

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/3253/2020

DATE: 21st JUNE, 2022

BETWEEN:

1. E-LKRAX PROPERTIES NIGERIA LIMITED
2. ALHAJI SULEIMAN SARKI SHITTU

} CLAIMANTS

AND

1. HAMTUL PRESS LIMITED

} DEFENDANT

APPEARANCE:

M. A. Shedrak Esq for the Claimant.
Defendant absent and unrepresented.

JUDGEMNT

The Claimant herein fled a writ of Summons dated 25th day of November, 2020 filed same day, seeking the following reliefs:-

An order of this Honourable Court for the Defendant to pay the Claimant the sum of Nigeria Naira ₦10,500.00 (Ten Million Five Hundred Thousand Naira only) being arrears of rent for (2) years, 2015 and 2016 respectively.

The Writ which was issued by M. S. Agaku Esq of Justice Gate, Legal practitioner for the Claimant, is supported by the statement of Claim, the statement on Oath of Oyagbola Majid Adeniyi, an employee of the

Claimant, list of witnesses to be called, a certificate of Pre-action counseling, and several Exhibits including a copy of a Tenancy Agreement.

Service of the Writ of Summons and other relevant processes was duly effected on the Defendant by the Bailiff of this Court on the 25th day of January, 2022, by leaving the above mentioned processes at Plot 289, Lagos, Street, Garki 2, FCT-Abuja, being the address provided by the Plaintiff, in the presence of one Mr. Majid.

Subsequently, by a Motion on Notice dated 28/2/2022 and filed same, equally served on the Defendant, brought pursuant to order 10 rule 3, order 21 Rule (1) of the FCT High court (Civil Procedure) Rules 2018 and under the inherent jurisdiction of this Court, the Claimant/Applicant herein prayed the court for the following orders:-

2. An order of this Honourable Court entering final Judgment for the Claimant as per paragraph 10 of the statement of Claim against the Defendant.
3. Any other order or orders this Honourable Court may deem fit to make to meet the Justice of this case.

The grounds predicating the Application are as follows:-

1. The Claim is for liquidated money demand and in the Claimant's belief there is no defence to the action.
2. The Defendants have failed to enter appearance within the time provided by the Rules of this Honourable Court.
3. The Defendants have failed to file a defence within the time provided by the Rules of this Honourable Court.

In support of the Application is an Affidavit of 10 paragraphs deposed to by Chukwu Patricia, a litigation secretary at Justice Gate, the law firm representing the Applicant, as well as a written address dated 28/2/2022.

In the written address in support of the Application, Learned Applicant's Counsel M. S. Agaku Esq formulated a lone issue for determination to wit:-

"Whether this Honourable Court can grant the prayers of the Claimant contained on the face of the motion paper."

Submitted in that regard that the Claimant/Applicant has done everything required under the law to be entitled to final Judgment, being that summary Judgment is preserved for prompt and expeditious disposal of matters without going into full trial when there is no dispute as to either material facts or inferences to be drawn from disputed facts if only question of law is involved. That same is a procedure for disposing with dispatch cases which are virtually uncontested.

Reliance was placed on the cases of **UNITED BANK FOR AFRICA PLC & ANOR V. ALHAJI BABANGIDA JARGABA (2007) 5 SCNJ 127; BONA TEXTLE LTD & ANOR V. ASABA TEXTLE MILL PLC (2012) 12 SC (PT. 1) 25.**

On failure to enter appearance and consequences of same, Learned Counsel referred the Court to order 10 rule 3 or the Rules of this Court 2018 and the case of **INAKOJI & ORS V ADELEKE & ORS (2007) LPELR-1510 (SC)** in submitting that the Defendants have failed to enter appearance in this case entitling the Claimants to Judgment in default of appearance.

On failure to file a defence Learned Counsel referred the Court to order 21 Rule 1 of the Rules of this Court and the Case of **MAJA V. SAMOORIS (2002) LPELR-1824 (SC)** , and submitted that the Defendant has failed to enter appearance or file a defence in this case thereby entitling the Claimant to Judgment in default of appearance and in default of defence in conclusion Learned Counsel urged the Court to so hold.

The Defendants herein were equally served with this Motion on Notice and hearing Notice by the Bailiff of this Court on the 16th of March, 2022 but have failed or refused to appear for the hearing or file a response to the motion on notice.

Now, order 10 Rule 3 of the High Court of the Federal Capital Territory (Civil Procedure Rules) 2018, provides:-

"Where the Claim in the Originating Process is a liquidated demand and a defendant or any of the Defendants fails to appear, a Claimant may apply to the Court for Judgment on the Claim in the originating process or such lesser sum and interest as the Court may order."

Under the Rules of this Court, and as stated on the Writ of Summons served on the Defendant on the 16th day of January, 2022 the Defendant is required to enter appearance within 30 days after the service of the writ on the Defendant.

Likewise, Order 21 Rule 1 of the High Court of the Federal Capital Territory (Civil Procedure) Rules 2018 provides thus:-

"If the Claim is only for a debt or liquidated demand, and the Defendant does not within the time allowed for the purpose, file a defence, the Claimant may, at the expiration of such time, apply for final Judgment for the amount Claimed with costs."

It is clear that in this case, the Defendants are out of time in filing their pleadings and have also failed to enter appearance as stated earlier in breach of the Rules.

The Claimant/Applicant avers in his statement of Claim in paragraphs 3-10 thereof as follows:-

- 1. The 1st Claimant is a Company duly registered under the law of the Federal Republic of Nigeria to carry on business in the lease and sales of properties and is located in Abuja FCT.***
- 2. The 2nd Claimant is a businessman and chief Executive Director of the 1st Claimant.***

- 3. The Defendant is a company duly registered under the law of the Federal Republic of Nigeria with its address for service located at Plot 289 Lagos Street, Garki II, Abuja FCT within the jurisdiction of the Honourable Court.***
- 4. The Defendant rented an office space from the Claimant measuring 150 square meters lying and situate at Plot 289, Lagos Street, Garki 11, FCT Abuja from and made a payment of NGN10,500,000.00 (Ten Million, Five Hundred Thousand Naira only) as rent for 2 (Two) years certain. The Tenancy Agreement will be relied upon at the trial.***
- 5. The Defendant who was a yearly tenant paying the sum of NGN 5,250,000.00 (Five Million Two Hundred and Fifty Thousand Naira only) last renewed his rent for 1st May 2013 to 31st April 2014. The payment receipts will be relied upon at the trial of this case.***
- 6. The Defendant did not make any payment to the Claimants but moved out after two years of further occupation without the payment of the rent that were in arrears.***
- 7. That the Tenancy came to an end by effluxion of time and the Defendant continued to stay further and over two years before moving out and without rent before moving out.***
- 8. That all effort to locate the Defendant proved abortive. The Defendant however abandoned a generator valued at NGN 3,000,000.00 (Three Million Naira) only at the leased property.***
- 9. That all the demands made on the Defendant to pay up before he moved out proved abortive.***
- 10. Wherefore the Claimants are aggrieved and claim against the Defendant as follows:-***

a. An order of this Honourable Court for the Defendant to pay the Claimants the Sum of NGN 10,500,000.00 (Ten Million Five Hundred Thousand Naira only) being arrears of rent for (2) years, 2015 and 2016 Respectively."

While in the Claimant's witness statement on Oath in paragraphs 12 and 13 it is deposed thereof as follows:-

"12. That the actions of the Defendants is mischievous, made in desperate bad faith and has caused severe inconvenience and hardship to Claimants.

13. That in my opinion the Defendant has no defence to this action."

The Claimant has attached receipts as well as the Tenancy Agreement to the Writ of Summons to prove that the Defendants were in occupation of the property in question and last renewed the rent for 1st May, 2013 to 31st April 2014 and moved out after two years of further occupation and did not make any payment to the Claimant.

Now, since the Defendants have not challenged this suit by entering appearance and filing defence pursuant to the Rules, the Court shall proceed to enter Judgment pursuant to order 10 Rule 3 and order 21 Rule 1 of the Rules of this Court 2018.

On this premise I equally commend the decision of **INAKOJU & ORS ADELEKE & ORS (SUPRA)** cited by the Applicant as well as the cases of **CHEVRON (NIG) LTD V. IMO STATE HOUSE OF ASSEMBLY & ORS (2016) LPELR-41563 (CA) per Agube- J.C.A, @P 119-122, PARA A.**

This failure to file a defence is taken to be admitted by the Defendant. I too rely on the case of **MAJA V SAMOURIS (Supra) cited by Applicant, per Iguh, J.S.C at P. 18, paras C-F.**

Consequently therefore, the sole issue as formulated by the Claimants/Applicants is resolved in their favour against the Defendant.

Judgment is hereby entered in favour of the Claimants as per the Claims as endorsed on the writ of summons.

Signed

HON. JUSTICE SAMIRAH UMAR BATURE.

21/06/2022.