

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY ABUJA  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT COURT NO. 13 WUSE ZONE 2 ABUJA  
BEFORE HIS LORDSHIP: HON JUSTICE A. S. ADEPOJU  
THIS 3<sup>RD</sup> DAY OF FEBRUARY 2022**

**SUIT NO: FCT/HC/CV/2250/2021**

**BETWEEN:**

**CONTRACT VENTURES LIMITED ----- CLAIMANT  
AND**

**DIPLOMAT TRAVEL TOURISM AGENCY LTD ----- DEFENDANT**

***NNAEMEKA OGUAJU** appears with **EKELE OFONDU** for the Claimant.*

**JUDGEMENT**

The plaintiff's claims as stated in the writ of summons are:

1. An Order directing the defendant to pay the Claimant the sum of **₦6,411, 261.84 (Six Million Four Hundred and Eleven Thousand Two Hundred and Sixty One Naira Eighty Four Kobo)** only being arrears of rent from 23<sup>rd</sup> January 2020 to 22<sup>nd</sup> June 2021.
2. An Order directing the Defendant to pay to the Claimant post judgement interest of 10%.
3. An Order directing the Defendant to pay to the Claimant the sum of **₦500,000 (Five Hundred Thousand Naira)** only as cost of this suit.

In support of the writ is a 15 paragraph affidavit deposed to by one Etim Abel Acho, an Estate Surveyor in Ashien Douglas & Co an Estate Firm and Agent to claimant who is the owner of property known and called Millennium Builders Plaza, Plot 251 Herbert Macaulay Way, Central Business District Abuja. The letter of authority is attached herewith as Exhibit A.

The defendant is tenant occupying the rear wing, ground floor, Block A at the building which tenancy runs from 23/6/2018 and expired on 22/6/2019 at an

annual rent of ~~₦4,284, 122. 4~~ **(Four Million Two Hundred and Eighty Four Thousand One Hundred and Twenty Two Naira Four Kobo)** excluding service charges which she paid. After the expiration of the tenancy on 22/6/2019 defendant made part payment of ~~₦2,537, 933.2~~ **(Two Million Five Hundred and Thirty Seven Thousand Nine Hundred and Thirty Three Naira Two Kobo)** only for the period that commenced from 23/6/2019 and expired on 22/6/2020.

The claimant stated that irrespective of the defendant outstanding balance of rent she enters into a new tenancy that commenced from 23/6/2020 and expired on 22/6/2021 which has not been paid till date. And that there were several demands for payment of the outstanding arrears of rent, payment for diesel and vat from 20/1/2020 to 22/6/2021 from the defendant which proved abortive. The evidence of the non-payment of the outstanding debt is attached as Exhibit B. The letter of demand for the outstanding arrears is acknowledged by the defendant is marked as Exhibit C. The claimant has brought this instant suit under the undefended list and believes that the defendant has no defence to the suit.

The undefended list procedure is governed by the provision of Order 35 of the High Court Civil Procedure Rules 2018. It is designed to enable the claimant get judgement without delay on a claim for liquidated money demand and where it is apparent that the defendant does not have any defence to the claim of the claimant. See **DATA AIR SERVICES V SUDAN AIRWAYS (2005) 3 NWLR (PT. 912) 394 R. 1; NYA V EDEM (2000) 8 NWLR (PT. 669) 349; ATAGUBA & CO. V GURA (2000) FWLR (PT.24) 1522.**

However, where a defendant delivers to the registrar, a notice in writing that he of intends to defend the suit together with an affidavit disclosing a defence on the merit before 5 days to the day fixed for hearing, the court may give him

leave to defend upon such terms as the court may think just. See Order 35 Rule 3(1) of the FCT Civil Procedure Rules 2018. But if the defendant neglects to deliver the notice of intention to defend and an affidavit prescribed by Rule 3(1) or is not given leave to defend by the court, the suit shall be heard as undefended suit and judgement given accordingly.

In the case at hand, the defendant from the record of court was served with the writ of summons together with hearing notice on 1<sup>st</sup> November 2021. The writ was dated 8/9/2021 and filed same date. It is evident that the defendant is in clear breach of the provision of Order 35 Rule 3(1) by failing to file its notice of intention to defend with affidavit in support disclosing defence on the merit.

On what is expected of the court on the date fixed for hearing of the matter brought under undefended list, the plaintiff's counsel relied rightly on the Supreme Court case **BEN THOMAS HOTEL LTD V SEBI FURNITURE LTD (1989) 12 NCNS 171** that the trial court is to give judgement to the plaintiff. See also the case of **OLUBISOLA V STANDARD BANK OF NIG (1975) 4 SC 51** where the court held:

***“That where the defendant does not file a notice of his intention to defend together with an affidavit on the day fixed for hearing judgement will be given to the plaintiff without his calling evidence to proof his claim unless the court in its own discretion in the interest of justice call for oral or documentary evidence.”***

In addition, it is trite principle of law that where the averments in an affidavit is not challenged by the opposing party, the court will accept the unchallenged affidavit as the true position of affairs and make use of it. See **UZOUWKU V EZEONU (1991) 6 NWLR (PT. 200) 708, AGBAJE V IBRU SEA FOOD LTD (1972) 5 SC 50.**

The defendant herein having been served with the writ of summons and the affidavit in support as can be gleaned from the proof of service deposed to by the bailiff of this court and have failed to file a counter-affidavit denying the claim of the plaintiff. The defendant is deemed not to have any defence to the plaintiff's claim. The court is therefore left with no option than to enter judgement in favour of the plaintiff as claimed.

Consequently, judgement is hereby entered for the plaintiff in terms contained on the writ of summons.

**Signed**

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**Hon. Judge  
3/2/2022**