

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE NYANYA JUDICIAL DIVISION
HOLDEN AT NYANYA ON THE 14TH DAY OF MARCH, 2019
BEFORE HIS LORDSHIP, HON. JUSTICE U. P. KEKEMEKE
SUIT NO.FCT/HC/CV/176/18

COURT CLERK: JOSEPH ISHAKU BALAMI & ORS.

BETWEEN:

ABKAS AND SONS GLOBAL SERVICES LTD.....CLAIMANT

AND

FEDERAL ROADS MAINTENANCE AGENCY.....DEFENDANT

JUDGMENT

The Claimant's Writ of Summons and Affidavit in Support under the Undefended List Procedure dated 9th November 2018 is for the sum of N38,434,174.18k being the contract sum for work done by the Claimant in favour of the Defendant.

In support of the Claim is an Affidavit of 4 paragraphs deposed to by Miss UmehAmaka. She states that on the 13th of

December 2013, the Defendant was awarded contract for special repairs of potholes and failed weak sections of carriage way at Ch 22 + 000 – Ch 69 + 000 along Jos Gimi Road in Plateau Contract No. ESR/13-27 to the Claimant in the sum of N40,355,882.89 A copy of the contract is Exhibit A.

The Claimant accepted the offer vide a letter dated 20/01/14. The acceptance letter is Exhibit B. It was agreed that the duration of the work shall be three months. That Claimant bought materials on credit and executed the contract on time. The Defendant inspected the job and was satisfied. The Defendant requested for an Interim Statement to be submitted with Claimant's account number. That the said Interim Statement and Bank Account number were submitted to Defendant on 24th February 2014. A copy of the Interim Statement is Exhibit C. The Claimant waited for the payment of the contractual sum to no avail.

On 15/06/18, Claimant through her Solicitor served Defendant with a Pre action Notice. The Pre action Notice is Exhibit D. The Defendant thereafter promised to pay but never did. That

the amount now due for payment after deduction of tax and VAT is N38,434,174.18k. That the Defendant has no defence to this action. That it will be in the interest of justice to enter judgment in favour of the Claimant against the Defendant.

The Writ of Summons and Affidavit were served on the Defendant. The Defendant filed a Notice of Intention to Defend with an Affidavit deposed to by Ohimai Abraham on 14/01/19. He admits awarding the contract for special repairs of potholes and failed/weak sections of carriageway at CH 22 + 000 – CH 69 + 000 along Jos – Gimi Road in Plateau State Contract No. ESR/13 – 27 on 13/12/13.

The Parties executed a Contract Agreement dated 18/06/15 which contains the rights of parties to the contract and the procedure for enforcing such rights. The Contract Agreement is FERMA Exhibit D1. That Article 5 provided and stipulated documents needed for payment under the Contract. That N40,355,882.89 is not the amount due for payment. That Exhibit C Interim Statement No. 1 final cannot be the basis for claim for payment under the contract. That Claimant failed to

comply with the provisions of Article 5 of the Contract. That no Demand Notice for payment was made etc.

The Defendant's Affidavit in support of the Notice of Intention to Defend is a catalogue of objection, legal arguments and conclusion. See Paragraph 7, 9, 10, 11, 12, 13, 16, 17 and 19. By Section 115(2) of the Evidence Act, An Affidavit shall not contain extraneous matter by way of objection or prayer or legal argument or conclusion.

In the circumstance, the above paragraphs cannot stand. They are accordingly struck out.

I have perused the remaining paragraphs of the Affidavit in support of the Notice of Intention to Defend particularly Paragraph 6. It refers to the Contract Agreement made pursuant to Exhibit A – the award letter. The Contract Agreement is said to have been executed by the Parties. The Claimant denied signing same.

I have perused the signatures in the said Exhibit D1. The signature of the Claimant's MD in the letter of acceptance which

is both in Exhibit D1 and B in the Claimant's Affidavit are not the same. The Exhibit D1 dated 18/06/15 seems to be document hurriedly compiled for the purpose of this Suit. Whereas by Exhibit A, B and C, the contract was awarded, accepted and performed between 13th December 2013 – 26th February 2014, Exhibit D1 is dated 8/06/15. Exhibit D attached to Claimant's Affidavit is a Pre action Notice which Defendant claimed not to have received but did not claim not to have received Interim Statement No. 1 Final but failed to controvert same. The document Exhibit D1 attached to the Defendant's Affidavit has no probative value. It is accordingly discountenanced.

The Affidavit evidence of the Claimant is uncontroverted. The Defendant has not by his Affidavit in support of the Notice of Intention to Defend placed anything before this Court to assuage the Court to give it leave to defend the action. The Defendant has no Defence to this Suit.

Accordingly Judgment is entered in favour of the Claimant against the Defendant as follows.

The Defendant shall pay to the Claimant the sum of N38,434,174.18k being the contract sum of work executed by the Claimant for the Defendant.

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HON. JUSTICE U.P. KEKEMEKE

(HOH. JUDGE)

14/03/19