

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT GUDU - ABUJA

DELIVERED ON THURSDAY THE 16TH DAY OF JULY, 2020.

BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE .R. OSHO-ADEBIYI

SUIT NO. CV/1335/2020

BETWEEN

MADUWA NIGERIA LIMITED ----- CLAIMANT

AND

1. OBODE CONSULTANCY LIMITED

2. OROROGHA DOMINIC MUTU -----DEFENDANTS

JUDGMENT

This suit is under the undefended list procedure of Court wherein the Claimant seeks against the Defendants as follows:

1. The sum of N11, 931, 000.00 (Eleven Million, Nine Hundred and Thirty-one Thousand Naira) being the grand total of the outstanding arrears of rent and service charge from the period commencing from 31st day of January, 2014 to 30th day of January, 2021 in respect of the occupation of suite 3C, Adisa Plaza, located at No. 39, David Ejoor Crescent, Gudu, Abuja.

2. The sum of N1, 200,000.00 (One Million Two Hundred Thousand Naira) for the cost of this action.

3. 10% (Ten percent) interest of the Judgment sum from the date of Judgment until the final liquidation of the Judgment sum.

The writ of summons is supported by 21 paragraphs affidavit deposed to by Usman Adelekan, Facility Manager in Consular Network Limited appointed by the Claimant and 7 Exhibits marked as Exhibit A – F.

The case was set down for hearing and the Defendants were duly served with all the processes and hearing notice. However, the Defendants did not file any notice of intention to defend or enter appearance. On the 11th day of June, 2020 when the matter came up for hearing of the Claimant's case, D. T. Nwachukwu counsel for the Claimant informed the court that parties have executed terms of settlement but in view of the absence of Defendant's counsel he applied for a short adjournment for adoption of terms or trial .

On the next adjourned date being 17th June, 2020 Claimant Counsel was in court but the Defendants were not in court and also not represented. In the absence of the legal representation for the Defendants, Claimant counsel D. T. Nwachukwu applied that the Memorandum of terms of settlement be struck out which said application was granted and counsel proceeded to hearing. At the hearing, Claimant's counsel urged this Court to enter judgment in

favour of the Claimant pursuant to **Order 35 Rules 4 of the FCT High Court Civil Procedure Rules 2015.**

The case of the Claimant as contained in the affidavit in support of the undefended list is that the 1st Defendant is the Claimant's yearly tenant occupying Suite 3C Adisa Plaza located at No. 39 David Ejoor Crescent, Gudu, Abuja. That the Defendants pay yearly to the Claimant's facility manager, the total sum of N1, 775,500.00 (One Million, Seven Hundred and Seventy Five Thousand, Five Hundred Naira) as rent and service charge of the office/apartment which includes but not limited to security, gardening, cleaning of the common area etc. that parties agreed that the rent and service charge shall be paid in advance at the commencement of every tenancy period. That sometimes in 2014, the Claimant's property manager wrote to the Defendants demanding for the rent of the apartment. That the 1st Defendant made a part payment of N1, 000,000.00 (One Million Naira) on the 8th of June, 2014 as part payment of his indebtedness and has since failed to make any payment whatsoever in respect of the property. That in spite of several oral and written demand for payment of all accumulated rents and service charges made by the Claimant, the 1st Defendant refused and neglected to make payment. That in August, 2016, the 2nd Defendant made an undertaking to make the payment of the outstanding rents on the property in the sum of N5, 326,500.00 (Five Million, Three Hundred and Twenty Six Thousand, Five Hundred Naira) on or before the 6th day of September, 2016 which said payment till date the Defendants has

willfully refused and neglected pay up. That all accumulated and outstanding rent arrears and service charge of the apartment occupied by the 1st Defendant are as follows;

1. 2014 to 2015 = N1,775,500.00
2. 2015 to 2016 = N1,775,500.00
3. 2016 to 2017 = N1,775,500.00
4. 2017 to 2018 = N1,775,500.00
5. 2018 to 2019 = N1,775,500.00
6. 2019 to 2020 = N1,775,500.00
7. 2020 to 2021 = N1,775,500.00

Total = N12, 428,500.00

Less payment of N1,000,000.00

Total debt owed plus VAT = N11,931.000.00

That the Claimant thereby demanded from the Defendants in their letter of demand dated 17/2/2020 to pay the sum of N11,428,500.00 (Eleven Million, Four Hundred and Twenty Eight Thousand, Five Hundred Naira) and the sum of N502,500.00 as value added tax (VAT) due to the Federal Government on the occupation of the property. That the Defendants received the demand letter and issued a letter of assurance to pay all the outstanding in their letter dated 17th day of February, 2020 otherwise known as Exhibit E. That the Defendants have unjustifiably continued to hold on to the property and have failed neglected and refused to pay all the 1st Defendant indebtedness to the Claimant. Exhibits attached to the writ are;

- a. Tenancy agreement between **MADUWA NIGERIA LIMITED AND OBODE CONSULTANCY LIMITED** marked Exhibit A.
- b. **MADUWA NIGERIA LIMITED Plaza** Guarantors Form marked Exhibit B1.
- c. Federal Government of Nigeria National Driver's License of Prince Dominic Mutu with expiry date 12 – 03 -2013 marked Exhibit B2.
- d. Letter on the letter headed paper of Consular Network Ltd dated 17/3/14 addressed to **OBODE CONSULTANCY LIMITED** marked Exhibit C.
- e. Undertaken signed by Dominic Mutu on 16/8/16 marked Exhibit D.
- f. Letter on the letter headed paper of Consular Network Ltd addressed to the managing director of **OBODE CONSULTANCY LIMITED** dated 17/2/2020 marked Exhibit E.
- g. Letter on the letter headed paper of **OBODE CONSULTANCY LIMITED** addressed to the manager, Consular Network Ltd dated 17/2/2020 marked Exhibit F.

The Plaintiff deposed in the affidavit in support of the writ of summons that the Defendants do not have any defence whatsoever to the claim against them in this suit.

As aforesaid, the originating processes and hearing notice was served on the Defendants which same was acknowledged by the 2nd Defendant but they neither appeared in Court nor filed any process in opposition or

defence. **Order 35 of the FCT High Court (Civil Procedure) Rules 2018** has made provisions with respect to matters commenced under the undefended list procedure. **Order 35 Rules 3 (1) of the FCT High Court (Civil Procedure) Rules 2018** provides that:-

“Where a party served with the writ delivers to a registrar, within five (5) days to the day fixed for hearing a notice in writing that he intends to defend the suit with an affidavit disclosing a defence on the merit the Court may give him leave to defend upon such terms as the Court may think just”.

Also see the cases of **Kabiru V. Ibrahim (2004) 2 NWLR pt. (857) pg. 326 of 346** and **Haido V. Usman(2004) 3 NWLR pt. 859 pg. 65 at 83.**

Order 35 Rules 4 of the FCT High Court (Civil Procedure) Rules 2018 of the Rules, further provides that:

“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, suit shall be heard as undefended and judgment given accordingly”

The implications of **Order 35 Rules 4 of the FCT High Court (Civil Procedure) Rules 2018** applies here particularly as the Defendant did not file the notice of intention to defend along with an affidavit hence the matter was heard as undefended.

I have nevertheless examined the evidence adduced by the Plaintiff and its affidavit in support of the writ and I am satisfied that it has made

out a case sufficient to grant the reliefs sought. This is irrespective of the fact that the position of the law is that averments in an affidavit not controverted or contradicted by an adversary in a counter affidavit are deemed admitted and unless the Court sees any reasons to the contrary, it is under a duty to accept them as established and act on them.

I have accordingly perused the entire Exhibits annexed to the affidavit. In support of writ of summons that is, Exhibit A – F. I am satisfied as shown on the face of the Exhibits that the 1st Defendant is a tenant and in arrears of rent in the property of the Claimant from 2014 to 2021 to the tune of N11, 931, 000.00 (Eleven Million, Nine Hundred and Thirty-one Thousand Naira) inclusive of VAT via Exhibits A, B1, C and E. Also the 2nd Defendant in Exhibit D and F undertook to make payment of the said arrears of rent. In the light of the foregoing, I hold that the Claimant's claim to the sum of N11, 931, 000.00 (Eleven Million, Nine Hundred and Thirty-one Thousand Naira) in relief No. 1 has been made out.

On relief No. 2, the Claimant claims the sum of N1, 200,000.00 (One Million Two Hundred Thousand Naira) for cost of this action. The Defendant was duly served with court processes and is aware of this suit. Defendant has neither challenged nor controverted any of the prayers as contained in the originating processes. The writ as filed states that the sum of N1, 200,000.00 (One Million Two Hundred Thousand Naira) only for the cost of this action; same was not

controverted by the Defendant and I therefore hold that the 2nd relief succeeds.

Finally the Plaintiff claims 10% interest per annum on the judgment sum from the date of the judgment till final liquidation of judgment sum. **Order 39, Rule 4 of the FCT High Court (Civil Procedure) Rules 2018** gives the Court discretion to grant a post judgment interest on the judgment sum at the time of judgment or thereafter at the rate not less than 10% per annum. The Claimant having claimed without challenge, the prayer also succeeds.

In totality therefore, the Claimant's suit succeeds in part the Court having granted reliefs' No. 1 and 3 and dismissed relief No. 2. I so hold.

Consequently it is hereby ordered as follows;

1. The Defendants are hereby jointly and severally ordered to pay forthwith to the Claimant the sum of N11, 931, 000.00 (Eleven Million, Nine Hundred and Thirty-one Thousand Naira) being the grand total of the outstanding arrears of rent and service charge from the period commencing from 31st day of January, 2014 to 30th day of January, 2021 in respect of the occupation of Suite 3C, Adisa Plaza, located at No. 39, David Ejoor Crescent, Gudu, Abuja.
2. Defendant is to pay forthwith to the Plaintiff the sum of N1, 200,000.00 (One Million Two Hundred Thousand Naira) only being the cost of this suit.

3. The Defendants shall pay interest on the judgment sum at the rate of 10% per annum from the date of judgment until final liquidation of Judgment sum.

Parties: Claimant is represented. Defendant is absent.

Appearances: No legal representation for either party.

HON. JUSTICE M. OSHO-ADEBIYI

JUDGE

16TH JULY, 2020