

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

**BEFORE: HON. JUSTICE O. C. AGBAZA**

**COURT CLERKS: UKONU KALU & GODSPower EBAHOR**

**COURT NO: 12**

**SUIT NO: FCT/HC/CV/0785/2018**

**BETWEEN:**

**STRONG TOWER DEVINE SECURITY LTD.....CLAIMANT**

**VS**

**1. HON CHAIRMAN, ABUJA MUNICIPAL AREA COUNCIL**

**2. ABUJA MUNICIPAL AREA COUNCIL.....DEFENDANTS**

**JUDGMENT**

By a Writ of Summons dated 31/1/18 and filed same day under the "Undefended List Procedure", the Claimant claims against the Defendants as follows:-

- (1) The sum of ₦18,497,600.00 (Eighteen Million, Four Hundred and Ninety Seven Thousand, Six Hundred Naira only) being the total sum of debt owed the Plaintiff by the Defendants for security services.
- (2) 21% interest per annum on the judgment debt until is liquidated by the Defendants.

Accompanying the summons is a 17 Paragraphs affidavit deposed to by one Hon. (Deacon) Felix Akintujoye, with Exhibits "A", "B", "C1" – "C2".

The Defendants were served with Writ of Summons on 13/4/18; the Defendants rather than filed a Notice of Defend in line with the Rules of Court filed a Notice of Preliminary Objection dated 19/4/18 and filed 27/4/18, in urging this court to strike out this Suit for lack of jurisdiction, the claimant having failed to file a Pre-action Notice pursuant to Section 124 of the Local Government Act 1976 Laws of FCT Abuja on the Defendants.

It is clear that the Defendants has raised a demurrer and by Order 23 Rule (1) of the Rules of Court, 2018, Demurrer has been abolished, therefore where a Defendant has any issue to raise ought to file a defence along with his objections, in this case, a Notice of Intention to Defend in line with Order 35 Rule 3 of the Rules. It is trite that where a party seek to raise a demurrer by way of objection, must file along a defence. See *Tabiowo Vs Disu* (2008) 2 NWLR (PT.1089) 533 @ 548 Para B- D (CA) where the court stated;

“Under the Rules of Court where demurrer has been abolished, a Preliminary Objection on point of law can only be raised only after both the Statement of Claim and the Defence, have been filed; such application may be lead to the dismissal of the Suit. If on the other hand, it fails, the action will proceed to trial;issues havingbeen joined in the pleadings”

In the instant case, the Defendant have failed to comply, in the circumstance, I shall not take cognizance of the Preliminary Objection

having not complied. I shall consider the application as presented in line with the law and Rules.

Having carefully considered this instant Suit, affidavit evidence, I find that only one (1) issue calls for determination.

“Whether the Claimant has made out a case to be entitled to judgment under the “Undefended List Procedure”.

By Order 35 Rule 3 (1) of the Rules of Court, where a Defendant or Defendants are served with a Writ of Summons under the “Undefended List Procedure” the Defendants have 5 (Five) clear days to file Notice of Intention to Defend along with an affidavit disclosing a defence.

Where by Order 35 Rule 4, a Defendants fails to file a Notice of Intention to Defend in line with Order 35 Rule 3 (1) as prescribed, the court shall consider the suit and proceed to enter judgment.

In this instant case, where the Defendant has failed to file a Notice to Defend, it is the duty of the court to examine the processes before it, to determine whether or not the Claimant has made out a case.

From the affidavit evidence before the court, the Claimant stated copiously facts of the business relationship between them and the Defendants vide a Letter of Engagement to provide security services for the Defendants at different locations. The said Letter of Engagement dated 29/7/2009 as Exhibit “A’ referred to in Para 6 of the Statement of Claim. Also, the Letter of Non-Renewal of Engagement bythe Defendants to claimant dated 13/9/2017 as Exhibit “B” in Para 7; also referred in Para 10 and 11 of the

supporting affidavit are two (2) Letters which contains pre-action notice to the Defendants as exhibit "C1 – C2" respectively. That despite the Exhibit "C1" – "C2", the Defendants failed to pay up the sums hence the action.

The Defendant having failed to file any Notice of Intention to defend, rather filed a Notice of Preliminary Objection, which this court has a taken position on, not to take cognizance of it as not in line with the law; and the court having found from the facts contained in this instant application, including the Exhibit "A", "B", "C1" – "C2" respectively, the court finds that they are sufficient proof to warrant the grant the reliefs sought. In particular, the court finds that the Exhibit "C2" satisfies the requirement of pre-action Notice as stipulated in Section 124 of the Local Government Act 1976 Laws of FCT, Abuja, having been issued to the Defendants on 16/11/2017 and received by the Defendants on 21/11/17 and this action commenced on 21/1/18, a clear period of more than one (1) months as required by the Act. This, in my firm view, is in full compliance with the Provision of the Act.

From all of these and having carefully considered the affidavit evidence of claimant and having dispensed with the Preliminary Objection of the Defendant that is of no moment in the face of the law, the court finds that the evidence is satisfactory and accordingly enter judgment in favour of the claimant as follows:-

- (i) It is hereby ordered that the Defendants pay the claimant forthwith the sum of ₦18,497,600(Eighteen Million, Four Hundred and Ninety Seven Thousand, Six Hundred Naira only)

being the total sum of debt owed the Claimant by the Defendants for Security Services.

- (ii) It is also ordered that the Defendants shall pay 10% interest until judgment sum is liquidated.

This is the judgment of the Court.

Signed

**HON. JUSTICE O. C. AGBAZA**

Presiding Judge

5/2/2019

C. C. IGWE ESQ FOR THE PLAINTIFF

NO REPRESENTATIVE FOR THE DEFENDANTS