

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT KUJE, ABUJA**

**BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS**

**COURT: 34**

**DATE: 23<sup>RD</sup> MARCH, 2021**

**BETWEEN:**

**FCT/HC/CV/3063/2020  
FCT/ HC/M/3071/2020**

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**1. GRAY-BAR ALLIANCE LTD  
2. NOVARE PROPERITY DEVELOPERS  
NIGERIA LTD**

}

**CLAIMANTS**

**AND**

**1. MINIKA ATING  
(TRADING AS "KINI & KAB INTERIORS")  
2. BASSEY NKITMA O.**

}

**DEFENDANTS**

**RULING**

This case is brought under the undefended list No FCT/HC/CV/3063/20 dated and filed on the 30<sup>th</sup> of October, 2020.

The Claimant's claim against the Defendant jointly and severally are as follows:-

- i. Payment of the sum of ~~N~~6, 633, 369.89 to the 1<sup>st</sup> claimant being the outstanding sum order in respect of "terms for payment of arrears agreement between claimant and the 1<sup>st</sup> Defendant.

- ii. Payment of the sum of ₦2, 119,691, 52 being the outstanding arrears of rent (inclusive of applicable withholding tax) owed the 1<sup>st</sup> Claimant (incurred after the execution of the arrears agreement).
- iii. Payment of the sum of ₦1,236,000.00 being the outstanding arrears of services charge owed the 1<sup>st</sup> claimant (incurred after the execution of the arrears agreement).
- iv. Payment of the sum of ₦286,705.70 being the outstanding arrears for cost of the utilities order the claimant (in cured after the execution of the arrears agreement).
- v. Payment of the sum of ₦1, 494, 653 .06 being compound interest at the rate of 18. 5% pa on the above sum cumulatively the sum of ₦10, 275,767.10 from February, 2020 till October, 26, 2020.
- vi. Payment of compound interest at the rate of 18.5% pa on the above sum of ₦10,275,767.10 from October, 27, 2020 till liquidation of the entire sum by the Defendant.
- vii. Payment of the sum of ₦ 5,000.00 or being cost of this action.

The Claimant by their 27 paragraphs affidavit in support deposed to by one Lucky Odji an Accountant of the 1<sup>st</sup> Claimant, dated 30<sup>th</sup> October,2020 stated in part that the 1<sup>st</sup> Claimant the owner of a Rental Mall known as Novera Gate Way Mall executed a lease agreement sometime in December 2018 with the 1<sup>st</sup> Defendant in

respect of shop no 23 Novare gateway mall Abuja for a term of 2years commencing on 1<sup>st</sup> January,2019 with a month relate value of the demised premises at USD 4,200 inclusive of withholding tax but exclusive of added tax calculated at USD 35 per Square Meter and the demised premises being 120 Square Meter. The monthly service charge of the demised premises from the commencement of the lease was ₦2, 500 per Square Meter which translate to the sum of ₦300,000.00. That failure of the 1<sup>st</sup> Defendant to make payment in respect of the lease culminated in outstanding debt following the 1<sup>st</sup> Defendant's complaints difficulties she was experiencing in her business led to 1<sup>st</sup> Claimant and 1<sup>st</sup> Defendant executing an agreement titled "(Terms of payment of arrears).

That the 1<sup>st</sup> Defendant formally and unequivocally admitted that she owed the 1<sup>st</sup> Claimant the sum of ₦ 6,633, 369. 89 as arrears of rent, service charge and utility bills in respect of the demised premises that the 1<sup>st</sup> Defendant failed to fulfill her obligation to the 1<sup>st</sup> Claimant in respect of payment.

That the 1<sup>st</sup> Claimant in good faith gave the 1<sup>st</sup> Defendant a concession on the rent such that the monthly rental value of the demised premises was reduced to the sum of USD 25 per square Meters Inclusive of (withholding tax) but exclusive of vat (value add

tax) and accordingly the 1<sup>st</sup> Defendant was obliged to pay the 1<sup>st</sup> claimant the sum of USD 3, 000 per months as rent.

That the 1<sup>st</sup> Defendant only paid the cumulative sum of ₦3, 916, 623 as her payment toward rent rather than ₦26,036, 314.52 with a balance of ₦2, 119, 691. 52 unpaid.

That the 1<sup>st</sup> Defendant only paid ₦210, 226.83 towards utilities consumed of the demised property leaving a balance of ₦286, 705.70 unpaid.

That the 1<sup>st</sup> Defendant gave up possession of the demised property in January, 2020.

Attached to this application are exhibits A, B. C . D. E<sup>1</sup> –E<sup>5</sup> F,G, H' - H<sup>3</sup>, T, J<sup>i</sup>,-J<sup>2</sup>. The claimant position is that the Defendants do not have a defence to this suit and urged the Court to grant the Claimant prayers. The Defendant however, filed a notice of intention to defend the action dated 1<sup>st</sup> February, 2021 and filed on the 5<sup>th</sup> February, 2020.

By an affidavit in support of notice of intention to defend deposed to by the 1<sup>st</sup> Defendant herself dated 8<sup>th</sup> February,2021.

Deponent admits in paragraphs -1-7 of the claimant's assertion. In their affidavit in support of the writ of summons under the undefended list and denies paragraphs 8-10, 14 to 24 of the claimant

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affidavit. The 1<sup>st</sup> Defendant avers that the 1<sup>st</sup> claimant barely 6 months after she took possession of the demised premises increased the rent and charges payable and thereafter repossessed the said demised premises. On 7<sup>th</sup> August, 2019 (due to default in payment on her part) but was still unlawfully charging and demanding rent and service charges from the Defendant as if the lease was still rerunning

That the terms of payment of settlement of arrears was entered into by the claimant and 1<sup>st</sup> Defendant to enable the 1<sup>st</sup> Defendant made installmental payment for 2months amounting to ₦4, 480,000.00 but was not put back in possession of the demised premises, 1<sup>st</sup> Defendant no longer considered herself bound by the claimants Exhibit B.

That there is no daily marked commentary of the said Bank's monthly Policy rate attached to claimants affidavit, therefore claimant cannot unilaterally claim interest of 18.5%.

1<sup>st</sup> Defendant avers that on the strength of clause 1 of annexure of the tenancy agreement between both parties this suit is premature and incompetence as the said clause refers any dispute between both parties to an arbitrator before resort to litigation.

That claimant exhibits C to G are false and generated by claimant in anticipation of litigation which is contrary to the provision of section 833, Evidence Act.

That 1<sup>st</sup> Defendant is not liable to pay rent and service charge after the 7<sup>th</sup> August,2019 being the date the 1<sup>st</sup> Claimant repossessed the demised premises.

That ever after the execution of claimant's Exhibit B the 1<sup>st</sup> Defendant made further payment of ₦ 4,480,000.00 to them as admitted by claimant's Exhibit C.

1<sup>st</sup> Defendant states that she has a good defence to this suit and disputed the claimant's 18.7% interest rate 1<sup>st</sup> urged the Court to transfer this case to the general cause list.

Having reproduced substantially the position of both the Plaintiff Counsel and the Defendant in this suit. The processes filed by the plaintiff Counsel was accompanied with motion on notice marked undefended list the purpose of the motion was for the Court to enter judgment firmly on the ground that the issue is for liquidated money demand which falls within the requirement of the undefended list procedure. On the other hand the Respondent Counsel averred that the matter should be transfer to the general course list this is because there are triable issue which require the calling of oral evidence. It

shall be born in mind from the affidavit generally attached to the motion on notice clearly described the need to enter Judgment in part as the Defendant have admitted in paragraph 13 of their counter affidavit. It should be noted that mere denial does not and cannot make a matter to be transferred to general cause list the counter affidavit filed by the Respondent must disclose a defence on merit. It is pertinent to note that in paragraph 13 of the Respondent counter affidavit contain the following admission. That even after the execution of Exhibit B the 1<sup>st</sup> Defendant made further payment of the sum of ~~₦~~4,480,000.00 (Four Million Four Hundred and Eighty Thousand Naira only) to them as admitted even by claimants in exhibit attached to their affidavit in this suit leaving the outstanding balance of ~~₦~~2,119, 691.52k (Two Million, One Hundred and Nineteen Thousand, Six Hundred and Ninety One Naira Fifty Two Kobo) therein as admitted in paragraph B.3 of affidavit in support of their undefended list. This is admissible. See section 20 of the evidence Act which provides that statement made by a party to a proceeding or by an agent to any such party, whom the Court regards in the circumstance of the case as expressly or impliedly authorized by him to make them are admissible. From the above paragraph contained in the counter affidavit is a clear admission of the outstanding balance.

In ***IFEANYICHUKWU T.I.V. LTD VS. OCB LTD (2015) 17 NWLR (PT 1487) page 4 CA.***

The purpose or object of the undefended list procedure is to enable the Court to deal summarily with the plaintiff's claim and enter quick Judgment. Once it is clear that the Defendant does not have any defence to such claim, in order to save time and avoid unnecessary expenses on litigation, in other words, the undefended list procedure rules is designed to secure justice and avoid the injustice likely to occur when there is indeed no genuine defence on merit to the Plaintiff claim. The procedure is employed to shorten the hearing of a suit when the claim is for liquidated sum. See ***UBA PLC VS. JARGABE (2007) INWLR (Pt. 1045) 247.*** By order 11 Rule 5 (1) (2) & (3) Civil Procedure Rule 2018.

The Court May (i) grant leave to Defendant where the Defendant has a good defence and ought to be permitted to defend the claim (ii) enter Judgment for the claimant where the Defendant has no good defence (iii) where the Defendant has a good defence to part of the claim only. Enter Judgment for the part of the claim to which there is no good defence and grand leave to defend that part to which there is a good defence.

It can be gleaned from the foregoing that the Court is invested with very wide discretion when grappling with application for summary Judgment, which is a unique procedure designed for the expeditious disposal of cases in which it is obvious that there is no genuine



defence on the merit and thus obviate grave injustice that might occur through a protracted and needless litigation it seeks to prevent sham defences from defeating the right of a claimant by delay and thereby occasion loss of time and resource to the claimant see **LEVIS VS. UBA Plc (2006) 1 NWLR Pt 962 546-565.**

*"In paragraph 9 of the Respondent counter affidavit averred that "by clause I of the annexure C attached to the tenancy agreement between the claimant and the Defendant this suit is premature and therefore incompetent as the said clause clearly provide that any dispute arising between the parties here and shall 1<sup>st</sup> be referred to an Arbitrator before resort to litigation."*

I completely disagreed with the Respondent Counsel where the Respondent's Counsel filed a Preliminary Objection in that regards for non compliance with the said clause then the matter is atomically incompetent. However, in this case since the Respondent has taken step by filing his processes and counter affidavit he out-rightly waived his right; this case is competent see **MTN COMMUNICATION LTD VS. TATS COMMISSION INTEGRATED RESOURCE LTD (2018) LPELR 44783 CA.** see also the following cases (1) **ZAKIRAI VS.**

**MINISTRY OF WORKS (2013) 13 NWLR (Pt1594) Q 181-352 (2) NNPC VS. CHIEF DETPLEN & ORS (2013) 13 NWLR (PT 1371) 211 Q 224.** From the contents of the Plaintiff affidavit and the Respondent's counter affidavit excluding the above sum clearly shown that there are issue that require full trial in **IFEAYICHUKWU TI VS VOGB LTD (supra)** the Court held in paragraph 3 " *under the undefended list procedure*" once the trial Court discovers in the Defendants affidavit evidencing an issue that will require an investigation or explanation from the Plaintiff on the claim or where the affidavit in support of the Defendant notice of intention to defend throw a doubt on the claim, the parties are said to be brought within the concept of joining issues.

And the case cannot longer be tried or heard under the undefended list but must be transferred to the general cause list for trial on pleadings. Section 135 of the Evidence Act make it mandatory on the Claimant to proof outstanding claim brought against the Defendant for the purpose of clarity paragraph 11 of the Respondent counter affidavit offend section 115 of the Evidence Act accordingly same is hereby struck out. This being so, the Defendant has not disclosed any bona fide defence on the merit to warrant the grant of leave to defend wholly, but the Defendant on merit is rejecting the other part of the Claimant's claims consequently Judgment will be and is hereby entered in favour of the claimant in the following terms:-

a. The Defendant shall forthwith, pay to the claimant the sum of **N2,119,691.52 (Two Million One Hundred and Nineteen Thousand Six Hundred and Ninety One Naira Fifty Two Kobo)** only.

While in respect of the other part of the claimant's claim the matter is transferred to general cause list matter is adjourned to the 15<sup>th</sup> April,2021 for Hearing.

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**HON. JUSTICE M.S IDRIS**  
**(Presiding Judge)**  
**23/3/2021**