

**IN THE HIGH COURT OF JUSTICE OF THE
FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI - ABUJA**

BEFORE: HON. JUSTICE O.C. AGBAZA

COURT CLERKS: UKONU KALU & GODSPower EBAHOR

COURT NO: 12

SUIT NO: FCT/HC///20

BETWEEN:

**MIKKY LOFTY VENTURES.....CLAIMANT
VS**

**1. NIGERIA POLICE FORCE
2. POLICE SERVICE COMMISSION...DEFENDANTS/RESPONDENTS**

RULING/JUDGMENT

By a Motion on Notice dated 9/9/2018 but filed on 12/9/18, brought pursuant to Order 10 Rule 3 of the High Court of the Federal Capital Territory (Civil Procedure) Rule 2018 and under the inherent jurisdiction of court, the Claimant/Applicant seeks the following reliefs;

1. An Order entering Judgment for the Claimant in terms of the Amended Writ of Summons and Statement of Claim filed on the 8th day of June 2018.
2. And the omnibus relief.

Filed along is a 6 Paragraph affidavit with Exhibits "A" and "B" attached, deposed to by one Happiness Ozemoya, litigation officer in the law firm of Applicant's Counsel. Also filed is a Written Address in compliance with Rules of Court.

The processes was served on the Defendants/Respondents however, the Defendant/Respondents failed to file their respective responses to the Applicant's Motion on Notice.

In Written Address of the Applicant, Applicant's Counsel O.M. Ojite Esq formulated two (2) issues for determination;

1. Whether the Claimant is entitled to Judgment in terms of its Amended Writ of Summons and Statement of Claim in default of any defence by the Defendants.
2. Whether the Honourable Court can grant the relief sought by the Claimant/Applicant.

He urge the court to grant the application having considered the affidavit evidence, the submission of counsel as well as judicial authorities cited the court finds that only 1 (one) issue calls for determination that is;

"Whether the Applicant has made out sufficient ground to warrant the grant of the relief sought"

Firstly, the Defendants/Respondents were served the originating processes of court, hearing notices and this Motion, but the 1st, 2nd and 3rd Defendants

failed to file their respective Statement of Defence to the Claimant's originating processes, which necessitated the Claimant/Applicant to file this application to court to invoke the Provision of Order 10 Rule 1 of the High Court of the Federal Capital Territory (Civil Procedure) Rules 2018. The 1st, 2nd and 3rd Defendants/Respondents did not file their responses to this application, it is trite law that where an affidavit does not attract a counter-affidavit, the facts deposed to therein are therefore uncontroverted and deemed to have been admitted and must be taken as true. See Egbuna Vs Egbuna (1989) 2 NWLR (PT. 106)773. See also Gana Vs FRN (2012) All FWLR (PT. 617) 793 @ 800 Paras D – E.

In the instant application, the Applicant seek the powers of the court to enforce the rules contained in Order 10 Rule 3 of its Rules, the said Rule states;

“Where the claim in the originating process is a liquated demand and a Defendant or any of the Defendants fail to appear a Claimant may apply to the court for judgment on the claim in the originating process or such lesser sum and interest as the court may order”.

Thus the import of the above Rule is that, the court must ascertain, if the sum endorsed in the Writ of Summons is for a liquidated demand, the court is empowered to enter final judgment in favour of a Claimant for a sum not exceeding the amount claimed as liquidated, where the Defendant fails to appear in court. And in doing all of these, the court must peruse its record to ascertain the claims on the Claimant/Applicant's Writ of

Summons. And this the court is empowered to do. See the case of Agbareh Vs Mimra (2008) All FWLR (PT. 409) 559 @ 564 Ratio 7.

I have taken a considered look at the Writ of Summons filed by the Clamant/Applicant on 21/12/2016, the Claimant specifically endorsed as follows;

1. A declaration of this Honourable Court that the contract between the Plaintiff and the 1st Defendant is enforceable against the Defendants.
2. A declaration that the Defendants are indebted to the Plaintiff to the tune of ₦500,000.00 being the contractual sum agreed by the parties in this suit.
3. An order directing the Defendant to pay to the Plaintiff the sum of ₦500,000.00 being the total agreed contract sum as follows
12 qualities of (205/80 x 16) Michelin tires at ₦40,000 each = 480,000
1 (75x14) Michelin tire 20,000
Total = ₦500,000
4. The sum of ₦1,500,000.00 (One Million five Hundred Thousand Naira only) as general damages for breach of contract and for the untold hardship suffered by the Plaintiff in her business.
5. The cost of this action.

the Applicant seek the court to grant these endorsement as prescribed by

Order 10 Rule 1 of the Rules of Court, since the 1st, 2nd and 3rd Defendants/Respondents have failed to appear in court. In the case of Omilani Vs Omisore (2007) All FWLR (PT. 354) 351 @ 371 – 372 Paras A – B. the court emphasized the need to enforce its Rules per Ogunbiyi JCA (As He then was) when it held

“The court like any other court is enjoined to do substantial justice and to avoid technicalities but the court is bound by statute, both substantive and subsidiary, if the statute lays down a procedure the court is bound to enforce compliance”.

Applying the said Rules to the instant case, the court is mindful that reliefs 1,2 and 4 endorsed in the Writ of Summons being for declaratory reliefs and for special damages are reliefs not contemplated by the order 10 Rule 1 being involved herein, thus the court will refrain from making pronouncement on the said reliefs of the Claimant. The reliefs 3 and 5 of the Applicant are reliefs which are covered by the said Order, reliefs 3 being for liquidated demand and reliefs for cost. The 1st, 2nd and 3rd Defendants/Respondents having failed to file their respective responses to the Writ of Summons of the Claimant/Applicant and having admitted to the claims therein by their failure to file counter-affidavits to this Motion, the court will therefore invoke the Provisions of Order 10 Rule 1 of its Rules and enter Judgment in favour of the Claimant/Applicant as per his endorsement in his Writ of Summons filed on 21/12/16.

The application succeeds and judgment is entered as follows;

1. The Defendant shall pay to the Claimant/Applicant the sum of ₦500,000.00 being the total agreed contract sum as follows;
12 quantity of (205/80x16)Michelin tires @ ~~₦40,000.00~~ each
N480,000.00 1(75x14) Michelin Tires @ ₦20,000.00
Total= ₦500,000.00
2. Cost assessed at ₦50,000.00

HON. JUSTICE O. C. AGBAZA

Presiding Judge

27/3/2019

O.M. OJITE FOR THE CLAIMANT/APPLICANT

NO APPEARANCE FOR 1ST 2ND AND 3RD DEFENDANTS/RESPONDENTS