

**IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY  
IN THE FEDERAL CAPITAL TERRITORY JUDICIAL DIVISION  
HOLDEN AT JABI FCT ABUJA  
SUIT NO: FCT/HC/CV/1276/19**

**BEFORE HIS LORDSHIP: HON. JUSTICE BABANGIDA HASSAN  
BETWEEN:**

**EME – BUS (NIG) LTD .....CLAIMANT**

**AND**

**ABUJA MUNICIPAL AREA COUNCIL.....DEFENDANT**

Appearances:

Ezenwa B. Ukoha Esq appeared for the claimant.

**JUDGMENT**

By the writ of summons filed under the undefended list procedure and the claimant claims as follows:

- 1) the sum of N15,920,000 = (Fifteen Million, Nine Hundred and Twenty Thousand Naira) only being the outstanding contract sum owed for contract for supply of 4 numbers 500 KVA/33/0.415v transformers to AMAC stores.
- 2) 20% of the sum of N15,920,000= from January, 2017 until judgment is delivered;
- 3) 10% of the sum of N15,920,000 from the date the judgment is delivered until the debt is liquidated;
- 4) The sum of 2,000,000 = (Two Million Naira) only being the cost of prosecution of this case.

The writ is supported by twenty-three paragraphed affidavit deposed to by Oscar Gift Akachi, the litigation clerk in the law firm of the counsel to the claimant, and they rely upon all the averments as are contained therein.

The counsel proffered and filed a written address in support of the claim.

Attached to the writ are the following documents:

- a) Letter of contract Award dated the 11<sup>th</sup> day of November, 2016 issued by Abuja Municipal Area Council;
- b) Acceptance letter dated the 12<sup>th</sup> November, 2016 by the claimant;
- c) Agreement for the supply and furnishing made between Abuja Municipal Area Council and the claimant dated the 22<sup>nd</sup> day of December, 2016;
- d) Confirmation of delivery written by the claimant to the Executive Chairman Abuja Municipal Council dated the 14<sup>th</sup> December, 2016;
- e) Information of Bank Account of the claimant written to the Chairman Abuja Municipal Area Council and was duly received by the latter dated the 16<sup>th</sup> day of July, 2018;
- f) A demand letter for payment of N17,000,000 = made by the solicitor to the claimant written to the Chairman, Abuja Municipal Area Council dated the 12<sup>th</sup> September, 2018;
- g) Another letter of demand for payment of N17,000,000= written to the Chairman Abuja Municipal Area Council by the solicitor to the claimant dated the 17<sup>th</sup> day of September, 2018;
- h) A statement of account of the claimant with Zenith Bank Plc indicating payment of the sum of N1,080,000= by the defendant to the claimant dated the 18<sup>th</sup> October, 2018.

The defendant, instead of filing a notice of its intention to defend, filed a Notice of preliminary objection challenging the jurisdiction of the court to hear the matter on the grounds among others that:

- a) The agreement between the claimant and the defendant which is the basis of the suit before the court has an arbitration clause;
- b) The condition precedent for the court to assume jurisdiction in this suit are yet to be fulfilled by the claimant:

- c) That the claimant has refused or neglected to approach the court or arbitration; and
- d) The suit as constituted is an abuse of court process.

The defendant further did not take any step to put up appearance in this matter since when he filed the notice of preliminary objection.

Now let me look at the implication of filing a Notice of preliminary objection before filing a defence, it is on record that the defendant only filed a notice of preliminary objection and did not accompany it with any statement of defence, see the case of **Central Bank of Nigeria v. Interstella Communications Ltd (2018) All FWLR (pt 930) p. 470 at 527 paras. A – B** where the Supreme Court held that once the defendant has decided to challenge an action by way of preliminary objection before filing his defence, it is taken as having conceded all questions of fact as contained in the statement of claim as correct. In the instant case, filing of notice of preliminary objection by the defendant before filing his notice of intention to defend this action will be taken as conceding to the averments as contained in the writ accompanied by an affidavit.

Thus, the defendant further failed to file a notice of his intention to defend the action after he has been duly served with the writ under this procedure. See the case of **Akhall & Sons Ltd v. Nigeria Deposit Insurance Corporation (2017) All FWLR (pt 880) p. 965 at 979 paras. E – F** where the Supreme Court held that the failure to deliver notice of intention to defend means that the defendant has no defence to plaintiff's claims. It is tantamount to an admission by the defendant of plaintiff's claims. In the instant case the failure on the part of the defendant to file a notice of intention to defend this action amounts to admission of liability to the claims, and to this, I undoubtedly stand. Order 35 Rule 4 of the Rules of this Court provides:

“Where the defendant neglects to deliver the notice of defence and on affidavit prescribed by Rule 3 (1) or is not given leave to defend by the court the suit shall be heard as an undefended suit and judgment given accordingly.”

It is based upon the above quoted provision that I have to have recourse to the affidavit in support of the writ with a view for

this court to exercise its discretion judicially and judiciously in entering its judgment.

It is in the affidavit in support of the claim that on the 11<sup>th</sup> day of November, 2016, the defendant awarded a contract to the claimant for the supply of 4 nos. of 500KVA/33/0.415V transformer to AMAC stores at a total contract sum of N17,010,000 (Seventeen Million Ten Thousand Naira only), and the contract was accepted by the claimant and an agreement was executed by the two parties dated the 22<sup>nd</sup> day of December, 2016.

It is in the affidavit that the claimant supplied the said 4 transformers of 500 KVA/33/0.415V to AMAC stores according to the specification, and same was received by the store keeper to the Area Council and the way bill which is attached to the writ is marked as EXH 'D'.

It is in the affidavit that two years after the delivery the defendant paid the sum of N1,080,000 = to the claimant on the 18<sup>th</sup> of October, 2018 after several demands, and several other demands for the payment of the balance of N15,920,000= have been rebutted by the defendant.

It is also in the affidavit that it is because interest has accrued on the money the claimant secured as well, hence the claim of interest, and that the claimants solicitor has charged the sum of N2,000,000= as his legal fees and the receipt is hereby annexed, and at the end he stated that his belief the defendant has no defence to the action.

The counsel proffered and filed a written address to accompany the writ, and I need not to go through the address, this is because under this procedure as provided by Order 35 of the Rules of this court does not envisaged the filing of a written address, let alone for the court to consider same, see the case of **Aso Motel Kaduna Ltd v. Deyemo (2007) All FWLR (pt 390) p. 1451 at 1474 paras. A – G**. Let me look at the documents attached to the writ particularly the agreement dated the 22<sup>nd</sup> day of December, 2016, and it is in the agreement that the contract was for the supply of 4 No. 500KVA/33/0.415V transformers at AMAC stores at the cost of N17,010,000= (Seventeen Million, Ten Thousand Naira only) and the transformers are to be supplied within the period of two weeks. By

this, it could be inferred that there is a contract between the claimant and the defendant and, I therefore so hold.

On the claim of interest of 20% on the contract sum of N15,920,000 = claimed by the claimant, I looked at the agreement made the 22<sup>nd</sup> day of December, 2016 duly executed by parties, and I have not seen any claims regarding payment of interest to the claimant by the defendant. To this, see the case of **Osita I. v. Nawka Micro-finance Bank Ltd (2018) All FWLR (pt 946) p. 1081 at 1091 paras. E – H** where the Court of Appeal Enugu Division held that a claim for interest under the undefended list bears the same principles as in a claim under the general cause list. Any plaintiff claiming interest under the undefended list must disclose in his affidavit how his right to interest accrues and how the rate thereof it was arrived at. Therefore, in the instant case there is no where it is shown in the affidavit in support of the claim that the claimant has a right to any interest, and even in the agreement made the 22<sup>nd</sup> day of December, 2016, however, the only thing the claimant stated is that he secured a loan from the suppliers of the materials, and this does not qualify to be the right accruing for an interest, and to this. I therefore, so hold.

On the claim of N10% post judgment interest until the judgment sum is liquidated, I refer to Order 39 Rule 4 of the Rules of this court which provides:

“the court at the time of making any judgment or order or at any time afterwards, may direct the time within which payment is to be made or other act is to be done, reckoned from the date of the judgment of order, or from some other point of time, as the court may deem fit and may order interest at a rate not less than 10% per annum to be paid upon any judgment.”

By the above quoted rule, this court may order for the payment of 10% interest per annum to be paid upon any judgment. The watch phrase is “to be paid upon any judgment”. See the case of **Nigeria Postal Services v. Irbok Nig. Ltd (2006) All FWLR (pt 326) p. 331.**

On the claim of cost of action, the claimant claims the sum of N2,000,000= as cost of action, and in his affidavit he referred to a

receipt issued to him by the counsel. However, I painstakingly looked at the documents exhibited, and I have not seen the receipt being attached as an exhibit, let alone for this type of claim to qualify as a liquidated sum. See the case of **Fed. Polytechnic, Offa v. UBA (2014) All FWLR (pt 737) p. 748 at pp. 774 - 775 paras. F – A** where the court held that where no receipt is attached to the claim of cost of action and where there is no consensus between the parties in that regard, that claim of cost of action does not qualify to be a liquidated demand, and to this, I so hold.

Thus, for the fact that the notice of preliminary objection is abandoned, I have no option than to strike it out, and it is hereby struck out accordingly.

Judgment is hereby entered in favour of the claimant. See Order 35 Rule 4 of the Rules of this court.

The defendant is to pay to the claimant the balance of the contract sum of N15,920,000= (Fifteen Million, Nine Hundred and Twenty Thousand Naira only) within the period of two weeks from the date of this judgment.

The defendant is also ordered to pay to the claimant 10% interest per annum until when the sum is fully liquidated.

Signed  
Hon. Judge  
12/11/2019