

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT GWAGWALADA- ABUJA**

**THIS WEDNESDAY THE 12<sup>TH</sup> DAY OF JULY, 2023**

**BEFORE HIS LORDSHIP: HON. JUSTICE ALIYU YUNUSA SHAFI**

**SUIT NO: FCT/HC/CV/3073/23**

**BETWEEN:**

**OUTLOOK SECURITY LIMITED.....CLAIMANT/APPLICANT**

**AND**

**INDEPENDENT NATIONAL ELECTORAL**

**COMMISSION.....RESPONDENT**

**JUDGMENT**

The claimant by a writ of default summons, dated and filed on the 6<sup>th</sup> day of April claims the following reliefs against the Defendant as follows:

1. An order of this honourable court directing the defendant to pay the claimant the sum of 278,592.208.30 (Two hundred and seventy-eight million, Five hundred and ninety two thousand, two hundred and eighty thousand thirty kobo) only being the money owed the claimant over the project executed for defendant by claimant at defendant's Guzape Estate Abuja, FCT.

Attached to the said writ of summon is an affidavit of 22 paragraphs deposed to by one Ernest Uwanyerim (m) of No.28, Bamishile street New world Bus stop off allen Avenue ikeja Lagos, Lagos state. Attached to the Affidavit are exhibits marked AA (being the request for Payment for jobs executed for the commission) addressed to the INEC dated the 26-4-2018, Exhibit BB being report of the committee on on-going security projects at commissioner's residence Guzape Abuja, Exhibit CC is a letter dated the 30<sup>th</sup> day of December, 2022 from Sprint Louis partners' law office addressed to the chairman of INEC

acknowledged and dated the 30<sup>th</sup> September, 2022 and a certificate of pre-action counselling dated the 6<sup>th</sup> April, 2023 signed by Outlook Security LTD (Claimant's Director) and Victor o. Izibilli Esq (Claimant's Counsel).

The claimant signed an exparte application with motion No M/9316/2023 for an order of this honourable court placing this matter under the undefended list, the motion dated the 9<sup>th</sup> day of May, 2023, attached to the motion is the following exhibit:

1. Exhibit AA being a letter from Outlook Security LTD addressed to the chairman INEC dated the 26<sup>th</sup> April, 2018.
2. Exhibit BB report of the committee on on-going security project at commissioner's residence Guzape Abuja.
3. Exhibit CC, letter from Sprint Louis partners addressed to the chairman INEC dated the 30<sup>th</sup> September, 2022.

Attached with a written address.

The said motion was moved on the 11-05-2023 and the matter placed on undefended list and the matter adjourned to the 31<sup>st</sup> of May, 2023 for hearing.

The endorsement order was served on the Defendant dated the 12<sup>th</sup> May, 2023 acknowledged by one Catherine Mathew.

By order 35(1)(3)(4) of the High court of Federal capital territory Abuja Civil Procedure Rules 2018, which said order is reproduced below:

Subsection 1(1)-

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 deponents belief, there is no defence to it, the judge in chamber shall enter the suit for hearing in what shall be called the "Undefended list"

Order 35(3)(1)-

Where a party served with the writ deliversto theregistrar, 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 on the merit, the court may give him leave to defend upon such terms as the court may think just.

Order 35(4)-

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.

In compliance with the above provisions of the law, the claimant filed a motion for leave placing this suit on an undefended list, the said leave was granted on the 11-05-2023 and the suit adjourned to 31-05-2023.

In compliance with the said rules the Defendant was served with the enrolment order of this court for leave dated the 12<sup>th</sup> May, 2023 acknowledged by one Catherine Mathew but neglects to deliver the notice of defence and an affidavit prescribed by rule 3(1).

From the records of court despite the ample time given, the defendant never appeared in court or took any steps in the matter by filing any process. The applicable rules contemplate that upon receipt of the originating court process, he reacts by the specific filing of a notice in writing that he intends to defend the suit together with an affidavit disclosing a defence on the merit in compliance with order 35 rule 3(1) of the rules of court.

It is only where a defendant takes these steps within the purview of order 35 rule 3(1) and does so within 5 days to the day fixed for hearing or within a time as may be extended by court upon an application that the court may then grant leave to defend on terms as the court considers just. Where however, a defendant neglects to take these steps or comply with order 35 rule 3(1) of the rules of court, as the defendant has elected to do in this case then the provision of order 35 rule 4 comes into play and in such circumstance as rightly submitted by the learned counsel to the plaintiff, the suit shall be heard as an undefended suit and judgment given accordingly.

I have above given a brief analysis of the applicable rules. I will simply apply it to the facts of this case which are largely uncontested and straight forward and I will hereby summarize the substance of the case of the plaintiff.

The plaintiffs' case as made out in the affidavit in support of the writ is to the effect that the defendant through its director, approached the claimant to execute security measures in defendants' estate located at Guzape District, Abuja FCT. The claimant on receipt of the defendant's letter, and due to the urgency involved in the work, especially in the challenge of security, the

director urged/pleaded with claimant to start work. The claimant mobilized to site in 2015, after having accepted the offer in the same 2035 when parties entered into a protracted negotiation.

The claimant carried out the contract with the description of work and amount due to the claimant as follows:

Paragraph 5 i-viii. And paragraph 6-16.

- 5. That the claimant carried out the contract with the description of work and the amount due to claimant as follows:**
  - i. Additional external works and security observation post at Hon. Chairman's Residence: N39,834,430.88.**
  - ii. Construction of police posts and gate house: N71,481,487,950.00**
  - iii. Construction of security observation posts at the entrance gate and exit automated security barrier: N33,731,731,537.42**
  - iv. Installation of closed circuit camera and LED lamps at the perimeter fence: N30,380,000.00**
  - v. Construction of steel Burglary/security grills at the perimeter fence of the Estate: N44,959,000.00**
  - vi. Gal vanished steel outdoor t-post clothes dryer mounted at the back of each Commissioner's Residence: N7,500,000.00.**
  - vii. Installation of BTC (barbed tape concertina) wire and security electric fence wire at the rear and between the Commissioners' Residence: N29,699,300.00**
  - viii. Supply and install Samsung 65 (Inch) curved TV including other necessary accessories: N21,000,000.00**

TOTAL: N278,592,208:30 (Two Hundred and Seventy –Eight Million, Five Hundred and Ninety-Two Thousand, Two Hundred and Eight Thousand Thirty Kobo) only.

- 6. That the claimant completed a tremendous milestone of the contract in 2018.**
- 7. That immediately claimant mobilised to site, it intensified its effort of getting an award letter and it was assured of an award letter by the director of Estate. Work and Transport Department of Defendant and was encouraged to proceed/continue with the work.**

- 8. That claimant wrote several letters to defendant requesting for its money without a response and particularly wrote that dated 26<sup>th</sup> April, 2028 and headed Request for update for Jobs executed for the Commission” attached and marked as Exhibit AA is Claimant’s letter to defendant dated 26<sup>th</sup> April, 2018.**
- 9. That claimant intensified its effort and defendant responded by setting up a committee on ongoing Security Projects at Commissioners’ Residence Guzape Abuja.**
- 10. That the Defendant’s committee in paragraph 9 above comprised of four members to wit: Nwanumara Paul (Chairman), Osime Clement (member), Mustapha Kuta (member) and Sambo Tukur (member).**
- 11. That the committee issued a report, (signed and dated by the members) and acknowledged the Claimant’s contract and the sum of money involved which stands at N278,592,208:30 (Two Hundred and Seventy- Eight Million, Five Hundred and Ninety-Two Thousand, Two Hundred and Eight Thousand Thirty Kobo) only. Attached and marked as Exhibit BB is Defendant’s Committee Report on Claimant’s contract with the Defendant, signed and dated by the members of the Committee.**
- 12. That in spite of Exhibit BB, the Defendant has failed to pay the Claimant it’s money after having completed the contract.**
- 13. That claimant spent so much money on the contract by sourcing for money from finance houses/Banks to execute the contract with interest accruing over the loan.**
- 14. That Claimant instructed the law of Saint Louis Partners to demand for it’s money owed it by the Defendant.**
- 15. That Claimant’s lawyer on 30<sup>th</sup> September, 2022, wrote Defendant through it’s Chairman, lawyer on 30<sup>th</sup> September, 2022 wrote Defendant through it’s Chairman, requesting Defendant to pay Claimant it’s money in the sum of N278,592,208:30 (Two Hundred and Seventy-Eight Million, Five Hundred and Ni9nety-two Thousand, Two Hundred and Eight Thousand Thirty Kobo) only. Attached and marked as Exhibit CC is Claimant’s Lawyers letter dated 30<sup>th</sup> September, 2022 and addressed to Defendant’s Chairman with an acknowledgement of receipt stamp affixed to the copy of letter.**

**16. That despite Exhibit CC as written to Defendant, Defendant has not replied the letter nor pay the Claimant its money.**

I therefore find these facts relating to the indebtedness of defendants as established. It is important to add that, the claimant completed the tremendous milestone of the contract in 2018 and the defendant has not paid the claimant up till date. It is not only a legal but moral imperative that the defendant fully pays the contract money as the plaintiff having completed the project reference to exhibit BB, being the defendant's committee report on claimant's contract with the defendant, signed and dated by the members of the committee. In spite of Exhibit BB, the Defendant has failed to pay the claimant its money after having completed the contract. It cannot and should not be seen as a matter of mere convenience. The defendant is therefore clearly indebted to the plaintiff to the extent of the amount claimed on the extant writ.

I accordingly hold that the claimant is entitled to the amount of the contract sum in the sum of 278,592,208.30 (Two Hundred and Seventy Eight Million, Five hundred and ninety Two Thousand, two Hundred and Eighty Thousand Thirty kobo) only as the defendant has not disclosed any defence on the merit, enjoining me to transfer this matter to the general cause list. See Ben Thomas Hotels LTD V Sebi Furniture LTD (1989)5 NWLR (PT.123) 523.

In summation and for avoidance of doubt, pursuant to order 35 rule 4 of the rules of court 2018, I must proceed to enter judgment in favour of the plaintiff.

Judgment is hereby entered for the plaintiff against the defendant as follows:

1. The sum of 278,592,208.30 (Two Hundred and seventy Eight Million, Five Hundred and Ninety Two thousand, Two hundred and Eight thousand thirty Kobo) only.

This is the judgment of this court.

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**HON. JUSTICE A. Y. SHAFI**

**APPEARANCE:**

