

**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/1601/2022**

**BETWEEN**

**HOIL SUITES AND APARTMENTS LIMITED**

**CLAIMANTS**

**AND**

**ABUBAKAR YAHAYA USMAN**

**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 N930,000.00 (Nine Hundred and Thirty Thousand Naira) only being the 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 29<sup>th</sup> September, 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 N930,000.00 (Nine Hundred and Thirty Thousand Naira) only being the said indebtedness forthwith.

The claimant filed a 26-paragraph affidavit via Bruno Emecheta, an employee of the claimant company and Exhibits A-D, attached therewith. The Defendants despite having been served with the processes in this suit did not appear in court neither were they represented.

In the Claimants 26-paragraph affidavit in support of the originating summons Bruno Emecheta deposed as follows;

1. That one ZakariJibrin 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 ZakariJibrin prior to his vacating the said house belonging to the Claimant was indebted to the Claimant to the tune of N1, 595, 000 being arrears of rent.
3. That when the said ZakariJibrin was unable to offset the said debt in the sum of N1, 595, 000 (One Million, Five Hundred and Ninety Five 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 29<sup>th</sup> September, 2021 with the Claimant wherein he accepted responsibility for the payment of the said debt owed the Claimant by ZakariJibrin in the event that the said ZakariJibrin failed, refused or neglected to pay the said sum of N1, 595, 000 (One

Million, Five Hundred and Ninety Five Thousand Naira) only due to the Claimant on or before the 29<sup>th</sup> day of March, 2022.

5. That the guarantor made an initial transfer of the sum of N200, 000 (Two Hundred Thousand Naira) only into the Access Bank Account of the solicitors to the Claimant in this suit with account number **0019217087** as part payment of the said debt owed to the Claimant.
6. That the Defendant pleaded to be allowed to offset the balance of N1, 395, 000 (One Million, Three Hundred and Ninety-Five Thousand Naira) only in three installments of N465, 000 (Four Hundred and Sixty-Five Thousand Naira) each.
7. That the Defendant thereafter issued three post-dated cheques for the balance being the sum of N1, 395, 000 (One Million, Three Hundred and Ninety-Five Thousand Naira) only. That the Defendant duly issued the three Zenith Bank Plc cheques for the sum of N465, 000 (Four Hundred and Sixty-Five Thousand Naira) only each dated 29/11/2021, 28/1/2022 and 29/3/2022 respectively. Copies of the three cheques were attached as Exhibits B, C & D.
8. That by the said guarantor's agreement, the Defendant herein will be discharged from all obligations under the said agreement when he pays the said debt in full within the time fixed in the said guarantor's agreement through bank transfers; and thereafter the three Zenith Bank Plc post-dated cheques made payable to the Claimant's solicitors, Chike S. Ekeocha & Associates shall be returned to the Defendant. That the Defendant was mandated by the Claimant to make all payments through the Access Bank Plc account number 0019217087 belonging to her solicitors, Chike S. Ekeocha & Associates.

9. That on the 15th of December, 2021 the Defendant made the payment of the sum of N465, 000 (Four Hundred and Sixty-Five Thousand Naira) only representing the payment of the first installment of the said debt as endorsed on the Zenith Bank Plc cheque of 29/11/2021 to the Claimant through the Access Bank Plc account of the solicitors to the Claimant, Chike S. Ekeocha & Associates with account number 0019217087. A copy of the statement of account of the Claimant's solicitors for the period 1<sup>st</sup> – 31<sup>st</sup> December 2021 showing the said credit/payment was attached as Exhibit E.
10. That when the payments in the Zenith Bank Plc dated 28/1/2022 and issued by the Defendant for the second installment became due, the Defendant refused to make the said payment. That the refusal to make payment is a requirement under the guarantor's agreement.
11. That when the payments in the Defendant's Zenith Bank Plc cheque dated 29/3/2022 and issued by the Defendant for the third installment became due, the Defendant refused to make the said payment. That till date the Defendant has failed and refused to make the said third payment as he is required under the guarantor's agreement.
12. That the Defendant has not made any payment to the Claimant through the solicitors, Chike S. Ekeocha & Associates domiciled with Access Bank PLC with number 0019217087 for the 2<sup>nd</sup> and 3<sup>rd</sup> installments of N465, 000 each as was done with the 1<sup>st</sup> installment. That the Defendant has not equally paid the 2<sup>nd</sup> and 3<sup>rd</sup> installments directly into any account belonging to the Claimant.
13. That the total sum being debt due and payable from the Defendant to the Claimant is the sum of N930, 000 (Nine Hundred and Thirty Thousand Naira) only, as a result of the default by the Defendant to

pay the 2<sup>nd</sup> and 3<sup>rd</sup> installments of N465, 000 each to the Claimant as shown on the face of Exhibits C & D respectively.

14. That by the agreement of the parties the Claimant is entitled to sue the Defendant in the event of a persistent default as in this case, to recover any part of the said debt that remains unpaid after the 29<sup>th</sup> day of March 2022.
15. That despite repeated demands made via several phone calls put across to the Defendant has refused and failed to pay over the said sum to the Claimant.

### **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: ***ASAFI 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 the 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: Ogojeofo vs. Ogojeofo (2006) 1 S. C. (PT.1) 157."**

The case of the Claimant in a nutshell is 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, 395,000 where the said ZakariJibrin fails to pay the Claimant.

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

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

- 1. *The Guarantor undertakes to personally pay the balance of the said debt due to the creditor being the sum of N1, 395, 000(One Million, Three Hundred and Ninety-Five Thousand Naira)only within six (6) months from the date of the execution of this agreement.***
- 2. *The guarantor undertakes to complete the payment on or before the 29th day of March 2022.***
- 3. *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.***
- 4. *The Guarantor undertakes that he shall issue three (3) post-dated cheques with dates to cover the said sum of N1, 395, 000(One Million, Three Hundred and Ninety-Five Thousand Naira)only being the debt owed the creditor by the said ZakariJibrin in favour of the Creditor.***

- 5. The Guarantor shall take the officers of the Creditor to verify his residence.**
- 6. Upon the execution of this agreement, the apartment occupied by Zakari Jibrin shall be inspected by the caretaker, Mr Benne, to certify if there is any damage done by the said Zakari Jibrin in the apartment that needs to be restored by him. If such restoration of the apartment before the said Zakari Jibrin will evacuate his belongings from the apartment.**
- 7. If the cost of the said restoration is provided or if there is such damage to the said apartment, the said Zakari Jibrin shall be at liberty to remove his belongings from the apartment; and leave the Estate.**
- 8. The Guarantor accepts personal liability and 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, 395, 000 (One Million, Three Hundred and Ninety-Five Thousand Naira) only or any part thereof due to the creditor that may be due or outstanding at any time.**
- 9. That the Creditor shall discharge the Guarantor from all obligations under this agreement if the Guarantor pays the said debt in full through by bank transfers; and hand over the post-dated cheques 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 from 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 Plaintiff 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 affords 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 light of the foregoing, I hold that the Claimant 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 ChikeEkeocha) for the Claimant.
2. Defendant was absent and unrepresented.