

IN THE DISTRICT COURT OF FCT
HOLDEN AT DUTSE ALHAJI, ABUJA

· BEFORE HIS WORSHIP HON: MUHAMMED TAHIR OMEIZA ABDULMUMINI

SCC/DUT/01/2023

BETWEEN

ORJI CHUKUMA.....CLAIMANT

(trading under the name and style uchorji general merchants)

AND

DURU PETER NELL.....DEFENDANT

19/10/2023

JUDGMENT

This is a Judgment on a claim for liquidated money demand. This matter was initially instituted pursuant to Order 5 of the District court civil procedures Rules 2021 but was transferred from the Registry to the small claims court for its suitability under the small claims proceedings.

The claimant herein as per his particulars of claim, affidavit and small claims complaints form (SCA2) is entitled to the sum of N1, 410,600.00(One Million, Four Hundred and Ten Thousand, Six Hundred Naira Only) being money paid by the claimant to the defendant for the procurement of travel visa which the defendant have failed to procure and has also refused to refund the said sum despite several demands.

Summons was issued to the defendant in pursuance to Article 2 Paragraphs 3 of the Small Claims Practices directions together with complaint form in accordance to Article 6 paragraphs 1 of the small claims practice direction of 2022, Affidavit of service form SCA4 was deposed to by the bailiff of the court Adams Theophilus.

On the 20th September 2023, Counsel to the claimant informed the court that the defendant have been served all the necessary processes, matter was deemed mention and subsequently adjourned for hearing.

On the date for hearing, counsel to the claimant Onyemaechi Onuigbo Esq referred the court to Article 7 paragraph 1 and 4 of the small claims court Practice Direction of 2022 and urge the court to grant the claims of the claimant on the strength of the said Article 7(1).

Let it be known that the objective of the small claim proceedings in Article 1 of the small claims Practice Direction is to provide easy access to an informal inexpensive and speedy resolution of simple debt recovery disputed in the Districts Courts

Article 7 Paragraph 1 and 4 of the small claims Practice Direction apply referred to by Mr Onuigbo states,

1. Upon service of the summons, the defendant shall file his defence or Admission or counter-claim within seven(7)days by completing form SCA 5 as appropriate”
2. Where a defendant fails to file an answer to the claim, or a counter-affidavit to the application for undefended claims, such defendant shall be held to have admitted the claim.

Article 9 (2) is in consonance with Order 24 Rule 4 of the District Court Civil Procedures Rule 2021, Article 9 Paragraph 2 states;

“when the claim is called for hearing and the claimant appears but the defendant does not appear, provided there is proof of service, the District Court Judge shall proceed with the hearing of the claim and enter Judgment as far as the claimant can prove his claims”

The defendant have been duly served with all the originating processes under the Federal Capital Territory Practice Directions on small Claims Court 2022,(hereinafter referred to as Small Claims Practice Direction) he has failed in pursuance to Article 7 paragraph 2 & 4 of

the small Claims Practice Direction (Supra) to file an answer to the Claim or a Counter affidavit or a defence to the claimant claim, it does therefore appear that the defendant does not dispute the Claimant's case against him.

I have carefully read through the 13 paragraph affidavit of the claimant, I have also studied the exhibits attached particularly the proof of transfer of the sum of N1, 400,600 (One Million, Four Hundred and Ten Thousand, Six Hundred Naira) to the defendant and document of achorji, General Merchandise addressed to the defendant with the Caption "Demand for immediate payment of the sum of N1, 410,600.00(One Million, Four Hundred and Ten Thousand, Six Hundred Naira)."

It is settled law that where affidavit evidence has not been challenged or contradicted by way of counter-Affidavit facts deposed to in such affidavit are deemed admitted. See RIMI V I.N.E.C (2004) 15 NWLR (PT 895)121 FAWEHINMI V ABACHA (1996)5NWLR (PT 447)198. In OKOEBOR V POLICE COUNCIL (2003) 12 NWLR (PT 834)444, the apex court held that where the evidence of a witness is not inadmissible in law, uncontradicted and unchallenged, a court of law can act on it and accept it as true version of the case, the court further held per Edozie JSC Cpp.36-37 Para G-B that wherever any evidence, whether affidavit or oral stands uncontradicted, unless the evidence is patently incredible, the court ought to regard the matter to be proved by that evidence as admitted by the adverse party.

Similarly in UNITY LIFE & FIRE INSURANCE CO. LTD V I.B.W.A LTD (2001) NWLR (PT 773)610 where the Apex Court held that

"where evidence given by a party in any proceeding was not challenged by the opposing party who had the opportunity to do so, it is always open to the trial court seized of the proceedings to act on such unchallenged evidence before it"

It is also trite that where evidence is uncontradicted, the onus of proof is satisfied on a minimal proof since there is nothing on the other side of the scale. See *BURAIMOH V BAMGBOSE* (1989) 2 NWLR (PT 109)352.

In consequence thereof, Judgment is hereby given in favour of the claimant, it is adjudged that the claimant has proven his case upon minimal proof and he is therefore entitled to Judgment. I hereby ordered

1. That the defendant pay the claimant the sum of N1, 410,600.00(One Million, Four Hundred and Ten Thousand, Six Hundred Naira Only) immediately.
2. 10%(Ten Percent) interest per annum shall be paid annually on Judgment sum in pursuance to Order 32 Rule 4 of the District court Civil Procedure Rule 2021.

REPRESENTATION

D. ONUIGBO for the claimant

Defendant absent

Claimant absent

Defendant not represented



HON: MUHAMMED TAHIR OMEIZA ABDULMUMINI