

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

THIS 16TH DAY OF MARCH, 2021

BEFORE HIS LORDSHIP: THE HON. JUSTICE A.A FASHOLA

SUIT NO:

FCT/HC/CV/2981/2020

MOTION NO:/11072/2020

BETWEEN:

MULTIMEDIA TRAINING INSTITUTE (MTI) -----CLAIMANT

AND

VOICE OF NIGERIA-----DEFENDANT

JUDGMENT

This is a matter commenced by writ of Summons under the undefended list brought pursuant to Order 35 of the High court Civil Procedure Rules 2018 the said application is dated and filed on the 22nd October 2020.

The Claimant's claims against the Defendant are as follows:

1. The sum of N3,836,190.48 (Three million, eight hundred and thirty –six thousand, one hundred and ninety naira, forty-eight kobo) being the contract sum owed the claimant by the defendant with respect to request order no. 0011336 dated 21/12/2012 for the replacement of cables in Taiwo Allimi Recording studios (TARS).
2. The sum of N3,835,285.75 (Three million, eight hundred and thirty-five thousand, two hundred and eighty-five naira, seventy – two kobo) being the amount owed by defendant to the claimant with respect to purchase order No. 00113362 dated 21/12/2012 for the replacement of the cables in Taiwo Allimi Recording Studios (TARS).
3. The sum of N4,050,257.14(Four million ,fifty thousand, two hundred and fifty – seven naira, fourteen kobo),being the contract sum owned by The Defendant to the claimant as endorsed on the Purchase Order NO. 0007901 dated the 27/08/2013 issued by the defendant for the supply additional studio accessories needed in Taiwo Allimi Recording studios (TARS).
4. 15% Interest on the judgment sum from the date of judgment to the date of final liquidation of the judgment sum.
5. The cost of this action.

Attached to the Writ of Summons is a 28 paragraphs Affidavit with annexures marked as Exhibits 1 to 8.

Exhibit 1 is a Voice of Nigeria Job Repair/Request Order dated 21/12/2012

Exhibit 2 is a Voice of Nigeria Job Repair/Request Order dated 21/8/2013

Exhibit 3 is a Voice of Nigeria Purchase Order dated 27/08/2013

Exhibit 4 is a Fidelity Bank Plc Invoice Discounting Facility dated March 31, 2014.

Exhibit 5 is a letter by MTI to the Director General Voice of Nigeria dated 3/3/14

Exhibit 6 is a Job Completion certificate and irrevocable domiciliation of payment dated March 4, 2014.

Exhibit 7 is a letter of invoice discounting facility dated 11/07/2014.

Exhibit 8 is a letter of final demand for payment by MTI to Voice of Nigeria.

At the hearing of the suit on the 2nd of February 2021 Mr Richard Obianu appeared for the claimant and he informed the court that though there is a Motion Exparte, that parties are exploring settlement and therefore urged the court to give them one month to report. This suit was further adjourned to 1st March 2021 for hearing.

At the hearing of the suit on the 1st of March 2021, Mr S. M Jimmy appeared for the Claimant. Learned counsel to the applicant informed the court that the defendant has not filed any defence to the suit.

Claimant Counsel further argued that on the strength of the provision of Order 21 Rule 1 of the FCT High Court Civil Procedure rules 2018 judgment should be entered in favour of the claimant he urged the Court to grant the reliefs sought against the defendant.

On his part, Mr. Oliver Eya, Counsel to the defendant urged the court to exercise its discretion looking at the implication of Order 35 rule 4 of the FCT High Court Civil Procedure rules.

Order 35 rule 4 says:

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

Where the defendant under the undefended list fails to disclose a defence on the merit, the trial court will set the suit down for hearing. On the return date for hearing the trial court would then proceed to enter judgment without calling on the defendant even if he is present in court See the case of **HAIDO Vs USAMAN (2004) 3 NWLR (PT. 859) 65.**

From the evidence before me, this suit raises a lone issue for determination:

1. WHETHER THE CLAIMANT HAS PROVED HIS CASE TO BE ENTITLED TO THE RELIEFS SOUGHT AGAINST THE DEFENDANT

On the lone issue above, the defendant though represented by learned counsel Mr Oliver Eya. Simply informed the Court that the defendant did not file any defence to the suit and that he is leaving everything to the discretion of the Court the defendant failed to file any defence to this suit. However it is the Law that the Court is entitled even in an undefended case to be satisfied that the evidence adduced is credible and sufficient to sustain the claim See the case of **AYOKE Vs BELLO (1992) 1 NWLR (PT 218) 387.**

In the case of **AREWA TEXTILES PLC Vs FINETEX LTD (2003) 7 NWLR (PT 819) 322 AT 341 Paras D-9 Per Salami JCA as he then was held:**
“that the Claimant will not be entitled to judgment merely because the defendant abandoned its defence by failing to lead evidence in Support thereof. The Court would only be bound to accept

unchallenged, uncontroverted and unrebutted evidence of the Claimant, if it were cogent and credible. The Court would not accept a piece of evidence which is not material and of no probative value merely because the only evidence before the Court is that of the Claimant. Even where the evidence is unchallenged and uncontradicted the trial Court has a duty to evaluate it and be satisfied that it is credible and sufficient to sustain the claim”

See the case of **GONZEE (NIG) LTD VS NIGERIAN EDUCATIONAL RESEARCH AND DEVELOPMENT COUNCIL (2005) 13 NWLR (PT. 943)**

On the strength of the evidence before me both oral and documentary and legal Authorities cited above which the defendant failed to challenge it is my considered legal opinion that the claimant has proved its case against the defendant.

IT IS HEREBY ORDERED THAT THE DEFENDANT SHALL:-

1. Pay the sum of N3,836,190.48 (Three million, eight hundred and thirty –six thousand, one hundred and ninety naira, forty-eight kobo) being the contract sum owed the claimant by the defendant with respect to request order no. 0011336 dated 21/12/2012 for the replacement of cables in Taiwo Allimi Recording studios (TARS).
2. Pay the Claimant the sum of N3,835,285.75 (Three million, eight hundred and thirty-five thousand, two hundred and eighty-five naira, seventy –two kobo) being the amount owed by defendant to the claimant with respect to purchase order No. 00113362 dated 21/12/2012 for the replacement of the cables in Taiwo Allimi Recording Studios (TARS)

3. Pay the sum of N4,050,257.14(Four million ,fifty thousand, two hundred and fifty – seven naira, fourteen kobo),being the contract sum owed by 0007901 dated the 27/08/2013 issued by the defendant for the supply additional studio accessories needed in Taiwo Allimi Recording studios (TARS).
4. 10% Interest on the judgment sum from the date of judgment to the date of final liquidation of the judgment sum.
5. No cost is awarded.

Appearances: Parties absent:

S M. Jimmy Esq with Mercy Anyawu for the claimant,

Oliver Eya Esq Appeared for the Defendant, Claimant's counsel informed the court matter was adjourn today for Judgment,

Judgment read in open court.

Signed
Hon. Presiding Judge
16/03/2021