

**IN THE HIGH COURT OF THE FEDERAL  
CAPITAL TERRITORY, ABUJA  
HOLDEN AT ABUJA**

**ON FRIDAY, 25<sup>TH</sup> OCTOBER, 2019**

**BEFORE HON. JUSTICE SYLVANUS C. ORIJI**

**SUIT NO. FCT/HC/CV/1152/2018**

**BETWEEN**

**MR. MACAULEY ADIGHIBE --- CLAIMANT**

**AND**

**MR. CHUKWUDI IHEONUKARA OPARA --- DEFENDANT**

**JUDGMENT**

In his statement of claim filed on 26/2/2018 with the writ of summons, the claimant [plaintiff] claims the following reliefs against the defendant:

1. An Order of this Court restraining the defendant from selling the property known as H75 [formerly H17B] Pipeline Kubwa, opp. Cherubim & Seraphim Liberation Church, off Byazhin Road Kubwa, Abuja until the sum of N6,751,600 [Six Million Seven Hundred and Fifty One Thousand Six Hundred Naira] owed the plaintiff by the defendant is fully liquidated.

2. The sum of N6,751,600 [Six Million Seven Hundred and Fifty One Thousand Six Hundred Naira] only being the sum of money the defendant borrowed from the plaintiff.
3. 10% interest from date of judgment until full liquidation of the judgment sum.
4. Cost of action of N500,000.
5. Such further or other orders as the court may deem fit to make.

From the records in the case file, the originating processes and hearing notices were served on the defendant. The defendant failed or neglected to file any process or to attend Court throughout the proceedings.

In proof of his claims, the claimant [as PW1] adopted his statement on oath filed on 26/2/2018 and tendered Exhibits 1-7. The evidence of the claimant is that he met the defendant in the course of carrying out his[claimant] business of supplying building materials. Sometime in 2011, the defendant approached him and solicited for financial assistance of N6,751,600 to enable him sort out some financial constraints hindering his business. Consequent upon repeated appeals by the defendant and the relationship which had developed between them, he lent the sum of N6,751,600 to the defendant. The defendant agreed to refund the said sum on or before 31/8/2011. The defendant issued various bank cheques to him to cover the sum of N6,751,600; the 5 cheques dated 26/7/2011, 1/8/2011, 15/8/2011, 27/8/2011 and 29/8/2011 are Exhibits 1-5.

When he presented the cheques for payment they were all returned unpaid. He informed the defendant that the cheques have been dishonoured. The defendant asked him to be patient and that he will sort out the issue of the dishonoured cheques soon. Thereafter, the defendant started avoiding him. Later, they agreed that the defendant will pay the sum of N6,751,600 in instalments and they executed an agreement to that effect; the agreement dated 25/2/2014 is Exhibit 6. The defendant failed to make any payment in 2014 as agreed in Exhibit 6. Sometime in September, 2015, he confronted the defendant; he said he was unable to pay the sum due to economic hardship and health challenges. The defendant took him to his bungalow with boys quarters located directly opposite Cherubim & Seraphim Liberation Church at pipeline Kubwa, off Byazhin Road known as H75 [formerly number H17B].

The claimant further stated that the defendant informed him that he will pledge the house as collateral to him and that he [ the claimant] can start collecting rent from the house from January, 2016 until the entire sum is liquidated. Both of them executed an agreement securing the unpaid debt with the said house; the agreement dated 17/9/2015 is Exhibit 7. When the second agreement was about to be executed, he noticed that the house address as stated in the agreement of 2014 was H17B Bassey Street, Pipeline Kubwa, Abuja while in the agreement of 2015, the house was referred to as H75 Bassey Street, Pipeline Kubwa, Abuja. The defendant informed him that the house was formerly numbered H17B but after more houses were built, it was renumbered as H75.

Mr. Macauley Adighibe further testified that they agreed that they would go back to the house on another day when the tenants would be around for the defendant to introduce him to the tenants as the person to be collecting the house rent. The defendant thereafter went underground and never showed up. He made repeated calls to the mobile phone of the defendant requesting the defendant to introduce him to the tenants in the house but the defendant never did. Every effort he made for the defendant to pay him the said sum of N6,751,600 proved abortive. The said house is the only known address and asset of the defendant. Lately, he heard that the defendant is making moves to sell the said property.

At the end of the trial, U. V. Egelamba Esq. filed the claimant's final address on 24/4/2019, which was served on the defendant on the same date. The defendant did not file his final address within the period of 21 days provided under Order 32 rule 14 of the Rules of the Court, 2018. Mr. Egelamba adopted the claimant's final address on 12/9/2019.

As rightly stated by Mr. Egelamba, the evidence adduced by the claimant is unchallenged; and it is trite that the Court is entitled to accept it as true and act on it. See **Fan Milk Ltd. v. Winn Edemeroh [2000] 9 NWLR [Pt. 672] 402.** However, the acceptance of unchallenged evidence on the one hand and the sufficiency of that evidence in proving the claim[s] of the claimant on the other are different matters. Even where the defendant did not defend the action, as in the instant case, it does not follow that judgment must be entered

for the claimant for his claims. See NEPA v. Chief Etim Inameti [2002] 11 NWLR [Pt. 778] 397. Therefore, the issue for determination is whether the claimant has proved his case to be entitled to his reliefs.

Learned counsel for the claimant submitted that the evidence of the claimant has proved that the sum claimed was borrowed by the defendant; and that the sum has remained unpaid by the defendant. He urged the Court to grant the claims of the claimant.

In relief 2, the claimant claims the sum of N6,751,600. The evidence of the claimant in proof of this claim is unchallenged. The cheques [Exhibits 1-5] are respectively for the sums of N2,350,000, N630,000, N321,600, N1,100,000 and N2,350,000. The total of these sums is N6,751,600. In Exhibits 6 & 7, the defendant acknowledged that he is indebted to the claimant in the sum of N6,751,600. I hold that the evidence of the claimant supports his claim of N6,751,600. This claim is granted.

The claimant's relief 1 is an order of the Court restraining the defendant from selling his property known as H75 [formerly H17B] Pipeline Kubwa, Abuja until the debt of N6,751,600 is paid. The unchallenged oral evidence of the claimant - which is in line with Exhibit 7 - is that the defendant pledged the said property as collateral for the repayment of the sum of N6,751,600. Part of Exhibit 7 reads:

*The borrower hereby covenants with the lender to pledge his house at No Bassey Street, Pipeline Kubwa Abuja, F.C.T. as collateral to Six million, seven hundred and fifty thousand, six hundred Naira [N6,751,600.00] only, as Loan Facility.*

*The borrower covenants with lender to keep hold of collateral and start collecting rents as from January 2016, till the last part of the loan is repaid.*

In the light of the foregoing agreement and covenants made by the defendant, it is proper to grant the order sought in relief 1 to prevent the defendant from selling the property until the loan sum of N6,751,600 is paid to the claimant. This relief is granted.

The third relief is interest on the judgment sum at the rate of 10% from the date of judgment till the debt is paid. In **Berende v. Usman [2005] 14 NWLR [Pt. 944] 1**, it was held that post-action or post-judgment interest is grounded in the rules of court. By Order 39 rule 4 of the Rules of this Court, 2018, the Court has power to grant post-judgment interest at a rate not exceeding 10% per annum commencing from the date of the judgment or afterwards. I grant this relief at the rate of 10% per annum.

In conclusion, I enter judgment for the claimant against the defendant as follows:

1. The sum of N6,751,600.00.

2. An Order restraining the defendant from selling the property known as H75 [formerly H17B] Pipeline Kubwa, opp. Cherubim & Seraphim Liberation Church, off Byazhin Road Kubwa, Abuja until he pays the sum of N6,751,600.00 to the claimant.
3. 10% interest on the sum of N6,751,600.00 from 1/11/2019 until the judgment sum is paid.
4. Cost of N150,000.00.

---

**HON. JUSTICE S. C. ORIJI**  
**[JUDGE]**

**Appearance of counsel:**

Nduwueze Anyama Esq. for the claimant.