

**IN THE HIGH COURT OF THE FEDERAL
CAPITAL TERRITORY, ABUJA
HOLDEN AT ABUJA**

ON MONDAY, 15TH DAY OF APRIL, 2019

BEFORE HON. JUSTICE SYLVANUS C. ORIJ

SUIT NO. FCT/HC/CV/906/2019

BETWEEN

1. GATEGOLD NIGERIA LIMITED
2. SOLE FITNESS AND SPORTS LIMITED } CLAIMANTS

AND

1. HAVITOL HEALTHCARE LIMITED
2. PHARM. [MRS.] NKECHI HOPE NWIGWE } DEFENDANTS

JUDGMENT

In their writ of summons filed on 29/1/2019, the claimants claim the sum of N11,447,258.00 being defendants' outstanding indebtedness to them. The writ of summons was supported by an affidavit of 29 paragraphs deposed to by Nonso Nweke, the supervisory manager of the claimants. On 26/2/2019, I entered the suit for hearing under the undefended list; and the return date was fixed on 26/3/2019.

The records in the case file show that the originating processes were served on the defendants on 4/3/2019. When the matter came up for hearing on

26/3/2019, defendants were absent;and there was no reason for their absence. The defendants did not file any process in defence of the action especially the notice on intention to defend the suit and an affidavit showing a defence on the merit.

Learned counsel for the claimants, Ani Remigius Esq., relied on the facts in support of the claim as deposed to in the affidavit. He submitted thatthe defendants have no defence to the action and urged the Court to enter judgment for the claimants for the sum claimed.

In his affidavit, Nonso Nweke stated that:

1. The claimants carry on the business of wholesale and retail of sports, gym and fitness equipment in Abuja. In 2014, the 2nd defendant, who is the managing director of the 1st defendant, approached the claimants to purchase crazy feet massagers and other allied/sundry products on credit. Claimants, considering the entreaties and assurances, released the goods/products to the defendants.
2. The defendants issued to the claimants 4 cheques respectively for the sums of N6,276,500.00, N6,276,500.00, N1,500,000.00 and N3,900,000.00; the 4 cheques are Exhibits 1, 2, 3 & 4. The claimants presented the cheques but they were dishonoured and returned unpaid. Claimants informed the defendants of the ugly development. The defendants failed to pay the debt.

3. Sometime in June 2017, the defendants informed the claimants that they just secured big contracts with NIMASA and FAAN capable of assisting them to settle their indebtedness. Defendants requested the claimants to release further goods/products to them to enable them execute the said contracts.
4. The defendants signed a memorandum of understanding with the claimants wherein they admitted their indebtedness, proffered options and procedures of settlement of the debt to the claimants. The claimants obliged the defendants and released more goods to them worth millions of Naira.
5. The defendants issued 2 cheques to the claimants to cover the payment for the goods/products. The cheques [Exhibits 5 & 6] are respectively for the sums of N2,100,000.00 and N6,150,000.00. The claimants presented the cheques and they were dishonoured and returned unpaid.
6. On 3/10/2017, the defendants again approached the claimants to oblige them with more goods/products and a cash of N700,000.00 to enable them settle some pressing issues arising from another contract they were handling.
7. The claimants obliged the defendants and transferred N700,000.00 from the 2nd claimants First Bank account to the 1st defendant's account in First Bank; the First Bank local currency fund transfer teller dated 3/10/2017 is Exhibit 7.

8. On 4/10/2017, claimants released massage cushion worth N600,000.00 to the defendants on credit. The invoice covering the said item is Exhibit 8.
9. Since 2014 till date, the defendants are still indebted to the claimants to the tune of N11,447,258.00. The claimants have made repeated demands for the defendants to settle their indebtedness but they refused or neglected to pay the debt. The defendants have no defence to the action.

Order 35 Rule 4 of the Rules of the Court, 2018 provides:

Where a defendant neglects to deliver the notice of defence and an affidavit prescribed by Rule 3[1] or is not given leave to defend by the Court, the suit shall be heard as an undefended suit and judgment given accordingly.

It is trite law that where a defendant is served with a writ of summons entered under the undefended list together with an affidavit deposed to by the claimant and he desires to defend the suit, it is his duty to file a notice of intention to defend the suit with an affidavit disclosing his defence on the merit. On the return date, the duty of the Court is to consider the affidavit in support of the claim and the affidavit in support of the notice of intention to defend the suit if the defendant has filed same. See **Massken Nig. Ltd. & Ors. v. Amaka & Anor. [2017]LPELR-42360 [SC].**

Where the defendant fails or neglects to deliver a notice of intention to defend a suit entered for hearing under the undefended list, the implication is that he

has no defence to the claim. Such a failure to file a notice of intention to defend the action amounts to an admission of the claimant's claim. Since facts admitted require no further proof, the claimant is therefore not called upon to prove his case formally. See **Mr. Jim Daniels v. Insight Engineering Co. Ltd. [2002] 10 NWLR [Pt. 775] 231.** This principle applies to the instant case. The defendants did not challenge the facts relied upon by the claimants for their claim. Therefore, the claimants are entitled to judgment for the sum claimed.

Accordingly, I enter judgment for the claimant for the sum of N11,447,258.00. The defendants shall pay cost of N100,000.00 to the claimants.

HON. JUSTICE S. C. ORIJI
(JUDGE)

Appearance of Counsel:

Ani Remigius Esq. for the claimant.