

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

**ON MONDAY, 19<sup>th</sup> DAY OF SEPTEMBER, 2022**

**BEFORE HON. JUSTICE NJIDEKA K. NWOSU-IHEME**

**SUIT NO. FCT/HC/CV/1602/2022**

**BETWEEN**

**HOIL SUITES AND APARTMENTS LIMITED**

**CLAIMANTS**

**AND**

**AYENI OLUSEGUN**

**DEFENDANT**

**JUDGMENT**

The claimant filed this suit on the 17/05/2022 under the undefended list claiming the following reliefs against the Defendant;

- a. The sum of N1,280,000.00 (One Million, Two Hundred and Eighty Thousand Naira) only being a debt owed the Claimant by the Defendant and which is the amount due to the Claimant by virtue of the guarantor's agreement executed between the Claimant and the Defendant dated 17<sup>th</sup> February, 2021, which said sum the Defendant has failed, refused and neglected to pay.
- b. 10% post judgment interest until the total indebtedness of the Defendant is finally and totally liquidated.

- c. An Order directing the Defendant to pay over to the Claimant the said sum of N1,280,000.00 (One Million, Two Hundred and Eighty Thousand Naira) only being the said indebtedness forthwith.

The claimant filed a 21-paragraph affidavit via Bruno Emecheta, an employee of the Claimant Company and Exhibits A-C, attached therewith. The Defendants despite been served with the processes in this suit did not appear in court neither were they represented.

In the Claimants 21-paragraph affidavit in support of the originating summons Bruno Emecheta deposed as follows:

1. That one Segun Abiodun was a tenant who occupied a two-bedroom bungalow in the property owned by the Claimant which is known as Hoil Suites and Apartments Estate, Kuje, Abuja situate at Block No. 6, Phase AA2 Layout, Kuje Area Council, Abuja (beside Dunamis Church) between 2015 and 2021.
2. That the said Segun Abiodun prior to his vacating the said house belonging to the Claimant was indebted to the Claimant to the tune of N1, 280, 000 being arrears of rent.
3. That when the said Segun Abiodun was unable to offset the said debt in the sum of N1, 280, 000 (One Million, Two Hundred and Eighty Thousand Naira) only to the Claimant, he had produced the Defendant in this suit to the Claimant as his guarantor for the payment of the said debt.
4. That the Defendant in this suit duly executed a guarantor's agreement on the 17<sup>th</sup> February, 2021 with the Claimant wherein he accepted responsibility for the payment of the said debt owed the

Claimant by Segun Abiodun in the event that the said Segun Abiodun fails, refuses or neglects to pay the said sum of N1, 280, 000 (One Million, Two Hundred and Eighty Thousand Naira) only due to the Claimant on the 31st day of August, 2021.

5. That the Defendant also handed over a copy of his business card to the Claimant. A copy of the said guarantor's agreement and Defendant's business card are attached as Exhibit A and B respectively.
6. That the Defendant in this suit agreed to be personally liable for the payment of the said debt owed by the said Segun Abiodun where the said Segun Abiodun fails to pay the Claimant; and consequently, the Defendant in line with the terms of the said guarantor's agreement issued a Guaranty Trust Bank Plc posted-dated cheque dated 31/8/2021 in the name of the Claimant for the sum of N1, 280, 000 (One Million, Two Hundred and Eighty Thousand Naira) only being the total debt due and payable to the Claimant.
7. That despite repeated demands made to him by the Claimant through his counsel, Chike S. Ekeocha via phone calls to his phone numbers, the said Segun Abiodun has failed and refused to pay the said sum of N1, 280, 000 being debt owed the Claimant on or before the 31st day of August 2021 as stipulated in the guarantor's agreement.
8. That on the 24th of November, 2021 the Claimant deposited the said Guaranty Trust Bank Plc cheque issued by the guarantor for the sum of N1, 280, 000 (One Million, Two Hundred and Eighty Thousand Naira) only into her own Guaranty Trust Bank Plc account with number 0025183677 and the said cheque was dishonoured with the

inscription 'Refer to drawer'. A copy of the cheque was attached as Exhibit C.

9. That since the said cheque was dishonoured allefforts made by the Claimant by repeated demands via phone callsto his phone number to honor his obligations under the guarantor's agreement have proved abortive and the Defendant is under an obligation to pay the indebted sum or any part thereof as required of him under the agreement.

### **DECISION OF THE COURT:**

#### **SOLE ISSUE FOR DETERMINATION**

***"whether the Claimant has established a case to be entitled to the reliefs sought"***

The Defendant did not appear before this court neither did they file a notice of intention to defend as required by the rules of this court. In the circumstance of this case, where the Defendants failed and neglected to file any counter process in opposition to the evidence adduced by the Claimant, the case of the Claimant remains unchallenged, uncontroverted and not rebuttable. see the case of: ***ASAF A SEA FOOD V. ALRAINE [NIG] LTD [2002] NWLR [PT.781] 353***

Where evidence is uncontroverted, the onus of proof is satisfied on a minimal proof since there is nothing on the other side of the scale see ***BURAIMOH V BAMGBOSE (1989) 2 NWLR (PT 109) 352.***

In ***CHIEF MAURICE UDO IDUNG & ANOR v. THE COMMISSIONER OF POLICE & ORS (2017) LPELR-42333(CA)***

**"It is well known in law that failure of a party to challenge or controvert depositions in affidavit of his opponent by filing a counter-affidavit, reply or further and better affidavit is deemed to have accepted the facts deposed in the affidavit. *AYOOLA VS. BARUWA (1999) 11 NWLR (PT. 628) 595; COMPTROLLER, NIGERIA PRISON SERVICE V. ADEKANYE (1999) 10 NWLR (PT. 623) 400. When an affidavit is unchallenged, the trial Court is at liberty to accept it as true and correct." Per ADAH, JCA (Pp. 22-23, paras. E-A)***

However, this court before it arrives at its decision must still consider the evidence of the Claimant irrespective of the fact that the Respondent failed to file his defence to the Originating Motion. The burden still rests on the Claimant to prove his case even though the requirement is minimal proof.

A Claimant must succeed upon the strength of his case and not on the weakness of the defence, although he is entitled to rely on evidence revealed in such weakness to strengthen his case. See ***OTUNBA ABDULLATEEF OWOYEMI V PRINCE OLADELE ADEKOYA 2013 12 SCNJ 131.***

In ***REV. POLYCARP MATHEW ODIONG v. ASSISTANT INSPECTOR GENERAL OF POLICE, ZONE 6, CALABAR (2013) LPELR-20698(CA) (P. 42, paras. A-D)***

**"Although the facts deposed to by an applicant are not challenged by a respondent, the Court still has a duty to**

**consider and weigh the affidavit evidence before it in order to ensure that they can ground the Order sought by the applicant. An unchallenged affidavit which contains obvious falsehood or is self -contradictory cannot sustain the case of the applicant. In other words the evidence contained in the unchallenged affidavit must be cogent and strong enough to sustain the case of the applicant. See: Ogojeifo vs. Ogojeifo (2006) 1 S. C. (PT.1) 157."**

The case of the Claimant in a nutshell is that that based on the understanding they had with the Defendant, the Defendant agreed to be personally liable for the payment of the debt owed by the said Segun Abiodun for arrears of rent to the tune of N1, 280,000 where the said Segun Abiodun fails to pay the Claimant.

Exhibit A captures the terms of the Guarantors agreement between the parties as follows:

***"3. The said SEGUN ABIODUN is unable to immediately settle the said debt and has introduced the Guarantor as his friend and the Guarantor being fully aware of the existence of the said debt owed by the said SEGUN ABIODUN to the creditor being the sum of N1,280,000 (One Million, Two Hundred and Eighty Thousand Naira) Only has unreservedly agreed to act as the guarantor for the said SEGUN ABIODUN for the said debt owed to the creditor by the said SEGUN ABIODUN.***

***THE PARTIES HEREBY AGREE AS FOLLOWS:***

- 1. The Guarantor undertakes to Guarantee the said SEGUN ABIODUN regarding the said debt due to the creditor and undertakes that the said sum of N1, 280, 000 (One Million, Two Hundred and Eighty Thousand Naira) only being the debt shall be paid by the said SEGUN ABIODUN on or before the 31<sup>st</sup> day of August, 2021.**
- 2. The Guarantor undertakes and agrees to be personally liable for the said debt and to pay the said sum due to the creditor personally within the time prescribed in the event that the said SEGUN ABIODUN fails, neglects or refuses to pay the creditor the debt due being the sum of N1, 280, 000 (One Million, Two Hundred and Eighty Thousand Naira) Only.**
- 3. The Guarantor undertakes that he shall issue a post-dated cheque for the sum of N1, 280, 000 (One Million, Two Hundred and Eighty Thousand Naira) Only being the debt owed the creditor by the said SEGUN ABIODUN in favour of the Creditor.**
- 4. The Guarantor shall take the officers of the Creditor to verify his residence.**
- 5. The Guarantor waives his right to challenge any suit or action that may be brought against him by the creditor for the recovery of the said sum of N1, 280, 000 (One Million, Two Hundred and Eighty Thousand Naira) only or any part thereof due to the creditor that maybe due or outstanding at any time.**

**6. That the Creditor shall discharge the Guarantor from all obligations under this agreement as soon as the said debt is fully paid by the said SEGUN ABIODUN; and hand over the post-dated cheque deposited by the Guarantor to him.**

This court respects the sanctity of contract as it is sacrosanct. The guarantor's agreement had laid down the procedure for repayment of the debt owed the Claimant.

It is trite that parties are bound by the terms of their agreement which they entered into.

In the case of **OKONKWO V CCB (NIG.) PLC (2003) 8NWLR (PT. 822) P. 382 PARAS D-E** the court put it succinctly:

***"it is trite law that persons of full age and sound mind are bound by an agreement lawfully entered into by them."***

**Emphasis Mine**

In the case of **JADESIMI V EGBE (2003) 10 NWLR (PART 827) P. 30 PARAS. H-A, P. 31 PARAS E-G** the Court held thus;

***"... I will apply the doctrine of equity "pacta sunt servanda" which means that agreements voluntarily entered into must be honoured in good faith for equity will not allow the law to be used as an engine of fraud. See Hart v T.S.K.J. (Nig) Ltd (1998) 12 NWLR (part 578) 372..."***



## **Emphasis Mine**

In the case of *N.I.C.N V Power Ind. Eng. Co. Ltd (1986) 1NWLR (Part 14) 1 at 29, Aniagolu J.S.C* had this to say;

*"equity as well all know, inclines itself to conscience reason and good faith and implies, system of law disposed to a just regulation of mutual rights and duties of men, in a civilised society.*

*Hence, in Earl of Oxford's case (1615), REP CHD, 20 Digest (Rep) 252 it is stated thus:*

*"Equity looks at the intent rather than the form and will impute an intention to fulfil that the appellant, far from scuttling away from its valid obligation to the respondent, will fulfil its agreement entered in January 1978, to indemnify the respondent form its loss."*

## **Emphasis Mine**

The Supreme Court in the case of *JFS INV. LTD V BRAWAL LINE LTD. (2010) 12 SC (PT 1) P. 110 @ P. 162 PARAS 5 -15* had this to say on the point;

*"... where the terms of the contract are clear and unambiguous the duty of the court is to give effect to them and on no account rewrite the contract for the Parties. In the absence of fraud, duress, misrepresentation, the parties are bound by the terms of the contract they freely entered into".*

## **Emphasis Mine**

The onus was on the Claimant to prove by credible evidence this claim and discharge the burden. In the light of the foregoing, I hold that the defendant has not discharged the evidential burden placed on him by virtue of Sections 131, 132 and 133 of the Evidence Act, 2011 as amended.

In ***INEME v. INEC & ORS CITATION: (2013) LPELR-21415(CA) @ PER OTISI, J.C.A. @ Pp. 19-21, Paras. F-C ;***

***"The Appellant has rightly submitted that the burden of proof lies on him who asserts. In civil cases, while the general burden of proof in the sense of establishing his case lies on the plaintiff, such a burden is not static. There may be instances in which, on the state of the pleadings, the burden of proof lies on the defendant. As the case progresses, it may become the duty of the defendant to call evidence in proof or rebuttal of some particular point which may arise in the case. See; Section 131, 132, 133, and 136 of the Evidence Act 2011, which provide thus:***

***131.***

***(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.***

***(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.***

***132. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.***

**133.**

***(1) In civil cases the burden of first proving existence or non-existence of a fact lies on the party against whom the judgment of the court would be given if no evidence were produced on either side, regard being had to any presumption that may arise on the pleadings.***

***(2) If the party referred to in subsection (1) of this section adduces evidence which ought reasonably to satisfy the court that the fact sought to be proved is established, the burden lies on the party against whom judgment would be given if no more evidence were adduced, and so on successively, until all the issues in the pleadings have been dealt with.***

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***(1) The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence unless it is provided by any law that the proof of that fact shall lie on any particular person, but the burden may in the course of a case be shifted from one side to the other.***

***(2) In considering the amount of evidence necessary to shift the burden of proof regard shall be had by the court to the opportunity of knowledge with respect to the fact to be proved which may be possessed by the parties respectively***

The burden of proof shifted from the Claimant to the Defendant because the Claimant asserted by proving with documentary and affidavit evidence that the Defendant had breached the terms of Exhibit A.

It is undisputed that there is an agreement between both parties and the terms of that agreement Exhibit A is before this court. The terms of this agreement afford this court opportunity to ascertain a breach of contract.

I find that the evidence of the Claimant remains unchallenged and uncontroverted, I accept same as true. I hereby determine the issue in favour of the Claimant as against the defendant. Therefore, I enter judgment in favour of the claimant and against the Defendant.

In the light of the foregoing, I hold that the Plaintiff has discharged the evidential burden placed on him by virtue of Sections 131, 132 and 133 of the Evidence Act, 2011 as amended.

The Claimantis hereby entitled to all reliefs as claimed.

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**HON. JUSTICE NJIDEKA  
KENECHUKWU NWOSU-IHEME  
[JUDGE]**

**Appearance of Counsel:**

1. L. U. Abanzukwe (holding brief for Chike Ekeocha) for the Claimant.
2. Defendant was absent and unrepresented.