

IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT HIGH COURT MAITAMA –ABUJA

BEFORE: HIS LORDSHIP HON. JUSTICE S.U. BATURE

COURT CLERKS:	JAMILA OMEKE & ORS
COURT NUMBER:	HIGH COURT NO. 34
CASE NUMBER:	SUIT NO. FCT/HC/CV/271/19
DATE:	3rd FEBRUARY , 2020

BETWEEN:

VEECE SYNERGY SERVICE LTD.....CLAIMANTS

AND

NATIONAL EMERGENCY MANAGEMENT AGENCY.....DEFENDANT

APPEARANCE

Timileyen Arokoyo Esq for the Claimant.

JUDGMENT

This matter was brought under order 35 Rule 1 of the F.C.T High Court (undefended list) (Civil Procedure) Rules 2018.

The writ which was issued by Ifeoluwa Adigun Esq Plaintiff’s Counsel is dated 29th day of October, and filed on the 7th day of October 2019 seeking for the following order:-

An order of this Honourable Court for the payment of the sum of ₦2,936,352.00 (Two Million, Nine Hundred and Thirty Six Thousand, Three

Hundred and Fifty-Two Naira only) by the defendant to the plaintiff being the payment of the debt owed to the plaintiffs by the Defendant for the supply of Relief materials.

The writ is supported by an Affidavit of 16 paragraphs deposed by Engr. Ibrahim Adigun, the Managing Director of the 1st Claimant and 2nd Claimant in this matter, as well as Exhibits marked Exhibits Veecee 1, Veecee2, Veecee3, Veecee 4, Veecee 5, and Veecee 6 and Veecee 7 Respectively.

In addressing the Court today, the learned Claimant's counsel Timileyen Arokoyo Esq, asked the court to enter Judgment for the Claimants against the defendants on the liquidated sum as endorsed on the writ of Summons of the Claimants.

Now order 35 Rule (1) of the Rules of this court 2018, provides:-

“Where an application in form 1, as in the Appendix is made to issue a writ of Summons in respect of a claim to recover a debt or liquidated money demand, supported by an Affidavit stating the grounds on which the claim is based, and stating that in the deponent's belief, there is no defence to it, the judge in chambers shall enter the suit for hearing, in what shall be called the undefended list.”

Further, order 35 Rule 3 of the same Rules provides :-

“Where a 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 such terms as the court may think just.”

In the instant suit, I have taken judicial notice of the records of this court showing proof of service on the defendant as same was acknowledged by the Assistant chief Conf. Secretary signed and dated 16-1-2020.

Therefore, it is instructive to note from the onset that going by the undefended list procedure under the Rules of this Honourable court, a defendant

who is served with a writ of Summons under the undefended list, is required to file a notice of intention to defend together with an affidavit disclosing a defence on the merit within 5 days to the day fixed for hearing.

Therefore, where a defendant who is duly served, fails or neglects to file a notice of intention to defend together with an affidavit disclosing a defence on the merit, judgment shall be entered for the Plaintiff.

On this premise, I refer to order 35 Rule 4 of the Rules of this court which provides thus:-

“Where a defendant neglects to deliver the notice of defence and an 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.”

Therefore, it is trite law that the purpose for bringing matters under the undefended list procedure is to avail a claimant swift justice in respect of a debt or liquidated sum by allowing a court to give judgment without the need of going into full trial and without calling witnesses in order to save judicial time and expense.

On this, please the case of OKAFOR VS P. D. P (2014) LPELR-23037 (CA) where the Court held:-

“.....It is clearly the law and not disputed that by the provisions of order 21 Rules 1-5 of the Federal Capital Territory (Civil Procedure) Rules (2004) a plaintiff such as the Applicant, in a claim to recover liquidated demand can file a suit along with an affidavit stating that in his belief the Defendant has no defence to the action. Where the defendant in such a situation fails or neglects to file a notice of intention to defend the suit along with an affidavit stating a defence to the claim upon being served with the writ five days before the return date, the trial court can hear the suit as undefended.”

The Defendant in the instant suit has failed and/or neglected to file any affidavit challenging the claimants suit. Therefore, in the circumstances, the question to ask is whether the claimants are entitled to judgment on the strength of their case?

From the averments contained in the claimant's supporting Affidavit particularly paragraphs 4-13, it is averred amongst other things that the defendant owes the Claimants the sum of ₦2,936,352.00 (Two Million, Nine Hundred and thirty Six Thousand, Three Hundred and Fifty-two Naira only) pursuant to a contract between the parties for the supply of materials i.e Sixty Nine (69) bags of Guinea corn (100 kg) each at the unit of twenty Three Thousand, Eight Hundred and Thirty Three Naira only (₦23,833.00) and fifty (50) bags of Beans (100 kg) each at the unit price of Twenty Five Thousand, Eight Hundred and Thirty Seven Naira, Fifty Kobo only (₦25,837.50).

That the claimant performed the contract as provided in the contract award letter on the 5th day of January, 2017 when it delivered the prescribed quantity of the relief materials at the defendant's designated warehouse as Evidenced in Exhibits Veecee 3, Exhibit Veece 4, and Exhibit Veecee 5 respectively.

That till date, the defendant has failed and refused or neglected to pay the contract sum agreed.

It is averred further that several demands were made to the Defendant in its office to pay up the contract sum as same was executed timeously since January,2017 but that the defendant is not making any effort to settle its indebtedness.

In paragraph 13, the deponent states:-

“That on the 17th day of September, 2019, the defendant wrote a letter with reference No. NEMA/LV/46/1/31 acknowledging the Claimant's lawyer's letter and also hinted that the supply made by the claimant to the defendant since the 5th day of January, 2017, and without any complaint is now undergoing scrutiny about thirty (30) months after just

because the claimant demanded, for payment, marked as Exhibit Veecee 7.”

In paragraph 15, the deponent states:-

“That I verily believe that the Defendant does not have any defence whatsoever to the claim.”

I have carefully considered all the paragraphs of the claimant’s Affidavit as well as all the annexures attached therewith.

Both the Affidavit and Documentary evidence clearly show that there was a contract between the claimants and the defendant, same has since been performed and the Defendant has acknowledged in its letter with reference No. NEMA/LV/46/1/31 receipt of a letter of demand for payment made on behalf of the Claimants by one Eloka .J. Okoye their counsel dated 10th September, 2019 stamped and received 11/9/19. Exhibit Veecee 7 is dated 17th September, 2019, written and signed by one Olayede M. Aiyeniko, Head Procurement unit for Director General of National Emergency Management Agency.

Now, although it is stated in Exhibit Veecee 7 that the said contract is undergoing scrutiny, the defendants did not deny having received the relief materials.

Furthermore, since they were duly served with the processes in this suit including hearing notice for today’s sitting and they failed and neglected to avail themselves of the opportunity to be heard, the court would have no option than to proceed to judgment.

On this premise, I refer to the case of J. O. E CO LTD VS SKYE BANK PLC (2006) 5 NWLR (PT. 1138) 518, where the court held:-

“.....The law is designed to give opportunity to parties to be heard. It is left to them to decide either to utilize the opportunity. A party cannot turn round later to blame the court or any other person for his failure. It must also be borne in mind that the principles of fair hearing do not apply only

to the defendant only, but also the plaintiff who has initiated action for judicial relief.”

Therefore, in the instant case, I am satisfied that the claimants have proven their case to be entitled to the Relief sought.

Consequently, Judgment is hereby entered for the claimants against the defendants as per the claim as endorsed on the writ of Summons.

Signed

Hon. Justice Samirah Umar Bature

3/02/2020

Claimant's Counsel: We thank my Lord for the well thought out judgment.