

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 22 WUSE ZONE 2 ABUJA.
BEFORE HIS LORDSHIP: HON JUSTICE A. S. ADEPOJU
ON THE 12TH DAY OF FEBRUARY, 2020**

SUIT NO: FCT/HC/CV/721/19

BETWEEN:

1.	ALABA OMONIYI	}		
2.	BOSIVA REALTORS	}		PLAINTIFFS

AND

1.	MRS. E.O. ETUKNWA	-		DEFENDANT
	(Trading under the name and style of Delight International School, Gwarimpa Estate)			

O. OSA—AMADASUN OGBEMUDIA for the Claimant.

D. AKORI for the Defendant.

JUDGMENT

The Plaintiff's claim is for a liquidated sum of **N4,400,000 (Four Million, Four Hundred Thousand Naira)** being the unpaid arrears of rent for use and occupation of Delight International School House 6, Road 1422, Gwarimpa Estate Abuja for the period 2017 – 2019. And for interest rate of 10% per annum and the cost of this suit. The action was instituted vide an undefended writ dated and filed on 4th January 2019. The affidavit in support was deposed to by Obabiyi Olufolahanmi, a partner in the firm of the 2nd plaintiff and also the attorney to the 1st plaintiff. He referred to the Power of Attorney as Exhibit A.

By virtue of the power of the attorney the property mentioned above was rented to the defendant at the rate of **One Million Seven Hundred Thousand (N1,700.00)** per annum vide Tenancy Agreement Exhibit B in November 2011. That the defendant continued to renew her rent until 2017 when she failed to pay her rent. The total rent of the defendant for the nature of the occupied premises was **N2,600,000 (Two Million Six Hundred Thousand Naira)** per annum. After repeated demand she made a part payment of **N800,000 (Eight Hundred Thousand Naira)** on the 12th of March 2018 leaving a balance of **One Million Eight Hundred Thousand Naira**. Exhibit C is the bank statement evidencing the transaction. The plaintiff further exhibited a letter of commitment by the defendant titled (letter of affirmation) Exhibit D where she pledged to redeem the balance owed soonest. That on the 6th of November 2018, the defendant was due to renew another term of tenancy. Leaving the total arrears of rent at **Four Million Four Hundred Thousand (4,400,000)**.

The plaintiff made a further demand vide Exhibit E. In response the defendant vide Exhibit F made another promise to pay. Consequent upon the defendant's failure, the plaintiff consulted the law firm of Respite Chambers to recover the rent arrears from the defendant and was charged the sum of **Six Hundred and Twenty Thousand (N620,000)**. See Exhibit G, the invoice attached. The deponent averred that the defendant has no defence to the plaintiff's claim.

In response, the defendant filed a notice of intention to defend together with a 16 paragraph affidavit in support, deposed to by one Humble Eyo, dated 14th March 2019. The said Eyo claimed to be the head of the school and also the proprietor. He took over the management of the school from the defendant on record on

23rd day of April 2018 vide a school management agreement dated and signed the same day. The Management Agreement is attached as Exhibit A. He narrated how the defendant entered into a fixed Tenancy Agreement with the plaintiff for a two year duration which commenced on the 7th November 2011 and expired on 6th November 2013 in the first place. And that the defendant paid the sum of **N3,400,000 (Three Million Four Hundred Thousand Naira)** for a two year period on the 7th of November 2011, from 2011 to 2013. And that by mutual consent the rent was reviewed upwards to **Two Million Six Hundred Thousand (N2,600,000)** without a Tenancy Agreement. In paragraph 8, the deponent averred further that the defendant kept renewing the rent on behalf of the school till 2017 and on the 6th of November 2018, the defendant made an initial payment of **N800,000 (Eight Hundred Thousand Naira)** through him and later paid the sum of **(Five Hundred Thousand Naira) N500,000.00** for the year under consideration. That the claim of **N4,400,000 (Four Million Four Hundred Thousand Naira)** by the plaintiff is not correct and that the outstanding rent is **One Million Three Hundred Thousand Naira (N1,300,000) Only.**

That the plaintiff have no existing agreement with the defendant that stipulate the time and circumstances of payment of rent within a given year. And that the Tenancy Agreement with the defendant expired since 6th day of November 2013 and covers only four (4) bedroom semi-detached duplex for the sum of **One Million, Seven Hundred Thousand (N1,700,000) Only.** Furthermore, he averred that the tenancy is for two years duration expired since November 2013. And also the Power of Attorney to manage the property dated 17th May 2006 has also expired. In reply the plaintiff filed a further and better affidavit in support of his claim.

Let me state straightaway that the filing of further and better affidavit to controvert an affidavit in support of a notice of intention to defend is not necessary. In an undefended list procedure, after the filing of an affidavit by the defendant, the court to determine whether there discloses a defence on the merit, transfer the matter to the general cause list or determine the claim of the plaintiff and give judgment thereon. See case of **NPA V. AMINU IBRAHIM & CO & ANOR (2018) LPELR 44469 (SC)**, where the Supreme Court held “Again it to be said is that in an undefended list procedure it is not permitted for a plaintiff to file an affidavit to controvert facts contained in the affidavit of the defendant in support of the notice of intention to defend. It is a matter left for the court to determine on what is already in, if it should transfer the suit to the general cause list or determine it on the claim of the plaintiff in the light of a worthless attempt at defence in the supporting affidavit of notice to defend where it is available. See **ODU V. AGBOR HEMESON (2004) FWLR (PT 188) 935** where the court stated as follows; “Admittedly, the rules under the undefended list procedure do not expressly bar the use of further affidavit as submitted by learned counsel to the appellant but with profound respect to counsel, it is not contemplated by the said procedure that triable issues raised by defendant’s affidavit should be rebutted or controverted by a further affidavit by the plaintiff as was done in the instant case. All that the trial court is enjoined to do if the defendant’s affidavit in support of the notice to defend discloses a defence is to transfer the suit to the general cause list for hearing and determination. There is no room for a further affidavit by the plaintiff to controvert the defendant’s affidavit as such will lead to trial and thus defeat the objective of the speedy trial which the undefended list

procedure is intended to achieve. The court below was therefore eminently justified in striking out the appellant's further affidavit".

The plaintiff's further and better affidavit in support of the claim is hereby struck out.

What is left to be determined is whether the defendant's affidavit discloses a defence on the merit or triable issues; on condition for a matter or suit to be transferred from undefended list to general cause list, the Supreme Court in the case of **UBA PLC V. JARGABA (2007) LPELR 3399 SC** held "for a matter to be transferred from undefended list to the general cause list, the affidavit in support of notice of intention to defend must show or disclose enough facts to satisfy a reasonable tribunal that the defendant has a defence to the action. Such a fact must be one that will require the plaintiff to proffer-explanation for certain matters with regard to his claim or which seriously questions the plaintiff's claim. Such a defence must not be a sham, frivolous, vague or fanciful or designed to delay the trial of the action. It must show that there is a dispute between the contending parties to be tried". See **IMMIYAME HOLDING LTD & ANOR V. SOREB ENTERPRISES LTD & OR (2010) LPELR 1504 SC. G.M.O. NWAORAH & SONS CO LTD V. AKPUTA (2010) LPELR 1296 SC. OKOLI V. MORECAB FINANCE (NIG.) LTD (2007) LPELR 2463 SC.**

Now coming to the issue at hand, there is no gainsaying the fact that the affidavit in support of the notice of intention to defend is a sham. The deponent to the affidavit is not competent to depose to the facts contained therein. This is because he was not a party to the Tenancy Agreement between the plaintiff and the defendant. He also did not have the authority of the defendant to depose to

the facts to which he attested to in the affidavit. He is a stranger to the Tenancy Agreement between the plaintiffs and the defendant.

Consequently apart from his deposition in paragraph 8 where he claimed that the sum of **₦1,300,000 (One Million Three Hundred Thousand Naira)** was paid through him as rent all other facts he averred to are mere hearsay. They do not have any probative value and are accordingly discountenanced. There is therefore no defence to the plaintiff's claim. The plaintiff admitted that the defendant paid part of the debt leaving a balance of **₦3,900,000 (Three Million, Nine Hundred Thousand Naira)**

Judgment is consequently entered in favour of the plaintiff in the sum of **₦3,900,000 (Three Million, Nine Hundred Thousand Naira)** being the unpaid arrears of rent by the defendant as claimed. Also 10% interest rate is also awarded on the Judgement sum with effect from today until the entire judgment sum is fully liquidated.

SIGNED

**HON. JUDGE
12/02/2020.**