

**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**

<b>COURT CLERKS:</b>	<b>JAMILA OMEKE &amp; ORS</b>
<b>COURT NUMBER:</b>	<b>HIGH COURT NO. 32</b>
<b>CASE NUMBER:</b>	<b>SUIT NO. FCT/HC/CV/1890/2020</b>
<b>DATE:</b>	<b>17<sup>th</sup> NOVEMBER , 2020</b>

**BETWEEN:**

**ZIHABIT LTD.....PLAINTIFF**

**AND**

**NATIONAL PRIMARY HEALTH CARE DEVELOPMENT AGENCY.....DEFENDANT**

APPEARANCE

Steven Mandeun Esq for the Claimant.

**JUDGMENT**

The Claimant filed this suit under the undefended list Claiming against the Defendant as Follows:-

- a) An Order of this Honourable Court compelling the Defendant to pay to the Plaintiff the outstanding sum on certificate No.3 dated the 20<sup>th</sup> March, 2014 in the sum of ₦3,249,934.60k (Three Million, Two Hundred and Forty Nine Thousand, Nine Hundred and Thirty Four, Naira Sixty Kobo) only and

retention fees in the sum of ₦559, 646.38 K only on Contract awarded to and executed to it dated the 28<sup>th</sup> of November, 2016.

b) Cost of this suit in the Sum of ₦750, 000.00 (Seven Hundred and Fifty Thousand Naira only).

The writ which was issued by Stephen Mandeun Esq, Solicitor to the Claimant is Supported by a statement of Claim comprising of 5 paragraphs, an Affidavit in support of the undefended List containing 8 paragraphs deposed to by Arc. (Dr) Philip Iyortyer, the managing Director ZIHABIT LTD, Plaintiff in this Suit, Exhibits marked Exhibit ST 1, Exhibit ST 2 A, Exhibit ST 2 B, Exhibit ST 3, Exhibit ST 4, and Exhibit ST 5 respectively.

While addressing this Court today, the Learned Claimant's Counsel Urged the Court to enter Judgment for the Claimant, since the Defendants have not disputed their Claims pursuant to order 35 Rule 4 of the Rules of this Honourable Court.

Having gone through the records of this Court, I have observed that the Defendant was duly served with the originating process in this suit as well as hearing notice for today's proceedings.

Inspite of that, the Defendant in the instant suit has failed or neglected to file any process showing intention to defend this suit as required by the Rules of this Court.

Order 35 Rule 3 (1) of the FCT High Court (Civil Procedure) Rules 2018 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".***

Order 35 Rule 4 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.”***

(Underlining mine for emphasis).

Also, it was held in the case of ONDEYO VS UBA PLC (2014) LPELR-24242, thus:-

***“The essence of suits on the undefended list is for quick dispensation of justice to the parties. Therefore, upon service of a writ of Summons in respect of a suit on the undefended suit on the Defendant, the latter must deliver or file a notice of intention to defend and together with the said Notice an affidavit disclosing a Defence on the merit and where the Defendant fails to do so or act, then Judgment may be entered against him as per the writ of Summons without necessarily calling on the Plaintiff to formally prove his Claim by calling witnesses to testify.”***

It is trite law that the purpose of the undefended list procedure is to save judicial time and expense. Therefore, a Defendant who intends, to challenge the suit must file a notice of intention to defend along with an affidavit disclosing a defence on the merit.

Please see the case of J. O. E CO. LTD VS SKYE BANK PLC (2006) 6 NWLR (PT. 11138) 518.

In the instant suit, the Claimant has stated in paragraph 3 of the statement of Claim that on 28<sup>th</sup> of November, 2016, it was awarded a Contract by the Defendant for the Construction of phase (1) of a Primary Health Care (type1) Gumbo village at Kwali, area Council, FCT Senatorial District at a Contract sum of ₦22,657, 509.00 (Twenty Two Million, Six Hundred and Fifty Seven Thousand Five Hundred and Nine Naira Zero Kobo) only. Same was attached to the writ.

In paragraphs 4 and 5, it is stated among other things that the said Contract was duly executed and ₦3, 249, 934.00 payment is due to it on interim certificate

No. 3, while the sum of ₦559,646.38 K is retention fees on certificate No. 4, thereby bringing the total sum to ₦3,809,580.98K Claimed.

It is further stated in paragraph 6 thereof that after completion of the Contract aforesaid, it approached the Defendant to pay the sum owed to the Managing Director of the Defendant Demanding its money be paid but this fell on deaf ears.

While in paragraphs 6 & 7 of the supporting affidavit to the Claimants writ under the undefended List, the deponent avers that all the sum of money owed by the Defendant to the Plaintiff is correct as Claimed to the best of his knowledge. And that the Defendant has no defence to this suit.

The Claimant has also attached the following Exhibits namely:-

- 1) Exhibit ST 1- Award of Contract for the Construction of a primary Health Care Centre (Type 1) at Gumbo village in Kwali Area Council FCT senatorial District (Lol: NPHCDA/2016/1/35), dated 28<sup>th</sup> November 2016.
- 2) Exhibit ST 2 A-A letter written by Dauda D. Bungwou for CYNERGY ASSOCIATES LIMITED addressed to the Executive Director/CEO, National primary Health Care Development Agency dated 4<sup>th</sup> May 2017.
- 3) Exhibit ST2 B letter written by Dauda D. Bungwou of CEYNERGY ASSOCIATES Limited addressed to the Executive Director/CEO of National Primary Health Care Development Agency dated 26<sup>th</sup> February 2018.
- 4) Exhibit ST 3-A letter written by Arc (Dr) Philip Z. Iyortyer Chairman/CEO of ZIHABIT LIMITED addressed to the Executive Chairman/CEO, National Primary Health Care Development Agency, dated 21<sup>st</sup> August 2017.
- 5) Exhibit ST 4-a letter of reminder written by Arc (Dr) Philip Z. Iyortyer FNIA, Chairman/CEO ZIHABIT LIMITED, addressed to the Executive Director/CEO, National Primary Health Care Development Agency dated 8<sup>th</sup> February, 2018; and
- 6) Lastly, Exhibit ST 5, a letter written by Stephen Mandeun Esq, of Stephen & Co Solicitors Associates, addressed to the Executive Secretary, National Primary Health Care Development Agency. Dated September 5, 2018.

Now, all these Exhibits Considered with the statement of Claim and supporting affidavit clearly show that there was a Contract duly Executed by the Claimant and to which the Defendant is yet to fulfill its own obligations under the Contract.

And to cap it all up, the Defendant, as stated earlier has failed and/or neglected to file any defence to challenge this suit.

Therefore, this Court has no option than to treat the averments in the Claimant's affidavit in support of the statement of Claim as unchallenged, uncontroverted and uncontradicted. As such this Court can Act of them.

On this premise, I humbly refer to the case of HEIN NEBUNG ISENSEE VS UBA PLC (2012) 10 NWLR (PT. 1326) 357 AT 384, paragraph C, where the Court held:-

***“Where evidence is uncontroverted, unchallenged and credible, the Court will be left with no option than to accept same.”***

Finally, and without further Ado, Judgment is hereby entered in Favour of Claimant against the Defendant as per the Claims endorsed in the writ of Summons under the undefended list.

***Signed***

***HON. JUSTICE SAMIRAH UMAR BATURE***

***17/11/2020***

Counsel: We are very grateful.

