

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT JABI

THIS 19th MAY, 2022

BEFORE HIS LORDSHIP: HON. JUSTICE A.A FASHOLA

SUIT NO: CV/2777/2021

BETWEEN:

1. MR. CHUKWUDI OBIAKOR
 2. M/S – NAT COMMODITIES NIGERIA LIMITED
- } - -CLAIMANTS

AND

1. THE CLARK HOUSE OF REPRESENTATIVE
 2. HOUDE OF REPRESENTATIVE OF NIGERIA
- } ----- DEFENDANTS

JUDGMENT

This is a matter commenced by a writ of Summons under the undefended list procedure dated 22nd October, 2021 and filed on the same date. Wherein the Plaintiff's claims against the Defendant as follows:

1. *An order of this Honourable court directing the defendant to pay and refund the sum of N10,153,400.00(Ten Million, one hundred and Fifty three four hundred Naira) being the sum invested in the business of the defendant.*

In support of the Writ of Summons is 25 paragraphs affidavit deposed to by one Chukwudi Obiakor the managing director of the 2nd claimant in this suit annexed are exhibits marked C1-C7 respectively.

FACT OF THE CASE

The 1st Claimant is the Managing Director of the 2nd claimant a private company limited by shares and duly registered with the Corporate Affairs Commission engaged in the business of general supplies and contract.

The 1st defendant is the clerk of the house of representatives of the Federal Republic of Nigeria and the chief administrative officer of the 2nd second defendant. The 2nd defendant is the legislative body of the National Assembly created and established under the 1999 constitution as Amended.

The Claimant avers that on the 13th day of October 2016, the 2nd defendant issued in favour of the claimant a contract to supply office equipments to the 2nd claimant through the 1st claimant. That in line with the contract stipulation the claimants promptly made the supply/delivery of the office equipment valued at N116,153,400.00 (One Hundred and sixteen Million, one Hundred and Fifty Three Thousand Four Hundred Naira only).

That the delivery of the office equipments were made within the validity period of four (4) weeks after the execution of the legal agreement as a requirement for the award of the contract. That upon the performance of the contract awarded by the defendants to the claimants, the claimants were paid N106,000,000.00 (One Hundred and Six Million Naira) only in which tax and vat were deducted from source of the contract sum leaving the total balance of N10,153,400.00 (Ten Million One Hundred and Fifty Four Hundred Naira). That since the last payment, the defendants have refused and failed to pay the balance sum of N10,153,400.00 (Ten Million One hundred and fifty Three Thousand Four Hundred Naira only. That a letter of demand was written and served on the defendants by the claimants lawyer. That upon receipt of the demand letter, the defendants through the director (ADR & CR) Mrs Ben- Stowe Olubusola requested certain documents which the claimants furnished the defendants with. That upon the failure of the defendants to appoint or constitute an arbitration panel as required by the contract agreement. That the claimants made an application dated the 1st day of September 2020 to the Chief Judge of the High Court of the Federal Capital Territory for the appointment of arbitartors. That on the 5th day of October 2020 the defendants invited the claimants and his solicitors to a meeting at the directorate of legal

services. That on the 22nd day of October 2020 at exactly 11am, the claimants and their solicitors met with a 4 man members of the committee to resolve the issue of the payment of the balance of the contract sum and it was resolved that the defendants will pay the outstanding balance. That the defendants have no defence to the claim of the claimants, annexed to the affidavit are exhibits.

LIST OF EXHIBITS

1. Exhibit C1 is a letter of Award of contract dated 13th October, 2016.
2. Exhibit C2 is an agreement for supply of office equipment to the second defendant dated 25th October 2016.
3. Exhibit C3 is a payment vouchers dated 10th August 2017
4. Exhibit C4 is a Notice of demand dated 10th February
5. Exhibit C5 are letters dated 5th March and 29th June 2020.
6. Exhibit C6 is an Application for appointment of Arbitration dated 1stSeptember 2020.
7. Exhibit C7 is a letter dated 3rd October 2020.

Upon the service of the writ of summons on the defendants, the defendants did not make an appearance in the 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 defense 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 defense 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 probative 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 annexure 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 hereby ordered to pay the claimants the sum of N10,153,400.00 (Ten million one hundred and fifty three thousand four hundred naira only), being the

outstanding sum invested in the business of the defendants.

Appearances

Claimants in court

Barth Ogar for the claimant

Judgment read in open court

Signed
Presiding Hon Judge
19th/05/2022