

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

**BEFORE: HON. JUSTICE O. C. AGBAZA**

**COURT CLERKS: UKONUKALU&GODSPOWEREBAHOR**

**COURT NO: 6**

**SUIT NO: FCT/HC/CV/2135/2018**

**BETWEEN:**

**CARDIFF PROPERTIES LIMITED.....CLAIMANT**

**VS**

**1. CHIEF IME ALBERT**

**2. PRIVIAKONSULTLIMITED.....DEFENDANTS**

**RULING/JUDGMENT**

By a Writ of Summons dated 21/6/2018 and filed same day, under the "Undefended List" the Claimant seek against the Defendants the following reliefs;

- (a) The sum of Thirty Million Naira (₦30,000,000.00) only being arrears of rent owed the Claimant by the Defendants for its 2015/2016, 2016/2017 and 2017/2018 tenancy in that one (1) Unit of Six (6) Bedroom Detached House, with three (3) Rooms Boys Quarters situate at No. 30 MammanNasir Street, Asokoro Abuja FCT and which sum the Defendants have defaulted and/or failed to pay to the Claimant.

- (b) Ten Percent (10%) monthly interest on the Judgment sum from the date of Judgment and until the Judgment sum is fully liquidated.

Accompanying the Writ of Summons is a 26 Paragraphs affidavit, with Eight (8) Exhibits attached deposed to by one Mr. OkechukwuMadubuko, a staff of the Claimant.

The Writ of Summons and all other processes of this Suit were served on the Defendants by substituted means at No. 30 MammanNasir Street AsokoroFCT Abuja. Defendant filed their Notice of Intention to Defend on 8/4/18 in compliance with Order 35 Rule 3 (1) of the Rules of Court. The said Notice of Intention to Defend was deemed properly filed and served on 9/4/19.

After a careful consideration of the affidavit evidence of the parties and the Exhibits attached, I find that only one (1) issue calls for determination that is;

“Whether the Claimant has made out a case to be entitled to Judgment under the “Undefended List”.

By the Provisions of Order 35 Rule 3 (1) of the Rules of Court, where a Defendant is served with a Writ of Summons under the “Undefended List”, the Defendant has Five (5) clear days to file a Notice of Intention to Defend along with an affidavit disclosing a Defence. It is trite law that where a Defendant files a Notice to Defend along with an affidavit disclosing a Defence, pursuant to Order 35 Rule 3 (1) of the Rules of Court, the duty of the court at that stage is to look at the affidavit to find if there

are triable issues form the facts contained in the said affidavit. It is not the duty of the court at that stage to determine whether the Defence being put up will ultimately succeed or whether the Defence has been proved or comprehensive. See Trade Bank PlcVs Spring Finance Ltd (2009) 12 NWLR (PT. 1155) 360 @ 373.

For a Defendant to succeed, he must show that there are triable issues as of revealed in the affidavit accompanying the Notice of Intention to Defend. On what may amount to triable issues, the Court of Appeal in the case of Patigi Local Government VsI.K. Eleshin-NIa (2008) All FWLR (PT. 421) 854 @ 875 Para E - G stated thus.

“That the following situations may give rise to the discharge of the burden placed on the Defendant”

- (a) A difficult point of law has been raised in the Defendant’s affidavit.
- (b) Dispute as to facts raised by the Defendants.
- (c) Dispute as to the correct amount owed.
- (d) Where there is probability of a bonafideDefence e.g. Counter-Claim.

See also Ataguba& Co Vs Aura Nigeria Ltd (2005) All FWLR (PT. 256) 1219 @ 1213 Ration 7.

In the instant case, it is the case of the Claimant that by a Tenancy Agreement created on 24/5/2013 for a two year term which expired on 23/5/2015, the Defendant paid the sum of ₦20,000,000.00 (Twenty Million

Naira) as evidenced by Exhibit "1". Claimant notified the Defendant of the expiration of the tenancy vide Exhibit "2".

Defendant who had earlier complained that the property was uninhabitable did not respond to Claimant's letter dated 25/3/2015 fixing a date for pre-vacation inspection as evidenced by Exhibit "3". Another letter reminding the Defendant of the date and time fixed for the pre-vacation inspection and requesting the Defendant to confirm the convenience of the fixed date was issued to the Defendant vide Exhibit "4" but rather than confirm the date, Defendant replied by Exhibit "5" demanding a refund of 50% (Fifty Percent) of the rental sum. 2<sup>nd</sup> Defendant instituted an action against the Claimant, Claiming a refund of Ten Million Naira (₦10,000,000.00) being Fifty percent of the rental sum paid to the Claimant, damages and cost of the suit Exhibit 6, meanwhile Defendants refused to vacate the Claimant's "Uninhabitable" property and also refused to pay any sum as rent. All efforts made by the Claimant to settle whatever grievances the Defendants might have against the Claimant yielded no result as the 1<sup>st</sup> Defendant rebuffed same and also refused to vacate the property of the Defendant.

Furthermore, Claimant through her Counsel wrote to the Defendants a letter dated 16/11/2016 – Exhibit "7", demanding for arrears of rent, since the Defendants were still in occupation of the Claimant's property and which rental arrears at the time was ₦20,000,000.00 (Twenty Million Naira). Defendant's Counsel by Exhibit "8" replied stating that "our Client is not only committed but also determined to fulfill all his tenancy obligations to his Landlord, but for now, our Client's hands are tight in view of the said court action". 2<sup>nd</sup> Defendant did not take any steps nor open the case

instituted at Court 25 of the FCT High Court and on 26/2/2018, the court on its own struck out the Suit for lack of diligent prosecution.

It is also the case of the Claimant that even after the Suit instituted by the 2<sup>nd</sup> Defendant was struck out, the 1<sup>st</sup> Defendant still did not take steps to vacate the Claimant's property, which he still occupies till date nor take steps to settle his outstanding rental arrears which is in excess of ₦30,000,000.00 (Thirty Million Naira), Claimant have suffered over the debt (rent) which has been withheld by the Defendants these past years and same would have been employed by the Claimant and ploughed back into herbusiness.

Finally that as at the 23/5/2018 the Defendants owes the Claimant the sum of ₦30,000,000.00 (Thirty Million Naira), which is rental arrears for 2015/2016, 2016/2017 and 2017/2018 tenancy. This sum is liquidated amount of money now owed by the Defendants and believes that the Defendants have no defence whatsoever to the Suit.

In their response, Defendants denies liability to the Claims made out by the Claimant in her affidavit in support of the suit and that it will be in the interest of justice to subject the Claimant and her witness to cross-examination by the Defendants, Defendants are willing and intend to enter Defence in the Suit. Defendant have a defence and it will be in the interest of justice to transfer the Suit to the General Cause List, and the Claimant will not be prejudiced.

On a critical perusal of the evidence of both parties, I find that while the Claimant has by their depositions and Exhibits disclosed a Landlord and

tenant relationship which culminated in arrears owed by the Defendants, and ultimately this action for the recovery of the said arrears of rent due to the Claimant whereas, the Defendants denies the claims of the Claimant, without more and puts the Claimant to the strictest proof even in the face of documentary evidence. Defendants merely deposed that they have a defence without specifically showing the court what manner of defence they intend to put up. What is left for the court to determine is whether the Defendants have disclosed triable issues in their affidavit in support of their Notice of Intention to Defend, so as to warrant the transfer of the case to the General Cause List.

Order 17 Rule 3 (1) of the Rules of Court provides;

“In an action for debt or liquidated money demand, a mere denial of the debt shall not be sufficient Defence”

I have mentioned that the Defendant merely denied the Claims of the Claimant without more and also failed to provide any clue as to what defence to put up as to make the court grant their Notice of Intention to Defend the Suit and this, in my view, is not sufficient defence under Order 17 Rule 3 (1) of the Rules of Court. And it is trite law that any fact in a Statement of Claim that is not specifically denied in a Statement of Defence is deemed admitted. It is worthy to state that the “Undefended List” Procedure is a procedure meant to shorten the hearing of a Suit where a Defendant has no defence hence the Defendant should not merely file his Notice of Intention to Defend for the purpose of delaying the hearing. See *Ataguba & Co. Vs Aura Nigeria Limited (Supra)* 224 Ratio 8. The Defendant

by their Notice of Intention to Defend, failed to defend in line with any of the defence contemplated as Prima facie defence in the case of Patigi Local Government Area Vs IK Eleshin – Nla Esq. (Supra), but merely deposed to facts which are insufficient as defence hence in my view, having failed to provide cogent evidence to establish any of the prescribed ways to establish a prima-facie Defence, Defendant seek to delay the hearing of the case as they failed to show to court any prima facie defence as can be gleaned from their affidavit in support of Notice of Intention to Defend.

From all of these, I find that the Defendant have failed to establish by credible evidence a prima facie defence which may warrant the transfer of the case to the General Cause List, consequently the Claimant having proved that the Defendant are indebted to her particularly from the facts which were not sufficiently denied by the Defendants the Claimant is therefore entitled to Judgment under the "Undefended List" and is entitled to Judgment as Claimed. Accordingly Judgment is entered as follows;

- (a) The Defendants are hereby Ordered to pay to the Claimant, jointly and severally the sum of ₦30,000,000.00 (Thirty Million Naira) only being arrears of rent owed the Claimants by the Defendants for its 2015/2016, 2016/2017 and 2017/2018 tenancy in that one (1) unit of Six (6) Bedroom Detached House, with three (3) Rooms Boys Quarters situate at No. 30 MammanNasir Street Asokoro, Abuja – FCT and which sum the Defendants have defaulted and or failed to pay to the Claimant.

- (b) Ten percent (10%) monthly interest on the Judgment sum from the date of Judgment and until Judgment is liquidated.

**Hon. Justice C. O. Agbaza**

Presiding Judge

9/6/2022

**APPEARANCE:**

BARTH OMOZOKPIA ESQ. FOR THE CLAIMANT

ODUONABE ESQ. FOR THE DEFENDANTS