

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT JABI

THIS 22ND FEBRUARY, 2022

BEFORE HIS LORDSHIP: HON. JUSTICE A.A FASHOLA

SUIT NO: FCT/HC/CV/1335/2021

BETWEEN:

AGENCE FRANCE PRESSE-----CLAIMANT

AND

DAAR COMMUNICATIONS PLC-----DEFENDANT

JUDGMENT

This is a matter commenced by an amended writ of summons under the undefended list procedure dated 29th November, 2021. and filed on 2nd December, 2021. Wherein the claimant claims against the Defendant as follows:

- (a.) The sum of **N2,000,000.00** (Two Million Naira), being outstanding indebtedness owed to the claimant hereof for service rendered to the defendant.
- (b.) Interest at the rate of 6% per annum on the outstanding indebtedness of **N2,000,000.00** (Two Million Naira), from 24th January 2018 till the debt is satisfied.
- (c.) Interest on the adjudged sum at the rate of 10% per month from the date of judgment until the judgment sum is fully liquidated.

(d.) The cost of this suit at the sum of **N5,00,000** (Five Hundred Thousand Naira)

In support of the amended writ of summons is a 16 paragraphs affidavit deposed to by one Patrick Akushie, a Regional sale manager, and Exhibits A, C, and D, herein attached to the application respectively.

FACT OF THE CASE

The Claimant is an international new agency incorporated under the laws of Nigeria and carrying on business at Flat 6, 24A Olu Holloway Road, 11, Awolowo Road, Ikoyi, Lagos State, Nigeria.

The Defendant is a public liability Company, in business of development, Production, and marketing entertainment news, information situate at AIT Central Asokoro Kpaduma Hills, Off Gen T.Y. Danjuma Street, Abuja Nigeria.

The Claimant avers that sometimes in September, 2016 the claimant entered a license Agreement with the Defendant, where the claimant provided subscriber's service called AFPTV live to the Defendant. The claimant rendered services to the Defendant between September 2016 to January 2018 till date the claimant has not received full payments for services rendered to the Defendant. He avers that having issued an invoice No.506578 on 3rd day May, 2017 at the sum of **N4, 000,000.00** (Four Million Naira) to the Defendant for the services rendered within the tenure of the contract. That the Defendant subsequently paid the sum of **N1,000,000.00** (One Million Naira Only) on 30th October, 2017, and another payment of **N1,000,000.00** (One Million

Naira). On 24 January, 2018 leaving an outstanding balance of **N2,000,000.00** (Two Million Naira). The claimant stated that despite the service of several letter of demand on the Defendant he neglected and failed to pay the outstanding balance.

The Exhibit attached to the application are:

1. Exhibit "A" is a copy of the invoice No,50678 dated 3rd day of March 2017
2. Exhibit "B" is not stated in the application
3. Exhibit "C" are several exchanged emails between the claimant and the Defendant on the subject matter to wit: dated 19th, 20th, July, 2016, some is dated 1st, 2nd, 15th, 20th, 23rd, September, 2016, wherein others is dated 10th, 14th, 17th, October, 2016 and 10th, 11th, November, 2016 respectively.
4. Exhibit "D" is a copy of the claimant's letter send to the Defendant dated 19th June 2020.

In moving the application on the 18th day of January, 2022, learned counsel to the claimant submitted that the application is accompanied by a certificate in compliance with section 84 of the Evidence Act, authenticity of computer generated evidence, the claimant's counsel relied on all averments and prayed the court to enter judgment in favor of the claimant pursuant to order 35 rule 4 of the F C T High Court civil procedure Rules 2018, he argued that the Defendant did not file any process as required under order 35 rule 3 of the F C T High Court civil procedure Rules 2018 despite the service of the originating processes on her.

From the evidence before this Honorable Court, this suit raises a sole issue for determination to wit:

Whether the claimant has proved his case to be entitled to the reliefs sought against the Defendant.

For the suppose of clarity, I deem it fit to reproduce Order 35 rule 4 of the Civil Procedure Rules of the FCT High Court 2018 which states:

" 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."

On the lone issue above, the Court have sufficiently expounded on what amounts to the Claimant proving his case to be entitled to reliefs sought. In the instant case the defendant failed to file any notice of intention to defend or a defence on the merit neither are they represented by counsel despite the service of Court processes on him. However, it is trite 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 **EJASCO GLOBAL INVESTMENT LTD VS INIM (2015) LPELR** the court of Appeal held that:

"In proceedings brought on the undefended list procedure, the duty of the trial court on the return date is to evaluate the affidavit evidence and determine if the Defendant who has filed a Notice of intention to defend supported by an affidavit that condescends upon particulars in response to the plaintiff's

case. If the trial court is of the view that the defendant has disclosed triable issues, the matter would be transferred to the general cause list for hearing. If no real defence has been disclosed, the matter will be heard on the undefended list and judgment entered in favour of the claimant”.

Also 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 probabtive 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).**

After a painstaking perusal of the evidence before me, particularly the Affidavit Evidence and the annexures thereof on the strength of these legal Authorities cited above it is my considered legal opinion that the claimant has proved his case against the defendant.

IT IS HEREBY ORDERED THAT THE DEFENDANT SHALL:-

1. The defendant is hereby ordered to immediately pay the sum of **N2,000,000.00** (Two Million Naira), being outstanding indebtedness owed to the claimant hereof for services rendered to the defendant.
2. On prayer number 2 (two) which is interest at the rate of 6% per annum on the outstanding indebtedness of N2,000,000.00 (Two Million Naira) the position of the Law is that interest is not payable on ordinary debt in purely commercial transactions in the absence of a term to that effect expressly or impliedly in the contract, see A.I.B. LTD Vs I.D.S LTD(2021) 17 NWLR (Pt 1328) p.1 SC in view of this, prayer two is hereby refused as there is no agreement between parties for 6% interest.
3. The Defendant is hereby ordered to pay the interest on the adjudged sum at the rate of 10% per month from the date of judgment until the judgment sum is fully liquidated.
4. No cost is awarded.

Appearances:

Parties Absent

Francis E Imuyi for the Claimant

Defendant absent not represented by any counsel

Judgment read in open Court

Signed
Presiding Hon Judge
22/02/2022