

IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA.

BEFORE HON. JUSTICE J.E. OBANOR
ON WEDNESDAY THE 31ST DAY OF MARCH, 2021.

SUIT NO: FCT/HC/CV/3445/2020

BETWEEN:

JOHN ONOJA

.....CLAIMANT

AND

MODUPE ABOSEDE

..... DEFENDANT

JUDGMENT

On 16/12/2020, the Claimant took out a Writ of Summons under the Undefended List Procedure against the Defendant. He claims as follows against the Defendant solely:-

- “1. AN ORDER OF COURT directing the Defendant to immediately pay the Claimant the sum of N4,731,501 (Four Million, Seven Hundred and Thirty-One Thousand, Five Hundred and One Naira) being the judgment sum in Suit No: AB/SDC/CO/42/2019 delivered in favour of Claimant herein, which the Defendant herein stood as a surety to one Mr Chidi Umeh pay up vide an undertaking dated 4th December, 2019.
2. And for such further order(s) as the Honourable Court may deem fit to make in the circumstances.”

The writ is supported by 18-paragraph affidavit deposed to George Amalu .

Records of Court show the writ and supporting affidavit and a Hearing Notice were served on the Defendant on 9th March, 2021.

The Defendants did not file any process in response to the claim despite the opportunity given to her.

At the hearing on 26/3/2021, Counsel for the Claimant urged the Court in the terms of the Writ of Summons. The Defendant was absent and not represented by Counsel. There was no written explanation for her absence filed in Court. Judgment was then reserved for 31/3/2021.

I have given due consideration to the reliefs sought in the Writ of Summons and averments in the Claimant's affidavit in support of them. The cardinal issue for determination is whether or not the Claimant has made out a case to justify a grant of the reliefs sought.

As aforesaid, the Claimant's claim is one commenced under the Undefended List Procedure.

Order 35 Rules 1 to 5 of the Rules of Court 2018 has made provisions guiding matters commenced under the undefended List Procedure.

Order 35 Rule 3 (1) and (2) provides that:-

“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 may 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 pleadings or proceed to hearing without further pleadings.”

In Rule 4, of the Order, it is provided that:-

“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 this case, as aforesaid, the Writ of Summons along with the affidavit in support and Hearing Notice were served on the Defendant. She did not file a Notice of Intention to defend along with an affidavit disclosing a defence on the merit as prescribed by Order 35 Rule 3(1) of the Rules of Court 2018. The case was accordingly heard without a defence by the Defendant. Therefore, whether or not judgment can be entered for the Claimant depends on if he has made out a case in his affidavit which entitles him to a judgment.

I have accordingly examined the averments in his affidavit. It was averred in the affidavit inter alia, that the Claimant is a businessman and the landlord of NIFA Estate Wuye Abuja-FCT. The Defendant is a business woman who stood as surety to one Mr Chidi Umeh to pay up the sum of N4,731, 501 (Four Million, Seven Hundred and Thirty One Thousand, Five Hundred and One Naira) being the judgment sum in Suit No. AB/SDC/CO/42/2019. Sometime in November, 2019, Judgment was delivered in favour of the Claimant in Suit No AB/SDC/CO/42/2019 against one Chidi Umeh to pay the total sum of N4,731,501 (Four Million Seven Hundred and Thirty One Thousand, Five Hundred and One Naira). A copy of the judgment is attached as Exhibit C1. Following the undertaking by Chidi Umeh to pay up the outstanding sum of N4, 731, 501 (Four Million, Seven Hundred and Thirty One Thousand, Five Hundred and One Naira) the Defendant herein presented herself as a surety to pay up the said sum in the event Chidi Umeh failed to fulfill his obligation under the undertaking dated 4th December, 2019. A copy of which is attached as Exhibit C2. It was agreed by the parties vide the undertaking that Chidi Umeh shall be making quarterly payment of N500,000.00 (Five Hundred

Thousand Naira) towards defraying the outstanding judgment sum of N4,731,501 (Four Million, Seven Hundred and Thirty One Thousand, Five Hundred and One Naira). The quarterly payments have been due since March 2020 for payments but up until date the said Chidi Umeh has not made any payment whatsoever in defraying the outstanding judgment sum. Paragraph 4 of the undertaking provided as follows: 'that in case you default in payment of any quarterly installment, we shall enforce the judgment against you or your surety. Upon the failure of Chidi Umeh to fulfil his obligation under the undertaking taken by him and surety by the defendant, a letter of demand was written to the Defendant for payment of the outstanding judgment sum. Paragraph 4 of the undertaking provided as follows "that in case you default in payment of any quarterly installment, we shall enforce the judgment against you or your surety." Following the failure of Chidi Umeh to fulfil his obligation under the undertaking taken by him and surety by the Defendant herein, on 4th December, 2019, the Claimant through his solicitors Messrs F.M. Oduma & Co wrote a letter of demand to the Defendant for payment of the outstanding judgment sum of N4,731,501 (Four Million, Seven Hundred and Thirty One Thousand, Five Hundred and One Naira). A copy of the letter of demand dated 5/11/2020 is hereby annexed and marked as Exhibit C3. Despite service of letter of demand on the Defendant, the Defendant has refused, failed or neglect to pay up the said outstanding judgment sum which she stood as a surety to Chidi Umeh. Till date the Defendant is still indebted to the Claimant in the sum of N4,731,501 (Four Million, Seven Hundred and Thirty One Thousand, Five Hundred and One Naira) and the Claimant having exhausted all efforts to recover the said from the Defendants has brought this action as the last resort against the Defendants.

The defendant has no defence to this suit

I have given due consideration to the foregoing Claimant's averments, despite the opportunity given to the Defendant to respond to this action, she chose not to file any process in response. What this means in law is an admission and that she has no defence to the suit. I have carefully examined the documents attached as exhibits in

support of the averments. I am satisfied the Defendant in Exhibit C2 stood as surety to one Mr Chidi Umeh to pay up the sum of N4,731,501.00 in Exhibit C1 being the judgment sum in Suit No AB/SDC/CO/42/2019.

I am also satisfied that in Exhibit C3 the Claimant through his solicitors demanded of the Defendant to pay up the said outstanding judgment sum but the Defendant failed to pay same which she stood as a surety to Chidi Umeh.

There is nothing before the Court to show that the Defendant has paid up the judgment sum. The Defendant has not placed any before the Court.

In the light of the foregoing and in the absence of anything showing the Defendant has paid up the judgment sum, the Court holds that the Claimant has made out a case to justify an order of Court entering judgment for him in the terms of his Writ of Summons.

By reasons of the foregoing, the suit succeeds. The sole issue raised above is resolved in favour of the Claimant against the Defendant. Consistent with the provision of Order 35 Rule 4 of the Rules of Court 2018, judgment is entered for the Claimant against the Defendant in sum of ~~N4~~, 731,501.00 being the outstanding judgment sum in Suit No AB/SDC/CO/42/2019 which the Defendant stood as a surety to Chidi Umeh.

The Claimant having succeeded shall be paid cost assessed and fixed at ~~N~~50,000.00 by the Defendant.

SGND.
HON. JUDGE
31/3/2021.

LEGAL REPRESENTATIONS

- (1) G.T. Amalu Esq and F.M. Oduma Esq for the Claimant.
- (2) No legal representation for the Defendant.