

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY ABUJA
IN THE GWAGWALADA DIVISION
HOLDEN AT COURT 12, JABI
BEFORE HIS LORDSHIP HON. JUSTICE A. S. ADEPOJU
ON THE 20TH DAY OF NOVEMBER, 2024**

SUIT NO: CV/2983/141/2024

BETWEEN:

JAJI M. M. NIGERIA LIMITED ----- CLAIMANT

AND

GWAGWALADA AREA COUNCIL ----- DEFENDANT

M. A. ODIEDI for the Claimant.

Claimant is represented by the Claimant.

JUDGEMENT

The Claimant's claim was constituted under the undefended list procedure pursuant to Order 35 of the High Court of FCT Civil Procedure Rules of 2018. It is for liquidated sum of **N65,094,684.40 (Sixty Five Million and Ninety Four Thousand Six Hundred and Eighty Four Naira, Forty Kobo)** being the net payable contract sum for the supply and installation of all in one Solar Street Light at old Kaida and Kache Villages by the defendant to the Claimant and the sum of **N2,000,000 (Two Million Naira)** only being the cost of action.

In support of the Writ is a 20 paragraph affidavit deposed to by the Chief Executive Officer of the Claimant. He averred that vide a contract award letter dated 30th December 2022, a supply and installation of all in one Solar

Street Light at old Kaida and Kache Villages at the contract sum of **N77,596,312.5K (Seventy Seven Million Five Hundred and Ninety Six Thousand Three Hundred and Twelve Naira Five Kobo)** was awarded to the Claimant. See Exh JAC1, the contract award letter. He proceeded with the supply and installation as stipulated within the contract period and the Defendant inspected and certified the contract as satisfactorily done, upon which a joint inspection report and certificate of final completion was issued.

The defendant also evaluated the job and issued a certificate of valuation recommending the sum of **N65,094,684.40 (Sixty Five Million and Ninety Four Thousand Six Hundred and Eighty Four Naira, Forty Kobo)** as net amount payable to the Claimant for the job done and issued Exhibit JAC3 to the Claimant. The Claimant accepted the net amount recommended, see Exhibit JAC4. And according to the contract conditions, the Claimant is entitled to be paid within one month after the issuance of Exhibit JAC3 issued on 21st of December 2023 but on the contrary the Claimant has called severally at the office of the Defendant for over three (3) months running for payment but to no avail. Afterwards the Claimant engaged the professional legal service of **M. A. Odiedi Esq**, of Jural Apex Consult to do a letter of demand to the Defendant. The letter of demand is dated 16/05/2024 and served on the 16th May 2024 at its Secretariat Gwagwalada. The acknowledgment copy is annexed as Exhibit JAC5.

The Defendant have not responded nor debunked the Solicitor's letter of demand, hence the institution of this action. The Claimant believes that the Defendant does not have a defence to this suit.

I have gone through the affidavit in support of the Claim of the Claimant and the documents attached. The claim as enumerated is undefended; the defendant from the record of the court was duly served with the writ of summons and hearing notice on the 1st of November 2024. This is as evinced by the proof of service endorsed on the writ of summons received at the office of the Executive Chairman of Gwagwalada Area Council. An affidavit of service was also sworn to by the Bailiff of the court, **Mr. Iheasuleme Uche**.

In an application of this nature, a defendant served with an undefended writ is expected to before five (5) days to the day fixed for hearing deliver to the registry of the court a notice in writing that he intends to defend the suit, together with an affidavit disclosing a defence on the merit. If he delivers the notice of intention to defend together with the affidavit as indicated in the Rules, the court may give him leave to defend upon such terms as the court may deem just and the matter removed from the undefended list and placed on the general cause list. However Order 34(4) states that where a defendant neglects to deliver the notice of defence and an affidavit as prescribed under the Rule 3(1) or is not given leave to defend by the court, the suit shall be heard as an undefended suit and judgement given accordingly.

The court in plethora of case held that where no notice of intention to defend a suit together with an affidavit disclosing a defence on the merit is filed by the defendant, the court should treat the matter as undefended and proceed to judgement. See **ISA & ORS V KANO CONSTRUCTION LIMITED (2017) LPELR 45063 CA, LADAN V ADAMU (2022) LPELR 56569 CA, THE CITY WAITERS LTD V JIMOH ADO (2014) LPELR 24329 CA.**

The whole essence of an application under the undefended list is to facilitate the determination of unliquidated claim particularly where there is no defence on merit to the claim of the Claimant. **EMORI V INSPECTOR OKOKO (2015) LPELR 25828 CA, ECHO SCAN SERVICES LTD V SHITTU (2010) LPELR 4070 CA**

The defendant in the instant case has failed to comply with the provisions of Order 35, Rule 3 (1) of the High Court of FCT Civil Procedure Rules by not filing a notice of intention to defend together with an affidavit disclosing a defence on the merit. The claim of the Claimant remains unchallenged and uncontroverted. I found merit in the aggregated of the fact in support of the Claimant's claim and hereby enter judgement in respect of items 1 and 2 of the claim for the sum claimed and the cost of action. Post judgement interest rate of 10% is awarded from today till the entire judgement sum is fully liquidated.

SIGN

**HON. JUDGE
20/11/2024**