

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT JABI

THIS 14TH APRIL, 2022

BEFORE HIS LORDSHIP: HON. JUSTICE A.A FASHOLA

SUIT NO: FCT/HC/CV/813/2021

BETWEEN:

AKHAMIUGU JOHN - - - - CLAIMANT

(Trading under the name and style of Micify Venture)

AND

- 1. NB & AO.HT PLC**
2. MORENO DC. WEST AFRICA PLC } - **DEFENDANTS**

JUDGMENT

This is a matter commenced by a Writ of Summons under the undefended list procedure dated 17th March 2021 and filed on the same date. Wherein the Plaintiff claims against the Defendants jointly and severally as follows:

- a. The sum of N19,000,000.00 (Nineteen Million Naira Only) being the outstanding sum for the contract of supplies of reinforcement (Rod)to Uyo project site, Akwa Ibom State, 66, 000 liters of AGO TO NDDC Project, Ugbo, Ondo State

- and 900 bags of cement to University of Uyo project site, which were duly completed.
- b. 10% monthly post judgment interest on the judgment sum until the judgment sum is fully satisfied.
 - c. Cost of this action.

In support of the Writ of Summons is a 17 paragraphs affidavit deposed to by one Akhamiogu John the sole proprietor of the plaintiff in this suit and Exhibits marked A, B, C, D, E, E1, Fi, F2, G; G1, H and H1 respectively.

FACT OF THE CASE.

The plaintiff is a business entity duly registered with the Corporate Affairs Commission.

The 1st and 2nd defendant are corporate entities duly registered with the Corporate Affairs Commission.

The Plaintiff avers that on the 10th of February 2015 the 1st defendant issued in favour of the plaintiff a Steel Reinforcement (Rod) supply contract to Uyo project site; Akwa, ibom State with a purchase order No: NB & A0 HT/UYO/0018/15 valued at N4, 505,000.00 (Four Million, Five Hundred and Five Thousand Naira

only). That on the 16th February 2015, the 2nd defendant issued a purchase order in favour of the plaintiff another purchase order to supply 66,000ltrs of AGO to NDDC project Ugbo Ondo State with a purchase order No. MDC/UG/34/15 valued at N10,890,000.00 (Ten Million Eight Hundred and Ninety Thousand Naira Only). That on the 27th February 2015 the 2nd defendant issued a purchase order in favour of the plaintiff to supply 900 bags of cement with purchase order No. MDC/UG/0038/15 Valued at N1, 980,000.00(One Million Nine Hundred and Eighty Thousand Naira only, to be initially supplied to NDDC Ugbo project site Ondo State, but was diverted to University of Uyo project site on the instruction of the 2nd defendant because of the communal dash at Ugbo as at the time of delivery. That on the 18th March 2015 the 2nd defendant issued a purchase order in favour of the plaintiff to supply another 900 bags of cement with purchase order No. UBL/UYO/0004/15 valued at N1,980,000.00 (One Million, Nine Hundred and Eighty Thousand Naira only, that these 900 bags of cement were requested for by one Mr. Amobi, Director of Uloma Block Industry and the contractor in charge of block molding for the project and when the plaintiff told Mr. Amobi categorically that the supply cannot be made because of shortage of cash flow Mr. Nicola Busacca, the director of the 2nd

defendant said the plaintiff should make the supply and promised that the plaintiff's payment for all the supplies is guaranteed within 30 days upon completion of delivery of all the items. That the plaintiff raised invoices for the supplies made in favour of the defendants. That the plaintiff was issued irrevocable payment orders (LPO). That the defendant refused to pay the plaintiff the sum of N19,000,000.00 (Nineteen Million Naira only) for all the supplies made by the plaintiff in favour of the defendant. That despite the defendants received the sum of N25,000,000.00 (Twenty Five Million Naira) from the University of Uyo for the same project within April/May 2015 and again the sum of N1.3 Billion Naira from the Co-operate account of NDDC within October/November 2016. That the plaintiff has made all efforts to get the defendants to defray their indebtedness to the plaintiff as agreed by writing series of letters to the defendants as well as University of Uyo but to no avail.

LIST OF EXHIBITS

1. Exhibit A is a purchase order dated 10th February 2015.
2. Exhibit B is a purchase order dated 16th February 2015.
3. Exhibit C is a purchase order dated 21th February 2015
4. Exhibit D is a purchase order dated 18th March 2015.
5. Exhibit E1 is an invoice dated 21st February 2015

6. Exhibit E2 is an invoice dated 12th March 2015
7. Exhibit F, F1 and F2 are irrevocable payment orders by the defendant to the plaintiff.
8. Exhibit G and G1 are the letters by the plaintiff to the defendants.
9. Exhibit H and H1 are letters of demand written by counsel of the plaintiff to the defendants.

Upon the service of the originating summon on the defendants by substituted means as ordered by this honourable court, personal service efforts having failed, the defendant did not make an appearance in this suit, neither did they file a notice of intention to defend nor an affidavit on the merit.

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 careful 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 DEFENDANTS SHALL:-

1. The defendants are to pay the plaintiff the sum of N19,000,000.00 (Nineteen Million Naira Only) being the outstanding sum for the contract of supplies of reinforcement (Rod)to Uyo project site, Akwa Ibom State, 66, 000 liters of AGO TO NDDC Project, Ugbo, Ondo State and 900 bags of cement to University of Uyo project site, which were duly completed.

2. 10% monthly post judgment interest on the judgment sum until the judgment sum is fully satisfied.

3. No cost of action awarded

Appearances:

Parties absent

No legal representation in court

Judgment read in open court

Signed

Presiding Hon Judge

14/04/2022