

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA – ABUJA**

**BEFORE HIS LORDSHIP: JUSTICE SALISU GARBA
COURT CLERKS: JIMOH I. SALAWU & OTHERS
COURT NUMBER: HIGH COURT TWO (2)
CASE NUMBER: FCT/HC/CV/1000/2019
DATE: 28TH MAY, 2019**

BETWEEN:

ABONIL INVESTMENT LIMITED

- **CLAIMANT**

AND

- 1. THE HON. MINISTER, MIN. OF ENVIRONMENT**
- 2. THE PERM. SECRETARY, MIN. OF ENVIRONMENT**
- 3. FED. MINISTRY OF ENVIRONMENT**

} **DEFENDANTS**

Parties absent.

Omoyeni Ajibade appearing with L.K. Salla for the Claimant.

Claimant's Counsel – The matter is for ruling.

J U D G M E N T

By a writ of summons under the Undefended List Procedure dated 5/2/2019, the Claimant claims against the Defendants jointly and severally as follows:

1. The sum of N29,903,765.24 (Twenty Nine Million, Nine Hundred and Three Thousand, Seven Hundred and Sixty Five Naira, Twenty Four Kobo) only being the total outstanding sum owed the Claimant and admitted by the Defendants as a result of the award of contract for Erosion control at Yelwa South/Ipokia North in the sum of N75,290,123.00 (Seventy Five Million, Two Hundred and Ninety Naira, One Hundred and

Twenty Three Naira) only awarded to the Claimant by the defendant via letter of award of contract dated 25th November, 2010.

2. Post-judgment interest at the rate of 10% on the judgment debt until full liquidation.
3. N1,000,000.00 (One Million Naira) only being the cost of this suit.

In support of the writ of summons the Claimant filed a 32-paragraph affidavit evidence dated 5/2/19 deposed to by Omolola Omotoso one of the Directors of the Claimant.

The gist of the affidavits evidence is that the claimant was awarded a contract by the Defendants for Erosion control at Yelwa South/Ipokia North in the sum of N75,290,123.00. Copy of the contract award letter is marked as Exhibit A.

That the Claimant upon receipt of mobilization from the Defendants, ensured that the contract was completed within the time frame allowed under the terms and condition of the contract. That upon the completion of the contract, the Defendants were extremely happy and promised to immediately pay the outstanding sum of N29,903,705.24.

It is the averment that by Exhibit B attached to the affidavit evidence, the Defendants irrevocably admitted its indebtedness to the Claimant to the tune of N29,903,765.24. That despite all the repeated demand notices served on the Defendants, they

refused, neglected and failed to liquidate their indebtedness to the claimant. Court is referred to Exhibit C.

That the Defendants have no defence to this suit.

From the record of this court, the Defendants were duly served with the originating processes of this court and a hearing notice on 19/3/19 but in their wisdom elected not to enter appearance or file notice of intention to defence as provided for in the rules of this court.

It is trite law that it is not the duty of a court or tribunal to wait for a party who is duly served with the process of the court and refused to show up. The court is free to begin hearing any matter when it is satisfied that the parties to the case were duly served with hearing notice. See *NYAMATI ENT. LTD v NDIC* (2006) All FWLR (Pt 293) 356.

It is without doubt that a suit is maintainable under the Undefended List if it relates to a claim for a debt or liquidated money demand, as in the instant case. See *HAIDO v USMAN* (2004) 3 NWLR (Pt 859) 65.

It is trite law that a Defendant who intends to defend an action brought under the undefended list procedure is expected to file a notice of intention to defend together with an affidavit disclosing a defence on the merit or a triable issue. See *HAIDO v USMAN* (Supra).

In the instant case as stated, the Defendants were duly served with the originating processes of this court, but in their wisdom

refused to file a Notice of Intention to Defend. It follows therefore that they do not have a defence to the claim of the claimant. In fact by Exhibit B attached to the affidavit evidence to the writ of summons, the Defendants admitted the claim of the claimant by their letter dated 6/3/2017.

It is settled law that when the matter under the undefended list comes up for hearing on that date, the court has only one duty, that is to see if a Notice of Intention to Defend with a counter affidavit in support was filed by the defendant, if non was filed, the court must proceed to judgment. See BEN THOMAS HOTEL LTD v SEBI FURNITURE LTD (1989) 5 newly (Pt 123) 523.

In the instant case from the record of the court there is no Notice of Intention to Defend nor a counter affidavit filed. Accordingly this court must proceed to judgment.

After a careful consideration of the processes filed particularly the 32-paragraph affidavit in support of the writ of summons, I hold the firm view that the Claimant have proffer credible and cogent/sufficient material to warrant judgment be entered in its favour.

Accordingly, judgment is entered in favour of the Claimant against the Defendants jointly and severally as follows:

1. The defendants are ordered to pay the Claimant the sum of N29,903,765.24 (Twenty Nine Million, Nine Hundred and Three Thousand, Seven Hundred and Sixty Five Naira, Twenty Four Kobo) only being the total outstanding sum owed the

claimant and admitted by the Defendants as a result of the award of contract for Erosion Control of Yelwa South/Ipokia North in the sum of N75,290,123.00 (Seventy-Five Million, Two Hundred and Ninety Naira, One Hundred and Twenty Three Naira) only awarded to the Claimant by the Defendants via Letter of Award of Contract dated 25th November, 2010.

2. Post-judgment interest per annum at the rate of 10% on the judgment debt until full liquidation.
3. Cost assessed at N3,800.00.

(Sgd)
JUSTICE SALISU GARBA
(PRESIDING JUDGE)
28/05/2019

Claimant's Counsel – We are grateful for the ruling.

(Sgd)
JUSTICE SALISU GARBA
(PRESIDING JUDGE)
28/05/2019