

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
BEFORE HIS LORDSHIP, HON. JUSTICE A.A.I. BANJOKO—JUDGE
SUIT NO: FCT/HC/CV/2549/2020**

BETWEEN:

BUNKARI MOTORS NIG LTD.....CLAIMANT

AND

- 1. THE CLERK OF THE NATIONAL ASSEMBLY**
- 2. THE NATIONAL ASSEMBLY.....DEFENDANTS**

**ROLAND OTARU SAN FOR THE CLAIMANT WITH AKINOLA
OYEBANJO
NWENYI PIUS ESQ. WITH ALIYU GARBA FOR THE 1ST AND 2ND
DEFENDANTS**

RULING/JUDGMENT

On the 4th day of September 2020, the Claimant filed a Writ of Summons under the Undefended Cause List of this Court, claiming the following Reliefs: -

1. A Sum of N1, 056, 630, 000.00 (One Billion, Fifty-Six Million, Six Hundred and Thirty Thousand Naira) Only, being the unpaid balance for the Forty-Two (42) 2017 Edition of Peugeot 508 Executive, supplied by the Claimant to the Defendants at the Defendant's Request, under the Agreement for Supply dated the 16th day of April, 2018 between the

- Claimant and the Defendants, which the Defendants have refused to liquidate despite several written and oral demands by the Claimant.
2. Ten Percent (10%) Post-Judgment Interest on the unpaid sum of N1, 056, 630, 000.00 (One Billion, Fifty-Six Million, Six Hundred and Thirty Thousand Naira) only, until the unpaid sum is finally liquidated.
 3. The Sum of N100, 000, 000.00 (One Hundred Million Naira) only, being General Damages for breach of contract for the supply of Forty-Two (42) 2017 Edition of Peugeot 508 Executive, dated the 16th of April 2018 between the Claimant and the Defendants and finally,
 4. The Cost of this Suit.

In support of this Process, the Claimant filed alongside the Pre-Action Counselling Certificate, a Nineteen (19) Paragraph Affidavit deposed to by Mohammed Abdullahi, a Manager of the Claimant, which set out therein, Seventeen (17) Grounds upon which the Claim is founded upon and further attached Fifty-Six Documentary Exhibits. Also attached to the Writ is a Written Address of Counsel dated the 30th day of August 2020.

In response, Learned Counsel representing the Defendants filed a Notice of Intention to Defend dated the 19th day of November 2020 and a Twenty Paragraph Affidavit in support of the Defence as well as Two Documentary Exhibits and a Written Address of Counsel.

Upon receipt of this Process, Learned Silk representing the Claimant filed a Reply on Points of Law and a Written Address dated the 27th of November 2020, which also contained the Claimant's reaction to a Preliminary Objection, which was filed by the Defendants.

Subsequent to the Filing of their Notice of Intention to Defend, Learned Counsel to the Defendants also filed a Notice of Preliminary Objection dated the 1st day of December 2020 with a Thirteen Paragraph Affidavit deposed to by Mr. Aliyu Garba, a Legal Officer of the Directorate of Legal Services, National Assembly as well as their Written Arguments on the Issues raised.

On the 2nd of December 2020, the Court consolidated both the Preliminary Objection as well as the Main Claim as one for the purposes of this Ruling/Judgment.

It is Trite Law that where a Preliminary Objection is raised in an Action, the Court is duty bound to determine the Preliminary Objectives before treating the Main Case. See the Cases of **CHIEF U.M. EFET VS INEC & 2 ORS (2011) NSCQR VOLUME 45 AT PAGE 886; BARRISTER ORKER JEV & 1 OR VS SEKAV DZUA IYORTYOM & 2 ORS (2015) 70 NSCQR AT 917**

In the Preliminary Objection, the Defendants sought the following Orders: -

1. That the Court lacks jurisdiction as a Pre-Action Notice, which is a Condition Precedent prior to filing this Suit was not met, pursuant to **Section 21 of the Legislative Houses (Power and Privileges) Act.**
2. That the Court lacks jurisdiction to determine the Suit, in view of the fact that the Contract between the Claimant and the Defendants contains an Arbitration Clause and the Claimant ought to go for Arbitration before instituting this Matter.
3. That the Action discloses no Reasonable Cause of Action against the Defendants and such is incompetent.

4. The Action is academic and frivolous and so the Court lacks jurisdiction.
5. And for any such Order or Orders as this Court may deem fit to make in the circumstances.

Turning to the **1st Ground of Objection**, which is that the Court lacks jurisdiction as a result of the absence of the required service on the Defendants of a Pre-Trial Notice pursuant to **Section 21 of the Legislative Houses (Power and Privileges) Act**, Learned Counsel for the Defence submitted that the Three Months Pre-Action Notice mandated to be served in the instance of any action against the President of the Senate, the Speaker, Clerk of the National Assembly and the National Assembly as an Institution, was not effected on them. He argued that this requirement was a condition precedent for the institution of an Action without which, the Action should be deemed as premature and incompetent.

Learned Counsel relied on the decided Case Law Authorities of **PRINCE ATOLAGBE & ANOTHER VS ALHAJI AWUNI & ORS (1997) 9 NWLR PART 522 AT 536 PER MOHAMMED JSC AND MOBIL VS LASEPA (2003) 1 MJSC 112 AT 125** to argue that this Notice was a Mandatory Statutory Requirement before an Action can be brought before the Courts and the Letters the Claimant may have written to the Defendants on the subject matter of the Suit did not obviate the need for the Pre-Action Notice. He cited the dictum of **His Lordship, Niki Tobi JSC**, where his Lordship compared the Statutory Pre-Action Notice to the usual Letter of Demand emanating from the Chambers of a Counsel, asking for specific conditions to be fulfilled in order to avert litigation.

In response, Learned Silk representing the Claimant submitted that the Defence Counsel cited out of context the Cases of **MOBIL**

PRODUCING COMPANY VS LASEPA (2003) (CITED SUPRA) AND ATOLAGBE VS AWUNI (1997) (CITED SUPRA) in his attempt to forcefully implant the principle of Pre-Action Notice into a Simple Contractual Transaction. Further, citing the Case of **OKAFOR VS NNAIFE (1987) 4 NWLR PART 64 AT 129**, he argued that Cases are only authorities for what they decide and therefore can only act as precedence when the facts are similar.

In this instant case, the Action is premised on a Simple Contract and therefore the issuance or non-issuance of the Pre-action Notice did not arise, especially where such provision was not expressly incorporated into the Contractual Agreement between the Parties.

Learned Silk further made reference to Cases that had similar challenges as this present case, and which had to do with the construction of Provisions in pari materia to the provisions of **Section 21 of the Legislative Houses (Power and Privileges) Act**. He set out in detail the various dicta arrived at by the Supreme Court in **NPA VS CONSTRUZIONI GENERALI FARSURA COGEFAR (1974) 12 SC AT 69**, which had referred to the English Case Authority of **MIDLAND RAILWAY COMPANY VS THE LOCAL BOARD FOR THE DISTRICT OF WITHINGTON (1882-3) 11 QBD 788 PER BRETT MR AT PAGE 794**; and **WARRI REFINING & PETROCHEMICAL CO LTD VS GECMEP NIGERIA LIMITED (2020) 10 NWLR PART 1731 AT 36 SC PER KEKERE-EKUN JSC**.

Contending further, Mr. Roland Otaru SAN, urged the Court to carefully peruse the Act to note that in totality, the Provisions did not relate to Contracts or any Subject Matter outside the purview of granting Legislators the desired Powers, Immunity and Legislative Responsibilities of the Legislative Houses. There was

also nowhere in the Act that granted the Legislators immunity from paying for the Contracts duly entered into by them.

Finally, the Cases of **LAWAN VS ZENON PETROLEUM & GAS LTD & ORS (2014) LPELR-23206 CA PER EYO EKANEM JCA; MOBIL OIL PLC VS IAL (2000) 6 NWLR PART 659 AT 146 PER KARIBI-WHYTE JSCas** well as **BAKARE VS NIGERIAN RAILWAY CORPORATION (2007) LPELR-712 SC PER CHUKWUMA-ENEH** were referred to in urging this Court to read the Sections of the Act as a whole to discern the collective sense and intendment of the Act and to follow the Canon of Interpretation of Statutes in instances where the Provisions of Statutes previously construed, are similar.

Now, in the Case of AG FEDERATION & 2 ORS VS ALHAJI ATIKU ABUBAKAR & 3 ORS DELIVERED FRIDAY 20TH OF APRIL (2007); SC 31/2007, it was held that Statutes are to be construed in the ordinary and natural meaning of the words and sentences. The Supreme Court summarized the approach to be adopted as follows: -

1. In its interpretation, the Court should adopt a liberal approach as adopted in **NAFIU RABIU VS KANO STATE (1980) 8-11 SC 130 AT 148**
2. The Court must employ care and always bear in mind the circumstances of the case **UKAEGBU VS ATTORNEY GENERAL OF IMO STATE (1983) 1 SC NLR AT 212**
3. The background facts necessary for comprehension of the subject matter may be used as an aid to discover the intention of the Legislature, which is deducible from the

language of the Statute. **SEE BRONIK MOTORS VS WEMA BANK (1983) 1 SCNLR AT 296** and finally,

4. Regard must be taken to ensure that the Mischief, which is intended to deter is arrested. See **MOBIL VS FBIR (1977) 3 SC AT 53.**

Further reliance is placed on the Decided Case Law Authorities of **INEC & 1 OR VS ALHAJI ABDULKADIR BALARABE MUSA & 4 ORS (2003), SC 228/2002**, it was held that the Golden and Main Rule of the Interpretation of Statutes, including the Constitution, is the intention of the Lawmaker. That intention must not be ambiguous, simple and straightforward and the Courts should give the words in the Act their ordinary and plain meaning.

It is also clear that Provisions of a Statute mustnot be interpreted in isolation, but must be interpreted in the context of the Statute as a whole, and in construing the Provisions of a Section of a Statute; the Whole of the Statute must be read in order to determine the meaning and effect of the words being interpreted. Regard is has to the Cases of **ACTION CONGRESS & 1 OR VS INEC (2007) SC 69/2007; BUHARI & ANOR VS OBASANJO & ORS (2005) 13 NWLR PART 941, 1 AT 219; AWOLOWO VS SHAGARI (1979) 6-9 SC AT 51 AND AMAECHI VS INEC & ORS (2008) SC 252/2007.**

Now in this instant case, Learned Counsel relied on **Section 21 of the Legislative Houses (Power and Privileges) Act of 2017.**

In its Explanatory Memorandum, it was stated thus: *“It is an Act to repeal the Legislative Houses (Powers and Privileges) Act, Cap L12 Laws of the Federation of Nigeria 2004, and enact **Legislative Powers and Privileges Act 2017 to give the Legislature the desired powers and immunity to be able to carry out its legislative responsibilities; and for related matters.”***

The Powers and Immunity created in this Act relates solely to their Legislative Functions and Responsibilities and is certainly not at large. The fact of confining the Act to Related Matters also means related to this same Legislative Functions and Responsibilities. This Act upon a calm view can be seen to treat issues of the Legislative Powers and Privileges granted as well as set out the Procedures to be adopted whilst carrying out their Functions, and also the Requisite Protection granted them.

This begs the question, “***What then are their Legislative Functions and Responsibilities?***”

The only recourse to positively decipher the Answer to the above Question is to peruse the Constitution of the Federal Republic of Nigeria 1999 (As Amended), which bestowed the Legislature with these Powers and Responsibilities in the first place.

By virtue of the Entirety of **Section 4 PART II OF THE 1999 CONSTITUTION (AS AMENDED)**, Legislative Powers are set out in great details. They include the Power to make Laws for the Peace, Order and good Government of the Federation or any part thereof with respect to any matter included in the Exclusive Legislative List set out in Part 1 of the Second Schedule to this Constitution save as otherwise provided by the Constitution.

Further, their Powers to make Laws were copiously set in **Section 4 Sub 4 (A-B) of the 1999 Constitution (As Amended)**

There is nothing in the Constitution or even in the Act relied upon that empowers the Legislatures to award or enforce performance of Contracts of any sort, whether Specific, Simple or Complex.

In the Cases relied upon by Learned Silk, the Supreme Court in particular and the Court of Appeal in the instance of the Case of

LAWAN (CITED SUPRA), were all of the view that Pre-Action Notice did not arise where such Provision of Statute relating to Pre-Action Notice is not expressly incorporated into the Contractual Relationship as set out in the Contract Agreement duly executed between the Parties. Further, in applying similar and near identical provisions of different Statutes to the facts of the Cases, they held the view that those Sections did not apply to Cases of Contract, as they were not the intention of the Legislature.

In the English Case of **MIDLANDS RAILWAY COMPANY (CITED SUPRA)**, **Brett Master of the Rolls**, went further to state that when goods have been sold, and the price is to be paid upon a Quantum Meruit, the Section would not apply to an action for the Price, because the refusal or omission to pay would be a failure to comply with the Terms of the Contract and not with the Provisions of the Statute.

Turning back to the Case at hand, it can be seen that the Act granted immunity from Litigation, Powers to Issue, Serve and Summon Witnesses, Powers to issue out warrants of arrests and warrants to compel attendance, the Manner of Examinations of Witnesses and their Privileges, the penalty for rendering false evidence and offering and taking of Bribes, consequences of obstruction of their duties, House Committee Proceedings, what amounts to Contempt, Evidentiary Issues during Proceedings, Publication Questions and the Powers of the President of the Senate and Speaker, Notification of Arrests of Members of the Legislative Houses etc.

Tucked into these above powers and privileges is **Section 21**, which upon a holistic view, can only relate to Pre-Action Notices in respect to the above powers, privileges and immunity and NOT to

any other activity or engagement. Section 21 is complimentary to all the other Sections in this Act and considering the Intention of the Legislature, there can be no other deduction except that the restrictions to Legal Actions without Notice, is a Restriction to what actions require Pre-Action Notices.

There is nothing in the Supporting Affidavit to demonstrate that Awarding Contracts or Vetoing them is part of the Legislatures duties and powers. These are presumable the administrative functions of the Clerk or Office. There was also nothing in the Contract Agreement referring to the necessity of giving three months Pre-Action Notice.

Therefore, in conclusion, the Court finds that evoking this Section in the instant case by the Defence was misconceived and ill advised. The Preliminary Objection on this point of Contention is therefore overruled and dismissed.

As regards **the 2nd Ground of Objection**, which is the non-compliance with the Arbitration Clause in the Contract Agreement, Learned Counsel representing the Defence contended that the Court has no jurisdiction to entertain this matter due to the Arbitration Clause contained in the Contract Agreement. According to Counsel, Arbitration Clauses are like other Agreements that must be kept. He cited the Cases of **SCOTT VS AVERY (1856) 10 ER 1121 AND CELTEL NIGERIA BV VS ECONET WIRELESS LTD & ORS (2014) LPELR 22430 PAGE 60 AT PARAS A-E** to submit that where it is expressly, directly and unequivocally agreed upon between the Parties that there shall be no right of action whatever till the Arbitrators have decided, it is a bar to the Action that there had been no such arbitration. The Arbitration Clause embodies the

agreement of both Parties that if any dispute should occur with regards to the obligations, which the other Party has undertaken to the other, a Tribunal of their own constitution and choice should settle such dispute.

Learned Counsel further cited **Section 5 (a) of the Arbitration and Conciliation Act Cap 13**, which permits a Party to an Arbitration Agreement to move the Court to stay any Litigation, pending the conduct of Arbitration and Publication of an Award.

Therefore, the absence of Arbitration made the Claimant's Case to be frivolous, an Abuse of Court Process and he urged the Court to strike out the Suit for want of jurisdiction.

In response, Learned Silk urged the Court to initially determine if there arose a dispute from the Contract that was amenable or referable to Arbitration. He contended that the Contract between the Parties had already been performed and in fact, the Defendants had issued the Claimant with a Job Completion Certificate as seen in **Exhibit K**, wherein it was indicated that the Defendants were satisfied with the Cars supplied in pursuance of the Agreement. Furthermore, the Defendants did not deny their indebtedness and Learned Silk relied on the Case Authority of **K.S.M.H VS M.I.E.E (2012) 3 NWLR PART 1287, PAGE 587 AT 276 PER ABDULLAHI JCA.**

Learned Silk pointed out **Clause 4.01 of the Agreement** for Supply dated the 16th day of April 2018 to argue that payment to the supplier shall be made after the acceptance of the Goods by the Purchaser. The inclusion of the word "Shall" connotes mandatory compliance and having failed to pay the balance of the contract

sum after the Completion Certificate had been issued by the Defendants and also after part-payment of the debt, the Defendants cannot rely on the Arbitration Clause in the Agreement.

The process of verification of contracts was also not included in the Agreement and he referred to the Cases of **AG, RIVERS STATE VS AG, AKWA IBOM STATE (2011) 8 NWLR PART 1248 AT PAGE 31 AT 81; SONA BREWERIES PLC VS PETERS (2005) 1 NWLR PART 908 AT 478.**

Finally, he argued that the Defendants did not dispute the fact of Part-Payment for the Goods Supplied and he urged the Court to grant the Claimant's Claim as sought.

Now, it is clear that the Defendants had taken steps when this Action was instituted. They had filed a Notice of Intention to Defend the Action and therefore cannot resort to Arbitration after submitting to the jurisdiction of the Court. This runs contrary to the Provisions of **Section 5 (1) of the Arbitration and Conciliation Act**, which provides that *"If any Party to an Arbitration Agreement commences any Action in any Court with respect to any matter which is the subject of an Arbitration Agreement, any party to the Arbitration Agreement may, at any time after Appearance and before delivery any Pleadings or taking any other Steps in the Proceedings, apply to the Court to Stay the Proceedings'.*

Having taken positive steps in these Proceedings, they are estopped from waving the Flag of Arbitration. To aim for Arbitration, the Defendants needed to have shown their readiness to pursue Arbitration through positive documentary evidence and demonstrated in the Affidavit deposed to in Support. Reference is made to the Case of **UNITED BANK FOR AFRICA PLC VS TRIDENT CONSULTING LIMITED (2013) 4 CLRN AT 119**, where it was held

that before a Stay may be granted pending Arbitration, the Party applying for a Stay must demonstrate unequivocally by Documentary and /or other visible means that he is willing to arbitrate. He does it satisfactorily by notifying the other Party in writing of his intention of referring the matter to Arbitration and proposing in writing an Arbitrator or Arbitrators for Arbitration.

Therefore, in conclusion, the Court is satisfied that the Defendants failed to demonstrate their readiness for Arbitration in the Affidavit in Support and the Preliminary Objection on this Score, is found unmeritorious and is also dismissed.

The **3rd Ground of Objection** is in regard to the absence of a Reasonable Cause of Action, which is the entire Set of facts or circumstances that would give rise to an Enforceable Claim. Reference is made to the Cases of **JOHN EBOSEDE EMIANTOR VS NIGERIAN ARMY (1999) 9 SCNJ PAGE 52; DR THOMAS VS MOST REV. OLUFOSOYE (1986) NWLR PT 78 PAGE 669 AT 671**

The law is settled that when an Objection is raised that the Action does not disclose a Reasonable Cause of Action against the Defendants, it is the Statement of Claim and not the Statement of Defence that is to be examined by the Courts. Reference is made to the cases of **IBRAHIM VS OSIN (1988) 3 NWLR PART 82 PAGE 257, AMODU VS ABAYOMI (1992) 5 NWLR PART 242 AT PAGE 503 AND SHODIPO VS LAMINKAINEN OYO (1992) 8 NWLR PT 258 PAGE 229**

The question for the Court to decide is whether from the State of Pleadings or as in this case, the State of the Averments in the Affidavit filed by the Claimant, a fair, proper and suitable Claim against the Defendants is disclosed, and whether there is a right to

be enforced directly against the Defendants. The Court must be satisfied that the Action is not a frivolous Action based on trifles, trivialities and also lacking in seriousness of purpose, and merely brought to annoy and irritate the Defendant.

Now, from the Averments in the Affidavit deposed to in Support, it is clear that a Reasonable Cause of Action involving an alleged unpaid debt is disclosed and therefore, without further ado, this line of objection is found untenable and is accordingly dismissed.

As regards **the 4th and Final Ground of Objection**, challenging the Suit on the basis that the Action is Academic and Frivolous, Learned Counsel to the Defendants did not proffer any arguments in this regard in their Final Address and so the Court is at a loss as to what factor made this Suit an Academic One. Therefore, this Ground is found unsustainable and is also dismissed.

In conclusion, the Preliminary Objection dated the 1st day of December 2020 is found unmeritorious and is accordingly dismissed in its entirety.

Turning to the Main Claim, Learned Silk initially contended in his Reply on Points of Law that the averments contained in **Paragraphs 13, 14, 15, 16, 17 and 18 of the Affidavit deposed to in Support of the Notice of Intention to Defend the Action**, fell short of the requirements of **Order 35 of the Rules of this Court**.

According to Counsel, the depositions are in violation of the Provisions of **Section 115 (1) and (2) of the Evidence Act, 2011** as they contained extraneous matters by way of Objections, Prayers, Legal Arguments and/or Conclusions

Now, it is clear that Affidavits must only contain Statements of facts and circumstances and not Objections or Prayers or Legal Argumentas held in the Case Authorities of **JOSIEN HOLDINGS LTD VS LORNAMEAD LTD (1995) 1 SCNJ 133** and **NIGERIA L.N.G. LTD VS ADIC LIMITED (1995) 8 NWLR PART 416 PAGE 677**. It is also trite that an Affidavit in an Undefended List Action must positively show the Grounds upon which the Claim is based. See the Case of **HIMMA MERCHANTS V. INUWA ALIYU (1994) 6 SCNJ 87** **ACB V. GWAGWADA (1994) 4 SCNJ 268**.

A close perusal of the referred **Paragraphs 13 through to 18**, reveals that indeed **Paragraphs 13, 15, 16, 17 and 18** are in breach of the provisions set out in the Evidence Act and are accordingly struck out.

Paragraph 14 was barely saved by the Court to give the Defendants a chance to their Defence.

In essence, the Claimant's case is that sometime in Year 2017, the Tender's Board of the Defendants sent a Letter of Invitation to them requesting for a Quotation for the supply of New Peugeot 508 as Utility Vehicles for the House of Representatives at the National Assembly. The Claimant thereafter submitted her quotation for the stated vehicles and tendered a Copy of the Tender Submission Sheet (Form G-1) as well as the accompanying quotation documents as **Exhibits B1-B2**. Following this submission, the Bid Evaluation Committee of the National Assembly, based on the Technical/financial Assessment conducted, endorsed and recommended the award of the Contract to the Claimant to supply Forty-Two (42) Number Peugeot Executive 1.6 Litres, Turbo High Pressure; Petrol Engine, Auto; Keyless; with Additional Features Full Option at a unit price of Twenty Five Million, Five Hundred

and Fifteen Thousand Naira (N25, 515, 000.00) totalling the Sum of One Billion, Seventy One Thousand, Six Hundred and Thirty Naira Only (N1, 071, 630, 000.00). The Claimant attached an Extract of the Bid Evaluation Committee Meeting as **Exhibit C**.

Based on the Evaluation Committee's recommendation, a Meeting was convened on the 4th day of August 2017, whereby the Clerk of the National Assembly resolved to grant the Approval for the award of the Contract to the Claimant, and the Copy of the Extract of the Minutes of the Meeting was attached as **Exhibit D**.

On the 6th day of December 2017, the Defendants formally awarded the Claimant the stated Contract of Supply and this Letter of Award informs **Exhibit E** on the Records. The Claimant accepted the Contract through a Letter of Acceptance, which was also annexed to the Claim as **Exhibit F**.

Subsequent to this, a Legal Contract was duly executed on the 16th day of April 2018 and is evidenced by **Exhibit G** in the Records.

According to the Claimants, they acted in line with their obligations under the Contract and supplied the total number of vehicles requested and issued out an invoice, which is attached as **Exhibit H**. Upon the issuance of this invoice, the requested vehicles were delivered by the Claimants to the Defendants and a Copy of the Delivery Note/Way Bill dated the 14th day of December 2017 was also attached as **Exhibit I**, and a Certificate/Letter of Attestation containing the Chassis Numbers and Description of the Vehicles delivered were attached as **Exhibits J1-J42**.

In order to confirm that the approved samples, description, quality and quotation met the required standards, a Job Completion Certificate issued by the Transport Division of the 2nd Defendant

dated the 19th of July 2018 was given to the Claimant, which is annexed to the Claim as **Exhibit K**. The Director of Supplies also issued out a Certificate of Goods Supplied to the Claimant and Stores confirming the Delivery of the stated vehicles to the Defendants and this informs **Exhibit L**.

It was stated that prior to this supply, the Defendant did not make any down payment towards the purchase of the vehicles and the costs of their procurement was borne solely by the Claimant. After the supply of the vehicles, the Defendants only paid the Sum of Fifteen Million Naira (N15, 000, 000.00) leaving a balance of One Billion, Fifty-Six Million, Six Hundred and Thirty Naira (N1, 056, 630) yet unpaid.

From then till the time of this action, the Defendants had refused to liquidate this balance sum due under the Contract Agreement, which the Claimant contends has substantially affected their business negatively leading to them being unable to fulfil their own obligations to their Creditors and Investors. All attempts to make the Defendants liquidate their debt were unsuccessful and despite a Letter of Demand written by their Counsel dated the 1st of July 2020, which was received by the Defendants on the 3rd day of July 2020 attached as **Exhibit M**, the Defendants still failed to settle their indebtedness. It was further stated that the Defendants requested for a Meeting through **Exhibit N**, a Letter of Invitation dated the 17th of July 2020, and at the Meeting held with the Deputy Clerk of the National Assembly and the Clerk of the National Assembly on the 11th of August 2020 and 19th of August 2020, admitted their liability. The Claimant believed that the Defendants have no defence to this Action and they urged the Court to grant the Reliefs sought.

The Defendants in their Notice of Intention to Defend this Action referred to an Affidavit in Support of the Claimant's Case that was deposed to by Alhaji Mohammed Saleh dated the 4th day of September 2020, which incidentally is not before the Court. What is actually before the Court is an Affidavit, deposed to by Mohammed Abdullahi, the Manager of the Claimant.

Learned Silk picked up on this error to argue that Alhaji Mohammed Saleh was unknown to the Claim and this indicates that the Defendants have no intention to defend the Suit. There was no reply by the Defendants on this point.

Now, it is clear that even though the Affidavits were deposed to on the same date, the Affidavit wrongly referred to as deposed by Alhaji Mohammed Saleh, is technically not referring to the averments deposed to by Mohammed Abdullahi but the Court will overlook this oversight and error in the interest of doing substantial justice in this Case. The point still remains that the averments relate to the Claim before the Court and therefore, this error will be condoned.

Turning to the averments in the Notice of Intention to Defend the Action, as earlier determined in the Ruling on the Preliminary Objections, **Paragraphs 13, 15, 16, 17 and 18** were struck off and therefore only the other paragraphs in this Affidavit would be considered. The Contract Document referred to in **Paragraph 15as Exhibit B**, also is struck out. This however will not occasion any injustice and neither will it be prejudicial to the Defendants as the Claimant already tendered the Contract Document as an Exhibit.

The Case as presented by the Defendants is that they had not and never refused to pay the Claimant any Contract Fees for the alleged

Contract of supply in question. The Defendants had set up a Committee to look into cases of unpaid contracts and after their verification of the veracity of these contracts, would make payments on their liabilities. They were also in the process of reconciling their contractual liabilities for payments and had communicated this fact to the Claimants in their Letter of Invitation to the Claimants attached as **Exhibit A**.

The Defendants were still expecting the Claimant's acknowledgement of their Letter on steps taken by them to verify the Contract Award. According to the Defendants, there were many such contracts they discovered were fraudulent and therefore there was a need for verification. The COVID Pandemic, and its impact on work however, hampered this verification generally and they urged the Court not to order payment, relying on the fact that due process was not followed in the institution of this Suit.

The Defendants urged the Court to refuse the Claimant's Claim as misrepresentations were made in his documents that could only be resolved at a full trial and he implored the Court to hold this Claim as unfounded and baseless.

Now, Order 35 of the Federal Capital Territory High Court (Civil Procedure) Rules of 2018 regulates Cases under the Undefended Cause List Procedure of this Court and mandates that the Claim must be for the Recovery of 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 the Claim.

His Lordship, RHODES-VIVOUR, J.S.C. in the Case of **UNION BANK OF NIGERIA VS AWMAR PROPERTIES LTD(2018) LPELR-44376 (SC) (PP. 8-10, PARAS. E-B)** recognized this above cited Order and went on to state that “the Procedure is designed to prevent delay in cases where the Claimant has a clear case and the defendant has no defence. So, where the Claimant satisfies the Court with affidavit evidence which the defendant cannot answer, the Court would enter judgment for the Claimant thereby avoiding a full blown trial with the usual expense, frustrations and delay. On the other hand if the defendant files an affidavit which discloses a defence on the merit, he would be granted leave to defend by the Court, and if there are material conflicts in the affidavits of both parties, the suit would be taken out of the Undefended List and placed on the general cause list for a hearing in the well-known way. It prevents worthless and sham defences”. Reference is further made to the cases of **M.C. INVESTMENT LTD & ANOR VS C.I. & C.M. LTD (2012) 6 SC (PART 1) PAGE 188, GAMBO VS IKECHUKWU & ORS (2011) 10 SC PART 1, INTERNATIONAL BANK LTD VS BRIFIAN LTD (2012) 5 SC (PT. II) PAGE 190 AND NKWO MARKET COMMUNITY BANK (NIG) LTD VS OBI (2010) 4-7 SC (PART 1) PAGE 30.**”

It is clear that a Notice of Intention to defend a Suit must be accompanied by an Affidavit, which ought to set out the Grounds of his Defence. It is the affidavit that discharges the burden imposed on the Defendant to show that the grounds for asking to be heard in defence are not frivolous, vague or craftily designed for filibuster the proceedings.

The Defendant must show:

A) That there is a Dispute between the Parties both on the Law and as to Facts per OLATAWURA JSC IN ACB VS GWAGWADA (1994) 4 SCNJ PART 11 PAGE 268, 277 – 278; JOHN HOLT AND COMPANY VS FAJEMIROKUN (1961) ALL NLR 513; AND EKUMA VS SILVER EAGLE SHIPPING AGENCIES LTD (1987) 4 NWLR PART 65 PAGE 472 AT 484 PER NNAEMEKA – AGU JCA CITING LORD BELLOW VS MARKEY 2 LR/RULE 185 AND MORTEX NIGERIA LTD VS FRANC TOOLS COMPANY LTD (1997) 4 NWLR PART 501 PAGE 603 AT 610-611.

B) The Grounds of Defence must also satisfy the Court that there are Triable Issues between the Parties, which can be deduced from the Affidavit. Reference is made to the Cases of UWAIFO JCA IN U.N.N. VS ORAZUIKE TRADING COMPANY (1989) 5 NWLR PART 119 PAGE 13 AT 31 CITING JIPREZE VS OKONKWO (1987) 3 NWLR PART 62 PAGE 737.

What constitutes a Triable Issue depends on the circumstances of each case and is usually found in situations where there are Difficult Points of Law involved in the Issues raised, where there are Disputes as to the Facts, which ought to be tried, where there is a Real Dispute as to the Amount due to the Party making a Claim, which would necessitate the taking an Account to determine the amount and finally, where there are Reasonable Grounds or a Fair Probability of a Bona Fide Defence Such As A Counter Claim **IRAN VS BILANTE INTERNATIONAL LTD (1998) 5 NWLR PART 550 PAGE 396, 402; UBEAZONU JCA IN GENERAL SECURITIES AND FINANCE COMPANY VS OBIEKEZIE (1997) 10 NWLR PART 526 PAGE 577 AT 587-88**

When a Court is satisfied that there is a Triable Issue, leave to defend will be given and at this stage, it is not necessary to decide whether the defence put up by the Defendant can be established, and it is immaterial that the Court thinks that a Defendant will in the end, lose the case per **BALOGUN VS BOLAJI (1981) 1-3 CCHCJ 258, 263; UWAIS JSC IN FEDERAL MILITARY GOVERNMENT VS SANNI (1990) 4 NWLR PART 14 PAGE 668 AND AGRO MILLERS LTD VS C.M.B. (1997) 10 NWLR PART 525 PAGE 469, 477**

Further, an averment merely asserting that the Defendant “has a good defence to the action” will not suffice. Reference is made to **KWARA HOTELS VS ISHOLA (2002) 9 NWLR PT 773 PAGE 604 AT 609. OBASEKI JSC IN NISHIZAWA LTD VS JETHWANI (1984) ALL NLR 470, 484-485** adopted above line of reasoning in **AGRO MILLERS CASE CITED SUPRA** by stating that a Defendant who has no real defence should not be allowed to dribble and frustrate the Plaintiff and cheat him out of the judgment by using delaying tactics. It is equally trite that an averment stating that the Claimant has failed to render a “correct and faithful account” of their dealings with the Defendants, without in any way showing in what respects the accounts had been incorrect will not answer to a defence on their merits and on this, the Case of **JOHN HOLTS VS FAJEMIROKUN (1961) ALL NLR 513** is pertinent.

See also AUGIE, JSC IN AMEDE VS UBA PLC (2018) LPELR-47994 (PAGES 20-21, PARAS E-D) (SC); CHIEF PETER AMADI NWANKWO & ANOR V. ECUMENICAL DEVELOPMENT CO-OPERATIVE SOCIETY (EDCS) U.A (2007) LPELR-2108(SC)

PAN ATLANTIC SHIPPING & TRANSPORT AGENCIES VS RHEIN MASS GMBH (1997) LPELR-2899 (SC) AND ED - OF NIGERIA

LTD VS SNIG (NIG) LTD (2013) ALL FWLR PART 708; 874 (2013) LPELR-19888(SC), where this Court held inter alia that “Another point is that the Terms of the Contract brooked no disagreement in respect of Payment for the Items supplied.

In **Paragraph 4.01**, it stated that the Payment shall be made to the Supplier after the acceptance of the Goods Supplied and upon the submission of the Valuation Certificate issued by the Purchaser.

There is nothing to indicate on Record, any contrary contention from the Defendants that the Goods were not supplied and that part-payment was not paid out. The Contract is a Completed Contract and there is no dispute as to the performance or defective or inadequate supply of the Goods by the Defendants. The Claimant cannot possibly be held responsible for any administrative lapses of the Defendant and there was no evidence that the Vehicles were rejected or returned as unsatisfactory. The fact that they acknowledged receipt of the vehicles and the fact that they are presumably in use by the Defendants is the fact that the Claimant satisfied the conditions set out in the Contract Agreement. They also did not pause the delivery of the vehicles pending their internal investigations and held out to the Claimant that all was well.

There is also the added fact that these vehicles were supplied sometime in 2018, over two years ago and naturally the value and depreciation of the vehicles at this present time must be taken into account.

The Defendants did not deny Part-Payment of their Debt and had furnished the sum of Fifteen Million Naira in this regard. They are estopped from denying the Contract and especially the Supply of the Vehicles. The Claimant not being a Member, Staff or Official of

the National Assembly cannot be expected to be involved in the procedure for contract awards and their verifications. That is entirely an internal affair and the Claimant cannot be expected to wait, COVID or no COVID for an unknown period of time whilst a reported verification is carried out. The Contract was simply a Simple Contract with determined and fixed terms as to Payments. There were no disagreements as to the terms and manner of payments in Clause 4 of the Contract Agreement. It is likened to buying bottles of Coca Cola from a supplier, drinking it and then two years later, querying whether the Coca Cola or the product was rightly purchased by due process. Utter nonsense and a complete disgrace to the Defendants, who are certainly expected to know and act in a better fashion.

The Claimant stated that he is also indebted to his creditors for this Contract and regard has to be had to his own handicaps.

Therefore, in conclusion, this Court has no hesitation whatsoever in holding as follows: -

1. The Defendants are hereby ordered to pay up forthwith the Sum of N1, 056, 630, 000.00 (One Billion, Fifty-Six Million, Six Hundred and Thirty Thousand Naira) Only, being the unpaid balance for the Forty-Two (42) 2017 Edition of Peugeot 508 Executive, supplied by the Claimant to the Defendants at the Defendant's Request, under the Agreement for Supply dated the 16th day of April, 2018 between the Claimant and the Defendants, which the Defendants have refused to liquidate despite several written and oral demands by the Claimant.
2. Ten Percent (10%) Post-Judgment Interest on the unpaid sum of N1, 056, 630, 000.00 (One Billion, Fifty-Six Million, Six

Hundred and Thirty Thousand Naira) only, until the unpaid sum is finally liquidated is also ordered to be paid forthwith.

3. As regards the Claim for the Sum of N100, 000, 000.00 (One Hundred Million Naira) only, being General Damages for breach of contract for the supply of Forty-Two (42) 2017 Edition of Peugeot 508 Executive, dated the 16th of April 2018 between the Claimant and the Defendants, this is certainly not a Liquidated Claim for Money Demand that can be entertained under an undefended cause procedure and is found to be lacking in merit and is accordingly dismissed. Reference is made to the case of **BEN THOMAS HOTELS LTD VS SEBI FURNITURE CO LTD (1989) LPELR 769 SC**

4. Costs of N1, 000, 000.00 is also ordered.

In conclusion judgment of this Court is entered in favour of the Claimant.

HON. JUSTICE A.A.I. BANJOKO
JUDGE