

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

BEFORE HON. JUSTICE J.E. OBANOR
ON WEDNESDAY THE 31ST DAY OF MARCH, 2021.

SUIT NO: FCT/HC/CV/3396/2020

BETWEEN:

- 1. WAVE YOUR FLAG LTD**
- 2. TOCHUKWU CHUKWUMA NRABALUCLAIMANTS**

AND

**ROAD TRANSPORT EMPLOYER ASSOCIATION
OF NIGERIADEFENDANT**

JUDGMENT

On 10/12/2020, the Claimants took out a Writ of Summons under the Undefended List Procedure against the Defendant. They claim as follows against the Defendant:-

- a. AN ORDER placing this suit on the UNDEFENDED LIST for hearing.
- b. An Order marking the suit as Undefended.
- c. An Order of payment of the sum of One Million, Fifty One Thousand, Five Hundred Naira (N1,051,500.00) only to the Claimant being balance of money unpaid for a contract of supply of Flags and Coat of Arms by the Claimants in November 2014.
- d. Payment of 25% interest per annum on the sum to the date of judgment.
- e. Payment of 10% interest on the judgment sum till the liquidation of the judgment debt.
- f. General damages in the sum of three million naira only being estimated sum of expenses incurred in coming to Abuja from Port Harcourt and staying in Hotels.

g. The cost of prosecuting the Claim.”

The writ is supported by 20-paragraph affidavit deposed to Tochukwu Chukwuma Nrabalu.

Records of Court show the writ and supporting affidavit and a Hearing Notice were served on the Defendant on 5th March, 2021. Another hearing notice was also served on the Defendant on 29th March, 2021.

The Defendant did not file any process in response to the claim despite the opportunity given to it.

At the hearing on 30/3/2021, Counsel for the Claimant urged the Court in the terms of the Writ of Summons. The Defendant was absent and not represented by Counsel. There was no written explanation for its absence filed in Court. Judgment was then reserved for 31/3/2021.

I have given due consideration to the reliefs sought in the Writ of Summons and averments in the Claimants' affidavit in support of them. The cardinal issue for determination is whether or not the Claimant has made out a case to justify a grant of the reliefs sought.

As aforesaid, the Claimant's claim is one commenced under the Undefended List Procedure.

Order 35 Rules 1 to 5 of the Rules of Court 2018 has made provisions guiding matters commenced under the undefended List Procedure.

Order 35 Rule 3 (1) and (2) provides that:-

“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.”

In Rule 4, of the Order, it is provided 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.”

In this case, as aforesaid, the Writ of Summons along with the affidavit in support and Hearing Notices were served on the Defendant. It did not file a Notice of Intention to defend along with an affidavit disclosing a defence on the merit as prescribed by Order 35 Rule 3(1) of the Rules of Court 2018. The case was accordingly heard without a defence by the Defendant. Therefore, whether or not judgment can be entered for the Claimant depends on if they have made out a case in their affidavit which entitles them to a judgment.

I have accordingly examined the averments in their affidavit. It was averred in the affidavit inter alia, that the Claimants were contracted by the Defendant sometime in July 2014 to produce flags, coat of arms and other souvenirs for it and an invoice to that effect with No 000008 was prepared on 24th November 2014 and delivered to the Defendant in the sum of One Million, Five Hundred and one thousand, five hundred naira (N1,501,500.00). A copy of the invoice is attached as Exhibit A. The Claimants prepared a delivery order dated 24th November 2014 and delivered the flags, coat of Arms and other souvenirs on 13th December 2014 to the Defendant. The delivery note is attached as Exhibit B. On 18th June 2015 Claimants wrote to the Defendant demanding payment of the contract sum but received no reply. A copy of the letter is attached as exhibit C. Out of the total contract sum, only four hundred and fifty thousand naira (N450,000.00) has been paid to the Claimants leaving a balance of the Claimed sum. On 1st March 2019 the Claimants wrote an appeal

letter to the Defendant for the payment of the balance of N1,051,500.00 but have not received any response. A copy of the appeal letter is attached as Exhibit D. On 3rd May 2019, the Claimants wrote another letter requesting for the payment to no avail. A copy of the letter is attached as Exhibit E. The Claimants approached the Public Complaints Commission for advice and intervention on the matter in early 2020 and a case conference was held between the parties with the commission on 11th February 2020, where the Executive Secretary of the Defendant promised to pay the sum of Seven hundred and Fifty thousand Naira to the Claimants on or before 6th March 2020 which was not honoured. On 3rd May 2019 the Claimants applied to the Legal Aid Council to intervene in the matter and the Council wrote two letters of invitation to the Defendant of 16th May 2019 and 25th June 2019 and the Defendant did not honour the invitations. Copies of the invitation letters are attached as Exhibits F1 and F2. When the Defendant refused to honour the agreement reached at the case conference with the Public Complaints Commission, the Claimants wrote and reminded the commission of the breach, the commission replied vide a letter of 10th August 2020 that they have written the Defendant on the issue but up to the time of filing this suit the indebtedness have not been defrayed. A copy of the letter of reply is attached as Exhibit G. The Claimants went back to Legal Aid Council in September 2020 and the Commission wrote a letter of demand to the Defendant on 7th September 2020 which was delivered on the 17th September 2020. A copy of the demand letter is attached as Exhibit H. Between July 2014 and November 2020 the 2nd Claimant has travelled to Abuja from either Port Harcourt and Lagos to Abuja for over 30 times by road and have had to spend the nights at various hotels. Copies of the receipts are attached as Exhibit I a-k. The Defendant is not ready to pay the balance of the contract sum and has no defence to this suit.

As aforesaid, the Defendant did not file any process in response or opposition to the above averments in the Claimant's affidavit in support of the Writ of Summon. In the circumstances, the averments remain uncontroverted and unchallenged which in the eyes of the law implies they are admitted by the Defendant. The settled position of

the law in a situation as this is that the Court is under a duty to accept and act upon them unless it finds them unbelievable. See:- . **See:- FOLORUNSO & ANOR V. SHALOUB (1994) 3 NWLR (Pt. 333) p.413; OKUPE V. IFEMECHI (1974) 3SC P.97 and KOSILE V. FOLARIN (1989) 3 NWLR (Pt. 107) P.1.**

I have carefully examined the documents attached as exhibits in support of the averments. I am satisfied the Defendant by Exhibit A contracted the Claimants to supply the aforesated contract items and by Exhibit B took delivery of them.

I am also satisfied that in Exhibits C, D & E, the Claimants demanded of the Defendant to pay up the said outstanding contract sum but the Defendant failed to pay same.

The Public Complaint Commission and Legal Aid Council also through Exhibits F1, F2, G, and H attempted to settle this issue of non-payment of contract sum by the Defendant but the Defendant rebuffed these attempts.

There is nothing before the Court to show that the Defendant has paid up the contract sum. The Defendant has not placed any before the Court despite the opportunity given to it.

In the light of the foregoing and in the absence of anything showing the Defendant has paid up the judgment sum, the Court holds that the Claimants have made out a case to justify an order of Court entering judgment for them for the payment of the unpaid contract sum in the terms of their Writ of Summons.

By reasons of the foregoing, the suit succeeds. The sole issue raised above is resolved in favour of the Claimants against the Defendant. Consistent with the provision of Order 35 Rule 4 of the Rules of Court 2018, Reliefs a, b and c are granted and judgment is entered for the Claimants against the Defendant in sum of ₦1, 051,500.00 being the balance of money unpaid for a contract of supply of Flags and Coat of Armss by the Claimants in November 2014.

In relief No d the Claimants seek for payment of 25% interest per annum on the contract sum to the date of judgment while in relief No e the Claimants seek for payment of 10% interest on the judgment sum till the liquidation of the judgment.

Now, there are two types of interest usually awarded by a Court, namely pre-judgment interest otherwise known as interest as of right and post-judgment interest otherwise known as discretionary interest, which a Court is allowed by the Rules of Court to award to a successful party at the end of the trial, at a rate fixed by the Rules.

Pre-judgment interest must not only be specifically claimed, but evidence must be adduced in proof of it, failing which it will not be awarded by a Court. The award of pre-judgment interest can be made where it is contemplated in the agreement between the parties, under a mercantile custom and under the principle of equity such as breach of fiduciary relationship. **See SHEDOWO v. A.G LAGOS STATE(2019) LPELR-46886(CA);EKWUNIFE vs. WAYNE (WA) LTD (1989) 5 NWLR (PT 122) 422 at 445, IDAKULA vs. RICHARDS (2001) 1 NWLR (PT 693) 111 at 122, 124-125, BERENDE vs. USMAN (2005) 14 NWLR (PT 944) 1 and BERLIET NIGERIA LTD vs. KACHALLA (1995) 9 NWLR (PT 420) 478** . There is nothing in the record of this case which provides for, or contemplates the payment of interest; furthermore there is nothing in the evidence on any mercantile custom or breach of any equitable principle on which the Claimants would be entitled to award of pre-judgment interest. Moreso the award of prejudgment interest is not cognizable under the undefended list being not liquidated in nature. Drawing from the above positions of the law, Relief no d cannot be granted. It is hereby refused.

With respect to relief No. e of the Writ of Summons, Order 39 Rule 4 of the Rules of Court 2018 gives the Court a discretion to grant post judgment interest on the judgment sum at the time of judgment or afterwards at a rate not less than 10% per annum. The Court being so enabled, the Defendant is ordered to pay interest on the above

mentioned judgment sum at the rate of 10% per annum from today till liquidation of the judgment debt.

In relief no f, the Claimants seek for General damages in the sum of three million Naira only being estimated sum of expenses incurred in coming to Abuja from Port Harcourt and staying in hotels. In support of this relief the Claimants attached to the affidavit before the court Exhibits I a-k. Learned counsel for the Claimants also urged the court to grant same. I have read the case of **IBRAHIM V.GWANDU (2015) 5NWLR (PT 1451) P32** commended to this court by learned Claimants' counsel on summary judgment proceedings and undefended list procedure being the same specie or genre in Nigerian adversarial systems of adjudication and I am well guided by the position of the Court of Appeal therein where it held that a claim for general damages is not cognizable under the summary judgment proceedings. Being thus guided, relief no f cannot be granted, It is hereby refused.

The Claimants having succeeded shall be paid cost assessed and fixed at ₦100,000.00 by the Defendant.

SIGNED
HON. JUDGE
31/3/2021.

LEGAL REPRESENTATIONS

- (1) V.S. Labesa Jr. Esq for the Claimants.
- (2) No legal representation for the Defendant.