

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

BEFORE HON. JUSTICE J.E. OBANOR
ON THURSDAY THE 22ND DAY OF JULY, 2021.

SUIT NO: FCT/HC/CV/618/2021

BETWEEN:

MR ISAAC OKPANACHI

.....CLAIMANT

AND

IDRISU ABDULHAMEED

.....DEFENDANT

JUDGMENT

On 2/03/2021, the Claimant took out a Writ of Summons under the Undefended List Procedure against the Defendant. He claims as follows against the Defendant:-

1. AN ORDER of Court directing the Defendant to pay unto the Claimant the sum of One Million Eight Hundred Thousand (N1,800,000.00) Naira being the outstanding and unpaid balance from the sale of Black Toyota Tundra Pickup with Chassis No. 5TFCV54148X007941 to the Defendant on the 7th day of February, 2020.
2. 20% post Judgment annual interest to the Claimant under Order 39 Rule 4 of the Rules of this Court.
3. Cost of action as may be determined by the Court.
4. ANY ORDER relief considered appropriate in the circumstances of this case.”

The writ is supported by 13-paragraph affidavit deposed to by Isaac Okpanachi.

Records of Court show the writ and supporting affidavit and a Hearing Notice were served on the Defendant personally on 30th March, 2021. Subsequent hearing notices were also on the Defendant's instruction and directive served on his counsel Okwara Williams Esq on the 29th June, 2021, 8th July, 2021 and 16th July 2021.

The Defendant did not file any process in response to the claim despite the opportunity given to him.

At the hearing on 9/7/2021, 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 his absence filed in Court. Judgment was then reserved for 22/7/2021.

I have given due consideration to the reliefs sought in the Writ of Summons and averments in the Claimants' 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 Notices were served on the Defendant. He 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 the affidavit. It was averred in the affidavit inter alia, that the Claimant on behalf of the Claimant’s undisclosed principal sold unto the Defendant a Black Toyota Pickup with Chassis No 5TFCV54148X007941 on the 7th day of February 2020 for the sum of Three Million Eight Hundred Thousand Naira. The Car sales Agreement was attached as Exhibit A. The Defendant paid the sum of Two Million (N2,000,000.00) Naira as part payment and promised to pay up the outstanding balance of One Million, Eight Hundred Thousand (N1,800,000.00) Naira to the Claimant in final settlement of the said outstanding sum on two installments to wit: (a) N900,000.00 to be paid on the 7/5/2020 and (b) N900,000.00 to be paid on the 7/8/2020. By 8/6/2020 the Defendant had failed to comply with the payment of the first installment of N900,000.00 to the Claimant as a result of which the Claimant engaged the law firm of Mexis & Associates to write a letter of demand to the Defendant. The letter of Demand titled “FINAL LETTER OF

DEMAND FOR PAYMENT” dated the 8/6/2020 was written, served on the Defendant. A copy of the said letter was attached as Exhibit B. The Defendant however replied the letter of 8/6/2020 through his counsel Williams Okwara dated 17/6/2020 and requested therein for time to be extended for him to make the payment in two installments of N900,000.00 by the end of July 2020 and the last N900,000.00 by the last week of October 2020. A copy of the letter was attached as Exhibit C. The Defendant failed to pay any money as requested in Exhibit C and further requested for more time to pay the outstanding which request was refused by the Claimant via a letter dated 22/6/2020 and attached as Exhibit D. The Claimant through his counsel wrote a final letter of demand to the Defendant dated 14/8/2020 and attached as Exhibit E demanding for payment of the outstanding sum or return of the vehicle. Neither the money was paid nor vehicle returned. Till date the Defendant has refused to pay the outstanding debt of One Million, Eight Hundred Thousand (N1, 800,000.00) to the Claimant and has refused to return the vehicle and kept using the vehicle till date in such a manner that it has depreciated in value. The Defendant has no defence to this suit and it will be in interest of justice to enter judgment for the Claimant.

As aforesaid, the Defendant did not file any process in response or opposition to the above averments in the Claimant’s affidavit in support of the Writ of Summon. In the circumstances, the averments remain uncontroverted and unchallenged which in the eyes of the law implies they are admitted by the Defendant. The settled position of the law in a situation as this is that the Court is under a duty to accept and act upon them unless it finds them unbelievable. See:- . **See:- FOLORUNSO & ANOR V. SHALOUB (1994) 3 NWLR (Pt. 333) p.413; OKUPE V. IFEMECHI (1974) 3SC P.97 and KOSILE V. FOLARIN (1989) 3 NWLR (Pt. 107) P.1.**

I have carefully examined the documents attached as exhibits in support of the averments. I am satisfied the Claimant by Exhibit A sold to the Defendant a Black Toyota Pickup with Chassis No 5TFCV54148X007941 on the 7th day of February 2020 for the sum of

Three Million Eight Hundred Thousand Naira. The Defendant paid the sum of Two Million(N2,000,000.00) Naira as part payment, leaving an outstanding balance of One Million, Eight Hundred Thousand (N1,800,000.00) Naira. The Defendant by Exhibit C admitted being indebted to the Claimant to the tune of One Million, Eight Hundred Thousand (N1,800,000.00) Naira and promised to make the payment in two installments of N900,000.00 by the end of July 2020 and the last N900,000.00 by the last week of October 2020.

I am also satisfied that by Exhibits B, D & E, the Claimant through his Counsel demanded of the Defendant to pay up the said outstanding or return the vehicle but the Defendant failed to pay same and also failed to return the vehicle despite repeated demands.

There is nothing before the Court to show that the Defendant has paid up the outstanding sum of N1,800,000.00 (One Million Eight Hundred Thousand Naira) Only. The Defendant has not placed any before the Court despite the opportunity given to him.

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

By reasons of the foregoing, this 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, Relief no 1 is granted and judgment is entered for the Claimant against the Defendant in sum of ~~N~~1, 800,000.00 being the outstanding and unpaid balance from the sale of Black Toyota Tundra Pickup with Chassis No 5TFCV54148X007941 which the Claimant sold to the Defendant on the 7th day of February, 2020.

With respect to relief No. 2 of the Writ of Summons, Order 39 Rule 4 of the Rules of Court 2018 gives the Court a discretion to grant post judgment interest on the judgment sum at the time of judgment or after

wards at a rate not less than 10% per annum. The Court being so enabled, the Defendant is ordered to pay interest on the above mentioned judgment sum at the rate of 10% per annum from today till liquidation of the judgment debt.

The Claimant having succeeded shall be paid cost assessed and fixed at ₦100, 000.00 by the Defendant.

SIGNED
HON. JUDGE
22/7/2021.

LEGAL REPRESENTATIONS

- (1) C.A. Uzoka Esq for the Claimant.
- (2) No legal representation for the Defendant.