

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT MAITAMA – ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE. H. MU’AZU

SUIT NO: FCT/HC/CV/2810/2023

MOTION: M/3084/2024

Date: 26/04/2024.

**BETWEEN:**

UZONNA OLIVE MMONU.....CLAIMANT/APPLICANT

AND

- 1. SUNTRUST BANK NIGRIA LIMITED
- 2. JIBRIL AHMED



DEFENDANTS/  
RESPONDENTS

**Appearance:**

*Emmanuel Jonathan, Esq. for the Claimant/Applicant.*

*Blessing Anazodo Esq. for the 2<sup>nd</sup> Defendant/Applicant.*

**RULING/JUDGMENT**

Before me is a Motion on Notice dated 25/01/2024 praying for the following reliefs:

- 1. An order of this Hon. Court entering final Judgment in favour of Claimant/Applicant in default of appearance and defence of the Defendants/Respondents.

2. Such further and/or other order(s) as this Honourable Court may deem fit to make in the circumstances.

The Motion is supported by an affidavit of 9 paragraphs deposed to by one Emmanuel Jonathan of Nicon Plaza Plot 242 Mohammadu Buhari Way, Abuja and a written address. It is the affidavit Evidence of the Claimant/Applicant as captured on paragraphs 3 – 8 as follows:

3. The Applicant instituted this action by filing her amended Writ of Summons and other accompanying processes on 16 October, 2023 and Defendants/Respondents were duly served on the 16/October, 2023. The endorsed acknowledgement of service is before the Hon. Court as service was effected by the Court bailiff.
4. The Defendants/Respondents have failed to file their memo of Appearance and statement of Defence.
5. The Suit has progressed to trial.
6. That as at the last three Court dates 17<sup>th</sup> October 2023, 9<sup>th</sup> November 2023, 12<sup>th</sup> December 2023, the Defendants have

failed to appear on record as they have neither filed their memo of Appearance or statement of Defence.

7. That the Applicant's claim is endorsed in the Amended Writ and statement of Claim filed on 16<sup>th</sup> October 2023 is for a Liquidated money demand.....
8. It is in the interest of justice that this application be granted as the Respondents will not in any way be prejudiced by granting of same.

In the Claimants' statement of Claim accompanying the Amended Writ of Summons, Claimant claim against the Defendants jointly and severally as follow:

1. An order of this Hon. Court directing the 1<sup>st</sup> Defendant to transfer to the Claimant, through her Zenith Bank Account no. 2285949326, the sum of N1, 995, 221.04 (One Million, Nine Hundred and Ninety Five Thousand, Two Hundred and Twenty One Naira Four kobo) currently held to the credit of the 2<sup>nd</sup> Defendant by the 1<sup>st</sup> Defendant in his Account No. 0024785805 domiciled with the 1<sup>st</sup> Defendant herein, same being the amount standing to the credit of the 2<sup>nd</sup> Defendant

with the 1<sup>st</sup> Defendant, having been transferred by the 2<sup>nd</sup> Defendant to his said account with the 1<sup>st</sup> Defendant out of the sum of N4, 000, 000. 00 (Four Million Naira) transferred by the Claimant herein to the 2<sup>nd</sup> Defendant for purchase of United State Dollars by the Claimant which the 2<sup>nd</sup> Defendant failed to supply.

2. An order of this Hon. Court directing the 2<sup>nd</sup> Defendant to pay the cost of this action.

In the Written Address, Learned Counsel submitted a sole issue for determination, to Wit: “***Whether the Applicant is entitled to the prayers Sought herein***”

Learned Counsel submitted, in support of the Application, that by the provisions of Order 10 Rule 2 and 3, Order 21 Rule 1 and Order 9 Rule 1(1) of the High Court of FCT (Civil Procedure Rules) the Defendants/Respondents having not entered appearance or filed a defence as required by the Rules, has waived their right to defend the Claim, the Claim being a liquidated money demand and urged the Court to grant the reliefs Sought. For clarity I shall reproduce the relevant provisions cited by Counsel.

**Order 10 Rule 2**

Where any defendant fails to appear, a claimant may proceed upon proof of service of the originating process under the appropriate provisions of these Rules.

**Order 10 Rule 3**

Where the claim in the originating process is a liquidated demand and a defendant or any of the defendants fail to appear, a claimant may apply to the Court for Judgment on the claim in the originating process or such lesser sum and interest as the Court may order.

**Order 21 Rule 1.**

If the claim is only for a debt liquidated demand, and the defendant does not within the time allowed for the purpose, file a defence, the claimant may, at the expiration of such time, apply for final Judgment for the amount claimed with costs.

**Order 9 Rule 1(1)**

- (1) A defendant served with an originating process shall, within the period prescribed for appearance, file in the registry as many copies of the completed and signed memorandum of appearance as in Form 12 with such

modifications or variations as circumstances may require for the use of the Court and for service on the other parties.

Counsel also cited the decisions in ALH. KABIRU RUFAl V. EKANEN EKPO OTU & ORS (1998) NWLR (PART 578) PAGE 426, OYEDEJI V. ADENLE (1993) 9 NWLR (PART 316) DAVIES V. GUILDPINE LTD (2004) 5 NWLR PAGE 144 AND MAJE V. SAMOURIS (2002) 7 NWLR (PART 765) PAGE 78. Counsel urged the Court to grant the reliefs.

It is pertinent to state at this point that the Defendants did not file any Counter affidavit or address in opposition to this application. On the day the Claimant/Applicant adopted the processes in this application, the 2<sup>nd</sup> Defendant was represented and Counsel for the 2<sup>nd</sup> Defendant Stated that they do not contest the grant of the Application.

**Court:** I have considered the relief Sought by the Claimant/Applicant, the affidavit in support and argument canvassed by Counsel. The Defendants/Respondents as stated earlier have not filed any process to contest the grant of the application. The Default of the Defendants/Respondents to enter

appearance and file pleadings constitutes a technical admission by the Defendants of the truth of the facts alleged in the Claimants' statement of claim.

In INEC & ANOR V. MADUABUN (2008) LPELR – 4316 (CA) the Court of Appeal stated thus:

***“In AKINRINBOYE V. AKINSOLA (supra) – “Default Judgment was defined as a Judgment rendered in consequence of the non – appearance of the Defendant. It is one entered upon the failure of a party to appear or plead at the appointed time. Put differently, default Judgment means Judgment entered under statutes or rules of Court, for want of affidavit or defence, plea, answer and the like, or the failure to take some required step in the cause.*”**

Evidence donated by the affidavit supporting the Claimant/Applicant's application proves convincingly that the Defendants/Respondents were sufficiently served with originating processes and documents of the Claimant/Applicant but they failed, neglected and/or refused to file their statement of Defence within the time allotted by the Rules of this Court for them to do

so. In the circumstance, I am satisfied, on the state of law that the reliefs of the Claimant/Applicant are rightly deserved. The Claimant/Applicant having met the requirements of the law for the grant of same and without further Ado, I hereby enter final Judgment for the Claimant/Applicant and pronounce as follows: -

Relief 1 granted as prayed i.e.

1. An order of this Hon. Court entering final Judgment in favour of Claimant/Applicant in default of appearance and defence of the Defendants/Respondents.

An award of N500, 000 is grant in favour of the Claimant against the Defendants jointly and severally as damages.

This is the Decision of the Court.

Signed  
Hon. Judge  
26/04/2024.

We are grateful.  
We are grateful.

Signed  
Hon. Judge  
26/04/2024.