

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

BEFORE HIS LORDSHIP : HON. JUSTICE Y. HALILU
COURT CLERKS : JANET O. ODAH & ORS
COURT NUMBER : HIGH COURT NO. 24
CASE NUMBER : SUIT NO: CV/507/19
DATE: : TUESDAY 12TH MAY, 2020

BETWEEN

ANDY NWANZE VALENTINE ESQ PLAINTIFF
(Suing as Lawful Attonery of Senator
Dr. Mohammed Abba Aji Mfa)

AND

MR. INNOCENT OGU DEFENDANT

RULING

The Claimant approached this Honourable Court vide a Writ under the Undefended List Procedure Pursuant to Order 35 of the Rules of this Honourable Court.

In line with Law and Procedure, the said Writ was marked Undefended on the 27th January, 2020 and the 26th February, 2020 was fixed as a return date.

The claims of the Claimant as endorsed on the Writ is for the following:-

The sum of N14,000,000 (Fourteen Million Naira) only being the money owed the Plaintiff by the Defendant on the rent arrears for five (5) bedroom duplex detached property of the Plaintiff since 2014.

1. The sum of N1,000,000.00 (One Million Naira) only being the cost of this action.
2. The sum of N3,000,000 (Three Million Naira) as mense profit.

3. An Order of Honourable Court for twenty percent (20%) interest from 2014 until Judgment is entered and 10% interest from the date of Judgment is entered until Judgment sum is liquidated.
4. And for such further Order/Orders as the court deem fit.

In support of the application is a 11 paragraph affidavit duly deposed to by the Claimant himself.

It is the deposition of the Claimant that sometimes in August, 2003 the Defendant issued the Plaintiff a Dud Cheque for the sum of N4,000,000.00 as rent which was returned unpaid. The said cheque was attached as Exhibit 'A'.

That the Defendant has failed/refused to pay his rent since 2014 despite using the property as Suit and Eatery.

The Claimant further avers that it took the effort of Economic and Financial Crimes Commission (EFCC) to

make the Defendant to pay the Dud Cheque he issued to the Plaintiff in 2003.

That it will be in the interest of justice to grant the Plaintiff this claim.

Upon service, the Defendant filed a Notice of Intention to defend the action on the merit.

In support of the Notice is a 14 paragraph affidavit duly deposed to by the Defendant himself.

It is the counter affidavit of the Defendant that he rented the property from Mohammed Abba Aji on the 1st of September, 2009 at the rate of Three Million Five Hundred Thousand Naira (3,500,000.00) only per annum and not Four Million Naira (4,000,000.00) only.

That Exhibit 'A' was issued as collateral that the money would be paid not for cashment upon the demand. And that the Plaintiff pressured the Economic and Financial Crimes Commission (EFCC) to initiate the prosecution of

Defendant and backed out when it became obvious to the Commission through Prosecution evidence.

That the Defendant has paid all the rents due on the property to Alhaji Abba Aji either directly through bank transfer, cheques, cash or bank draft.

The Defendant annexed the following documents to show evidence of payment.

1. First Bank Cheque as Exhibit 'A1'
2. Acknowledgment receipt as Exhibit 'A2'
3. Acknowledgment receipt as Exhibit 'A3'
4. First Bank Cheque as Exhibit 'A4'
5. First Bank Cheque as Exhibit 'A5'
6. First Bank Cheque as Exhibit 'A6'
7. First Bank Cheque as Exhibit 'A7'
8. First Bank Cheque as Exhibit 'A8'

That the ownership of the property has changed hand from AlhajiAbubakarGarba to Bean Nigeria Limited vide

Exhibit 'A9'. And that it will be in the interest of justice to transfer the case of the general cause list.

I wish to observe that the undefended list procedure is a truncated form of ordinary civil hearing peculiar to our adversary system where the ordinary hearing is rendered unnecessarily due in the main to the absence of an issue to be tried or the quantum of Plaintiff's claim disputed to necessitate such a hearing. It is designed to quicken justice and avoid the injustice likely to occur where there is no genuine defence on the merits to the Plaintiff's case.

It is a procedure meant to shorten hearing of a suit where the claim is for liquidated money demand see *UBA PLC VS JARGABA (2007) 5 SC1*.

An action begun under the undefended list, is no less a trial between the parties and where a Defendant is properly served, he has a duty to disclose his defence to the action. *ATAGUBA & CO. VS GURA (2005) 2 SC (pt. 11) 101*.

However, notice of intention supported by affidavit so filed must condescend to issues stated in affidavit in support of the claim of the Plaintiff. A mere empty affidavit in support of the Notice of Intention to defend which disclose no defence shall certainly not sway the Court into transferring the matter to general cause list for trial.

Simply put, the Defendants affidavit must condescend upon particulars and should as far as possible, deal specifically with the Plaintiff's affidavit and state clearly and concisely what the defence is and what facts and document are relied on to support it.

Such affidavit in support of Notice of Intention to defend must of necessity disclose facts which will, at least throw some doubt on the Plaintiff's case.

A mere denial of Plaintiff's claim or liability or vague insinuation devoid of evidential value does not and will

not suffer as facts, which will throw doubt on Plaintiff's claim. *UBA PLC VS JARA GABA (Supra)*.

I have gone through the affidavit of Plaintiff in support of its claim brought under the Undefended List Pursuant to Order 35 of the Rules of this Court. I have also gone through the affidavit in support of Notice of intention to defend this action filed in compliance with Order 35 Rule 3(1) of the Rules of this Court.

The facts averred in affidavit in support of Plaintiff's case are such that if put side by side with those of the Defendant, certainly the reliefs claimed by Plaintiff cannot be resolved under Order 35 of the Rules of this Court.

By the power conferred on me therefore, I hereby transfer this suit to general cause list under Order 35 Rule 3 (2) of the Rule of this Court.

I order that evidence be led in prove of the respective cases of Plaintiff and Defendant in that Order.

This is the Ruling of the Court.

Signed
Hon. Judge
12th May, 2020

APPEARANCES

CHIKA FAVOUR BEN – for the Defendant.

Claimant not in court and not represented.