

**IN THE HIGH COURT OF JUSTICE OF THE F.C.T.**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT ZUBA, ABUJA**

**ON WEDNESDAY THE 5<sup>TH</sup> DAY OF APRIL, 2023**

**BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA**

**JUDGE**

**SUIT NO.: FCT/HC/CV/383/2022**

**BETWEEN:**

**MELFORD EMOKAH**

-----

**CLAIMANT**

**AND**

**OBIORA JOHN**

-----

**DEFENDANT**

## **BENCH JUDGMENT**

It is trite that where a Writ is premised on unliquidated money demand or debt that such Writ will be marked "Undefended" either suo motu by Court or by application of the Plaintiff/Plaintiff Counsel. Such marking is done before the Writ is served on the Defendant. Once the Defendant is served, the Rules of Court provide that he will respond within 5 days. Where he is not able to do so, the Court can grant an application for extension of time to do so if made and supported by good reason. But where it is evidently clear that the Defendant was served and he fails to enter appearance or respond to the Writ by filing Notice to Defend and Affidavit in support that it has a prima

facie defence to the Suit, the Court will hold that it has no defence and what the Court will do is to look at the Affidavit in support of the Writ and the facts therein and any document(s) attached, and if from there it is clear that there is merit in the case of the Plaintiff, the Court will not hesitate to grant the Plaintiff its heart desire in that regard. That is, the Court will enter Judgment since the Suit is not challenged.

In this case, it is evidently clear that the Defendant, Obiora John was served with the Writ by Order of this Court by substituted means. That Order was made on the 1<sup>st</sup> of February, 2023. The said Defendant was served, going by the Affidavit of the Bailiff/Clerk on the 3<sup>rd</sup> of February, 2023. That is exactly 2 months and 2 days ago. There is no evidence to show that the Defendant entered appearance in pen and paper or in flesh and blood. He never had any Counsel representation. He never appeared before this Court to challenge the Writ so served on it.

Before I proceed, it is imperative to reiterate that in the Writ the Claimant claims the following Reliefs against the Defendant:

- (1) The sum of Twenty Seven Million, Five Hundred Thousand Naira (₦27, 500,000.00) only being the sum the Claimant advanced to the Defendant as a friendly loan.**
- (2) The statutory Ten (10) per cent interest on the Judgment sum from the date of Judgment until the Judgment sum is completely liquidated.**

### **(3) Cost of the Suit.**

The Claimant supported the Writ with an Affidavit of 17 paragraphs deposed to by the Claimant in person. The Claimant Counsel also attached 3 documents which are Memorandum of Understanding between the Claimant and the Defendant made on the 31<sup>st</sup> day of August, 2021. Both parties signed the Agreement. They also have Witnesses to the said Agreement. The Agreement was authenticated by a Commissioner for Oath on the 1<sup>st</sup> of September, 2021. There is the photocopy of the Driver's License of the Defendant – Obiora John. That document was attached as **EXH A**.

Also in support, the Claimant attached a Cheque issued by the Defendant to the Claimant through the Defendant's company. That Cheque is for **Twenty Seven Million, Five Hundred Thousand Naira (₦27,500,000.00)** which is the sum in issue. It is an Access Bank Cheque dated 29<sup>th</sup> July, 2022. The Cheque is in the name of Noblyngold Ventures. It was presented to the Bank on 29<sup>th</sup> July, 2022 going by the stamp thereon.

The Claimant/Claimant Counsel further attached a 3<sup>rd</sup> document which is Letter from the Solicitor of the Claimant – Ogbulafor & Co. That Letter was written on the 1<sup>st</sup> of August, 2022. It was addressed to the Defendant. It is a letter for demand for payment of the said friendly loan given to the Defendant by the Claimant. It is a 2 paragraphs letter. By its content, it puts no one in doubt that it was centred on the demand for the repayment of the said friendly loan. In it the

Claimant's Solicitor who stated that the letter is based on the behalf and instruction of the Claimant, shows that the Defendant failed to keep to its promise to repay the loan within Three (3) months as agreed – **EXH 1**. It stated and detailedly narrated how the Cheque was presented to the Bank and it show that there is no sufficient fund in the Account of the Defendant.

In the second to the last paragraph of the letter – page 2, the Claimant Counsel demanded for the payment of the said friendly loan of **Twenty Seven Million, Five Hundred Thousand Naira (₦27, 500,000.00)**.

In the first paragraph in the second page of the letter, the Claimant Counsel had on behalf of the Claimant pointed out to the Defendant the legal implication of issuing such a Cheque, stating that it is criminal offence and to do so attract up to 6 months imprisonment.

In the last paragraph the Claimant Counsel had threatened to take legal action by making formal criminal complaint against the Defendant if he fails to pay up within Seven (7) days of the letter. The Defendant failed to do so till date. Hence this Writ.

It is clear that where a party fails to respond to any Process served on it, it means that such party has nothing to say and had admitted everything said or allegation raised against it. This is more so where such party was given all judicial leverages to do so but failed. It is a known fact that unchallenged facts are deemed to be admitted.

In this case as earlier stated the Defendant was served with the Writ since 3<sup>rd</sup> February, 2023; till date he did not respond. The Suit of the Claimant is therefore unchallenged in that regard.

Also where a Suit as in this case is marked Undefended and there is no Notice to Defend or Affidavit of Intension to Defend showing that there is a prima facie defence on merit, the Court will hold that the case is unchallenged and undefended. Where that is the case as in this particular case, the Court will not hesitate to do the needful.

Today the Claimant Counsel had moved their Writ and had asked the Court to enter Judgment on its behalf as, according to him, the Defendant has no defence to the Suit of the Claimant. This Court totally agrees with the Claimant Counsel.

The Court had earlier gone through the fact in the Affidavit and also through the 3 document especially the Memorandum of Understanding and the Letter for Demand. There is indeed no Defence by the Defendant. Aside from that fact, the Defendant did not file anything to challenge the Suit.

Based on all the above, this Court holds that there is merit in the case of the Claimant. The Defendant has no Defence and the Claimant's case is equally not challenged. The facts in the Affidavit support the Claimant's claims.

This Court therefore enters Judgment in favour of the Claimant. The Court also grants the claims of the Claimant as prayed.

**This is the Bench Judgment of this Court.**

**Delivered today the \_\_\_ day of \_\_\_\_\_ 2023 by me.**

---

**K.N. OGBONNAYA**  
HON. JUDGE