

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT HIGH COURT MAITAMA – ABUJA**

BEFORE: HIS LORDSHIP HON. JUSTICE S. U. BATURE

COURT CLERKS: JAMILA OMEKE & ORS

COURT NUMBER: HIGH COURT NO. 24

CASE NUMBER: SUIT NO. FCT/HC/CV/1423/2021

DATE: 18TH JANUARY, 2022

BETWEEN:

- | | | |
|----------------------------------|---|----------------|
| 1. OME GLOBAL INTEGRATED PROJECT | } |CLAIMANTS |
| 2. ENGR. KENNETH OMEIZA SADIQ | | |

AND

COLOSIAN MEGA UNIVERSAL LIMITED.....DEFENDANT

APPEARANCES:

Ifeanyi M. Nrialike Esq for the Claimants with Collins N. Onah and Ifeoma I. Okeke Esq.

JUDGMENT

The Claimants filed this Writ of Summons under the Undefended List procedure claiming against the Defendant as follows: -

- “(1). The sum of N6, 600, 000.00 (Six Million, Six Hundred Thousand Naira) only being the outstanding balance of N10, 000, 000.00 (Ten Million Naira) as agency fee due and which has remained unpaid from the date the Claimants perfected their work.***

(2). The sum of N750, 000.00 (Seven Hundred and Fifty Thousand Naira) only for the cost of filing this suit.

(3). 10% interest on judgment sum till it is fully liquidated”.

The writ which was issued by Ifeanyi M. Nriaike Esq, legal practitioner for the Claimants is supported by an Affidavit of 18 paragraphs deposed to by Kenneth Omeiza Sadiq, the Managing Director in the 1st Claimant's company. Annexed to same are Exhibits 1, 2, 3, 4 and 5 and a list of the documents.

Meanwhile, upon being served with the Writ of Summons under the Undefended List, the Defendant herein filed a Memorandum of Appearance dated 9th day of November, 2021 filed same day along with an Affidavit disclosing a defence on the merit, a list of witnesses, a list of evidence to be relied upon as well as some unmarked annexures.

In addressing the Court on the 9th November, 2021, learned Claimants' Counsel adopted all Claimants' processes and submitted that the Defendants herein have admitted owing the sum and equally admitted they have failed to meet up the payment as agreed and even promised to tell the Claimant how to liquidate the money that is remaining and that it has been over a year.

That their Affidavit to show cause has instead actually established that they are owing the Claimants. That all they were asking is they need time to pay and there was no definite time within which to make the payment.

Reference was made to EXH. OME 1 which was also attached by the Defendant as COL 1 in their Counter Affidavit. That by EXH. OME 2 and a cleaner copy attached as CLO 2 of their Affidavit, Defendant had clearly made the admission.

That in totality, Defendant's Affidavit has not disclosed any cause. The Court is then urged to enter Judgment for the Claimants pursuant to Order 35 of the Rules of this Court 2018.

This Court on the same date, (from the observations of learned Claimants' Counsel), granted the Defendant an adjournment to enable them regularize their processes filed out of time and further adjourned the matter to 11th November, 2021.

However, on the 11th November, 2021 when the matter came up for regularization, and hearing of the suit Defendant was unrepresented and there was no correspondence from their Counsel M. K. Nwogu Esq, nor any reason for being absent in Court on that day. Equally, no process or motion was served on either Claimants' Counsel or the Court for the said regularization. Learned Claimants' Counsel applied that the Court adjourn for the Ruling.

It must therefore be noted at the onset, that the Undefended List procedure is preserved for matters required to be treated with expediency where there's no defence disclosed on the merit.

The nature of the Undefended List is for speedy dispensation of justice without the need for calling witnesses.

See the cases of **ONDEYO V U. B. A PLC (2014) LPELR-24242; J. O. E CO. LTD V SKY BANK PLC (2006) 6 NWLR (PT. 111) 518.**

Now, Order 35 Rules 1, 3(1) and (4) of the High Court of the Federal Capital Territory (Civil Procedure) Rules, 2018 provide as follows: -

35 Rule (1): Where an application in Form 1, as in the Appendix is made to issue a Writ of Summons in respect of a claim to recover a debt or liquidated money demand, supported by an affidavit stating the grounds on which the claim is based, and stating that in the deponent's belief there is no defence to it, the Judge in Chambers shall enter the suit for hearing in what shall be called the "Undefended List".

35 Rule 3 (1): 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.

35 Rule 4: 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.”

Therefore it is clear from the above that a Defendant served with a Writ of Summons under the Undefended List must file a Notice of Intension to Defend along with an Affidavit disclosing a defence on the merit before five days to the day fixed for hearing.

In the instant case, the Defendant filed a Memorandum of Appearance as against a Notice of Intension to Defend contrary to the rules.

Nevertheless, having filed same along with an Affidavit disclosing a defence on the merit, this Court shall treat same as an irregularity and in the interest of justice, therefore proceed at this stage to consider whether or not the said Affidavit has disclosed any defence on the merit.

The Claimants averred in their affidavit as deposed in paragraphs 3 – 17 thereof as follows:-

3. The Claimants pursuant to the Defendant company objective, through the 2nd Claimant, its Managing Director, CEO facilitated a Joint Venture/Partnership with Rock of Ages Property Ltd **FOR ACQUISITION OF THE PLOT OF LAND FOR ESTATE DEVELOPMENT AT WUYE, ABUJA, for the Defendant at an agreed agency fee of N10, 000, 000.00 (TEN MILLION NAIRA) only payable in favour of the Claimants.**
4. That as agreed, the Claimants facilitated the said transaction on the 5th day of July, 2018.
5. That it was agreed that the Defendant should pay the Claimants the facilitation fee of **N10, 000, 000.00 (Ten Million Naira) only.**
6. That out of the agreed sum, the Defendant paid the Claimants in several installments the total sum of **N2, 900, 000.00** leaving out a balance of **N7, 100, 000.00 (Seven Million and One Hundred Thousand Naira) only** after several demands both oral and in writing by the Claimants. Copy of the letter by the Claimants written to the Defendant and the Response of the Defendant acknowledging the said sum is herein delivered and marked **Exhibits OME 1 & 2.**

7. That the said money being paid in bits by the Defendant, and coming far in between, have undermined the actual need the facilitation fee is meant to serve the Claimants.
8. That consequent to the above paragraphs, the Claimants retained the services of the law firm of **Ikechukwu Ezechukwu, SAN & CO** to demand for the payment of sum of **N7, 100, 000.00 (Seven Million and One Hundred Thousand Naira)** only being the outstanding balance of **N10, 000, 000.00 (Ten Million Naira)** as agency fee due to the Claimants and which as at then remained unpaid which the law firm did. A copy of the said letter herein delivered and marked **Exhibit "OME 3"**.
9. That upon the receipt of the demand letter, the Defendant on the 5th day of April, 2021 paid the sum of **N500, 000.00 (Five Hundred Thousand Naira)** to the Claimants, leave a balance of **N6, 600, 000.00 (Six Million, Six Hundred Thousand Naira)** only and refused to pay the balance till date.
10. That despite the Claimants' demand letter to the Defendant and repeated visit to the Defendant's office, the Defendant has ignored, refused and/or neglected to pay off the outstanding balance of **N6, 600, 000.00 (Six Million, Six Hundred Thousand Naira)** the agency fee due to the Claimants.
11. That also by a letter dated 12th April, 2021 and received by the Claimants' Counsel, **Ikechukwu Ezechukwu, SAN & CO**, the Defendants acknowledged that they are owing the Claimants. A copy of the said response is herein delivered and marked **Exhibit "OME 4"**.
12. The Claimants' Counsel, **Ikechukwu Ezechukwu, SAN & CO** responded to the Defendant on behalf of the Claimants refusing further payments in bits and pieces and requesting one off payment within 72 hours. Copy of the Acknowledged letter is herein delivered and marked **"Exhibit OME 5."**
13. That the total sum due to the Claimants from the Defendant which has remained unpaid and which the Defendant has acknowledged in writing dated 12th of April, 2021 and not denied as per **Exhibit "OME**

4” is N6, 600, 000.00 (Six Million, Six Hundred Thousand Naira) only.

14. That the Claimants paid his solicitors, the sum of **N750, 000.00 (Seven Hundred and Fifty Thousand Naira)** only to prosecute this case. The receipt of payment is delivered and marked **Exhibit “OME 6.”**
15. That the debt is a liquidated money demand and ascertainable.
16. That the Defendant has no defence on the merit to this action.
17. That I pray to this Honourable Court to enter judgment as per the writ and grant the Claimants’ reliefs before this Court.

However, Defendant averred in their Affidavit particularly paragraphs 2,3,4,5,6,7,8, 9, 10(h) – (xv) thereof as follows: -

“(2). The Defendant admits paragraphs 1, 2, 3, 4, and 5 of the Claimant’s Affidavit.

(3). The Defendant denies paragraph 6 as the balance due to the Claimant as Six Million, Six Hundred Thousand Naira (N6, 600, 000.00).

(4). The Defendant denies paragraph 7 and states that the Claimant was fully aware of the methods of payment but only asked for a different method on his own volition without recourse to the Defendant.

(5). The Defendant admits paragraph 8 only to the extent that the Defendant paid the sum of Five Hundred Thousand Naira (N500, 000.00) to the Claimant on the 5th of April, 2021 and same was communicated to the Claimant.

(6). The Defendant admits paragraphs 9 and 10 only to the extent that the Defendant did not refuse to pay the balance but only reiterated that the payment will keep coming as the work progresses at the site.

- (7). ***The Defendant admits paragraph 11 only to the extent that the Defendant is still within time to pay back the sum owed the Plaintiff.***
- (8). ***The Defendant admits paragraph 12 only to the extent that the condition to pay the balance within the 72 hours is not the agreement of both parties as they were to pay the agency fee as work progresses at the site and the Defendant intends to honour that obligation before getting to the finishing stages of the estate development.***
- (9). ***The Defendant denies paragraphs 13, 14, 15, 16 and 17 and states that the money owed the Claimant is Six Million, Six Hundred Thousand Naira (N6, 600, 000.00) only and the Defendant is still within time to pay the outstanding sum to the Plaintiff.***
10. ***The Defendant herein avers as follows:***
- i. ***That the Claimant and the Defendant entered into an agreement for the Plaintiff to facilitate the joint venture development of Plot 953 Wuye District, Abuja.***
 - ii. ***That the Defendant disclosed to the Plaintiff that at the material time, the Defendant was not financially buoyant to carry on the project development without the prospective subscribers of the Defendant making payments for the purchase of the units of houses in the estate.***
 - iii. ***That the Defendant also disclosed to the Plaintiff that payments are made periodically by the subscribers of the Defendant as the houses are paid for in installments.***
 - iv. ***That the Defendant also disclosed to the Plaintiff that the total agreed agency fee which is Ten Million Naira (N10, 000, 000.00) was going to be paid in installments to the Plaintiff as work progresses at the site and the payment will be fully satisfied when the***

estate gets to the completion stages of the construction.

- v. That the Plaintiff accepted these terms and promised to assist the Defendant in any way he can to fully deliver the estate.**
- vi. That the pace of work at the suite was heavily constrained during the period that the Defendant was seeking for approval to commence development at the site and this affected the payment of the agency fee to the Plaintiff.**
- vii. That the Department of Development Control regularly stopped the Defendant from working because at the time, the building plan of the estate had not been approved by the said Government Agency.**
- viii. That the Plaintiff was not happy and he wrote a letter to the Defendant asking that the payment of the agency fee should be paid in two tranches as against the earlier agreement of both parties. Attached is a copy of the said letter and marked as Exhibit "COL 1".**
- ix. That the Defendant replied the letter and reiterated that there will be a payment schedule plan for the payment of the facilitation fee and that the payment will be made in installments as has always been the agreement of the parties. Attached is a copy of the said letter and marked as Exhibit "COL 2".**
- x. That the Defendant was later prevented from completely working at the site as the Department of Development Control in Abuja stopped the Defendant from further working at the site and this was made known to the Plaintiff as this affected the pace of work at the site.**

- xii. That the Plaintiff after a while became impatient and vide letter to the Defendant, he started demanding for the payment of the balance of the agency fee to be paid once and embloc. Attached is a copy of the said letter marked Exhibit "COL 3".***

- vii. The Defendant admitted to pay but only asked that he should be afforded more time to pay the balance as the Defendant's clients were not coming forth with payment and the development was halted as a result of the fact that the Plaintiff had not gotten approval for the estate at the time.***

- xiii. The Defendant replied the Plaintiff's letter and admitted that he shall pay the balance of the money either in lump sum or in tranches as they had already commenced. Attached is copy of the said letter marked as Exhibit "COL 4".***

- xiv. That the Defendant never had an agreement with the Plaintiff as to the exact date that the facilitation fee is to be paid to the Plaintiff other than that the payment is to be made as work progresses at the site.***

- xv. That by the agreement of the parties, time is not of the essence and the Defendant is still within time to pay the balance of the facilitation fee as the payment is to be made before the finishing stage of the project."***

Well, I have taken my time to consider all the above averments reproduced earlier and what is clear is that the Defendant does not deny liability on the claims owed.

However, the only contention of the Defendant its inability to make the payment in trenches as agreed by the parties.

I have also noted the depositions in paragraph 3 of the Defendant's Affidavit denying the debt owed which is the sum of **N6, 600, 000.00** as claimed by the Claimants and deposed in their paragraph 6 of the supporting Affidavit.

Interestingly however, the Defendant had written a letter to the Claimants admitting and acknowledging its indebtedness to the Claimants to the tune of **N6, 600, 000.00**, in Exhibit COL 4 attached by the Defendant which is the same with EXH MOE 4 annexed by the Claimants.

The last paragraph of EXH COL 4 (MOE 4) dated 13th April, 2021 provides thus:-

“Please accept this letter as an assurance that we shall pay your client the balance of N6, 600, 000.00 subsequently either in a lump sum or in trenches as we have already commenced.”

Again, Defendant deposed in paragraph 10(viii) of their Affidavit thus: -

“10(viii): The Defendant replied the Plaintiffs’ letter and admitted that we shall pay the balance of the money either in lump sum or in trenches as they had already commenced. Attached is a copy of the said letter marked Exhibit COL 4.”

Therefore since the Defendant had clearly admitted the said sum, there’s no need for any further proof.

Likewise, having carefully perused the Affidavit disclosing a defence, it is my humble view that the Defendant has not disclosed any defence on the merit, which would require the Court to transfer this matter to the general cause list.

Consequently, from the evidence presented by the Claimants both Affidavits and documentary, coupled with the admission of the Defendant in the absence of any defence disclosed herein, I am satisfied that the Claimants are entitled to the reliefs sought.

Accordingly, Judgment is hereby entered in favour of the Claimants against the Defendant as per the claims as endorsed on the Writ of Summons.

Signed:

***Hon. Justice S. U. Bature
18/1/2022.***