

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA

ON THE DAY OF FEBRUARY, 2025

SUIT NO.FCT/HC/CV/441/23

BEFORE HIS LORDSHIP:
HONOURABLE JUSTICE JUDE O. ONWUEGBUZIE – JUDGE

BETWEEN:

STRONG ALUMINUM COMPANY LTD -----CLAIMANT

AND

1. ARMBORG GLOBAL RESOURCES

2. ANDREW NWEKE

-----DEFENDANTS

RULING

INTRODUCTION

This is a matter commenced by writ of summons under the undefended list brought pursuant to order 35 of the High Court Civil Procedure Rules 2018 the said application is dated and filed on the 1st day of December, 2023.

The Claimant's claims the following reliefs:

1. A recovery of debt of the sum of Nineteen Million, Eight Hundred and Sixteen Thousand, Seven Hundred and Ninety One Naira (19,816,791,44) only as outstanding for supplies of roofing materials and installation services rendered by the Claimant to the Defendants from July 2020 to December, 2020 which the Defendant has defaulted in remitting same to the Claimant.
2. An Order awarding pre-judgment of 20% per-annum on the judgment sum until judgment is delivered.
3. An Order of Court awarding 60% post judgment interest on the said sum from the date of this judgment till the debt is fully paid/liquidated.

4. A general damages against the defendants for unlawful refusal and or neglect to pay the Claimant the full cost of supply and installation services rendered.
5. Cost of Five Million Naira (N5,000,000.00) only as cost of instituting this suit.
6. Such further order or reliefs as the Court may deem fit to make in the circumstances.

Attached to the application is a 43 paragraph affidavit with annexures marked as exhibits “A1 to A 20”, Exhibit B1 & B2, Exhibit C, Exhibit D, Exhibit E, Exhibit F, Exhibit G, Exhibit H, Exhibit I, Exhibit J1 to J15, Exhibit K and Exhibit L respectively. The Affidavit is deposed to by one Aggrey Edewore, the Managing Director of the Claimant in this suit, stating that the Defendants have no defence in this suit.

The Defendants on their part filed a Notice of Intention to Defend this suit dated the 3rd day of May, 2024. Accompanied with the Notice of Intention to defend is an affidavit of 9 paragraph, deposed to by one Gatah Woji the Chief Operation Officer, of the 1st Defendant stating that the suit needs to be transferred to the general cause list.

THE CLAIMANT’S CASE

The Claimant’s case is stated in its Affidavit in Support of the Undefended Writ Application. There would be no need reproducing same here as references would be made to it in the cause of this ruling.

THE DEFENDANTS’ CASE

The Defendants’ case is properly captured on its affidavit attached to the Notice of Intention to Defend. There would be no need reproducing same here as references would be made to it in the cause of this ruling.

COURT'S ANALYSIS

From the evidence before me, this suit raise a lone issue for determination to wit:

WHETHER THE CLAIMANT HAS PROVED HIS CASE TO BE ENTITLED TO THE RELIEFS SOUGHT AGAINST THE DEFENDANT.

For the purpose of clarity, I deem it fit to reproduce order 35 Rule 1 of the Civil Procedure Rule of the FCT High Court 2018 which states:

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 deponent's belief there is no defence to it, the judge in chambers shall enter the suit for hearing in what shall be called the 'Undefended List'.

On the lone issue above, the Court have sufficiently expounded on what amounts to the Claimant proving his case to be entitled to reliefs sought. In the instant case the Defendant filed a notice of intention to defend this suit and accompanied it with an affidavit deposed to by one Gatah Woji the Chief Operation Officer of the 1st Defendant, who averred at paragraph 1 to 8 of the affidavit accompanying the Notice of Intention to Defend as follows:

- 1. That I am the Chief Operation Officer of the 1st Defendant's company and by virtue I am conversant with facts of this case. That the Writ of Summons served on our company was not**

signed by the Registrar and was not marked and/or signed @ UNDEFENDED LIST’ ;

- 2. That paragraph 2 of the affidavit in support of the writ of summons is false in the sense that there is no evidence of that there (sic) was a resolution of Board of Directors of the Plaintiff giving their consent to file this suit ;**
- 3. That the whole paragraph 6 is false, fabricated of figures, quotations, supply and events ;**
- 4. That paragraph 8 is true to the extent that negotiations of the contract were majorly done orally and need to lead evidence to prove same;**
- 5. That paragraphs 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40 and 41 of the affidavit in support of the writ of summons are false hence cannot sustain a writ under undefended list;**
- 6. That this suit with the inconsistent and false averments in the affidavit need to be transferred to the General Cause list for evidence to be led and also enable the Defendants make a counter-claim.**
- 7. That the annexure/receipts/invoices attached to the Affidavit in support of the Writ of Summons are cooked and have no relationship with the Defendants in this suit;**
- 8. That it will be in the interest of Justice to strike out this suit for being incompetent or better still transfer same to general cause list.**

By virtue of all the above depositions, this Court thinks there are a lot of contentions issues which needs to be cleared by the Claimant through leading of evidence and being cross-examined as it were.

Paragraphs 7 and 8 of the Claimants Affidavit in Support of the Writ of Summons under the Undefended list application state thus:

- 7. That the Plaintiff sent all her quotations via WhatsApp, and carried out its communications to the Defendant through the 2nd Defendant orally and also via online WhatsApp chat, on phone number 08037031860, for the projects listed above to the tune of One Hundred and Forty Four Million, Four Hundred and One Thousand, Three Hundred and Eighty Seven Naira (144, 401, 387) only. An exported and printed copy of the said chat as well as screen shorts of same are hereby attached and marked as ‘ Exhibit B1 & B2 respectively.**
- 8. That the various amounts stated in the quotations, where at various points negotiated orally by the Defendant upon receiving the quotations via WhatsApp chat from the plaintiff who thereafter reduced the costs and issued discounts on some of the quotations.**

However, it is the law that the court is entitled even in an undefended case to be satisfied that the evidence adduced is credible and sufficient to sustain the claim see the case of *AYOKE VS. BELLO (1992) 1 NWLR (PT 218) 387*.

In the case of *EJASCO GLOBAL INVESTMENT LTD VS. INIM (2015) LPELR* the court of Appeal held that:

In proceedings brought under the undefended list procedure, the duty of the trial court on the return date is to evaluate the affidavit evidence and determine if the defendant who has filed a Notice of intention to defend supported by an affidavit that condescends upon particulars in response to the plaintiff's case. If the trial court is of the view that the defendant has disclosed triable issues, the matter would be transferred to the general cause list for hearing. If no real defence has been disclosed, the matter will be heard on the undefended list and judgment entered infavour of the claimant.

Also in the case of *AREWA TEXTILES PLC VS. FINETEX LTD (2003) 7 NWLR (PT 819) 322 AT 341* Paras D-9 Per salami JCA as he then was held:

That the claimant will not be entitled to judgment merely because the defendant abandoned its defence by failing to lead evidence in support thereof. The court would only be bound to accept unchallenged, uncontroverted and unrebutted evidence of the claimant, if it were cogent and credible. The court would not accept a piece of evidence which is not material and of no probative value merely because the only evidence before the court is that of the claimant. Even where the evidence is unchallenged and contradicted the trial court has a duty to evaluate it and be satisfied that it is credible and sufficient to sustain the claim.

See the case of *GONZEE (NIG) LTD VS. NIGERIAN EDUCATIONAL RESEARCH AND DEVELOPMENT COUNCIL (2005) 13 NWLR (PT. 943).*

COURT'S DECISION

I have carefully perused the evidence before me, particularly the affidavit evidence and the exhibits attached thereof, this Court thinks that the Exhibits/evidence are not very clear to this court to sustain the claim of the Claimant. This Court finds that there some triable issues as there is no defined agreement as the liquidated money being claimed by the Claimant from this Court.

It is therefore my humble finding and opinion that the matter would be better determined if evidence is led and witnesses being cross-examined thereof. I find and so hold.

Consequently and subject to **Order 35 Rule 1 of the Civil Procedure Rule of the FCT High Court 2018** the matter is hereby transferred to the General Cause list.

This is the ruling of the Court.

Hon. Justice Jude O. Onwuegbuzie

Appearances:

1. Excellency Idisi Esq., for the Claimant.
2. I.E Uzoegbu Esq., for the Defendants.