOYIN MUNIS APPELLANTS
AND
CORE INVESTMENTS &
CAPITAL MARKETS LTD RESPONDENT

APPEALS - Actions - Undefended suit - Defence to - Federal High Court Rules O.3 rr. 11&12 - Failure to comply - Effect - Appellants are deemed to have no defence (H1)

RULES OF COURT - Binding nature - The rules are for compliance of court and parties - Since they regulate matters in court - As well as help parties in prosecution of cases (H2)

COURTS - Processes - Failure to notify court - Effect - Where processes are not properly fixed for hearing - Court may not consider same (H3)

FACTS

Plaintiff/respondent filed this action claiming several reliefs at the Federal High Court, Ikoyi-Lagos against defendants/appellants under the undefended list procedure of the court pursuant to Order 3 of the Federal High Court (Civil Procedure) Rules of 1976. The action was placed on the undefended list of the court. Instead of filing a notice of intention to defend the action, appellants filed a motion on notice for stay of proceedings on the matter on the ground that the action was premature. The court dismissed the motion for stay of proceedings in appellants' presence.

After several adjournments at the instance of appellants, the court heard the action as listed and adjourned to 19th July 1996 for ruling. Meanwhile on the 18th July 1996, appellants filed another motion for stay of proceedings pending appeal against earlier ruling

of the court refusing their 1st application for stay of proceedings. The court was not notified of the latter application. The court nevertheless delivered its ruling, granting all reliefs sought by respondent. Being dissatisfied, appellants filed appeal at Court of Appeal, Lagos Division accusing the trial court of ignoring its application for stay of proceedings. The court dismissed the appeal and affirmed the ruling of trial court. Appellants further appealed to Supreme Court.

ISSUES FOR DETERMINATION

“Whether the Court of Appeal was right in dismissing the appeal in the circumstances of this case, when the Court of Appeal held that it is the duty of Counsel who filed the application to draw the attention of the Judge to it.”

HELD (Unanimously dismissing the appeal per
MOHAMMED JSC)

Actions - Undefended suit - Defence to

1. It is quite clear from the record of this appeal that the Respondent had complied with the requirements of the rules of court in filing its suit against the Appellants. It is significant to observe however, that having regard to the single ground of appeal contained in the Appellants’ Notice of appeal and the sole issue identified in the Appellants’ brief of argument from the ground of appeal, the Appellants have no complaint whatsoever against the judgment of the Court of Appeal affirming the judgment of the trial court in the liquidated sum claimed against the Appellants in the undefended suit. In other words the Appellants having neglected to comply with the rules of the trial court in Order 3 Rules 11 and 12 quoted above, the trial court was on very strong grounds in proceeding under Rule 13 of Order 3 of the rules of that Court in entering judgment for the Respondent in its claims against the Appellants who were deemed to have no defence to the undefended suit against them. (p. 2242 D)

RULES OF COURT - Binding nature

2. Rules of Court are made to be complied with by parties and

the Courts. The rules regulate matters in Court and help parties to prosecute their cases to achieve fair hearing and quick dispensation of justice. (p. 2243 B)

COURTS - Processes - Failure to notify court - Effect

3. In this respect, as far as the law is concerned on the subject, even if the Appellants' application for stay of proceedings was filed on the same day the Respondent's suit was heard on 10th July, 1996, it would have been perfectly in order for the trial Court to have ignored the application having regard to the rules of the Court. The fact that the application for stay of proceedings was filed a day before the delivery of the trial Court's judgment in the undefended suit, does not make the position of the Appellants any better as far as the right to be heard is concerned in the matter under the rules. The learned Counsel to the Appellants made heavy weather on the argument that since the Appellants application was filed a day before the trial Court delivered its judgment, that Court ought to have given attention to the application before proceeding to deliver judgment. Certainly, that is not the correct position of the law. The Court deals with only matters and issues that are properly before it and the Court does not speculate or assume jurisdiction to determine matters that are not properly before it. Documents or Court processes like the Appellants' application in the present case, filed in the registry of the Court but are not fixed for hearing and served on the parties, the Court cannot be blamed for failing to take such matters into consideration as such processes cannot be deemed to be within the knowledge of the Judge or Court as erroneously argued by the Appellants. (p. 2244 D)

REPRESENTATION

Samuel N. Agweh with Tochukwu Nwazota, for the Appellants
Olusegun O. Jolaawo with Abayomi Okubote, for the Respondent

CASES REFERRED TO

Alawode v. Semoli (1959) N.S.C.C. 36
SBM Services Nig Ltd v. Okon (2004) 9 NWLR (Pt. 879) 529

- Famfa Oil Ltd v. A-G Federation (2003) 18 NWLR (Pt.852) 453
Oforkire v. Maduike (2003) 5 NWLR (Pt.812) 166
Ekpeto v. Wanogho (2004) 18 NWLR (Pt. 905) 394
Afolabi v. Adekunle (1983) NSCC 398
University of Lagos v. Aigoro (1985) 1 NWLR (Pt.1) 143
B U.T.C. (Nig) Ltd. v. Pamotei (1989) 2 NWLR (Pt. 103) 244
Jammal Engineering Co. Ltd. v. Misr Nig Ltd (1972) 7 NSCC 216
Olubusola Stores v. Standard Bank Nig. Ltd (1975) 9 NSCC 137

RULES REFERRED TO

- C Federal High Court (Civil Procedure) Rules of 1976, O. 3 rr. 9 - 14

LEAD JUDGMENT BY MOHAMMED JSC

- The parties in this appeal were before the Federal High Court
D Ikoyi, Lagos where the Respondent as the Plaintiff in that Court
brought an action against the Appellants who were the Defendants
under the provisions of the undefended list procedure of that Court
pursuant to Order 3 of the Federal High Court (Civil Procedure)
Rules of 1976. The action was placed on the undefended list of the
E trial Court on 11th September, 1995 with the return date fixed at
16th October, 1995. On being served with the Plaintiff's marked writ
of summons together with affidavit and documentary exhibits in sup-
port of the claims, the Defendants' chose not to respond to the ac-
F tion by filing a Notice of intention to defend the action supported by
an affidavit specifying its defence to the action but rather decided to
file a motion on Notice for stay of proceeding in the matter on the
grounds that the action was premature. This motion by the Defen-
dants was duly heard by the trial Court which dismissed the applica-
G tion on 27th May, 1996 when the Defendants' Counsel was in Court.
It was on this same date that the Plaintiff's case placed on the unde-
fended list of the court was adjourned to 3rd July, 1996 for hearing.
The record shows that on this date fixed for the hearing of the case,
on the application of the learned Counsel to the Defendants by a
H letter written to the Court, the case was further adjourned to 10th
July, 1996 for hearing on which date the Defendant was again ab-
sent and not represented by Counsel. The Court then on being sat-
isfied that there was no notice of intention to defend the action in
accordance with the rules of the Court, proceeded and heard the

action under the undefended list of the Court and adjourned the case to 19th July, 1996 for Ruling/Judgment. Meanwhile, on 18th July, 1996, the Defendant's counsel decided to respond to the undefended action against it by filing yet another motion for stay of proceedings pending appeal against the earlier Ruling of the trial Court refusing its application for stay of proceedings in the same action on grounds among other that the action was premature. The trial Court proceeded to deliver its Ruling/Judgment in the undefended action granting all the reliefs sought by the plaintiff on the 19th July, 1995. Although the record of the trial court shows that the learned counsel to the Defendant Mr. S. H. Agweh was in court on this date 19th July, 1996 when the Ruling/Judgment was delivered, he made no attempt to inform or draw the attention of the Court of the motion filed the previous day for stay of proceedings. Not satisfied with the judgment of the trial Court against them, the Defendants all the same came to the Court of Appeal on appeal against the Ruling/Judgment of 19th July, 1996 accusing the trial Court of ignoring its motion for stay of proceedings before giving judgment for the Plaintiff. This appeal was heard and dismissed by the Court of Appeal Lagos Division in its judgment delivered on 22nd June, 2004, hence the present further appeal to this Court by the Defendants/Appellants on a Notice of appeal filed on 30th July, 2004 containing a single ground of appeal from which one issue for the determination of the appeal was identified in the Appellant's brief of argument which issue was also adopted in the Respondent's brief of argument. The issue in the Appellants brief of argument is -

"Whether the Court of Appeal was right in dismissing the appeal in the circumstances of this case, when the Court of Appeal held that it is the duty of Counsel who filed the application to draw the attention of the Judge to it."

Arguing in support of this issue, learned Counsel for the Appellants quoted a portion of the judgment of the Court of Appeal which blamed the learned Counsel for the Appellants for the failure of the trial Court to hear and determine the Appellants' application for stay of proceedings pending appeal before the delivery of the trial Court's judgment against the Appellants in the undefended action filed against them by the Respondent. Learned Counsel further argued that the stand taken by the Court below on the Appellants'

application at the trial Court, is quite contrary to the laid down principles of law as regard the duty of litigants and their Counsel in respect of the conduct of cases as laid down in the case of *Alawode v. Semoli* (1959) N.S.C.C. 36 at 39; that since the fixing of cases or applications for hearing is not the function of the litigants or their Counsel, the Court below was wrong in blaming the Appellants' Counsel for the failure of the trial Court to hear the Appellants' application for stay of proceedings filed on 18th July, 1996 before delivering its judgment against the Appellant on 19th July, 1996. This is because, according to learned Counsel, that the application having been in the Court's file, the knowledge of it by the Registrar of the Court is imputed to the Court, as decided by the Court of Appeal in *SBM Services (Nig.) Ltd. & 4 Ors. v. Catherine Sede Okon & 18 Ors* (2004) 9 N.W.L.R. (Pt. 879) 529 at 551; that since the application had been in the Court's file and the Court failed to look at it, neither the Appellants nor their Counsel can be penalized for failure of the trial Court to hear it as decided by this Court in *Famfa Oil Ltd v. Attorney General of the Federation* (2003) 18 N.W.L.R. (Pt.852) 453 at 471. In conclusion, learned Counsel for the Appellants urged this Court to allow this appeal, set aside the judgment of the Court of Appeal and order a hearing of the Appellants' motion on Notice dated 17th July, 1996 and filed on 18th July, 1996.

As far as the learned Counsel to the Respondent is concerned, the real issue in this appeal is whether the Court of Appeal was right in dismissing the appeal in the circumstances of this case; that the complaint of the Appellants that the trial Court did not hear their application filed on 18th July, 1996 before that Court delivered its judgment on 19th July, 1996, is mere allegation in the absence of the evidence that when the motion was filed on 18th July, 1996, it was brought before the Court and put in the Court's file for the attention of the Judge or that the learned Counsel to the Plaintiff/Respondent was served with the motion in question which was clearly on Notice; that in the circumstances of this case, the Court of Appeal was right in dismissing the Appellant's appeal as the cases of *Alawode v. Semoli* (supra), *S. M. B. Services (Nig.) Ltd. & Ors. v. Catherine Sede Okon & Ors.* (Supra) and *Famfa Oil Ltd. v. Attorney General of the Federation* (Supra), relied upon by the Appellants in their Appellants' brief of argument, are distinguishable with the present

case which was rightly decided by the trial Court in the absence of any application to arrest the Judgment/Ruling of the trial Court that was fixed for delivery on 19th July, 1996. Concluding his argument learned Counsel to the Respondent urged this Court to uphold the decision of the Court below that it was the duty of the Appellant's Counsel to have drawn the attention of the trial court to the pending motion and take necessary steps to ask for time to move the application in line with the decision of this Court in *Osuji Okoro Oforkire & Ors. v. Johnson Maduike & Ors.* (2003) 5 N.W.L.R. (Pt.812) 166 at 182 and dismiss this appeal.

It is very important to note that this appeal arose from the judgment of the Court of Appeal dismissing the Appellants' appeal from the Judgment/Ruling of the trial Federal High Court delivered on 19th July, 1996 granting all the reliefs claimed against the Appellants who were the Defendants in an undefended suit brought against them in that Court under the provisions of Order 3 Rules 9, 10, 11, 12, 13 and 14 of the Federal High Court (Civil Procedure) Rules, 1976 which specified procedure for dealing with undefended suits. Rules read -

"9. Whenever application is made to the Court for the issue of a writ of summons in respect of a claim to recover a debt or liquidated money demand and such application is supported by an affidavit setting forth the grounds upon which the claim is based and stating that in the Deponent's belief there is no defence thereto, the Court shall, if satisfied that there are good grounds for believing that there is no defence thereto, enter the suit for hearing in what shall be called the Undefended List, and mark the writ of summons accordingly, and enter thereon a date for hearing suitable to the circumstances of the particular case.

10. There shall be delivered by the Plaintiff to the registrar upon the issue of the writ of summons as aforesaid, as many copies of the above-mentioned affidavit as there are parties against whom relief is sought, and the registrar shall annex one such copy to each copy of the writ of summons for service.

11. If the party served with the writ of summons and affidavit delivers to the registrar, not less than five days before the day fixed for hearing, a notice in writing that he intends to defend the suit, together with an affidavit setting out the grounds of his defence, then

and in such case the suit shall be entered in the general list for hearing.

12. Where any Defendant neglects to deliver the notice of defence and affidavit, as described in rule 11 of these Rules, within the time fixed by the said rule, the Court may at any time before judgment is entered, on an affidavit disclosing a defence on the merits and satisfactorily explaining his neglect, let in the Defendant to defend upon such terms as the Court may think just.

13. Where any Defendant neglect to deliver the notice of defence and affidavit, prescribed by rule 11 of these Rules, within the time fixed by the said rule, and is not let in to defend in accordance with the provisions of rule 12 of these Rules, then and in such case, the suit shall be heard as an undefended suit, and judgment given thereon, without calling upon the plaintiff to summon witnesses before the court to prove his case formally."

It is quite clear from the record of this appeal that the Respondent had complied with the requirements of the rules of court in filing its suit against the Appellants. It is significant to observe however, that having regard to the single ground of appeal contained in the Appellants' Notice of appeal and the sole issue identified in the Appellants' brief of argument from the ground of appeal, the Appellants have no complaint whatsoever against the judgment of the Court of Appeal affirming the judgment of the trial court in the liquidated sum claimed against the Appellants in the undefended suit. In other words the Appellants having neglected to comply with the rules of the trial court in Order 3 Rules 11 and 12 quoted above, the trial court was on very strong grounds in proceeding under Rule 13 of Order 3 of the rules of that Court in entering judgment for the Respondent in its claims against the Appellants who were deemed to have no defence to the undefended suit against them. See *Ben Thomas Hotel Ltd v. Sebi Furniture Ltd* (1989) 5 NWLR (Pt. 123) 523. Indeed if the Appellants as the Defendants in the suit of the Respondent had any defence to the action, all they could have done was to have proceeded under Rule 11 of Order 3 of the rules to file Notice of their intention to defend the action setting out the grounds of their defence five days to the date fixed for the hearing to justify entering that action in the general list of

that Court for hearing without having to resort to the filing of motion for stay of proceedings in the action thereby derailing them completely from the required track of attaining quicker dispensation of justice in the case. In fact, even if the Appellants had failed to take the required steps under rule 11 of Order 3 of the rules, they could still have come under Rule 12 of the rules at any time before judgment is entered on an affidavit disclosing a defence on the merits and satisfactorily explaining their neglect to comply with rule 11 of the rules and ask the Court to let them in to defend the action upon such terms as may be determined by the trial Court. **Rules of Court are made to be complied with by parties and the Courts. The rules regulate matters in Court and help parties to prosecute their cases to achieve fair hearing and quick dispensation of justice.** See Solanke v. Somefun (1974) 1 S.C. 141, Ibado v. Enarofia (1980) 5-7 S.C. 42; Aina v. Aina (1986) 2 N.W.L.R. (Pt. 22) 316; Olusesi v. Oyelusi (1985) 3 N.W.L.R. (Pt.31) 634; John v. Black (1988) 1 N.W.L.R. (Pt.72) 648 and Dambam v. Lele (2000) 11 N.W.L.R. (Pt.678) 413. Therefore there being no appeal against the judgment of the trial Court on the undefended suit on the merits in the absence of any defence to the suit that judgment of 19th July, 1996 remains valid and cannot be disturbed in this appeal.

Coming back to the main and only complaint of the Appellants against the Judgment/Ruling of the trial Court of 19th July, 1996 affirmed on appeal by the Court of Appeal in its judgment of 22nd June, 2004 now on appeal, is whether the Court of Appeal was right in dismissing the Appellants' appeal in the circumstances of this case when the Court of Appeal held that it was the duty of the Appellants' Counsel who filed their application to draw the attention of the Judge of the trial Court to it. The Appellants are attacking this stand taken by the Court of Appeal on the ground that since their motion was filed in the trial Court on 18th July, 1996 before that Court delivered its judgment in the undefended suit against them on 19th July, 1996, the failure to hear and determine their motion for stay of proceedings was solely attributable to the conduct of the trial Judge who ought to have taken cognizance of the application having been validly filed on 18th July, 1996 and that not having done so, this Court must allow this appeal, set aside the judgment of the Court of Appeal and remit the case to the trial Court to hear and determine their

application. Unfortunately all the cases of *Alawode v. Semoli* (supra), *SBM Services (Nigeria) Ltd. & Ors. v. Catherine Sede Okon & Ors.* (supra) and *Famfa Oil Ltd. v. Attorney General of the Federation* (Supra) relied upon by the Appellants are not helpful to them at all having regard to the circumstances of this case.

B In the first place, unlike in the cases relied upon by the Appel-
lants, the present case arose from proceedings of the trial Federal
High Court under the special provisions of its rules for the hearing of
cases filed under the undefended list procedure. The peculiar proce-
C dure of these rules under Order 3 Rules 9, 10, 11, 12, 13 and 14 of
the rules is such that unless a defendant, which was what the Appel-
lants were at the trial Court, complied with the requirements of these
rules, they could not be heard even when they were present or rep-
resented by Counsel on the date fixed for the hearing of the unde-
D fended action. This was the decision of this Court sitting as a full
Court in the case of *U.T.C. (Nigeria) Ltd. v. Chief J. P. Pamotei & Ors*
(1989) 2 NWLR (Pt. 103) 244 at 299. See also the case of *U.A.C.*
(Technical) Ltd v. *Anglo Canadian Cement Ltd.* (1966) NMLR 349.

In this respect, as far as the law is concerned on the
E ***subject, even if the Appellants' application for stay of pro-***
ceedings was filed on the same day the Respondent's suit was
heard on 10th July, 1996, it would have been perfectly in or-
der for the trial Court to have ignored the application having
F ***regard to the rules of the Court. The fact that the application***
for stay of proceedings was filed a day before the delivery of
the trial Court's judgment in the undefended suit, does not
make the position of the Appellants any better as far as the
right to be heard is concerned in the matter under the rules.
G ***The learned Counsel to the Appellants made heavy weather***
on the argument that since the Appellants application was
filed a day before the trial Court delivered its judgment, that
Court ought to have given attention to the application before
proceeding to deliver judgment. Certainly, that is not the cor-
H ***rect position of the law. The Court deals with only matters and***
issues that are properly before it and the Court does not specu-
late or assume jurisdiction to determine matters that are not
properly before it. Documents or Court processes like the
Appellants' application in the present case, filed in the regis-

try of the Court but are not fixed for hearing and served on the parties, the Court cannot be blamed for failing to take such matters into consideration as such processes cannot be deemed to be within the knowledge of the Judge or Court as erroneously argued by the Appellants. See Egerafo Ekpeto & Ors. v. Ikono Wanogho & Ors. (2004) 18 N.W.L.R. (Pt. 905) 394 at 412 and Osuji Okoro Oforkire & Ors. v. John Maduiké & Ors. (2003) 5 N.W.L.R. (Pt. 812) 155 at 182. In the present case therefore where the learned counsel to the Appellants filed the Appellants' application to stay proceedings in the undefended suit on 18th July, 1996, when the hearing of the case had already been concluded on 10th July, 1996 and adjourned for judgment on 19th July, 1996, the court below was on very firm ground for blaming the learned Counsel to the Appellants who was in Court on that same date when the judgment was delivered for his failure to draw the attention of the trial Court of the fact that the Appellants' application had been filed on 18th July, 1996. In other words, the Court of Appeal was right in not allowing the Appellants to hide behind their application for stay of proceedings pending appeal filed after the Respondent's undefended suit against them had already been heard and adjourned for judgment, to seek to set aside that judgment when the Appellants had failed to take any steps under the rules of the trial Court, to defend the action. In the result, this appeal has no snow ball chance of surviving in hall. The appeal must therefore be dismissed and it is hereby dismissed. The decision of the trial Court as affirmed by the Court of Appeal is hereby further affirmed. There shall be N50,000.00 costs to the Respondent against the Appellants.

MUNTAKA-COOMASSIE JSC

I was privileged to have read in draft the lead judgment just read by my learned brother Mahmud Mohammed, JSC. I entirely agree with his Lordship that the appeal is devoid of any merit and same deserved to be dismissed. In this appeal there are concurrent decisions of the two lower courts which are correct. It will be difficult in such a situation for me to disturb same. The trial court has done a good research work. Its decision as is affirmed by the court below is further affirmed. I endorse the order as to costs.

FABIYI JSC

I have read before now the judgment just delivered by my learned brother Mahmud Mohammed, JSC. I agree with the reasons therein advanced to arrive at the conclusion that the appeal is devoid
B of merit and should be dismissed.

The suit against the appellants was filed and placed on the undefended list of the Federal High Court. The appellants were duly served. Instead of filling the requisite Notice of Intention to defend
C the action supported by an affidavit depicting the defence, a motion on notice for stay for proceeding in the matter on the ground that the action was premature was filed. The motion was heard and dismissed. In a recalcitrant manner the appellants failed to comply with the Rules of court and judgment was entered against them on 19th
D July, 1996. The appellants should be reminded that Rules of court are meant to be obeyed. Any party who fails to obey court rules does so at his own peril. Such a party as the appellants herein cannot be heard to complain. See: Afolabi v. Adekunle (1983) NSCC 398 at 405; University of Lagos v. Aigoro (1985) 1 NWLR (Pt.1) 143.

The above is still not the end of the scenario. Learned counsel for the appellants filed a motion for stay of proceedings pending appeal against the earlier Ruling of the court on 18th July, 1996 presumably to stop the trial court from reading its judgment the next
E day. On 19th July, 1996, appellant's counsel who was in court did not draw the intention of the court to the motion; all in a bid to set
F the stage for appeal.

Learned counsel for the appellants, no doubt, mishandled the matter. The appeal filed before the Court of Appeal was a ruse. It
G had no modicum of chance for success.

For the above remarks and the detailed reasons contained in the judgment of my learned brother, this appeal should be dismissed. I order accordingly and abide by all consequential orders therein contained; that relating to costs inclusive.

H

RHODES-VIVOUR JSC

I have had the privilege of reading in draft the judgment of my learned brother, Mohammed, JSC. I am in full agreement with

his reasoning and conclusions. I propose to add a few observations.

The procedure under Order 3 Rules 9 - 13 of the Federal High Court (Civil Procedure) Rules 1976 is designed to prevent delay in cases where the plaintiff has a clear case and the defendant has no defence. So, where the plaintiff satisfies the court with affidavit evidence which the defendant cannot answer, the court would enter judgment for the plaintiff thereby avoiding a full blown trial with the usual expense, frustrations and delay. If the defendant files an affidavit disclosing a defence on the merit, he would be granted leave to defend by the court, and if there are conflicts in the affidavits of both parties the suit would be taken out of the undefended list and placed in the general list for a hearing in the well known way. It prevents worthless and sham defences. See U.T.C. (Nig) Ltd. v. Pamotei (1989) 2 NWLR (Pt. 103) p.244, Jammal Engineering Co. Ltd. v. Misr (Nig) Ltd. 1972 Vol. 7 NSCC P.216; Olubusola Stores v. Standard Bank Nig. Ltd. 1975 Vol. 9 NSCC p.137

On being served the plaintiffs processes the defendants' instead of filing a Notice of intention to defend the action with an affidavit disclosing a defence on the merit filed a Motion for stay of proceedings, which was dismissed on 27/5/96. The suit was adjourned to 3/7/96 and then to 10/7/96 for hearing on the undefended list. On 10/7/96 the plaintiff's application was heard and judgment was fixed for 19/7/96. A day before the Ruling (i.e. on 18/7/96) the defendant filed another application for stay of proceedings. On 19/7/96 the learned trial judge entered judgment for the plaintiff/respondent. The judgment was confirmed by the Court of Appeal.

The central issue in the appeal is that the trial judge was wrong to enter judgment for the plaintiff/respondent when there was a second application for stay of proceedings pending. It is clear that the appellants' are not complaining about the judgment of the Court of Appeal which confirmed the judgment of the trial court for a liquidated sum. Their complaint is procedural.

Under the undefended list procedure under Order 3 Rules 9 - 13 of the Federal High Court (Civil Procedure) Rules 1976 the defendants' can only be heard in court if, and only if they file a defence on the merits, Filing an application for stay of proceedings amounts to non compliance with Order 3 Rules 9 - 13 (supra).

A defendant who refuses to comply with the Rules of the court

should not expect a hearing from the court on his application. The pending application for stay of proceedings would have no effect on the legitimate course of the application for judgment, and the learned trial judge was correct to ignore the application and enter judgment for the plaintiff/respondent in the absence of any form of defence
B from the defendants/appellants. The Court of Appeal was right to confirm the judgment of the trial court.

For this and the more detailed reasoning in the leading judgment I dismiss this appeal with costs of N50,000 to the respondent.

C _____

NGWUTA JSC

I read in draft the lead judgment just delivered by my learned brother, Mohammed, JSC and I adopt the reasoning and conclusion
D therein as mine.

The matter was adjourned to 19th July 1996 for judgment. The respondent's second motion for a stay of proceedings was filed on 18th July 1996. A judgment/ruling for delivery on 19/7/96 ought to have been ready on or before 18/7/96. Even if the motion filed
E on 18/7/96 had been processed and put in the Court file, the learned trial Judge, having concluded the judgment/ruling, is not expected to go through it before delivering same on 18/7/96. To use the learned Counsel's expression, an apt one in this case in the circumstances of
F this case, it was incumbent on the learned Counsel who was in Court to inform the Court of the motion he filed the previous day. His failure to do so smacks of a deliberate trap meant to create for him a ground of appeal. Learned Counsel was caught in his own trap and he cannot lay the blame on the learned trial Judge. He gambled and
G lost.

For the above and the fuller reasons in the lead judgment, I also dismiss the appeal as lacking in merit. I adopt the order for cost made in the lead judgment.

H