

**IN THE HIGH COURT OF JUSTICE OF THE F.C.T.**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT KUBWA, ABUJA**

**ON THURSDAY, THE 25<sup>TH</sup> DAY OF FEBRUARY, 2021**

**BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA**

**JUDGE**

**SUIT NO. FCT/HC/CV/331/18**

**BETWEEN:**

**MR. KENNETH EZE.....CLAIMANT**

**AND**

**MRS. RACHEAL MANDI GEORGE.....DEFENDANT**

## **BENCH JUDGMENT**

By a Writ under the undefended list procedure the Plaintiff filed this action against the Defendant claiming as follows:

- (a) Payment of the sum of N17,000,000.00 (Seventeen Million Naira) being the outstanding balance of purchase price of N50,000,000.00 (Fifty Million Naira) of the property situate at house 1C, 21 Road, Efab Estate Lokogoma District Abuja.

Once the Plaintiff feels that given the circumstances of the case that it has a prima facie case against the Defendant where the claim is on liquidated money demand, it will apply that the writ be marked as undefended. This is usually heralded by an application made Exparte urging the Court to mark such Writ as Undefended. Once marked and dated the Defendant will be served. The Defendant is expected by the provision of the Rules of this Court on Undefended list to reply or respond to such Writ within 5 days of receipt of same. Order 35 R 3(1).

If the Defendant feels that it has a defence to the case, it will file Affidavit showing that it has a prima facie defence to the Suit of the Plaintiff. He will where available and necessary attach document to support his defence and will serve the Defendant.

It is imperative to state that the Plaintiff usually support such Writ with Affidavit showing that the Defendant has no defence to their claim and that the Court should enter Judgment summarily in favour of the Plaintiff without hearing from the Defendant.

So when a Defendant fails to file any Affidavit in support of his Notice to Defend the Court will deem it that it has no prima facie to the Suit. And the Court will not hesitate to enter Judgment for the Plaintiff. Before it does that the Court must go through the Affidavit and Exhibit attached by Plaintiff to support his claim.

In this case the Plaintiff filed his Writ on 26/11/18 the Court marked the Writ Undefended on the 14/5/19. The Defendant was served by substituted means per Order of

this Court made on the 14/5/19. That order is still subsisting.

The Defendant did not file any Notice to Defend and Affidavit to showing she have a prima facie defence to the Suit of the Plaintiff even as I read this Judgment. The same Defendant has been served several Hearing Notice showing any day the matter is scheduled to be heard.

Meanwhile the Plaintiff's claim is for the N17,000,000.00 (Seventeen Million Naira) which is the outstanding balance on the purchase price of N50,000,000.00 (Fifty Million Naira) for the property situate at House 1C, 21 Road, Efab Estate Lokogoma District Abuja FCT.

He supported the Writ with Affidavit of 12 paragraphs. The Plaintiff had attached four documents-the sale Agreement between the Plaintiff- Kenneth Eze and the Defendant Mrs Racheal Mandi George. The sale agreement was signed on the 29/11/12.

He had attached 2 cheques issued by the Defendant- Intercontinental Bank Cheques No.0010042908 dated 31/4/14. He also attached an undertaking to pay the balance written by the Defendant on 30/7/14 promising to pay N17,000,000.00 (Seventeen Million Naira) which is the outstanding Balance which is what the Plaintiff is claiming. She had promised to pay the N17,000,000.00 (Seventeen Million Naira) One year from August 2014 to July 2015 But she failed to do so.

The Plaintiff also attached letter of demand for payment of the said outstanding sum written by the law firm of Obinna Ajoku on the 24/8/2018 addressed to the Defendant. That letter was signed by the Counsel to the

Plaintiff-Ezekiel Egbo Esq based on the instruction of the Plaintiff. The Plaintiff also attached evidence of service of the said Demand Notice on the Defendant. That evidence is the DHL Courier service .....and waybill.

Today the Plaintiff Counsel had adopted their claims/process in this suit. They have urged the Court to grant their claim as the defendant had not challenged same and has evidently no prima facie defence to her case. He had also asked for interest on the post Judgment sum from today until the said Judgment sum is fully liquidated. He cited and referred to Order 39 R 4 FCT High Court Rules and the case of UBA Vs Aminu to support the application for paying interest on the post Judgment sum.

**COURT:**

It is the Law that unchallenged facts in an Affidavit are deemed admitted in as much as that is so, Court cannot swallow hook line and sinker any such claim the Court must have a detailed and critical look to ensure that the claims of the Plaintiff is legal lawful, legitimate and in accordance with a procedure permitted by law before it can make any pronouncement on such claim.

Today in this suit this Court had earlier gone through the facts in support of this case and also through the documents/evidence attached to support the claim. It is the humble view of this Court that the Plaintiff's claim is meritorious. It is also unchallenged by the Defendant who had and was given all the ample time and opportunity to be heard and have her say in this case. But decided not to do so by reason best known to her.

This Court holds that the defendant not having challenge this suit has no prima facie defence to the suit of the Plaintiff.

The Plaintiff had also succinctly presented the facts in support of the case in his Affidavit in support and the 4 documents attached showing that actually the claim is liquidated money demand and the Defendant has no iota of prima facie defence to his claim.

This Court therefore hold that the claim of the Plaintiff is meritorious and undefended and as such the said claim is granted as prayed.

The Court also in line with the Judgment of the Court of Appeal in the case of:

**NPA Vs Aminu** that the Plaintiff deserve to be paid interest on the post Judgment sum. The Court therefore award interest of 5% interest on the post Judgment sum.

This is the Judgment of this Court delivered today the.....day of.....2021 by me.

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K.N.OGBONNAYA

HON. JUDGE

