

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI
BEFORE HIS LORDSHIP, HON. JUSTICE A.A.I BANJOKO-JUDGE
DELIVERED ON THE 21st OF January 2019**

SUIT NO: FCT/HC/CV/0925/2018

BETWEEN:

1. NNPC PENSION FUND LIMITED

2. ABDULKAREEM SULE OBAITO

(Estate Agents, Valuers, and
Property Consultants Carrying out
Business in the name and style
“Sule Obaito & Associates”)

}

PLAINTIFFS

AND

1. FEDERAL MINISTRY OF YOUTH

AND SPORTS DEVELOPMENTDEFENDANT

- **NUHU IBRAHIM ESQ FOR THE PLAINTIFFS**
- **THE DEFENDANT WAS UNREPRESENTED**

JUDGMENT

By way of a Writ of Summons brought under the Undefended Cause List Procedure, dated and filed on the 14th of February 2018, the Plaintiffs are praying this Court for the following Reliefs: -

- 1) An Order for Specific Performance compelling the 1st Defendant to pay the Sum of N18, 700, 000.00 (Eighteen Million, Seven Hundred Thousand Naira) only being the total outstanding

agreed rent for the Lease of two houses each of 3 Bedroom Terrance Duplex +1 Room in suite at Basement, at Plot 1258, Pakali Close, Off Aminu Kano Crescent, Wuse II, Abuja.

- 2) An Order that the Defendant pays the Plaintiffs Post Judgment Interest at the rate of 10% per annum until final liquidation of the Judgment Sum
- 3) The Cost of this Action plus the Sum of N1, 500, 000 (One Million Five Hundred Thousand Naira) only being Legal Fees paid by the Plaintiffs to their Solicitors to prosecute this Suit for them.

In support of their Claims, the Plaintiffs filed a Twenty-Two (22) Paragraph Affidavit, on the 14th of February 2018, deposed to by the 2nd Plaintiff and attached Documentary Exhibits.

The Defendant was served with the Process but failed to respond to it. It is on Record that the Defendant was in receipt of the Originating Processes and Hearing Notices for the 17th of April 2018, 15th of June 2018, 26th June 2018, 27th September 2018, 18th October 2018, 1st November 2018, and the 27th of November 2018, and despite receiving them failed to appear in Court.

Now, Order 35 Rule 3 (1) of the High Court of the Federal Capital Territory Civil Procedure Rules, 2018 provides that a Defendant once served has not less than Five (5) days before the day fixed for Hearing to file a Notice of Intention to Defend the Suit alongside an Affidavit disclosing a Defence on the merit. See also the case of **CALVENPLY LTD VS. PEKALS INTL LTD (2001) 9 NWLR PART 717 PAGE 164 @ RATIO 2**, and **PLANWELL WATERSHED LTD AND ANOR VS CHIEF VINCENT OGALA (2003) 12 SCNJ @ 58**.

Despite Service of the Processes and several Hearing Notice of the pending action, the Defendant failed to file any Notice of Intention to defend the action as required under **Order 35 Rule 3(1)**.

Order 35 Rule 4 specifically states that “*where any Defendant neglects to deliver the Notice of Intention to defend and an affidavit prescribed by **Rule 3 (i)** or is not given leave to defend by the Court, the Suit shall be heard as an Undefended Suit and Judgment given accordingly.*”

Therefore, on the 27th of November 2018, Learned Counsel to the Plaintiffs argued his case and urged the Court to enter Judgment in the Plaintiffs’ favour.

It is trite Law that once a date is set for Hearing, and there is no intention to defend, the Court is obliged to proceed to Judgment. **ESO JCA** as he then was in the case of **SODIPO VS. LEMMINKAINEN (1986) 1 SC 198, 268** held that where the Defendant was duly served with the processes and did nothing, on the date fixed for Hearing, Judgment will be given for the Plaintiff. The Defendant cannot subsequently be heard to complain of lack of fair hearing. The Court as it has now done can safely assume jurisdiction because the Defendant have been duly served with the Court processes and can proceed to Judgment.

It is important to note that Affidavit evidence constitutes evidence and is different from averments in pleadings, which have to be supported by evidence, reference is made to **B.V MAGNUSSON V KOIKI (1999) 12 SCNJ 114**. When duly sworn to or deposed to before an official designated by law for that purpose, an Affidavit is in itself documentary evidence, reference is made to **AGBETOTU VS. BRISBIE (2005) ALL FWLR (PT 257) 1454 @1468**. The Supreme

Court has held severally that an Affidavit filed by parties in actions commenced by originating summons takes the place of evidence and that any material paragraph of an Affidavit not specifically denied is taken as admitted and constitutes unchallenged evidence upon which the Court can act.

It is also settled law that unchallenged facts in an Affidavit which remains uncontroverted are not only deemed admitted but also that the unchallenged and uncontroverted facts deemed admitted in the Affidavit of a party must be capable of proving and supporting the case of the party to entitle him to Judgment reference is made to the case of **OGOEJEFO VS. OGOEJEFO (2006) ALL FWLR (PT 301) N 1792 @ PG 1803-1806**

In this case at hand, the Affidavit deposed to in support of the Writ of Summons remained uncontroverted and unchallenged and in the absence of any incredibility, would be believed as credible and true evidence by the Court.

Therefore, the summary of the Case is as follows: -

The 2nd Plaintiff, who is an Estate Surveyor, Valuer and a Property Manager, in charge of the Property of the 1st Plaintiff claimed that the Defendant sometime in 2015 sought to secure accommodation for two of its High Performance Directors (Expatriates); Ms Angie Taylor and Eric S. Campbell.

Based on their request, an Offer Letter dated the 10th of December 2015 for the Lease of Two Units of a Three(3) Bedroom Terrace Duplex and a One (1) Room in suite basement at Plot 1258 Pakali Close off Aminu Kano Crescent, Wuse II, Abuja at the rental Value of

N9, 350, 000 (Nine Million, Three Hundred and Fifty Thousand Naira only) each was issued to the Defendant.

The Defendant accepted the Offer in a Letter dated the 1st of March 2016 and pleaded with the 2nd Plaintiff to grant Ms Angie Taylor and Eric S. Campbell access to the premises, as the rent and ancillary charges would be paid as soon as the 2016 Appropriation Bill was passed into Law. The Bill was passed, but the Defendant refused to pay the Rent.

The Tenancy was for the period from the 2nd of March 2016 to the 1st of March 2017, which has since expired, and at the expiration, Ms Angie Taylor and Eric S. Campbell quitted the premises without making any payments. The 2nd Plaintiff then wrote a Demand Letter to the Defendant on the 23rd of March 2017 requesting for the Sum of N18, 700, 000.00 (Eighteen Million, Seven Hundred Thousand Naira) being the outstanding owed them as rent for the Two Units.

The Defendant failed to respond to the Letter or contact them by any means, and based on this the 2nd Plaintiff caused his Solicitor to issue the Defendant with a Seven Day Quit Notice and Owners Intention to Recover Possession on the 11th of April, 2017.

The Defendant finally responded to the 2nd Plaintiff's Letter on the 11th of July 2017, wherein they admitted being indebted and promised to pay the arrears of rent in Six Instalments based on the Ministry's Monthly Fund Allocations or at intervals by the Ministry of Finance, as approved by their Management.

The 2nd Plaintiff responded to the Letter seeking for clarifications on the effective date for the commencement of the instalments and the amount per instalment, but the Defendant deliberately failed to respond. It is the Plaintiffs view that the Defendant being a Federal

Government Agency receiving large Budgetary Allocations can settle the debt. The 2nd Plaintiff claimed he had to pay his Solicitor N1, 500, 000. (One Million, Five Hundred Thousand Naira) to prosecute the Defendant.

According to the Plaintiffs, their claim is in regard to a Liquidated Money Demand, and they believe that the Defendant has no defence to the claims. The Defendant's failure to pay the money has caused a misunderstanding between their 2nd Plaintiff and the Defendant, and also affected the goodwill the 2nd Plaintiff enjoyed with the 1st Plaintiff, its Principal.

After a careful consideration, it is pertinent to note that Affidavit Evidence constitutes evidence, which is different from Averments in Pleadings that have to be supported by evidence; reference is made to **B.V MAGNUSSON VS KOIKI (1999) 12 SCNJ 114**. When duly sworn to or deposed to before an Official Designated by Law for that purpose, an Affidavit is in itself Documentary Evidence and reference is also made to **AGBETOTU VS BRISBIE (2005) ALL FWLR (PT 257)1454 @1468** and **STEPHEN LAWSON-JACK VS THE SHELL PETROLEUM DEVELOPMENT COMPANY OF NIG (2002) 7 SCNJ @ 121**, and the Averments contained therein ought to be deemed as true unless the Evidence so adduced is incredible and unbelievable. Unchallenged Facts in an Affidavit which remained uncontroverted are not only deemed admitted but also must be capable of proving and supporting the Case of the Party to entitle him to Judgment. Reference is made to the Case of **OGOEJEFO VS OGOEJEFO (2006) ALL FWLR (PT 301) N1792 @ PG 1803-1806**

It is trite that an Application brought under the Undefended Cause List Procedure must be for a Liquidated Money Demand, which is a specific amount accruing in favour of the Plaintiff from the Defendant. See **EDOZIE JCA in SAVANNAH BANK VS KYENTU LTD (1998) 2 NWLR PT 536, PG 41 AT 56**. The Application must be supported by an Affidavit setting forth the Grounds upon which the Claim is based, which deposition must contain the essential point that in the deponent's belief, the Defendant has no defence to the action.

The 2nd Plaintiff has set out clearly in his Affidavit the state of the transaction between the Parties, he has also attached documents to prove his claims, Also, in light of Exhibit E, the Defendant's Letter dated the 11th of July 2017, where in Paragraph 2, the Defendant referred to a Meeting where a decision was reached to pay the 2nd Plaintiff based on their allocation. Therefore, in the absence of a Defence, and the presence of Documentary Evidence validating the Plaintiffs' Claim, the Court finds the Plaintiffs Claim to be meritorious.

Therefore, an Order is made for the Specific Performance compelling the Defendant to pay the Sum of N18, 700, 000.00 (Eighteen Million, Seven Hundred Thousand Naira) only being the Total Rent agreed and Outstanding for the Lease of the Two Units of Three(3) Bedroom Terrance Duplex +1 Room in suite at Basement, at Plot 1258, Pakali Close, Off Aminu Kano Crescent, Wuse II, Abuja.

As regards the Prayer for Interest on the Judgment Sum at the rate of 10% per annum from the date of Judgment until final liquidation of the Judgment Debt, it is clear that interest on a Judgment Debt is

Interest after Adjudication. See **WAYNE W/A VS EKWURIFE (1989) 12 SCNJ 99 @ 118 - 119**. Moreover, this is allowed under **Order 39 Rule 4, of the Civil Procedure Rules of the Federal Capital Territory, 2018** and the Court Awards 10% Interest on the Judgment Sum from the Date of the Judgment until the Final Liquidation of the Debt.

As regards the Final Prayer for an Order for the Cost of the action, it is trite that a Successful Party should not be denied Costs, and that Costs follows the Event. It is not meant as a Bonus or as a Punishment. See the Case of **UNION BANK OF NIGERIA LTD VS NWAOKOLO (1995) 6 NWLR PART 400 PAGE 127**. The Court, therefore Orders Costs of N1, 500, 000.00 in favour of the Plaintiffs.

In conclusion, Judgment is entered in favour of the Plaintiffs.

HON. JUSTICE A.A.I. BANJOKO
JUDGE.