

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

THIS 17TH DAY OF FEBRUARY, 2021

BEFORE HIS LORDSHIP: THE HON. JUSTICE A.A FASHOLA
SUIT NO: FCT/HC/CV/3153/2020

BETWEEN:

NNAJIOFOR IKENNA-----CLAIMANT

AND

IBRAHIM ISA-----DEFENDANT

JUDGMENT

The Claimant instituted this action against the defendant by writ of Summons dated the 12th November 2020 filed on the 12 November 2020.

The Claimant did not state under the rules of Court he is coming under.

The Claimant's claims against the defendant are as follows:

- (1)An Order of this Honourable Court mandating the defendant to pay the Claimant the sum of N5,000,000 (Five Million Naira) only being the Outstanding balance of the Claimant's car sold by the defendant.
- (2)An Order of this Honourable Court mandating the defendant to pay the Claimant the sum of N 4,000,000.00 (Four Million Naira) only as general damages for distress, discomfort and hardship suffered by the Claimant over the refusal of the defendant to remit to the Claimant the balance of the car sold by the defendant.
- (3)The sum of N 500,000,000.00(Five Hundred Thousand Naira) only as cost of this proceedings.

In Support of the writ of Summons, the Claimant filed 18 paragraph affidavit dated the 12th November 2020.

All processes were duly served on the defendant.

On the 2nd February 2020, at the hearing of this suit, Mr Stephen Nwigwe of Counsel appeared for the Claimant. The defendant was absent and not represented in Court by any counsel.

Learned Counsel in moving his writ of summons said that before the court is a writ of summons dated 12th November 2020. On the face of the Writ the Claimant claims against the defendant as follows:

- (1)An Order of this Honourable Court mandating the defendant to pay the Claimant the sum of N5,000,000 (Five Million Naira) only being the Outstanding balance of the Claimant's car sold by the defendant.
- (2)An Order of this Honourable Court mandating the defendant to pay the Claimant the sum of N 4,000,000.00 (Four Million Naira) only as general damages for distress, discomfort and hardship

suffered by the Claimant over the refusal of the defendant to remit to the Claimant the balance of the car sold by the defendant.

(3) The sum of N 500,000,000.00(Five Hundred Thousand Naira) only as cost of this suit.

Learned Counsel said in support of the Writ is 18 paragraph Affidavit deposed to by the Claimant himself, Mr Nnajofofor Ikenna with no Annexures as Exhibit. Learned Counsel placed reliance on all the averments therein. He urged this Honourable Court to grant their claims.

Learned Counsel further submitted or rather referred this Honourable Court to the provisions of Order 35 Rule 3 of the rules of this Honourable Court. He contended that the defendant upon been served with the writ is required to file a defence before this Honourable Court against the claim of the Claimant if the defendant has any against the case of the Claimant. He contended further that where the defendant fails to do so the Honourable Court shall enter judgment in favour of the Claimant where the Claimant has made a Prima Facie case against the defendant. Learned Counsel referred the Court to the case of **DURU Vs NWOSU(1989) 4 NWLR PT 113. Ratio 24 & 28.**

In the light of the above submission, learned Counsel to the Claimant urged this Honourable court to enter judgment in their favour as the defence did not file a valid defence to their suit. The Claimant in this Closed their case and judgment was reserved to 17th February 2021.

I have listened very carefully to the oral submission of the learned Counsel to the Claimant, I have also read very carefully the writ of summons and the affidavit in Support. In my humble and respectful view this suit raises a sole Issue for Determination:

WHETHER THE CLAIMANT HAS PROVE HIS CASE TO BE ENTITLED TO THE RELIEFS SOUGHT AGAINST THE DEFENDANT

In my view, and from the oral submission of the Claimant counsel, this suit is Undefended list procedure, that is the learned counsel come under the undefended list procedure as enshrined in Order 35 Rule 3 of the High Court of the Federal Capital Territory Civil Procedure Rules 2018.

Order 35 rule 4 says:

“ Where a defendant neglects to deliver the notice of defence and an affidavit prescribed by the rule 3(1) or is not given leave to defendant by the Court the suit shall be heard as an undefended suit and judgment given accordingly.”

In this suit, the defendant was not present in Court, he was not represented by any counsel. This is despite the prove of service of Court Processes on the defendant, the defendant failed to file any defence to this suit. However it is the Law that the Court is entitled even in an undefended case to be satisfied that the evidence adduced is credible and sufficient to sustain the claim See the case of **AYOKE Vs Bello(1992) 1 NWLR (PT 218) 387.**

In the case of **AREWA TEXTILES PLC Vs FINETEX LTD (2003) 7 NWLR (PT 819) 322 AT 341 Paras D-9 Per Salami JCA** as he then was held:

“that the Claimant will not be entitled to judgment merely because the defendant abandoned its defence by failing to lead evidence in Support thereof. The Court would only be bound to accept unchallenged, uncontroverted and unrebutted evidence of the Claimant, if it were cogent and credible. The Court would not accept a piece of evidence which is not material and of no probabtive value merely because the only evidence before the Court is that of the Claimant. Even where the evidence is unchallenged and

uncontradicted the trial Court has a duty to evaluate it and be satisfied that it is credible and sufficient to sustain the claim”

See the case of **GONZEE (NIG) LTD VS NIGERIAN EDUCATIONAL RESEARCH AND DEVELOPMENT COUNCIL (2005) 13 NWLR (PT. 943)**

I have perused very carefully all the originating processes filed by the Claimant herein together with the Supporting affidavit and the oral submission of the learned Counsel, it is my humble and respectful view that the Claimant in this suit failed to place before this Honourable Court cogent, credible and compelling evidence to enable me grant the claim.

The Writ of Summons dated 12th November 2021 hereby failed in its totality, I so hold. It is hereby struck out.

This is the judgment of this Honourable Court dated 17th February 2021.

Signed
Hon. Presiding Judge
17/02/2021

Appearance:

Parties absent.

Stephen Nwigwe for the Claimant.

Defendant is absent, not represented by any Counsel.

Signed
Hon. Presiding Judge
17/02/2021