

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

BEFORE: HIS LORDSHIP HON. JUSTICE SAMIRAH UMAR BATURE

COURT CLERKS: JAMILA OMEKE & ORS
COURT NUMBER: HIGH COURT NO. 32
CASE NUMBER: SUIT NO. FCT/HC/CV/2745/20
DATE: 1ST MARCH, 2021

BETWEEN:

UNIVERSAL ESTATE LIMITED.....CLAIMANT

AND

MR. ABUBAKAR ABDULMALIK.....DEFENDANT

APPEARANCES:

Christabel Ayuk Esq for the Claimant.

RULING

The Claimant filed this suit via Undefended List dated 25th day of September 2020 and filed same day. The Claimant claims against the Defendant as follows: -

- “(i). An Order of this Court mandating the Defendant to pay the sum of ₦30, 000, 000.00 (Thirty Million Naira Only) to the Claimant as arrears of rent from the 14th day of June 2015 to the 13th day of June 2020.***
- (ii). The sum of ₦2, 000, 000.00 (Two Million Naira Only) being the sum of money paid to the Claimant’s Counsel to institute this action.***
- (iii). The sum of ₦500, 000.00 (Five Hundred Thousand Naira Only) being the cost of proceedings.”***

Filed in support of the Writ of Summons is a 15-paragraphed affidavit deposed to by Ikechukwu Uzuegbu, the Managing Partner of the Law Firm of Ikechukwu Uzuegbu & Co, the Manager of the property in issue. Attached to the affidavit are annexures marked as Exhibits A, B, C, D,E, & E2 respectively.

Addressing the Court on 3rd day of December 2020, Amaka Eke Esq, Counsel to the Claimant urged the Court to enter judgment for the Claimant in this suit and submitted that the Defendant has not disclosed a defence on the merit, reference was made to the cases of **RANGASA V. MICRO PLASTIC LTD (2013) LPELR – 20303 (CA); FIRST CONTINENTAL PROPERTY LTD V DEVINE TRIUMPH LTD (2017) LPELR-42869 (CA) P.24.**

On the other hand, the Defendant filed a Notice of Intention to Defend together with an Affidavit in support of 7 paragraphs deposed to by one Vera Chinyere Amaechi, litigation Secretary in the firm of AL-ADL Law firm Counsel to the Defendant. Attached to the Affidavit are documents marked as Exhibits AA1 to AA3 respectively. Equally, filed in support of the Notice of Intention is a Written Address dated 23rd day of November 2020.

Addressing the Court, learned Counsel to the Defendant, Ishaq Muhammed Bashir Esq urged the Court to transfer this matter to the General Cause as it is contentious. He relied on the paragraphs of the affidavit and the Exhibits as well as the Written Address.

In the said Written Address, Counsel formulated a lone issue for determination which is whether this suit may be tried under Undefended List in view of the Notice of Intention to Defend filed by the Defendant showing defence on the merit to this action.

In arguing the issue, Counsel referred the Court to Order 35 Rule 3(1) of the Rules of Court and submitted that the Defendant having complied with the provision of Order 35 Rule 3(1), the duty of the Court is to automatically transfer the matter to the Ordinary Cause List. Counsel referred the Court to the case of **NIGERIA SUGAR COMPANY LIMITED V MOJEC INTERNATIONAL LIMITED (2005) ALL FWLR (Pt. 262) P. 475 at 493, para A – C.**

Consequently, Counsel submitted that the Defendant has not expressly or even impliedly admitted the claims of the Claimant and as such the

Court ought to allow the Defendant to defend the case against him in the General Cause List on the merit and urged the Court to so hold.

In his further submission, Counsel stated that at this stage, it is not expected of the Defendant to depose to an absolute defence to the action. That it is sufficient if by the facts deposed to in the affidavit in support of the Notice of Intention to Defend, the Court finds that there is a triable issue that should warrant a further inquiry into the matter to enable the Court to do justice between the parties.

In the circumstances, Counsel submitted that the Court ought to determine whether the Defendant has raised a defence on the merit as deposed to in the supporting Affidavit to the Notice of Intention to Defend. Reliance was placed on the cases of ***JOS NORTH LOCAL GOVERNMENT V DANIYAN (2000) 10 NWLR (Pt. 675) 283, Ratio 3 - 5; SANATORY COMPANY LTD V ELABED (1998) 12 NWLR (Pt. 579) 538.***

On what constitutes a defence on a merit, Counsel cited the case of ***MAT HOLDING LTD V UBA PLC (2003) ALL FWLR (Pt. 183) Page 149 at 150 Ratio 7.***

Therefore, Counsel referred the Court to paragraphs 4 -5 of the Defendant's Affidavit and submitted that where the debt is disputed at this stage, the Court ought to transfer the matter to General Cause List. It is the learned Counsel's contention that the Defendant has shown defence on the merit. He referred the Court to the case of ***AKINYEMI V GOVERNOR OYO STATE (2003) FWLR 1821 at 1823 – 1824.***

In his final submission Counsel stated that if the Court decides to proceed to determine this action as it is constituted under the Undefended List procedure, the Defendant would have been short out and denied the constitutional right of fair hearing which is the cardinal point in all judicial proceedings and urged the Court to so hold.

On the whole, Counsel urged the Court to transfer this matter to the General Cause List and order parties to exchange pleadings.

I have carefully perused the Writ of Summons filed under the Undefended List procedure, the reliefs sought, the supporting affidavit and the exhibits attached therewith. I have equally gone through the Notice of Intention to Defend filed by the Defendant together with the

supporting Affidavit and the annexures attached therewith as well as the Written Address in support.

It is germane to begin by saying that the Claimant herein deposed in the supporting affidavit particularly at paragraphs 8, 9 and 13 that the Defendant has refused and failed to renew his tenancy since 13th of June 2015 when his last tenancy expired and that based on the averment made in paragraph 8 above, the Defendant is in arrears of rent from 2015 to 2020 which comes up to the total sum of N30, 000, 000.00 (Thirty Million Naira Only) and that the Claimant strongly believes that the Defendant has no defence whatsoever to this suit. In this respect, I refer to Order 35 Rule 1(1) of the Rules of this Court which provides thus: -

“Where an application in Form 1 as in the appendix is made to issue a Writ of Summons in respect of a claim to recover a debt or liquidated money demand, and stating that in the deponent’s belief there is no defence to it, the Judge in Chambers shall enter the suit for hearing in what shall be called the Undefended List”

Therefore, it is important to note that the object of the Undefended List procedure is to enable a Claimant whose claim is unarguable in law and where facts are undisputed to obtain swift justice and it is expedient not to allow a Defendant to defend for mere purpose of delay and to enter judgment in respect of the amount claimed. In this respect, see the case of ***H.R. LTD V F. INV. LTD (2007) 5 NWLR at Page 346, para c*** where it was held thus:

“...The Undefended List procedure is a special procedure designed for quick dispensation of justice in a claim for a liquidated money demand....”

See also the case of ***OBITUDE V OYESOM COMM. BANK LTD (2014) 9 NWLR (Pt. 1412) 352.***

Moreso, a liquidated money demand is a debt which has become due and payable having being ascertained or capable of being ascertained without any further investigation. Basically, where the amount claimed by the Plaintiff can be ascertained by calculation, or fixed by any scale of charges or positive data like a receipt or invoice of payment, it is a liquidated money demand. This was reinstated in the case of ***EPE L.G.***

V KESHINRO (2009) 4 NWLR at page 421, Paragraph H where it was held thus: -

“....A liquidated money demand is in the nature of a debt, it is a specific sum of money due and payable under or by virtue of a contract. It is liquidated when the sums are easily ascertainable...”

However, it is not the aim of the Undefended List procedure to prevent a Defendant from contesting a suit brought under the Undefended List at the expense of justice and the rule goes further to give a Defendant willing to defend a suit placed under the Undefended List a leeway by making it mandatory upon such a Defendant to file a notice of his intention to defend the suit together with an affidavit disclosing a defence on the merit and where the Court finds merit in the defence, the Court will grant him leave to defend. In support of this, see Order 35 Rule 3(1) of the Rules of this Court. It provides thus: -

“....Where a party served with the Writ, delivers to the registrar before 5 days to the day fixed for hearing, a notice in writing that he intends to defend the suit, together with an affidavit disclosing a defence on the merit, the Court may give him leave to defend upon such terms as the Court may think just...”

Nevertheless, before a Defendant who filed a Notice of Intention to Defend is granted leave to defend the action, the Affidavit in support must disclose a defence on the merit, must not be a sham and must produce details and particulars of the defence. See the case of ***UBA PLC V JARGABA (2007) 11 NWLR (Pt. 1045) Page 247, Tobi JSC at page 273*** said thus:

“The Affidavit in support of the Notice of Intention to Defend must of necessity disclose facts which will at least, throw some doubt on the case of the Plaintiff. A mere denial of Plaintiff’s claim and evidential value and as such would not have disclosed any defence which will at least, throw some doubt on the Plaintiff’s claim. A Defendant’s Affidavit in support of Notice of Intention to Defend raises a triable issue where the Affidavit is such that the Plaintiff will be required to explain certain matters with regard to his claim or where the Affidavit throws a doubt on the Plaintiff’s claim...”

Similarly, it was held in the case of **NATIONAL COORDINATOR/CE & ANOR V. MABOL & ASSOCIATES LTD (2009) LPELR-4576 (CA) per BADA, JCA at Page 23, paras A – B** that:

“All that a Notice of Intention to Defend is required to do under the Undefended List is to satisfy the Court that there is a triable issue or raise a bona fide issue for trial...”

See also the case of **AMEDE V. UBA (2008) 8 NWLR (Pt. 1090) 623 at 662 -663, paras F – A.**

At this juncture, the pertinent question before this Honourable Court is whether the Affidavit filed in support of the Defendant’s Notice of Intention to Defend has disclosed a defence on the merit and/or raised triable issues to warrant the transfer of this suit to the General Cause List.

The Defendant in the instant case as stated earlier, filed a Notice of Intention to Defend this suit together with an affidavit in support of same. In the said supporting affidavit, the Defendant deposed therein particularly at paragraphs 4 sub-paragraphs g, h, i and j and for ease of reference, I shall reproduce same hereunder. It reads thus: -

“g -That the Defendant has paid the outstanding rent arrears except for the current tenancy which is not due yet.

h – “That the Defendant was surprised to receive a Demand Notice dated 24th September 2020 claiming the sum of N30 Million as the rent arrears from the Defendant and that the rent was increased from N4 Million per annum to N5 Million per annum”

l – “In response, the Defendant through his lawyers vide the letter dated 5th October 2020 denial liability as per the claim of N30 Million rent arrears from 2016 to 2020 claimed by the Claimant in this suit and the purported increase in the rent. See Exhibit’AA3”

J – “That the Defendant has a very strong defence to the claims of the Claimant in this suit.”

In addition, an x-ray of Exhibit AA3 attached to the supporting affidavit to the Notice of Intention to Defend i.e. letter written by Counsel to the

Defendant dated 5th October, 2020 titled: RE: DEMAND FOR ARREARS OF RENT OF N30, 000, 000.00 (THIRTY MILLION NAIRA ONLY) will show particularly at paragraphs 2, 3 and 4 that the Defendant denied into claims of the Claimant in this suit.

In the light of the above, taken into consideration the deposition in the supporting affidavit to the Notice of Intention to Defend particularly the paragraphs quoted above together with Exhibit AA3, it is my humble but from view that the Defendant has successfully throw same doubt on the claims of the Claimant before this Honourable Court. In other words, it has raised a defence on a merit and/or raised a triable issue requiring attention of the Court. I so hold. See the case of **S.P.D.C. (NIG) LTD V ARHO-JOE (NIG) LTD (2006) 3 NWLR (Pt. 966) at Page 173** where it was held inter alia that:

“...a triable issue or a defence on the merit under the Undefended List procedure is where a Defendant Affidavit in support of the Notice of Intention to Defend is such that requires the Plaintiff to explain certain matters with regard to his claim, or throws some doubt on the Plaintiff’s claim. A triable issue is an uncontroverted material allegation contained in the Defendant’s affidavit which cannot and should not be given a name of the back-hand and which requires further investigation by the Court to unravel the veracity or otherwise of same...”

To this end and without further ado, the Defendant’s affidavit in support of the Notice of Intention to Defend having raised a defence on the merit as contemplated by law, it is my considered opinion that this suit ought to be transferred to the General Cause List for trial in the interest of justice. I so hold.

In the circumstances therefore, this suit with Suit No: CV/2745/20 filed via Undefended List procedure is hereby transferred to the General Cause List for hearing. Parties are hereby ordered to file and exchange pleadings accordingly.

Signed:

**Hon. Justice Samirah Umar Bature.
1/3/2021**