

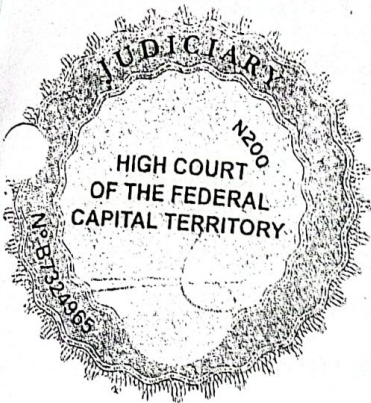
IN THE CHIEF DISTRICT COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE SMALL CLAIMS COURT

HOLDING AT FHA ESTATE, LUGBE

BEFORE HIS WORSHIP: L. O. ABOLAJI

THURSDAY 11TH JANUARY, 2024



SUIT NO: SCC/LUG/001/2023

BETWEEN:

MRS. AZUKA ANIEROBI PLAINTIFF

AND

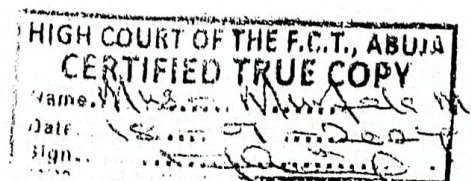
MR. ICHOJA MICHAEL PATRICK DEFENDANT

JUDGMENT

This proceeding was initiated by the claimant under the Small Claims Court on 10/11/2023 pursuant to the District Courts Act Practice Directions on Small Claims 2022. The claimant filed a complaint form (Form SCA 2), application for undefended claims (Form SCA 3A) which is supported by an affidavit (Form SCA 3B) to which is annexed the following documents:

- i. Colour photocopy of the defendant's driver's licence marked as exhibit CL1;
- ii. An original quotation of AZ Deep Eletrical/Mechanical Services Limited for the supply and installation of 100KVA marked as exhibit CL2;

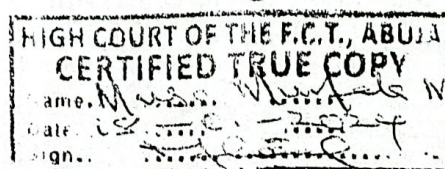
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- iii. Defendant's computer generated statement of account of Standard Chartered Bank marked as exhibit CL3;
- iv. Computer generated text message demanding the defendant to refund the sum of N1, 100, 000.00 (One Million, One Hundred Thousand Naira Only) marked as exhibit CL4;
- v. Computer generated credit alert of the sum of the sum of N230, 000.00 marked as exhibit CL5;
- vi. An unmarked certificate of compliance made by the claimant on 04/10/2023; and
- vii. Photocopy of a letter of demand (Form SCA 1) issued and signed on 05/10/2023 and also a letter of demand dated 05/10/2023 written on the letterhead of the law firm of Bonna & Eastman Solicitors both addressed to the defendant which he endorsed receipt of on 17/10/2023.

The claimant is praying for the total liquidated sum of N1, 030, 000.00 (One Million and Thirty Thousand Naira Only) which is broken down into liquidated sum of N800, 000.00 (Eight Hundred Thousand Naira Only) being refund of the outstanding contract sum part-payment made by the plaintiff to the defendant but which the defendant failed to perform/execute the contract; and N230, 000.00 (Two Hundred and Thirty Thousand Naira) being money paid to claimant's counsel for this action.

Sadly, when it came up on 18/12/2023 for hearing, the defendant had not been served with the originating processes then and the claimant's counsel never filed an application for substituted service as required by Article 6 of the District Courts Act Practice Directions on Small Claims 2022 notwithstanding the fact that the sitting of that day was basically because of the matter as I was on annual leave then. Hence, the application for substituted service was not heard and granted until

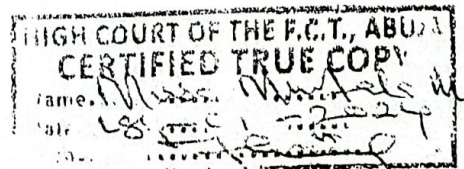


28/12/2023 after I resumed from annual leave. The defendant was duly served on 29/12/2023 as ordered. When it came up on 04/01/2024 for hearing again, it was not ripe to be heard in order to enable the defendant file his defence/admission/counterclaim/counter-affidavit within 7 days as required under Article 7 of the Practice Directions.

Finally, on 08/01/2024 it was heard. The defendant complied with Article 7(1) by filing a defence and a supposed counterclaim on 05/01/2024. Strangely, the defendant's counsel also filed a process headed: Defendant's Defence on the same date which also contained a counterclaim. Photocopies of three (3) documents are also strangely annexed to the said process. In reaction to this, the claimant's counsel on the 08/01/2024, the day of hearing, filed a reply to the defence and a defence to the counterclaim. Further filed is a 5 paragraph affidavit in support of the defence to the counterclaim which has three documents as annexures. They are:

- i. Proposed contract agreement between the parties in this suit marked as exhibit CLR 1;
- ii. A scanned letter dated 23/08/2023 from Abuja Electricity Distribution Company addressed to the Managing Director of Lukins Universal Projects marked as exhibit CLR2; and
- iii. Scanned copy of a letter dated 05/06/2023 written on the letterhead of Lukins Universal Projects addressed to the Managing Director of AEDC.

A brief fact of this case is that the claimant contracted the defendant to supply and install a 100KVA transformer in her house project somewhere at Gwarimpa, Abuja. The defendant gave a quotation of N7, 456, 900.00 (Seven Million, Four Hundred and Fifty-Six Thousand, Nine Hundred Naira Only). However, both parties agreed on the sum of N6, 300, 000.00

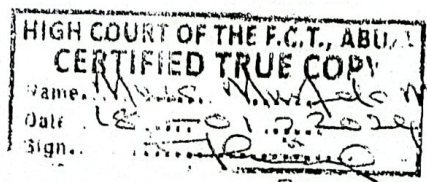


(Six Million, Three Hundred Thousand Naira Only) for the contract. The claimant on 27/02/23 made an advance part-payment in the sum of N1, 100, 000.00 (One Million, One Hundred Thousand Naira Only) to the defendant. When the claimant observed the defendant was not carrying out the contract as agreed, she demanded for the refund of the sum paid to the defendant out of which the defendant only paid back N300, 000.00 (Three Hundred Thousand Naira Only) leaving as outstanding, the sum of N800, 000.00 (Eight Hundred Thousand Naira) which is now the subject-matter of this action.

Forms SCA 1, 2, 3A and 3B were all issued and duly served on the defendant. Form SCA 3B is an affidavit which has six (6) documents annexed supporting the application for undefended claims all in a bid to prove this small claim action.

In responding to the claims, the defendant only filed Form SCA 5 without filing a counter-affidavit in support as required by Article 7(2) of the Practice Directions which is very germane in this proceeding as the failure is fatal to the defendant's case. Article 7(4) provides thus: "*Where a defendant fails to file an answer to the Claim or a Counter-Affidavit to the Application for the Undefended Claims, such Defendant shall be held to have admitted the Claim.*" This provision is in tune with the trite position of the law that depositions in an affidavit are required to be denied or controverted with a counter-affidavit. In the case of **Akiti v. Oyekunle (2018) LPELR-43721(SC) (Pp. 7-8 paras. F)** where Rhodes-Vivour, J.S.C. said:

"I must state that depositions in affidavit on material facts resolve applications in Court. Where depositions on material facts in an affidavit in support of an application are not denied by the adverse party filing a counter-affidavit, such facts not denied in the affidavit in support remain

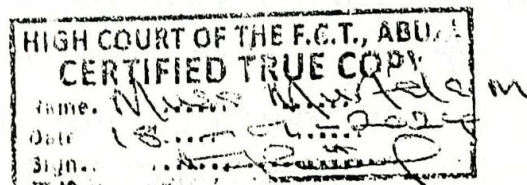


the correct position and the Court acts on them except they are moonshine. Material facts in a counter-affidavit not denied by a reply affidavit are the true position. It is only when the affidavits cannot resolve facts that parties are invited to lead evidence in proof of the facts they deposed to. See Akinsete v. Akindutire (1966) 4 NSCC p. 157; Eboh v. Oki (1974) 9 NSCC p. 29; National Bank (Nig) Ltd v. The Are Brothers Nig Ltd (1977) 11 NSCC p. 382; Alagbe v. Abimbola 1978 2SC p. 39."

See also the cases of **Owuru & Anor v. Adigwu & Anor (2017) LPELR-42763(SC)** (Pp. 28-29 paras. D); **Ajomale v. Yaduat & Anor. (No.2) (1991) 5 NWLR (Pt.191) 226 @ 282-283; (1991) 5 SCNJ 178; Magnusson v. Koikoi (1993) 12 SCNJ 114 and Henry Stephens Engineering Ltd v. S. A. Yakubu (Nig) Ltd (2009) LPELR-1363(SC) (Pp. 18 paras. A).**

In the absence of any counter-affidavit filed by the defendant to challenge the claimant's depositions, the court will deem such depositions as admitted and will rely on them as the true position. See **Owuru & Anor v. Adigwu & Anor (Supra); Ajomale v. Yaduat & Anor. (No. 2) (Supra).**

In Form SCA 5 filed by the defendant, he did not admit any of the plaintiff's claims. However, he did not deny the contractual relationship between the parties. All he is saying in defence is that the liquidated claim of N800,000.00 was used to obtain permit/approval from A.E.D.C. to purchase and install the 100KVA transformer. Hence, he is not liable to refund the money to the claimant. And also that he is not liable to pay claimant's legal expenses as the claimant knows she has no case against him before filing this suit. In the column for counterclaim in Form SCA 5, what the defendant wrote there do not qualify as counterclaims. They are still in the realm of defence.



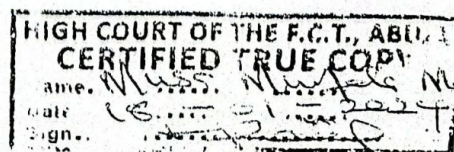
The choice of the defendant's counsel to file a process headed as: "Defendant's Defence" which also contained a counterclaim is ill-advised because that is what Form SCA 5 is expected to do. So, the filing of the process in the circumstance is tantamount to repetition of what Form SCA 5 already did. And by the Practice Directions, where the claimant files an application for undefended claim (Form SCA 3A) supported by an affidavit (Form SCA 3B) in addition to the small claims complaint form (Form SCA 2), then the defendant is required to file in response a counter-affidavit as in Form SCA 5A in addition to the Form SCA 5 filed by the defendant in this suit as provided by Article 7 (2) of the Practice Directions.

In spite of all these laxities, I will still consider the defence of the defendant. A careful look at exhibit CL2 which is the quotation for the contract made by the defendant, there is no item there listed as AEDC approval fee. The closest to this seen on the page 2 are the following:

1. Permission to Construct - N200, 000.00
2. LECAN Fee - N100, 000.00
3. NEMSA - N500, 000.00

If at all any of the above items are paid for, it is not enough for the defendant to just allege he used N800, 000.00 to obtain approval/permit; he must present evidence showing the payments made before getting the approval as claimed by him. These are official fees which must have receipts issued upon payment for such. In the absence of evidence to prove the payment of N800, 000.00 to AEDC, the defence is nothing but a sham. The burden is on him to discharge. He who alleges must prove.

The defendant also weakly alleged in the defendant's defence filed by his counsel before coming up with the counter-claims therein that the approval he obtained was used by the claimant to carry out the



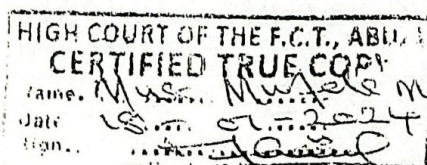
installation using another company. Ideally, I am not supposed to give credence to this process of the defendant but it is glaring that in Form SCA 3B (affidavit evidence) supporting the application for undefended claims, the claimant even without knowing that the defendant will ever come up with this said the defendant never provided her with all necessary clearance papers he purportedly got from AEDC as promised even upon being demanded. How then can the claimant then use the approval papers which she never saw much more have in her possession? By the affidavit filed on 08/01/2024 in response to the counter-claim, it is crystal clear that the claimant got another company/person to carry out the contract and it was executed independent of the defendant's allegedly obtained approval/permit.

In view of all the above, it is glaring that the defendant has no defence and counterclaim (which is also required to be a liquidated sum) to this action, hence, this court has no option but to enter judgment in favour of the claimant as prayed. In the locus classic case of **Ben Thomas Hotels Ltd v. Sebi Furniture Co. Ltd (1989) LPELR-769(SC) (Pp. 21 paras. D)** which is a matter on liquidated money demand brought under the undefended list, Agbaje, J.S.C. opined thus:

"Under this rule once the defendant in an action on the Undefended List fails to deliver the notice of defence and affidavit and is not let in to defend the plaintiff is entitled to judgment once the affidavit in support of the application for writ of summons shows that the defendant has no defence to the action."

See also **Planwell Watershed Ltd. & Anor. v. Ogala (2003) LPELR-2920(SC) (Pp. 8 paras. B)** where Kalgo JSC also said:

"...a defendant in an undefended list proceeding must show in his affidavit not only that he intends to defend the action but also he discloses his

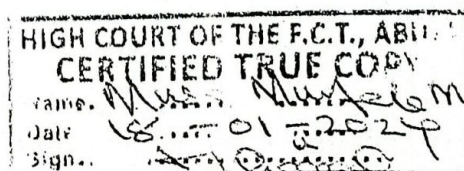


defence to the action on the merits of the case. It is not enough merely to assert that he has a good defence to the action without giving full details of the actual defence he intends to put forward to the court See A.C.B. Ltd. v. Gwagwada (1994) 5 NWLR (Pt. 342) 25 at p. 36; Ben Thomas Hotels v. Sebi Furniture (1989) 5 NWLR (Pt. 123) 523; John Holt & Co. (Liverpool) Ltd. v. Fajemirokun (1961) All NLR 492."

In the instant case, the defendant never denied the contract between the parties. He is only saying the sum being claimed has been spent on the contract without providing proof(s) in that regards. No counter-affidavit was filed in denial of the depositions supporting the claims. In view of all these, based on the undisputed facts averred by the plaintiff and the exhibits annexed, her liquidated claim for the refund of the balance of part-payment made for the contract is hereby granted as prayed. The defendant should pay, forthwith, the outstanding sum of N800, 000.00 of the contract sum.

On the claim for legal expenses incurred, that is not the main claim. It is a subsidiary claim. This proceeding, unlike the undefended list/default summons did not give room for such claim. And even where the claim can be made, there is no cogent evidence for the award of same. That aside, the law generally seems not to be in favour of such claim as decided in *NWANJI V. COASTAL SERVICES NIGERIA LTD (2004) LPELR-2106* where the issue of assessment of cost taxation was raised by Uwaifo JSC when he held thus:

"Secondly, it is an unusual claim and difficult to accept in this country as things stand today because as said by Uwaifo, J.C.A. in Ihekwoaba v. A.C.B. Ltd (1998) 10 NWLR (Pt. 571) 590 at 610-611:



"The issue of damages as an aspect of solicitor's fees is not one that lends itself to support in this country. There is no system of costs taxation to get a realistic figure. Costs are awarded arbitrarily and certainly usually minimally. I do not therefore see why the appellants will be entitled to general or any damages against the auctioneer or against the mortgagee who engaged him, in the present case, on the ground of solicitor's costs paid by them."

See also MICHAEL V. ACCESS BANK (2017) LPELR-41981(CA). In this vein, this claim is refused.

Notwithstanding the above, a cost of N20, 000.00 is hereby awarded against the defendant as cost of this suit.

SIGNED

CDJ II

11/01/2024

LEGAL REPRESENTATIONS:

1. Mr. C. C. Ogbonna for the Claimant
2. Mr. J. J. Uroko for the Defendant

