

**IN THE HIGH COURT OF JUSTICE OF THE
FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA - ABUJA**

BEFORE: HON. JUSTICE O. C. AGBAZA

COURT CLERKS: UKONU KALU & GODSPower EBAHOR

COURT NO: 6

SUIT NO: FCT/HC/CV/1395/2018

BETWEEN:

- 1. PHIGABY NIGERIA LIMITED**
- 2. ARCH JAMES JIRGBA**
- 3. GABRIEL IKYIOVE.....CLAIMANTS**

VS

- 1. SPLIT SECOND INTERNATIONAL LIMITED**
- 2. REMI OLUWAJI.....DEFENDANTS**

RULING/JUDGMENT

By a Writ of Summons filed on 4/4/2018 under the "Undefended List" Procedure, the Claimant claims against the Defendants as follows;

The Plaintiff's claims the sum of ₦4,718,200.22 special damages jointly and severally against Defendants.

Accompanying the Writ of Summons is a 12 Paragraph affidavit with 1 Exhibit attached deposed to by Gabriel Ikoyiove the 3rd Claimant in the Suit. Also filed a Written Address in support of the Writ. The Defendants were served the Writ of Summons and other court processes by substituted means to wit: by pasting on the wall of their last known Address being No.

46 Mike Akhigbe Street Jabi FCT, Abuja vide Order of Court granted on 19/6/19. On the other hand, Defendant did not file their response to the Suit and were absent throughout hearing of the case.

The case of Claimants is that they were awarded a contract for the Constitution of 4 Bedroom semi-detached duplexes at Banke's Court, Bilmore Homes Plot No. 26 Cadastral Zone C07 Galadimawa District Abuja at the cost of ₦22,023,564.00. That they agreed to carry out the work in stages as required by the Defendants who agreed to pay the Claimants after each stage of the development of the building construction. The Claimants satisfactorily carried out the contract amounting to the total sum of ₦9,835,073.79, but the Defendants only paid the sum of ₦5, 117, 473.57 to the Claimants leaving the sum of ₦4,718,200.22 remaining unpaid.

It is further the case of the Claimant that the Defendants called them to a meeting on the contract from the Claimants and that the Claimants shall be paid the remaining balance due for work done to the tune of ₦4,718,200.22, but which the Defendants have either failed, neglected or refused to pay to the Claimants despite repeated demands by the Claimants. Claimants believe the Defendants have no defence to the Suit and now claims the sum of ₦4,718, 200.22.

In the Written Address, Claimant's counsel formulated a sole issue for determination that is;

“Whether or not the Defendants have a good defence to this Suit against them”.

Submits that Exhibits "A" is a documents showing the indebtedness of the Defendants to the Claimants and the Defendants have no defence to the Suit. Submits further that this admitted fact which is unchallenged need not be proved, refer to the case of Ngeribe Vs Dave Engineering Company Ltd (1994) 9 SCNJ @ 172 – 173. Therefore urge court to enter Judgment in favour of the Defendants.

After a careful consideration of the submission Claimants Counsel, judicial authority cited as well as affidavit evidence of the Claimants, the issue that can be distilled for determination is;

"Whether the Claimants has made out a case to be entitled to Judgment under the "Undefended List"?"

By the Provision of Order 35 Rule 3 (1) of the Rules of Court, where a Defendant is served with a Writ of Summons under the "Undefended List" and marked as such the Defendants has five (5) days to file his Notice of Intention to Defend along with an affidavit disclosing that defence.

Further by Order 36 Rule 4, where the Defendants neglect to deliver the Notice of Defence and an affidavit prescribed by the Rule of court, or he is not given leave to defend by the court, the Suit shall be heard as an "Undefended" Suit and Judgment given accordingly.

In the instant case, the Defendants who were duly served with the Writ of Summons failed to file neither the requisite Notice of Intention to Defence nor an affidavit of defence disclosing a defence on the merit. The implication of this, is that this Suit is "Undefended" as the Defendants can

said to have no defence to same and has conceded to the claim of the Claimants. See the case of Ekiti Local Government Area Vs Aje Printing (Nig) Ltd (2009) 4 NWLR (PT. 1131) 304 @ 313.

The law is that where the Defendants neglects to deliver the Notice of Intention to defence with an affidavit prescribed by the Rules of court, the consequence is that the Suit shall be heard as an "undefended Suit and Judgment given thereon without calling upon the Claimants to summon witnesses before the court to prove his case formally. See Udoaka Vs Asuquo (2008) 9 NWLR (PT.1091) 15 @ 18. See also National Assembly Vs C.C.I & Co Ltd (2008) 5 NWLR (PT. 1081) 519 @ 525 – 526. In the instant case, the court having carefully looked at the processes before it, that is the affidavit evidence which remains unchallenged and uncontroverted, the court finds that the facts contained are deemed as true facts and will act on it.

Accordingly, Judgment is entered in favour of the Claimants. The Defendants are hereby ordered to pay to the Claimants the sum of ₦4,718,200.22 jointly and severally.

Cost of this Suit is assessed at ₦50,000.00 only in favour of the Claimants

Signed
HON. JUSTICE O. C. AGBAZA
Presiding Judge
21/2/2022

APPEARANCE:

GODWIN .T. AHEMBE ESQ - CLAIMANTS

NO APPEARANCE – FOR THE DEFENDANTS.