

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

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT APO**

**SUIT NO FCT/HC/CV/181/19**

**DATE: 04-02-2020**

**BETWEEN:**

**FAROUK ASEKOME**

**PLAINTIFF**

**AND**

**ATTORNEY GENERAL OF THE FEDERATION**

**DEFENDANT**

**JUDGMENT**

**(BEFORE HIS LORDSHIP HON. JUSTICE S. B. BELGORE)**

In this matter transferred from the Federal High Court to this court and also from the Chief Judge of F.C.T High Court to me, the plaintiff's claim from the writ of summons, a total sum of ₦20,250,000.00 (Twenty Million, Two Hundred and Fifty Thousand Naira) = less 10% withholding tax which on deduction will leave a balance of ₦18,225,000.00 (Eighteen Million, Two Hundred and Twenty Five Thousand Naira only) = (b) 10% interest from the date of judgement till liquidation of the cost of this action.

The writ of summons was accompanied by a 17 paragraphs affidavit and wherein the deponent deposed at paragraph 16 that the defendant has no defence to the action.

The writ dated 1/3/2019 was placed on the defendant list in the Federal High Court. Upon being seized of the suit and his lordship ABANG.J. transferred the case to this court. See the transfer order dated 4/7/2019.

And on 31/10/2019 the Chief Judge transferred the case to this court 16.

Following the above fact, the defendant was served with the transfer order on 28/11/2019. One **NDAGI MUSA** in the defendant office received the process by **1:03pm**. The transfer order was attached to the hearing notice put as **3/12/2019**.

On **3/12/2019** the defendant was not in court. I directed in chambers that the defendant should be served again with a fresh hearing notice against **16/1/2020** the defendant was served on 8-1-20 by 12:06pm. The same **NDAGI MUSA** received the process in the office of the defendant.

On 8-1-20, the defendant was not in court. I caused another hearing notice to be issued against todayi.e.**4/2/2020**and served on the defendant. That service was effected on the defendant on 28-1-20. The same **NDAGI MUSA** received the process by 12:10pm in the office of the defendant.

Now, today as usual, the defendant is not in court.

Today as the hearing date and a short while ago, learned counsel to plaintiff/claimant **MR. ROTIMI OLUJIDE** urged me to invoke the provisions of Order 35 Rule 3 of rules of this court, 2018 and enter judgement in favour of the claimant. He relied on the case of **DAVID VS JOLAYEMI (2011) All FWLR (PT. 50) 15457.**

I have considered provision of Order 35 Rule 3. It reads:

*“where a defendant neglect 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 judgement given accordingly”.*

In this case under scrutiny, no notice of defence was filed. No affidavit for defendant says they have a defence on the merit or that there is a triable issue in this case. The court’s record is replete with hearing notices served on the defendant without head.

In the circumstance, I have no difficulties in saying the provision of O35 R3 (2) must be given full effect. **JOLAYEMI’s** case (supra) is apt and instructive in this instance. I too relied upon it.

In effect therefore, I entered judgement in favour of the claimant for all the reliefs sought save the cost of this suit which is not known.

For clarity, the defendant shall pay the sum of ~~₦~~20,250,000.00 (Twenty Million, Two Hundred and Fifty Thousand Naira) =less 10% withholding tax to the plaintiff/claimant and amount to ~~₦~~18,225,000.00 (Eighteen Million, Two Hundred and Twenty-Five Thousand Naira only).

.....  
**Suleiman Belgore**  
**(Judge) 4-2-2020.**