

**THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY,
IN THE BWARI JUDICIAL DIVISION,
HOLDEN AT COURT NO. 11 BWARI, ABUJA.
BEFORE HIS LORDSHIP: HON. JUSTICE O. A. MUSA
SUIT NO. FCT/HC/BW/CV/102/2019**

BETWEEN:

HAJIA ADIZAT KUBURAT IBRAHIM --- PLAINTIFF

AND

MR. SUNNY ONYENWENSON --- DEFENDANT

JUDGMENT
DELIVERED ON THE 5th March, 2021

The Plaintiff commenced this action under the Undefended List against the defendant whereof the plaintiff claims against the defendant the sum of N17, 000,000.00 (Seventeen Million Naira) only being part payment she made to the Defendant in respect of a 4 Bedroom Semi - detached duplex (Carcass) being No. 24A Pine Crescent, Sunnyvale Estate, Dakwo District, Abuja.

The plaintiff, on 27th day of June, 2019, through her counsel, Niven Aliyu Momoh, Esq. obtained an order of this Honourable Court granting leave for the plaintiff to serve the defendant by Substituted means, by pasting the Originating Processes and all other subsequent processes in this suit at the entrance gate of the defendant at No. 24A Pine Crescent, Sunnyvale Estate, Dakwo District, Abuja.

The defendant having been served with all the processes in accordance with the order of this Honourable Court did not file any reply or defence to the plaintiff's claim as required by the Rules of the court. Order 35 Rule 1, 2 & 3.

The question that required an immediate answer is Whether in view of the nature of this suit, the plaintiff having satisfied the requirements of the law, is entitled to the judgment of this Honourable Court or not ?

The learned counsel in his submission answers this question in the affirmative. By citing Section 131 (1) of the Evidence Act, 2011 which provides that:-

"Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person."

He humbly submit that the plaintiff has by credible affidavit evidence discharged the burden of proof placed on her to entitle her to the judgment of this Honourable Court.

By Order 35 Rule 1 of the High Court of the Federal Capital Territory Abuja, (Civil Procedure) Rules, 2018, provides: "1. (1) 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, supported by an affidavit stating the grounds on which the claim is based, 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".

(2) A writ of summons for a suit in the undefended list shall contain the return date.

3. (1) Where a party served with the writ delivers to 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 give him leave to defend upon such terms as the court may think just.

(2) Where leave to defend is given under this Rule, the action shall be removed from the Undefended List and placed on the ordinary Cause List; and the court may order pleaaings, or proceed to hearing without further pleadings.

4. Where a defendant neglects to deliver the notice of defence and an affidavit prescribed by Rule 3(1) or is not given leave to defend by the court the suit shall be heard as an Undefended suit and Judgment given accordingly."

In Ifeanyichukwu Trading Investment Ventures Ltd & Anor v. Onyesom Community Bank Ltd & Anor (2015) 35 WRN 1 at 23, the Supreme Court, Per Ariwoola, JSC, held:

"It is trite law that the purpose and object oj this 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 trial. In other words, the procedure under undefended list rules is designed to secure justice and avoid the injustice likely to occur when there is indeed no genuine defence on the merits to the plaintiff's claim."

He equally submit that "Undefended List" procedure is strictly provided for recovery of a debt or liquidated money demanded upon the plaintiffs belief that the defendant does not have defence to the suit and to ensure quick dispensation of justice.

In Masseken (Nig) Ltd v. Amaka (2017) 38 WRN 61 at 71, the Supreme Court, Per Onnoghen, JSC (as he then was) held:

"It is settled that Undefined List Procedure is designed and adopted for speedy trial for the recovery of any debt or liquidated money demand. Particularly where it is clear to the court that the defendant has no defence on the merit for the claim of the plaintiff, where a defendant is served with a writ of summons entered under the Undefined List together with an affidavit deposed to by the plaintiff, as required by the rules of court, and he desires to defend same, it is his duty to file a notice of intention to defend the suit together with an affidavit disclosing his defence on the merit of the claim for the liquidated money demand. On the return date the duty of the court is to consider the affidavits of claim and defence in order to determine whether the defendant has disclosed any defence to the claim of the plaintiff so as to decide whether the action should be transferred to the General Cause List to be dealt with according to the rules of court or enter judgment for the debt or liquidated money demand for the plaintiff, where it comes to the conclusion that that no defence, on the merit has been disclosed in the affidavit of defence, it is very clear from the above description that the decision of the trial Judge on the matter on the return date is strictly based on the facts as disclosed in the affidavits filed before him, the judge cannot therefore go outside the affidavit evidence in determining the matter."

He submit further that the defendant fails to file a notice of his intention to defend the suit because he knows and believes that he does not have any defence whatsoever to the suit. He therefore urge the court to enter judgment in favour of the plaintiff based on the unchallenged affidavits evidence before the court.

The learned council stated that the Law is also settled that unchallenged or uncontroverted affidavit evidence is deem admitted and the court should consequently accept it as true. In Mr. Babatunde hording & Anor v. The Administrator General and Public Trustee of Logos State & Anor (2016) 43 WRN 113 at 138, the Court of Appeal, Per Georgewill, JCA, held:

"I should also reiterate, just by way of emphasis, the trite position of the law that where facts deposed to in an affidavit have not been controverted by the adverse party in a counter affidavit, such facts must be taken as true and established and is good evidence to be acted upon by the court except such unchallenged facts are unreasonable or frivolous, the court below was legally bound to accept it as true."

In the same vein, in Owuru & Anor v. Adigwu & Anor (2017) 47 WRN 1 at 19-20, the Supreme Court, Per Onnoghen, JSC, held:

"Given the above scenario, it is my view that the 1st respondent shot himself in the foot when he failed to refute or challenged, in a further affidavit in response to the 1st appellants counter affidavit the weighty allegations against his supposed victory at the primary election. Therefore, any deposition made in an affidavit which is not challenged or controverted is deemed admitted. Underline is ours for emphasis).

It is our humbly and respectful submission that the defendant having failed to file counter affidavit in opposition the plaintiffs affidavits in support of her claims, he is deem to have admitted all the averments as contained therein. He urged court to so hold.

Conclusively in view of the foregoing judicial authorities, we most humbly and respectfully urge this Honourable Court to enter judgment in favour of the plaintiff and grant her the relief sought. We are much obliged.

Have carefully studied and perused the claim of the plaintiff and the supporting affidavit alongside the whole Exhibits attached. I equally understood the submission and argument of the learned plaintiff's counsel address which all are not challenged by the defendant who failed to file his notice of intention to defend the suit as provided for by the Rules of court Order 35 Rule 1, 2 2018.

So, I equally studied the case cited by the counsel in his written submission. I am fully convinced that undefended list procedure are meant to ease a trial where no defence is filed.

As such I adopt all the submission of the plaintiff's counsel together with the cases cited therein; and grant all the reliefs sought by the plaintiff in her statement of claim to wit: that the defendant shall pay to the plaintiff the sum of N17,000,000.00 (Seventeen Million Naira) only being part payment she made to the defendant in respect of a 4 Bedroom Semi Detached duplex (Carcass) being No. 24 A Pine Crescent, Sunnyvale Estate, Dakwo District, Abuja.

This is the Judgment of the court. I so hold.

APPEARANCE

Evelyn Enenyi Esq. for the plaintiff.

Respondent not in court and not represented.

Sign
Hon. Judge
05/03/2021