

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

BEFORE: HON. JUSTICE O. C. AGBAZA

COURT CLERKS: UKONU KALU & GODSPOWER EBAHOR

COURT NO: 6

SUIT NO: FCT/HC/CV/2894/2021

BETWEEN:

EMEKA MADU, ESQ.....CLAIMANT

VS

CENTRAL BANK OF NIGERIA.....DEFENDANT

RULING/JUDGMENT

By a Writ of Summons dated 2/11/2021 and filed same day, under the "Undefended List, the Claimant herein claims against the Defendant as follows:-

- (1) The sum of \$30,750.00 (Thirty Thousand Seven Hundred and Fifty US Dollars) being rent for lease furniture and household equipment from the Claimant from 1st June, 2018 - 31st October, 2021.

PARTICULARS

- i. 1st June, 2018 - 31st October, 2018 @ \$750 per month = \$3,750.00
- ii. 1st November 2018-31st October, 2019 = \$9,000.00
- iii. 1st November, 2019 – 31st October, 2020 = \$9,000.00
- iv. 1st November, 2022 – 31st October, 2021 = \$9,000.00

ACCRUED RENT UPTO 31ST OCTOBER, 2021=\$30,750.00

2. Post Judgment interest of 10% per Annum from the date of Judgment till the date of liquidation of the Judgment sum.
3. Cost of Action.
4. An Order of Court that the Defendant pay the Judgment sum, cost of action and Post-Judgment interest to the Claimant's Bank Account with the following Account Details:

Account Type: - **Dollar Account**
Bank: - **Zenith Bank PIC (Asokoro Branch)**
Account Name: - **Emeka Joseph Maduagwu**
Account Number: - **5070648952**
Sort Code: - **057080316**
Swift Code: - **ZEIBNGLA (Dollar Transfer Code)**

Or any other Account that the Plaintiff through his Counsel may communicate the Defendant post-Judgment.

Accompanying, the Writ of Summons is an affidavit of 15 Paragraphs sworn to by the Claimant and attached are Exhibits marked as Exhibits "1 -4".

In compliance with the Rules of Court, Order 35 Rules 3 (1) of FCT High Court (Civil Procedure) Rules 2018, the Defendant on 5/1/2022 filed a Notice of Intention to Defend and is supported with an affidavit of 29 Paragraphs deposed to by Godwin Afuoh Agi. Attached are 4 (Four) Exhibits.

Pleadings having been filed and exchanged the case proceeded to hearing.

Addressing court on 17/1/2022, the Claimant Counsel, Jeph C. Njikonye (SAN), submits that the claim of the Claimant, borders on claim for outstanding Rental Value of the Household items, still in possession of the Defendant from 1st June, 2018 – 31st October, 2021, and for determination of the past or present Rental Market Value, and urge the court to discountenance the Para 13 – 28 of the Defendant’s affidavit in support of the Notice to Defend. And even it was, urge the court to note that Para 16 of the Defendant’s affidavit contradicts their Para 20. Therefore, does not suffice to say that the Defendant has proffered a defence to the suit warranting a transfer.

Further contend, that by the Defendant by Para 9, 10 of their affidavit, admitted the claim of the Claimant in Para 5 and also admitted claim of the Annual Rental Value of the household items as stated in their Writ of Summons by the Defendant as their Para 12 and that Para 8, 9 of the Claimant’s affidavit in support, was never denied by the Defendant. In all contend that the Defendant, having failed to contest the claim of the Claimant with proof, urge the court to hold the Claimant has clearly made out a case under the “Undefended List” and enter Judgment accordingly. Commend the court to several judicial authorities.

Responding, Learned Silk for the Defendant Samuel O. Zibiri (SAN) , submitted that the Exhibit 1, Judgment of Court is a relevant factor in this instant case, which is the basis of the Claimant present Suit. That a cursory reading of the Exhibit 4 attached to the Claimant’s affidavit in support, Exhibits “CBN2” attached to the Defendant’s affidavit in support are all connected to the Exhibit 1. That premised on these, this Suit is caught up by the doctrine of Res judicata. Refer to Eluwonta & Ors Vs Owunke & Ors (2014) LPELR – 23538

(CA). That what is open to the Claimant is enforcement of that Judgment. Refer to Odium Vs Offiong (2011) 16 NWLR (PT.1272) Pg 111 @ 120. Para A – B.

That in any event, if the court is minded to proceed, that from the affidavit evidence before it, there issues of disputation that would call for taking of evidence, which invariably call for the transfer of this case to the General Cause List.

Replying on point of law, Learned Silk for the Claimant, contend on the issue of Res Judicata raised by Learned Silk for the Defendant, that it was not averred to in the affidavit of the Defendant and further as it trite Res Judicata as a doctrine, must be pleaded before it can succeed, which was not the case here, therefore, urge the court to discountenance this submission.

Having carefully considered the affidavit evidence of the parties, the submission of both Learned Silk and the judicial authorities cited, the court finds that the issue that calls for determination is;

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

By the Provision 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 his 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, the

duty of the court at the stage isto look at the affidavit to find it there are triable issues from the facts contained in the said affidavit, it is notthe 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 Plc Vs Spring Finance Ltd (2009) 12NWLR (PT.1155) 360 @ 373.

A Defendant to succeed, must show that there are triable issues, as revealed in the affidavit accompanying the Notice to Defend. On what amounts to triable issues, the Court of Appeal in the case of Patigi Local Government Vs I.K. Eleshin-Nla Esq (2008) ALL FWLR (PT 421) 854 @ 815 Para E – G stated thus;

That the following situation 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 bythe Defendant.
- c. Dispute as to the correct amount owed.
- d. Where there is probability of a bonafide e.g Counter-Claim.

In this instant case, the claim ofthe Claimant is predicated on the Exhibit 1, Judgment of Court delivered on 7/12/2017 by My Lord F.O. Ojo (J) (as she then was). This facts are contained in Paras 3, 4 Exhibit 4 attached to the Claimant's affidavit in support. And Exhibit "CBN2", ofthe Defendant's affidavit in support of the Notice lends credence to this fact that the claim borders on the Judgment of this court herein above mentioned.

On the other hand, the Defendant contend that this case is caught up by the doctrine of Res judicata, by reasons of the fact that this case has been conclude and what is left for the Claimant is enforcement. Further that in any event, if the court is minded to consider it as it where, there are disputation in this instant case of the Claimant, by the Defendant that would warrant the transfer of the case to the General Cause List.

Replying on point of law, the Learned Silk contends that Res Judicata cannot avail the Defendant having not pleaded it.

Taking a cursory reading of the affidavit evidence of both parties, firstly, in line with the principles enunciated in the case of Patigi Local Government Vs I.K. Eleshin-Nla Esq (2008) (Supra), in Paras 15, 18 and 19 of the Defendant's affidavit to the Notice to Defend, the court finds thatthere are disputation as to the correct amount due to the Claimant. This in the court's firm view is a reason to cause this matter to be transferred.

However, on the consideration of the 2nd leg of the finding of this court, premised on the submission of defence counsel that this case is caught up by the doctrine of Res judicata and therefore, a case where the Claimant shouldpursue for enforcement.

It is not in doubt that the both parties are in Agreement that this case is anchored on the Judgment of court delivered on 7/12/2017. To determine whether or not this suit is caught up by this doctrine, recourse has to be made to judicial pronouncement on it . See Ighokpe & Ors Vs Ogbogboyibo & Ors (2000) LPELR-50759 (CA); court held that the doctrine simply implies that the issues arising in the present suit has been definitely settled/resolved by judicial

decision. *Res judicata*, simple means “a thing adjudicated” The essentials of the doctrine, are;

- (1) An earlier decision on the issue;
- (2) A final judgment on the merits;
- (3) The involvement of the same parties or parties in privity with the original parties.

The question to be answered in the instant is; whether the failure of the Defendant to plead the doctrine as stipulated by the law avail the Defendant. In the case of *Asiukwu Vs Enwereji* (2016) LPELR – 40504 (CA), the court held;

“Appellant cannot therefore be right to say that the Respondent did not plead *res-judicata* in his Statement of Defence, in any case, by Section 174 (1) (2) of the Evidence Act, 2011, even where the previous judgment is not expressly pleaded, by way of estoppels, it can still be deemed to be relevant and applicable, where the previous suit was between the same parties in the present suit, or their privies as they were expected to have had adequate knowledge of the said suit, which they remain also bound” per Mbaba JCA, PP.26 Para A.

In this instant suit, the parties are agreed to the previous suit as between them, and it is therefore, the firm view of this court that rather than considering a transfer of this suit in the face of disputation arising from the affidavit evidence, would rather hold that this suit is caught up with the doctrine of *Res judicata* in line with the judicial authorities cited and order that this suit be dismissed and the Claimant pursue enforcement of that Judgment. I so hold.

HON. JUSTICE O.C. AGBAZA

(Presiding Judge)

4/4/2022

Appearance

JEPH C. NJIKONYE (SAN) WITH BLESSING TIMOTHY ESQ FOR THE CLAIMANT

SAMUEL O. ZIBIRI (SAN) WITH HENRY UWADIAE ESQ – FOR THE DEFENDANT