

**IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY**  
**IN THE FEDERAL CAPITAL TERRITORY JUDICIAL DIVISION**  
**HOLDEN AT JABI FCT ABUJA**

**SUIT NO: CV/2969/2021**

**BEFORE HIS LORDSHIP: HON. JUSTICE BABANGIDA HASSAN**

**BETWEEN:**

- |  |   |                       |
|--|---|-----------------------|
| <b>1. ROYAL EXCHANGE GENERAL INSURANCE<br/>COMPANY LIMITED</b> | } | <b>.....CLAIMANTS</b> |
| <b>2. MRS. JULIET UZO</b>                                      |   |                       |
| <b>AND</b>   |   |                       |
| <b>AURORA-SHEF CONCEPT SERVICES LIMITED.....DEFENDANT</b>      |   |                       |

**JUDGMENT**

The claimant filed this suit under the undefended list procedure and claims as follows:

- a. The sum of Ten Million Naira (10,000,000.00) only being arrears of annual rent owed the 1<sup>st</sup> claimant by the defendant for its 2021/2022 tenancy covering the periods from 13<sup>th</sup> day of September, 2021 to the 12<sup>th</sup> day of September, 2022 in that five (5) bedroom semi detached duplex with one (1) room boy's quarters, situate at No. 7B Usuma Street, Maitama, Abuja – FCT and which sum the defendant has defaulted and/or failed to pay to the claimants.
- b. The sum of Six Hundred Thousand Naira (N600,000.00) only being the cost of instituting this suit.
- c. Ten percent (10%) monthly interest on the judgment sum from the date of judgment and until the judgment sum is fully liquidated.

The writ of summons accompanied by an affidavit and some documents attached were duly served on the

defendant on the 15<sup>th</sup> day of December, 2021, and since then the defendant did not deem it appropriate to file its notice of intention to defend this suit.

It is in the affidavit accompanying the writ that the defendant is a leasee of the 1<sup>st</sup> claimant and become a leasee sometime in 2018 after entering into a lease agreement with the 1<sup>st</sup> claimant to lease the 1<sup>st</sup> claimant's property for a term of five years certain at the rate of Ten Million Naira (N10,000,000.00) per annum, payable in advance (on or before September, 12<sup>th</sup> of each year) and subject to review annually from the third year based on the prevailing market rate. The lease commenced on the 13<sup>th</sup> day of September, 2018 and will expire on the 12<sup>th</sup> day of September, 2022.

It is averred that after the payment of the lease amount for the first year of the lease, the defendant formed the habit of delaying the 1<sup>st</sup> claimant's payment until it is being harassed with Notice to Quit and other notices.

It is stated that the claimants have sent letters to the defendant severally and for over a month, the defendant can't reply any of the letters, including the letters sent by the claimants' lawyer which has become very intolerable and frustrating to the claimants; and that the property was employed and used by the defendant for commercial purposes only, in Abuja FCT, and that since the expiration of the defendant's 3<sup>rd</sup> year rent on the 12<sup>th</sup> of September, 2021, the defendant has not made any visible effort or shown any sign of good faith in paying the arrears but has mastered the art of turning deaf ears to the letters of the claimants, and that as a result of no response from the defendant the claimants procured the services of Messrs Uzoma Eneh & Co. (a firm of legal practitioners) to write to the defendant and to demand the payment of the arrears

of rent owed to the 1<sup>st</sup> claimant by the defendant, and no reply to the said letter till date.

It is deposed to the fact that the claimants became fed up with the defendant's unfounded disposition and briefed the law firm of Messrs Uzoma Eneh & Co. to file an action in court and recover the arrears of rent owed to the 1<sup>st</sup> claimant by the defendant, and that the claimants paid Messrs Uzoma Eneh & Co the sum of N600,000.00 (Six Hundred Thousand Naira) only.

The claimants averred that the sum of (N10,000,000.00) Ten Million Naira only being claimed by the claimants against the defendant as a liquidated money, and that the deponent believed that the defendant has no defence to the claim.

Thus, on the date fixed for hearing, the counsel to the claimant was in court, while the defendant was not in court, and was not represented, and the court proceeded to hearing. See the case of **Onadeko V. U.B.N. Plc (2006) All FWLR (pt 301) p. 1879 at 1896; paras. E-F** where the Court of Appeal, Ibadan Division held that on the date fixed for hearing on an undefended list procedure, the only business of the day is the determination of the claim. The absence of the defendant or counsel on his behalf will not cause a delay in the hearing.

As I said earlier, the defendant failed to file its notice of its intention to defend the suit, and this is against the provision of Order 35 Rule 3(1) of the Rules of this Court, which provides:

**“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.”**

By the above quoted rule, it can be inferred to mean that it behooves upon the defendant after being served and within five days from the date of the receipt of the writ to file his notice of his intention to defend the action, and where he fails to and upon his application the court can extend the time for him to file the notice, and in the instant case no such application for leave was filed by the defendant.

Now in a claim under the undefended list procedure, two steps are to be identified and which are crucial:

- 1. to scrutinize the plaintiff’s claims with a view to seeing whether there is a good reason to believe that it is a proper action that should be placed on the undefended list; and**
- 2. the court shall proceed whether there is a defence to the action.**

On the No. 1 above, it is in the affidavit that by the agreement between the parties which is exhibited and attached to the affidavit, and it is agreed that the rent payable for the remainder term of three years (yet unpaid) shall be based on the prevailing market rates and shall become due and payable on or before September, 12 of each year of the remainder lease period. It is in the affidavit that notices were served on the defendant demanding for the payment of the money and to which the defendant failed to pay. By this, it can be inferred that the claim paragraph (a) falls within the category of the liquidated money demand. See the case of **Chairman Moro L.G.A. V. Lawal (2008) All FWLR (pt 440) p. 699 at 730; paras. E-F** where the Court of Appeal, Ilorin Division held that a claim under the undefended list procedure is by its nature an action for

a liquidated sum which is an amount previously agreed on by the parties, or which can be precisely determined or ascertained from their terms of agreement. In the instant, it is in the affidavit that the sum of N10,000,000.00 was agreed by the parties payable by the defendant on the 12<sup>th</sup> of September, 2021. It is also in the agreement between the parties that as exhibited in the agreement that the payment should be effected in advance.

The claimant also claims the sum of N600,000.00 as cost of instituting this suit, and it is deposed in the affidavit that the claimant has engaged the services of a counsel to file this suit. Now the question is:

**Whether the cost of instituting this suit falls within the category of the claims under the undefended list procedure?**

It is not deposed in the affidavit that the parties are consensus on the issue of payment of engaging the services of a counsel and this was never contemplated on the agreement made between them, and therefore, this claim falls short of the requirement under the undefended list procedure. See the case of **Fed. Poly, Offa V. UBA Plc (2014) All FWLR (pt 737) pp. 774 – 775; paras. F-A per Ogbuinya JCA** in essence that the parties were never consensual on the payment of cost of action and besides, cost of action may be indeterminable or inestimable without further investigation as it can include the filing fees for other processes, apart from the writ and professional fees charged by counsel.

In other words, the claim involves a lot of variables and it cannot be arrived without arithmetic calculation. It was held that the claim for cost of action was nebulous and it has no place within the province of the undefended list procedure. See also the case of **Chairman Moro L.G.A. V.**

**Lawal (supra)** where the undefended list by its nature an action for a liquidated money demand which an amount previously agreed by the parties.

In the instant case, nowhere it is shown that there was an agreement or rather there is any clause on the exhibited agreement that the defendant shall bear the cost of action in the event of any dispute which if the claimant succeeds, he would be entitled to the cost of filing the suit or fees paid to a counsel. See also the case of **Aruwa V. Abdulkadir (2002) FWLR (pt 115) 677.**

On the claim of 10% interest as in paragraph (c) of the reliefs, I refer to Order 39 Rule 4 where it is provided in essence that the court may order interest at a rate not less than 10% per annum to be paid upon any judgment. This claims too falls within the category of the claims under the undefended list procedure.

The second to be identified is whether there is any defence to the suit, and to this, I have earlier said that the defendant failed to file its notice of its intention to defend, and the effect or implication thereof is that judgment should be entered in favour of the claimants. See Order 3 Rule 4 of the Rules of this Court which provides:

**“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.”**

See also the case of **Gidado V. Daku (2006) All FWLR (pt 292) p. 33 at 46; paras. A-B** where the Court of Appeal, Jos Division held that in an undefended list action, where on the date fixed for hearing, no notice of intention is/was filed, or there is no application for an adjournment or extension of time to file defendant's affidavit disclosing a defence, then

the court will enter judgment. Even if the defendant is in court, he would not be heard as he is deemed to have acted deliberately. In the instant case, the defendant, having received the writ and the accompanying affidavit did not send a letter seeking for an adjournment, or rather an application for leave to extend the time, then certainly it acted deliberately, and therefore judgment can be entered in favour of the claimant.

Judgment is hereby entered in favour of the claimant, and the defendant is hereby ordered to pay to the claimant the sum of N10,000,000.00 (Ten Million Naira) without duely delay.

10% interest per annum, as against monthly claimed by the claimant, is awarded to the claimant until when the judgment sum is liquidated.

The relief in paragraph (b) of the reliefs is transferred to the general cause list, and parties can file pleadings.

Hon. Judge  
Signed  
23/5/2022

Appearances:

Uzoma Eneh Esq appeared for the claimant.