

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT JABI**

**THIS 16<sup>TH</sup> FEBRUARY, 2022**

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

**SUIT NO: FCT/HC/CV/2588/2021**

**BETWEEN:**

**AMAL ENGINEERING & CONSTRUCTION LTD-----CLAIMANT**

**AND**

**ABUJA MUNICIPAL AREA COUNCIL-----DEFENDANT**

**JUDGMENT**

This is a matter commenced by a writ of summons under the undefended list procedure dated 5<sup>th</sup> October 2021 and filed on the 6<sup>th</sup> day of October 2021. The suit is brought pursuant to order 35 of the High Court Civil Procedure Rules of the Federal Capital Territory Abuja 2018. Wherein the Claimant Claims against the defendants as follows:

- 1. AN ORDER** of this Honorable court directing the Defendant to forthwith pay the claimant **N7,796,393.80** (Seven Million, Seven Hundred, and Ninety three Naira, Eighty Kobo Only) being the contract sum as contained in the contract award letter due to the claimant, which the defendant have since refused and/or neglected to pay the claimant.

- 2. AN ORDER** of this Honorable Court directing the Defendant to pay to the Claimant 20 percent interest on the judgment sum from the date judgment is delivered until the entire sum is liquidated.
  
- 3.** Cost of this suit.

Attached to the application is a 23 paragraphs affidavit deposed to by one Yahuza Idris Gaga, a member of staff of the claimant.

The claimant avers that sometimes in the month of August 2018, the claimant was awarded a contract for the construction of a perimeter fence at LEA primary School, Dape within the Abuja Municipal Area Council by the Defendant vide a letter of Award dated the 18<sup>th</sup> of August 2018. That the claimant accepted the award vide a letter of Acceptance dated the 24<sup>th</sup> August 2018, which was duly served and acknowledged on the 30<sup>th</sup> of August 2018 in the Executive Chairman office in furtherance of which the claimant moved to site upon given possession and executing the contract even without mobilization. That sequel to the acceptance of the contract by the claimant the defendant issued a "site possession form" to the claimant dated the 27<sup>th</sup> of August 2018. That after the completion of the contract, the claimant notified the defendant of the development vide a letter titled "Completion/Handover dated the 14<sup>th</sup> of January 2019. That since January 2019 when the claimant completed the project and handed over the School, the defendant failed, refused/or neglected to pay anything in respect of the said contract despite demands. That it was based on the assurances given by the

Defendant and also to protect its image that the claimant hastily move to site and began to work. That the claimant expended huge amounts of money, time and effort and got the work completed in August 2019. That the defendant failed to pay the agreed sum to the claimant. Annexed to the Application of the claimant are the following Exhibit:

1. Exhibit Amac 1 is a letter of contract award dated 18<sup>th</sup> August 2018
2. Exhibit Amac 2 is a letter of Acceptance dated 24<sup>th</sup> August 2018
3. Exhibit Amac 3 is a site possession form dated 27<sup>th</sup> August 2018
4. Exhibit Amac 4 &5 are letters dated 14<sup>th</sup> January 2019 and 10 September
5. Exhibit Amac 6A-61 are pictures of the Res
6. Exhibit Amac 7 is a letter of demand (acknowledgment) dated 28 may 2021
7. Exhibit Amac 8 is an acknowledgment copy of pre-Action Notice.

At the hearing on the 18<sup>th</sup> December 2021, learned counsel to the claimant urged the court to enter judgment in favour of the Claimant as the defendant has failed to file any process in the suit. Though a counsel appeared for the defendant, there is no notice of intention to defend neither has he filed any processes in response to the Writ of summons.

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

## **1. 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 Courts 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 though they were represented by counsel; who merely asked for time to file a defence. 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 **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 ParasD-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)**

I have carefully perused 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 its case against the defendant.

**IT IS THEREFORE ORDERED AS FOLLOWS:**

- 1. AN ORDER** of this Honorable court is hereby granted directing the Defendant to forthwith pay the claimant **N7,796,393.80** (Seven Million, Seven Hundred, and Ninety three Naira, Eighty Kobo Only) being the contract sum as contained in the contract award letter due to the claimant, which the defendant have since refused and/or neglected to pay the claimant.
  
- 2. AN ORDER** of this Honorable Court is hereby granted directing the Defendant to pay to the Claimant 10% percent interest on the judgment sum from the date judgment is delivered until the entire sum is liquidated.
  
- 3.** I hereby award cost of N50,000.00 in favour of the Claimant herein

**Appearances:**

Parties Absent

S.A Usman for the plaintiff

Defendant not represented by any counsel.

Judgment read in open Court

**Signed**  
**Presiding Hon Judge**  
**16/02/2022**