

IN THE DISTRICT COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
F.C.T SMALL CLAIMS COURT

HOLDEN AT COURT 13(A) WUSE ZONE 2 ABUJA
BEFORE YOUR WORSHIP: ARIWOOLA, OLUWAKEMI V.
DATED THIS THE 2ND DAY OF FEBRUARY, 2024.

SUIT NO: SCC/17/2023.

BETWEEN:

ADEDAPO ESAN.....CLAIMANT

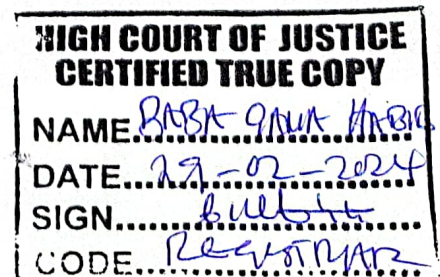
AND

ADEKEYE EZEKIEL AKIN-OLUBODE.....DEFENDANT

JUDGMENT

This matter was commenced under the Un defended Claims procedure as Small Claims Practice Direction 2022, wherein the Claimant claims the sum of **₦1, 660, 800.00 (One Million, Six Hundred and Sixty Thousand, Eight Hundred Naira) only** which is the equivalent of the sum of **\$1600 (One Thousand, Six Hundred Dollars)**, and **₦100, 000.00 (One Hundred Thousand Naira)** borne out of a payoneer fund exchange transaction against the Defendant via **Form SCA 3A** as provided under **Article 3** of the small claims practice direction.

By the provisions of **Article 7 (2)** of the Practice Direction, the Defendant upon being served with **form SCA 3A** and **Form**



SCA3B is expected to within 7 days of receipt of same file **form SCA 5A** in opposition or Counter of the Claimant.

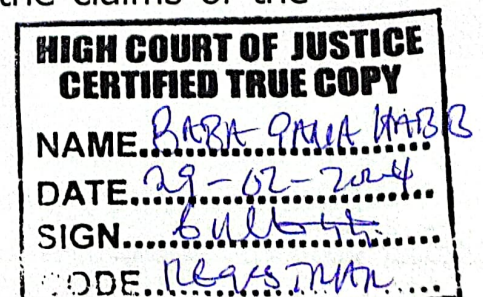
Matter was mentioned and the Claimant applied for an Order for substituted service to serve the Defendant via e-mail and whatsapp through his mobile number and also to serve the Defendant by pasting the Processes on the Notice Board of this Court.

Subsequently, matter was mentioned on the 30th day of November, 2023 and the Defendant was duly served by substituted service and matter came up for Hearing on the 10th day of January, 2024 and the Defendant did not file any Counter or Defence against the claims of the Claimant.

By the records of this Court, it shows that the Defendant was duly served by substituted service and the seven days within which the Defendant ought to reply or file his Counter has elapsed.

Without any doubt, the procedure as contained under the Small Claims Procedure is of no difference to that of the Default Summons as contained in the Rules of this Court same being for a procedure for recovery of liquidated sum of money which is demanded, and such is determined basically by affidavit evidence.

In this instance Suit, the Defendant having neglected and refused to file **form SCA 5** in opposition to the claims of the



Claimant it follows therefore that the affidavit evidence of the Claimant as presented before this Court remains unchallenged and uncontroverted.

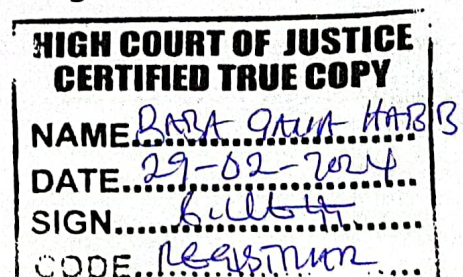
The position of the law is that where averments contained in an affidavit are not challenged by a way of Counter affidavit as the case may be such averments are deemed admitted by the party against whom they are sought.

However, it is also trite that every application must succeed on its own merit. That is to say that the averments contained in such affidavit must be cogent, credible and reliable. Based on this, this Court shall proceed to determine the application of the Applicant on its merit in the absence of the any Counter Process from the Defendant.

Then the next question is what is the evidence of the Claimant that the money claimed is a liquidated debt demand?

After a careful perusal of the Annexure attached to **form SCA3** and **SCA3B**, it shows that the Claimant (**Adedapo Esan ESQ.**) is acting for one named Adebisi Fashoyin. Analysis of the said Exhibit has not shown any link between the Defendant and the Claimant and how the Claimant arrived at the sum claimed as liquidated money demand.

This is indeed contradictory to prove the claim of the Claimant. To say that there is nothing before this Court to show that the Defendant did owe the said sum claimed, though the Letter of



Demand dated 23rd October, 2023 shows indeed that same was demanded, but same is contradictory which leaves the Court in a position where it might begin speculations.

And the position of the law is that the Courts are not allowed to speculate as findings of the Court are to be based on cogent and credible evidence. Furthermore, it has been held in plethora of authorities that a Court when faced with contradicting evidence from a Party is not in any position to choose and select which one to believe as the truth.

Based on the above, this Court hold that the Claimant has not been able to prove that he is entitled to the amount claimed.

Consequently, the sum claimed by the Claimant is hereby refused and this Suit is hereby struck out accordingly.

SIGNED:

ARIWOOLA, OLUWAKEMI V.

DISTRICT JUDGE

DATE: 02/02/2024

