

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE GWAGWALADA JUDICIAL DIVISION
HOLDEN AT GWAGWALADA
BEFORE HIS LORDSHIP: A. S. ADEPOJU
THIS 14TH DAY OF FEBRUARY, 2024**

SUIT NO: FCT/HC/CV/2264/22

BETWEEN:

SHIYUMA NIGERIA LIMITED -----CLAIMANT

AND

GWAGWALADA AREA COUNCIL -----DEFENDANT

A. O. OTORI for the Claimant.

H. S. YAHAYA for the Defendant.

JUDGEMENT

The plaintiff claims the sum of **N33, 811, 523. 62 (Thirty Three Million Eight Hundred and Eleven Thousand Five Hundred and Twenty Three Naira Sixty Two kobo)** being the unpaid debt of the Defendant to the Claimant in respect of the contract for the rehabilitation of Market Road from Traffic to Coca-Cola Junction, Gwagwalada of which the 1st Defendant failed or neglected to pay in spite of repeated demands.

2. The interest on the judgement sum at the rate of 20% per annum from the date of judgement until final liquidation.
3. **N1,000,000 (One Million Naira)** cost of the action.

In the affidavit in support of the Writ of Summons, the Managing Director of the Claimant averred that by an and upon a contract agreement dated 13th December 2020, the Claimant was given the contract to rehabilitate the Market Road from Traffic to Coca-Cola Junction, Gwagwalada at a contract sum of **N275,891, 951.00 (Two Hundred and Seventy Five**

Million Eight Hundred and Ninety One Thousand Nine Hundred and Fifty One Naira) only. The copy of the agreement is attached and Marked as Exhibit A. that it was agreed that the defendant shall pay the Claimant the total sum of **N273,982, 500.00 (Two Hundred and Seventy Three Million Nine Hundred and Eighty Two Thousand Five Hundred Naira)** for the performance of the contract. That it was further agreed that the amount to be to the Claimant shall be in Naira and may be made in instalment or on submission of valuation certificate issued to the claimant by the defendant.

That after the execution of the contract agreement, the defendant did not make available to the claimant the sum referred to enable the claimant perform the contract. That nonetheless the claimant sourced for funds to commence work and performed the contract to over 22% completion in anticipation that the defendant will fulfil their part of the obligation. And that as the work progresses, the defendants were invited to carry out evaluations, and after much delays, a joint evaluation was eventually carried out by the defendant. And following the joint evaluation of the work done, the claimant submitted to the defendant, a valuation certificate based on the value of work carried out on the project by the claimant. That the valuation certificate submitted to the defendant was certified by the defendant on the 8th of July, 2021. The copy of the valuation certificate is attached as Exhibit B.

That by the terms of the contract agreement executed between the parties, the claimant are entitled to be paid the amount certified in the

valuation certificate upon submission. That the outstanding indebtedness due and owing the claimant from the certificate is in the sum of **N33, 811, 523. 62 (Thirty Three Million Eight Hundred and Eleven Thousand Five Hundred and Twenty Three Naira Sixty Two kobo)**. That the sum represented the value of work payable to the Claimant for the rehabilitation of the said awarded road. And that the total sum of **N33, 811, 523. 62 (Thirty Three Million Eight Hundred and Eleven Thousand Five Hundred and Twenty Three Naira Sixty Two kobo)** remains unpaid despite repeated demands for same. That following the failure of the defendant to pay the sum owed and outstanding, the claimant wrote series of letters demanding for the payment of the certified amount as reflected in Exhibit B and complaining that the unavailability of the funds have gravely affected the progress of the contract. The letters of demand are attached to the affidavit as Exhibits C1 and C2 respectively.

That the despite repeated demands made by letters and complaints aforesaid, the defendant has wilfully failed, refused or neglected to liquidate the amount owed to the claimant. And this prompted the claimant to write a pre-action notice to the secretary of the defendant on the 25th May, 2022 in accordance with the Local Government Act. However upon service of the said notice, the Secretary to the defendant endorsed on a copy of the letter that the claimant should re-address same to the Honourable Chairman, Gwagwalada Area Council. The endorsement dated 26th May 2022 is attached and marked as Exhibit D. Thereafter the Claimant addressed a similar letter to the Honourable Chairman, Gwagwalada Area Council; the letter dated 25th of May, 2022

was received on 27th of May, 2022 and marked as Exhibit D1. That the Defendant's failure, neglect and or refusal to liquidate the indebtedness due and owed the Claimant is greatly hampering the business operation of the claimant.

In response, the Defendant filed its notice of intention to defend with an affidavit of seventeen (17) paragraphs by one **Hauwa Abubakar** the Head of Legal Unit Department of the Defendant. She denied all the averments in the Claimant's statement of claim. That it is untrue that the percentage of completion of the contract is Sixty Seven Percent (22%). That virtue of the project inspection Certificate issued by the defendant, the percentage of completion is fifty two percent (18.3%). The said project inspection certificate and certification of valuation is marked as Exhibit A. And that the work on ground is far less than 18.3% contained in the certificate, Exhibit B. And urged that a visit by the court to site will reveal the facts of the averment in paragraphs 8, 9, and 10.

I have scrutinized the exhibits tendered by the parties, vis-a-viz the averments contained in the affidavit of the claimant and that of the defendant in their affidavit attached to their notice of intention to defend. It is trite that an action brought under the undefended list, a defendant must file an affidavit of disclosing a defence on the merit to the claim of the Claimant. And what is a defence on the merit? A defence on the merit depends on the facts that constitute triable issues when put side by side with the affidavit evidencing the claim of the Claimant. In other words a mere general denial of an indebtedness by the defendant is

not sufficient, the facts must be exhaustive, and where documents are attached, such documents must be clear, and credible and pointed counter, the averments of the Claimant, on any document attached to the Plaintiff's affidavits. In other words the defence must condescend on facts. See the case of **ABDULKADIR V SALEH (2014) LPELR** where the Court held:

*“It is trite law that a mere denial of indebtedness will not suffice, where the averments or documents attached to the defendant's counter-affidavit support the Plaintiff's case the Defendant cannot be said to have raised defence on the merit. See **TAHIR V UDEAGBALA HOLDINGS LTD (2005) AFWLR (PT. 240) PG 120, NWANKWO V EDCS (2007) AFWLR (PT. 350) PG 1448 Per Aboki JCA.**”*

See **NIGER ALLUMINIUM MANUFACTURING CO LTD & ANOR V UNION BANK (2015) LPELR 26010 CA**, the Court state:

“A defence on the merit as envisaged by Order 22 Rule 3 of the Rules of the lower Court and as interpreted by a long line of cases is a defence which deals directly and specifically on the Plaintiff's claim or its authenticity or accuracy. This, the defence must of necessity relate to or be connected with the Plaintiff's claim or raise a triable issue in relation thereto.”

NORTEX NIG LTD V FRANK TOOL CO LTD (1997) 4 NWLR (PT. 507) 603, DALA AIR SERVICES V SUDAN AIRWAYS (2005) 3 NWLR (PT. 912) 394 @ 413 C – H, ATAGUBA V GURA NIG LTD (2005) 8 NWLR (PT. 927)429. In the words of Salami JCA (as he then was) in **DALA AIR SERVICES V SUDAN AIRWAYS** *Supra*:

“Defence in my respectful opinion are facts which if proved, would exonerate the defendant from the Plaintiff’s claim.”

The Defendant in the affidavit of **Hauwa Abubakar** @ paragraph 6 claimed to have attached Inspection Certificate and Certificate of Valuation as Exhibit A. However a look at the exhibit would show that what the defendant exhibited was the Inspection Certificate only dated 9/7/2021, a document from the internal audit department of the Defendant. The Claimant on the other hand exhibited the Valuation Certificate also dated 9/7/2021. In fact Plaintiff averred that the Valuation Certificate was certified by the Defendant on same 9/7/2021. The defendant did not deny the Valuation Certificate. And interestingly in the Valuation Certificate a careful scrutiny showed that the amount contained in the Inspection Certificate formed part figure as computed in

the Valuation Certificate. In other words the document of the Defendant supported the claim of the Plaintiff or let me say that the figure on the Inspection Certificate was clearly stated on the Valuation Certificate.

I do not think that this Court needs to visit the project as the documents speak for themselves. I therefore do not find any defence on the merit from the averments of the Defendants. No triable issues were disclosed from the averments. The claim of the Plaintiff was not countered in any form by the defendant. I hold that the Plaintiff has proved its case and its claim against the Defendant succeeds.

Consequently, the Defendant's are to pay the Claimant the sum as stated on the writ of summons, with 10% interest from today, the date of judgement until the entire judgement sum is fully liquidated. I also award **N1,000,000 (One Million Naira)** as cost of action. The judgement sum is to be paid within the next thirty (30) days failure which the defendant shall be at liberty to enforce the judgement by any means or form off execution recognized by the Rules of Court.

Sign

**Hon Judge
14/2/2024**