

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT HIGH COURT MAITAMA –ABUJA**

**BEFORE: HIS LORDSHIP HON. JUSTICE S.U. BATURE**

**COURT CLERKS: JAMILA OMEKE & ORS**

**COURT NUMBER: HIGH COURT NO. 24**

**CASE NUMBER: SUIT NO. FCT/HC/CV/2758/2020**

**DATE: 1<sup>ST</sup> DECEMBER, 2022**

**BETWEEN:**

**MONAD MARS INTERNATIONAL COMPANY.....APPLICANT**

**AND**

**KUJE AREA COUNCIL & 1 OR.....RESPONDENT**

APPEARANCE

H. E. Leonard Esq for the Claimant.

**JUDGMENT**

The Claimant by a writ of Summons initiated via the undefended list procedure, pursuant to order 35 of the F.C.T High Court (Civil Procedure) Rules 2018, dated and filed 28<sup>th</sup> September 2020, Claims against the Defendants as follows:-

- a) The Sum of **₦14,061,305 (Fourteen Million, Sixty One Thousand, Three Hundred and Five Naira)** only, being the Defendants' indebtedness to the Claimant as at 30<sup>th</sup> August, 2020;

the sum being the balance of the total contract sum of **₦24,512,562.00(Twenty Four Million Five Hundred and Twelve Thousand, Five Hundred and Sixty Two Naira)** less 10% Tax for the General Renovation of the official Residence of the Executive Chairman of Kuje Area Council which contract the Claimant completed in 2013.

- b) Pre-judgment interest to the discretion of the Honourable Court.
- c) Post Judgment interest at the rate of 10% from the Day of Judgment till final liquidation of the Judgment sum.

However, in a Ruling delivered on 16/06/2022, this Honourable Court gave the Defendants leave to defend the suit and ordered for the transfer of the suit to the general causelist.

Now, although the Defendants were duly represented in this suit, they did not file any statement of defence.

On the other hand the Claimant filed its statement of Claim on 23/6/2021 along with some annexures.

Claimant also called one witness PW1, Mr. Marcel Nwofu, who testified on 28/3/2022 and adopted his witness statement on Oath deposed on 23/6/2021.

The following Exhibits were tendered through PW1, admitted in Evidence and marked as follows:-

- (1) A Certificate of incorporation of Monad Mars International Company Marked Exhibit A.
- (2) A letter of award of Contract issued by Kuje Area Council dated 24/9/2013, Marked Exhibit B.
- (3) An acknowledgment copy of a letter of acceptance addressed to the Honourable Chairman Kuje Area Council dated 25/9/2013, Marked Exhibit C.

- (4) Photocopy of a construction agreement between Kuje Area Council and Monad-Mars International Company, marked Exhibit D.
- (5) Photocopy of a letter of Handing over of the renovation of Chairman's official residence addressed to the Chairman Kuje Area Council dated 17/12/2013, marked Exhibit E.
- (6) A Certificate of practical completion of Building/Civil works issued by Kuje Area Council, marked Exhibit F.
- (7) A Zenith Bank PLC statement of Account of Monad Mars International Company LTD, marked Exhibit G.
- (8) Photocopy of a letter for request for the payment of ₦14,000,000.00 (Fourteen Million Naira) only, balance for the renovation of Honourable Chairman's permanent Residence dated 24/7/2018 marked Exhibit H.
- (9) Photocopy of a letter captioned :Re-demand for the payment of the outstanding balance of Fourteen Million Naira only to M/s Monad-Mars Co. Ltd dated 24/7/2019, marked Exhibit I.
- (10) Report of the Committee on Contract verification from 2010-2018, submitted to the Honourable Chairman Kuje Area Council RT. Honourable Alhaji Abdullahi D. Galadima on 24<sup>th</sup> October, 2016, marked Exhibit J.
- (11) A Certificate of compliance pursuant to Section 84 of the Evidence Act, 2011, Marked Exhibit K.

On the day PW1 testified-in-chief Defendants were duly represented by their Counsel Mr. A. J. Iyede Esq.

However, Defendant's Counsel informed the Court that they had no wish to cross-examine PW1.

Subsequently, several adjournments were made by the Court for defence, slated firstly for report of settlement against 10/5/2022 or for defence. And

later further adjourned to 20/9/2022 and 26/9/2022 for defence. On the two dates slated for defence, the Defendants were absent and unrepresented with no correspondence to either the Court or learned Claimant's Counsel.

On failure of the Defendants to put up their defence and their consistent absence in Court, Learned Claimant's Counsel H. E. Leonard Esq, Applied for foreclosure of defence.

This Court considered learned Counsel's Application and foreclosed defence. Right to file final written address was waived by Claimant's Counsel and the matter was adjourned for Judgment.

The case of the Claimant as contained in the statement of Claim is that it is a duly incorporated limited liability company with its address at Plot 7, Oka Akoko, Street, Garki 2 Abuja.

That day by their letter dated 24/09/2013, the Defendants awarded a Contract for the general renovation of the official Residence of the Executive Chairman of the Kuje Area Council to the Claimant at a Contract Sum of **₦24,512,562.00 (Twenty four Million, Five Hundred and Twelve Thousand, Five Hundred and Sixty Two Naira) only less 10% Tax.**

That by Claimant's letter of acceptance dated 25/09/2013, the Defendants accepted the said Contract and subsequently a construction agreement was executed between the two parties.

That consequently, Claimant commenced and completed the execution of the said contract as agreed by parties, and later wrote a letter dated 17/12/2013, where claimant requested for a date for handing over of the Contract to the Defendants. That the said request was granted and Claimant's letter dated 17/12/2013 was duly acknowledged by the Defendants.

That the Claimant handed over to the Defendants the completed Contract and was issued a certificate of completion of the contract by the Department of works, Housing and survey of the 1<sup>st</sup> Defendant, certifying that the contract had been duly executed was issued as aforesaid.

That the Defendants on 17/7/2014 made a part payment of the sum of ₦5,000,000.00 (Five Million Naira) only to the Claimant out of the contract sum of ₦24,512,562.00 less 10% Tax.

That subsequently, a second payment of the sum of ₦3,000,000.00 (Three Million Naira) only was made to the Claimant on 14/10/2014, making a total sum of ₦8,000,000.00 paid to the Claimant by the Defendants.

That since the last payment to the Claimant made on 14/10/2014 for the sum of ₦8,000,000.00 leaving an outstanding balance of ₦14,061.305 (Fourteen Million, Sixty One Thousand, Three Hundred and Five Naira) only unpaid. That since the Defendants have refused neglected to pay the remaining balance to the Claimant.

That consequent to the repeated visits and demands by the Contractors (including the Claimant) being owed by the defendants, the defendants had to set up a committee on contract verification, from 2010-2015 to verify all Contracts awarded by the Defendants between the year 2010 through 2015.

That on 24/10/2016, the committee submitted its report to the 2<sup>nd</sup> Defendant wherein it stated that the Defendants are indebted to the Claimant to the tune of ₦16,512,562 (Sixteen Million, Five Hundred and Twelve Thousand, Five Hundred and Sixty Two Naira) being the balance left unpaid out of the Contract sum.

That the committee further stated that the Contract was duly executed and recommended that the Defendants pay the Claimant.

That despite repeated letters of demand by the Claimant and its Counsel to the Defendants, demanding that the Defendants offset their indebtedness

to the Claimant, the Defendants have refused/neglected to heed to their demands, hence the need for this suit, and thereafter engaged the services of the firm of Leonard and Nzom to enable it recover its money from the Defendants and was charged a professional fee of ₦1,000,000.00(One Million) Naira only by the firm.

Averred further in paragraph 16 of the statement of Claim, that the Claimant has suffered serious damage due to the failure of the Defendants to offset their indebtedness to it, as it would have invested the sum owed it by the Defendants into their profitable projects, hence the claims against the Defendants endorsed in the writ of Summons.

In this judgment, I shall raise a sole issue for determination to wit:

***"Whether the Claimant has proved its case on the preponderance of evidence to be entitled to the reliefs sought?"***

Well, I have carefully considered the Claimant's Claims, the statement of Claim, the Claimant's witness statement on Oath and the documents relied upon by the Claimant, as averred in its statement of Claim and witness statement on Oath, tendered and admitted in evidence through PW1.

Indeed, the Claimant has successfully proved by its oral and documentary evidence presented in this suit, that it has since executed and completed the contract awarded to it by the Defendants herein. And that despite repeated requests and demands the Defendants have failed/refused to offset their indebtedness to the Claimant.

In particular, I have averted my mind to Exhibit J, the committee report on Contract verification submitted to the 2<sup>nd</sup> Defendant on October, 2016, wherein the Defendants indebtedness to the Claimant was clearly acknowledged as well as the committee, recommendation for the said outstanding balance to be paid to the Claimant.

Now, at this Juncture, it is important to re-reiterate that the Defendants did not file a statement of defence, and did not cross-examine Claimant's witness, even though they had the opportunity to do so.

On this issue, may I refer to the case of **GAJI & ORS V. PAYE (2003) LPELR-1300 (SC)** where the Court, per **EDOZIE JSC**, held at P20, paras E-D, as follows:-

***"It has been said that the effect of failure to cross-examine a witness upon a particular matter is a tacit acceptance of the truth of the evidence of a witness....."***

Similarly, in the case of **OFORLETE V STATE (2000) LPELR-2270**, the Supreme Court, held per Achike JSC, at pp 24-25, paras G-F, as follows:-

***".....Where the adversary fails to Cross-Examine a witness upon a particular matter. The implication is that he accepts the truth of that matter as led in evidence."***

See also **ADEDAYO V. CHRISTINE & ORS (2019) LPELR-48871 (CA), PER Ndukwe Anyanwu, J. C.A, @ PP 32-33, PARAS A-C.**

In this suit, the Claimant has led evidence which is unchallenged and uncontroverted. Therefore, the effect is that the Defendants have admitted Claimant's Claims as endorsed on the Writ of Summons.

Therefore, the Court is at liberty to accept Claimant's evidence as the truth of the matter. See **OFORLETE V. STATE (Supra).**

It is settled law that civil cases are decided on preponderance of evidence and balance of probability.

See: **OBU & ANOR V. OKIGWE & ORS (2018) LPELR-43938 (CA); HUSSEINI & ANOR V. MOHAMMED & ORS (2014) LPELR-24216 (SC).**

In the instant case, on the strength of Claimant's evidence I am satisfied that the Claimant has proved its case on preponderance of evidence to be entitled to the reliefs sought.

Therefore, the sole issue is hereby resolved in favour of the Claimant against the Defendants, I so hold.

Consequently, Judgment is hereby entered in favour of the Claimant against the Defendants as endorsed on the Writ of Summons, save for Claim (b) which is refused.

I award the sum of **₦500,000.00** as Cost of this action, since Claimant did not tender in evidence receipt for professional fees to prove that the sum **₦1,000,000.00** was paid as cost of this action.

***Signed:***

***Hon. Justice S. U. Bature  
1/12/2022.***