

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

DELIVERED THE 7<sup>TH</sup> NOVEMBER, 2023

HOLDEN AT ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE ASMAU AKANBI- YUSUF

SUIT NO. CV/796/2021

BETWEEN

1. NEP MALL LTD
  2. NOVARE PROPERTY DEVELOPMENTS  
NIGERIA LTD
- ... .. CLAIMANTS

AND

1. ENERGY KONNECT  
(NIGERIA) LTD
- ... .. DEFENDANT

### JUDGMENT

By a writ of summons placed under the undefended list procedure dated and filed the 7<sup>th</sup> December 2021, the Claimant's claim against the Defendant as follows.

- The cumulative sum of #3,333,555:82 (Three Million, Three Hundred and Thirty -Three Thousand, Five Hundred and Fifty -Five Naira, Eighty- Two Kobo), being arrears of Rent, Service Charge, and Utility Bills owed the 1<sup>st</sup> Claimant by the Defendant in respect of the lease of the Demised Property in line with the Agreement between the 1<sup>st</sup> Claimant and the Defendant, and also as evidenced by the Arrears Agreement between the parties.
- The sum of #5, 000, 000 (Five Million Naira) being the cost of this action.

The processes of the claimants were served on the defendant vide substituted service and upon the consideration of the affidavit in support of the claimants' case, the matter was transferred to the general cause list and pleadings were ordered to be exchanged. The claimants' filed their Statement of Claim as well as the accompanying processes on 7/12/2021 and same was served on the Defendant via substituted means (see the affidavit of service deposed to by Mohammed Raji Haruna).

The defendants despite being served with the hearing notices failed and/or neglected to defend this matter.

The claimants called one witness in this case. on the 12/4/2022, the claimants' witness MaryJane Ugwu testified as Pw1. She adopted her witness statement on oath. Her evidence is as follows:

1. I am an Accountant of the 1<sup>st</sup> Claimant, and by virtue of which I am conversant with the facts of this matter. I have the consent of the Claimants to depose to this Affidavit, and all facts deposed to in this Affidavit are true, and within my personal knowledge except as otherwise stated.
2. The 1<sup>st</sup> Claimant is a Limited Liability Company, duly registered with the Corporate Affairs Commission (" the CAC"), and with offices at Plot 502, Dalaba Street, Off Micheal Okpara Way. Novare Central Office, Wuse Zone 5, Abuja. The 1<sup>st</sup> Claimant was previously named Aptics Nigeria Limited, but thereafter duly changed its name to NEP Mall Limited. The 2<sup>nd</sup> Claimant is a Limited Liability Company, duly registered with the CAC, and with offices at Novare Central Office, Plot 502, Dalaba Street, Off Michael Okpara Way, Wuse Zone 5, Abuja-FCT.
3. The 1<sup>st</sup> Defendant is a Limited Liability Company registered in Nigeria, with its stated address at 15 Arsenal Street, Sun City, Abuja-FCT.
4. The 1<sup>st</sup> Claimant is the owner of the Retail Mall known as Novare Apo Mall, and it had executed an Offer to Lease Agreement sometime about February 23, 2015 with the Defendant in respect of Shop No. 2 Novare Apo Mall, Abuja-FCT, which Agreement was to commence from May 1, 2015 (" the Agreement").
5. The 2<sup>nd</sup> Claimant is the Property Manager and Agent of the 1<sup>st</sup> Claimant, with authority to lease and undertake the management of Novare Apo Mall (part of which was leased by the 1<sup>st</sup> Defendant) on behalf of the 1<sup>st</sup> Claimant. The 2<sup>nd</sup> Claimant also leased Shop No. 2 Novare Apo Mall, Abuja-FCT to the Defendant for and on behalf of the 1<sup>st</sup> Claimant.
6. By virtue of the Agreement, the Defendant took possession of Shop No. 2 (measuring approximately 32.37Square Metres) at Novare Apo Mall, Abuja-FCT (" the Demised Premises") for use, initially as a DSTV Outlet, and subsequently as a Hair Salon, under the name and style; "Hairline Barbing Salon"
7. In line with Clause 6 of the Agreement, the monthly rental of the Demised Premises was at the rate of USD60 (Sixty United States Dollars) per square metre inclusive of Withholding Tax (WHI) but exclusive of Value Added Tax (VAT), for the first year, and which escalated by 5% (Five percent) in the second year. Accordingly, since the size of the Demised Premises was 32.37SqM (Thirty-Two Point Tree Seven) Square Metres, the monthly rental of the Demised Premises was the sum of

USD1,942:37 (One Thousand, Nine Hundred and Forty-Two United States Dollars, and Thirty-Seven Cents), inclusive of WHT but exclusive of VAT, for the first year, and which escalated by 5% (Five percent) in the second year.

8. In line with Clause 7.2 of the Agreement, the monthly Service Charge of the Demised Premises for the first year was the sum of USD9:90 (Nine United States Dollars, and Ninety Cents) per square metre. However, in line with the Agreement, this amount was adjustable to the actual operating costs subsequently from the second year. The services covered by the Service Charge include Cleaning & Fumigation Expenses; Refuse Removal Charges; Security Expenses; Air-Conditioning Running & Maintenance Costs; Building Amenity Costs; and Any Other Cost Incurred in Servicing or Maintaining Novare Gateway Mall.
9. In line with Clause 7.1 of the Agreement, Electricity and Water ("the Utilities") consumed upon the Demised Premises was measured by the sub-metres installed for the Demised Premises, and accordingly the Costs varied depending on the quantity of the Utilities consumed by the 1<sup>st</sup> Defendant. The 2<sup>nd</sup> Claimant duly issued the Defendant with Monthly invoices, for applicable amounts, in respect of the Utilities when due.
10. The lease of the Demised Premises was characterized by the failure of the Defendant to make the above itemized payments in respect of the lease as was due, which culminated in outstanding debts being owed the 1<sup>st</sup> Claimant by the Defendant. Following complaints by the Defendant on difficulties being experienced in its business, the Claimants decided to formalize the terms of the repayment schedule for the payment of the outstanding debts owed the 1<sup>st</sup> Claimant by the Defendant.
11. The Defendant had also leased other shops at other Malls (different from the Demised Premises) from the Claimants sister/ affiliate companies; Gray-Bar Alliance Limited and Elysium Diem Nigeria Limited, and the Defendant was also owing these aforesaid sister/ affiliate companies other outstanding sums in respect of their respective leases (as separate from the debts owed the 1<sup>st</sup> Claimant)
12. The Claimants aver that sometime about October 23<sup>rd</sup>, 2019, the 1<sup>st</sup> Claimant, Gray-Bar Alliance Limited and Elysium Diem Nigeria Limited jointly executed an agreement tagged the "Terms of Payment of Arrears" (hereinafter "The Arrears Agreement") with the Defendant regarding the terms of the Defendant's repayment schedule for all the several outstanding debts owed to them.
13. In line with Clause 1 of the Arrears Agreement, particularly by the figures contained in its Annexures, the Defendant formally and unequivocally ADMITTED that it owed the 1<sup>st</sup> Claimant the sum of #3,333,555:82 (Three Million, Three Hundred and Thirty Three Thousand,

Five Hundred and Fifty Five Naira, Eighty Two Kobo), as arrears of Rent, Service Charge, and Utility Bills in respect of its lease of the Demised Property (Shop No. 2 Novare Apo Mall, Abuja-FCT) as at October 14, 2019.

14. In line with the terms of the Arrears Agreement, the Defendant was obliged to pay the sum of #1,000,000 (One Million Naira) per month, a portion of which money would be used to defray the 1<sup>st</sup> Defendant's monthly rent obligation, and the balance applied towards its outstanding arrears. In line with the terms of the Arrears Agreement, the Defendant was obliged to pay these monies at specified times.
15. The Defendant did not comply with the terms of the Arrears Agreement as it NEVER made payment as contemplated by the Arrears Agreement in respect of the Demised Premises, and also failed/refused to make further payments in compliance thereof or even towards its obligations to the 1<sup>st</sup> Claimant pursuant to the Agreement in respect of payment for the Rent, Service Charge, and Utilities consumed at the Demised Premises.
16. The Defendant made NO PAYMENT regarding its obligations in the Arrears Agreement in respect of the Demised Property, and thus the sum of #3,333,555:82 (Three Million, Three Hundred and Thirty Three Thousand, Five Hundred and Fifty Five Naira, Eighty Two Kobo), being arrears of Rent, Service Charge, and Utility Bills owed by the Defendant in respect of its lease of the Demised Property as at October 14, 2019, as ADMITTED in the Arrears Agreement remains UNPAID and outstanding.
17. From the commencement of the lease of the Demised Premises, the understanding and agreement between the parties is that ordinarily, the conversion rate is as determined by the 1<sup>st</sup> Claimant's Banker, Stanbic IBTC Plc (*which is normally the interbank exchange rate*), however, the exchange rate utilized by the Claimants for the Defendant was a "Group Exchange Rate Concession", which was in fact at a rate lower than the prevailing interbank exchange rate.
  - 17.1 The exchange rate utilized for the Defendant for May 2015 to March 2016 was the sum of #199:10 (*One Hundred and Ninety Nine Naira, Ten Kobo*) [#199.1] to 1USD (One United States Dollar).
  - 17.2 The exchange rate utilized for the Defendant from April to June 2016 was the sum of ~~₦~~199.10 (*One Hundred and Ninety Nine Naira, Ten Kobo*) to 1USD.
  - 17.3 The exchange rate utilized for the Defendant from July to September 2016 was the concessionary rate of the sum of ~~₦~~225(*Two Hundred and Twenty Five Nine Naira*) to 1USD.
  - 17.4 The exchange rate utilized for the Defendant from October 2016 to March 2017 was the sum of ~~₦~~225(*Two Hundred and Twenty Five Nine Naira*) to 1USD.

18. In line with the Agreement, from April 2017 the rent escalated to the sum of USD66 (Sixty Six United States Dollars) per Square Metre, inclusive of Withholding Tax (WHT) but exclusive of Value Added Tax (VAT). Accordingly, the Defendant was then obligated to pay the 1<sup>st</sup> Claimant the sum of USD2,136.42 (Two Thousand, One Hundred and Thirty Six United States Dollars, and Forty Two Cents) per Month as rent.
- 18.1 The exchange rate utilized for the Defendant from October 2016 to March 2017 was the sum of ₦225 (Two Hundred and Twenty Five Naira) to 1USD.
19. From January 2018 to April 2018, when the Defendant gave up possession of the Demised Premises, the Claimants as a good faith gesture, gave the Defendant a concession on the rent such that the monthly rental of the Demised Premises was reduced from the agreed sum of USD66 to the sum of USD50 (Fifty United States Dollars) per Square Metre, inclusive of Withholding Tax (WHT) but exclusive of Value Added Tax (VAT), and accordingly, the Defendant was then obligated to pay the 1<sup>a</sup> Claimant the sum of USD1,177.60 (One Thousand, One Hundred and Seventy Seven United States Dollars, and Sixty Cents) per Month as The exchange rate utilized for the Defendant from April 2017 to December 2017 was the sum of ₦225 (Two Hundred and Twenty Five Naira) to 1USD.
- 19.1. The exchange rate utilized for the Defendant from January 2018 to April 2018, when the Defendant gave up possession of the Demised Premises was the sum of ₦225 (Two Hundred and Twenty Five Naira) to 1USD.
20. For the first year of the lease, the Service Charge was USD9:90 (Nine United States Dollars, and Ninety Cents) per square metre, per month, which translated to the sum of USD320.46 (Three Hundred and Twenty United States Dollars, and Forty Six Cents) per Month. Accordingly, this translated to the sum of ₦196,973:07 (One Hundred and Ninety Six Thousand, Nine Hundred and Seventy Three Naira, Seven Kobo) per Month.
21. As at the April 2018, when the Defendant gave up possession of the Demised Premises, the outstanding Arrears in respect of its obligations to the 1<sup>st</sup> Claimant pursuant to the Arrears Agreement, on the records of the Claimants, was the cumulative sum of ₦3,333,555:82 (Three Million, Three Hundred and Thirty Three Thousand, Five Hundred and Fifty Five Naira, Eighty Two Kobo), which is broken down into its component parts as follows –
- 21.1 The outstanding rent (inclusive of applicable Withholding Tax) for the Demised Premises, being the sum of ₦1,783,019:43 (One Million, Seven Hundred and Eighty Three Thousand, and Nineteen Naira, Forty Three Kobo).

21.2 The outstanding Service Charge for the Demised Premises, being the sum of the sum of ~~N~~906, 493:425 (Nine Hundred and Six Thousand, Four Hundred and Ninety Three Naira)

21.3 The outstanding Service Charge for the Demised Premises, being the sum of the sum of N644,043:25 (Six Hundred and Forty Four Thousand, and Forty Three Nara, Twenty Five Kobo).

22. As at the time the Defendant gave up possession of the Demised Premises, the Defendant owed the 1<sup>st</sup> Claimant the cumulative sum of #3,333,55582 (Three Million, Three Hundred and Thirty Three Thousand, Five Hundred and Fifty Five Naira, Eighty Two Kobo).

23. The Defendant had failed/ refused to pay the outstanding debts despite the many opportunities afforded it by the Claimants. The Claimants and the Defendant had exchanged several email correspondences in respect of the payment of the monies due by the Defendant, but the Defendant had failed /refused to make the due payments.

24. I was informed by Mr. Emmanuel Edibo of Counsel to the Claimants on December 3, 2021 at Novare Central Offices, 1<sup>st</sup> Floor, Novare Central Mall, Wuse Zone 5, Abuja-FCT, when we were discussing the filing of this Affidavit, and I verily believe him as stated below:

24.1 When he wanted to deliver a Demand Letter to the Defendant at 15 Arsenal Street, Sun City, Lugbe, Abuja- FCT, he was informed by the security guard at the premises that the Premises was vacant and that there was no person in occupation.

24.2 The Claimant's Solicitor subsequently delivered Demand Letter to the Defendant by email to [adogaibrahim@gmail.com](mailto:adogaibrahim@gmail.com), which is the email address utilized by the Defendant.

24.3 Despite their Solicitor's correspondences demanding for payment in respect of the arrears and unpaid sums, the Defendant had failed/ refused to respond in any way or manner to the correspondence.

25. The Claimants aver that the Defendant does not have a defence to this suit, and it would be in the interest of justice for this Honourable Court to grant the reliefs sought by the Claimants.

The following documents were admitted in evidence:

- Offer to lease for Energy Konnect NG Limited- shop G 02, Grand Towers Abuja Mall. Marked as Exhibit A
- A copy of the terms for payment of arrears which is stated as "These terms of settlement is made this October 23, 2109 between Nep Mall Ltd, Gray Bar Alliance Ltd and Elysium Diem Nigeria Limited (Novare

Group)" Private limited Company and Energy Konnect Nigeria Ltd marked as Exhibit B.

- Certificate made pursuant to Section. 84 of the Evidence Act 2011 made on the 10<sup>th</sup> January 2022 marked as Exhibit C.
- Rent Statement -Tenant-Hairline Barbing Salon. Shop No. 2, shop size 3237 marked as Exhibit D1.
- Service Charge Statement-Tenant Hairline Barbing Salon, Shop No 2, Shop Size 3237 marked as Exhibit D2, A document tagged utility -Tenant Hairlines Barbing Salon Shop No. 2, Shop Size 32.37 marked as Exhibit D3, Tenant Statement (As 15<sup>th</sup> December 2020) Tenant Hairlines Barbing Salon, Shop No. 2, Shop Size 32.37 marked as Exhibit D4
- Email Correspondences of October 6<sup>th</sup> 2020 between Adoga Ibrahim to Chineme Onuoma Head of Legal Novare property developers Nig. Marked as Exhibit E, email from Adoga Ibrahim sent on Tuesday 29<sup>th</sup> September 2020 at 7:34am to Chinenye Unuoma marked as Exhibit E2, email from Adoga Ibrahim sent Monday 31<sup>st</sup> August 2020 at 8:52pm to Chineme Onuoma and email from Mary Jane Iheanacho dated Monday August 17 2020 at 12:31am to Adoga Ibrahim marked Exhibit E3i, email from Adoga Ibrahim sent Monday July 27, 2020 at 5:38pm to Mary Jane Iheanacho and email of Monday 27 June 2020 03.41 Mary Jane Iheanacho marked as Exhibit 3ii, email from Adoga Ibrahim sent Thursday July 16, 2020 at 7.20pm to Mary Jane Iheanacho and email of Thursday 16 July 2020 at 1. 28 to Mary Jane Iheanacho marked as Exhibit 3iii, email from Adoga Ibrahim sent on Tuesday July 14, 2020 at 10.46am sent to Lucky Odji marked as Exhibit 3iv
- Email from John Paul Okwoli sent Tuesday December 1, 2020 at 3.41pm to Adoga Ibrahim and gmail.com-subject-Re. Demand for debt owed by Energy Konnect LTD in respect of the lease of shop No. 1 Novare Apo mall Abuja FCT marked as Exhibit F.

At the end of the Pw1's evidence in chief, the matter was adjourned for cross examination. On the adjourned date, the Defendant failed to appear in Court, hence, the Claimants' Counsel applied that the Defendant be foreclosed. The matter was adjourned for Defence. Again, on the day slated for defence, the Defendant failed to appear before the court, he was foreclosed from defending the matter and same was adjourned for adoption of final written address.

On 2/11/2023, Learned counsel John Paul Okwoli Esq. argued and adopted the final written address filed on behalf of the claimant, wherein he formulated two issues for determination, to wit;

1. Whether the court ought not to grant the reliefs sought for failure of the defendant to defend the matter.
2. Whether the claimant is entitled to the grant of the reliefs sought.

I find the issues formulated by counsel to the claimants' as one and the same. It is my view that issue 2 formulated by counsel to the claimants is sufficient in the determination of the case. In the case at hand, it is not in dispute that the defendant failed or ignored to defend this matter or enter appearance; this however will not mean an automatic victory to the claimants. The claimants by law are required to prove their assertions with cogent and credible evidence. In MTN NIGERIA COMMUNICATIONS LIMITED v. MUNDRA VENTURES NIGERIA LIMITED (2016) LPELR-40343(CA)"...the law is that evidence that is unchallenged or un-contradicted by the adverse party is good to be acted upon by the Court unless it is either irrelevant or palpably false or worthless by itself. Therefore, the mere fact that evidence is unchallenged is not tantamount to proof as such unchallenged evidence must also be credible and relevant in relation to the facts it seeks to establish. See CAMEROON AIRLINES V. MIKE OTUTUIZU (2005) 9 NWLR (PT. 929) 202. SEE ALSO ISHOLA LAWSON V. AFANI CONTINENTAL CO NIG LTD (2002) 2 NWLR (PT. 752) 585; OMOREGBE V. LAWAN (1981) 3 SC 108; ODUOLA V. COKER (1981) 5 SC 197."

It is the submission of Counsel that the Defendant failed/refused to enter Appearance, despite the opportunities availed it in that regard; that the Claimants had proceeded to lead evidence, oral and documentary and were duly admitted. He submits that where a Defendant(s) disputes the Claimant's claims or case, he must file a Statement of Defence and lead evidence thereon at the trial; that in a case where the Defendant files no defence, the standard of proof cast on a Plaintiff is a minimal one. He cited EGE SHIPPING & TRADING INCO & ORS VS. TIGRIS INTERNATIONAL CORPORATION (1999) 14 NWLR (PT.637) P.70 AT 84 - 85 AND OBA ADEYINKA OYEKAN IL & ORS. VS. MR. ELI ROSSEK (2009) LPELR - 11906 (CA) AND KHALED BARAKAT CHAMI VS. U.B.A. PLC (2010) S.C.NJ. P.23 AT 39 -40.

Arguing further, counsel to the claimant states that the basis of the Claimants' claim is based on contract, as duly executed between the parties in respect of the Subject Property; that by the terms of Clause 6 of the Agreement, the monthly rental of the Demised Premises was at the rate of USD60 (Sixty United States Dollars) per Square metre inclusive of Withholding Tax (WHT) but exclusive of Value Added Tax (VAT), for the first year, and which escalated by 5% (Five percent) In the second year. Clause 2 of the Agreement provides that the size of the Demised Premises was 32.37Sqm (Thirty Two Point Three

Seven) Square Metres, and thus by simple mathematical calculation, the monthly rental of the Demised Premises was the sum of USD1,942:37 (One Thousand, Nine Hundred and Forty Two United States Dollars, and Thirty Seven Cents), inclusive of WHT but exclusive of VAT, for the first year, and which escalated by 5% (Five percent) in the second year; that by the terms of Clause 7.2 of the Agreement, the monthly Service Charge of the Demised Premises for the first year was the sum of USD9:90 (Nine United States Dollars, and Ninety Cents) per square metre; that by virtue of clause 7.1 of the Agreement, Electricity and Water ("the Utilities") consumed upon the Demised Premises was measured by the sub-metres installed for the Demised Premises, and accordingly the Costs varied depending on the quantity of the Utilities consumed by the Defendant. He argued that the uncontroverted evidence of the Claimants is that the 2<sup>nd</sup> Claimant duly issued the Defendant with Monthly invoices, for applicable amounts, in respect of the Utilities when due.

He continued that exhibit B was duly executed between the 1<sup>st</sup> claimant and other affiliate companies and the defendant in respect of the defendant's payment of its arrears of rent and other outstanding in respect of the subject matter. He submits that by clause 1 of the exhibit B, particularly by the figures contained in its Annexures, the Defendant admitted that it owed the 1<sup>st</sup> Claimant the sum of #3,333,555:82 (Three Million, Three Hundred and Thirty-Three Thousand, Five Hundred and Fifty Five Naira, Eighty Two Kobo), as arrears of Rent, Service Charge, and Utility Bills in respect of its lease of the Demised Property (Shop No. 2, Novare Apo Mall, Abuja-FCT) as at October 14, 2019; that in line with the terms of the Arrears Agreement, the Defendant was obliged to pay the sum of #1,000,000 (One Million Naira) per month, a portion of which money would be used to defray the Defendant's continuing monthly rent obligation, and the balance applied towards the Defendant's outstanding arrears that Defendant made no payment in line with the terms of the Arrears Agreement, and the earlier outstanding sum of #3,333,555:82 remained unpaid.

It is elementary law that he who alleges must prove. The law enjoins a party who makes an assertion to prove the truth of same, in order to succeed in the action. See DANGOTE CEMENT V. ANYAFU (2021) LPELR-52601 (CA)

Guided by the above, I shall now proceed to determine the sole issue.

It is the evidence of the claimants' that parties by exhibit A entered into a contract wherein the defendant agreed to lease Shop G 02 Grand Towers Abuja Mall at usd60.000/m<sup>2</sup> including WHT but excluding VAT. See clauses 6, 7.1, 7.2 of exhibit A. It is equally in evidence that the lease of the defendant commenced on 01 May, 2015 for a period of two years. The Pw1 equally

testified that the 2<sup>nd</sup> claimant being the property manager and agent of the 1<sup>st</sup> claimant has the authority to lease and undertake the management of Novare Apo Mall which was leased by the defendant on behalf of the 1<sup>st</sup> claimant; that the 2<sup>nd</sup> claimant also leased shop no. 2 Novare Apo Mall, Abuja – FCT to the defendant for and on behalf of the 1<sup>st</sup> claimant; that by virtue of the agreement, the defendant took possession of shop no. 2 Novare Mall, Abuja for use initially as DSTV outlet and subsequently as a Hair Salon under the name and style Hairline Barbing Salon. The claimant further gave evidence that due to the failure of the defendant to comply with the terms and conditions stated in exhibit A, the claimants' decided to draw up a terms of repayment schedule for the payment of the outstanding debt owed the 1<sup>st</sup> claimant by the defendant; that the defendant had also leased other shops at other Malls from the claimants' sister/affiliate companies different from the one stated in exhibit A and the defendant was also owing the aforesaid companies, hence, exhibit B was executed by the 1<sup>st</sup> claimant and the defendant.

Exhibit A is the offer lease granted to the defendant to occupy Grand Towers Abuja Mall. It is shown in exhibit A that the lessor is one Aptic Nigeria Ltd. The Pw1 testified to the fact that the 1<sup>st</sup> claimant is a Limited Liability Company duly registered with the Corporate Affairs Company and that it was formally known as Aptics Nigeria Limited. In the circumstance of this case, I would have thought the claimants would present documentary evidence to buttress this assertion. Ss. 131. (1) provides that whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist. (2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person. 132(1) The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side. 133(1) In civil cases the burden of first proving the existence or non-existence of a fact lies on the party against whom the judgment of the court would be given if no evidence were produced on either side, regard being had to any presumption that may arise on the pleadings.

The Claimants testified to the fact in paragraph 4 of the Pw1's witness statement on oath thus;

*Paragraph 4,*

*"The 1<sup>st</sup> Claimant is the owner of the retail Mall known as Novare Apo Mall and it had executed an offer for Lease Agreement sometime about February 23<sup>rd</sup>, 2015 with the Defendant Novare Apo Mall, Abuja-FCT, which Agreement*

*was to commence in respect of Shop No. 2 Novare Apo Mall, Abuja – FCT which Agreement was to commence from May 1<sup>st</sup>, 2015 ("the Agreement")."*

Again, the witness in paragraph 5 of the witness statement on oath states thus

*"The 2<sup>nd</sup> claimant is the property manager and agent of the 1<sup>st</sup> claimant, with authority to lease and undertake the management of Novare Apo Mall (part of which was leased by the 1<sup>st</sup> defendant) on behalf of the 1<sup>st</sup> claimant. The 2<sup>nd</sup> claimant also leased shop no.2 Novare Apo Mall, Abuja – FCT to the defendant for and on behalf of the 1<sup>st</sup> claimant."*

The question is who amongst the claimants leased out shop no 2 Novare Apo Mall, Abuja – FCT as both entities are relying on exhibit A? I have considered the testimony of the Pw1 and it does appear to me that there are contradictions in her evidence. In one breadth she said that the 1<sup>st</sup> claimant and the defendant executed an offer to lease agreement sometime in February 2015 in respect of shop no.2 Novare Apo Mall which agreement was to commence from May 1, 2015; while in another breadth she averred that the 2<sup>nd</sup> claimant, the property manager and agent of the 1<sup>st</sup> claimant leased shop no. 2 Novare Apo Mall Abuja to the defendant for and on behalf of the 1<sup>st</sup> claimant. Exhibit A appears to be the only agreement tendered by the claimants in this suit and gleaning through the exhibit A, the agreement, it is shown in clause 2.1 thus "The lessee to occupy shop G 02 Grand Towers Abuja Mall..." Firstly, the claimants failed to link the Grand Towers Abuja Mall to the Novare Apo Mall, Abuja as averred in the statement of claim. There is no correlation or explanation to those contradictions.

Going further, the Pw1 gave evidence that the defendant also leased other shops at other Malls from the claimants' sister/affiliate companies and was also owing those companies; that due to the non-compliance of the defendant with the terms and conditions stated in exhibit A, the claimants drew up a repayment schedule i. e exhibit B.

Exhibit B, reads in part;

#### *TERMS FOR PAYMENT OF ARREARS*

*THESE TERMS OF SETTLEMENT is made this October 23, 2109, BETWEEN NEP MALL LIMITED, GRAY- BAR ALLIANCE LIMITED AND ELYSIUM DIEM NIGERIA LIMITED ("NOVARE GROUP"), Private Limited Companies incorporated under the Companies and Allied Matters Act, Cap C20. Laws of the Federation of Nigeria with its representative office at Plot 502. Dalaba Street, Off Micheal Okpara Way. Wuse Zone 5, Abuja which expression shall wherever the context so admits*

*include its successors-in-title and assign of the one part: AND*

*ENERGY KONNECT NIGERIA LIMITED ("Tenant"), having its principal offices at 15, Arsenal Street, Suncity, Abuja, which expression shall wherever the context so admits include his successors- in-title and assign of the other part:*

A cursory look at the terms of payment of arrears above shows the names of some companies that are not parties to this suit. The companies are Gray Bar Alliance Ltd and Elysium Diem Nigeria Ltd. The court cannot take decisions with regards to Gray Bar Alliance Ltd and Elysium Diem Nigeria Ltd who are not parties to this suit. Again, in exhibit B it is stated that by virtue of the signed lease agreements, the tenant became a tenant of shop nos. 1 & 2 at NovareApo Mall; however, the claimants failed to present the said lease agreement signed by parties evidencing what is contained in clause ii of the exhibit B. The established fact is that no weight can be attached to exhibits A & B as the claimants failed to present cogent evidence to support the contents of the documents. And I so hold.

Learned counsel to the claimants argued that the applicable Statements of Accounts of the Defendant with the Claimants are in evidence and same depict the claimed sums; that the Claimants have not just made a bare assertion against the Defendant, as they have provided an account statement to that effect, and also gone further to depict by cogent and compellable oral and documentary evidence of an accountant, how the claimed sums was arrived at; that the entirety of the monies claimed by the Claimant against the Defendant is covered by written contract in evidence. He argued that contractual agreements not found to have been entered fraudulently or illegally must be observed and enforced. He urged the court to hold that the defendant having consented to an agreement is bound to pay as agreed; he submits that the Arrears Agreement is by its nature admissions by the 1<sup>st</sup> Defendant of the indebtedness, and thus needs no further proof. He states that it is trite law that whatever fact is admitted needs no further proof. It is deemed established; that the clear intention of the parties as per their agreement and utterances was that the 1<sup>st</sup> Defendant was obligated to pay the 1<sup>st</sup> Claimant for the stated items in the manner agreed. He argued that the transaction between the 1<sup>st</sup> Claimant and the 1<sup>st</sup> Defendant are first and foremost a commercial lease transaction, and which means that there are bottom-line implications for the Claimant/Landlord and its investments in the Subject Property. Counsel relied on REPTICO SA GENEVA VS. AFRIBANK NIGERIA PLC (2013) LPELR- 20662(SC)

Furthermore, the Claimants' witness presented exhibits D1 to D4. A mere glance on the exhibits shows the tenant is Hairlinies Barbing Salon. The Pw1 testified in paragraph 6 of her witness statement on oath that by virtue of an

agreement, the defendant took possession of shop no. 2 at Novare Apo Mall Abuja for use initially as a DSTV Outlet and later as a Hair Salon, under the name and style Hairline Barbing Salon. Was there service of exhibits D1 & D4 on the defendant? If there was, there is no evidence of such presented to this court by the claimants. I am not unmindful of the fact that the claimants presented exhibits E1 to E3iv, these are email correspondences sent to Adoga Ibrahim on behalf of Hairline Barbing Salon. I have read through the conversations, it lacks value. What is the connection of Hairline Barbing salon to the present suit? is it for this court to link Adoga Ibrahim whom the emails were sent to with exhibit A & B. I had earlier stated my position with regards to exhibits A & B and I do not intend to repeat same here. It is rudimentary law that a Court is only to act upon and ascribe probative value to legally admissible credible evidence. See *OLADELE V. STATE (2021) LPELR-54413(CA)* (P. 36, paras. B-C). I find and hold that exhibits D1 to D4, E1 to E3iv lacks any probative value and same cannot be relied on.

In civil cases, the burden of proof is placed on the claimant; a party is to rely on the strength of his own case and not to depend on the weakness of the defendant's case. The onus is on the claimant to plead and prove every material fact that is necessary by credible evidence for the success of his case. It is the duty of the court to weigh the evidence by placing it on an imaginary scale of justice before arriving at a decision. From the evidence adduced by Pw1, she failed to discharge the initial burden placed on her. I am not unmindful of the fact that the defendant did not put up a defence, however, the failure to do so, does not prevent the claimant from substantiating their claims with cogent evidence; the claimants must succeed on their own strength. See *s.134 Evidence Act*. Having placed the testimony of the Pw1 on the scale of evidence, I find that it lacks evidential value, thus the matter is resolved against the claimants.

Accordingly, the claims of the claimants are refused and the case is dismissed.

ASMAU AKANBI – YUSUF

(HON. JUDGE)

APPEARANCES;

Parties absent and not represented

