

COMMUNITY COURT OF JUSTICE,

ECOWAS

COUR DE JUSTICE DE LA COMMUNAUTE,

CEDEAO

TRIBUNAL DE JUSTIÇA DA COMUNIDADE,

CEDEAO



No. 10 DAR ES SALAAM CRESCENT,

OFF AMINU KANO CRESCENT,

WUSE II, ABUJA-NIGERIA.

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**IN THE COMMUNITY COURT OF JUSTICE OF THE ECONOMIC
COMMUNITY OF WEST AFRICAN STATES (ECOWAS)**

HOLDEN AT ABUJA, THIS DAY 6TH DAY OF OCTOBER, 2016

SUIT N°: ECW/CCJ/APP/37/15.

JUDGMENT NO: ECW/CCJ/JUD/24/16

BETWEEN:

Vision kam Jay Investment Limited

} Plaintiff

AND

1. President of the Commission
2. ECOWAS Commission

} Defendants

BEFORE THEIR LORDSHIPS:

1- Hon. Justice Friday Chijioke Nwoke

Presiding

2- Hon. Justice Micah Wilkins Wright

Member

3- Hon. Justice Yaya Boiro

Member

Assisted by Athanase Attanon

Deputy Chief Registrar

REPRESENTATION OF THE PARTIES:

1. George Ibrahim with I .O Oladummoye for the Plaintiff
2. Sambo Ishaku, for the Defendants.

Delivers the following Judgment:

SUMMARY OF FACTS AND PROCEDURE

1. The Plaintiff, a limited liability Company incorporated under the laws of Nigeria entered into a two tranche contract with the Defendants for the supply, installation and maintenance of power and Associated Equipment.

The first contract was valued at thirty five million, seven hundred and sixteen thousand, four hundred and twenty two naira (**N35,716,422.00**). The second tranche was for the sum of Twenty Million, six hundred and Ninety eight thousand, Nine hundred and twenty Naira (**N20, 698, 920.00**).

The Plaintiff completed the contract within the stipulated four weeks completion period and was issued a certificate of job completion on the 18th of December, 2014 by the Defendants.

The Plaintiff contends that by Article 16 (4) of the special condition contract (SCC), full payment shall be made within 30 days of acceptance of the contract and where payment is delayed up to 120

days after, the time due for payment, interest of between 0.5% and 10% per day shall be applied to the contract sum.

That while the first sum of Thirty – five million seven hundred and sixteen thousand, four hundred and twenty two naira (**N35, 716,422.00**) only has been paid to the Plaintiff, the balance of twenty million, six hundred and ninety eight thousand, nine hundred and twenty naira (**N20, 698, 920.00**) only has remained unpaid till date despite several demands from the Defendants.

Accordingly, the Plaintiff seeks the following reliefs from this Court:

1. AN ORDER, compelling the Defendants to pay the Plaintiff the sum of Twenty million, six hundred and ninety eight thousand, nine hundred and twenty naira (**N20, 698,920.00**) being the balance of the contract sum of goods and services rendered to the Defendant since 15th December, 2014.
2. 10% Interest per day on the sum of twenty million, six hundred and ninety eight thousand, nine hundred and twenty naira (**N20, 698,920.00**) only from the 16th of April 2015 till the sum is finally paid to the Applicant.
3. General damages in the sum of five hundred million naira (**N500, 000,000.00**) against the Defendants.

2. NATURE OF EVIDENCE IN SUPPORT.

In support of his claim the plaintiff provided the following documentary evidence:

- i. Quotation dated October 15, 2014
- ii. Provisional Award letter dated 21/11/2014
- iii. L.P.O dated 20/ 11/2014
- iv. Notification of commencement of work dated 21/11/2014
- v. Contract agreement dated 21/11/2014
- vi. Job completion certificate dated 18/12/2014
- vii. Letter of demand dated 13/3/15
- viii. ECOWAS letter dated 24th April 2015
- ix. Notice of withdrawal of licence dated 19th August, 2015
- x. Plaintiff's solicitors' letter dated 1/11/2015
- xi. Notice to apply interest dated 14 / 04/2015
- xii. Notice of intention to commence Arbitration dated 23/09/2015
- xiii. Proposal for the Appointment of an Arbitrator dated 27/10/2015.

3. THE PLAINTIFF'S CASE:

By an Application dated the 08th of December, 2015, the Plaintiff brought an action against the Defendants for breach of contract and failure of the Defendants to pay the Plaintiff the full sum stated in a contract, after duly discharging its obligations thereunder.

The Plaintiff thus specifically averred that:

1. The 2nd Defendant represented by the 1st Defendant, by a publication in specific papers, particularly The Guardian Newspaper of June 12, 2014, invited bids for the production of SAP infrastructure in three separate lots.
2. The Plaintiff indicated interest in Lots 1, 2, 3 and submitted its bids after purchase of the bid documents.
3. Having satisfied the requirements of the bid, the Plaintiff was awarded the contract for the supply, installation and maintenance of power Associated Equipment by the Defendants.
4. The place for the supply installation and maintenance of power and Associated Equipment was to be the 2nd Defendant's Headquarters in Abuja while the renovation of the ECOWAS Data Recovery Centre (DRC) site was stated to be the ECOWAS Commission Liaison Office, Lagos.

5. That being satisfied with the performance of the Plaintiff in the initial contract, the Defendants approached the Plaintiff to give a proposal for direct contract for the supply, installation and maintenance of two additional inverters (15KVA) for the server rooms at Niger House and River Plaza ECOWAS Commission Office Annexes in Abuja (the subject matter of this Dispute).
6. By a proposal submitted the Plaintiff, the indicative price schedule for the supply, installation and maintenance of two additional inverters (15KVA) for the server rooms at Niger House and River Plaza office Annexes in Abuja was to cost fifty six million, four hundred and fifteen thousand, four hundred and twenty two naira (**N 56, 415, 422.00**) only, the 2nd Defendant received the quotation from the Plaintiff, vetted and approved same.
7. The 2nd Defendant drafted and prepared a contract which was approved by both parties.
8. The Plaintiff completed the contract and was issued a completion certificate by the Defendants.
9. By the terms of the contract, the Plaintiff was to be paid within thirty (30) days of acceptance of the contract. The Contract document further provided that where payment is delayed up to

120 days, interest of between 0.5% and 10% per day will be applied to the contract sum.

10. That the Defendants have failed and refused to pay the sum owed the Plaintiff after the expiration of the 120 days.
11. By a letter dated 14th April, 2015 the Plaintiff gave notice to the Defendants of its intention to apply the interest rate on the contract sum as stipulated in the contractual document.
12. That the failure of the Defendants to pay the Plaintiff resulted in the withdrawal of the Plaintiff's operational licence by Outback power, a solar electricity company from the United States of America.
13. That the failure of the Defendants to pay the sum owed have resulted in untold hardship to the Plaintiff.
14. By a letter dated 24/04/2015, the Defendants agreed to pay the sum of fifty six million, four hundred and fifteen thousand, four hundred and twenty two naira only (N56, 415,422.00) owed in the two tranches of the contract.
15. That the Defendants have paid the sum of Thirty five million, seven hundred and sixteen thousand, four hundred and twenty two naira only (**N35, 716, 422.00**) representing the sum of the first tranche of contract, leaving the balance of twenty million, six hundred and ninety eight thousand, nine hundred and twenty

naira only (**N20, 698, 920.00**), representing the sum of the second tranche unpaid till date despite several demands.

THE PLAINTIFF THEREFORE CLAIMS FOR:

1. AN ORDER compelling the Defendants to pay to the Plaintiff the sum of twenty million, six hundred and ninety eight thousand, nine hundred and twenty naira (**N20, 698, 920.00**) only being the balance of the contract sum for goods and service rendered to the Defendant since the 15th of December, 2014.
2. 10% interest per day on the sum in (1) above from 16th April, 2015 till the said sum is finally paid to the Plaintiff.
3. General damages in the sum of five hundred million (**N500, 000,000.00**) against the Defendants.

4. DEFENDANTS CASE:

The Defendants were served with the originating application on the 10th of December, 2015. After the expiration of the thirty days period for entry of appearance and filing of a defence, the Defendants did not file any defence.

However, by a letter addressed to the President of the Court dated 22nd January, 2016, the 1st Defendant purportedly an advanced reasons why the Defendants could not file their defence out of time. This is indeed a strange procedure unknown to law. By a document titled statement of defence filed on the 18/02/2016, the Defendants' purported to file a statement of defence without leave of Court and took no further steps to defend the action.

5. ANALYSIS BY THE COURT :

The facts of this case are not in dispute. The Defendants entered into a contract for the supply and maintenance of SAP infrastructure with the Plaintiff for a sum of **N 56, 415,422.00**. This was evidenced by a contract document dated 21st November, 2014 and signed by both parties.

The Plaintiff completed the contract on schedule and was issued a job completion certificate by the Defendants on the 18th of December 2015 which was within the four weeks completion period stipulated by the contract.

By the executed contract document, full payment of the contract sum was to be made within 30 days after the acceptance of the contract, and that where the payment is delayed up to 120 days, after the payment was due,

an interest of between 0.5 to 10% of the contract sum per day shall be applied to the contract sum.

Following the neglect, failure and refusal of the Defendants to pay the Plaintiff, the Plaintiff, by a letter dated 14th April, 2015 gave notice to the Defendants of its intention to apply the interest in accordance with terms of the special condition of the contract.

By a letter dated 24th April, 2015 the Defendants admitted owing the Plaintiff the sum of fifty six million, four hundred and fifteen, four hundred and twenty two naira (**N 56, 415, 422.00**) to be paid in two tranches. The first tranche of the sum of **N35, 717, 422** (Thirty five million, seven hundred and sixteen thousand, four hundred and twenty two naira only). The second tranche will be **N20, 698, 920.00** (Twenty million, six hundred and ninety eight thousand, nine hundred and twenty naira. The Defendants have paid the sum indicated in the first tranche but the second tranche of **N 20, 698, 920.00** (Twenty million, six hundred and ninety eight thousand nine hundred and twenty naira only), has remained unpaid till date despite repeated demands.

The Plaintiff, by a letter dated 23rd September, 2015, indicated its intention to initiate arbitration proceedings against the Defendants in accordance with the provisions of the contract but the Defendants did not respond or indicate intention to pursue that option.

Similarly, on the 29th October, 2015 the Plaintiff through its Solicitor, wrote to the Defendants making a proposal for the appointment of an Arbitrator, a letter the Defendants failed to reply.

Accordingly, all efforts by the Plaintiff to recover the outstanding sum of **N20, 698, 920. 00** (Twenty million, six hundred and ninety eight thousand, nine hundred and twenty naira only, from the Defendants has proved abortive, hence the commencement of this suit against the Defendants.

From the records before the Court, the originating application was dated the 8th of December, 2015 and filed on the same day. The Defendants were served with the originating application and other processes in this suit on the 10th of December, 2015.

By the Rules of this Court, the Defendants had one month to file a defence after the service of the originating application, but failed to do so after the expiration of the period.

The Plaintiff then filed an application for judgment by default and also an application to call oral evidence.

The Defendants, acting through the 1st Defendant, wrote a letter dated 22 /01/2016 to the President of this Court, purporting to advance reasons why the Defendants did not file their statement of defence. There was no application for leave of Court to file their statement of defence out of time.

On the 18th of February, 2016, the Defendants filed a document titled **STATEMENT OF DEFENCE** with no application for extension of time. Accordingly, there was no defence to this action.

When the matter came up for hearing on the 15th March, 2016, the Defendants were not in Court nor were they represented.

The Counsel to the Plaintiff, Mr. George Ibrahim Esq., presented the case of the Plaintiff. He argued that the Defendants were served with all the processes in this case and are aware of the case and the date for hearing but took no steps to answer to the same. He further argued that the letter written by the 1st Defendant is neither a statement of Defence nor a recognizable process and urged the Court to discountenance the letter and hold that there is no defence before the Court.

The Plaintiff then moved his application for judgment in default dated 18th January, 2016 and asked the Court to enter judgment in favour of the Plaintiff for the Defendants' failure to enter appearance or file a defence. He urged the Court to grant all the reliefs sought in the originating application since the Defendants have no defence.

The Plaintiff, after much hesitation, withdrew the application to call witness. The Court granted his prayers and adjourned to 26th May, 2016 for judgment.

However, the business of the Court did not permit it to sit on that day and the matter was adjourned to 06th June,2016 for judgment.

On the said day, the judgment was not ready and the matter adjourned to the 5th of July, 2016, however, the Court did not sit on that day due to the Eid-el Fitri holiday.

As earlier noted, there is no dispute to the facts of this case especially as the Defendants did not file a defence. The Rules of this Court, particularly Rule 90(1), enjoins the Court to enter default judgment on behalf of the Plaintiff where the Defendant fails to enter appearance or file a defence.

However, entering judgment in default is not a matter of course. The Court must examine the totality of evidence provided by the Plaintiff to determine whether there is a cause of action and if the claim has been satisfactorily proved.

From the uncontroverted evidence presented by the Plaintiff the following facts were clearly established

- a. The Plaintiff and the Defendants entered into a contract evidenced by a written document attached to this claim.
- b. The Contracts were in two tranches, the first tranche was for the sum of supply and maintenance of SAP equipment and services for the sum of N35, 716, 422.00 (Thirty five million, seven hundred and sixteen thousand, four hundred and twenty two naira only. This sum have been fully paid by the Defendants to the Plaintiff

- c. The second tranche of the contract was for the sum of **N20, 698, 920.00** (Twenty million, six hundred and ninety eight thousand, nine hundred and twenty naira only). The job was executed on schedule for a certificate of job completion issued to the Plaintiff by the Defendants. However, the Defendants have refused or neglected to pay the sum outstanding dispute several demands by the Plaintiff.
- d. The Defendants have not denied any of these allegations (even from the purported statement of defence, which the Court discountenanced, the debt was clearly admitted).

Accordingly, it is obvious that the Plaintiff has proved his case by a preponderance of evidence and is entitled to reliefs.

First the contract is clear as to the terms and period of payment which the Defendants have breached. The payment of the contract sum was due since December, 2014 but the Defendants have refused to pay the sum well over 120 days period provided for by the contract prepared by the Defendants and agreed to by the Plaintiff. The Defendants inserted a penalty clause for purposes of ensuring compliance and is now the offending party.

It will therefore serve the interest of justice to award some interest against the Defendants for breach of the contract it voluntarily entered into with the Plaintiff, and thus the Court makes the following decisions :

- i. Orders and directs the Defendants to pay the sum of **N20, 698, 920.00** (Twenty million, six hundred and ninety eight thousand, nine hundred and twenty naira only being the debt owed the Plaintiff by the Defendants for services rendered pursuant to the contract entered into by the parties.
- ii. Directs the Defendants to pay 1% interest on the sum in paragraph (1) above from the 16th of April, 2015 till the judgment debt is liquidated.
- iii. Rejects the claim for general damages as the Defendants cannot pay for the Plaintiffs' impecuniosity.

The Defendants are advised to exhibit some measure of responsibility and commitment in executing contracts entered into by the Institution in the future. It is unfortunate that the laxity on the part of the officers and the legal Department of the Defendant Commission have occasioned loss to the Defendants. This should be avoided in future dealings.

The Court holds that the action of the Plaintiff is competent and admissible

FOR THESE REASONS,

Adjudicating in public session, after hearing both parties in the first and last resort,

THE COURT

IN TERMS OF MERITS

In regard to this claim holds that, the Defendants have breached the contract and are therefore liable to pay the sum of **N20, 698,920.00** together with interest of 1% per day on that sum from the 16th of April, 2015 till the judgment debt is fully paid.

AS TO COSTS,

Directs the Defendants to bear the cost of this action as assessed by the Registry.

Thus made, adjudged and pronounced in a public hearing at Abuja on the 06th day of October, 2016.

AND THE FOLLOWING HEREBY APPEND THEIR SIGNATURES;

1. Hon. Justice Friday Chijioko Nwoke ----- Presiding
2. Hon. Justice Micah Wilkins Wright ----- Member
3. Hon Justice Yaya Boiro -----Member

Assisted by Athanase Attanon ----- Deputy Chief Registrar