

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT KUBWA, ABUJA
ON TUESDAY, THE 28TH DAY OF JANUARY, 2020
BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA

JUDGE

SUIT NO.: FCT/HC/CV/1190/18

BETWEEN:

DE-CHICO INVESTMENT LTD ----- CLAIMANT

AND

KANAYO OKOYE ----- DEFENDANT

JUDGMENT

On the 13th day of March, 2018 the Plaintiff De-Chico Investment Ltd filed this Writ against the Defendant – Kanayo Okoye seeking the following:

Payment of Eighty Million Naira (N80, 000,000.00) being the Judgment Debt the Defendant pleaded with the Claimant to pay to El-shalom International Ltd in the Suit between El-shalom Ltd and Jukok International Ltd in the Suit No: CV/1072/15 to enable the Claimant take the property attached by

the Enforcement Unit of the Federal Capital Territory.

All efforts to serve the Plaintiff with the Originating Process personally proved abortive. The Plaintiff filed an application of leave to effect service of the said Process on the Defendant by substituted means, the Court granted it.

But because the claim of the Plaintiff is on debt – liquidated money demand the Plaintiff approached the Court to grant him Interim Order to mark the Writ undefended. The Court granted same.

The Defendant was served as per the substituted Order of this Court. But the Defendant did not file any Notice of Intention to defend the Suit of the Plaintiff. He did not enter appearance in flesh and blood or in paper too.

The Plaintiff had supported this application with an Affidavit of 30 paragraphs. He had attached some documents marked as **EXH A – M.**

To the Plaintiff the Defendant does not have any prima facie defence to this Suit and as such he had urged the Court to enter Judgment Summarily in its favour as there is no prima facie defence and as the case is retained under the undefended list. More so when the Defendant did not file any Notice to defence or even any defence at all.

It is the story of the Plaintiff that the Defendant offered Plaintiff Plot No 1121 CAD Zone AO7 Wuse 2, Abuja FCT for sale. That offer was made on the 17th day of September, 2015.

That by their search report there was no encumbrances on the land. He attached the search report as **EXH A.**

The plaintiff accepted the offer, parties executed deed of Assignment and Sale agreement too. The Plaintiff paid Four Hundred Million Naira (N450, 000,000.00) only to the Defendant as purchase price of the property. He attached the documents as **EXH B1 & B2.**

That while Plaintiff was renovating the property the FCT High Court Enforcement Unit chased out the workers of the Plaintiff and placed attachment on the property. The Plaintiff notified their lawyer who conducted search at the FCT High Court on the issue and discovered that the Defendant and his company – Jukok International Ltd had sometime in 2003 bought five (5) Heavy Duty Equipment worth One Hundred and Thirty Million Naira (N130, 000,000.00) from El-shalom International Ltd.

El-shalom International Ltd took an action against the Defendant and his company – Jukok International Ltd in Suit No: CV/1072/15 between it suing through its Attorney Mr. Anity Levy against Jikok International Ltd & 1 Or for the recovery of outstanding balance of Ninety Million Naira (N90, 000,000.00) only.

Justice Halilu of FCT High Court delivered Judgment in favour of El-shalom International Ltd on the 16th day of April, 2015. The Defendant did not file any defence in that Suit but only filed an application after Judgment was delivered. He attached copy of the Motion as **EXH C.**

On the 12th day of June, 2015 the Judgment Creditor El-shalom International Ltd filed an application for leave to attach and sell the

immovable property at Plot 1121 CAD AO& Wuse 2 belonging to the Defendant.

Certificate of Occupancy No: **C27uw – 623az – 53ar – cd70u – 20**. He attached the document as **EXH D**.

On 8th day of July 2015 the Defendant therein filed a Preliminary Objection challenging the competence of the Motion and stating that the application is a gross abuse of Court Process. The said Preliminary Objection was annexed as **EXH E**.

On a swift shift, on 8th day of July 2016, the Defendant withdrew the Preliminary Objection. The Court heard the application of El-shalom International limited and granted same for attachment of immovable property of the Defendant. The Plaintiff Counsel attached the Record of Proceeding as **EXH F**.

On the 15th day of February 2016 a Writ of Attachment for sale of the Plot 1121 CAD Zone AO7 was issued by Halilu J. in favour of El-shalom International Limited. The said Writ is attached as **EXH G**.

The Plaintiff Counsel stated that the Search Report from AGIS did not reveal or indicate that there is a pending application for leave to attach and sell the said property of the Defendant.

Again that Defendant had the knowledge of the above facts before he sold the property to Plaintiff. But for reasons best known to him he refused to disclose same to the Claimant. The Claimant had since the sale been in an undisturbed possession of the said property until the 8th day of March, 2016 when the Deputy Sheriff of the FCT High Court attached the duplex pursuant to an Order of the Court in the Suit

CV/1052/15 between El-shalom International Ltd V. Jukok International Ltd & 1 or.

Again that the said attachment came as a surprise to the Claimant as she was not aware of any encumbrances to the property as regards application for Attachment. That the Plaintiff immediately after the purchase of the property from the Defendant mobilized the Deputy Sheriff for an Interpleader action to enable her take back her property. He attached the notice of claim dated 8/3/16 as **EXH H.**

Upon the receipt of the Notice/application the Deputy Sheriff filed an Originating Summons before Justice Uthman Musa asking the Court to determine whether the Plaintiff is the lawful owner of the said plot in issue – Plot No: 1121 CAD Zone AO7 Wuse Abuja. That both Claimant and Defendant in this Suit filed Affidavit in support of the Originating Summons while El-shalom International Ltd filed a Counter Affidavit in opposition. He attached all the documents referred to above as **EXH 1⁽¹⁾ & 1⁽²⁾.**

On the 5th day of October, 2016 the Court Ruled against Plaintiff and held that the Attachment of the Judgment Debtor's (Defendant in this case) property in fulfilment of the said Judgment is valid and still subsisting. He attached the said Certified True Copy (CTC) of the Ruling as **EXH J.**

That after the Ruling the Plaintiff asked Defendant to refund it the sum of Four Hundred and Fifty Million Naira (N450, 000,000.00) paid for the property the failed contract.

The Defendant requested for a meeting with the Claimant, Mela Ofonbike Counsel to El-shalom and Barr. Obinna Ajoku. At the meeting

the Defendant pleaded with Barr. Mela Ofonbike the Counsel to El-shalom to collect the sum of Eighty Million Naira (N80, 000,000.00) as full and final payment of the Judgment Sum. The Counsel for El-shalom accepted that offer made to it by the Defendant.

On the 9th day of November, 2016 the Plaintiff raised a Draft of Eighty Million Naira (N80, 000,000.00) in favour of Amit Levy, Attorney to El-shalom International Limited who is the Judgment Creditor in the Suit **CV/1072/15**. The Plaintiff attached the Bank draft as **EXH K**.

Upon receipt of the Bank Draft, El-shalom through its lawyer/Counsel wrote to the Deputy Sheriff informing him that Claimants in this Suit had paid the sum of **Eighty Million Naira (N80, 000,000.00)** to El-shalom. He attached the letter dated 9/11/16 as **EXH L**.

That up till date the Defendant is yet to defray the Claimant the said sum and the Defendant has not taken any step to show interest in paying back the money.

That based on the refusal of the Defendant to pay the said money, the Plaintiff through the firm of Obinna Ajoku wrote a letter to Defendant. He attached the letter as **EXH M**.

That on the 23rd day of January, 2018 the Defendant replied to the letter through the chambers of E.A. Adedeji & Co. The Plaintiff Counsel attached the letter as **EXH L**.

The Claimant further submitted that despite repeated demands, the Defendant has neglected and invariably refused to defray the Claimant he money he paid to El-shalom International Limited.

That based on the above the Claimant strongly believe and convincingly hold and knows that the Defendant has no atom of prima facie defence to this case. That is why the Plaintiff has come to this Court as a law abiding citizen to present this Writ duly marked undefended seeking for the claim as presented above and asking the Court to enter Judgment in his favour as there is no defence on merit against the claim.

It is important to reiterate that the Court ensured that the Defendant was served with all the Processes filed by the Plaintiff as well as Hearing Notices showing everyday that this matter is scheduled to be heard. The Defendant even as I am delivering this Judgment, never entered appearance or filed any notice of intention to defend as required by law. So this Judgment is based on the Processes filed by the Plaintiff as well as the claim and Affidavit in support and critical analysis of the documents tendered in support of their claims.

It is the law and had been chanted at several decisions of all the level of our Courts that facts unchallenged are deemed admitted. More so where the party who ought to challenge such facts were given ample opportunity to do so.

Again once a matter is based on liquidated money demand or a debt and there is a claim to such money, the Court will upon the request of the Plaintiff/Applicant mark such Writ as undefended before the Writ is served on the Defendant. This is so because to the Plaintiff the Defendant has no prima facie defence to the case. But to the Court marking it is a sign and signal to the Defendant to state or let the Court know whether he has a prima facie defence and if so to let the Court know and file a notice to defend the Suit. This the Defendant does by

filing such notice along with Affidavit of fact showing that it has a prima facie defence to Plaintiff's claim.

Once he does so, he must tell Court to put the case in general cause list so that parties will file and exchange pleadings, call evidence and for Witness to be heard before the Court can take a final decision on the case. When the Defendant succeeds it is said that he has a prima facie defence to the claim of the Plaintiff and matter will go into hearing before decision is given by Court.

But where the Defendant fails to establish Defence on merit the Court will go on to hear the application and enter Judgment Summarily in favour of the Plaintiff.

It is important to note that the Court can decide suo motu to transfer such case to general cause list. All is done in the interest of justice as the case warrants.

The whole essence of matter of an application for Summary Judgment or Undefended list procedure is to shorten the journey undertaken in full process during under general cause list. It also takes off the burden from litigants especially the Plaintiff who will in one swoop have judgment entered in his favour summarily without calling any evidence and goes ahead to enjoy the fruit of such Judgment.

As stated above such procedure is applicable where the claim is on debt and on liquidated money demand.

It is not a one of run in the mill because to enjoy Summary Judgment the Plaintiff must through the fact in the Affidavit in support, state vividly that the claim is a debt and that the debt is on amount of money well ascertained and that such money is on liquidated form. Once the

Claimant can do so especially where he had attached documents where available, the Court will not hesitate to enter Judgment in his favour summarily without call for evidence.

- (1) Purpose of undefended list procedure
Imoniame Holdings Ltd & Anor V. SONEB Enterprises Ltd & ors
(2010) LPELR – 1504 (SC)
- (2) What is undefended list?
UBA & Anor V. Alhaji Babangida Jargaba
(2007) LPELR – 3399 (SC)
- (3) Object of undefended list procedure
Wema Securities & Finance PLC V. Nigeria Agricultural Insurance Corporation
(2015) LPELR – 24833 (SC)
- (4) The purpose of undefended list procedure
Chief S.S. Obaro V. Alhaji Sale Hassan
(2013) LPELR – 20089 (SC)
- (5) Ifeanyichukwu Trading Investment Ventures & Anor V. Onyesom Community Bank Ltd.
(2015) LPELR – 24819 (SC)
- (6) Surveyor B.J. Akpan V. Akwa Ibom Property & Investment Company Ltd.
(2013) LPELR – 20753 (SC)

All that is in the decision of:

**Nanka Community Bank V. Obi
(2019) All FWLR**

In this case the Plaintiff claim is not challenged by the Defendant. That means that as far as the claim of the Plaintiff is concerned there is no

challenge to it. That also means that as far as the facts in support of this application is concerned they are not challenged. All these facts are deemed admitted as they remain unchallenged.

That is what this Court holds. After all, the Defendant was given opportunity to challenge those facts but he refused to do so.

Again a closer look at the documents EXH A – L attached by the Plaintiff in support of this Writ, it puts no one in doubt that there is an agreement to buy the plot in issue and that there is actual Deed of Sale/Purchase. There is also clear evidence that before the sale, there was a search report which is encumbrances to the said Plot 1121 CAD Zone AO7 Wuse 2 Abuja going by the Search Report attached as EXH A. The said Sale Agreement was marked as EXH B. it was made between the Defendant Kanayo Okoye and the Plaintiff. The said Sale Agreement shows the price of the Plot which is Four Hundred and Fifty Million Naira (N450, 000,000.00) only as stated in **paragraph 3 of the Sale Agreement dated 15/9/15** thus:

“The Seller and Buyer hence agree to the purchase of the property for a consideration of Four Hundred and Fifty Million Naira (N450, 000,000.00) only”.

Again the Certified True Copy (CTC) of the Judgment of Halilu J. delivered on the 16th day of April, 2015 puts no one in doubt as to the relationship between the Plaintiff and the Defendant as far as issue pertaining to the claim in issue in this Suit is concerned and also on the issue of the Defendant’s indebtedness to the El-shalom who sued through it Attorney Amit Levy.

Again the content of **EXH D** is clear as the application to attach the property in issue Plot 1121 CAD Zone AO7 Wuse 2 Abuja. So also the Ruling of the Court as shown in Record of Proceeding attached as EXH E & F which are the Preliminary Objection challenging the Motion for Writ of Attachment of Immovable Property of the Defendant and the Preliminary Objection which the Defendant filed but later withdrew.

In the Record of Proceeding of the 8th day of February, 2016 it stated therein:

Beny Ikoro for Judgment Debtor Applicant

Ikoro: We withdraw our Preliminary Objection.

Mela Counsel for the Judgment Creditor Respondent.

Mela: No objection.

Court: Application withdrawn is hereby struck out.

The above means that the Defendant did not challenge the application for Writ to attach the immovable property of the Defendant which is Plot 1121 CAD Zone AO7 Wuse 2 Abuja which is the property in centre of this application.

The Ruling of the Court shows and it is stated therein:

“There is no Counter Affidavit.

RULING

Application M/8272/15 is for Writ of execution duly served on the Judgment Debtor. There is no Counter Affidavit but rather a notice of Preliminary Objection which was withdrawn and was struck out

leaving the Affidavit in support of the application unchallenged.

Application succeeds on its strength.

It is hereby granted”.

The above need no further elucidation. The application for attachment of Plot 1121 was not challenged. It was granted.

Of utmost important is EXH H which is the letter from Obinna Ajoku to the Deputy Sheriff of this Court. The letter was dated 8/3/16. In it the Counsel had pointed out to the Deputy Sheriff that the duplex belonging to their client was wrongfully attached during the execution in respect of the Suit El-shalom International Ltd V. Jukok International Ltd. In it the Counsel sought for the release of the said wrongfully attached Plot/property.

In the Judgment of A.O. Musa delivered on the 5th day of October, 2016 in the Suit between the:

Deputy Sheriff	-----	Applicant/Claimant
V.		
De Chico Investment	-----	Judgment Debtor
El-shalom	-----	Judgment Creditor
Jukok International	-----	Judgment Debtor
Kanayo Okoye	-----	Judgment Debtor

The Court held as follow:

“.... I hold that Claimant – Deputy Sheriff has no title to the property in issue. The title is with and remains that of the Judgment Debtor. Therefore the execution carried out by the Applicant – Deputy Sheriff where in the property in issue was attached in fulfilment of the Judgment Debtor remains valid and subsisting. So this Court holds”.

The above Ruling seals the deal as far as the property is concerned. It shows that the attachment and subsequent execution by the Deputy Sheriff was wrong and that impliedly the present Plaintiff’s case is right.

Also the EXH K which are Manager Cheques issued and paid to Mela Ofonbike the receipt of which was acknowledged by Mela on the 9th day of November, 2016 puts no one in doubt about the amount which is the claim of the Plaintiff in this Suit – Eighty Million Naira (N80, 000,000.00) only.

Also EXH L which is a letter dated 9/11/16 title:

“Notification of Payment of Judgment Debtor in Suit: CV/1072/15 El-shalom International Ltd V. Jukok International Ltd & Anor”.

In paragraph 2 the letter stated:

“We wish to inform you that the Claimant De Chico Investment Ltd in Suit: CV/548/16 – Deputy Sheriff of High Court V. De Chico Investment Ltd & ors, has paid the Judgment Sum of Eighty Million Naira (N80,

000,000.00) only as full and final settlement of the Judgment debt in the above mentioned case.

Please find the attached the drafts – Managers Cheques.

We therefore request that you cause a release of the property to De Chico Investment Ltd, the Judgment Debt having been satisfied”.

Meanwhile the writer are Counsel to the El-shalom suing through Amit Levy. The letter was to the Deputy Sheriff.

On the 17th November, 2017 the Counsel to De Chico Investment Ltd Ezekiel Egbo wrote a letter to the Defendant. The letter was titled:

“Letter of Demand”.

In the letter the learned Counsel reminded the Defendant in this Suit of his offer of outright sell of the property to their client – the Plaintiff in this case and the payments made. He further pointed out how the Plaintiff offered to pay off the debt of Eighty Million Naira (N80, 000,000.00) and how the Plaintiff actually paid the Eighty Million Naira (N80, 000,000.00) and the Defendant agreed to defray Plaintiff after the said payment was made.

The Plaintiff Counsel also stated how the Defendant had failed to defray the Plaintiff as promised and they demanded for the money to be paid within Fourteen (14) days from the date of receipt of the letter, threatening to take legal action if the Defendant failed to defray as he promised.

The Defendant failed and the Plaintiff came to Court, hence this application.

From all the above it is not in doubt that the Defendant has no defence to the Suit of the Plaintiff in this case. More so he did not file any notice to defend the Suit. Most probably because he has no defence and he knows it.

From all the above it is very evident that the Plaintiff have through the cogent facts and credible and water tight documentary evidence had established its claim and had also shown that the Defendant has no prima facie defence in this Suit by not challenging the claims of the Plaintiff.

The application by the Claimant is meritorious. This Court therefore enter Judgment in his favour by granting their Reliefs as sought to the fullest.

This is the Judgment of this Court.

Delivered today the ----- day of ----- 2020.

K.N. OGBONNAYA

HON. JUDGE