

**IN THE HIGH COURT OF JUSTICE OF THE  
FEDERAL CAPITAL TERRITORY ABUJA  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT JABI - ABUJA**

**BEFORE: HON. JUSTICE O. C. AGBAZA**

**COURT CLERKS: UKONU KALU & GODSPower EBAHOR**

**COURT NO: 11**

**SUIT NO: FCT/HC/CV/1274/2019**

**BETWEEN:**

- 1. PRINCE R.K. OMATSEYE**
- 2. K.B. OMATSEYE ESTATE.....CLAIMANTS**

**VS**

- 1. ATTORNEY GEN. OF THE FEDERATION & MINISTER OF JUSTICE**
- 2. MINISTER OF DEFENCE.....DEFENDANTS**

**RULING**

By a Writ of Summons dated 7/3/2019 but filed on 8/3/2019 under the "Undefended List", the Claimants commenced this Suit against the Defendants seeking the following;

- (1) An Order of this Hon. Court against Defendants to pay the Claimants the sum of ₦2,200,000,000.00 (Two Billion, Two Hundred Million Naira) only being debt owe Claimants by Defendants.
- (2) Ten percent (10%) post judgment interest on the said ₦2,200,000,000.00 (Two Billion, Two Hundred Million Naira)

commencing from the date the judgment is delivered till judgment sum is fully liquidated.

Accompanying the Writ of Summons is a 21 Paragraph affidavit with 4 Exhibits attached. The affidavit was deposed to by Emeka Ugwuja, Administrative Officer to 2<sup>nd</sup> Claimant.

The Writ of Summons and all other processes of this Suits was duly served on Defendants on 31/5/2019 and upon being served, Defendants filed Notice of Intention to Defend on 28/6/2019 alongside an affidavit of 26 Paragraph deposed to by Olusegun Isaac Olubola, a staff of Nigeria Navy Headquarters, Abuja. Also filed a Written Address in support.

Counsel to Claimants, Onyemaechi Onuigbo in his written submission raised two (2) issues for determination;

- (1) Whether this Suit qualifies to be placed under the “undefended List” Procedure of this Hon. Court.
- (2) Whether the Claimant is entitled to his claim as per his Originating application.

Refer the court to Order 35 Rule 1 of Rules of Court and submits this Suit falls within the contemplation of the Provisions of the said order 35 Rule 1. Also refer to Paras 3 – 20 of the supporting affidavit and Exhibit 1 – 4 attached and submits the claim before the court is for a liquidated sum of debt, refer to Okeke Vs Nikon Hotels Ltd (1999) 1 NWLR PT. 586 216 at 217, UTC Nig Ltd Vs Pamotei (1983) 3 SC PT 1, 79. That Defendants has refused and neglected to pay the debt and has no defence to the Suit.

That the Exhibit 1 – 4 Exhibited presents the fact that Defendants are actually indebted to Claimants, the said debt is due and demanded and Defendants have refused to pay. Further commend the court to UBA PLC & Anor Vs Alhaji Babangida Jargaba (2007) 5 SC 1 at 25 – 26 and submits there may not be a better case for the Undefended List than the instant case.

On the other hand, P.A. Imafidor counsel for Defendants in his written submission also submitted two (2) issues for determination;

1. Whether the Claimants claim against the Defendants in this Suit is for liquidated sum contemplated by Order 35 of the Rules of this Hon. Court.
2. Whether it would be in the interest of justice for the Hon. Court to transfer this suit to the General Cause List for effective and fair adjudication and determination.

And arguing both issues together, refer court to Order 35 Rules 1 and 3 of Rules of Court and cases of Offa Vs UBA Plc (2014) ALL FWLR PT 748, 888, Maju Vs Samounis (2002) 7 NWLR PT 765 78 at 102, Denton –West Vs Momah (2010) 2 NWLR PT 1171 on the judicial definition of liquidated money demand. That in the instant case, there is no indication or suggestion whatsoever the existence of landlord and tenancy relationship or any valid tenancy agreement executed between Claimants and Defendants or their agents and privies to even warrant the court to begin to inquire or ascertain the lease or rent sum payable to Claimants in respect of the estate in contention. That Defendants have in their affidavit

stated they or their agents or privies never at any time, agreed, either before or after taking possession of the subject matter in 1987, to payment of certain amount to Claimants as rent. Submits further that Claimants claim of rent arrears of ₦2,200,000,000.00 was misconceived and a fiction of imagination because only Claimants can tell how they came about such figures since there was no tenancy relationship between Claimants and Defendants and no evidence to prove that Claimant and Defendants agreed on rent sum projected and claimed by Claimants. Submit Claimants suit is nothing but cheap blackmail of Defendants because ownership of the Estate in contention was duly and unequivocally transferred to Defendants upon receiving sum of ₦5,000,000 in 1987 and that was why Defendants personnel, Nigerian Navy has been in peaceful occupation of the Estate for over 30 years without harassment, legal battle or even a demand for payment of rent or lease by Claimants or any other person for that matter. Submits its impossible for landlord to allow tenant occupy his premises for over 20 years without payment of rent and no attempts made to evict such tenant. That assuming without conceding Defendants are occupying subject matter of this Suit as tenants, the rent sum will still not be the amount claimed because Claimants had purportedly claimed in their letter to 2<sup>nd</sup> Defendant that they received ₦5,000,000 in 1987 as rent for 10 years and evidence of rent increase before court. Submit the claim of Claimants cannot be and certainly not "liquidated money demand" as defined by Rules of Court and Plethora of decided authorities and therefore the claim of Claimant cannot be heard or granted under the Undefended List.

Having considered the submission of both counsel, the affidavit evidence, the attached Exhibits as well as the judicial authorities cited, the court finds that only one (1) issue calls for determination and that is;

“Whether the Claimants can be said to have established their case to be entitled to judgment under the “Undefended List” Procedure.

By the Provisions of Order 35 Rules 1 and 3 of the Rules of Court, where a Defendant is served with a Writ of Summons under the “Undefended List” the Defendants have Five (5) clear days to file his Notice of Intention to Defence along with an affidavit disclosing a defence. And when he files a Notice of Intention to Defend pursuant to Order 35 Rule 3 (1) of Rules of Court, the duty of the court at that stage is to look at the affidavit to find if there are triable issues from the facts contained in the said affidavit. It is not the duty of court at that stage to determine whether the defence being put up will ultimately succeed or whether the defence has been proved or comprehensive. See the case of Trade Bank Plc Vs Spring Finance Ltd (2009) 12 NWLR PT. 1155 360 at 373.

For a Defendant to succeed, he must show that there are triable issues as revealed in the accompanying affidavit to the Notice to Defend. On what amount to triable issues, the court in Patigi Local Government Vs Eleshin-Nla (2008) ALL FWLR PT 421 854 at 875 Para E-G stated as follows:-

“That the following situation may give rise to the discharge of the burden placed on the Defendant”.

- (a) Difficult point of law has been raised in the Defendants affidavit.
- (b) Dispute as to facts raised by the Defendant.
- (c) Dispute as to correct amount owed.
- (d) Where there is probability of a bonafide defence, e.g Counter-claim”.

The case of Claimants is that on or about the year 1997, Defendants through Nigerian Navy became Claimantstenant occupying their 38 blocks of residential housing units, domestics servants quarters, club house, gate house, generator house and temporal housing unit at various stages of construction situate at Estate of Claimants at Sapele, Delta State. That the schedule of the demised property is contained in Federal Ministry of Land, Housing and Urban Development’s letter dated 16/10/2015, the Exhibit 1. That Defendants are indebted to Claimants to tune of ₦2,200,000,000 (Two Billion, Two Hundred Million Naira). That Claimants through their Solicitors wrote a demand letter dated 24/6/2017 to Defendants through 2<sup>nd</sup> Defendant, the Exhibit 2 which letter has not been replied by Defendants. That in the course of demand for payment, the Federal Ministry of Defence on 20/2/2014 wrote to Chief of Naval Staffrequesting amongst others immediate payment of the debt and handing over vacant possession of the property to Claimants with immediate effect, the Exhibit 3. Further that in the course demand for payment, the Federal Ministry of Justice headed by 1<sup>st</sup> Defendant on 10/7/2015 wrote a letter to Permanent Secretary, Ministry of Defence Headquarters advising that the Debt owner/Claimants be liquidated, the Exhibit 4. That despite Exhibit 2, 3 and

4 which on the face are unequivocal admissible of the debt, Defendants have vehemently refused, rejected and neglected to pay Claimants the said ₦2,200,000.00 (Two Billion, Two Hundred Million Naira).

The Defendants, on the other hand had stated that Defendants never at any time rented or lease any Estate, parcel of land or any property of whatever description and name from Claimants neither have they been party to any tenancy or lease agreement between Defendants and Claimants to warrant paying rent to Claimants. That the Nigerian Navy purchased the said Estate from the Omatseye family since 1987 and fully paid the agreed sum had been in full possession of the property for over 30 years and had further developed the Estate to meet present day status and standard. They stated Nigerian Navy never received any demand for payment of rent from Claimants for over 30 years because the property was outrightly sold to Nigerian Navy having fulfilled all obligations in respect of the purchase including payment of agreed sum and immortalizing the name of the family by naming the Estate after the family name. That Defendants or their agents/subsidiaries and Claimants never agreed on any rent or lease sum at any time to make Defendants indebted to Claimants in the sum of ₦2,200,000.00 (Two Billion, Two Hundred Million Naira). That Defendants are not tenants to Claimants, rather bonafide owner of the Estate after Claimants transferred ownership to Nigerian Navy upon payment of sum of ₦5,000,000 in 1987 and duly acknowledged by Claimants Solicitor's letter dated 24/6/2017, their Exhibit "N1". That Nigerian Navy never at any time agreed to pay Claimants the purported arrears sum claimed. That they have been in full possession and

internally managing the property for 32 years now to the exclusion of every other person including Claimants.

The Court notes that the said Exhibit "N1" referred to by Defendants in Para 15 of their affidavit evidence is not annexed as claimed and therefore not before court. In any event, I have critically perused the affidavit evidence of both parties before court and finds that there are disputations as to facts leading to this suit. It is also the view of court that some of the issues raised by the Defendants in their affidavit evidence, in particular Pars 7 – 21 would call for answer by the Claimants.

From all of these, and in line with the decision in Patigi Local Government Vs N.K. Eleshin-Nla (Supra), triable issues has been raised by Defendants in the instant case necessitating the court to order that this Suit be transferred to the General Cause List for trial on the merit.

In conclusion, I hereby ordered that this Suit be transferred from the "Undefended List" to the General Cause List for trial.

The parties are also hereby ordered to file their respective pleadings within the time prescribed by the Rules of Court.

**HON. JUSTICE O. C. AGBAZA**

Presiding Judge

13/5/2020

**APPEARANCE:**

ONYEMACHI ONUIGBO - FOR THE CLAIMANTS

P.A. IMAFIDOR- FOR THE DEFENDANTS