**IN THE HIGH COURT OF JUSTICE OF THE F.C.T.**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT KUBWA, ABUJA**

**ON FRIDAY, THE 18TH DAY OF SEPTEMBER, 2020**

**BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA**

**JUDGE**

**SUIT NO. FCT/HC/CV/1525/2015**

**BETWEEN:**

1. **SECDA NIG.LTD**
2. **DANIEL AUDU ……CLAIMANT**

**AND**

1. **THE NATIONAL UNION OF ROAD TRANSPORT WORKERS (ABUJA)**
2. **ABUJA ENVIROMENTAL PROTECTION BOARD ……DEFENDANTS**
3. **ALHAJI ABBAS**
4. **MR. BODE**

# JUDGMENT

Over 5 years and 8 months ago the plaintiff SECDA Nig. Ltd and Daniel Audu instituted this action against National Union of Road Transport Workers Abuja, Abuja Environmental Protection Board, Alhaji Abbas and Mr. Bode. In the Writ filed on the 8/4/15 they claimed the following:

1. A declaration that the 2nd Defendant has no legal authority to delegate an illegal authority to the 1st Defendant or its agent to be arresting vehicles and bringing same to its any advantage or for any other unlawful purpose.
2. An Order of perpetual Injunction restraining the Defendants, there agents and privies and any other person acting on their behalf from arresting any vehicle belonging to the plaintiffs except for any purpose relating to the duty and functions of 2nd Defendant.
3. A declaration that 1 & 2 Defendant have no right in law to impound the vehicle of the plaintiffs and detain same in the premises of the 2nd Defendant.
4. An Order of the Court directing the Defendants to pay to the plaintiffs the sum of N8000=per day from the 3/3/15 until the vehicle is released to the plaintiffs.
5. Sum of N150,000,000.00 (One Hundred and Fifty Million) as general Damages for the assault on the 2nd plaintiff the unlawful seizure of the plaintiffs vehicle and loss of earnings.
6. Cost of the Suit.

Plaintiff opened its case on the 29/3/17 almost 2 years after the matter was filed. The PW1 testified and tendered 2 documents. The Defendant started the cross-examination of the PW1 on the 26/4/17. They could not finish so the Court adjourned to 18/5/17 for continuation of cross-examination of PW1.

The Defendants never showed up there were several adjournments. The Defendant were never in Court. The Court ensured that they were served with hearing notice for all the days that matter was adjourned. The adjournment was to ensure that the Defendants were given all time and leverage to exercise their right to fair

hearing. Between the 18/5/17 and 25/2/18, the Defendants never came to Court. No reason given.
The Court foreclosed the Defendants from cross- examining PW1 and from entering their defence. Meanwhile as at that day the Defendants have not filed any statement of Defence. The Court adjourned the matter for Final Address and ensured that Defendants were duly notified via service of Hearing notices on them. Matter was further adjourned on 3 occasions for adoption of Final Address until 4/6/16.
That day the 2nd Defendant Counsel Yatshagha was in Court. The 2nd Defendant Counsel asked for adjournment to enable them file their statement of Defence. That's 2 years after the plaintiff opened its case and one year after the Court foreclosed the Defendant from opening their case. The Court awarded a cost against them refused to vacate the Order for foreclosure insisting that the Defendant pay the cost. The Court did so because as at that time the Defendant have not filed their statement of Defence.
The Defendant eventually filed the statement of defence on the 9/3/10 a day before the adjourned date for adoption of Final Address which was slated for 6/3/19.
On the 19/2/20 the 2nd Defendant Counsel came to Court to seek for leave to file the statement of Defence out of time. The Court refused and dismissed the motion because it took the Defendant 5 years to file their statement of defence in this Suit. The Court feels that it is far too long a delay to allow the motion. The document is still before the Court and Court has every right and power to look at documents before it. The Court however ask the parties to adopt their Final Addresses. The Plaintiff have served the Defendant with their Final Address since 25/4/18. The Defendant did not file any reply on points of law. They did not file their own Final Address. The Court will deem as moved the statement on oath of the Defendants witnesses,

as if the witnesses were in Court to admit same. The Court also deem as admitted all the documents attached to the statement of Defence as if they were presented and admitted unchallenged. This means that this judgment is based on the testimony of the PW1 and those of the DW1.

It is imperative to state that the other witnesses never filed anything or presented any document before this Court in defence of this Suit. The 2nd defendant filed the statement on oath of Sani Amar who is the head of enforcement of the 2nd Defendant at the time the incident happened. The 2nd Defendant did not attach any document to the statement of their witness. It is the story/case of the plaintiff that on the 13/3/15 the 2nd plaintiff while driving by taxi cab with Reg.No RSH33XH belonging to the 1st defendant-SECDA was arrested at Area 3 Garki bny the men of the 1st defendant. He alleged that he was pushed out of the vehicle by the 3 & 4 Defendant who made him to enter and seat in the back seat of the vehicle. He alleged that 3 & 4 Defendants Alhaji Abbas and Mr. Bode respectively were employees and agents of the 1st Defendant. That the duo drove the vehicle to the office of the 2nd Defendant and parked same their.

It is imperative to state that the court eventually gave an order for the vehicle to be released and the 2nd Defendant obeyed that order. Though by then the Plaintiff Counsel alleged that the vehicle had state for 425 days in the premises of the 2nd Defendant.

In their Final Address the plaintiffs raised 2 issues for determination which are:

1. "Whether the Defendants who are aware of a Suit against their interest and despite services of hearing notices can even complain of want of fair hearing."

2. “whether the plaintiffs have by the evidence of PW1 proved their case on balance of probability to entitle them to the Judgment of their claim against the Defendants.”

ON ISSUE NO.1. they submitted that the defendants were served with both the Originating Processes and all other processes in this Suit. The 2nd Defendant were represented by a Counsel Barr Yatsegha who was their for them from inception but who refused and neglected to file any statement of Defence. There is no evidence as to why they did not file statement of Defence until in 2019. There is equally no reason for their refusal to attend Court as Scheduled or to complete the cross-examination of the PW1. Inspite of the service of hearing notices on them. That the Defendants cannot complain of about breach of fair hearing. They referred to the case of:

COMPACT MANIFOLD & ENERGY SERVICES LTD Vs PAZAN SERVICES NIG.LTD (2017) 30 WRN 124 @144

BERNARD AMASIKE Vs REG-GENERAL CORPORATE AFFAIRS COMMISSION & 1 OR (2006) 3 WRN 70 @ 108

They submitted that there is evidence of hearing notices served on all the Defendants. There is evidence that some of the Defendants especially the 2nd Defendant was represented by Counsel. This means that they were aware of the existence of the Suit. They partly cross-examined the PW1. They cannot complain of breach of right to fair hearing because they were given ample time to defend the suit but they refused to do so and decide to sleep on their rights rather than defend the case. Based on the above the plaintiffs urged the Court to resolve the Issue No. 1 in their favour.

ON ISSUE NO.2: on whether the plaintiff have through the evidence of PW1 proved their case on balance of probability to be entitled to Judgment of this Court. They submitted that answering the question in the affirmative and stated that the 2nd plaintiff gave evidence as the PW1 and tendered documents in support of the case of the plaintiff. The Defendants had and were given more than ample opportunity and leverage to cross-examine him. But only the Counsel for the 2nd Defendant that cross-examined the PW1 fully. The 1st Defendant Counsel sid they were not ready. They 1st defendant and

1st defendant Counsel never come to Court again to cross-examine the PW1. The Court had allowed 2nd Defendant Counsel to do the cross-examination since the 1st Defendant Counsel said that they were not ready. The Court had ordered that the 1st Defendant Counsel do the cross-examination but she refused. The 1st defendant Counsel never came to Court after that day till today. But the Court ensured that all the defendants were served with Hearing notices. That none of the Defendants filed any statement of defence as at the day the plaintiff filed his Final Address on the 10/4/18. But the 2nd defendant later on the 5/3/19 filed their statement of Defence.
That the Defendants have a stipulated period within which to file their statements of Defences going by ORDER 15 RULE 2 FCT HIGH COURT RULES 2018.
But that the Defendants are in flagrant disobedience to the Rules of Court. They further submitted that it is incumbent on the parties to appearing before the Court to obey the Rules of the Court and comply with the provision of the Rules of Court. They referred and relied on the case of:

DEXED ENERGY & NATURAL RESOURCES LTD & 2 ORS Vs TRANS INTERNATIONAL BANK LTD & ORS (2005) 15 WRN 1 @ 24

That the Rules of this Court enjoin the Court to enter judgment in favour of the plaintiff where the defendant refused to file their statement of defence within the time allowed by the Rules. They referred to ORDER 21 RULE 9 FCT H/COURT RULES 2018.

They also referred to case of: BERNARD ANASIKE Vs REG. GEN CAC

That the PW1 gave evidence in support of the claims of the plaintiff but the defendants refused and neglected to controvert the evidence. They consistently refused to attend Court. Despite Hearing notices served on them by the Court.

They further submitted that their evidence and pleading were not challenged by the Defendant who had opportunities to do so but failed. That in such situation the Court should act on such unchallenged evidence and hold them as uncontroverted.

The referred to the case of:

PROVOST OF LAGOS COLLEGE OF EDUCATION Vs DR. KOLAWOLE EDAN & ORS

They urged the Court to resolve the 2nd issue in their favour and enter judgment in their favour accordingly. It is imperative to reiterate that over a year after this Final Address summarized above was filed and served on the Defendants the 2nd Defendant filed and served the plaintiff with their statement of Defence. The Court based on the discretionary power it has to ensure that justice is done as per the extent provision of the Rules of this Court, had decided to look and consider the belated statement of Defence filed by the 2nd Defendant in the interest of fair hearing and justice. The other Defendants. 1st Defendant did not file any Defence. The Court have in the spirit of frontloading decided to deem as adopt the oath of DW1- Sani Amar as he adopted in Court in person.

The 2nd Defendant-Abuja Environmental Protection Board filed a 46 paragraph statement of Defence vehemently denying the averments in the statement of Claim. In his oath their sole witness who never testified in person in Court averred.

2nd Defendant state that the 2nd plaintiff committed a traffic offence by obstructing free flow of traffic under the fly over bridge at Area 1

round about towards Area 3 Garki Abuja on the 13/3/15. He was apprehended by the agents of the 1st Defendant who were co-opted by the 2nd Defendant to help maintain flow of traffic by checkmating all potential offenders. That under the law they have right to work with the 1st Defendant and other similar organs of Government like the FRSC and Traffic police and V.I.O

That 2nd Plaintiff wrongly parked its vehicle, obstructing the traffic on a public high way. He was apprehended and granted administrative bail that same day and the vehicle was impounded. He drove the vehicle to the office their offence while the 3 & 4 were in the passenger seat in front and at the back respectively. That they asked the 2 plaintiff to appear the following day at 12noon since the mobile Court had close for that day-13/3/15.

But that the vehicle was detained as a means to ensure that the 2nd plaintiff gets back to them to face trial at the mobile Court. That apprehending the 2nd plaintiff for wrongful parking and obstruction of traffic by members of the 1st Defendant is not an illegal act

because they are empowered by law to apprehend traffic offenders and all those who are on reasonable suspicious of committing or about to commit an offence.

That the 2nd plaintiff parked his vehicle along the way; was outside calling on passengers to patronise him, in a manner that obstructed flow of traffic. That as the head of enforcement of the 2nd Defendant they handed over the vehicle to him. That the wrong parking is criminal offence punishable by a fine, imprisoned or imprisonment for 3 months and fine of N2, 000=

They could not arraign the 2nd plaintiff immediately as the mobile Court has closed for the day as earlier state. That he failed to appear before them the following day, 14/3/15 to undergo trial for the offence he has committed. That all effort to trace him proved abortive as the 2nd Defendant did not have his address or phone number. That after its move was stuck out from the suit initially filed by plaintiffs that the 2nd Defendant applied to the mobile Court for an Order of substituted service of the summons through his Counsel

whose address was in the process served on the 2nd Defendant. They pleaded the criminal summons but did not attach same.

FIR was prepared for the purpose of arraignment of the 2nd plaintiff on 17/6/15. He refused to honour the invitation for no justifiable reason. They pleaded the documents but never attached same. That since the 13/3/15 when he was apprehended, the 2nd plaintiff now came to the office of the 2nd Defendant at Area 3 Garki Abuja. That they 2nd defendant seeking the co-operation of 1st Defendant and other agents to discharging its function is not an illegal act. Because it is empowered to do so under its enabling laws for effective performance of its functions.

That the vehicle impounded has Reg. No as RSH 33 HB as against the RSH 33 XH which the plaintiffs claimed was the vehicle impounded by the 2nd Defendant and subject of a suit before this Court. That when the 2nd Defendant was served an Order of Court to release the vehicle, it could not do so as no vehicle with RSH 33 XH was in their custody. that they wrote letter to Court informing it about the mixed vehicle No. That they could not release the vehicle because the

plaintiffs were nowhere to be found. They pleaded the letter but never attached it. That after the vehicle Reg. No was corrected after several months that they released it to plaintiffs.

The 2 Defendants denied the allegation that their staff and agents hold dangerous weapons from wood to shape irons as plaintiffs alleged. That they never confronted the 2nd plaintiff as he never returned to the office of 2nd plaintiff after 13/3/15.

Again that the purported record book pleaded by the plaintiffs is frivolous, unfounded and tantamount to gold digging. That plaintiffs have not suffered any special or general damages. That plaintiffs claim 1,2, 3, 4,5 and 6 are all gold digging and should be dismissed. That they should be dismissed with substantial cost.

COURT:

Having summarized the case of the plaintiff and 2 defendants above can it be said that the plaintiff have established their case so much so by the testimony of the PW1 and the documents he tendered that this Court should enter Judgment in their favour moreso where the 1,3 & 4 defendants did not testify and the 2nd Defendant witness did

not testify in person though it filed a statement of Defence or should the Court, having deemed as adopt the statement on oath of the 2 DW1 and hold that the 2 Defendant has been able to defend the suit against the plaintiff and not enter judgment as sought.

The Court is enjoined to do substantial justice at all times in a case. It is the humble view of this Court that there is element of truth in the testimony of the 2nd Defendant though they filed their statement of defence late out of time. The Court had struck out their motion for extension of time to file. The Court were and now reverse the said order striking out the Defence and hold and deem as the said motion for extension of time as granted.

It is the law that uncontroverted facts are deemed admitted. But in this case the 2nd Defendant by their statement of defence had denied all the allegations raised by the plaintiff concerning the impounded vehicle. They had admitted that the vehicle was impounded. But that it was the fault of the 2nd plaintiff who had wrongly parked the vehicle obstructing traffic flow looking for passengers to carry.

To start with it is evident that the 2nd Defendant Counsel cross-examined the PW1 going by the record of the Court's proceeding. Again it filed though belated statement of Defence and witness statement on oath. By those single action they participated in the proceeding though disjointedly. They challenged the case of the plaintiffs though all the documents they allegedly pleaded were not attached. They admitted impounding the vehicle but for a reason. They stated that they have the right under the law to do so. This Court believes them and hold that their action was in line with the extant enabling laws as an Agency of the FCT government they have right to work with other similar organisation like the FRSC, VIO, Police and of course the 1st defendant, NURTW.

They have right to impound any vehicle that obstructs flow of traffic within the FCT as they did in the instant case. One wonders why the 2nd plaintiff refused to go back to the office of the 2nd Defendant in order to know the outcome of the ordeal it has with the staff of the 1 & 2 Defendants.

It is imperative to note that the plaintiffs were served with the statement of Defence for a long time. They had enough time to respond on any issues raised. So not responding means that they have no reply to the statement of Defence.

From all indication the Defendants were given ample opportunity to be heard. As for the 1, 3, 4 Defendants they were given all opportunities to be heard they neither filed a statement of defence nor a Final Address. The 1st Defendant had a Counsel in Court on one or 2 occasions. The Counsel was in Court the day the PW1 testified in chief but declined to cross-examine the PW1. After that they never show up in Court. This Court therefore hold that they have no defence to the case of the plaintiffs and as such have invariably admitted the issues raised therein. On this see the case of:

ANASIKE Vs REG. GENERAL CAC (SUPRA)

AUWALU DARMAN Vs ECOBANK (2017) LPELR-41663 (SC)

This Court based on its power to make orders whether sought or not has overruled the provision of Order 29 Rule 9 FCT H/Courts in the interest of justice and fair hearing and allowed the belated

statement of defence filed by the 2nd Defendant to be deemed adopted.

It is imperative to state that as at 26/4/17 the vehicle had been released to the plaintiff. From the testimony of the PW1 it is evident that the recording made in the Note Book/Exercise Book were contradictory. The vehicle was impounded on 13/3/15. But there were entries up to 21/3/15 from the documents tendered by the 2nd plaintiff. It is evidently clear that there no recording of money to 1st defendant on 15/3/15.

Though there was recording on the 13/3/15 the day that the vehicle was impounded. Also there was recording up till 21/3/15 which this Court finds strange. The explanation given by the 2nd plaintiff is not satisfactory to the Court. It is also not convincing. This Court finds it difficult to believe that the 2nd plaintiff has the originals of the vehicle particulars. It is not news that organization like the 1st Defendant SECDA usually have in there custody the original licences. This is a way to safeguard the vehicle form been stolen and told it gets missing.

This Court does not accept the statement of PW1 about his younger brother coming into the picture to notify the disparity in the amount of money recorded on same day. This Court also does not believe that the PW1 could not remember the date that the vehicle was released.

All in all it is the humble view of this Court that the PW1 did not suffer and did not lead evidence for this Court to believe that the PW1 was actually beaten by the Defendants especially 3 & 4 Defendants. The testimony on that is not showing.

It is no doubt going by the aspect of the record of his earning that he must have suffered loss of profit with the time the vehicle was impounded at the office of the 2nd Defendant. But such loss is not as humongous as the 2nd plaintiff made it to look. After all while the vehicle was parked at the premises of the 2nd Defendant, they must have ensured that the watch/security men were keeping watch over it.

Since the PW1 could not tell Court the exact date the vehicle was impounded this Court finds it difficult to know the period when the calculation for damages should end.

The 452 days claimed by the plaintiffs are too vague to be calculated. There was no specific date mentioned by the plaintiff as the day the vehicle was released.

Again it is on record that the plaintiffs gave the wrong vehicle No. to the Court. They initially stated that the vehicle is RSH 33 XH. At the time the Court gave Order to Defendant to release the vehicle there was no vehicle in the 2 Defendant's custody with such Reg. No. it took several months before the plaintiff released that the vehicle Reg. No they gave was wrong. It was later corrected.

This Court finds it difficult to quantify when the vehicle was released. The plaintiff did not lead evidence to show that they made attempt for the vehicle to be released but that 2 Defendant refused to released same. The evidence and testimony of the PW1 was centred on the amount he lost. He did not even lay evidence on how the 3 & 4 Defendants assaulted him.

From all indication the submission of the 2nd Defendant shows that actually the 2nd Plaintiff abandoned the vehicle in the office of the 2nd Defendant probably because he was avoiding criminal prosecution by the mobile magistrate Court otherwise he would have laid evidence on attempts he made to get back the vehicle.

The fact that the men the Defendant met wore the T-Shirt with inscription of AEPB, show that they were doing legitimate and Legal act. This Court does not believe that the men of 2 Defendant have the dangerous weapon. Again impounding the vehicle and turning it in the premises of the 2nd Defendant shows that the 3 & 4 Defendants were known and acknowledged Agents of the 2nd Defendant and that they work in collaboration with 1st Defendant and 3 & 4 Defendants too.

This Court does not believe that the 3 & 4 Defendants pushed the plaintiff down as he claims before asking him to enter the back seat of the vehicle. There must have been resistance by the 2nd Defendant before releasing the vehicle keys.

It is strange that in the scenario painted by the 2 plaintiff on the fact that the traffic and vehicles were moving at slow speed and suddenly the 3 & 4 Defendants bounce into his vehicle.

And suddenly as he claims in Paragraph 6 of his statement of Defence that-

"… suddenly the 3rd and 4th Defendants jumped into his car and ordered him to park/clear off the road and when he did the 3 & 4 Defendants ordered him to surrender the ignition key to them immediately."

The above cited paragraph contradicted the content of paragraph 10 where the 2nd plaintiff had alleged that the duo pushed him down and ordered him to enter the back seat of the vehicle.

Again allegation of settling the 3 & 4 Defendants as they demanded is equally contradictory too and too good to be true. The same men who have told him that they will take him to their office could not have pushed him down. The 2nd Defendant should not have singled him out to fight him in a traffic jam and suddenly demanded that plaintiff gives them some money.

Without further ado this Court holds that the plaintiffs were not able to succinctly establish their case to warrant the grant of the Reliefs sought. It is not in doubt that plaintiff lost some money because of the impoundment of the vehicle from the 13/3/15 till the day it was ordered to be released. But the said lost days has no specifics.

This Court will and hereby hold that though the plaintiff could not establish their case the Court grants them the award of N100,000.00 (One Hundred Thousand Naira) as lost income and as damages incurred by the impoundment of the vehicle.

This is the Judgment of this Court delivered today

The ……day of ……..2020 by me.

……

**K.N.OGBONNAYA**

**HON. JUDGE**