

**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/2841/2017
DATE:	25/5/2022

BETWEEN:

POLO LIMITED.....CLAIMANT

AND

1. SANUSI LAMIDO ADO BAYERO	}.....DEFENDANTS
2. ALHAJI LAWAL ABBA	

APPEARANCES:

Eseoghene Okpewho Esq for the Plaintiff.
Defendants absent and unrepresented.

JUDGMENT

The Claimant herein filed a Motion on Notice with motion no: M/11261/2020 dated the 14th of October, 2020 and filed on the 28th day of October, 2020, seeking the following reliefs:-

“(1). AN ORDER of this Honourable Court entering judgment in the sum of \$45, 984.27 (Forty Five Thousand Nine Hundred and Eighty Four Dollars Twenty Seven Cents) or its Naira equivalent at the prevailing exchange rate at the time of the institution of this action at N330 TO \$1USD, being the sum owed by the Defendants to the Plaintiff for the purchase of the items listed in the schedule hereunder , which sum the

Defendants have deliberately failed, neglected, omitted and/or refused to pay despite repeated demands by the Plaintiff.

- (2). Post judgment interest on the afore-said sum at the rate of 10% per annum until the final liquidation of same.”***

The motion which was issued by Jamiu Agoro Esq of PINHEIRO Legal Practitioners, Legal practitioner for the Claimant is supported by a 12 paragraph Affidavit deposed to by one Okonoboh Rhema Efua, an Interim Boutique Manager of the Claimant, as well as Exhibits A1, A2, B-F.

Service of the Motion on Notice was duly effected on the 1st and 2nd Defendants by Mr. Idris Sadiq, a litigation officer in the law firm of Pinheiro LP, Counsel to the Claimant on the 1st day of February, 2022 by way of Ekesons Parcel Services Limited (EPS) Courier Service pursuant to a Court Order to serve the Defendants as above. The 1st Defendant was served a hearing notice at No. 12 Shange Street, Maitama Abuja via a letter communicating that the matter was slated for hearing on 15th day of March 2022, hereby filed as Exhibit A and a copy EPS Waybill Proof of Posting as Exhibit D. Likewise, the 2nd Defendant was also served with a hearing notice at No. 18F Thompson Avenue, Ikoyi Lagos via a similar letter communicating the date of hearing on 15th of March, 2022, hereby filed as Exhibit C and a copy of the EPS waybill proof of posting as Exhibit D.

The Claimant attached an affidavit of service deposed to by the said Idris Sadiq and sworn at the High Court of the FCT Registry, Abuja on the 2nd day of March, 2022.

The grounds predicating the application are as follows: -

- “(1). That the Claimant/Applicant filed its Court ordered pleadings on the 17th day of March 2020.***
- (2). The principal relief sought as inscribed in the pleadings is for a liquidated money demand against which the Claimant/Applicant reasonably believes that the Defendants/Respondents have no defence.***

- (3). *That corollary to (1) and (2) above, the Claimant's/ Applicant's Court ordered pleadings were duly served on the Defendants/Respondents on the 18th day of March 2020, and till this material time, the Defendants /Respondents have neglected and/or failed to file their defences.*
- (4). *The time allowed the Defendants/Respondents to present their defences to the Claimant's/Applicant's action has long elapsed.*
- (5). *That the Defendants/Respondents have no defence to present against the Claimant's/Applicant's action.*
- (6). *That as per Order 11 Rule 1 of the Rules of this Court is empowered to enter judgment in favour of the Claimant/Applicant in circumstances such as the instant application.*
- (7). *The schedule of goods to which relief 1 relates include:*
- | | | | |
|------|-------------------------------------|---|--------------------|
| (a). | <i>Handbag</i> | - | <i>\$6, 676</i> |
| (b). | <i>New Iris bag</i> | - | <i>\$6, 932</i> |
| (c). | <i>New Iris wallet</i> | - | <i>\$3, 908</i> |
| (d). | <i>Men's L.G. Accessories</i> | - | <i>\$9, 048</i> |
| (e). | <i>Fondente revival bag</i> | - | <i>\$4, 388</i> |
| (f). | <i>Wheel suit case</i> | - | <i>\$7, 503.2</i> |
| (g). | <i>Hand bag</i> | - | <i>\$18, 862.3</i> |
| (h). | <i>Zig around wall</i> | - | <i>\$4, 966.78</i> |
| (i). | <i>PTD Gucci Nouveau</i> | - | <i>\$8, 164</i> |
| (j). | <i>Tissue wallet</i> | - | <i>\$872</i> |
| (k). | <i>Cufflinks (2)</i> | - | <i>\$1, 900</i> |
| (l). | <i>Piaget wrist watch</i> | - | <i>\$97, 200</i> |
| (m). | <i>Breguet 18k Gold Wrist watch</i> | - | <i>\$97, 200</i> |

In support of the application is a 12 paragraph Affidavit deposed to by one Okonoboh Rhema Efua, an Interim Boutique Manager of the Claimant, as well as a Written Address dated the 14th day of October 2020.

In the Written Address in support of the application, learned Applicant's Counsel, Jamiu Agoro Esq formulated a lone issue for determination to wit:-

“Whether the Plaintiff/Applicant is entitled to the reliefs sought in view of the want of defence by the Defendant to the Plaintiff's claims?”

In his argument, learned Counsel to the Plaintiff relied on the provisions of Order 11 Rule 1 of the Federal Capital Territory High Court (Civil Procedure) Rules 2018, which provides that a Claimant, who believes that the Defendant has no defence to his claim, may file an application for summary judgment.

For ease of reference, the provision reads thus:-

“Where a Claimant believes that there is no defence to his claim, he shall file with his originating process the Statement of Claim, the exhibits, the depositions, of his witnesses and an application for summary judgment which application shall be supported by an affidavit stating the grounds for his belief and a written brief in support of the application.”

Learned Counsel to the Plaintiff, submitted in his written submission to the Court, that the action before this Honourable Court against the Respondents is for a liquidated money demand. Learned Counsel further submitted that as a result of the unassailable facts presented by the Applicant in its Statement of Claim filed on the 17th day of March 2020, the Applicant reasonably believes that the Defendants have no defence to its claim, due to the facts that the Defendants have failed to present a defence to the action despite being served with the Plaintiff's Statement of Claim sine the 18th day of March, 2020.

Learned Counsel to the Plaintiff further referred the Court to the instant application before the Court, particularly the supporting Affidavit where he submitted, it revealed that the Applicant has succinctly paragraphed cogent and credible evidence to substantiate its outright entitlement to the liquidated sum of \$45, 984.27 Forty Five Thousand Nine Hundred and Eighty Four Dollars Twenty Seven Cents against the Defendants/ Respondents for goods purchased on the 18th day of May 2015 by the

2nd Defendant/Respondent as an agent of the 1st Defendant/Respondent. Counsel submitted that the failure of the Defendants to file a defence is as a result of the fact that the Defendants have no defence to the unassailable claims of the Applicant.

On failure to file a defence, learned Counsel referred the Court to Order 11 Rule 1 of the High Court Civil Procedure Rules of this Court and the case of ***NNABUDE V G.N.G (W/A) LTD (2012) ALL FWLR (Pt. 619) 1174 CA*** and submitted that the Defendants have failed to enter appearance or file a defence in this case thereby entitling the Plaintiff to judgment in default of appearance and in default of defence. In conclusion, learned Counsel urged the Court to so hold.

Relying on the settled position in our jurisprudence, especially regarding the issue of summary judgment, learned Counsel to the Plaintiff referred the Court to the following cases: “

“(1). ANUMUDU V DHL INTERNATIONAL (NIG) LTD (2019) LPELR-47634 (CA) where the Court held inter alia “Summary Judgment procedure is one which aims to and whose primary purpose is the attainment of speedy disposition of claims or cases to which prima facie on the facts and Affidavit evidence of the parties, there is no genuine and real dispute on the material facts of the claim without the need for full trial. The procedure is meant for cases where the material facts of a claim are not seriously disputed or contested and so there is no real or genuine defence to it in order to necessitate full trial with its usual attendants of delay and expenses.

(2). To further support his case, learned Counsel to the Plaintiff cited the following cases:

(a). UBA PLC V JARGBA (2007) 11 NWLR (Pt. 1045) 247 (SC) where the Court held “A summary judgment procedure is a procedure for disposing with dispatch cases which are virtually uncontested. It also applies to cases where there can be no reasonable doubt that the Plaintiff is entitled to judgment and where it is inexpedient to allow a Defendant to depend for

mere purpose of delay. It is for the plain and straight forward, not for the dubious and crafty.”

- (b). *REBOLD INDUSTRY LTD v LADIPO (2007) LPELR-8709 (CA); NNABUDE V G.N.GODISCOY WA LTD (2010) 15 NWLR (Pt. 1216) 365, BONA TEXTILES LTD V ASABA TEXTILE MILL PLC (2013) 2 NWLR (PT. 1338) 357 AND ILOMUANYA V LOBI BANK LTD (1997) 12 NWLR (Pt. 531) 1.”***

Finally, learned Counsel to the Plaintiff in conclusion urged the Court to consider the following prerequisites that the Plaintiff is required to satisfy under the summary judgment procedure as enumerated in the decision of the Court of Appeal in the case of ***MADUIKE VS. TETELIS NIGERIA LTD (2015) LPELR-24288 (CA)***, they include the following: -

- (a). Belief that the Defendant has no defence to his claim.
- (b). File a Statement of Claim, the exhibits, the depositions of his witnesses along with his originating process.
- (c). Support the application with an affidavit evidencing the Defendant has no defence; and
- (e). File a Written Address in support of the application for summary judgement.

See also the case of ***EMERALD GARLAND BEVERAGES LTD & ANOR V. MADUECHESI (supra)***.

In conclusion, learned Counsel to the Plaintiff submitted that the Plaintiff has successfully proved his case on the following grounds: -

- (a). That the claims of the Applicant are for liquidated money demand to which the Respondents have no defence.
- (b). That the Respondents' failure to present a defence even after being served with the Applicant's processes, which solidifies that they have no defence to the Applicant's claims.

Having carefully gone through the Statement of Claim of the Plaintiff dated the 4th of March 2020 and filed on the 17th of March 2020 as well as the Motion on Notice of the Plaintiff; I hereby make the following observations:-

- (1). That the Defendants herein were served with this Motion on Notice dated the 14th of October 2020 and filed on the 28th of October 2020 and hearing notice by the Bailiff of this Court on the 10th of December, 2020, but have failed or refused to appear for the hearing or file a response to the Motion on Notice.

It is trite law that under Order 10 Rule 3 of the High Court of the Federal Capital Territory (Civil Procedure) Rules 2018, it provides thus:-

“Where the claim in the originating process is a liquidated money 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 order.”

Under the Rules of this Court and as stated in the Writ of Summons served on the Defendant on the 10th day of December, 2020, 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 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 cost.”

Similarly, under Order 11 Rule 1 of the High Court of the Federal Capital Territory (Civil Procedure) Rules 2018 provides thus:-

“Where a Claimant believes that there is no defence to this claim, he shall file with his originating process, the depositions of his witnesses and an application for summary judgment which application shall be supported by an Affidavit stating the

grounds for his belief and a written brief in support of his application.”

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 Plaintiff/Applicant avers in his Statement of Claim in paragraphs 1 – 14 thereof as follows: -

- “(1). The Plaintiff is a Limited Liability Company in corporate and licensed to carry on business of sale of luxury goods in Nigeria with its registered office at Plot 166, Ozumba Mbadiwe Street, Victoria Island, Lagos State.***
- (2). The 1st Defendant is a businessman, a well known citizen of the Federal Republic of Nigeria and the former Managing Director of the Nigerian Ports Authority.***
- (3). The 2nd Defendant is at all-time material and agent of the 1st Defendant through whom the 1st Defendant had been dealing and transacting with the Plaintiff and to the Plaintiff’s knowledge, has acted for the 1st Defendant on several occasions and over a considerable period of time.”***

Back Ground Facts

The Plaintiff avers that sometime about the 18th day of May 2015, the 1st Defendant through his all-time recognized agent, the 2nd Defendant purchased certain items from the Plaintiff in the sum of \$267, 920.28 (Two Hundred and Sixty Seven Thousand, Nine Hundred and Twenty Dollars Twenty Eight Cents), which the 1st Defendant intended to use as gifts, with a promise to promptly make payments. The items purchased and covered by invoice nos: 0016035 and 0016044 are:

- | | | |
|-----------------------------|---|----------|
| (a). Handbag | - | \$6, 676 |
| (b). New Iris bag | - | \$6, 932 |
| (c). New Iris wallet | - | \$3, 908 |
| (d). Men’s L.G. Accessories | - | \$9, 048 |
| (e). Fondente revival bag | - | \$4, 388 |

(f).	Wheel suit case	-	\$7, 503.2
(g).	Hand bag	-	\$18, 862.3
(h).	Zig around wall	-	\$4, 966.78
(i).	PTD Gucci Nouveau	-	\$8, 164
(j).	Tissue wallet	-	\$872
(k).	Cufflinks (2)	-	\$1, 900
(l).	Piaget wrist watch	-	\$97, 200
(m).	Breguet 18k Gold Wrist watch	-	\$97, 200

- “2. The goods were listed in the Plaintiff’s invoices which invoices bears the name of the 2nd Defendant being the agent of the 1st Defendant and through whom the 1st Defendant had been dealing with the Plaintiff.**
- 3. The Plaintiff avers that the 2nd Defendant duly acknowledged and signed the said invoices on behalf of the 1st Defendant. The Plaintiff pleads and shall at the trial of this suit rely on Invoice Nos: 0016035 and 0016041 which contains the items purchased by the Defendants.**
- 4. The Plaintiff avers that the items were subsequently delivered to the 1st Defendant by the Managing Director of the Plaintiff upon the 1st Defendant representation to promptly make payments for same.**
- 5. The Plaintiff further avers that after several months and upon the failure of the 1st Defendant to make good his promises to promptly make payments as aforesaid, the Plaintiff via a letter dated 1st September, 2015 formally demanded for the immediate payment of the outstanding sum in the sum of \$267, 920.28 (Two Hundred and Sixty Seven Thousand, Nine Hundred and Twenty Dollars, Twenty Eight Cents). The Plaintiff pleads and shall at the trial of this suit rely on the letter dated 1st September, 2015 addressed to the 1st Defendant.**
- 6. The 1st Defendant in reaction to the letter dated 18th September, 2015, sent his representative; one Sagir Ado Sanusi to appeal to the Plaintiff to make some concessions**

as the Defendant had certain challenges which made it difficult for him to meet his payment obligation.

- 7. That the Plaintiff avers that after much persuasion by the 1st Defendant, the Defendant decided to waive its policy on return of goods already sold and accepted a piaget timepiece wrist watch worth \$97, 200 back from the 1st Defendant regardless of the fact that the 1st Defendant had been in possession of the item for over 5 (five) months.**
- 8. The Plaintiff avers that in addition to the above, the 1st Defendant also paid a diminutive sum of \$20, 000.00 (Twenty Thousand Dollars only) bringing this total indebtedness to \$150, 720.28 (One Hundred and Fifty Thousand, Seven Hundred and Twenty United States Dollars and Twenty Eight Cents only). The Plaintiff pleads and shall at the trial of this suit rely on the letter dated 14th September, 2015 evidencing the meeting and the sum paid by the 1st Defendant.**
- 9. That the Plaintiff vide its letter of 30th September, 2015 and as a mark of goodwill and regard to the 1st Defendant, gave the 1st Defendant a rebate of 5% on the aforesaid outstanding sum to bring the total outstanding indebtedness of the Defendant to \$143, 184.27 (One Hundred and Forty Three Thousand One Hundred and Eighty Four United States Dollars Twenty Seven Cents only). The Plaintiff pleads and shall at the trial of this suit rely on the letter dated 30th September, 2015.**
- 10. The Plaintiff avers that to its surprise, the 1st Defendant vide a letter dated 7th October, 2015, made an attempt to deny the aforesaid transactions even though in the said letter it admitted attending meeting and paying the sum of \$20, 000.00 (Twenty Thousand Dollars only) the Plaintiff pleads and shall at the trial of this suit rely on the letter dated 7th October, 2015.**
- 11. Consequently, the Plaintiff through its Solicitors vide a letter dated 23rd November 2015 demanded for the**

immediate liquidation of the 1st Defendant outstanding indebtedness in the sum of \$143, 184.27 (One Hundred and Forty Three Thousand, One Hundred and Eighty Four United States Dollars, Twenty Seven Cents only). The Plaintiff pleads and shall at the trial of this suit rely on its Solicitors' letter addressed to the 1st Defendant dated 23rd November, 2015.

- 12. The Plaintiff avers that during the pendency of this suit under the undefended list, the 1st Defendant's Counsel initiated an out of Court settlement wherein it was agreed that the 1st Defendant would return the Breguet 18k Gold Wrist Watch and pay the sum of \$45, 685.00 (Forty Five, Six Hundred and Eighty Five United States Dollars) as full and final settlement of his indebtedness to the Plaintiff.**
- 13. That while the 1st Defendant returned the said Breguet 18k Gold Wrist Watch, he failed, refused and or neglected to pay the agreed sum of \$45, 685.00 (Forty Five Thousand, Six Hundred and Eighty Five United States Dollars). The return of the Breguet 18k Gold Wrist Watch by the 1st Defendant brought his total outstanding indebtedness to the sum of \$45, 984.27 (Forty Five Thousand, Nine Hundred and Eighty Four United States Dollars, Twenty Seven Cents).**
- 14. The Plaintiff avers that the 1st Defendant has been in continuous possession of other items sold to him and has failed to liquidate his outstanding indebtedness of \$45, 984.27 (Forty Five, Nine Hundred and Eighty Four United States Dollars, Twenty Seven Cents) representing the cost these items despite repeated demands by the Plaintiff."**

Whereof the Plaintiff claims against the Defendants jointly and severally as follows: -

- (1). The sum of \$45, 984.27 (Forty Five, Nine Hundred and Eighty Four United States Dollars, Twenty Seven Cents) or its Naira equivalent at the prevailing exchange rate at the time of the institution of this action at N330 to \$1 USD, being the sum owed by the Defendants to the**

Plaintiff for the purchase of items listed in schedule hereunder, which sum the Defendants have deliberately failed, neglected, omitted and/or refused to pay despite repeated demands by the Plaintiff.

2. Post judgment interest at the rate of 10% per annum on the judgment sum until final liquidation of same.
3. Cost of this action assessed as N5, 000, 000.00 (Five Million Naira only).

Schedule of goods to which relief 1 abates

(a). Handbag	-	\$6, 676
(b). New Iris bag	-	\$6, 932
(c). New Iris wallet	-	\$3, 908
(d). Men's L.G. accessories	-	\$9, 048
(e). Fondente revival bag	-	\$4, 388
(f). Wheel suit case	-	\$7, 503.2
(g). Hand bag	-	\$18, 862.3
(h). Zig around wall	-	\$4, 966.78
(i). PTD Gucci Nouveau	-	\$8, 164
(j). Tissue wallet	-	\$872
(k). Cufflinks (2)	-	\$1, 900
(l). Piaget wrist watch	-	\$97, 200
(m). Breguet 18k Gold wrist watch	-	\$97, 200

While in the Plaintiff's Witness Statement on Oath in paragraph 14 thereof as follows: -

"14. That the 1st Defendant has been in continuous possession of the other items sold to him and has failed to liquidate his outstanding indebtedness of \$45, 984.27 (Forty Five, Nine Hundred and Eighty Four United States Dollars, Twenty Seven Cents) representing the cost these items despite repeated demands by the Plaintiff."

The Plaintiff has attached two (2) receipts ie Invoices nos: 0016035 and 0016041 containing the items purchased by the Defendants. The Plaintiff has equally attached the Plaintiff's letter of demand dated 1st September, 2015 addressed to the 1st Defendant; the letter dated 14th September, 2015

evidencing the meeting and sum paid by the 1st Defendant; the Plaintiff's letter dated 30th September, 2015 addressed to the 1st Defendant; the 1st Defendant's letter dated 7th October, 2015 addressed to the Plaintiff and the Plaintiff's Solicitor's letter addressed to the 1st Defendant dated 23rd November, 2015. All the above documents were tendered by the Plaintiff in support of its case.

Now, since the Defendants have not challenged this suit by entering appearance and filing a defence pursuant to the Rules; the Court shall proceed to enter judgment pursuant to Order 10 Rule 3, Order 11 and Order 2 of the Rules of this Court 2018.

On this premise, I equally commend the decision of ***UBA PLC V JARGABA (2007) 11 NWLR (1045) 247 SC***, cited by the Applicant as well as the case of ***MADUIKE VS. TETELIS NIGERIA LTD (2015) LPELR-24288 (CA)***.

This failure to file a defence is taken to be admitted by the Defendants. I too rely on the case of ***ANUMUDU V DHL INTERNATIONAL (NIG) LTD (2019) LPELR-47634 (CA) (supra)*** cited by the Applicant.

Consequently therefore, the sole issue formulated by the Plaintiff/Applicant is resolved in their favour against the Defendants.

Judgment is hereby entered in favour of the Claimants as per the claims as endorsed on the Motion on Notice for summary judgment.

Signed:

***Hon. Justice S. U. Bature
25/5/2022.***