

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY IN
THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
ON 22ND DAY OF JUNE, 2021
BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS
SUIT NO: FCT/HC/CV/428/2021

BETWEEN:

REX OPTIMA INTENATIONAL LIMITED.....CLAIMANT/APPLICANT

AND

KUJE AREA COUNCIL.....DEFENDANT

JUDGMENT

This case was brought under the undefended list with No FCT/HC/CV/428/21 dated and filed on the 1/2/21 consequent upon the motion exparte No M/2744/2021 dated and filed on the 17/3/21.the Claimant/Applicants claim against the defendant is as follows:

- (1) The payment of the sum of 11,459,925.00 being the amount due to the claimant from the defendant for the contracts completed being
 - (A) *Purchase/supply of Hospitals equipments*
 - (B) *The evacuation of refuse at Kuje central market*
 - (C) *The purchase/supply and Installation of 13 KVA generator with accessories to Rubochi Town Hall.*
 - (D) *The purchase and supply of office furniture.*

(2) The Judgment sum at the prevailing Central Bank of Nigeria Interest rate until the whole Judgment sum is fully liquidated.

(3) The cost of filing and prosecuting this suit.

This application is supported by a 23 paragraphed affidavit, 11 exhibit marked A-K and a written address. The facts as deposed to by one Ugwu Beatrus Chinonso a Director within the employment of the claimant is that defendant through letters of contracts awarded to the claimant on:

(1) 13th April, 2012 for the purchase of Hospital equipment at the sum of N11,159,500.00 of which only N7,425,000.00 was paid remaining the unpaid balance of N3,734,500.00.

(2) 6th August, 2012 for the Purchase/supply and Installation of 13KVA generator with accessories at the sum of N4,500.00 of which only 2,500.00 was paid remaining the unpaid balance of 2,000,000.00.

(3) The 7th August, 2012 for the evacuation of refuse at Kuje Central Market at the sum of 4, 983,550,00 and yet unpaid.

(4) 5th February, 2013 for the purchase and supply of office equipment at the sum of 721,875.00 which remain unpaid.

The claimant has requested for his payment upon completion of those jobs, through a letter attached as exhibit K. to the Defendant who certified that the contracts/Projects were duly completed to No avail.

That the non-payment of the defendant to the claimant duly earned N11,439, 925.00 has caused same unquantifiable hardship.

This case firstly came up on the 30/3/21 the defendant have been served and are aware of this suit.

See copy of the writ dated 15/2/21 is a proof of service. The defendants were also served with a hearing notice dated the 30th March, 2021 unfortunately same have refused to file a notice of defence or prayed the court for leave to defend. In line with the provision of Order 35 Rule 4 of the FCT CPR 2018 which provides:

Where a Defendant neglect 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.

In **UGWU VS EMENOGBI (2009) LPELR PER ABOKI JCA PP 31 PARAGRAPH C** state:

.... It is trite that when a matter under the undefended list comes up for hearing on the date, it was fixed for hearing, the only duty of the court in relation of that matter is to see that if a notice of intention to defend with a counter affidavit in support was filed by the defendant if none was filed the court must Proceed to Judgment. Equally also in the case of **BEN THOMAS HOTEL CTS VS. SEBI FURNITURE LTD (1989) S NWLR (PT 123) PG 532** there is nothing in the case file that indicates that the Defendant has put upon defence or notice to the court for leave to defend despite the proof of service. In **IKPONG VS. UDOBONG (2006) LPELR-6050 (CA) OMOKRI JCA** (of blessed memories) held. A Judgment entered on the undefended list is a judgment entered on its merit and not

a judgment in default. Such Judgment can only be set aside on appeal. See also **F.O. LOY VS. REGISTERED TRUSTEES OF THE NEW COVENT (2017) LPELR -42183 (CA) MARK & ANON VS. EKE (2004) LPELR-1841(SC).**

The general requirement of the law is with when a party files a suit under the undefended list and support it with an affidavit disclosing the facts of its case the defendant is regarded by law to file a notice of Intention to defend, together with supporting affidavit to disclose his defence. See **INTERNATIONAL BANK LTD VS. BRIFING LTD** suits No Sc 67/2004. Also cited in (2012) **13 NWLR P.I.** from the above it is the requirement of the law that the Defendant is required to file his notice of intention to defend. In this case that has not been done. The defendant have never put appearance in this case. It is trite that justice delay is justice denied. Since the claimant have fully satisfied the requirement of the procedure to be brought under the undefended list procedure couple with the fact that I have gone through the accompany affidavit as well as the exhibits attached to the applicant. This court have No option then to enter Judgment as per the Plaintiff claimant. Accordingly Judgment is hereby entered in favour of the Plaintiff against the defendant as per the claimants claim.

Signed
Hon. Judge
22/6/2021