

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT HIGH COURT MAITAMA –ABUJA**

**BEFORE: HIS LORDSHIP HON. JUSTICE S.U. BATURE**

<b>COURT CLERKS:</b>	<b>JAMILA OMEKE &amp; ORS</b>
<b>COURT NUMBER:</b>	<b>HIGH COURT NO. 34</b>
<b>CASE NUMBER:</b>	<b>SUIT NO. FCT/HC/CV/1761/19</b>
<b>DATE:</b>	<b>10<sup>TH</sup> OCTOBER, 2019</b>

**BETWEEN:**

**JENEW NIGERIA LIMITED .....CLAIMANT**

**AND**

**MOHAMMED ADAMU YARO.....DEFENDANT**

**APPEARANCE**

D. C. Nwagbara Esq for the plaintiff. Plaintiff absent.

**CONSENT JUDGMENT**

The suit with No FCT/HC/CV/1761/19 dated 29<sup>th</sup> day of April 2019 was filed by the claimant same day via undefended list against the defendant claiming as follows:-

- (1) An order for the payment of the sum of #5,800,000.00 (five million eight hundred thousand Naira) only being the Outstanding balance of he increased/Allocation fee by the Defendant to the plaintiff in respect of the purchase of A plot at Jenew Homes plot 3 Cadastral Zone D02, South District, Abuja.

- (2) An order for payment of the sum of #150,000,000.00 (one hundred and fifty thousand Naira) only as cost of litigation.
- (3) An order for the payment of statutory interest rate at 10% per annum on the judgment sum from the date of judgment until judgment debt is liquidated.

Filed in support is an affidavit of 21 paragraphs deposed to by one Olushola .O. Olayinka secretary of the plaintiff. Annexed to the affidavit are documents marked as exhibits JNL 1, JNL 2, JNL 2 A and JNL 3 respectively.

Addressing the court on the 9<sup>th</sup> day of October 2019, learned counsel to the claimant, D. C. Nwagbara Esq submitted that the law is sacrosanct that a matter brought under the undefended list which a defendant was duly served, is required to file his processes within 5 days to the day fixed for hearing. And that the claimants have not been served with any notice of intention to defend. He referred the court to order 35 of the High Court of the F.C.T (civil procedure) Rules, 2018.

Therefore, counsel submitted moreso that where a defendant fails to comply then judgment is to be entered in favour of the plaintiff..

Consequently, counsel urged the court to enter judgment accordingly.

I, have carefully gone through the writ of Summons brought under the undefended list, the reliefs sought therein, the affidavit in support and the annexures attached therewith together with the oral submission of the learned counsel to the claimants.

It is instructive to note that from the certificate of service in this suit dated 13<sup>th</sup> day of June 2019, it was stated therein that personal service of the originating processes could not be effected on the defendant which necessitated filing of a motion exparte with motion No. M/7235/19 by the Claimant/Applicant for substituted service which was accordingly moved and granted on 26<sup>th</sup> day of June 2019.

Furthermore, from the certificate of service dated 9<sup>th</sup> day of September 2019, it was stated therein that court order and the originating processes were served by pasting at N. 2k close 313 Road, F. H. A KUBWA, Abuja as ordered by the court.

From the forgoing, it is clear that the defendant was given ample opportunity to appear and defend his case but failed to utilize the opportunity.

Nevertheless, as stated earlier this suit is brought under the undefended list governed under order 35 of the Rules of this Honourable Court.

It is important to note that the undefended list procedure is usually for matters bordering on a liquidated money demand or debt owed.

In this respect, see the case of NKWO MARKET COMMUNITY BANK (NIG) LTD V OBI (2010) LPELR 2015 (SC) at page 26, paragraphs E-G, where it was held that:-

***“.....The undefended list procedure is adopted when it is perceived that the defendant could not possibly have any defence to the claim. A suit maintainable under this procedure relates to a claim for a debt or liquidated money demand.’***

The claimant herein deposed in the supporting affidavit particularly at paragraph 20 thus:-

***“ That I know that the Defendant does not have any defence to this suit.”***

To this end, I refer the case of J. O. E. CO LTD V SKY BANK PLC (2019) 6 NWLR (pt 1138) 518 at 542, paragraphs G-H that:-

***“..... The action of the respondent who was the plaintiff at the trial High Court against the applicants who were the defendants was brought under the undefended list procedure of the Rules of the trial court. The whole purpose of these rules is to facilitate the obtaining of short and quick judgment without proceeding to trial. The rules are therefore for***

***disposing with dispatch cases which are virtually uncontested having regard to the nature of the dispute between the parties.....”***

On that note and as pointed out earlier, the defendant failed and neglected to file any process in defence of this suit as required by law. In that regard, let me quickly refer to order 35 rule 4 of the rules of this court. For purpose of clarity, I hereby reproduce same here under:-

Order 35 Rule 4 reads thus:-

***“ 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.”***

Consequently, it is trite law that rules of court are meant to be obeyed. In this respect, see the case of OYIKE V AKPABIYO L. G. (2005) 19 NWLR (pt959) 130 AT 142-143, paragraph G-A, where the Supreme Court held thus:-

***“ It is important to understand the nature of the of the rules of court. Our courts have held that rules of court are meant to be obeyed....”***

To that extent therefore, the defendant having failed to file anything has left the court with no option than to find for the claimant and enter judgment accordingly. I so hold.

Therefore, judgment is hereby entered in favour of the claimant as per the claims as endorsed on the writ of Summons same for claim for #150,000.00 (one hundred and fifty thousand Naira) as cost of litigation which same is assessed and #50,000.00 (fifty thousand Naira) is awarded.

Signed

**Hon. Justice Samirah Umar Bature**

9/10/19

Counsel. Most grateful.