

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GWAGWALADA- ABUJA

THIS THURSDAY THE 7TH DAY OF JULY, 2022

BEFORE HIS LORDSHIP: HON. JUSTICE ALIYU YUNUSA SHAFI

SUIT NO: FCT/HC/CV/960/22

BETWEEN:

GENUIC NIGERIA LIMITED.....PLAINTIFF

AND

- 1. HON. MINISTER OF FEDERAL
CAPITAL TERRITORY**
- 2. FEDERAL CAPITAL TERRITORY
ADMINISTRATION..... DEFENDANTS**

JUDGEMENT

By writ of summon on the undefended list issued on the 23th day of March, 2022, the claimant claims the following against the defendants.

- 1. The sum of N5, 209,381.44 as money had and received being settlement of building plan fees.**
- 2. Interest on the rate 21% post judgement interest per annum.**

Pursuant to order 35 R(1)1) under undefended list procedures the claimant commenced hearing upon proof of service on the 1st & 2nd defendant of the original process dated the 7th June, 2022 acknowledged same by FCTA legal

service secretary by one Comfort at 12:11 pm, the defendants did not appear in court and did not file any process in line with the provisions of the rules.

The claimant case as made out in the affidavit insupport of the writ is that sometimes on 23/11/09 the claimant, who at all times material to this suit, submitted documents relating to plot No: 462 Cadastral Zone B14 to Abuja Metropolitan Management council, seeking building approval on the property from the agency, the application form is exhibit GNL1. That upon the claimant submitting Exhibit GNL:1 the Abuja Metropolitan Management Agency prepared by building plans Assessment format dated 23/1/09 and a copy of it was handed over to the claimant exhibit and marked exhibit GNL2.

That sometimes in November, 21, 2010 the Abuja Metropolitan Management council, vide a letter titled settlement of building plan fees, directed the claimant to pay the sum of N5,209,381.94 through a designated Account as it is indicated on the face of the document exhibited and marked exhibit GNL3.

That the said sum N5,209,381.44 was paid promptly to avoid imposition of penalty for default as indicated in the letter of demand and sequel to the payment, the Federal Capital Territory Administration issued it's official Receipt No: FCTA 000055445, exhibited and marked GNL:4 contends that the defendant does not intend to pay the claimant due to him. It is finally deposed that the defendant has no defence to this action.

At the hearing one A. S. Amos of claimants' counsel relied on the processes filed and urge the court to enter judgement for the claimant in the absence of any notice of intention to defend and that by virtue of order 35 rule 4 of the High Court (civil Proceeding) Rule 2018, gives the Defendant the liberty to file its own affidavit to disclose in defence if they has one. And failure to do so the rules says the court proceed on the suit and heard as an undefended list and judgement giving accordingly. He referred this court to order 35 Rule 3, which provides thus:

“where a party is served with writ delivers to registrar, before 5 day to the day fixed for hearing, a notice in writing that he intends to defend the suit, together with an affidavit disclosing a defence on the merit, the court may give him leave to defend is given under this Rule, the action shall be removed from the Undefended list and placed on the ordinary Cause list; and the

court may order pleading, or proceed to hearing without further pleadings

and that failure of the defendants to file their counter affidavit on memorandum of appearance urge the court to enter judgment for the claimant in the interest of justice.

While I share the same position on the state of the law, I need only add that the said provisions must be read in conjunction with the provision of order 35(5) which allows the court to call for hearing or oral evidence where it feels compelled at any stage of the proceedings under Rule 4.

The position in my considered opinion from the careful reading of the entire order 35 therefore is that entering judgement is not automatic where rule 3 is not complied with by defendant. Therefore, notwithstanding the absence of defendant or noncompliance with rules, the case and the facts insupport must be such that is legally cognisable under the undefended procedures.

Therefore, the object of this procedure is to enable the court deal summarily with the claimant claim and enter quick judgement once it is clear that the defendant does not have any defence to such claim, in order to save time and avoid unnecessary expense on litigation. The procedure is designed to secure justice and avoid the injustice likely to occur where is indeed no genuine defence on the merits to the claimant claim. **See Ifeanyi Chukwu Trading Investment Ventures Ltd and Anor Vs Onyesom Commodity Bank (2015) 17 NWLR (PT.1487) 1 AT 24 paragraph C-E.**

In simple language, the claim under the undefended must be in respect of or liquidated money demand supported by an affidavit stating clearly the grounds on which the claim is predicated. The court may therefore in appropriate cases be compelled where the facts are not clear or where the claims does not precisely come within the ambit of liquidated money demand or where it has doubts on the entire circumstance of a particular cause call for hearing or oral evidence to enable parties to further shed light on issued that are ambiguous to put the court in a commanding height to do Justice. I leave it at that.

The present claim is one boarding on settlement of building plan fees” directed the claimant to pay the sum of N5,209,381.44 through a designated Account and sequel to the payment, the Federal Capital Territory Administration issued its official receipt No: FCTA 000055445, and after collecting the money the

defendants i.e. the 1st defendant who is co-ordinating minister in charge of the Federal Capital Territory and the 2nd Defendant who is the statutory institution with the management of its affairs refusal, failed and neglected to issue, the much needed building approval to the claimant. **Exhibit GNL 3 & 4. Exhibit GNL 3**, being the settlement of building plan fees dated 26 November, 2010 while exhibit GNL4, is the official receipt of **Federal Capital Territory Administration Receipt No:000055445 dated the 28-01-2011 Bank Teller No: 0563 dated the 24-1-2011 of the sum of N5,209,381. 44.**

This the claimant counsel in its written address submit that, the law is clear and opposite to the effect that, “Where a person not expressly a trustee traffics with money belonging to another the law raises a trust by implication and cloths that person with fiduciary character for the purpose of making him accountable. See **Madu V Madu (2008) 6 NWLR (PT. 1083) 296.** Counsel then refers this court to order 35 rules 1(1) of the rules of court, and the purposes which is that if the claim of the claimants is clear, to the extent that it is manifested that the defendants cannot be said to have any defence, in law or the fact, the claimant should be given judgement. This he referred this court to the case of **Obitude V Onyeson community Bank Ltd (2014) LPELR 22693(SC).**

It is clear from the affidavit of the claimant I have no doubt that the claim is a liquidated money demand within the purview of order 35 of the rules of court and established authorities. I cannot do any better than quote **Ipsissima Verba, the words of Iguh JSC in Maja V Samooris (2002) FWLR (PT. 98)** where the respected Lordship expounded on the what liquidated money debt meant as follows:

“a liquidated demand is a debt or other specific sum of money usually due and payable and its amount must be already ascertained or capable of being ascertained as a mere matter of arithmetic without any or further investigation. Whenever therefore, the amount to which a plaintiff is entitled can be ascertained by calculation or fixed by any scale of charges or any positive data, it is said to be liquidated” or made clear,

Again, where the parties to a contract, as part of the agreement between them, fix the amount payable on the default of one of them or in the event of breach by way damages, such sum is classified as liquidated damages where it is in the nature of a genuine pre-estimate of the damage, which would arise from breach

of contract not obnoxious as to constitute. A penalty” and it is payable by the party in default. The term is also applied to sums expressly made payable as liquidated damages under statute.

I have quoted in extend the above dictum to establish the point that the claim of claimant comes within the contemplation or purview of the above definition or a liquidated money claim or relief.

It is also to be noted that in an action in the undefended list, the court has one purpose only, to see if there is a notice of intention to defend. If none, as in this instant case, then to proceed to judgement. **Ben Thomas Hotals V Sebi Furniture Ltd (1989) 5 NWLR (PT.123) 523 AT 529.** The court is therefore enjoined to enter judgement for the claimant where the defendants has failed to or neglected to file notice of intention to defend with its supporting affidavit. Once the defendant in an action fails to deliver the notice of intention to defend and affidavit and is not let into defend, the claimant is entitled to judgment, in particular, once the affidavit in support of the application for writ of summons shows that the defendants has no defence to the action. **See Ifeanyi Chukwu trading Investment Ventures Ltd & Anor Vs Onyesom Community Bank (SUPRA).**

Therefore failure to deliver notice of intention to defend is tantamount to an admission which need no proof. **Akahall & Sons Ltd V Nigeria Deposit Insurance Company (2017) 7 NWLR (PT.1564) 194 AT 209.**

I cannot end this judgement without touching on unchallenged or uncontroverted evidence. It is trite that where evidence is unchallenged or uncontroverted the onus of proof is satisfied on minimal proof, since there is nothing on the other side of the scale. **Mobile oil (Nig) Ltd V National oil & Chemical Marketing Co Ltd (2000)9 NWLR (PT. 671) 44 AT 52** or where material evidence given by a party to any proceeding was not challenged or rebutted by the opposite party who had the opportunity to do so, it is always open to the court seized of the matter to act in such unchallenged evidence before it.

Insurance Brokers Nigeria V ATMN (1996) 8 NWLR (PT.466)316 AT 327.

In view of the above I shall accept the unchallenged or uncontradicted affidavit of the claimants. I so hold.

The claimant further claims interest of the said sum at the rate of 21% Per annum from the date of judgment until the judgement is realised. By order 39rule 7 of the rules of this court.

The court may order interest at a rate not exceeding 10% per annum to be paid on any judgment commencing from the date of it or afterwards, as the case may be. The claimant is entitles to interest on the judgment sum of 10 % of N5, 209,384.44 only.

In summation pursuant to order 39 rule 4 of the rules of court, 2018

I must proceed to enter judgment in favour of claimant. Judgment is hereby entered for the claimant against the defendant as follows:

1. The sum of N5,209,381.44 as money had and received being settlement of building plans fees.
2. There shall be 10% interest per annum on the said judgement sum from 8/7/2022 until the judgment sum is liquidated.

SIGNED

HON. JUDGE

APPEARANCE:

1. A. S. Amoa for the claimant.
2. Bukola Osewa for the Defendants