

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

**CLERK: CHARITY ONUZULIKE  
COURT NO. 15**

**SUIT NO: FCT/HC/CV/3093/17  
DATE: 9/2/2021**

**BETWEEN:**

**NOCAD INTERGRATED SERVICE  
NIGERIA LIMITED.....PLAINTIFF**

**AND**

**FEDERAL MINISTRY OF FINANCE.....DEFENDANT**

**JUDGMENT**

**(DELIVERED BY HON. JUSTICE SULEIMAN B. BELGORE)**

In this suit, marked undefended, the Plaintiff, NOCAD INTEGRATED SERVICE NIGERIA LIMITED, claims against the Defendant, FEDERAL MINISTRY OF FINANCE, as follows:

- (1) An Order of this Honourable Court directing the Defendant to pay the Plaintiff the sum of **N3,312,600.00** (Three Million, Three Hundred and Twelve Thousand, Six Hundred Naira) being the value of the Books supplied to the Defendant by the Plaintiff in 2011.
- (2) An Order of this Honourable Court directing the Defendant to pay the sum of **N2,000,000.00** (Two

Million Naira) only being the sum of money paid to the Plaintiff's Counsel to institute this action.

- (3) The sum of **N500,000.00** (Five Hundred Thousand Naira) as the cost of this suit.

In support of the Writ of Summons filed pursuant to Order 35 Rules 1 - 5 of the Federal Capital Territory High Court (Civil Procedure) Rules, 2018, is a 15-paragraphs affidavits deposed to by one Mrs. GRACE EMENOGU of No. 7, Ike Anobi Street, Off Odumbo Street, Solomade Ikorodu, Lagos. Annexed to the supporting affidavit are annexures A, B, C, D, E, F, & G.

**Annexure A:** Is the Plaintiff letter to the Defendant dated 16/02/2017

**Annexure B:** Is the Plaintiff's letter to the Defendant dated 3/04/2017

**Annexure C:** Is the Plaintiff's letter to the Defendant dated 28/07/2017

**Annexure D:** Is the Plaintiff's letter to the Defendant dated 22/08/2017

**Annexure E:** Is the Plaintiff's letter to the Defendant dated 23/08/2017

**Annexure F:** Is the Defendant's letter to the Plaintiff dated 24/07/2017

**Annexure G:** Is the Plaintiff's Solicitor's (IKECHUKWU UZUEGBU & CO) to the Defendant dated 30/08/2017.

The case of the Plaintiff by way of summary is that sometimes in the year 2011, the Defendant awarded a contract to the Plaintiff worth **N3,312,600.00** (Three Million, Three Hundred and Twelve Thousand, Six Hundred Naira) only for supply of Books to the Defendant's library. The Plaintiff supplied the Books in accordance with the terms of the contract and the Defendant collected the Books.

When the Defendant refused or failed to pay the Plaintiff they (Plaintiff) wrote letters of demand asking them (Defendant) to honour their own obligations. See Annexures A - E.

Later as a result of pressure or apparently disturbed, the Defendant wrote annexure "F" asking them to confirm that they have received the total contract sum (**N3,312,600.00**) paid to them through Mrs. Bose Obamoh. This Mrs. Bose Obamoh was a Deputy-Director (Library Services) in the Ministry at the material time. And she was the person that received the money from the Ministry ostensibly to pay the plaintiff. But alas she did not pay the money to the Plaintiff. When it became apparent to both parties, that the Plaintiff was not given the contract sum by the Defendant staff, they both agreed on settlement option. The settlement option was unduly protracted and in the long run, the Court was informed that settlement had failed.

The Plaintiff believed the Defendant had no defence to this action and said so point blank in paragraph 13 of the affidavit in support of their claim.

Upon service of the Writ of Summons together with the supporting affidavit on the Defendant, they filed no memorandum of appearance nor any counter affidavit showing a defence to the action. They simply did not file any notice of intention to defend the suit.

The case eventually came up in Court yesterday the 8/02/2021 for hearing. The Defendant were absent in Court despite the hearing notice served upon them.

I would have invoked the provision of Order 35 Rule 4 to this case yesterday and enter judgment for the Plaintiff. But because of my tight schedule I adjourned the case till today.

It is settled law that when a matter placed under the undefended list come up for hearing, the Court has only one duty on that day. And the duty is to see if a Notice of intention to defend with a counter-affidavit in support was filed by the defendant. If none was filed, the Court must proceed to enter judgment in favour of the Plaintiff. See **BEN THOMAS HOTEL LTD VS. SEBI FURNITURE LTD (1989) 5 NWLR (PT. 123) 523 SC; HAIDO VS. USMAN (2004) 3 NWLR (PT. 859) 65.**

Furthermore, Order 35 Rule 4 of the Rules of this Court provides:

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

My task is now simple. I had earlier said in this judgment that the Defendant who were duly served with the Writ of Summons and the Plaintiff’s affidavit in support filed no counter affidavit by way of challenging the suit. The implication is that I must follow the statutory provision of Order 35 Rule 4 and the established case law authorities.

On the strength of the provisions of Order 35 Rule 4 and the Supreme Court's decision in **BEN THOMAS HOTEL LTD (Supra)**, I hereby enter judgment in favour of the Plaintiff save prayers or claims (2) and (3) thereof which are not proved by the affidavit evidence supplied.

For avoidance of doubt, and for purposes of clarity the Defendant is ordered to pay the Plaintiff the sum of **N3,312,600.00** (the contract sum for the supply of Books) to the Defendant which the Plaintiff performed and the Defendant accepted.

That is the judgment of this Court.

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**S. B. Belgore**  
**(Judge) 9-2-21.**