

IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT HIGH COURT MAITAMA –ABUJA

BEFORE: HIS LORDSHIP HON. S.U. BATURE

COURT CLERKS:	JAMILA OMEKE & ORS
COURT NUMBER:	HIGH COURT NO. 34
CASE NUMBER:	SUIT NO. FCT/HC/CV/2877/19
DATE:	30TH JANUARY, 2020

BETWEEN:

ACHORU ASSOCIATES.....CLAIMANT/RESPONDENT

AND

ABIA STATE GOVERNMENT & 1 OR.....DEFENDANTS/APPLICANTS

APPEARANCE

Obi C. Nwankwor Esq for the Claimant.

C. Amanamba Esq, for (senior State Counsel Abia State Ministry of Justice for the Defendant.

JUDGMENT

The Claimant filed this suit on the 12th day of September, 2019 under the undefended list, claiming against the Defendants as follows:-

1. The sum of ~~₦~~20 million Naira as fees for the review of the inventory and valuation of electricity Distribution Assets provided by the Abia State Government to Enugu Electricity Distribution Company plc. not by the

claimant and submitted to the Nigeria Electricity Regulatory Commission on behalf of the Abia State Government.

2. 10% percent interest on the judgment sum from the date of judgment until the judgment sum is finally liquidated.

The writ which was issued by Obi C. Nwakor Esq, Claimant's Counsel, is supported by an affidavit of 17 (seventeen) paragraphs deposed to by one Charles Chigbu an associate in the firm of Achoru & Associates, Estate surveyors and valuers, facility Managers and property Consultants, of 3rd floor, Nikon Plaza, Mohammed Buhari way, Central Business District Abuja.

Attached to the supporting affidavit are annexures marked Exhibits 1, 2, 3, 4, 5, 6, 7, and Exhibit 8 which has annexures 1, 2, 3, 4, 5, and 6. Exhibit 9 which has annexures 1, 2, 3, 4, 5, 6, and 7 therewith.

The writ was served on the Defendants in Umuahia Abia State on the 18-10-19 as acknowledged on the proof of service before this Honourable Court.

The Defendants on their part, filed a notice of intention to defend this suit dated 12th day of November, 2019.

In support of the notice of intention to defend is a 14 paragraphed Counter-Affidavit deposed to by WINIFRED ADA NWOKORO Esq, a senior counsel in the Attorney-General's Chambers of the Abia State Ministry of Justice, in opposition to the Claimant's Claim.

While addressing the court on the 5th day of December, 2019 Obi C. Nwakor Esq, the Learned Claimant's Counsel submitted and urged the court to look at the two Affidavits in this suit and to enter judgment for the claimant.

Learned Counsel submitted that the affidavit of the Defendants cannot be used in the instant suit. That the deponent therein states that she's a senior State Counsel in the Ministry of Justice and started giving evidence outside of her knowledge without stating the source of how she came to such knowledge.

That the facts which she deposed to particularly paragraph 6 (1) (2) is information which somebody must have informed her about or else how did she know that?

Counsel also referred to paragraph 9 (1) (2) and (3), to argue that the deponent must state the informant and how she came about the information in this regard counsel referred the court to Section 116 and 117 of the Evidence Act 2011 and the case of O. G. N VS FLOUR MILLS LTD (1968) 2 NWLR at 13.

However, learned counsel submitted further that assuming without conceding that the affidavit can be looked at, he referred the court to paragraph 6 (1) and (2) earlier referred to, Exhibits 1 and Exhibit 3, which contains depositions to the effect, that they had no knowledge of the contract which 2nd Defendant admitted and even asks that the contract be paid. That the truth is that the Defendants don't want to pay. Learned counsel submits that on this issue, the courts have held such to be despicable, and stated that there is admission on all the Exhibits of the said contract.

Reference was made to the case of OHIWERE S OKOSUN (2003) 11 NWLR (PT.832) 426. ILORIN EAST LOCAL GOVERNMENT COMPANY VS ALHAJI WOLE ALASINRIN & SONS (2012) 23 NWLR.

The learned counsel submits that Exhibits 8 and 9 are official letters written to both the Governor and A-G Abia State demanding for payment before coming to court.

And that the defendants were silent on these two letters which were never replied.

Therefore counsel submits that silence to official correspondence raises an unrebuttable presumption of facts alleged in those correspondences.

Reference was made to the case of ZENON PETROLEUM & GAS VS IDRISIYYA (2006)8 NWLR (PT.. 982) at 221, and JOMBO V. P. E. F (management board) (2005) 7 SC 9pt. 2) AT 30, 35 AND 36.

In his response to claimant counsel's submissions, the learned Counsel to the Defendants, I. C. Amanamba Esq, (Senior State Counsel) Abia State Ministry of Justice submitted that they've filed their notice of intention to defend together with an affidavit as well as Exhibits. That Winifred .A. N who deposed to their Counter-Affidavit is a staff of Abia State Government, as such in paragraph 2 is an information of the 1st and 2nd Defendants who gave her authority to depose to it.

Learned counsel finally urged the court to transfer this matter to the general cause list since the matter is contentious and that they intend to defend same.

First of all before delving in to the merits or otherwise of the two affidavits before the court, it is pertinent to consider the issue raised by the learned claimant's counsel which is on the source of information deposed to by the deponent in the counter-affidavit of the Defendants.

The response of the learned Defendant's Counsel is that the Defendant Winifred .A. Nkwooro is a staff of Abia State Government and in paragraph 2 of the counter-affidavit states that her Deposition is on the authority of the 1st and 2nd Defendants.

Now, section 115 (3) of the Evidence Act 2011 provides:-

“where a person deposes to his belief in any matter of fact and his belief is derived from any source other than his own personal knowledge, he shall set forth explicitly the facts and circumstances forming the ground of his belief.”

Section (4) provide

“when such belief is derived from information received from another person, the name of his informant shall be stated and reasonable particulars shall be given respecting the informant, and the time, place and circumstance of the information.”

I find paragraphs 1-5 of the Counter-affidavit as most relevant here and I hereby reproduce them hereunder.

Paragraph 1

“That I am a senior State Counsel in the Attorney-General’s Chambers of the Abia State Ministry of Justice”.

Paragraph 2

“That I have the consent and authority of the 1st and 2nd Defendants to depose to this Affidavit.”

Paragraph 3:-

“That the facts to which I depose are facts within my knowledge By virtue of my employment and schedule of duties.”

(underlining mine)

Paragraph 4:-

“That I have seen the originating processes in this suit. I have also read the same and I understand the contents thereof.”

Paragraph 5

“That I verily believe that the defendants have a good defence to this suit.”

From the above, it is clear that the deponent in the said counter affidavit has laid foundation as to how she came about the information and her belief on the facts deposed to since she’s a senior state counsel in the Abia State Ministry of Justice. And that she deposed to facts within her knowledge by virtue of her employment and schedule of duties. Therefore, in my humble view, the above depositions are substantially in compliance with the provisions of Section 115 (2) and (3) of the Evidence Act 2011.

Consequently, the submissions of the learned Claimant’s counsel on this issue is hereby discountenanced.

Now, going into the meat of the matter, let me begin by saying that it is settled law, that the purpose of matters under the undefended list procedure is

to avail a claimant swift Justice in respect of a debt or a liquidated money demand, by allowing a court to give judgment without the need of going into full trial, without calling witnesses in order to save judicial time and expense. See the case of IMONIYAME HOLDINGS LTD (2010) 4 NWLR VS SONER ENTERPRISES LTD. (2010) 4 NWLR (PT. 1185) page 56; and order 35 Rules 1 and 2 of the F.C.T High Court (Civil Procedure Rules) 2018.

Therefore, in the undefended list procedure, where a Defendant is served with a writ of Summons such as in this case they are required under the Rules to file a notice of intention to defend together with an affidavit disclosing a defence on the merit. It is not the aim of the undefended list procedure to prevent or shut out a defendant from contesting a suit brought under the undefended list at the expense of Justice.

On this premise, I refer to order 35 Rule 3 (1) of the F.C.T High Court (Civil Procedure) Rules 2011, which provides thus:-

“where party served with the writ delivers to the Registrar before 5 days to the day fixed for hearing a notice in writing that he intends to defend the suit together with an affidavit disclosing a defence on the merit, the court may give him leave to defend upon terms as the court may think just.”

Consequently, it is clear from the above that before a defendant who filed a notice of intention to defend is granted leave to defend the action, the affidavit in support of the notice intention to defend, must disclose a defence on the merit, not a sham defence and must provide details and particulars of the defence. The position was stated in the case of U. B. A PLC VS JARGABA (2007) 11 NWLR (PT. 1045). 247, where Tobi JSC held that:-

“The affidavit in support of the notice of intention to defend must of necessity disclose facts which will at least throw some doubt on the case of the plaintiff. A mere denial of plaintiff’s Claim and affidavit is devoid of any Evidential value as such would not have disclosed any defence which will at least throw same doubt on the plaintiff’s Claim. A defendant’s

affidavit in support of notice of intention to defend raises a triable issue where the affidavit is such that the plaintiffs will be required to explain certain matters with regard to his claim or where the affidavit throws a doubt on the plaintiff's claim."

The Claimant in the instant case stated in the affidavit in support of the undefended list of summons particularly at paragraphs 2 to 4 as follows:-

"That Achoru Associates is a firm of Estate Surveyors and Valuers, Facility managers and property consultants."

That I was one the assigned by my office to interface with the Abia state Government in relation to the matters that form the cause of action in this suit and herein deposed, which matters are of my personal knowledge.

That Abia state government vides a letter of 24th January, 2017, contracted Achoru Associates for the facilitation of Abia State Government investments in Enugu Electricity Distribution Company. The letter is marked Exhibit 1.

That the contract was to be executed in Abuja the Federal Capital Territory. And the major plank of the contract was to review the inventory and valuation of Electricity Distribution Assets, provided by the Abia state. Government connected to Enugu Electricity Distribution Company by the Claimant, which review was to be submitted to the Nigeria Electricity Regulatory Commission (NERC)headquarters in Abuja by the Claimant Achoru Associates.

That it is expressly provided in Exhibit 1 that the contract will be deemed to have been performed on the confirmation by the Nigerian Electricity Regulatory Commission (NERC) of the receipt of Abia State submission and its conformity with the Nigerian Electricity Regulatory Commission – NERCS framework guidelines, the fees for the services shall be the sum of ₦20,000,000.00 (Twenty Million Naira) payable in advance on the provision of Advance payment Guarantee for the entire Sum by the

Claimant, and the contract shall be for a period of 3 calendar months from the date of Exhibit 1.

That the Claimant diligently fulfilled all the terms and conditions contained in Exhibit AA and on the 3rd of February, 2017, submitted on behalf of Abia state Government to the Nigerian Electricity Regulatory Commission Abuja on Ms Excel copy and a hard copy of the schedule of the inventory and valuation of Electricity Distribution Assets Provided by Abia State Government and connected to Enugu Distribution Company. The acknowledgement letter of the submission is marked Exhibit 2.

That on the same 3rd of February, 2017, the permanent Secretary, office of the Governor, Government House Umuahia in a letter to Achoru Associates, conveyed the approval of the Governor of Abia State for the release of the contract sum/fee of ₦20,000,000.00, Twenty Million Naira, to the claimant as payment for the contract but no money was released or paid to the Claimant. The letters is marked exhibit 3.

That the claimant by a letter of 12th February, 2017 addressed to the Honourable Commissioner of Finance & Economic planning Abia State, forwarded to Abia State Government a hard and soft copies of the same inventory & valuation of Electricity Distribution Assets provided by Abia State and connected to Enugu Electricity/Distribution Company as earlier submitted to the Nigerian Electricity Regulatory Commission (NERC). The acknowledgement letter dated 12th February, 2017 is marked Exhibit 4.

That by the same letter of 12th February, 2017-Exhibit 4, the claimant equally submitted an advance payment Guarantee from sterling Bank and demanded for the payment of their fee of ₦20 million having discharged its own part of the contract.

That Abia State Government through its Commissioner of finance & Economic planning by a letter dated 15th February, 2017 asked the Nigerian Electricity Regulatory Commission to clarify that the claimants submission on behalf of Abia State Government to them met with NERCS

guidelines and framework of the inventory of Electricity Distribution assets provided by Abia State Government and connected to Enugu Electricity Distribution Company. The letter is marked Exhibit 5.

That the Nigerian Electricity Regulatory Commission (NERC) in a letter dated 9th march, 2017 written to Abia State Government acknowledged the receipt from Achoru Associates of Abia State and connected to Enugu Electricity Distribution Company and that same is in conformity with the methodology and approved template of NERC. The acknowledged letter is marked Exhibit 6.

That yet again the commissioner of finance & Economic planning by a letter to the Governor of Abia State dated 3rd November, 2017 (ten months after the execution of contract) requested for the release of the contract sum of ₦20 million Naira to the Claimant for executing the contract as per Exhibit AA1. The letter is marked Exhibit 7.

That despite the Claimant executing the contract as detailed in Exhibit 1, the confirmation of the Nigerian Electricity Distribution regulatory Commission to the Abia State Government of the receipt of the inventory and valuation of Electricity Distribution Assets provided by the Abia State and connected to Enugu Electricity Distribution Company and its conformity with its guidelines, methodology and template as done by the claimant; the purported approval of the Governor of Abia State for the release of the contract Sum/fee of ₦20 Million Naira to the Claimant, and the letter of the Commissioner of finance & Economic planning to the Governor of Abia State for the release of the contract sum to the complainant, the Abia State Government have failed, refused and neglected to pay Claimant the said sum of ₦20 Million Naira or any other sum at all on account of the executed contract.”

It is deposed for the 1st and 2nd defendants in their counter affidavit particularly paragraphs 6-11 as follows:-

“That the paragraph 4 of the supporting affidavit to the suit is false, misleading and is denied in further Response, I state as follows:-

- i. ***That the purported contract “for the facilitation of Abia Government investment in Enugu Electricity Distribution Company” was not awarded by the 1st defendant in this suit and the letter dated 24th January, 2017 was made without the authority or knowledge of the defendants.***
- ii. ***That extant guidelines and regulations for the award of contracts were disregarded, particularly, the extant Abia State Government financial Regulations (revised to 1st January, 2001) which stipulates, among others that all works and services costing over ₦500,000.00 must be obtained by contract after public tenders.***
- iii. ***That the tenders Board of the Abia State Government and/or the Ministry of public utilities did not approve the contract or have knowledge of the same at any material time.***
- iv. ***That the claimant claims to be a firm of Estate surveyors and valuers and lacks the requisite expertise and knowledge of the energy industry/sector to execute the purported contract***

That paragraphs 5 and 6 of the supporting affidavit to the suit are denied in further response, I state as follows:

- (i) ***That the contract was to be performed in Abia State and not in the Federal Capital Territory of Abuja.***
- (ii) ***That the Electricity Distribution Assets which were subject of the contract are located in the Abia State of Nigeria and not the Federal Capital Territory.***
- (iii) ***That as earlier deposed in paragraph 7 above, the claimant is not an energy industry/sector consultants or operator and lacked the prerequisites to execute the contract or works.***
- (iv) ***That the claimants is not entitled to the sum of ₦20,000,000.00 (Twenty Million Naira) or any other sum from the defendants with respect to the claim before the Honourable Court.***

That paragraphs 7, 8, 9, 10, 11, 12 and 13 of the supporting affidavit are denied. I hereby state as follows in further response:-

- (i) That there was no contract between the claimant and the defendants on record neither did the Governor of Abia State or the 2nd defendant have any knowledge of the purported contractual relations which is the subject matter of the claim.***
- (ii) That the then Commissioner for finance and economic planning who purported to contract on behalf of the 1st defendant did not have authority of the defendants to do so and acted outside the scope of his office and authority.***
- (iii) That this suit is a gold-digging exercise, calculated to profit from the defendants without any benefit or service to the defendants.***

That paragraphs 14 and 15 are false and are denied. I further state as follows:-

- (i) That the claimant did not execute any contract for the defendants in this suit and the defendants did not enter into any contractual relations with the claimant for the works services claimed to have been executed.***
- (ii) That the defendants are not indebted to the claimant to the tune of ₦20,000,000.00 (Twenty Million Naira) or any other sum whatsoever.***

That there was no contract between the defendants and the claimant and none was breached by the defendants.

Now, I have carefully gone through the claims of the claimant particularly the supporting affidavit and all the Exhibits attached therewith. Most importantly, I have extensively studied the counter-affidavit of the Defendants in order to ascertain whether or not it discloses a defence on the merit to warrant this Honourable Court to transfer this matter to the general cause list.

It is pertinent to state here that in the Affidavit of the defendants particularly paragraphs 6 (i) 9 (i) (ii) and 10 (i) thereof, it is deposed that the claimant did not execute any contract with the defendants.

In particular, I refer to paragraph 9 of the said Affidavit where deponent states thus:-

9 (i) "That there was no contract between the claimant and the defendants on record neither did the Governor of Abia State or the 2nd Defendant have any knowledge of the contractual relations which is the subject matter of the claim

However, it is interesting to note that the deponent seems to have contradicted herself on this issue in the same affidavit, when she states in paragraph 8 (i) of the counter affidavit thus:-

"That the contract was to be performed in Abia State and not in the Federal Capital Territory Abuja."

Therefore, it is my humble view that if there was no contract between the parties and the 1st and 2nd Defendants had no knowledge of the said contract nor given their approval, then how did the Deponent know that the contract was to be performed in Abia state and not in the Federal Capital Territory?

It is therefore, blatantly obvious that contrary to the above averments, there was indeed a contract between the Claimant and Abia state Government on the said subject matter.

Likewise, considering the averments contained in paragraph 6 (i) (ii) that the purported contract was made without the authority and knowledge of the Defendants, and extant guidelines and regulations for award of contracts in Abia State, and without knowledge of the tenders Board of Abia State, which were not Exhibited before the court as no Exhibits were attached to the counter affidavit of the Defendants on the said Extant guidelines and regulations for award of contracts in Abia State. Therefore, one only needs to look at the Exhibits tendered by the claimant to believe otherwise.

Firstly, Exhibit A Emanates from the office of the Hon. Commissioner Ministry of finance & Economic planning dated 24th of January, 2017 on approval for the contract in question.

Exhibit 3 emanates from the office of the Governor Government House, Umuahia Abia State, Nigeria dated 3rd February, 2017. The letter is addressed to the managing Consultant Achoru Associates. A portion of the letter reads Thus:-

“A copy of this letter is being addressed to the Accountant-General/Permanent Secretary Ministry of Finance to ensure speedy release of the money to you as approved by the Governor.”

The letter is Signed by one Sir, ONyi Wamah (KSJI) permanent Secretary (GHU).

I also refer to the acknowledgment letter of NERC marked Exhibit 6 and the letter of the Commissioner of finance & Economic Planning addressed to the Governor of Abia State dated 3rd November, 2017 requesting for the release of the contract sum of ₦20 Million Naira. See Exhibit 7.

Exhibits 8 and 9 show letters of demand to the executive Governor of Abia State and to the Government of the state through it's A-G demanding immediate payment of the sum due to the claimant on the executed contract as given in Exhibit AA1. I also refer to paragraph 15 of the claimant's affidavit.

It is deposed in paragraph 16 thereof that Abia State has no defence to this suit.

In addition, let me point out that it is settled law that a defendant who wishes to defend a suit under the undefended list procedure should not be allowed to delay Justice by sending the court on a wild goose chase, it is equally the law that a defendant in an undefended list who has no real defence to the action, should not be allowed to dribble and frustrate the plaintiff/claimant and cheat him out of judgment he is legitimately entitled to by delay tactics aimed not at offering any real defence to the action but at gaining time within which he may continue to postpone meeting his obligation and indebtedness.

Please see the cases of N. P. A VS A. I. CO (2010) 3 MW;R (PT. 1182) 1487 at 501-502, paragraphs F-B; S. P. D (NIG) LTD VS ARTTO TOE (2006) 3 NWLR (PT 966) 173.

To this end, therefore, I find that the affidavit of the defendants has failed to disclose a defence on the merit or raise a triable issue as required by law. I so hold.

Finally, and without further ado, I hereby enter judgment for the claimant against the defendants as per the claims as endorsed on the writ of Summons.

Signed

Hon. Justice Samirah Umar Bature

3/01/2020

Claimant's Counsel: We show grateful for the Judgment.

Defendant's Counsel: We are very grateful.