

**IN THE HIGH COURT OF JUSTICE OF THE
CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA - ABUJA
BEFORE: HON. JUSTICE O. C. AGBAZA**

COURT CLERKS: UKONUKALU&GODSPOWEREBAHOR

COURT NO: 6

SUIT NO: FCT/HC/CV/2616/2021

BETWEEN:

MRS. RISIKATNIHINLOLADEBANJOH.....CLAIMANT

VS

MR. SHUAIBUKABBAYERIMA OBAJE.....DEFENDANT

RULING/JUDGMENT

By a Writ of Summons dated 8/10/2021 and filed same day under the "Undefended List" the Claimant, claims against the Defendant as follows;

- (a) An Order compelling the Defendant to pay over to the Plaintiff the sum of ₦14,400,000.00 (Fourteen Million Four Hundred Thousand Naira) being refund for unexecuted contracts.
- (b) Interest at 10% from the date of Judgment until the debt is paid and discharged.

The Writ of Summons was accomplished by a Thirty Four (34) Paragraphs affidavit deposed to by the Claimant with Seven Exhibit attached.

The Defendant was served with the Writ of Summons and other court processes on 1/12/2021 and with leave of court filed a Notice of Intention to Defend in compliance with Order 35 Rule 3 (1) of the Rules of Court the said Notice of Intention to Defend was deemed properly filed and served on 28/3/2022.

Responding, Defendant deposed to a Forty One (41) Paragraph affidavit in support of his Notice of Intention to Defend, denying indebtedness to the Claimant.

After a careful consideration of the affidavit of the parties and the Exhibit attached, I find that the issue which call for determination is;

- (1) Whether the Claimant has made out a case to be entitled to Judgment under the "Undefended List"

By Order 35 Rule 3 (1) of the Rules of Court, where a Defendant is served with a Writ of Summons under the "Undefended List" the Defendant has Five (5) clear days to file a Notice of Intention to Defend along with an affidavit disclosing a Defence.

It is trite law that where a Defendant file a Notice of Intention to Defend along with an affidavit disclosing a Defence, pursuant to Order 35 Rule (1) of the Rules of Court the duty at that stage is to look at the affidavit to find if there are triable issues from the facts contained in the said affidavit, it is not the duty of the court at that stage to determine whether the Defence being put up will ultimately succeed or whether the Defence has been

proved or comprehensive. See *trade Bank PlcVs Spring Finance Ltd* (2009) 12 NWLR (PT. 1155) 360 @ 373.

For a Defendant to succeed, he must show that there are triable issues as revealed in the affidavit accompanying the Notice of intention to Defend. On what may amount to triable issues, the Court of Appeal in the case of *Patigi Local Government VsI.K. Elesin-Nla* (2008) All FWLR (PT. 421) 854 @ 875 Para E – G stated thus;

That the following situation may give rise to the discharge of the burden placed on the Defendant;

- (a) A difficult point of law has been raised in the Defendant's affidavit.
- (b) Dispute as to facts raised by the Defendant.
- (c) Dispute as to the correct amount owed.
- (d) Where there is probability of a bonafideDefence e.g. Counter-Claim.

See also *Ataguba& Co. Vs Aura Nigeria Ltd* (2005) All FWLR (PT. 250) 1219 @ 1233 Ratio 7.

In the instant case, it is case of the Claimant that she paid to the Defendant the total sum of ₦51,822,000.00 (Fifty One Million Eight Hundred and Twenty Two Thousand Naira) to execute the 7 contracts stated as;

- (1) Award of contract for the Construction of Solar powered Borehole in Kaduna of Kankia/Kusada/Ingawa Federal Constituency Katsina State ₦3,400,000.00.
- (2) Award of contract for the Provision of Ino Motorized Borehole at Umuahia Abia State ₦3,000,000.00.
- (3) Award of contract for the Construction of Block of Three Classroom at Methodist Primary School Ibese and Motorized Borehole in Mama Wapa Akinyera Street, Ibese, Ikorodu Federal Constituency Lagos State ₦3,400,000.00 and ₦5,500,000.00 Respectively.
- (4) Award of contract for the Construction of a Block of Three Classroom at Iju Grammar School Old Akute Road Lagos- ₦5,500,000.00.
- (5) Award of contract for the Provision of Equipment and Furnishing of Skill acquisition center at Nitel Road – Lanlate Oyo State - ₦5,500,000.00.
- (6) Award of contract for the installation and sustenance of streetlights on Agua Akho Junction, Ekpomaend - ₦16,000,000.00.
- (7) Award of contract for the Construction of 1 Block of 3 Classroom at Jajere Primary School Yobe State and Provision of 1 No. Solar Powered Borehole at Shuwarin Secondary School Kiyawa ward

KiyawaLocalGovernment AreaJigawa State ₦3,400,000.00 and ₦5,500,000.00 respectively.

It is also the case of the Claimant that the Defendant failed to execute the contract stated in (e) and (f) above. And paid the total sum of ₦14,400,000.00 to the Defendant for the execution of the contract for 3 classroom at Jajere Primary School, Yobe State and Provision for 1 No. Solar Powered borehole at Shuwarin Secondary School Kiyawa Ward KiyawaLGAJigawa State as contained in the award letter dated 27th December, 2019 and the contract for the Provision of equipment and furnishing of Skill Acquisition Center at Nitel Road Lanlate Oyo State which was never executed by the Defendant.

And following the failure of the Defendant to execute the said contract, Claimant immediately demanded that the sum of ₦14,400,000.00 due allocated for the unexecuted contract be returned to her. Notwithstanding repeated demands, the Defendant have refused to refund the total sum of ₦14,400,000.00 given to him for the execution of the said contracts. The list and price allocated for each of the project given to the Defendant is contained in Exhibit "C". Defendant undertook to pay the sum but has failed to do so.

Claimant knows as a fact that the Defendant have no Defence to this suit and is entitled to the reliefs claimed against the Defendant.

In this response, Defendant admitted to being given the contract in Paragraph 5, 12, 17, of his affidavit in support of Notice of Intention to

Defend, which contracts out of the total number of seven contracts the Claimant's claims the sum of ₦14,400,000.00. That these contracts were executed to certain stage which he described as 70% and 80% completed. But could not entirely complete the contracts owing to paucity funds as the sums allocated were not sufficient to complete the contract owing to rising cost of goods. Stated that the Claimant frustrated the continued execution of the projects by refusing to listen to his complaints about the rising cost of goods and also to provide money to cushion the effect of the rise in prices.

Defendant denies misuse of the monies meant for the projects, that he informed the Claimant of having no money left due to the projects he had executed in Lagos, but instead of the Claimant to give him the sum of ₦7,500,000.00 (Seven Million Five Hundred Thousand Naira) only he was given ₦5,500,000.00 (Five Million Five Hundred Thousand Naira) only. That the Claimant also engaged him to supervise and renovate her house in Gwarimpa Abuja at the cost of ₦600,000.00 (Six Hundred Thousand Naira) only in May 2020 but after the supervision Claimant refused to pay the Defendant.

Defendant denies making promise to pay the Claimant the sum of ₦14,400,000.00 (Fourteen Million Four Hundred Thousand Naira) only or any other amount in respect to the projects and is not indebted to the Claimant. Defendant avers that he has a Counter-Claim therefore it will be in the interest of justice to transfer the suit to the General Cause List.

On a critical perusal of the affidavit evidence of both parties, I find that the Defendant admitted receiving monies for the projects subject matter of the contract award hence it is not in doubt that the Defendant received the amount paid to him for the execution of the project. What is left for the court to determine is whether the Defendant have disclose triable issues in his affidavit in support of the Notice of Intention to Defend, so as to warrant the transfer the suit to the General Cause List. In urging the court to transfer the suit to the General Cause List, Defendant disputed the facts as stated by the Claimant contending that the sums made available to him for the execution of the contract were not sufficient to complete the project, while admitting to the sum paid to him for the projects. However Defendant failed to establish by hard facts steps taken to execute the projects subject matter of the contracts as well as efforts made to make demands for sums to enable him complete the contract, but rather alleged that the Claimant owes him the sum of ₦600,000.00 (Six Hundred Thousand Naira) which is a far cry, from the sum of money claimed by the Claimant. Although Defendant deposes to have a Counter-Claim, he neglected to state the nature of the Counter-Claim to enable the court assess whether indeed it is a Counter-Claim worthy of transferring the case to the General Cause List.

It is worthy to mention that the "Undefended List" is a procedure meant to shorten the hearing of a suit, where a Defendant has no Defence, hence the Defendant should not merely file his Notice of Intention to Defend for the purpose of delaying the hearing. See *Ajaguba & Co. Vs Gura Nigeria Ltd* (Supra) 224 Ratio 8. The Defendant by their Notice of Intention to Defend,

failed to Defend in line with any of the Defence contemplated as Prima-facie Defence in the case of Patigi Local Government Area VsI.K. Elsehin-Nla Esq. (Supra), but sets up facts which he failed to provide cogent evidence to establish any of the prescribed ways to establish a Prima-facie Defence. The Defendant by his deposition seeks to delay the hearing of the case as his affidavit in support of Notice of Intention to Defend suggest and this the court must resist.

From all of these, I find that the Defendant have failed to establish by credible evidence a Prima-facie Defence, which may warrant the transfer of the case to the General Cause List. Consequently the Plaintiff having proved that the Defendant is indebted to her particularly from the facts which the Defendant is unable to Defend, the Claimant is therefore entitled to Judgment under the "Undefended List" and is entitled to Judgment as claimed. Accordingly Judgment is entered as follows;

- (1) The Defendant is hereby ordered to pay over to the Claimant the sum of ₦14,400,000.00 (Fourteen Million Four Hundred Thousand Naira) only being refund for unexecuted contract.
- (2) Defendant shall pay interest at 10% from the date of Judgment until the debt is paid and discharged.

Signed
HON. JUSTICE C. O. AGBAZA
Presiding Judge
20/6/2022

APPEARANCE:

FEMI ADEDEJI ESQ. FOR THE CLAIMANT

J.O. APEH ESQ. FOR THE DEFENDANT.