

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT JABI

THIS 19TH MAY, 2022

BEFORE HIS LORDSHIP: HON. JUSTICE A.A FASHOLA

SUIT NO: FCT/HC/CV/2588/2021

BETWEEN:

- 1. CARDIFF PROPERTIES LIMITED-----CLAIMANTS**
- 2. MRS.JULIET UZO**

AND

NATIONAL LOTTERY REGULATORY COMMISSION-----DEFENDANT

JUDGMENT

This is a matter commenced by a writ of summons under the undefended list procedure dated and filed on 19th October 2021. Wherein the Claimant's claims jointly and severally against the defendant as follows:

- a. The sum of **One Hundred and Fifty Million Naira (N150,000,000.00)** only being arrears of rent for Two (2) years owed the claimants by the defendant for the years 2020 and 2021 tenancies covering the periods from the **1st day of January 2020 to the 31st day of December 2020, and from 1st day of January 2021 to the 31st day of December 2021** respectively in that four (4) storey office complex, situate at plot 640, Shehu Musa Yaradua

Way, Jabi District Abuja – FCT, and which sum the defendant have since defaulted and/or failed to pay to the claimants.

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

In support of the writ of summons is a 21 paragraphs affidavit deposed to by on Winifred Mike-Ibe the head of property management department of the 2nd claimant.

FACTS OF THE CASE

The 1st Claimant is a limited liability Company duly registered with the Corporate Affairs Commission. The claimants avers that vide a power of Attorney dated 14th November 2017, Libraville Limited donated powers of possession, control and management of a four storey office complex situate at plot 640 Shehu Musa Yaradua way Jabi amongst other powers to the 1st claimant. That upon taking over the property, the claimants met the defendant (an agency of the Federal Government of Nigeria) as tenants in the property, whose annual rent of N75,000,000.00(Seventy Five Million Naira Only) runs from the 1st of January to 31st December of the same year. That the 2nd Claimant carries on business of property managers, Estate surveyors and valuers manages the said property for the 1st claimant. That prior to the expiration of the defendants tenancy the Claimant served a rent renewal letter dated 16 December 2019 on the defendant wherein the defendant was offered the property for another two (2) years term and settle their rental obligations for which the defendant

accepted but failed to pay their rent the claimant vide a letter dated 28th January 2021 demanded for the payment of rent for 2020 and 2021 tenancies, upon the defendant refusal to pay, claimant served another letter of demand dated 21st June 2021. That the claimant in compliance with section 50 (3) of the National lottery Act 2005, served a pre Action notice on the defendant through DHL Courier, upon receipt of the pre Action notice the defendant invited claimants solicitor for a meeting with the Management of the defendant. Despite all assurances the defendant failed to pay the outstanding rent. That the defendant served the claimants a letter dated 14th October 2021 appealing for more time while stressing that they will do the needful but still failed to pay their outstanding rental debt. Annexed to the affidavits are exhibits

LIST OF EXHIBITS

1. Exhibit 1 is a power of Attorney dated 14th November 2017
2. Exhibit 2 is a letter dated 16th December 2018
3. Exhibit 3 is a letter of demand dated 28th January 2021
4. Exhibit 4 is a letter of demand dated 21st June 2021
5. Exhibit 5 is a letter of demand dated 1st September 2021
6. Exhibit 6 is a pre Action Notice dated 27th September 2021, DHL Receipt dated 30th September 2021 and DHL printed proof of delivery dated 12 October 2021
7. Exhibit 7 is a letter dated 14th October 2021

Upon service of the writ of summons and other accompanying processes on the defendant. The defendant filed a 5 paragraph Counter Affidavit dated 21st February 2022 and filed on the same

date deposed to by one Adamu Selbol Yilkur an executive officer in legal services department of the defendant. The defendant avers that they are at the final stage of process to pay the claimants the arrears of rent. That the outstanding sum is included in the budget for year 2022, that the outstanding rent will be paid once the budget sum is disbursed by the appropriate authorities without delay. Annexed to the Counter Affidavit are exhibits.

LIST OF EXHIBITS

1. Exhibit 1 is an appropriation bill

I have carefully perused the Writ of summons, the accompanying affidavit, and the exhibits annexed. I have in the same vein considered the Counter Affidavit filed by the defendant in this suit. It is my humble legal opinion from the evidence before this Honorable Court that this suit raises a sole issue for determination to wit:

Whether the claimant has proved his case to be entitled to the reliefs sought against the Defendant.

For the suppose of clarity, I deem it fit to reproduce Order 35 rule 4 of the Civil Procedure Rules of the FCT High Court 2018 which states:

" Where a defendant neglects to deliver the notice of defense and an affidavit prescribed by the 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."

On the lone issue above, the Court have sufficiently expounded on what amounts to the Claimant proving his case to be entitled to reliefs sought. In the instant case the defendant failed to file any notice of intention to defend or a defense on the merit they were represented by counsel who filed a Counter Affidavit on behalf of the defendant. However, it is trite law that the Court is entitled even in an undefended case to be satisfied that the evidence adduced is credible and sufficient to sustain the claim See the case of **AYOKE Vs BELLO (1992) 1 NWLR (PT 218)387**.

In the case of **EJASCO GLOBAL INVESTMENT LTD VS INIM (2015) LPELR** the court of Appeal held that:

“In proceedings brought on the undefended list procedure, the duty of the trial court on the return date is to evaluate the affidavit evidence and determine if the Defendant who has filed a Notice of intention to defend supported by an affidavit that condescends upon particulars in response to the plaintiff’s case. If the trial court is of the view that the defendant has disclosed triable issues, the matter would be transferred to the general cause list for hearing. If no real defence has been disclosed, the matter will be heard on the undefended list and judgment entered in favour of the claimant”.

It is trite that where a defendant in an undefended list procedure fails to disclose by affidavit, a defence on the merit, the court is enjoined to give judgment on the undefended list. In other words in the absence of any compelling facts made out in a defendants affidavit in support of his notice of intention to defend a trial court can enter Judgment in favour of the claimant on the undefended list. **UWAECHINA V OKEKE (2015) 14 NWLR (PT 1478) P.108 See also BATURE VS SAVANNAH BANK OF**

NIG LTD (1998) 4 NWLR (PT. 546) 438, UBN PLC V EDAMUKE 2005 7 NWLR (PT. 925)520.

Also in the case of **AREWA TEXTILES PLC Vs FINETEX LTD (2003) 7 NWLR (PT 819) 322 AT 341 Paras D-9 Per Salami JCA as he then was** held:

"That the Claimant will not be entitled to judgment merely because the defendant abandoned its defence by failing to lead evidence in Support thereof. The Court would only be bound to accept unchallenged, uncontroverted and unrebutted evidence of the Claimant, if it were cogent and credible. The Court would not accept a piece of evidence which is not material and of no probative value merely because the only evidence before the Court is that of the Claimant. Even where the evidence is unchallenged and uncontradicted the trial Court has a duty to evaluate it and be satisfied that it is credible and sufficient to sustain the claim"

See the case of **GONZEE (NIG) LTD VS NIGERIAN EDUCATIONAL RESEARCH AND DEVELOPMENT COUNCIL (2005) 13 NWLR (PT. 943).**

After a careful perusal of the evidence before me, particularly the Affidavit evidence and the annexures thereof; on the strength of these legal Authorities cited above it is my considered legal opinion that the claimant has proved his case against the defendant.

IT IS HEREBY ORDERED THAT THE DEFENDANT SHALL:

1. The defendant are hereby ordered to pay the sum of **One Hundred and Fifty Million Naira (N150,000,000.00)** only being arrears of rent for Two (2) years owed the

claimants by the defendant for the years 2020 and 2021 tenancies covering the periods from the **1st day of January 2020 to the 31st day of December 2020, and from 1st day of January 2021 to the 31st day of December 2021** respectively in that four (4) storey office complex, situate at plot 640, Shehu Musa Yaradua Way, Jabi District Abuja – FCT, and which sum the defendant have since defaulted and/or failed to pay to the claimants.

2. Ten percent (10%) monthly interest on the Judgment sum is hereby awarded from the date of the Judgment until the judgment sum is fully liquidated.