

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT KUBWA, ABUJA

ON MONDAY THE 16TH DAY OF JULY, 2021

BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA

JUDGE

SUIT NO.: FCT/HC/CV/1080/15

BETWEEN:

KINGS GUARDS NIGERIA LIMITED

_____ } **PLAINTIFF**

AND

1. HON. MINISTER OF THE FCT

_____ } **DEFENDANT**

JUDGMENT

Over six (6) years ago the Plaintiff Kings Guards Nigeria Limited, an Incorporated Company registered to carry out business of providing Security Services for private homes and public organizations, instituted this action against the Hon Minister of the FCT.

In the Writ the Plaintiff claims the following Reliefs against the Defendants:

- 1. An Order of this Court compelling the Defendant to immediately pay to the Plaintiff the sum of Forty Two Million, Four Hundred and Thirty Two Thousand Naira (N42, 432,000.00) being the outstanding Security Services Bills for security services rendered to the Defendant.**

2. 21% interest on the sum of Forty Two Million, Four Hundred and Thirty Two Thousand Naira (N42, 432,000.00) from 31st August, 2014 till date Judgment is delivered and final liquidation.

3. Fifteen Million Naira (N15, 000,000.00) as General Damages against the Defendant for the hardship suffered by the Plaintiff as a result of the Defendant's refusal to liquidate its indebtedness.

4. Cost of the Suit.

The Plaintiff alleged that it rendered security services at the Agric and Rural Development Secretariat of the Defendant for so many years. That all the while it had a relatively good business relationship with them. That after some time, the Defendant started owing them for the services rendered. That since 2011 the settlement of their bill became epileptic and that by the end of that year the Defendant's indebtedness stood at Fifteen Million, Eight Hundred and Thirty Two Thousand Naira (N15, 832,000.00). That by 13th April, 2014 the indebtedness stood at Thirty Seven Million, Nine Hundred and Fifteen Thousand, Six Hundred and Eighty Six Naira (N37, 915,686.00). But even at that the Defendant was not forthcoming. The Plaintiff wrote Letter of Demand dated 12th March, 2014 notifying Defendant's Secretariat that with effect from 13th March, 2014 it will withdraw its services if their Bills are not paid. The Defendant made promise in a meeting held in May 2014 that it will take some steps to ensure that those bills are paid before the

end of June. Unfortunately, the Defendant did not keep to that promise.

The Plaintiff wrote another letter stating that it will, with effect from 12th August, 2014 withdraw its services. This was after the Defendant had prevailed on it to continue its services to it at the meeting in May 2014.

In the letter, Plaintiff had stated that it will discontinue its service with effect from 12th September, 2014. As at August 2014 the Defendants indebtedness stood at **Forty Two Million, Four Hundred and Thirty Two Thousand Naira (N42, 432,000.00)**.

That despite the letter the Defendant failed, refused and neglected to pay the said bill. The Plaintiff instituted this action in order to get the money for services rendered. The plaintiff had claimed that it obtained facilities from banks to render the services to Defendant who mounted pressure on it at the time.

That the Banks interest is mounting and that it had much embarrassment harassment and humiliation for Defendant's failure to liquidate the indebtedness. The Plaintiff attached the latest agreement of 3rd September, 2010, Letter of Demands written to the Defendant all in support of its claim.

The Defendant was served and it entered appearance, filed Statement of Defence and had Counsel representation for a long time. The parties initially agreed to explore settlement of the issues in dispute. For over 2 years, the

parties could not settle amicably. So the matter went into hearing.

The Plaintiff called one Witness – the Regional Manager in charge of North Central of the Plaintiff – Mrs. Sherifat Umar, who testified and tendered 3 documents marked as **Exhibits 1, 2 & 3.**

The Defendant abandoned their case. It never cross-examined the PW1. It never opened and closed its defence it did not file any Counter Claim, challenged the case of the Plaintiff. It filed a statement of Defence and witness statement on oath but never utilized them in this case. The Court ensured that it was served all processes and hearing notices in this case, but it refused neglected and ignored to be in Court to do the needful. The Plaintiff filed a Reply to the Defendant's Statement of Defence and additional Statement on Oath.

The Plaintiff also tendered another document in the cause of adoption of the Additional Witness Statement on Oath. That document was marked as Exhibit 4. The document was a letter written to Plaintiff by Defendant pleading with Plaintiff not to discontinue its services to the Defendant. That letter was dated 11th April, 2014.

The Court foreclosed the Defendant from Cross-examining the PW1, opening and closing its Defence in this case. This is because the Court cannot wait for Defendant in perpetuity. That was after waiting for over two (2) years. The Plaintiff Counsel closed Plaintiff's case and the Court adjourned the matter for Final Address which the Plaintiff adopted. The Defendant did not file or serve any Final

Address. The Plaintiff Counsel adopted same subsequently and matter was reserved for Judgment. Hence this Judgment.

In the Plaintiff's Final Address it raised a sole issue for determination which is:

“Whether it has proved its case as required by law and therefore is entitled to the Reliefs sought in this Suit.”

The Plaintiff Counsel submitted that the Plaintiff has discharged the burden on it as it gave uncontroverted evidence on its engagement by Defendant and presented Exhibit 1 – Contract of Engagement.

That it also presented the facts of the outstanding Security Services Bill owed to it by Defendant and Letters of Demand for payment of outstanding Bills vide **EXH 2 & 3**. That it also presented evidence of the Defendant promising to pay the said outstanding Bill vide letter of marked as **EXH 4**.

That the four (4) Reliefs sought by Plaintiff had been satisfactorily proved through those documents. That although the Defendant declined to execute yearly renewal of the Agreement with the Plaintiff that EXH 2 – 4 established that Defendant was actively enjoying the services rendered by Plaintiff at those material times prior to Plaintiff withdrawal of its services. That those exhibit shows that the Defendants outstanding indebtedness to Plaintiff stood at **Forty Two Million, Four Hundred and Thirty Two Thousand Naira (N42, 432,000.00)** as at the time it withdrew its services to Defendant. That Court has the

power to construe the contractual relationship between parties. That parties are bound by the terms of their Contract. He relied on the following case:

Daodu V. UBA PLC

(2004) 9 NWLR (PT. 878) 276 @ 279

International Textile Ind. Ltd V. Aderemi

(1999) 8 NWLR (PT. 614) 268

Koiki V. Magnusson

(1999) 8 NWLR (PT. 615) 492

That since the Defendant did not move its Defence that Court should discontinue same and hold that the document deserves any judicial attention. That since evidence was not laid to prove those evidence, the Court should hold that it goes to no issue. That the averment is not an evidence and should be construed to be evidence. He relied on the following cases:

UBA V. Astra Building (WA) Ltd.

(2010) 14 NSCQR (PT. 2) 1016

Buhari V. Obasanjo

(2005) 2 NWLR (PT. 910) 241

Yusuf V. Oyetunde

(1998) 12 NWLR (PT.579) 483

That failure of Defendant to adduce evidence in this case means that it had admitted all the evidence of the Plaintiff and as such the Court should hold that Plaintiff's case is not challenged or controverted. He relied on the case of:

Kaycee Venture Ltd V. FCT Minister

(2010) 181 LRCN 69 @ 76

Adeyuyi V. Odukwe

(2005) 131 LRCN 2510

That in this case, the Plaintiff discharged onus on it to prove its case and that onus shifted to the Defendant but that the Defendant failed to discharge the onus. That since there is no evidence put forward by the Defendant, that it means and further buttress the fact that there is nothing to be placed on the imaginary side of scale of the Defendant. That Defendant has no defence to the case of the Plaintiff. He relied on the following cases:

Egharevba V. Osagie

(2010) 180 LRCN 75 @ 79

Nwabioku V. Ottih

(1961) 2 SCNLR 232

Braimoh V. Bangbose

(1989) 3 NWLR (PT. 109) 352

Adeyuyi V. Odukwu Supra

That the allegation/defence of the Defendant that it did not renew the Contract with the Plaintiff does not hold any water. That the Court should hold that the Plaintiff not secure the required requisite approval to enable it do so as required by the procurement Act.

That the Agreement in EXH 1 was entered long into in 2010, long after the procurement Act came into effect. That the said Procurement Act came into effect in 2007 while the contract EXH 1 came into effect in 2010. That

the Defendant's evidence in that regard is inconsistency and further damages its defence.

That obtaining approval pursuant to the Procurement Act is an internal Affairs of the Defendant for which the Plaintiff should not be made to suffer. That Contract can be created by conduct and it is very clear that by conduct the Defendant voluntarily and wholeheartedly enjoyed the services of the Plaintiff over those years even when it did not renew the said Contract in paper. That the date and content of **EXH 4** debunks the Defence of the Defendant in this case.

That the said **EXH 4** is a direct response to **EXH 3**. That EXH 4 shows that it was the Defendant who persuaded the Plaintiff to continue with the provision of Security Service promising to settle its outstanding indebtedness to Plaintiff when Plaintiff threatened to withdraw its services because of the unpaid services. He urged Court to discountenance the Defence of the Defendant in its entirety.

That Plaintiff is entitled to its Reliefs. That it had tendered credible and uncontroverted evidence in proof of its case. That Defendant abandoned its Defence by refusing to call evidence or even Cross-examine PW1.

That its abandonment of its Defence means that it accepted the claim of the Plaintiff. He urged Court determine the sole Issue in Plaintiff's favour since he had proved its case on Balance of Probabilities and Preponderance of Evidence as required. He urged Court to so hold.

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From the above can it be said that the Plaintiff's case was not challenged and the facts in support of it were not controverted bearing in mind that the Defendant filed a Statement of Defence and a Statement on Oath but it did not call the evidence or tender any document in Court and also bearing in mind that frontloading of Court processes has become part of our jurisprudence. Did Plaintiff established its case and deserve Judgment in its favour?

It is the humble view of this Court that the Claim of the Plaintiff was challenged since the Defendant filed and served the Plaintiff their Statement of Defence and Oath and Plaintiff filed its Reply to the said Statement of Defence. This is so, bearing in mind that frontloading of Court Processes in advance has become part of our jurisprudence though the Defendant did not present their Witness to testify in Court. It is a different thing whether the challenge of the Plaintiff's case was success or not. Filing the Statement on Oath shows that the Suit of Plaintiff was challenged. So this Court holds.

It is also the view of this Court that the Plaintiff established its case on Preponderance of Evidence and on Balance of Probability with the testimony of its lone Witness PW1 and the documents it tendered in support, EXH 1 – 4. This is what this Court holds.

It is the Defence of the Defendant that the Contract was not renewed and that they did not meet up with the Procurement Act provision. The Plaintiff had submitted that the issue of Procurement Acts is an internal problem

and workings of the Defendant should not in any way affect the Plaintiff. This Court believes them. Again a look at the EXH 1 shows that it was entered into sometime in September, 2010. Yes it provided for yearly renewal by the Defendant. Yes there was no renewal paper. But evidence are abound that the Defendant continued to enjoy the services the Plaintiff rendered to it after the expiration of Contract of 2010. It is known fact that contract between parties can be inferred from the conduct and body language of parties and not necessary from the signed dotted lines in a Written Agreement.

A closer look at **EXH 4** puts no one in doubt that though there was no evidence of the renewal of the Contract between the parties in written documents that the body language and the action, correspondence between the parties shows that there still existed the Contract Agreement which can be deciphered by the body language and the continued relationship of the parties going by Exhibit 4.

Paragraph 1 Exhibit 4:

“The attention of Management ... drawn to the notice served by Kings Guards Ltd. of their intention to DISCONTINUE Security Services being rendered to ARDS”

The above is response to letter by Plaintiff informing the Defendant of its intention to discontinue service. This shows that there was existing contractual relationship between the Plaintiff and the Defendant though there was no renewal signed in paper. There was an implied renewal.

The Defendant accented to that renewal by consent and body language and action. That is why the Plaintiff provided the services and the Defendant accepted same and enjoyed the services for some years.

That letter EXH 4 was dated 11th April, 2014 and was received by the Plaintiff/Plaintiff Counsel on the 14th April, 2014. If actually the Defendant was adverse to the rendering of such services it would not have pleaded with the Plaintiff to give it some time to settle the outstanding balance of the bill owed to Plaintiff as stated in the 2nd paragraph of that letter.

Going by the date of the letter it shows that the Plaintiff had rendered services beyond the tenure of the Agreement of 2010 which had expired since 2011.

A look at the content of paragraph 2 of EXH 4 confirms the above that the Defendant accented to the existence or the implied renewal of the contract by body language and action/correspondences of the parties from 2011 till 2014. To confirm this in the said paragraph the Defendant stated thus:

“It is in line with the above that Management of ARDS is craving the indulgence of Management of Kings Guard Ltd. to please consider and put on hold their intention to suspend Security Service as arrangement to settle pending bills has reached a matured stage.”

The above needs no further elucidation because it confirmed as the Plaintiff claimed that there was renewal

of contract by the implication of continuous rendering of Services by Plaintiff and continued enjoyment of the Services rendered by the Defendant. So the Defence of non-renewal of contract anchored on by the Defence cannot stand. The Defence, though not presented physically by the Defendant Witness is implied to have been presented by the spirit of frontloading. So this Court holds.

The Defendant even concluded the letter by thanking the Plaintiff for its kind gesture to reconsider the withdrawal of the Service.

If the Defendant did not want the Services of the Plaintiff they would not have pleaded with the Plaintiff not to suspend its Services. If they were not in support of the Service rendered they would not have plead with Plaintiff.

Again, if they are not aware or did not like or were challenging the Services rendered or Bill presented, Defendant would not have said that **“arrangement to settle pending bill have reached a matured stage.”**

They said so in EXH 4 because they accented to the continuation the contract and accepted the bill charged by Plaintiff for those Services rendered by Plaintiff. They were happy with the Plaintiff and believed that Plaintiff will not suspend withdrawing its Services to ARDS. That is why they stated in paragraph 3 of EXH 4 that:

Paragraph 3 Exhibit 4:

“Thanking you in anticipation of your kind gesture please.”

A closer look at EXH 2 letter of 12th April, 2014 further confirms the existence of the Contract between the parties beyond 2011 when the contract of 2010 expired. It show that both parties know and agreed to continue the contract of security service though it was not penned down in paper.

Paragraph 4 EXH 2 stated thus:

“We are withdrawing our services due to non-payment of outstanding security services bill since January 2012.”

The above showed that the service was rendered beyond 2011. What time or period of the bill is — **“Security Service Bill since 2012.”**

This confirms that there was an implied agreement renewal by action of the parties. The Plaintiff stated the reason for the intended withdrawal of Service.

That letter was dated 12th March, 2014. The detailed bills attached to the letter shows the month to month bill and debt for Services rendered between 1st January, 2012 to 12th April, 2014. From the bill it is clear that those services were rendered beyond the Agreement of 2010. It further confirms that there was implied renewal of the Contract Agreement between the parties in this Suit. This also rendered the Defence of the Defendant that there was no renewed contract to be “inadmissible”, incorrect and unsubstantiated. The Defendant did not deny receiving these documents.

Again there is Exhibit 3 the letter of withdrawal of Security Service written by the Plaintiff on 12th August, 2014 and received by Plaintiff on the same day. In the said letter – EXH 3, the Plaintiff, through their Counsel, referred to the meeting it held with the Defendant in May 2014 on the outstanding balance of the bill for Security Service rendered to ARDS. It also pointed out to Defendant that the parties agreed to end of June as the period within which necessary appreciable steps were to be taken to pay the outstanding bill. The Plaintiff lamented that they continued to incur debts by paying for the Services of Security Guards deployed to the Defendants location by Plaintiff.

They lamented on the failure of the Defendant to live up to its processes. They asked the Plaintiff to make necessary arrangement for Security management in their location.

The said Exhibit 3 says it all. It stated the amount in issue – **Forty Two Million, Four Hundred and Thirty Two Thousand Naira (N42, 432,000.00)**. It pointed out that parties agreed as to June deadline.

“We also agreed to the end of June 2014 as the period within which necessary appreciable steps would be taken to pay the outstanding bill.”

The above says it all. Parties knew that the Contract Agreements extended beyond the 2010 Agreement. So this Court holds. The Defendant is bound by the said Terms and Condition of the Agreement even if it was not penned down as in 2010. Defendant enjoyed the Services. They are therefore bound to pay for such Service. The

Defendant's inability to comply with the Procurement Act is of no moment because that is an internal problem of the Defendant.

Again the Contract – EXH 1 came into being long after the Procurement Act came into effect. It is evidently clear that the issue of obtaining approval pursuant to the Procurement Act is an internal affair of the Defendant. The Plaintiff should not be made to suffer for it.

This is because the conduct of the parties in this case confirmed that there was existence of contract between the parties so this Court holds. The Defendant having voluntarily enjoyed the Services of the Plaintiff for such a long and uninterrupted period, are liable to pay for those Services they enjoyed. So this Court holds.

Plaintiff is therefore entitled to its Claims having proved same on Preponderance of Evidence and Balance of Probability. This case is meritorious, and this Court grants the Reliefs sought to wit:

1. The Court hereby Order the Defendant to immediately pay to the Plaintiff the sum of **Forty Two Million, Four Hundred and Thirty Two Thousand Naira (N42, 432,000.00)** being the outstanding Bill for Services rendered by the Plaintiff to the Defendant at Agric & Rural Development Secretariat.

2. Defendant to pay to the Plaintiff 5% interest on the said sum from 31st August, 2014 till the day the Judgment sum is fully liquidated.

3. Defendant to pay to Plaintiff the sum of **Five Hundred Thousand Naira (N500, 000.00)** as damages for the loss suffered by Plaintiff for the delay in payment of the said Bill.

4. The Defendant is to pay to Plaintiff the sum of **One Hundred Thousand Naira (N100, 000.00)** as cost of the Suit.

This is the Judgment of this Court.

Delivered today the ____ day of _____ 2021 by me.

**K.N. OGBONNAYA
HON. JUDGE**