

3. **AN ORDER** of this Honourable Court directing the Defendant to pay to the Claimant 5 percent (5%) interest monthly on the judgment sum from the date Judgment is delivered until the entire sum is liquidated.
4. **AN ORDER** of this Honourable Court directing the Defendant to pay cost of this suit at Two Million Naira (N2,000,000.00).

In support of the claims is a 22 paragraphs affidavit deposed to by the claimant herself. The claimant annexed to the affidavit five exhibits and deposed that to the best of her knowledge the defendant has no defense to this case. The defendant was purportedly served by substituted means but did not file any notice of intention to defend the action coupled with an affidavit disclosing a defense on the merit.

When the case came up for hearing on 26/1/2022 the claimant adopted his written address and the matter was adjourned to 1/03/2022 for defense. But on the said 01/03/2022 the defendant was not present in the court and his defense was followed and the matter was adjourned for judgment Ruling. I have carefully read the originating process as well as all the exhibits annexed thereof. This matter is regulated by order 35 of the rules of this court. By order 35 Rule 1 of the rules of this court, when a claimant makes a claim for a recovery of a debt or a liquidated money demand supported by an affidavit stating the grounds upon which the claim is based and stating that in the deponent's belief there is no defense to the claim, the matter shall be heard as an undefended list matter under order 35 Rule 3 [1] where the defendant is served.

And he intends to defend the suit; the defendant will have to deliver to the Registrar before five days before the date of hearing of the suit a notice in writing of his Intention to defend the suit together with an affidavit disclosing a defense on the merit.

At this point, the court may grant the defendant leave to defend the suit and transferred the matter to the general cause list. However under order 35 rule4 where the defendant failed to comply with order 35rule3 the court shall hear the matter as an undefended list suit. It is of note that the court may call for hearing or require oral evidence where feels compelled at any stage of proceeding under rule 4. Now, in this present suit, the debt sought to be recovered arose from a contract between the claimant and the defendant from the address of the defendant endorse on the write of summons, the defendants is residence at almujaazzal football club, king salmon sport city stadium, al majmaah Saudi Arabia. This is outside the jurisdiction of the court. In that case reference to be made to section 97 of the sheriffs and civil processes Act. The section provide as follows;

“ every write of summons for service under this act out of the state or the capital territory in which it was issued shall, in addition to any other endorsement or notice required by the law of such state or the capital territory have endorsed there on a notice to the following effect (that is to say) – this summons or as the case may be) is to be served out of the ... state (or as the case may be)... and in the ... state (or as the case may be) ... and in the ... state (or as the case may be). Put simply, the plaintiffs has the legal obligation to involve the power of the court to grant it leave to take out the suit against the defendant and to serve the

defendant outside its jurisdiction in compliance with section 97 of the sheriffs and civil processes act. A plethora of cases by the superior court have held that non-compliance with section 97 of the sheriffs and civil processes act is fatal as the wording there is mandatory thus non-compliance with the said section 97 renders the writ of summons violable. In the instant case, the claimant did not obtain the leave of court to issue and served the writ of summons on the defendant in Saudi Arabia. He did not also endorse the writ of summons as required by the said section. In view of this, I am reluctant to enter judgments under the undefended list for the claimant. I hereby order that the claimant should comply with section 97 of the sheriffs and civil process act as this court is not clothed with the jurisdiction to entertain the claimant's suit at this stage.

APPEARANCE

Chiamaka Anagu Esq. appearing in person.

Sign

Hon. Judge

22/03/2022