

**SUPREME COURT OF NIGERIA**  
MONDAY 10TH OCTOBER, 2011. SC. 256/2005  
**CORAM:- M. MOHAMMED,**  
**M. S. MUNTAKA-COOMASSIE, J. A. FABIYI,**  
**O. O. ADEKEYE, M. PETER-ODILI, JJSC**

ALH. ABUBAKAR JALLI GAMBO ..... APPELLANT  
AND  
JERRY IKECHUKWU & ORS ..... RESPONDENTS

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ACTIONS - Commencement - Wrongful procedure - The claim not being for debt or liquidated money demand - Disqualified the case from being heard under the undefended list procedure (H1)

**HELD** (Unanimously allowing the appeal per  
**MOHAMMED JSC**)

*ACTIONS - Commencement - Wrongful procedure*

**1. It is quite plain that the relief not only required proof of the alleged acts in breach of the contract between the parties, credible evidence was also required to have proved the extent of general damages claimed by the plaintiff resulting in the trial court awarding only N40,000.00 out of the N1,000,000.00 claimed by the plaintiff. On these undisputed facts, I am of the view that this case did not satisfy the requirement of Order 23 Rule 1 of the Federal Capital Territory (F.C.T.) High Court Rules, for hearing under undefended list not being a claim for debt or liquidated money demand.**

**For this reason, I agree with the Learned Counsel on both sides that this case ought to have been transferred to the General cause list for hearing on the merit on pleadings. Accordingly, this appeal is allowed. The judgments of the Court of Appeal of 17/4/2003 and that of the trial court of 2/7/1997 are hereby set aside. There shall be an order remitting the entire plaintiff's claims contained in the writ of summon for hearing by another judge of the trial court on pleadings.**

(p. 2870 D)

**REPRESENTATION**

Chief Wale Taiwo with O. Olakanmi, for the Appellant  
Samuel Zibiri with Sonny Idasefiema and Azodoh Uzoma, for the  
Respondents

**RULES REFERRED TO**

Federal Capital Territory High Court Rules, O. 23 r. 1

**LEAD JUDGMENT BY MOHAMMED JSC**

In this appeal which is fixed for hearing today, it is quite clear from the writ of summons marked for hearing under the undefended list of the trial that the 3 distinct reliefs granted by the trial Court on hearing the action under the undefended list of that Court included the 3rd relief which reads:-

*“(iii) N1,000,000.00 (One Million Naira Only) as general damages for breach of contract”*

***It is quite plain that the relief not only required proof of the alleged acts in breach of the contract between the parties, credible evidence was also required to have proved the extent of general damages claimed by the plaintiff resulting in the trial court awarding only N40,000.00 out of the N1,000,000.00 claimed by the plaintiff. On these undisputed facts, I am of the view that this case did not satisfy the requirement of Order 23 Rule 1 of the Federal Capital Territory (F.C.T.) High Court Rules, for hearing under undefended list not being a claim for debt or liquidated money demand.***

***For this reason, I agree with the Learned Counsel on both sides that this case ought to have been transferred to the General cause list for hearing on the merit on pleadings. Accordingly, this appeal is allowed. The judgments of the Court of Appeal of 17/4/2003 and that of the trial court of 2/7/1997 are hereby set aside. There shall be an order remitting the entire plaintiff’s claims contained in the writ of summon for hearing by another judge of the trial court on pleadings. I am not making any order on costs.***

**MUNTAKA-COOMASSIE JSC**

There is an unliquidated money demand of one million naira. See relief 3 at the trial court. The learned trial court Judge dealt with the matter as undefended list - writ. No court can do that without calling evidence. The matter could have been thrashed out there and then. It could have been sent back to general cause list for hearing. Appeal with the consent of both counsel is going to be remitted back to the trial court to be transferred to the general cause list for hearing.

The claims are not liquidated money demand. The trial court lacks the jurisdiction to try to entertain the suit under the undefended list procedure and the Court of Appeal was not right to agree with the trial court.

The appeal has merit and is allowed and the decision of the court of Appeal is set aside together with the decision of the trial court. The matter be remitted back to the trial court for hearing.

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**FABIYI JSC**

This appeal deals with action filed under the undefended list procedure. Relief (iii) as endorsed in the writ of summons is for N1 million general damages for breach of contract which is not one suitable for hearing under the undefended list procedure. It is not a liquidated money demand.

The appeal has merit. It is hereby allowed. The suit shall be heard by the Federal Capital Territory High Court under the general cause list upon due filing of pleadings. I agree with the judgment of my learned brother, Mahmud Mohammed, JSC.

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**ADEKEYE JSC**

The matter heard by the High Court under the undefended list procedure has no feature to qualify it to be entered on that list. In view of the claim for general cause list so as to hear evidence on the One Million Naira Claim for general damages. There is lack of fair hearing in the trial before the High Court. The Justice of this case can only be met by sending the matter down to the trial court for hearing ab initio on the merits. The appeal is allowed. The matter is to be heard De novo before another judge. No order on costs.

**PETER-ODILI JSC**

The Brief No.3 that we can see should not have been heard on the Undefended List. In fact the suit had areas requiring evidence to be proffered and so the suit should be sent to the General Cause List  
B for trial on the merits.

It is directed that the matter be sent back to the FCT Trial High Court to be tried in the General Cause List. This matter does not fall within the ambit of causes that should be dealt with in the  
C Undefended List. This order is made in the interest of Justice since the issue of unliquidated as shown in the writ and other processes damages are to be clarified by evidence.

Appeal is allowed. The judgments of the court below and that of the Trial High Court of the FCT are hereby set aside.

D The suit to be tried by pleadings and in the General Cause List.

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