

**IN THE HIGH COURT OF JUSTICE OF THE F.C.T.**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT APO, ABUJA**  
**ON FRIDAY, THE 21<sup>ST</sup> DAY OF OCTOBER, 2022**  
**BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINI MUSA**  
**JUDGE**

**SUIT NO.: FCT/HC/CV/1999/2021**

**BETWEEN:**

**NESTEL PROPERTIES LTD**

**CLAIMANT**

**AND**

**MR CHUKWUDI EGBOH**

**DEFENDANT**

**JUDGMENT**

This Judgment is on the suit of the Claimant which was brought by way of a Writ of Summons on the Undefended List.

By way of a Writ of Summons dated and filed on the 16<sup>th</sup> of August, 2021, the Claimant instituted this suit under the Undefended List procedure seeking the following reliefs from this Honourable Court against the Defendant:-

1. Judgment against the Defendant in the sum of ~~N~~1,000,000.00 (One Million Naira) only being arrears of rent period for 1<sup>st</sup> May, 2019 to 30<sup>th</sup> April, 2020.
2. Judgment against the Defendant in the sum of ~~N~~14,000,000.00 (Fourteen Million Naira) only being rent period for 1<sup>st</sup> May, 2020 to 30<sup>th</sup> April, 2021.

3. 10% of the Judgment sum from the date of judgment till liquidation of the sum.
4. The cost of filing this suit.
5. And for such further order or orders as this Honourable Court may deem fit to make in the circumstances.

The Writ of Summons was supported by a 15-paragraph affidavit deposed to by one Mr E. E. Emerson, the resident Manager in the office of the Claimant. According to the deponent, the Claimant let out its property, particularly described as a five-bedroom duplex all rooms *en suite* with two-room boys' quarters, swimming pool and security post situate at No. 12 Queen Elizabeth Crescent, Asokoro, Federal Capital Territory, Abuja to the Defendant at the rate of ₦14,000,000.00 *per annum* in 2015. The deponent further deposed that the Defendant was still indebted to the Claimant in the sum of ₦1,000,000.00 (One Million Naira) only being the outstanding arrears due on the 2019/2020 tenancy and the sum of ₦14,000,000.00 (Fourteen Million Naira) only being the arrears of rent for the tenancy period 2020/2021.

It was the case of the Claimant as evinced in the affidavit in support of the Writ of Summons that the Claimant has made repeated demands for the payment of these sums which came up to ₦15,000,000.00 (Fifteen Million Naira) only but the Defendant had willfully refused to pay this sum to the Claimant. Because of the Defendant's unwillingness to pay his debt to the Claimant, the Claimant has instituted this suit under the Undefended List procedure to recover the above-stated sum of ₦15,000,000.00 (Fifteen Million Naira) only.

In support of the depositions in the affidavit, the Claimant attached the following documentary exhibits: the tenancy agreement between the Claimant and the Defendant in respect of the property described as a five-bedroom duplex all rooms *en suite* with two-room boys' quarters, swimming pool and security post situate at No. 12 Queen Elizabeth Crescent, Asokoro, Federal Capital Territory, Abuja marked as **Exhibit A**; a notice of reminder of the imminent determination of the tenancy by effluxion of time dated the 28<sup>th</sup> of January, 2020 and a proof of delivery of the same to the Defendant marked as **Exhibits B1 and B2** respectively; and a letter of demand from the Claimant to the Defendant for the payment of the above-stated sum and a proof of delivery of same to the Defendant marked as **Exhibits C1 and C2** respectively.

This Court placed the suit on the Undefended List and marked the Writ of Summons as “undefended” on the 22<sup>nd</sup> of February, 2022. It also fixed the 7<sup>th</sup> of April, 2022 as the return date. On the return date, learned Counsel for the Claimant, Darlington I. Dike Esq., brought an application for leave of Court to serve the Defendant by substituted means. The Court granted the relief sought and adjourned the suit to the 22<sup>nd</sup> of June, 2022 for hearing. On the 22<sup>nd</sup> of June, 2022, learned Counsel for the Defendant informed the Court that the Claimant was unable to serve the Defendant pursuant to the order of the Court. The case was accordingly adjourned to the 6<sup>th</sup> of October, 2022 to enable the Claimant do the needful. On the 6<sup>th</sup> of October, 2022, neither the Defendant nor his Counsel was in Court. Satisfied that the Defendant had been served with the processes and the hearing notice in respect of this suit against that date, the Court granted leave to the Claimant to proceed. Learned Counsel argued the case of the Claimant

and urged the Court to enter Judgment in favour of the Claimant pursuant to the provisions of Order 35 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules, 2018.

The question before this Court, therefore, is this: ***“Whether from the facts and circumstances of this case, the suit of the Claimant is not maintainable under the Undefended List Procedure and the Claimant is not entitled to Judgment on the basis of the unchallenged depositions in the affidavit in support of the Writ of Summons on the Undefended List?”***

To address this question, the provisions of Order 35 of the Rules of this Court, 2018 are relevant. The said Order provides that

Section 35

***“1. (1) Where an application in Form 1, as in the Appendix is made to issue a writ of summons in respect of a claim to recover a debt or liquidated money demand, supported by an affidavit stating the grounds on which the claim is based, and stating that in the deponent’s belief there is no defence to it, the judge in chambers shall enter the suit for hearing in what shall be called the “Undefended List”.***

***(2) A writ of summons for a suit in the undefended list shall contain the return date of the writ.***

***2. A claimant shall deliver to a registrar on the issue of the writ of summons, as many copies of the supporting***

***affidavit, as there are parties against whom relief is sought, for service.***

***3. (1) Where a party served with the writ delivers to registrar, before 5 days to the day fixed for hearing, a notice in writing that he intends to defend the suit, together with an affidavit disclosing a defence on the merit, the court may give him leave to defend upon such terms as the court may think just.***

***(2) Where leave to defend is given under this Rule, the action shall be removed from the Undefended List and placed on the ordinary Cause List; and the Court may order pleadings, or proceed to hearing without further pleadings.***

***4. Where a defendant neglects to deliver the notice of defence and an affidavit prescribed by 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.***

***5. A court may call for hearing or require oral evidence where it feels compelled at any stage of the proceedings under Rule 4.”***

The Courts have made pronouncements in a plethora of cases on the importance of this *sui generis* procedure and the circumstances under which it can be resorted to. In ***Asuquo v. Udoaka (2021) 15 NWLR (Pt. 1798) 177 S.C. at 188, paras E - F***, the Supreme Court per Okoro, JSC, commenting on Order 23 of the High Court of Cross River State (Civil Procedure) Rules which is *in pari materia* with Order 35 of the Rules of this Court held that

**“The various rules of courts provide for cases involving liquidated money demands to be placed on undefended list and heard expeditiously without the court having to go the whole hog of a full blown trial with attendant expenses, frustration and delay. The procedure is deliberately designed to allow for quick dispensation of justice.”**

See also *Zakhem Oil Serve Ltd. v. Art-in-Science Ltd. (2021) 18 NWLR (Pt. 1808) 341 S.C. at 363, paras F-H*, where the Supreme Court per Abba Aji, JSC, examining Order 11 of the High Court of Rivers State (Civil Procedure) Rules, 2006, a corresponding provision to Order 35 of the Rules of this Court, 2018, held *at p. 363, paras F – H* that

***“The purpose of rules under undefended list procedure is to ensure quick dispatch of certain types of cases such as involving debts or liquidated money claims. In other words, it is to enable a plaintiff whose claim is unarguable in law and where the facts are undisputed and it is inexpedient to allow a defendant to defend for mere purposes of delay, to enter judgment in respect of the amount claimed.”***

As to the duty incumbent on the Court when it is confronted with a Writ of Summons placed under the Undefended List, the apex Court in *Zakhem Oil Serve Ltd. v. Art-in-Science Ltd. (2021), supra at Pp.357, paras. D-G; 361, paras. D-F;366, paras. B-F* held that

***“...where a claimant in respect of a claim to recover a debt or liquidated money demand believes that there is no defence to his claim, he shall make an application to a court***

***for the issue of a writ of summons in respect of the claim to recover such debt or liquidated money demand and shall support the application by an affidavit setting forth the grounds upon which the claim is based and stating that in the deponent's belief, there was no defence thereto. And the court shall, if satisfied that there are good grounds for believing that there is no defence thereto, enter the suit for hearing in what shall be called "undefended list" and mark the writ of summons accordingly and enter thereon, a date for hearing suitable to the circumstances of the particular case.***

I have examined the case of the Claimant and, in particular, have paid close attention to the facts contained in the affidavit in support of the Writ of Summons on the Undefended List and the exhibits attached to the affidavit in support of the Writ of Summons on the Undefended List. I have no doubt in my mind that the facts contained therein satisfy the requirements for placing the suit on the Undefended List. First, the claim of the Claimant is for a liquidated money demand, that is, the total and certain sum of ₦15,000,000.00 (Fifteen Million Naira) only. The facts supporting this claim are found in paragraphs 5, 6, 7, 8, 9, 10, 11, 12, and 13 of the affidavit in support of the Writ of Summons. Furthermore, **Exhibit A** disclosed the existence of a tenancy relationship between the Claimant and the Defendant. **Exhibit B**, dated 28<sup>th</sup> of January, 2020, showed that the Claimant reminded the Defendant of the fact that he had not paid the sum of ₦1,000,000.00 (One Million Naira) only which is outstanding on the rental period 2019/2020. The exhibit further reminded him to pay the rent

for the rental period of 2020/2021 which rent was fixed at ₦14,000,000.00 (Fourteen Million Naira) only.

Following the refusal or failure of the Defendant to comply with **Exhibit B**, the Claimant, via **Exhibit C** dated the 21<sup>st</sup> of January, 2021 demanded from the Defendant, the total sum of ₦15,000,000.00 (Fifteen Million Naira) only from the Defendant being the arrears of rent due to the Claimant from the Defendant in respect of the property. It is my considered view, and I so hold, that the suit was properly commenced and is qualified eminently maintainable under the Undefended List.

I have taken my time to analyse the facts of this case because the Court has a duty to examine the depositions in the affidavit in support of the Writ of Summons on the Undefended List in order to satisfy itself that the suit is such that can be brought and maintained under the Undefended List. The Court is not relieved of this duty even where the Defendant failed, refused or neglected to file a Notice of Intention to Defend as well as the affidavit disclosing a defence on the merit. In ***Ntekim v. Oron Local Govt (2010)***, ***infra***, at 235, ***paras C – F***, the Court of Appeal held that

***“Failure of a defendant to file a notice of intention to defend does not relieve the trial court of the judicial duty to consider whether the action is one that should be placed on the undefended list. The plaintiff's entitlement to judgment in such circumstance depends on whether the primary duty to scrutinize whether the case is a proper one to be placed on the undefended list was discharged by the trial court. Where the court failed or neglected to discharge the primary duty of***



***ascertaining whether the plaintiff's action disclosed a prima facie case to warrant its being placed on the undefended list, the remiss in duty is fraught with the consequences that the court lacks the competence to hear the action, and if the court heard it based on failure of the defendant to file the statutory notice, the trial would be a nullity as by so doing, it would shift the burden of proof to the defendant to defend an action that had not been shown to disclose a prima facie case to warrant the defendant being called upon to defend.”***

It is the urge to avoid the unpleasant consequences of such judicial remiss that impelled me to scrutinise the depositions in the affidavit of the Claimant, the exhibits it attached to the affidavit as well as the records of this Court to determine whether to proceed to hear the suit under the Undefended List Procedure. I have stated earlier that the Claimant, unable to serve the Defendant with the originating processes, sought for and obtained the leave of the Court to serve him with the processes via substituted means – a prayer this Court granted. The records of this Court showed that the Defendant was served as per the Orders of this Honourable Court. Unfortunately for the Defendant, he did not file any process in response to the Writ of Summons on the Undefended List. Specifically, there was no Notice of Intention to Defend and no Affidavit disclosing a defence on the merit. Order 35 Rule 4 is very clear on the Court should do in the circumstance. It provides that

***“Where a defendant neglects to deliver the notice of defence and an affidavit prescribed by 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.”***

This has made the task of this Court easy. In the absence of a Notice of Intention to Defend and an affidavit disclosing a defence on the merit, and after giving due consideration to the entire facts of this case, this Court has a bounden duty to enter Judgment in favour of the Claimant without more. This is the appropriate thing to do. In ***Ntekim v. Oron Local Govt (2010) 16 NWLR (Pt. 1219) 209 C.A at Pp. 233, paras. F-G; P. 234, paras. F-G 241, paras. F-H***, the Court of Appeal, while commenting on the provisions of Order 23 Rule 4 of the High Court of Akwa Ibom State (Civil Procedure) Rules (which is *in pari materia* with the provisions of Order 35 Rule 4 of the Rules of this Court, 2018), held that

***“By the provision of Order 23 Rule 4 of the High Court of Akwa Ibom State (Civil Procedure) Rules, in a suit entered on the undefended list for hearing, if the defendant neglects to deliver the notice of defence and affidavit prescribed by Rule 3(1) of the Rules or is not given leave to defend by the court, the suit shall be heard as an undefended suit, and judgment given thereon, without calling upon the plaintiff to summon witnesses before the court to prove his case formally.***

***“When a case on the undefended list comes to court on the return date, the court has only one duty, normally to see whether the defendant has filed a notice of intention to defend and an affidavit disclosing his defence. If no such notice and affidavit have been filed before the return date, the***

***court has no choice in the matter but to proceed to judgment.”***

As I have noted earlier, the Defendant did not file any process challenging the suit of the Claimant. The implication is that the Defendant has admitted the facts as contained in the affidavit in support of the Writ of Summons on the Undefended List. In ***Owakah v. Rivers State Housing & Property Development Authority & 1 Other (2022) 12 NWLR (Pt. 1845) 463 S.C. Pp. 497-498, paras. G-A; 515, paras. D-G***, the Supreme Court per Tijani Abubakar, JSC reiterated this trite position of the law when it succinctly held that ***“Pleaded facts not disputed, challenged, or controverted are deemed admitted and no further proof of such facts is necessary.”*** It is my considered opinion, therefore, and I so hold, that the suit of the Claimant is maintainable under the Undefended List Procedure. It is also my considered view, and I so hold, that, after giving due consideration to the facts and circumstances of this case, the Claimant is entitled to Judgment as per his claims as contained in the Writ of Summons on the Undefended List.

Accordingly, therefore, I hereby enter Judgment in favour of the Claimant and against the Defendant as follows:

- 1. THAT the Defendant is hereby ordered to pay to the Claimant the sum of ₦1,000,000.00 (One Million Naira) only being the sum outstanding as arrears of rent for the tenancy period beginning from the 1<sup>st</sup> May, 2019 and ending on the 30<sup>th</sup> April, 2020.**
- 2. THAT the Defendant is hereby ordered to pay to the Claimant the sum of ₦14,000,000.00 (Fourteen Million Naira) only being the**

amount of money due to the Claimant from the Defendant as arrears of rent for the tenancy period beginning from the 1<sup>st</sup> May, 2020 and ending on the 30<sup>th</sup> April, 2021.

3. THAT this Court hereby awards 10% as interest on the Judgment sum from the date of Judgment till the Judgment sum is fully liquidated.
4. THAT this Court hereby awards the sum of ₦200,000.00 (Two Hundred Thousand Naira) only to the Claimant as the cost of prosecuting this suit and payable by the Defendant.

This is the Judgment of this Honourable Court delivered today, the 21<sup>st</sup> day of October, 2022.

**HON. JUSTICE A. H. MUSA**  
**JUDGE**  
**21/10/2022**

**APPEARANCE:**

**For the Claimant**  
**Darlington I. Dike Esq.**

**For the Defendant**  
**No Legal representation**