IN THE SUPREME COURT OF NIGERIA

Suit No: SC295/2000

Petitioner: Ataguba and Company
And
Respondent: Gura Nigeria Limited

Date Delivered: 2005-02-11

Judge(s): Muhammadu Lawal Uwais , Sylvester Umaru Onu , Akintola Olufemi Ejiwunmi , NikiTobi , Dennis Onyejife Edozie

Judgment Delivered

By a writ of summons filed on 4th May, 1988 in suit No KD4/KAD/257/98 at the Kaduna State High Court, the respondent as plaintiff sued the defendant/appellant, Ataguba and Company being the business name of Mr. E. E. Ataguba a legal practitioner of No. 27, Ali Akilu Road, Kaduna. The claim was for the sum of N750,000.00 (seven hundred and fifty thousand naira only) with interest at the rate of 21% from 11th May, 1995 till the date of judgment and thereafter at the rate of 10% until the judgment sum is liquidated. The principal sum claimed represents the amount paid by the respondent to the appellant as the purchase price of a DAF truck with registration No. KD 144 SR which vehicle was later retrieved from the respondent upon the sale being set aside by the court pursuant to an interpleader proceedings. The suit was filed under the \"undefended list\" procedure and was supported by an affidavit of nine paragraphs (with two exhibits) sworn to by Tahir Saleed, a litigation officer in the firm of Sofianu Saleh Gadem & Co. the solicitor to the respondent.

Upon being served with the summons, the appellant through his counsel entered a conditional appearance on 16th June, 1998 and later on 7th July filed a notice of intention to defend the suit accompanied with an affidavit sworn to by the appellant to which affidavit were annexed four exhibits. Furthermore, the appellant filed on 7th July, 1998 a notice of preliminary objection to the effect that the appellant, as named, Ataguba and Company, is not a juristic person and as such the suit should be struck out as the court had no jurisdiction to entertain same. This objection appeared to have been glossed over.

The trial court took the argument of counsel on the \'notice of intention to defend\' and in a ruling delivered on 20th July, 1998, the learned trial Judge, Kurede, J. held that the appellant had not by his affidavit disclosed a defence on the merit to warrant the transfer of the suit to the general cause list and thereupon, he proceeded to enter judgment for the respondent in the sum of N750,000.00 (Seven hundred and fifty thousand naira only) without costs.

Against that ruling, the appellant lodged an appeal to the Court of Appeal raising therein the preliminary objection to jurisdiction based on the alleged incapacity of the named appellant as a non-juristic person, an objection which for reason not apparent on the record was not entertained by the trial court. After hearing the appeal, the Court of Appeal, Kaduna Division, in a unanimous decision delivered on 9th of May, 2000 dismissed the appeal both on the objection on the personality of the named appellant and the merits of the case. Undaunted, the appellant has further appealed to this court.

Briefs were filed and exchanged and in the appellant\'s brief two issues were identified and adopted by the respondent for the determination of this appeal. These are:-

\"(1) Whether the Court of Appeal was not in error when it held that the entire proceedings before Hon. Kurede, J. (sic) were not rendered a nullity by the fact that the purported defendant was not a juristic or legal person'

(2) Whether the Court of Appeal was right when it affirmed the decision of the High Court that the appellant\'s notice of intention to defend an affidavit in support did not disclose sufficient facts and materials constituting a defence on the merit.\"

With respect to the first issue for determination, dealing with the non-juristic personality of the named appellant on record, \"Ataguba and Company\" it is submitted in the appellant\'s brief that generally, parties to an action must be juristic persons, that is, natural persons or persons recognised by law citing the case of Lion of Africa Insurance Co. Ltd. v. Esan (1999) 8 NWLR (Pt. 614) 197 at 201 adding that where either of the parties lacked the juristic personality of suing or being sued, the court would have no jurisdiction to adjudicate over the matter, consequently any proceedings thereon would be a nullity on the authorities of the cases of Rossek v. A.C.B. Ltd. (1993) 8 NWLR (Pt. 312) 382 and Madukolu v. Nkemdilim (1962) 2 SCNLR 341.

It was pointed out that there are exceptions to the general rule where the rules of court permit non-juristic persons to sue or be sued. In this connection, reference was made to Order 11 rules 9 and 26 of the Kaduna State High Court (Civil Procedure) Rules, 1987, which the court below relied upon in holding that the appellant was properly sued in the name of his firm \"Ataguba and Company\". But learned counsel for the appellant expressed the view that Order 11 rules 9 and 26 were unavailing. He contended that since the affidavit evidence of the parties did not establish that there are two or more persons practising as partners in the name and style of \"Ataguba and Company\", the appellant was not stable in that name under rule 9. He craved in aid the case of Iyke Medical Merchandise v. Pfizer Inc. (2001) 10 NWLR (Pt. 722) 540; (2001) 5 SCNJ 27 paras. 15 to 20. Furthermore, he argued that the appellant was not carrying on business in a name or style other than his own name to make rule 26 applicable. But learned counsel for the respondent in his brief of argument argued to the contrary. He was of the view that the appellant was properly sued in the name of his firm in accordance with Order 11 rule 26 of the aforesaid Kaduna State High Court (Civil Procedure) Rules, 1987 relying in support of his contention the following cases:- Carlen (Nig.) Ltd. v. University of Jos (1994) 1 NWLR (Pt. 323) 631 at 656; Thomas v. Local Government Service Board (1965) NMLR 310; Provost Alvan Ikoku College of Education v. Amuneke (1991) 9 NWLR (Pt. 213) 49.

The dispute which eventually culminated into this appeal started when the respondent bought a vehicle from Mr. E. E. Ataguba, a legal practitioner, who issued a receipt of the price paid in the firm name of \"Ataguba and Company\".

That informed the respondent to commence the action in that firm name for the refund of the purchase price of the vehicle when there was a total failure of consideration by reason of the fact that the vehicle in question was subsequently recovered from the respondent following the setting aside of the sale by the High Court under an interpleader proceedings. The question now being raised under the first issue for determination in this appeal is whether an action is maintainable against the appellant in the firm\'s name, the firm not being a juristic persona.

Undoubtedly, for an action to be properly constituted so as to vest jurisdiction in the court to adjudicate on it, there must be a competent plaintiff and a competent defendant. As a general principle, only natural persons, that is, human beings and juristic or artificial persons such as body corporate are competent to sue or be sued. Consequently, where either of the parties is not a legal person, the action is liable to be struck out as being incompetent: see Shitta v. Ligali (1941) 16 NLR 23; Agbonmagbe Bank Ltd. v. General Manager G. B. Ollivant Ltd. and Anor (1961) 1 All NLR 116. The law, however, recognises that apart from natural and juristic persons, some non-legal entities can sue and be sued eo nomine. Thus it has been held that no action can be brought by or against any party other than a natural person or persons unless such a party has been given by statute, expressly or impliedly or by the common law, either-

(a) a legal persona under the name by which it sues or is sued, e.g. corporation sole and aggregate, bodies incorporated by foreign law and \"quasi-corporations\" constituted by Act of Parliament; or

(b) a right to sue or be sued by that name e.g. partnerships, trade unions, friendly societies and foreign institutions authorised by their own law to sue and be sued but not incorporated.

See Fawehinmi v. N.B.A. (No.2) (1989) 2 NWLR (Pt. 105) 558; Knight and Searle v. Dove (1964) 2 All E.R 307 at 301; Carlen (Nig.) Ltd. v. Unijos (1994) 1 NWLR (Pt. 323) 631.

In the instant case, the appellant on record sued by the firm\'s name is not a juristic) person capable of suing or being sued in the firm\'s name but it could have that capacity if there is an enabling law. In this regard, the applicability of

Order 11 rules 9 and 26 of the Kaduna State High Court (Civil Procedure) Rules, 1987, needs to be examined.

The rules provide thus:-

\"9. Any two or more persons claiming or alleged to be liable as partners may sue or be sued in the name of the firm in which they were partners when the cause of action arose; and any party to an action may in such case apply to the court for a statement of the names and addresses of the persons who were, when the cause of action arose, partners in any such firm, to be furnished in such manner, and verified on oath or otherwise, as the court may direct.\"

\"26. Any person carrying on business within the jurisdiction in a name or style other than his own name may be sued in such name or style as if it were a firm name and; and so far as the nature of the case will permit, all provisions relating to proceedings against firms shall apply.\"

Under rule 9 above, any two or more persons claiming or alleged to be liable as partners may sue or be sued in the name of the firm in which they were partners when the cause of action arose. For the rule to apply, there must be two or more persons claiming or liable as partners. The provision is not concerned with a firm which is owned and or run by one person only: see the case of Iyke Medical Merchandise v. Pfizer Inc. (2001) 10 NWLR (Pt. 722) 540 at 565 where this court interpreted identical provision contained in Order 4 rule 6 of the Federal High Court (Civil Procedure) Rules, 1976. Order 11 rule 26 of the Kaduna State High Court (Civil Procedure) Rules, 1987, meets the situation where one person carrying on business within jurisdiction in a name or style other than his own name may be sued in such a name or style as if it were a firm.

In the case in hand, in the respondent\'s affidavit in support of its claim, it was deposed in paragraph 3(b) thereof, thus:-

\"3(b) The defendant is a firm of legal practitioners situate along Akilu Road, Kaduna.\" (sic)

And in the same vein, in the appellant\'s affidavit in support of the notice of intention to defend, the deponent, E. E. Ataguba averred in paragraph 1 thereof as follows:-

\"1. That I am principal partner in the firm of Ataguba and Company, legal practitioners of 27 AN Akilu Road, Kaduna and by my position I know the facts of this suit well.\"

It is plain to me that from the above averments, it is reasonable to assume that the firm of Ataguba and Company consists of and/or is run by more than one person to entitle the respondent to maintain the action in the name of the firm pursuant to Order 11 rule 9 of the Kaduna State High Court (Civil Procedure) Rules, 1987. But even if it is suggested that the firm is a one man business, the suit in the name of the firm is authorised under rule 26 of the said Order 11.It is, therefore, my view that even though the firm \"Ataguba and Company\" is not a juristic person, it is suable eo nomine by virtue of Order 11 rule 9 or 26 of the Kaduna State High Court (Civil Procedure) Rules, 1987. The appellant\'s contention to the contrary, is misconceived and baseless as rightly conceded to by learned counsel who represented the appellant in court when the appeal was being heard.

The second issue for determination posed the question whether the appellant\'s notice of intention to defend with its affidavit in support disclosed sufficient facts and materials constituting a defence on the merit. Referring to the case of Yabola Ltd. v. Trade Bank Plc. (1998) 6 NWLR (Pt. 555) 670 at 680, the learned counsel for the appellant, stressed in his brief that what is required of the affidavit in support of the notice of intention to defend is that it must disclose particulars which if proved would constitute a defence maintaining that the appellant\'s affidavit in support of the notice to defend in the instant case did not disclose a defence on the merit. In his reply, respondent\'s counsel expressed a contrary view in his brief, submitting that leave to defend may be granted where the defendant\'s affidavit raised substantial question of fact or law which ought to be tried or where the defendant alleges misrepresentation by the plaintiff and the misrepresentation is of such a nature as to entitle the defendant to interrogate the plaintiff or his witness. The case of University of Nigeria v. Orazulike Trading Co. (1989) 5 NWLR (Pt. 119) 19 was referred to. It was contended that the respondent\'s case was not controverted and as such the Court of Appeal was right in affirming the decision of the trial court not to grant the appellant leave to defend.

The respondent\'s case was brought under the \"undefended list\", a procedure governed by Order 22 of the Kaduna State High Court (Civil Procedure) Rules, 1987, rules 1 to 4. Under the rules, a defendant, who upon being served the plaintiffs claim with supporting affidavit decides to contest the claim is enjoined to file a notice of intention to defend with an affidavit disclosing a defence on the merit. On the basis of that affidavit, the court may give him leave to defend, in which case, the suit is removed from \"undefended list\" and transferred to the \"ordinary cause list\" for trial upon pleadings.

On the other hand, the court may, after studying the affidavit and being satisfied that it discloses no defence on the merit, proceed to hear the case as an undefended suit and give judgment thereon without calling upon the plaintiff to summon witnesses before the court to prove his case formally.

The object of the undefended list procedure is to enable a plaintiff whose claim is unarguable in law and where the facts are undisputed and it is inexpedient to allow a defendant to defend for mere purposes of delay, to enter judgment in respect of the amount claimed: - see Macaulay v. NAL Merchant Bank Ltd. (1990) 4 NWLR (Pt. 144) 283 at 324-325. 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 notice of intention to defend discloses a defence on the merit. In this regard, it has been held that it must disclose a prima facie defence: Bendel Construction Co. Ltd. v. Anglocan Development Co. (Nig.) Ltd. (1972) 1 All NLR 153. The affidavit must not contain merely a general statement that the defendant has a good defence to the action. Such a general statement must be supported by particulars which if proved would constitute a defence: see John Holt & Co. (Liverpool) Ltd. v. Fajemirokun (1961) All NLR 492. It is sufficient if the affidavit discloses a triable issue or that a difficult point of law is involved; that there is a dispute as to the facts which ought to be tried, that there is a real dispute as to the amount due which requires the taking of an account to detetmine or any other circumstances showing reasonable grounds of a bona fide defence: Nishizawa Ltd. v. Jethwani (1984) 12 SC 234; F. M. G. v. Sani (1990) 4 NWLR (Pt. 147) 688 at 713. To ascertain whether the appellant\'s affidavit in support of the notice of intention to defend disclosed a defence on the merit in line with the principles stated above, it is desirable to examine the case put up by each party.

For the respondent\'s case, paragraphs 4, 5,6, 7, 8 and 9 of its affidavit are material and they are reproduced thus:-

\"(4) That sometime on or about the 11th May, 1995 the defendant collected through Afri Bank (Nig.) Plc. (cheque) No. KB006648 the sum of N750,000.00 (being purchase price) on the purported ground that a DAF truck with registration No. KD 144 SR would be sold to him, (photocopy of receipt dated 11th of May, 1995 acknowledging receipt of the said sum is hereby attached and marked as Exh. ('A\')
(5) That the defendant collected and cashed the cheque and the plaintiff\'s account was accordingly debited.

(6) That the truck was thereafter delivered to the plaintiff for only two weeks and thereafter the truck was seized on the order of the Chief Judge of Kaduna State.

(7) That it is now three years since the defendant collected the money without delivery despite oral and written demands to the defendant including letter written by plaintiff\'s solicitors dated 16th March, 1988, the defendant refused to pay the plaintiff (the said letter is hereby attached and marked as Exh. \"B\"). That the defendant has no defence to the suit.\"

The appellant\'s version as portrayed in paragraphs 2,3,4, 5, 6, 7, 8 and 9 of the affidavit in support of the notice of intention to defend reads:-

\"2. that I know as a fact the defendant is not indebted to the plaintiff in the sum of N750,000 or in any sum whatsoever.

3. That on or about the 11th of May, 1995, a DAF truck with registration No. KD 144 SR was sold to the plaintiff by bailiffs of this court in the sum of #750,000 in execution of a valid and subsisting judgment of this court in the sum of N5.3 million in suit No. DKH/KAD15/95 between Inland Bank Nigeria Plc. (plaintiff and judgment creditor) and Cash

Affairs Finance Limited (defendant and judgment debtor) and further that attached to this affidavit and marked as exhibits 1, 2 and 3 respectively are:- a copy of the certificate of judgment, a copy of the writ of attachment and a copy of the notice of auction.

4. That the said truck which was attached by bailiffs of this court in February, 1995 and which had been in the premises of the High Court was delivered to the plaintiff on the said 11th May, 1995 by bailiffs; that as solicitors to the aforementioned Inland Bank Nigeria Plc., we collected the proceeds of the sale and paid it into our account with the Kaduna Branch of the said Inland Bank Nigeria Plc. and forwarded same to (sic) them on or about the 18th day of May, 1995 vide our cheque No. 01879 of even date in the sum of N1 million being the aforementioned proceeds of sale and other monies of the bank in our possession. Attached to this affidavit and marked as exhibit 4 is a copy of the statement of account of Ataguba and Company.

5. That thereafter, upon the application of Ugo Udoji, Esq., of counsel, solicitor to Messrs Chikaji Motors Ltd., Zaria who had laid claim to the said truck by way of an interpleader summons, the sale of the said truck was set aside by this court in June 1995 and it was ordered that the said truck be returned to the premises of the court whereupon, bailiffs of this court on or about the 9th August, 1995 recovered the truck from the plaintiff and returned same to the High Court premises where it still is till date.

6. That thereafter I requested Inland Bank Plc. my erstwhile client to return the proceeds of the sale to enable me refund same to the plaintiff but they have persistently refused to do so.

7. That pursuant to the refusal, I have caused to be instituted in the High Court, Kaduna suit No. KDH/KAD/357/98 against Inland Bank Nigeria Plc. seeking a refund of the proceeds of the said sale which suit is currently pending. Attached to this affidavit and exhibit 5 is a copy of the writ of summons.

8. That the defendant has a defence to this action.\"

In his appraisal of the appellant\'s affidavit partly reproduced above, the learned trial Judge, on page 35 of the record, reasoned as follows:-

\"The defendant in his affidavit has not denied issuing this exhibit \"A\". In fact the affidavit is absolutely silent on this exhibit. The exhibit clearly shows that the plaintiff paid the sum of N 750,000.00 to the defendant on 11th May, 1995 which sum the defendant collected and issued exhibit \"A\" and the amount was payment for a DAF truck No. KD 144 SR.\"

The claim by the defendant in his affidavit that it was the bailiff that sold the truck to the plaintiff is no defence at all as same is not borne or supported by any evidence. The law requires a defendant to show a defence on the merit and not just a defence. It is a notorious fact which this court has taken judicial notice of that whenever the bailiffs of this court sell any property by public auction, they issue the buyer with their official receipt. This is however not so in the instant case. From exhibit \"A\", it was the defendant that sold the truck, received the sum of N750.000.00 (Seven hundred and fifty thousand naira) being payment for the truck and issued exhibit \"A\" which he has not denied.

Other averments in the defendant\'s affidavit concerning other cases in respect of the DAF truck are also no defence to this action. They have no relevance to this case which is for the refund of N750,000.00 (Seven hundred and fifty thousand naira) paid to defendant by the plaintiff for a DAF truck and which transaction has not been denied. The defendant\'s affidavit in my view has therefore not disclosed a defence on the merit to this action.\"

In endorsing the views expressed above, the Court of Appeal as per the leading judgment of Mohammed, JCA at p. 85 of the record had this to say:-

\"I entirely agree with the learned trial Judge. This is because on the face of the receipt issued by the defendant now appellant to acknowledge receiving the sum of N750,000.00 from the plaintiff now respondent being payment for the DAF truck No. KD 144 SR there is nothing to show that Inland Bank Nigeria Plc. was involved in the sale of the truck or

that it was sold by the bailiff of the Kaduna State High Court as claimed by the appellant. The facts averred in the appellant\'s affidavit in support of its notice of intention to defend do not at all controvert the facts in support of the respondent\'s claim that the sale transaction for the purchase of the DAF truck in question was clearly between the appellant and the respondent Since for the reasons stated by the appellant itself that the DAF truck which was delivered to the respondent on 11/5/95 after the sale transaction was later recovered and returned to the premises of the Kaduna High Court on the orders of the State Chief Judge where it is still lying pending the outcome of an action to determine its ownership, the respondent is indeed entitled to the refund of its money paid directly to the appellant from the appellant which received the amount and not from any other person not connected with the sale.\"

In my view, the two courts below cannot be faulted. The appellant\'s affidavit in question does not disclose any real triable issue. The only seemingly triable issue raised therein concerns the allegation that the truck in question was sold by the bailiffs. But that issue is resolved by documentary evidence, that is, the receipt exh. \"A\" which confirmed that the sale was effected by the appellant. The substance of the appellant\'s defence is that he acted as an agent for the Inland Bank Plc. But this defence is unavailing. Admittedly, the general law is that a contract made by an agent acting within the scope of his authority for a disclosed principal is in law the contract of principal, and the principal and not the agent is the proper person to sue or be sued upon such contract see Carlen (Nig.) Ltd. v. Unijos, (supra) at p. 659.

But surely, if an agent in his name enters into a transaction with another, he can sue and be sued in respect of that transaction. This is in accord with the views expressed in Chitty on Contracts, 28th Edition, Volume 2, p. 53 paragraphs 32-87 to the following effect: -

\"A very important exception to the rule that an agent is neither entitled to sue nor liable to be sued on a contract made by him in a representative capacity is to be found where an authorised agent makes the contract in his own name without disclosing the fact that he was acting on behalf of another. On such contracts he can sue and be sued in his name because he is then to all appearances the real contracting party.\"

See Alien v. O\' Hearn & Co. (1937) A.C 213,218.

In the case in hand, the appellant by selling the truck to the respondent and collecting purchase price and issuing a receipt thereto in his own name has become the real contracting party to the respondent. Consequently, the appellant is personally answerable for any breach of contract on his part. In the light of the foregoing, it is my judgment that this appeal lacks substance and is hereby dismissed with N10,000.00 (Ten thousand naira) costs to the respondent.

Judgment Delivered by
Muhammadu Lawal Uwais. C.J.N.

I have had the opportunity of reading in draft the judgment read by my learned brother, Edozie, J.S.C. I entirely agree with his reasoning and conclusions. I too hold that the appeal lacks merit and that it should be dismissed with N10,000.00 (Ten thousand naira) costs in favour of the respondent against the appellant.

Judgment Delivered by
Sylvester Umaru Onu. J.S.C.

For the reasons for judgment contained in the leading judgment of my learned brother, Edozie, J.S.C .just delivered, I am in full agreement therewith that the appeal is devoid of any merit. Accordingly, I too dismiss the appeal and make similar consequential orders inclusive of costs awarded therein.

Judgment Delivered by
Akintola Olufemi Ejiwunmi. J.S.C.

As I was privileged to have read in advance the judgment just delivered by my learned brother, Edozie, J.S.C., I am in entire agreement with the reasoning that led to the dismissal of this appeal. In an action begun under the undefended list is no less a trial between the parties and when a defendant is properly served, he has a duty to disclose his defence to the action. See Grand Cereals and Oil Mills Ltd. v. As-Ahel International Marketing Ltd. and Procurement Ltd. (2000) 4 NWLR (Pt. 652) 310; Alhaji Ahmed v. Trade Bank of Nigeria Plc. (1997) 10 NWLR (Pt. 524) 290.

As the appellant palpably failed to disclose such defence as I would exculpate him, the court below was right to have dismissed his appeal and I have no reason to depart from the well considered leading judgment of Edozie, J.S.C., dismissing the appeal. I abide with all the orders made including the order as to costs.

Judgment Delivered by
NikiTobi. J.S.C.

This is yet another matter on the undefended list. The amount involved is N750,000.00 (Seven hundred and fifty thousand naira). Sometime on or about the 11th day of May, 1995, the defendant who is the appellant in this court, collected through Afri Bank (Nig.) Pic. cheque No. KB006649, the sum of N750,000.00 (Seven hundred and fifty thousand naira) being purchase price for a DAF truck with registration No. KD144 SR to be sold to him. The appellant collected and cashed the cheque and the plaintiff/respondent account was debited. According to the respondent, the truck was thereafter delivered to it for only two weeks, when it was seized on the order of the Chief Judge of Kaduna State, Hon. Justice Ibiyeye (as he then was). The appellant refused to pay the 0 money to the respondent, and so the action was filed against him.

The appellant filed notice to defend the action. The learned trial Judge held that the appellant\'s defence was a sham. He entered judgment against the appellant in the terms of the writ of summons. An appeal to the Court of Appeal was dismissed. The appellant has come to this court.

The main issue before this court is whether the appellant was not a juristic or legal person. Mohammed, JCA, delivering the leading judgment of the court said at page 80 of the record:-

\"In other words if the firm of Legal Practitioners of Ataguba and Company has two or more legal practitioners operating the firm in partnership, that firm has the capacity to sue and be sued in the name of Ataguba and Company. However if the firm is being operated by Ataguba alone in that name and style other than his own name, the firm can all the same be sued in that name. For the foregoing reasons the suit of the respondent against the appellant in the name of Ataguba and Company as the defendant is quite competent and has no feature whatsoever depriving the lower court of jurisdiction to hear and determine the claim.\"

The Court of Appeal relied on Order 11 rules 9 and 26 of the Kaduna State High Court (Civil Procedure) Rules, 1987, and a number of cases. I should read the two rules here:-

\"9. Any two or more persons claiming or alleging to be liable as partners may sue or be sued in the name of the firm in which they were partners when the cause of action arose; and any party to an action may in such case apply to the court for a statement of the names and addresses of the persons who were, when the cause of action arose, partners in any such firm, to be furnished in such manner, and verified on oath or otherwise, as the court may direct.\"

\"26. Any person carrying on business within the jurisdiction in a name or style other than his own name may be sued in such name or style as if it were a firm\'s name; and, so far as the nature of the case will permit, all provisions relating to proceedings against firms shall apply.\"

Learned counsel for the appellant, Mr. S. S. Alegeh faulted the finding of the Court of Appeal at page 79 of the record on the ground that there is no evidence that Ataguba and Co. is made up of more than one partner or that E. E. Ataguba was running his business in name other than his own name.

Counsel based his submission on the following two paragraphs of the opposing affidavits. Paragraph 3(b) of the affidavit in support reads:-

\"The defendant is a firm of legal practitioners situate along Akilu Road, Kaduna.\"

Paragraph 1 of the affidavit of notice of intention to defend reads:-

\"That I am principal partner in the firm of Ataguba and Company, legal practitioners of 27, Ali Akilu Road, Kaduna and that by the position aforesaid I know the facts of this suit well.\"

It is clear from the above paragraphs that the appellant is a firm of legal practitioners of which Emmanuel Ataguba is the principal partner. A firm by dictionary definition is a business company. Although there could be difference between a firm and a company in law, I do not see where the submission of learned counsel will lead him to. Mr. Emmanuel Ataguba deposed in paragraph 1 of the notice of intention to defend that he is the principal partner in the firm of Ataguba and Company legal practitioners. The word \"principal\" in the context of paragraph 1 means highest in importance or position. It also means chief or main. The word presupposes that there is either one person or more persons in the firm other than Mr. Emmanuel Ataguba, the principal member. That apart, a company, and relevantly this refers to the cognomen (Co.) which completes the name of the appellant, presupposes more than one person. It is the law that one person cannot form or establish a company.

I have no difficulty in coming to the conclusion that the appellant comes clearly within Order 11 rules 9 and 26 of the Kaduna State High Court (Civil Procedure) Rules, 1987. In Carlen (Nig.) Ltd. v. University of Jos (1994) 1 NWLR (Pt. 323) 631 at 656, Ogundare, J.S.C., said:-

\"There are bodies generally regarded as quasi or near corporations on 25 whom statutes expressly or impliedly confer a right to sue or be sued though unincorporated. They are no legal personae strictu sensu but have a right to sue or be sued by a particular name. Examples of these are partnerships, trade unions, friendly societies and foreign institutions authorised by their own law to sue and be sued, though not incorporated.\"

In Chief Fawehinmi v. N.B.A. (No.2) (1989)2 NWLR (Pt. 105)558, this court held that the principal and jural units to which the law ascribes legal personality are (a) Human beings; (b) Companies incorporated under the various Companies Acts; (c) Corporation sole with perpetual succession; (d) Trade Unions; (e) Partnerships 5 and (f) Friendly societies.

The deponent, Mr. Emmanuel Ataguba deposed in paragraph 1 of his affidavit of notice of intention to defend that he is the principal partner, thus agreeing that the appellant is a partnership. As a partnership, it can sue and be sued in the name of 3 the partnership. There cannot be a better example of admission against interest. See Ojiegbe v. Okwaranyia (1962) 2 SCNLR 358; Seismograph Services (Nig.) Ltd. v. Eyuafe (1976) 9-10 SC 135; Ajide v. Kelani (W85) 3 NWLR (Pt. 12) 248; Nwankwo v. Nwankwo (1995) 5 NWLR (Pt. 394) 153; Kamalu v. Umunna (1997) 5 NWLR (Pt. 505)321.

That takes me to issue No. 2 and it is whether the Court of Appeal was correct in coming to the conclusion that the facts deposed to in the defendant\'s affidavit did not constitute a defence on the merit to the plaintiff\'s claim for a refund of the sum of N750,000.00 (Seven hundred and fifty thousand naira). The object of the rules relating to actions on the undefended list is to ensure quick dispatch of certain types of cases such as those involving debts or liquidated money claims. See Bank of the North v. Intra Bank S. A. (1969) 1 All NLR 91.

A defence on the merit for the purposes of undefended list procedure may encompass a defence in law as well as on fact. The defendant must put forward some facts which cast doubt on the claim of the plaintiff. A defence on the merit is not the same as success of the defence in litigation. All that is required is to lay the foundation for the existence of a

triable issue or issues. See Nortex (Nigeria) Limited v. Franc Tools Co. Ltd. (1997) 4 NWLR (Pt. 501) 603.

What will constitute a defence on the merit depends on the facts of the case. This is within the discretion of the court of trial which must be exercised judicially and judiciously after a full and exhaustive consideration of the affidavit in support of the notice to defend. See Grand Cereals and Oil Mills Ltd. v. As-Ahel Intenzational Marketing Ltd. and Procurement Ltd. (2000) 4 NWLR (Pt. 652) 310; Alhaji Danfulani v. Mrs. Shekari (1996) 2 NWLR (Pt. 433) 723; Alhaji Ahmed v. Trade Bank of Nigeria Plc. (1997) 10 NWLR (Pt. 524) 290; Calvenply Limited v. Pekab International Limited (2001) 9 NWLR (Pt. 717) 164.

Under the undefended list procedure, the defendant\'s affidavit must condescend upon particulars and should as far as possible deal specifically with the plaintiff\'s claim and affidavit, and state clearly and concisely what the defence is and what facts and documents are relied on to support it. The affidavit in support of the notice of intention to defend must of necessity disclose facts which will at least throw some doubt on the case of the plaintiff. A mere general denial of the plaintiffs claim and affidavit is devoid of any evidential value and as such would not have disclosed any defence which will at least throw some doubt on the plaintiff\'s claim. See Agro Millers Limited v. Continental Merchant Bank (Nigeria) Plc. (1997) 10 NWLR (Pt. 525) 469.

To satisfy a Judge in an action on the undefended list, the defendant must depose to what on the face of the affidavit discloses a reasonable defence. See Jipreze v. Okonkwo (1987) 3 NWLR (Pt. 62) 737. I have carefully examined the affidavit in support of notice of intention to defend and I cannot see my way clear in faulting the decision of the Court of Appeal, which affirmed the judgment of the trial court. I am with the trial Judge who said that the defence was a sham.

In the light of the above and the more detailed reasons given by my learned brother, Edozie, J.S.C., I dismiss the appeal. I award N10,000.00 (Ten thousand naira) costs to the respondent.