

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

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT KUBWA, ABUJA

ON FRIDAY THE 11TH DAY OF MARCH, 2022

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

JUDGE

SUIT NO.: FCT/HC/CV/893/20

BETWEEN:

1. JIKA NIGERIA LIMITED
2. ALIYU MUSTAPHA RAFAU

----- } CLAIMANTS

AND

ALHAJI SULEIMAN MUSA

----- } DEFENDANT

JUDGMENT

In this case, the Plaintiffs are seeking the following claims against the Defendants:

(1) Twelve Million, Eight Hundred and Sixty Thousand Naira which comprises of the following:

(a) Ten Million Naira (₦10, 000,000.00) expenses advanced to Defendant by 1st Plaintiff through the 2nd Plaintiff as money had and received as the purchase price of a property never delivered by the Defendant.

- (b) One Million Naira (₦1, 000,000.00) as expenses incurred by the Claimants in their effort and for repeated fruitless meetings convened by the Defendant.**
- (c) Three Hundred and Sixty Thousand Naira (₦360, 000.00), money expended on security of the premises from 1st May, 2013 to 30th April, 2019.**
- (d) 10% interest per annum from 22nd April, 2013 till Judgment is delivered in the Suit by the Court.**
- (e) An Order of payment of 20% interest per annum from date of Judgment till final liquidation.**
- (f) ₦1.5 Million as cost of the action.**

The Plaintiffs attached eight (8) documents – Certificate of Incorporation, Letters of Demand, photocopy of Managers Cheque of Ten Million Naira (₦10, 000,000.00) issued to the Defendant by the Plaintiffs acknowledging receipt of the Cheque, Evidence of Payment of Fifty Thousand Naira (₦50, 000.00) to the Counsel Law office, Letter for Search Report, Revenue Receipt to S.M Abba & Associate, Demand Letters, Memorandum of Understanding, Receipt of Five Hundred Thousand Naira (₦500, 000.00) paid to Plaintiff's Solicitor to attend meetings, Solicitor's Fee for handling the case receipted too.

The Defendant was served via substituted means – pasting of the document at the door of the Defendant in his last known address at Flat 2 Block 59, Sector 1, Area 1 Garki, Abuja on 3rd December, 2021.

The Defendant did not respond to the document served on him. He did not enter appearance or had Counsel representation. The Court allowed the Plaintiff Counsel to move their application. He urged the Court to enter Judgment in its favour since according to him the Defendant has no Defence to the Suit as that the claim is on liquidated money had and obtained by the Defendant. They supported the claims with an Affidavit of 27 paragraphs.

Since the Defendant was served and he did not enter appearance, the Court reserved the matter for Judgment since the case is under Undefended List.

Notwithstanding that the Defendant did not enter appearance the Court is still enjoined to look at the claims of the Plaintiffs and the Affidavit in support to ensure that the case of the Plaintiff is meritorious bearing in mind that facts unchallenged are deemed admitted especially where a person is given all leverages to challenge same but refused to do so.

The Rules of this Court provides the A – Z on cases which are predicated under Undefended List. See **Order 35 High Court Rules 2018**.

In this case, the Plaintiffs had alleged that it paid the sum of Ten Million Naira (₦10, 000,000.00) to the Defendant for purchase of house. They had attached that document –

Evidence of Payment of the money and Acknowledgment of same as **EXH CW2**. A closer look at the EXH 2 shows that the Defendant personally acknowledged receipt of same with the words:

**“Original collected by me Alhaji Suleiman Musa
24th April, 2013.”**

The Defendant did not deny receiving the money – Managers Cheque of Ten Million Naira (₦10, 000,000.00) raised on 24th April, 2013. The Cheque was made in the name of the Defendant.

The Plaintiffs also attached Letter of Search on the file at AGIS. That letter was marked as EXH 3. It was dated 29th April, 2019 and was addressed to the Director of Land at AGIS. AGIS acknowledged same on 30th April, 2019.

The Plaintiffs attached all documents of title given to them by the Defendant. Those documents include Certificate of Occupancy, AGIS Receipt No. 65646735 evidencing payment of the legal search made on 29th April, 2019. On it is written the purpose for payment which is – Legal Search with No. FZB29041973S. It has the stamp of the Bank – Zenith Bank on it, evidence it was received by Teller 3. The amount paid is Ten Thousand Naira (₦10, 000.00). It shows that the payment was for Search of Plot No. 412 CAD B10 which is the Res located at Dakibiyu, File No. KN 11073. It shows receipt by AGIS showing that the payment was for Legal Search. It was dated the same 29th April, 2019.

The Plaintiffs also attached letter from its Solicitor demanding refund of the money when they discovered that

the Res was encumbered and that the whole transaction was a fluke and that the Res belonged to another person. That letter was dated 18th November, 2019. The Defendant was personally served with the letter and he acknowledged receipt of same on the 20th November, 2019 as shown in the face of the EXH where he signed thus:

“Original collected by me Alhaji Suleiman Musa.”

He signed same. In that document the Plaintiff Counsel S.M Abba & Associate expressed disappointment that the Defendant had failed to live up to his several promises made previously to refund the said Ten Thousand Naira (₦10, 000.00). In the letter the Plaintiffs said that it is clear that Defendant is not actually interested in the refund of the money. They threatened to take legal action if the Defendant failed to refund the Ten Thousand Naira (₦10, 000.00) within fourteen (14) days of receipt of the letter. The Defendant failed, refused and neglected to refund the money within the period stated in the Letter of Demand.

The Plaintiff also attached the receipt of evidence of payment of Solicitor’s Fee of ₦1.5 Million and Fifty Thousand Naira (₦50, 000.00) all paid to their Solicitor.

Most importantly, the Plaintiffs attached a Memorandum of Understanding made between the Plaintiffs and the Defendant on the 1st August, 2019 which was made for the purchase of the property – the Res which is Plot 412 CAD B10 Dakibiyu District, Abuja FCT. The Memorandum of Understanding was signed by the parties. The Defendant signed and one Suleiman Umar witnessed for

the Defendant. All these documents were served on the Defendant. But he did not deny receipt or deny receiving the documents along with the Writ.

It is the law that facts undenied are deemed admitted especially where the person who ought to deny the facts was given all the leverages known to law but failed to do so.

Since the Defendant did not deny those facts, this Court holds that the Claims of the Plaintiffs are not challenged and are therefore admitted by the Defendant.

The provision of Order 35 Rule 4 High Court Rules provides that where a party is served with all the Processes in a claim under the Undefended List but fails to respond to the fact with Affidavit of intension to defend, that the Court has a right to enter Judgment in favour of the Plaintiff in that regard.

The Defendant had not filed any intension to defend in this case. He was served with all the Originating Processes and documents attached to the Writ. He did not enter appearance too.

From all indication, the case of the Plaintiffs is meritorious and this Court grants same to wit:

Prayer 1 (a) is granted. So also prayer (b).

The Court also grants 6% interest on the sum from 22nd April, 2013 till the final liquidation.

The Defendant is to pay to the Plaintiffs the sum of Fifty Thousand Naira (N50, 000.00) as cost of the Suit.

The Plaintiffs to bear cost of legal fees paid to their Solicitors.

This is the Judgment of this Court.

**Delivered today the ____ day of _____ 2022 by
me.**

**K.N. OGBONNAYA
HON. JUDGE**