

**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/3072/23**

**BETWEEN:**

**TONIV RESOURCES LTD.....CLAIMANT/APPLICANT**

**AND**

**INDEPENDENT NATIONAL ELECTORAL**

**COMMISSION.....RESPONDENT**

**JUDGMENT**

The claimant by a writ of summons under the undefended list procedure dated the 6<sup>th</sup> April, 2023 filed the same date, claiming against the defendant as follows:

1. An order of this honourable court directing the defendant to pay the claimant the sum of 354,390,9450 (Three Hundred and Fifty-Four Million, three Hundred and ninety Thousand, nine hundred and Twenty-one thousand fifty kobo) only being the money owed the claimant over the construction project executed for the defendant by the claimant at defendant's residence Electoral Commission Residence at Yenagoa Bayelsa state.

Attached to the said writ is the affidavit in support of 23 paragraphs deposed to by one Ernest Uwanyerem of No 28, Bamishile street, New world bus stop off Allen Avenue, Ikeja Lagos state and attached to the affidavit are

Exhibits marked AA, BB, CC, DD, EE, FF, GG, HH, II, and the certificate of pre-action counselling dated the 6<sup>th</sup> April, 2023.

Upon the filing the claimant took off with a motion ex parte with motion number, M/9317/2023 dated the 9<sup>th</sup> May, 2023 and filed on the 10-05-2023. The motion seeks for the following orders:

An order of this honourable court placing this matter under the undefended list. The motion was moved and the order sought was granted and the matter placed under the undefended list and the matter adjourned to 31-05-2023.

On the 31-05-2023, when the matter came up for hearing, the claimant counsel, one Barrister Ibrahim Idayi was in court while the defendants were not in court despite being served with the order of this court and all the court processes which were acknowledged by me Catherine Mathew AO II dated the 12<sup>th</sup> May, 2023. Upon being satisfied that service was effected on the defendants, the claimant counsel who then informed the court that the defendants failed to put up appearance or respond by way of delivery of notice of defence and the affidavit as prescribed by the rules, and therefore prayed the honourable court to enter judgment for the claimant as per the claim.

The undefended list procedure is prescribed under order 35 of the High court of the FCT Abuja civil procedure Rules 2018, this rule which will be reproduced below:

**35(1)(1) where an application in form I, 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 deponent believes there is no defence to it, the judge in chamber shall enter the suit for hearing in what shall be called the ‘Undefended List’**

**(2) a writ of summons for a suit in the undefended list shall contain the return date of the suit.**

**35(2) A claimant shall deliver to the registrar on the issue of the writ of summons, as many copies of the supporting affidavit as there are parties against whom relief is sought for service.**

**35(3) (1) Where a party served with the writ delivers to 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.**

**(2) Where leave to defend is given under this rule, the action shall be removed from the undefended list and placed on the ordinary cause list and the court may order pleadings or proceed to hearing without further pleadings.**

**(4) Where a defendant neglects to deliver the notice to defend and an affidavit prescribed in 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.**

Before I proceed to the main affidavit in support, I shall first and foremost dwell on the need for service.

Service of court process is a pre-condition to the exercise of jurisdiction by the court and it entails that a party should know or be aware that there is a suit against him so that he can prepare a defence. Service of process is a fundamental issue because it is a means of summoning parties to court and it also foists Jurisdiction on the court to hear the suit. It is therefore a very important aspect of Jurisdiction. See UBA PLC V J.M & W (Nig.) LTD (2016) 5 NWLR (PT.1504) 171.

It is also trite that evidence of proof of service is conclusive where a bailiff deposes to an affidavit to that effect. An affidavit of service deposed to by the person effecting the service setting out the facts, place, mode and date of service and describing the document or process served shall be Prima facie proof of the matter stated in the endorsement or affidavit. See Estate of Late Chief H.I.S Idisi V Ecodril (Nig) LTD (2016)12 NWLR (PT.1527).

Based on what I said, it is conclusive that the claimant has complied with the law on proof of service in the instant case as was endorsed and acknowledged by one Catherine Mathew AO II INEC HQTR Abuja dated the 12<sup>th</sup> May, 2023 (Litigation and Prosecution Dept.).

From the record of court despite ample time given, the defendant never appeared in court or took any step(s) in the matter by filling 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 Rules 3(1) of the Rules of court as stated above.

It is only when the defendant takes these steps within the purview of order 35 rules 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, the court may then grant leave to defend on terms as the court considers just. Where however, the defendant neglects to take these steps or comply with order 25 rule 3(10) 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 circumstances as rightly submitted by the learned counsel to the claimant, 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 straightforward and I will hereby summarize the substance of the case of the claimant. The claimant's case as made out in the affidavit in support of the writ is to the effect that:

- 1. That claimant is into the business of general contracts including civil construction works and was engaged by claimant vide an award of contract letter dated 28<sup>th</sup> December, 2011, wherein Defendant awarded claimant a contract a construct Resident Electoral Commissioner's Residence at Yenagoa, Bayelsa state. Attached and marked as exhibit AA is the award of contract letter dated 28<sup>th</sup> December, 2011, granted claimant by Defendant.**
- 2. The claimant in a letter dated 29<sup>th</sup> December, 2011 and addressed to the secretary of the Defendant accepted the award of contract same was received by Defendant. Attached and marked as exhibit BB is the claimant's acceptance letter dated 29<sup>th</sup> December, 2011 and addressed to Defendant's secretary.**
- 3. That claimant was issued a certificate of site hand over on 15<sup>th</sup> February, 2012 by the Defendant and claimant took possession of the site for the construction. Attached and marked as Exhibit CC is the certificate of site hand dated 15<sup>th</sup> February, 2012.**
- 4. that immediately claimant took possession of the site, the indigenes entered the land and pursued claimant out of the land.**
- 5. That claimant was quickly instructed by Defendant to obtain a land allocation from Bayelsa state Government in order to relocate to that plot of land in view of the invasion of the site handed to claimant.**

- 6. That claimant engaged Bayelsa state government and got an allocation of land to Defendant with an allocation letter dated 19<sup>th</sup> March ,2012 with a technical drawing plan [TDP] attached to it issued in favour of Defendant for the construction of resident electoral commissioner's residence in Yenagoa. Attached and marked as exhibit DD is the letter of allocation of land to Defendant dated 19<sup>th</sup> March 2012 with a technical drawing plan(TDP)attached to it.**
- 7. That upon taking possession of the land allocated to Defendant, after having been pursued out of the initial site,claimant took preparatory steps to and fill the access road and the compound and thereafter, erected the retaining walls.**
- 8. That claimant invited the resident electoral commissioner of Bayelsa state,who inspected the construction work and received the bill of quantities for theretaining walls and sand filling of the compound. the site plan and architectural drawing, and bill of quantities of the access road from the claimant and in turn forwarded same to the secretary of the Defendant in a correspondence Dated 21<sup>st</sup> June, 2018 with all the documents annexed to the correspondence. Attached and marked as Exhibit EE is the correspondence written by resident Electoral Commissioner of Bayelsa state, dated 21<sup>st</sup> June 2018 and addressed to the secretary of the Defendant with thefollowing documents annexed as follows: bill of quantities for the retaining walls and sand filling of compound,the site plan and architectural drawings, and bill of quantities of the access road from the claimant.**
- 9. That claimant's work on the retaining walls and sand filling of the compound amounted to N35,337,277;50 (thirty-five million three hundred and Thirty-seven thousand two hundred and seventy-seven naira fifty kobo) only and the work on the access road amounted to N107,487,072, ;00[one hundred and seven million four hundred and eighty-seven thousand and seventy-two naira) only which document containing the cost of work done wereannexed to EXHIBIT EE.**
- 10. That claimant in a correspondence dated 10<sup>th</sup> June, 2020 addressed to Defendant's chairman requested for a variation of the contract value in view of the time the construction work had taken owing to the failure and non-readiness of the Defendant to see to the timely completion of the work and the inflation that hit the economy. Attached and marked as Exhibit FF is the correspondence dated**

**10<sup>th</sup> June, 2020 addressed to the Defendant's chairman on a request for variation of the contract value.**

- 11. That claimant on 10<sup>th</sup> June 2020 also wrote another correspondence to Defendants chairman requesting for settlement of claims for works carried out on the initial project site that was abandoned due to the interference of the indigenes which claim for work amounted to N11,936,683,13 (Eleven million nine hundred and thirty –six thousand six hundred and Eighty –three naira thirteen kobo) only. Attached and marked as Exhibit GG is claimant's correspondence dated 10<sup>th</sup> June, 2020 and addressed to Defendant's chairman requesting for settlement of claim for work on the abandoned site.**
- 12. That in spite of the work done by the claimant and demand being made the claimant, the Defendant refused to respond to claimant, demand for payment and Defendant continued to delay the work and the payment of claimant's money.**
- 13. That claimant in a correspondence dated 4<sup>th</sup> May, 2021 and addressed to Defendant's chairman reminded Defendant of several of its demands for payment on the contract awarded to it, which correspondence was received by Defendant wherein claimant demanded for a total sum of N354,390,921,50 (three hundred and fifty-four million three hundred and ninety thousand nine hundred and twenty-one thousand fifty kobo) only due to it. Attached and marked as Exhibit HH is claimant's correspondence dated 4<sup>th</sup> May, 2021, addressed to Defendant's chairman and received and acknowledged with some previous correspondences annexed to the Exhibit.**
- 14. That claimant having completed the contract awarded to it in 2018, the delay in completion of work having been occasioned by the conduct of the Defendant the claimant instructed the law firm of saint Louis to write the Defendant and make a claim for its money owed it by Defendant.**
- 15. That claimant's lawyer wrote the Defendant, through its chairman, in a correspondence dated 2<sup>nd</sup> November, 2022 and received in the chairman's office on same dated and requested for claimant's money owed it in the sum of N354,390, 921,.50 [three hundred and fifty-four million three hundred and ninety thousand nine hundred and twenty-one thousand fifty kobo) only. Attached and marked as Exhibit II is**

**the correspondence dated 2<sup>nd</sup> November ,2022 and addressed to the Defendant requesting for its money.**

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

It is this claim for works carried out on the claimant to the defendant's house for the construction of the resident Electoral Commission s' residence at Yenagoa Bayelsa State, which in my opinion is clearly in the nature or realm of liquidated money claims that forms the basis of the principal claim of the claimant. The defendant as stated at the beginning of this judgment has not in any manner challenged or controverted these clear depositions in support of the claim of the claimant or filed any process disclosing any defence on the merit.

I therefore, from these facts relating to the claim of the claimant for the construction of the chairman's resident at Yenagoa Bayelsa State as established. How that, the defendant is clearly indebted to the claimant to the extent of the amount claimed on the extant writ.

I accordingly hold that, the claimant is entitled to the payment of the sum of 354,390,921,50 (Three Hundred and Fifty-Four Million, Three Hundred and Ninety thousand, Nine Hundred and twenty-One thousand Fifty Kobo) only and the defendant has not disclosed any defence on the amount enjoining me to transfer this matter to the general cause list. See Ben Thomas Hotels LTD V Sebi Furnitures LTD (1989) 9 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 claimant.

Judgment is hereby entered in favour of the claimant against the defendant as follows: -

The defendant to pay claimant the sum of 354,390,921.50 (Three Hundred and Fifty-Four Million, Three Hundred and Ninety thousand, Nine Hundred and twenty-One thousand Fifty Kobo)only being the money owed claimant over the construction project executed for Defendant Residence of Yenagoa, bayelsa State.

This is my Judgment.

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

**APPEARANCE:**