

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI, ABUJA**

**BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS
COURT: 28**

Date: - 20THSEPTEMBER, 2023

BETWEEN

FCT/HC/CV/4099/2023

BETWEEN

MESSRS A.S BACHA NIG. LIMITED-----

CLAIMANT

AND

- 1. FEDERAL MINISTRY OF POWER,WORKS & HOUSING**
- 2. THE HONOURABLE MINISTER, FEDERAL MINISTRY
OF POWER,WORKS AND HOUSING
HEADQUARTERS, MABUSHI ABUJA FCT.**
- 3. ATTORNEY GENERAL OF FEDERATION
&MINISTER OF JUSTICE**

DEFENDANTS

JUDGMENT

This is a case brought by way of undefended list against the three Defendants the Claim as contained on the writ is for money liquidated demand . the Claimant claim against the 1st and 2ndDefendant as follows:-

1. The payment of the sum of ₦14,000,000.00 (Fourteen Million Naira Only) being the payment for awarded contract for the construction of block of classroom at Etsako Central Iga, Etsako East Iga, Akoko- Edo Iga, Etsako West Iga 111, Edo State by the Ministry of Power, Works & Housing's to the Claimant and completed and which the Ministry has failed and or refused to pay to the Claimant despite repeated Demand.
2. The payment of the sum of ₦14,000,000.00 (Fourteen Million Naira only) being the Payment for awarded contract for the construction of one Block of 3 Classrooms at Alape Lalupon Ojo, Moniya, Monatan, Oyo State by the Ministry of power, works and Housing to Claimant and completed and which the ministry has failed and or refused to pay to the Claimant despite repeated demand.
3. Interest on the said sum ₦9,000,000.00 (Nine Million Naira only) at the commercial rate of 20% per annum from the date of failure to payment the said amount.
4. 10% per annum on the judgment debt from the date of judgment until same is liquidated and
5. The cost of ₦2,000,000.00 (Two Million Naira Only) as the cost of this action.

In support of the claim is an affidavit of 25 paragraphs deposed to by Henry Nkeki a business man carrying on business and contract work and other business with registered office at No 31 Zoo Road, Kano, Kano State. Same deposed to this affidavit based on the consent of all other

directors of the claimant particularly paragraphs 3 to 25 gave factual account of how the contract was awarded to the Claimant and the failure of the defendants to discharge its own obligation after the completion of the contract as mutually agreed and signed by the parties involved in the execution of the said contract. To support the facts contained on the affidavit in support the deponent on behalf of all the claimant attached some exhibit to support this case the exhibits are marked as exhibit A-K those exhibits gave detail account on how the contract started and how same was completed by the defendant. Having reproduced partly the claim of the Claimant as per the writ and the heavy reliance of the affidavit in support and the exhibits attached although not reproduced in this judgment. I must clearly start by saying that the claimant have satisfied all the requirement leading to the filing of the application under the undefended list procedure the Claimant have graphically and meticulously gave detail of the entire transaction as can be seen from the process filed by the Claimant. For the avoidance of doubt. *I would like to reproduce the provision of 035 Rule 11 and 4 in order to demonstrate the satisfaction of the above order done by the Claimants*

Order 35 rule 11 and 4 of the Civil Procedure Rules (FCT) 2018

“Where an application in form 1, as in the appendix is made to issue a writ of summons in respect of a claim to recover a debt or liquidated money demand

supported by an affidavit stating the grounds on which the claim is based and stating that in the deponent belief there is no defence to it, the judge in chamber shall enter the suit for hearing in what shall be called the "undefended list"

Rule 4 of 35 provides :-

"Where a Defendant neglects to deliver the notice of defence on an affidavit prescribed by Rule 39(1) or is not given leave to defend by the Court the suit shall be heard as an undefended suit and judgment given accordingly"

I must in this judgment states clearly that from the above order the claimant have sufficiently satisfied the above requirements and therefore his claim is within the contemplation of the said order 35(s1) and 4 respectively, it is equally important to record in this judgement the altitude of the defendants in this judgment. Same were duly served as required by the rules. However the defendant refused to put up appearance neither did they filed any notice of intention to defend the claim. On the date fixed for hearing. The Claimant urged the Court to allow him to proceed with the case. Not withstanding the non compliance with the rules of this Court by filing their notice of intention to defend within 5 days. This Court suo motu and reluctantly adjourned this matter to another date and also ordered that hearing notice be served on the Defendants. Same was carried out

as ordered by the Court. Still the Defendant refused to do the needful there shall be an end to every litigation. It is on this note I safely conclude that judgment is hereby entered in favour of the Claimant against the 1st and 2nd Defendant only. I also order that the Defendant shall pay 10% of the judgment sum until the whole sum is liquidated while in respect of claim No. 5 as per the claim of Claimant that is the cost of the action of N2,000,000.00 to be granted same is hereby refused parties shall bear their respective cost. Basically the above conclusion and decision of this Court in respect of claim No. 1 and 2 was based on order 35 Rules 1 and 4 of this Rule of this Court and the case of **ACME BUILDERS VS WATER BOARD (1999)2 SCNJ 25 and OSAKWE VS NAMUO (1976)1 MSL RVI 39 at 43.**

Coming back to the 3rd prayer contained in the claim of the claimant thus: interest on the said sum N9,000,000.00 at the commercial rate of 20% per from the date of failure to pay the said amount.

From the prayers mentioned above the claimant have not provides any facts or evidence deposed in the affidavit in support of the claim nor any annexure attached to the processes filed by the Claimant in order to convince the Court that the claim is a one that can be granted under this procedure.

This procedure essentially established for money liquidated demand or in otherwards for money certain the primary

essence of the procedure is to avoid expenses caused to the Claimant by the rigorous methods of litigation and to also speedily dispense justice without undue delay of technicalities. This claim can not be granted by this Court because the claim has not been sufficiently proved by affidavit evidence not even mention of the same in any of the paragraphs of the Claimant deposition. This Court is not a Father Christmas. A liquidated sum or liquidated money means an amount agreed upon by parties to which the Plaintiff is entitled and which is capable of being ascertained, calculated or fixed by mathematical computation or operation of law. See **ACME BUILDERS VS WATER BOARD (supra)**. The term liquidated money demand also came up for judicial interpretation in the case of **DENTAN- WEST VS MOMAL (2020) 2 NWLR (pt 1177) 19**.

Also in more recent case of **ACADAMIC STAFF UNION of the FED POLYTECHNIC OFFA VS UBA PLC (2014) ALL WLR (PT.748) 888**. The Court of Appeal in defining the term liquidated demand referred to and cited with approval the explanation of the term given by the Supreme Court in the earlier case of **MAJA VS SAMOURIS (2002) FWLR (pt 98) 818 (2002) 7 NWLR (pt 765) 78 Q102 PER IGUH (JSC) viz.**

A liquidated demand is a debt or other specific sum of money usually due and payable and its amount must be already ascertained or capable of being ascertained as a mere matter of arithmetic without any other or further investigation whenever therefore, the amount to which a

Plaintiff is entitled can be ascertained by calculation or fixed by any scale of changes or other positive data, it is said to be “liquidated” or made clear. Again where the parties to a contract, as part of the agreement between them, fixed the amount payable on default of one of them or in the event of breach by way of damages, such sum is classified as liquidated damages where it is in the nature of a genuine pre estimate of the damages which would arise from breach of the contract so long as the agreement is not obnoxious as to constitute a “penalty” and it is payable by the party in default.

From the above wise quotation it becomes imperative on the part of this Court to refuse the above prayer 3, therefore I so hold and refused prayer 3 as contained in the Claimants Claim.

HON. JUSTICE M.S IDRIS
(Presiding Judge)

Appearance

Parties:- Absent

Court:- Judgment read in the open Court.