

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT APO – F.C.T. – ABUJA**

CLERK: CHARITY  
COURT NO. 16

SUIT NO: FCT/HC/CV/2104/19

DATE: 3<sup>rd</sup> December, 2019

BETWEEN:

BASHIR AHMED .....PLAINTIFFS

AND

1) LINEAL NTO MBAH

2) LNM REALITY LIMITED .....DEFENDANTS

**JUDGMENT**

**(DELIVERED BY HON. JUSTICE S. B. BELGORE)**

Order **35, Rule 1- 5** of the FCT high court civil procedure Rules of 2018, are the relevant provisions with respect to liquidated money demand. It is technically referred to as undefended list procedure.

The order and the Rules referred to above detailed in simple form steps to be taken in such matters whether the case is intended to be defended or not.

It is pursuant to the said provisions that the claimant in this case – BASHIR AHMED – sued Lineal NtoMbah and LNM Reality Ltd -, the two defendants, in this court. By a writ of summons dated 7<sup>th</sup> June, 2019, and filed same day, the claimant claimed principally against the two defendants as follows;

- 1) The sum of **N10,000,000**=(Ten million Naira) only being total money paid at various times to the defendants by the claimant in respect of construction and delivery of a 2 – bedroom flat luxury apartment at Linto estate, karmo district, Abuja, fcton which the defendants have defaulted but voluntarily agreed to refund to the claimant.
- 2) Post judgment interest at the rate of 10% per annum from judgment until final and full liquidation of the judgment sum.

In support of this writ is a 45 paragraphs affidavit deposed to by the claimant himself. He deposed to the fact that the defendants are indebted to him in the total sum of Ten million Naira and that they have refused to pay after repeated demand. The deponent also asserted that the defendant has no defense to the action.

Fifteen (15) exhibits were attached to this affidavit. They were marked as exhibits A- O. the exhibits are:

**Exhibit A'** is the offer letter dated 22<sup>nd</sup> June, 2014.

**Exhibit B'** is Ecobank chequedated 8<sup>th</sup> July, 2017. Made in favour of the defendants.

**Exhibit C'** is a copy of GT Bank cheque dated 27– 10 – 2014 made in favour of the defendants.

**Exhibit D'** is a copy of GT bank cheque dated 13<sup>th</sup> February, 2015 made in favour of the defendants.

**Exhibit E'** is a copy of Fidelity Bank transaction receipt dated 12<sup>th</sup> January, 2017 made in favour of the defendants.

**Exhibit F'** is a copy of Fidelity Bank transaction receipt dated 16<sup>th</sup> January, 2017.

**Exhibit G.** is a letter dated 5<sup>th</sup> July, 2017 sent to and received by the defendants.

**Exhibit H'** is a copy of the letter dated 7<sup>th</sup> July, 2017 written by the defendants wherein they promised to refund all the money paid to them.

**Exhibit I'** is a copy of a letter dated 20<sup>th</sup> July, 2017.

**Exhibits J' & k** is a copy of a letter dated 3<sup>rd</sup> August, 2017 and details of remittances made to the defendants in respect of the houses respectively.

**Exhibit L'** is a copy of the letter dated 13<sup>th</sup> September, 2017 and sent to the defendants.

**Exhibit M'** is a copy of an undated letter written by the defendants promising to refund all the monies paid to them.

**Exhibit N'** is a copy of another letter dated 27<sup>th</sup> October, 2017 sent to the defendant asking them to pay as promised.

**Exhibit O'** is a copy of demand letter written to the defendants by the law firm of TayoJegade SAN & co. it is dated 31<sup>st</sup> October, 2017.

The defendants were duly served with the writ together with the affidavit and all the exhibits.

Today is the hearing date. And a few minutes ago, learned counsel to the claimant, OsitaNwanjo submitted to the court that the defendants have been duly served but did not appear nor file any notice of intention to defend. He then urged the court to enter judgment for the claimant on the strength of the case of **ITV LTD VS. OCB LTD (2015). All FWLR (PART 797) 722 AT 751.**

I have considered the totality of the circumstances of this case. That is, the writ of summons, the 45 – paragraphs affidavits in support, the 15 exhibits attached thereto, the lack of defense on the part of the two defendants and the provisions of **order 35, Rule 1,2,3 and 4** of the Rules of this court.

By order **35 Rule 3(1)** of the FCT high court (civil procedure rules 2018) a defendant upon service with a writ of summons marked “undefended” is expected to deliver to the Registrar of this court within 5 days to hearing a Notice in writing that he intends to defend the suit. He must do this together with an affidavit disclosing a defense on merit. Where that is done, the court would give him leave to defend. But where that is not done, such a defendant will have to swim dangerously in murky water. This is because order 35 Rule 4 will instantly come into play. By the provision of order 35 Rule 4, where a defendant neglects to deliver a notice of defense and an affidavit or is not given leave to defend, the suit shall be heard as an undefended suit and judgment given accordingly. See **OHA MOTORS LTD Vs NEW ARRIVAL MOTORS LTD (2005)2 FWLR 599.**

As a matter of fact, I have found that the claim of the claimant is for liquidated money demand; the affidavit in support says the defendants has no defense to the action and this deposition is not controverted; the defendants filed no Notice of intention to defend; the defendant have admitted owing the claimants Ten million naira (**N10, 000,000=**) only and as a result, this court is at liberty to invoke the provisions of order **35 Rule 4** to this case.

In conclusion, judgment is hereby entered in favour of the claimant. Consequently, the two defendants are hereby ordered to pay jointly and severally, the sum of Ten million Naira (**N10,000,000=**) only being the money the claimant advanced to them for purchase of 2 bedroom flat that they could not deliver.

The claim for post judgment interest at the rate of 10% per annum from today till final and full liquidation of the judgment sum is also hereby granted.

.....

**Signed**

Hon. Judge

**3 – 12 – 19.**