

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT GWAGWALADA-ABUJA  
ON MONDAY THE 13<sup>TH</sup> NOVEMBER, 2023**

**SUIT NO: FCT/HC/CV/2654/2022**

**BEFORE HIS LORDSHIP: HON. JUSTICE A. I. AKOBI**

**BETWEEN**

**ENGR. EKE UKWA.....CLAIMANT**

**AND**

**MR. SAVIOUR ENYIEKERE.....DEFENDANT**

**JUDGMENT**

The claimant through his counsel V. I. Uma Esq filed a writ of summons on the 09/08/2022 under the undefended list procedure against the defendant. It is supported by affidavit of 9 paragraphs deposed to by one Salome Akpan, a litigation secretary in the law firm of **N. J. Kalu & CO.**, annexed with 5 exhibits marked A – E. Reliefs sought are:

1. The sum of Seven Million, Three Hundred Thousand Naira (N7, 300, 000, 00) only due and payable by the defendant to the claimant as outstanding rent.
2. Interest on the said sum of Seven Million, Three Hundred Thousand Naira (N7, 300, 000.00) only at the rate of 10% from the date of judgment until the entire sum is liquidated.

3. The cost of this suit calculated at Five Hundred Thousand Naira (N500, 000) only.

By the facts disclosed from the affidavit evidence, the relationship between the claimant and the defendant is that of landlord and tenant. It is further disclosed that the defendant rented a 4 (four) bedroom semi-detached duplex located at plot 1424 Gudu District, Abuja from the claimant as a yearly tenant at the rate of Two Million Five Hundred Thousand Naira annually. The defendant paid the full rent for the first year evidenced by receipt issued to him dated 15/08/2016 annexed as exhibit A. It is averred that after the expiration of initial rent the defendant did not renew the rent and became evasive. When he was eventually reached, the defendant was able to convince the claimant for more time as he claimed he was expecting money from investment/project and even promised to pay the whole arrears as well as advance payment.

The claimant believed him and let him be until when it became obvious to the claimant sometime in October 2019 for almost three years that the defendant was not willing to pay the rent arrears save the payment of N200, 000.00 in 2019.

In view of the development, it is averred that the claimant engaged the service of a lawyer V. I. Uma Esq who on his instruction issued the requisite notice to be serve on the defendant to deliver possession and pay the arrears of rent from 15<sup>th</sup> March, 2017 to 14<sup>th</sup> March, 2020 calculated as Seven Million, Five Hundred Thousand Naira (N7, 500, 000) save for the two hundred thousand naira (N200, 000.00) already paid. It in further averred that on getting to the property in March,

2020, the defendant had secretly moved out his belonging from the property and absconded and that all effort by the claimant to reach him on phone was thwarted as he continued to ignore calls from the claimant. Nevertheless, that the claimant's counsel on the instruction of the claimant sent a demand letter dated 21/07/2020 to the defendant via his WhatsApp message. Subsequently, that the claimant again through his counsel whom he hired for N500, 000 initiates this action against the defendant on the instruction of the claimant. It is alleged in paragraph 5 of the affidavit in support that the defendant has no defence to the claim and that the defendant will continue to refuse to pay the sum of N7, 300 being arrears of rent from 15<sup>th</sup> March 2017 to 14<sup>th</sup> March, 2020 except by the order of the court.

It is apt to state here that the court upon application from the applicant made order for substituted service of the originating and all other process on the defendant after efforts to effect personal service failed. The record of the court shows that the originating processes was served on the defendant in line with the order of the court followed by service of hearing notices for every other hearing date.

There is no denying the fact that **Order 35 Rule 3(1) of the High Court of Federal Capital Territory Civil Procedure Rules 2018** provides that a defendant sued under the Undefended List procedure has time within which to file a Notice of Intention to defend the suit supported by an affidavit disclosing a defence on the merit. The Order and rule reads as thus:

“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”. The record of the court via certificate of service shows that the writ was served on the defendant on the 29<sup>th</sup> March 2023 and the hearing was fixed for 21/09/23, over a period of 5 months; the defendant did not file notice of intention to defend the suit in line with order 35 rule 3(1) of the rules of this court. The pressing question is what is the effect of failure to file notice of intention to defend? To answer this question, I resort to judicial pronouncement in the case of **Uzakah v. Okeke (2017) LPELR-43445(CA)**. In that case, the Court of Appeal upheld the decision of the lower court which is that in the absence of a notice of intention to defend the suit, the plaintiff is entitled to succeed.

The Un defended List Procedure under which this suit is brought is a special procedure which an aggrieved litigant employs in order to get a quick judgment in a subject matter that borders on liquidated money demand. "Liquidated claim or liquidated demand" is defined in Black's Law Dictionary 7th edition as: "A claim for an amount previously agreed on by the parties or that can be precisely determined by operation of law or by the terms of the parties' agreement". In **MAJA VS SAMOURIS (2002) 7 NWLR (Pt. 675) 78 at page 102** the apex Court, pronounced thus: "A liquidated demand is a debt or specific sum of money usually due or payable and its amount must be already ascertained or capable of being

ascertained as a mere matter of arithmetic without any other or further Investigation. Whenever therefore, the amount to which plaintiff is entitled can be ascertained by calculation or fixed by any scale of charges or other positive data, it is said to be liquidated or made clear. Again, where the parties to a contract as part of the agreement between them, fix the amount payable on the default of one of them or in the event of breach by way of damages, such sum is classified as liquidated damages where it is in the nature of genuine pre-estimate of the damage which would arise from breach of the contract so long as the agreement is not obnoxious as to constitute a penalty and it is payable by the party in default"...

In the instant case, there is no denial that the parties agreed and fixed the rent over the subject matter for N2,500,000 (Two million five Hundred thousand naira) annually. The defendant clearly paid the said amount for the first year shows in exhibit A which is a receipt of payment but defaulted to pay subsequently for a period of three years.

After careful reading of the affidavit in support of the writ of summons and considering the definition ascribed to liquidated money demand, I have no doubt in my mind and I so hold that the sum of Seven Million Three Hundred Thousand Naira (N7, 300, 000.00) being demanded by the claimant in this writ is a liquidated money demand; and the defendant having failed or neglected to deliver notice of defence and an affidavit prescribed by rules 3(1) of the rules of this court, I therefore hold that the claimant's suit is rightly heard under order 35 of the rules of this court.

Consequent to the above, the suit of the claimant succeed and I invoke my power under order 35 rules 4 of the rules of this court and deliver judgment in favour of the claimant and make the following orders:

- a. That the claimant is entitled to the sum of Seven Million Three Hundred Thousand Naira (7,300,000.00) due from the defendant being an outstanding rent arrears from 15<sup>th</sup> March 2017 to 14<sup>th</sup> March 2020 in respect of the subject matter, a four bedroom semi-detached duplex located at plot 1424 Gudu district Abuja and the amount be paid with immediate effect.
- b. Interest on the said sum of Seven Million Three Hundred Thousand Naira (N7, 300, 000.00) at the rate of 10% from the date of judgment until the entire sum is liquidated being a post judgment sum statutorily provided for under order 39 rule 4 of the rules of this court is hereby awarded in favour of the claimant against the defendant.
- c. Having awarded a post judgment sum of 10% a claim for cost of litigation is refused.

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**HON. JUSTICE A. I. AKOBI**  
**13/11/23**