

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY,
IN THE ABUJA JUDICIAL DIVISION,
HOLDEN AT COURT NO. 11 BWARI, ABUJA.
BEFORE HIS LORDSHIP: HON. JUSTICE O. A. MUSA.**

SUIT NO: FCT//HC/CV/2943/2018

MOTION NO: M/6788/2020

BETWEEN :

ASO SAVINGS AND LOANS ----- CLAIMANT/APPLICANT

AND

1. MR. SAMSON WORU

2. EOK GLOBAL LINK LIMITED -- DEFENDANTS/RESPONDENTS

RULING

DELIVERED ON THE 5th March, 2021

Before me is a Motion Notice dated the 5th day of March, 2020 but filed on the 23rd day of March, 2020 praying for the following reliefs:

1. AN ORDER OF THIS HONOURABLE COURT ENTERING JUDGMENT against the Defendants in default of Appearance and/or Pleadings by the Defendants in this case.
2. AND FOR SUCH FURTHER ORDER(S) as this Honourable Court may deem fit to make in the circumstances of this case.

The motion is supported by four grounds, an affidavit six (6) paragraphs and a written address in support. Paragraphs 3 and 3 of the said affidavit deposed to by one HABILA DANLADI, a Litigation Secretary in the Applicant Counsel's Law Firm, read as follows:

3(a) That the Claimant/Applicant served the Defendants in this suit with its Originating processes by substituted means on the 27th day of May, 2019. Attached and marked as Exhibit A is the proof of service of the Originating process on the Defendants.

3(b) That since the service of the Claimant's Originating processes on the Defendants, the Defendants have failed, refused or neglected to enter appearance to this suit within the time prescribed by the Rules which is 14 days from the date of service of the Claimant's originating processes.

3(c) That the Defendants have also failed, refused and or neglected to file their Statement of Defence to this suit within the time prescribed by the Rules which is 21 days from the date of service of the Claimant's originating processes.

3(d) That the Claimant is entitled to an Order of Court entering Judgment against the Defendants in Default of Appearance and Pleadings in this suit.

4 That it will be in the interest of justice to enter final judgment against the Defendants in Default of Appearance and Pleadings in this suit.

Both in its Writ of Summons and at paragraph 41 of its Statement of Claim, which supersedes the Writ of Summons, the claims of the Claimant against the 1st and 2nd Defendants jointly and severally read as follows:

1. **A DECLARATION** that by virtue of the offer of mortgage loan and deed of legal mortgage, the 1st Defendant is indebted to the Claimant in the sum of **₦54, 893, 902.31 (Fifty-Four Million, Eight Hundred and Ninety-Three Thousand, Nine Hundred and Two Naira, Thirty-One Kobo) only** being the outstanding

amount on the 1st Defendant's loan facility as at 17th July, 2018 with 19% interest rate p.a. from 17th July, 2018 till judgment.

2. **A DECLARATION** that by virtue of its corporate guarantee, the 2nd Defendant is jointly and severally liable to pay the sum of **₦54, 893, 902.31 (Fifty-Four Million, Eight Hundred and Ninety-Three Thousand, Nine Hundred and Two Naira, Thirty-One Kobo) only** being the outstanding amount on the 1st Defendant's loan facility as at 17th July, 2018 with 19% interest rate p.a. from 17th July, 2018 till judgment.
3. **AN ORDER OF COURT** directing the 1st and 2nd Defendants jointly and severally to pay the sum of **₦54, 893, 902.31 (Fifty-Four Million, Eight Hundred and Ninety-Three Thousand, Nine Hundred and Two Naira, Thirty-One Kobo) only** being the outstanding amount on the 1st Defendant's loan facility as at 17th July, 2018 with 19% interest rate p.a. from 17th July, 2018 till judgment.
4. **10% PERCENT COURT INTEREST** on the judgment sum from the date of judgment till final liquidation of the judgment sum.
5. The sum of N1, 000, 000 as the cost of this action.

ISSUE FOR RESOLUTION:

At **paragraph 3.1** of its un-paginated written address, the Claimant/Applicant submitted these two issues for the disposal of this Motion:

1. Whether or not the Claimant/Applicant is entitled to the grant of an Order entering judgment in default of appearance" (sic)

2. Whether or not the Claimant/Applicant is entitled to the grant of an Order entering judgment in default of Pleadings" (sic)

On issues one, it is argued on behalf of the Claimant/Applicant that following **Order 9 Rule 1 of the 2018 Civil Procedure Rules** of this Court, a Defendant, once served with the originating process of the Claimant, must enter appearance to the suit within the period prescribed by the Rules, which is 14 days as appears on the face of the Writ of Summons by which the instant suit was commenced. Further reference was made to **Order 10 Rule 3 of the 2018 Civil Procedure Rules** of this Court empowering a Claimant to apply to the Court for judgment on the claim in the originating process or such lesser sum and interest as the Court may order where, as here, the claim in the originating process is a liquidated demand where the Defendant failed to appear. Counsel urged the Court to enter judgment accordingly in favour of the Claimant/Applicant as borne out by the Motion paper.

Arguing Issues two, Counsel referred me to **Order 10 Rule 1(2) of the Rules** of this Court wherein it is prescribed that a Defendant served with the originating process and accompanying documents shall his Statement of Defence, set off, or counterclaim, if any, not later than 21 days after such service on him. Referring to the case of **DAKO V. UNION BANK OF NIGERIA (2004) 4 NWLR (Pt. 862) 123; IWUENE V. IMO BROADCASTING CORPORATION (2005) 17 NWLR (Pt. 955) 447**, the Claimant/Applicant's Counsel urged the Court to accede to the prayers of the Motion especially keeping in view the additional provision of **Order 21 Rule 1 of the Rules** of this Court.

RESOLUTION OF THE ISSUES:

I shall resolve the twin issues together at once. Whether judgment is entered against a party in default or appearance or in default of pleadings, such a judgment, just as the Claimant/Applicant has sought herein by its instant Motion, is called a default judgment as confirmed by the Supreme Court in **BELLO v. INEC & ANOR. (2010) LPELR-767(SC)** wherein Mohammed, J.S.C. (as he then was now CJN) explained that: "A default judgment is one given in default of appearance or pleadings against a Defendant or a Plaintiff in a cross-action whose names appear as such Defendant or Plaintiff in the record of the trial Court". Both on the ground of default of appearance and on the ground of default of pleadings, the Claimant/Applicant has beseeched this Court to enter judgment as per the terms of its Writ of Summons against the Defendants jointly and severally.

That is to say, a default judgment is one that is obtained pursuant to an application by the plaintiff upon the failure or default of defendant to enter appearance or defense. Most often, it is a judgment in favor of a plaintiff when the defendant has not responded to a summons or has failed to appear before a court of law. The failure to take action is the default. A judgment upon default, is the final judgment in the case which is entered after the default, **Automotive Twins, Inc. v. Klein, 138 Conn. 28,33, 82 A.2d 146, 149 (1951).**

That once the defendants have been adjudged to have defaulted and had failed to file a notice of intent to present defenses, they, by operation of law, were deemed to have admitted to all the essential elements in the claim and would not be allowed to contest liability at the

hearing in damages.’ **Richey v. Main Street Stafford, LLC, 110 Conn. App. 209, 218, 954 A.2d 889 (2008)**; see also 1 **E. Stephenson, Connecticut Civil Procedure (3d Ed. 1997) § 96, p. 282** The default in appearance and filing of pleadings constitute a technical admission by the defendants of the truth of the facts alleged in the Statement of Claim ` ,**Schwartz v. Milazzo, 84 Conn. App. 175, 178, 852 A.2d 847**. Accordingly, `the default on the part of the defendants commands the rendering of judgment in favor of the plaintiff.’ **Peterson v. Woldeyohannes, 111 Conn. App. 784, 791, 961 A.2d 475 (2008)**. In **INEC & ANOR v. MADUABUM (2008) LPELR-4316(CA)**, it was stated thus:

"In Akinrinboya vs. 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 for failure to take some required step in the cause"

Evidence donated by the affidavit evidence supporting the Claimant/Applicant’s application proves convincingly that the Defendants/Respondents were sufficiently served with the originating processes and documents of the Claimant/Applicant but they failed, neglected and or refused to enter appearance not later than 14 days after the service of the processes on them. They equally failed, neglected and or refused to file their Statement of Defence within the 21-days period allotted by the Rules of this Court for them to do so. In

the circumstances, I am satisfied, on the state of the law, that the reliefs of the Claimant/Applicant are richly meritorious, the Claimant/Applicant having met the requirements of the law for the grant of same. In the circumstance and without much ado, I hereby pronounce as follows:

- (a) **A DECLARATION** is hereby made that by virtue of the offer of mortgage loan and deed of legal mortgage, the 1st Defendant is indebted to the Claimant in the sum of **₦54, 893, 902.31 (Fifty-Four Million, Eight Hundred and Ninety-Three Thousand, Nine Hundred and Two Naira, Thirty-One Kobo) only** being the outstanding amount on the 1st Defendant's loan facility as at 17th July, 2018 with 19% interest rate p.a. from 17th July, 2018 till judgment.
- (b) **A DECLARATION** is hereby made that by virtue of its corporate guarantee, the 2nd Defendant is jointly and severally liable to pay the sum of **₦54, 893, 902.31 (Fifty-Four Million, Eight Hundred and Ninety-Three Thousand, Nine Hundred and Two Naira, Thirty-One Kobo) only** being the outstanding amount on the 1st Defendant's loan facility as at 17th July, 2018 with 19% interest rate p.a. from 17th July, 2018 till judgment.
- (c) **AN ORDER OF COURT** is hereby granted directing the 1st and 2nd Defendants jointly and severally to pay the sum of **₦54, 893, 902.31 (Fifty-Four Million, Eight Hundred and Ninety-Three Thousand, Nine Hundred and Two Naira, Thirty-One Kobo) only** being the outstanding amount on the 1st Defendant's loan facility as at 17th July, 2018 with 19% interest rate p.a. from 17th July, 2018 till judgment.

(d) **10% PERCENT COURT INTEREST** on the judgment sum from the date of judgment till final liquidation of the judgment sum.

I am minded to award the sum of **Two Hundred and Fifty Thousand Naira (N250, 000. 00)** as the cost of this suit against the Defendants jointly and severally.

APPEARANCE

Ciaral Ogah Esq. for the Claimant/Applicant.

Sign
Hon. Judge
05/03/2021