IN THE DISTRICT COURT OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT WUSE ZONE II, FCT ABUJA (COURT 14)
BEFORE HIS WORSHIP: OLUMIDE BAMISILE
DATED THIS 14TH DAY OF NOVEMBER, 2023

BETWEEN SUIT NO: SC/30/2023

CHARLES EZIASHI -- CLAIMANT

VS

MICHEAL STEPHEN TOMIZAYI -- DEFENDANT

Parties: Present

Appearances: Chukwuemeka Mbakwe Esq for the claimant
Defendant not represented

JUDGMENT

This matter was commenced under the Small Claims Practice Direction, 2022 wherein the claimant took out forms SCA 3A and form SCA 3B under Article 3 of the Practice Direction against the defendant for the sum of ₦560, 000. Under this procedure which is similar to the default summons under the District Court Civil Procedure Rules, 2021. The defendant upon receipt of form SCA 3A and SCA 3B is expected to within 7 days file form SCA 5A in defence as contained under Article 7 paragraph 2 of the Small Claims Practice Direction.

This matter first came up on the 9/11/2023 wherein the defendant informed the Court that he was willing to settle with the claimant and this matter was adjourned to today for hearing in default of settlement. Today being the adjourned date for hearing, the claimant through his counsel informed the Court that settlement has failed and urged this Court to proceed into hearing of this undefended claim application.

From the evidence before this court, the defendant was served with the Claimant's Forms SCA 3A and SCA 3B on the 6/11/2023 and by the provisions of Article 7 Paragraph 2 of the Small Claims Practice Direction, the defendant is expected to within 7days file his response in Forms SCA 5 and SCA 5A to the sum claimed but he however failed and neglected to do so. This Undefended Claim procedure being one which is

basically determined by affidavit evidence, this therefore means that the affidavit evidence of the claimant has not been challenged by the defendant.

The position of the law is that where averments in an affidavit are not challenged or denied by way of counter affidavit or reply affidavit as the case may be, such averments are deemed to be admitted by the party against whom they are averred and the court is at liberty to hold same as the true state of facts. See LAJIBAM AUTO & AGRIC CONCERNS LTD & ANOR V. UBA PLC & ORS (2013) LPELR-20169(CA)

Be that as it may, it is also elementary that for a court to rely on averments contained in an affidavit, same must be credible, cogent and reliable. In ensuring this, this court has carefully perused the unchallenged affidavit evidence of the claimant and the annexures to same which are letter of agreement and letter of demand of the sum claimed against the defendant. From all of these, this court is satisfied that the defendant has no defence to this claim and that the said sum is truly liquidated and same has been demanded.

It also remains trite that where a party is given ample opportunity to present his case within the confines of the law, but chooses not to utilize same, he cannot later be heard to complain that his right to fair hearing has thereby been breached. See BILL CONST. CO. LTD. VS IMANI & SONS LTD. (2006) 19 NWLR (PT.1013).

In view of all above, this court hereby holds that the claimant is entitled to the sum of ₦560, 000 as claimed. Consequently, the defendant is hereby order to immediately pay to the claimant the sum of ₦560, 000 being the debt owed.

Olumide Bamisile, Esq
District Judge
F.C.T. Judiciary Abuja
Sign Date. 14/11/2023

Signed.
OLUMIDE BAMISILE
PRESIDING DISTRICT JUDGE
14/11/2023

HIGH COURT OF JUSTICE
CERTIFIED TRUE COPY
NAME Bolanwa Olawaseun
DATE 27/2/2024
SIGN
CODE