IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GUDU – ABUJA
DELIVERED ON 30TH DAY OF SEPTEMBER, 2020.
BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE OSHO-ADEBIYI

SUIT NO. CV/418/2019

BETWEEN

GLOBAL OKEMS IMPEX LIMITED ------------------ CLAIMANT

AND

1. **THE ATTORNEY GENERAL OF THE FEDERATION**
2. **FEDERAL MINISTRY OF WORKS & HOUSING ------DEFENDANTS**

JUDGMENT

The Claimant by a Writ of Summons brought under the undefended list; pursuant to Order 35 Rule 1 of the FCT High Court Civil Procedure Rules, 2018 filed this suit against the Defendant claiming the following:

1. An order that the Claimant are entitled to the sum of N8,435,000.00 (Eight Million, Four Hundred and Thirty-Five Thousand Naira) Only, being the contract sum executed by the Claimant for the construction of Borehole with Hand Pump at Iwu Village, Offumwengbe ward and Nikrogha Ward Ovia South West LGA, and Oluku Ward North Est LGA, Edo South Senatorial

District, Edo State, with contract No: PRODC/MDGs7/ 2013/838/1. Which sum is due and owed to the Claimant by the Defendants.

2. An order directing the Defendants to pay to the claimant, the sum of ₦ 8,435,000.00 (Eight Million, Four Hundred and Thirty-Five Thousand Naira) only, which sum is due and owed to the Claimant by the Defendants for the construction of borehole with Hand Pump at Iwu Village, Offumwengbe ward and Nikrogha Ward Ovia South West LGA, and Oluku Ward North Est LGA, Edo South Senatorial District, Edo State, with contract No: PRODC/MDGs7/ 2013/838/1, and which has remained unpaid despite demands.
3. Interest on the above stated sum calculated at 10% (ten percent) per annum, from the date payment of the sum was due according to contract agreement until the judgment sum is liquidated.
4. The cost of this action.

The writ is supported by a 17 paragraph affidavit in support dated 25/03/2019 deposed to by Okechukwu Sergius Obinna manager of the Claimant to which is attached seven (7) Exhibits.

From the facts deposed therein, it is the case of the Claimant that the Defendants sometimes in September, 2013 awarded a contract to the Claimant for the construction of Borehole with hand pump at Iwu Village, Offumwengbe ward, and Nikrogha Ward Ovia South West LGA, and Oluku Ward North East LGA, Edo South Senatorial District, Edo State with contract No: PROC//DMGs7/2013//838/1, and dated 10th

September, 2013. That the Claimant executed the contract agreement with the 2nd Defendant on the 19th day of December, 2013. That the Claimant sourced for funds and finished the contract within the period of eight (8) weeks and handed over the said boreholes with Hand pumps to the 2nd Defendant and the 2nd Defendant issued the Claimant Certificate of Practical Completion and took over the Boreholes with its hand pumps on the 20th of January, 2014. That the Claimant has severally requested from the 2nd Defendant for the payment but to no avail. That the Claimant complained to SERVICOM yet 2nd Defendant refused to respond nor pay the Claimant. That the 2nd Defendant has refused and neglected to pay the contract sum of work assiduously done by the Claimant despite several demands by the Claimant and now the Claimant is in series of debt and cannot pay its staff nor repay the loan collected to execute the said contract, even when it is conspicuously stated in its Certificate of Practical Completion that the Claimant's payment has been due since 20th January, 2014. That the claim is for ascertained liquidated sum of N8, 435, 000.00 (Eight Million, Four Hundred and Thirty-Five Thousand Naira) only.
Claimant therefore filed this suit to recover the contract sum of N8, 435, 000.00 (Eight Million, Four Hundred and Thirty-Five Thousand Naira) only) under the undefended list procedure as the Defendants have no defence to this claim.

Claimant attached 7 exhibits to prove its case as follows;

- **Exhibit – "GLOBAL 1"** a letter addressed to the Claimant from the Federal Minister of Lands, Housing and urban Development, dated 10th September, 2013.

- **Exhibit 'GLOBAL 2'** is a letter addressed to The Director Procurement Department of the Federal Minister of Lands, Housing and urban Development from the Claimant dated 23rd December, 2013.

- **Exhibit 'GLOBAL 3'** is MDG's Project Agreement between Federal Minister of Lands, Housing and urban Development and MESSRS GLOBAL OKEMS IMPEX LIMITED for the reconstruction of borehole with hand pump at Iwu Village, Offumwengbe ward, and Nikrogha Ward Ovia South West LGA, and Oluku Ward North East LGA, Edo South Senatorial District, Edo State.

- **Exhibit 'GLOBAL 4'** is Certificate of Practical Completion from the Federal Ministry of Lands, Housing and urban Development to the Contractor GLOBAL OKEMS IMPEX LIMITED.

- **Exhibit 'GLOBAL 5'** is a letter titled "RE: INDEBTEDNESS TO M/S GLOBAL OKEMS IMPEX LIMITED BY FEDERAL MINISTRY OF LANDS, HOUSING AND URBAN DEVELOPMENT HEADQUATERS MABUSHI" dated 16th October, 2018.

- **Exhibit 'GLOBAL 6'** is a letter addressed to the Permanent Secretary, Federal Ministry of Lands, Housing and urban Development dated 26th August, 2019.

- **Exhibit 'GLOBAL 7'** is a letter addressed to the Permanent Secretary, Federal Ministry of Lands, Housing and urban Development dated 18th November, 2019.

Learned Counsel to the 2nd Defendant did not file a memorandum of appearance, nor did they file a notice of intention to defend this suit despite the service of processes on Defendant since the 21st day of January, 2020. On the return date Claimant counsel urged the court in compliance with Order 35 Rule 4 of the FCT High Court Civil Procedure Rules 2018 to proceed to hearing the claim. A. I. Reuben-Nnwoka counsel that announced appearance for the 2nd Defendant informed the court that they propose an out of court settlement. Claimant counsel was reluctant to accede to that request. The court ruled that the 2nd Defendant counsel was not properly before the court as he was yet to file a memorandum of appearance and there was nothing before the court from the office of the Defendants to that effect, hence should proceed to trial. Learned Counsel to the Plaintiff subsequently moved his suit under the undefended list and urged the Court to enter judgment for the Claimant accordingly.

However on the date adjourned for judgment the court suo motu requested Counsels to address the Court on the juristic personality of the 2nd Defendant. Counsel for the 1st Defendant also informed the court that they had filed notice of intention to defend, affidavit disclosing defence on merit and a notice of preliminary objection all dated and filed on the 26/02/2020 having been served with the originating processes on the 21/01/2020. The notice of preliminary objection is brought pursuant to Section 6 (6)(b) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and under the inherent jurisdiction of this Honourable Court, praying for the following:-

1. An order striking out the 1st Defendant/Applicant name as a party in the suit.
2. The claimant suit is statute barred.
3. And any further orders as this honourable court may deem fit to make in the circumstance.

Grounds upon which the objection is sought are;

i. The 1st Defendant/Applicant is not a necessary party in the suit.
ii. None of the reliefs claimed by the Claimant relates to the 1st Defendant/Applicant.
iii. The time within which the Claimant was to commence action have expired.

Attached to the motion is a written address. Learned Counsel raised two (2) issues for determination to wit;

1. Whether in the circumstances of the case and facts before this Honourable Court, there is any reasonable cause of action against the 1st Defendant/Applicant in this suit.
2. Whether in the circumstances of this case and the available facts placed before this Honourable Court the Claimant is not caught up by the statute of limitation in bringing this action.

On issue one, Learned counsel submitted that there was no need to join the 1st Defendant when the matter does not affect the Federal

Government directly and the matter can be properly, completely and effectually determined without joining the 1st Defendant/Applicant as a party. Counsel submitted that there is no privity of contract between the Claimant and the 1st Defendant, stating that only parties to a contract can enforce the contract. Counsel further submitted that in determining whether or not the Plaintiff's case discloses a cause of action against the 1st Defendant, the originating motion, grounds upon which the reliefs are sought and the Affidavit in support of motion and all processes in totality must be examined by the Court and that it is their humble argument that the Plaintiff's writ upon which the reliefs are sought and the affidavit in support did not disclose any cause of action or claim against the 1st Defendant. Counsel submitted that there is no definite claim against the Federal Government in this Application and that the Plaintiff has established in his processes that his grievance is specifically against the 2nd Defendant and its personnel. Counsel also submitted that the 1st Defendant is neither a necessary nor a proper party in this suit as the Plaintiff's case can completely and effectively determined in his absence and that the 1st Defendant is mis-joined as a party and urged the court to resolve the issue in favour of the 1st Defendant and strike out the name of the Hon. Attorney General of the Federation as a party.

On the second issue, learned counsel submitted that it is trite law that a limitation law is procedural, setting out clearly time frame within which an action must be brought. Counsel submitted that the Defendants in this suit are public officers by virtue of their office,

therefore an action against them must commence within three months of accrual of cause of action. Hence counsel submitted that the Claimant claim is statute barred. Counsel further submitted that the issue of statute bar is an issue of jurisdiction and where a court lacks jurisdiction it lacks the necessary competence to try the case. Counsel urged the court to grant this application in favour of the 1st Defendant/Applicant by striking out the name of the Attorney General of the Federation as he is not a necessary party in this suit and dismiss the suit entirely. Counsel relied on the following cases amongst other;

1. ADEKOYA V. FEDERAL HOUSING AUTHORITY (2008) 11 NWLR (PT. 1099) 539 AT 551, PARAS D-F
2. A.G KANO STATE V. A.G. FEDERATION (2007) 6 NWLR (PT. 1029) 164 AT 192.
3. ADESOKAN V. ADEGOROLU (1997) 3 SCNJ 1 @ 16-17.
4. AROMIRE & OTHERS V. AWOYEMI (1972) 1 ALL NLR (PT 1) 101.
5. R. O. IYERE V. BENDEL F. AND F. LTD (2009) VOL. 165 LRCN, F-K.
6. DUNLOP PNEUMATIC TYRE CO. LTD V. SELFRIDGE & CO. LTD (1914) & (1915) ALL ER REPRINT 333.
7. OJO V. OGBE (2007) 9 NWLR (PT. 1040) 542 @ 557-559 (PARAS. B-A) C.A.
8. SECTION 2 (A) Public Officers Protection Act.
9. FRANCIS OFILI V. CIVIL SERVICE commission (2008) ALL FWLR (PT. 4340) AT 1623.
10. WILLIAM O. OLAGUNJU & ANOR V. POWER HOLDING CO. OF NIG. PLC. (2011) LPELR-2556 (SC)

11. KALOGBOR V. GENERAL OIL LTD (2008) ALL FWLR PT. 418 PG. 303.

In opposition to the preliminary objection the Claimant filed a 7 paragraph affidavit deposed to by Chukwuemeka Gloria, Learned Counsel to the Claimant/Respondent filed a counter-affidavit to a non-existent affidavit. This is very un-procedural as 1st Defendant/Applicant did not accompany his preliminary objection with an affidavit but merely a written address, hence the filing of a counter affidavit to a non-existence affidavit is like building something on nothing, it will not stand. I therefore discountenance the counter affidavit.

Attached to the counter affidavit is a written address where the Claimant/Respondent raised a sole issue for determination to wit;

> "Whether in the circumstance of this case, the 1st Defendant/Applicant has made out a case that will warrant this Honourable Court to exercise its discretion in its favour".

Learned counsel submitted that the 1st Defendant/Applicant has failed woefully to place any material or facts before this Honourable Court that will enable this court to exercise its discretion in its favour. Counsel submitted that the 1st Defendant/Applicant as a Chief Law Officer of the Federal Government of Nigeria has a statutory duty to defend the Federal Government and its Agencies. Counsel further submitted relying on the dictim of Aniogolu JSC in the case of **NISHIZAWA V. S.M. JETHWANI (1984) 12 SC 234** that a defendant

who has no real defence to an action should not be allowed to dribble and frustrate the Claimant or cheat him out of a judgment he is entitled to by his delay tactics aimed not at offering any real defence to the action but at gaining time within which he may continue to postpone meeting his obligation and indebtedness. Learned counsel also submitted that the 1st Defendant/Applicant has not established any material fact in the circumstance to warrant a grant of their application based on the said **Section 2(a) of the Public Officers Act** as the Supreme Court has held that acknowledgement to indebtedness takes a suit out of limitation of action. Counsel finally submitted that the 1st Defendant/Applicant's application does not disclose any defence on its merit to occasion a grant of the application as limitation period does not apply to contract cases. Counsel relied on the following cases;

1. **A.G KANO STATE V. A.G. FEDERATION (2007) 6 NWLR (PT. 1029) 164 AT 192.**
2. **A.G RIVERS STATE V. A.G. AKWA IBOM STATE (20011) 45 (PT 2) NSCQR 1041 AT PAGES 1201-1202.**
3. **OKORO V. EGBUOH (2006) ALL FWLR (PT 332) 1569 SC AT 1588 PARAS A-C.**
4. **EGBOIGBE V. NNPC (1994) 5 NWLR (PT. 347) 647 AT 659-660.**
5. **NIGERIAN SOCIAL INSURANCE TRUST FUND MANAGEMENT BOARD V. KLIFCO NIGERIA LTD (2010) 43 NSCQR 380 AT 408**
6. **ENGR. ZUBAIRU YAKUBU & ANOR V. MINISTRY OF HOUSING DEVELOPMENT, BAUCHI STATE & ANOR (2020) LPELR-49482 (CA)**

I have listened to both parties and the following issues arise for determination:-

1. Whether the Attorney General of the federation is a necessary party to be joined in this suit.

2. Whether the suit is statute barred.

3. Whether 2nd Defendant is a juristic personality who can sue and be sued.

I will take the 1st and 2nd issues simultaneously.

A necessary party to a proceeding is a party whose presence and participation in the proceeding is necessary or essential for the effective and complete determination of the claim before the court. See **In-Re Mogaji (1986) 1 NWLR (pt.19) 579.**

The 1st Defendant/Applicant has argued that no cause of action has been disclosed in the affidavit evidence of the claimant and that no claim has been made against the 1st Defendant/Applicant. The Claimant on the other hand insisted that 1st Defendant/Applicant is a proper party before the court.

The 1st Defendant/Applicant is the Attorney-General of the Federation who is the chief law officer of the Federation. It is settled law that in an action for or against Federal Government or its agencies the Attorney-General is the appropriate party to sue or be sued on behalf of the Government and its agencies. In the case at hand the claimant vide his

reliefs is seeking for payment of contract sum owed by the 2nd Defendant who in this suit is an agency of the Federal Government. The Supreme Court on whether the Attorney General of the Federation can be sued in all civil matters against the Federal Government or any of its agencies stated in **AG KANO STATE v. AG FEDERATION (2007) LPELR-618(SC)** thus;

> *"It is not in dispute that the Attorney-General of the Federation can be sued as a defendant in all civil matters in which a claim can properly be made against the Federal Government or any of its authorized agencies, arising from any act or omission complained of. See Ezomo v. A.G Bendel State (1986) 4 NWLR (Pt. 36) 448."*

The question that flows from the above judgment is "whether a claim has properly been made against the Federal Government given the circumstances of this case?" From the agreement exhibited to the writ of summons under the undefended list (otherwise unknown as EXH-GLOBAL 3) the said Agreement was executed between the Federal Ministry of Lands, Housing and Urban Development (2nd Defendant), on behalf of the Federal Government and Messrs Global Okems Impex Ltd (Claimant). The first paragraph of the said agreement is hereby reproduced below:-

> "THIS AGREEMENT is made this 19th day of DECEMBER, 2013
>
> BETWEEN

THE GOVERNMENT OF THE FEDERAL REPUBLIC OF NIGERIA herein represented by the Federal Ministry of Lands, Housing and Urban Development of the one part

AND

Messrs Global Okems Impex Limited of the other part"

A literal analysis of the above simply connotes that the said Agreement is between the Federal Government of Nigeria and Messrs Global Okems Impex Ltd (Claimant); the Federal Ministry of Lands, Housing and Urban Development is simply an agent representing the Federal Government in the transaction. The Federal Ministry of Lands, Housing and Urban Development being a creation of the Federal Government of Nigeria can be said to not only be under the control of the Federal Government but created for administrative purposes. The Federal Ministry of Lands, Housing and Urban Development is not responsible for its actions rather any action taken by an agent binds the principal which in this case is the Federal Government. The principal is solely responsible for the actions of its agent. Federal Ministry of Lands, Housing and Urban Development is a conduit pipe through which the Federal Government operates; hence, in relation to issues emanating from the contract in issue, the contract concluded by the Claimant as exhibited in the certificate of completion (otherwise known as EXH-GLOBAL 4) binds the disclosed principal which in this case is the Federal Government of Nigeria.

It is trite law where parties enter into a contract such parties are bound by the terms of their contract and where words of a contract or agreement are clear; the operative words in it should be given their simple and ordinary grammatical meaning. The Courts cannot legally read into agreement the terms in which parties have not agreed. **SEE LARMIE V. DPM AND SERVICES LTD (2005) 18 NWLR (Pt. 958) P. 88 S.L at P. 459 para E, Onnoghen JSC** in this suit held that where parties have embodied the terms of their contract in a written agreement, extrinsic evidence is not admissible to add to, vary, subtract from or contradict the terms of the written instruction.

Consequently, I am of the view and I so hold that from the operative words of the agreement, the Federal Ministry of Lands, Housing and Urban Development simply executed the contract on behalf of the Federal Government of Nigeria and it is trite that in all civil actions involving the Federal Government and its agencies the Attorney General of the Federation being the Chief Law Officer of the state is the appropriate party to sue. **SEE A.G. KANO V. A.G. FEDERATION (SUPRA)**. It is the duty of the Attorney General to represent the Federal Government or any of its agencies in actions or breach of contract of this nature. Consequently, it is my view and I so hold that the Attorney General is a necessary party to be joined in this suit.

In the circumstance the 1st Defendant/Applicant is a proper party to be sued. **See FAAN V BI-COURTNY LTD & ANOR. 2011 LPELR-19742 CA**.

It is therefore proper to sue Attorney General in an action against government or any of its agencies as in this case. The presence of Attorney General in any suit means the interest of government and its agencies are adequately taken care of and protected. It is without any doubt that Attorney General can be sued in any civil claim that can be made against government or its agencies arising from any act or omission complained of.

On the issue of the suit being statute barred the 1st Defendant/Applicant relied on the provision of Section 2 of the Public Officers Protection Act Cap 379 LFN, 2004.

Section 2(a) of Public Officers Protection Act provides that:

> *'Where any action, prosecution, or other proceeding is commenced against any person for any act done in pursuance or execution or intended execution of any Act Of Law or of any public duty or authority, or in respect of any alleged neglect or default in the execution of any such Act, Law, duty or authority, the following provisions shall have effect- [Order 47 of 1951.]*
>
> > *(a) Limitation of Action the action, prosecution, or proceeding shall not lie or be instituted unless it is commenced within three months next after the act, neglect or default complained of, or in case of a continuance of damage or injury within three months next after the ceasing thereof: Provided that if the action, prosecution or proceeding be at the instance of any person for cause arising while such person was a convict prisoner, it may be commenced within three months after the discharge of such person from prison;"*

It is trite law that in determining whether an action is caught by a limitation statute, the court looks at the writ of summons and the statement of claim alleging when the wrong was committed by the defendant, that is, when the cause of action accrued, and then locate or situate the date when the writ of summons was filed in court. If the date of filing, as endorsed on the writ, is beyond that permitted by the limitation law, then the action is statute barred. If otherwise, it is not statute barred. The authorities on this point are legion but they all say or make the same point. **See Amusan V. Obideyi (2005)14 N.W.L.R (pt.945)322; Asabosa V. Pan Ocean Oil (Nig) Ltd (2006)4 N.W.L.R (pt.971)595; Onadeko V. UBN Plc (2005)4 N.W.L.R (pt.916)440; Amede V. UBA (2008)8 N.W.L.R (pt.1090)623; Agbai V. INEC (2008)14 N.W.L.R (pt.1108)417.**

Now **Section 2(a) of the Public Officer Protection Act** without doubt restricted the time for initiation of action against a public officer to three months after the happening of the act, neglect or default complained of. Learned counsel to the 1st Defendant/Applicant has submitted that the applicant is a public officer within the meaning of the Public Officers Protection Act, and that he is a person to whom the Act applies. However the Claimant in underlining "commenced against any person" on the provision of **Section 2(a) of the Public Officer Protection Act** submitted that the Act is clear on its intention as same is provided for a public officer not Government agencies or parastatals. Public Officer is defined in the case of **ABUBAKAR & ANOR v. GOV, GOMBE STATE & ORS (2002) LPELR-11247(CA)** as;

> ".....It must be noted that the person being protected by the law under Section 2(a) thereof, is "any person" against whom, an action, prosecution, or proceeding is commenced for any act done, in pursuance or execution or intended execution of any Act or Law or of any public duty or authority or in respect of any alleged neglect or default in the execution of such Act, law, duty or authority. Section 2(a) of the Public Officers (Protection) Law does not say "any public officer". What it says is "any person". The question therefore is whether, a State Governor is "any person" within the meaning of the said law. The definition of 'any person' in the Public Officers (Protection) Law cannot be read as meaning any person in any limited sense, that is to say, as referring only to natural persons or human beings. It admits and includes artificial persons such as a corporation sole, company or anybody of persons corporate or unincorporated."

Also in **Alhaji Aliyu Ibrahim v. Judicial Service Committee, Kaduna State & Others (1998) 14 NWLR (Part 584) 1 at 36**; the Supreme Court, per Iguh, JSC stated the law as follows:-

> "It is beyond dispute that the word "person" when used in a legal parlance such as in a legislation or Statute, connotes both a 'natural person'. That is to say, a "human being" and an "artificial person" such as a corporation sole or public bodies corporate or incorporate....."

Hence from the above authorities the 1st Defendant/Applicant is a public officer.

Counsel to the 1st Defendant/Applicant has contended that the time within which the Claimant was to commence action has expired. The Claimant/Respondent on the other side however submitted to the contrary that the limitation period does not apply to contract cases.

As earlier reiterated, the Objective of the Public Officers Protection Act is to protect Public Officers in respect of acts done by them in the execution of their duty, hence the Court when faced with such a dilemma is to look at the Writ of summons and statement of claim in order to ascertain when the cause of action arose. In :- **HOLECS PROJECTS NIG LTD VS DAFESON INT'L LTD (1999) 6 NWLR (Pt.607) 490 @ 500 para. G-H per Salami JCA Held** that is determining whether there exists a reasonable cause of action, the court is to confine itself to the writ of summons and statement of claim. Hence limitation begins to run when a cause of action arises. See **LAWAL VS EJIDIKE (1997) 2 NWLR (Pt.487) Pg. 319 @ 328 para. G Per Ubaezeonu JCA.**

From the originating processes filed by the Claimant, a contract for the construction of borehole with hand pump at Iwu Village, Ofumwengbe ward and Nikrogha ward Ovia South West Local Government Area and Oluku ward North East Local Government Area, Edo South was awarded to the Claimant sometimes in September, 2013, dated 23rd December, 2013, Claimant executed contract and same was concluded with the 2nd Defendant Federal Ministry of Works and Housing issuing a "Certificate of practical completion to the Claimant dated 20/1/2014.

Claimant thereafter requested 2nd Defendant to pay for the already executed contract which Defendant failed to do so. That Claimant wrote several letters and followed up with 2nd Defendant for payment to no avail is unchallenged and uncontroverted. Claimant in his unrelenting pursuit of his money subsequently lodged a complaint to SERVICOM on 6/10/2018 (Service Compact with All Nigerians); SERVICOM is an agency established by the Federal Government targeted at providing quality services to the people by ensuring that public officers are alert to their responsibilities in providing improved, efficient, timely and transparent services to the citizenry.

SERVICOM in turn sent a letter to the Claimant stating that its complaint has been forwarded to the 2nd Defendant and awaiting reply. After awaiting SERVICOM's reply to no avail, Claimant's lawyer wrote to 2nd Defendant on 26th August, 2019 & 18/11/2019 but 2nd Defendant did not react nor reply to the letter. It is on the backdrop of the above; the Claimant instituted this suit by filing a writ dated 25th November, 2019. It is worthy to note that evidence of the Claimant from award of contract till the time of instituting this action was neither challenged nor controverted. From evidence before me, the cause of action arose in 2014 when 2nd Defendant acknowledge that Claimant had successfully executed the contract and due for payment; this is exhibited in the certificate of completion issued by the 2nd Defendant to the Claimant dated 20/01/2014 (otherwise known as EXH - GLOBAL 4); The 2nd paragraph of the certificate of completion is hereby reproduced below:-

"The works were completed to our satisfaction and taken into possession on 20/1/2014 and that the said defect liability period will end on 20/7/2014".

The last paragraph read:- *"We declare that one moiety of the retention moneys deducted under previous certificates in respect of the said works or section of is to be released".*

Although it has been held in a plethora of authorities that the Public Officer Protection Act is inapplicable to breach of contract, it is worthy to note that this is not a general principle as it depends on the nature of the contract. See **I.G.N. VS ZEBRA ENERGY (2003) I M JSC 1 @ 20D; LEDB VS SALAKO 20 NLR 159**. However, in determining the test as to the nature of which contract is caught up with the Public Officers Protection Act, this was aptly elucidated by **OGUNTADE JSC in BAKARE VS N. R. C. (2007) 17 NWLR (Pt. 1064) 606 @ 650 G-H**

"If the contract in issue is one which is a specific or special one in which it might have been expected that the parties freely agreed to the terms of the relationship between them, the provision of the law on limitation would not apply; but it would apply on matters bordering on the day to day activities of the public corporation as protected by the provision of the law".

From the above cited decision of Oguntade JSC the question that arises at this stage is "whether the nature of the contract between the Claimant and 2nd Defendant is such that borders on the statutory responsibilities of the 2nd Defendant". The 2nd Defendant is the ministry

vested with creation of Home Ownership to citizens of Nigeria and also vested with the responsibility of providing the citizenry with access to functional Nigerian roads. The Claimant on the other hand is a company registered under the CAMA who was awarded a contract to construct Borehole complete with hand pump at Iwu Village in Edo State.

In determining whether the provision of the Public Officers Protection Act applies to this contract it is worthy to note that the provision of water, whether pipe borne water or borehole is not part of the statutory duties of the ministry of works and housing. It therefore does appear that the nature of the contract between the Claimant and 2nd Defendant is special or specific contract as the parties freely entered into the agreement on the terms to create the specific relationship between them.

Consequently, since the nature of the contract between the parties does not fall under the day to day discharge of the duties and responsibilities of the 2nd Defendant as statutorily provided but rather the contract is of a special or specific nature; it is my considered view and I so hold that the provision of the Public Officers Protection Act would not apply and consequently I am of the view that the preliminary objection is devoid of merit and lacking in substance.

The Court suo motu asked parties to address the court on the juristic personality of the 2nd Defendant. The Claimant did not file any address in respect of same. However, the 1st Defendant filed their address on the

juristic personality of the 2nd Defendant dated 1st June, 2020. I will like to state that the said address did not address the issue raised by the court, rather the 1st Defendant went on to canvass their position on their preliminary objection further. Therefore no useful purpose will be served repeating same again here.

The 2nd Defendant is Federal Ministry of works and Housing. As a general rule, only natural persons, that is to say, human beings and juristic or artificial persons such as bodies corporate are competent to sue and be sued before any law court. In other words, no action can be brought by or against any party other than a natural person or persons unless such party has been given by statute expressly or impliedly or by common law either a legal personality under the name by which it sues or it is sued or a right to be sued by that name. This is because a law suit is in essence, the determination of legal rights and obligations in any given situation. Therefore, only such natural juristic persons in whom the rights and obligations can be vested are capable of being proper parties to law suits before Courts of law… see **IPBC NIGERIA LTD & ORS v. IBPC UK LTD (2014) LPELR-23086(CA).**

S. 147 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) provides thus:-

> "There shall be such offices of the Minister of the Government of
> The Federation as may be established by the president"

S. 147 of the Constitution as cited above only created the office of the Ministers of the Government of the Federation. It is necessary at this

junction, to elucidate and bring out the difference between the "office of the Minister of the Government of the Federation" and a "Ministry as an agency of the Government". Pursuant to **S. 147 of the 1999 Constitution (as amended)** the president of the Federal Republic of Nigeria is vested with the powers to nominate for appointment anybody who fits the bill into the office of the Minister of the Government of the Federation subject to confirmation by the senate. Hence the office of a Minister of the Government of the Federation otherwise called "Ministers" is a creation of statute that can sue or be sued. See **ATALOYE & ANOR VS. THE EXECUTIVE GOVERNOR OF ONDO STATE & ORS (2013) LPELR-21962 (CA)** in this case, the Appeal Court in deciding whether the commissioner for Land is a juristic personality whose office can sue and be sued held that being a creation of statute the duties and responsibilities attached to the office can only be performed by natural persons duly designated and held that the office of the commissioner for Lands can indeed sue and be sued. Hence the office of the Minster of the Government of the Federation has its own duties and functions which cannot exist in vacuum and since the said office is a creation of the Constitution, it is my view and I therefore hold that the office of the Minister of the Government of the Federation is a Juristic person which can sue and be sued.

However, a Ministry is distinct from the office of a Minister of the Government of the Federation in that a Ministry as in this case, Federal Ministry of works and Housing was created by the Federal Government for administrative convenience. The Federal Ministry of

works and Housing is not a creation of statute hence it cannot sue and be sued in its own name rather it has a disclosed principal which is the Federal Government of Nigeria and it is trite law that an agent cannot be made to suffer for the acts of a disclosed principal, hence the Federal Ministry of works and Housing not being a creation of statute cannot sue or be sued. See **F.G.N. VS. SHOBU (2013) LPELR-21457 (CA) PP. 16-18 para A-F where UWA J.C.A** Held that the Federal Ministry of Works is not a Juristic person against whom an action can lie because it has a disclosed principal which is the Federal Government and that the Federal Ministry of Works was simply created not by statute but by the Federal Government for administration convenience.

From the above, I am of the view and I therefore hold that the 2nd Defendant being the Federal Ministry of works and Housing is not a juristic person. Although it is trite law that this Court does not have the Jurisdiction to entertain a suit where the party sued is a non-juristic person but in this instant suit only one of the parties is a non-juristic person while the 1st Defendant is a juristic person who can be sued. The issue that comes to fore from this principle is "whether this Court has the Jurisdiction to entertain this suit"?. Flowing from the cases of **ANYANWOKO VS. OKOYE (2010) 5 NWLR (Pt. 188) Pg. 497 SC @ Pg 519-520 Paras H-B Per Fabiyi JSC; BELIVERS FISHERIES GREDGING NIG. LTD VS. UTB TRUSTEES LTD (2010) 6 NWLR (Pt. 1189) Pg 185 @ Pg 202 Paras D-H Per Rhodes vivoor JCA** (as he then was), misjoinder or non joinder of a party is only a procedural irregularity which can be corrected in the course of proceedings, hence

the misjoinder of necessary parties would not defeat an action otherwise properly constituted. The Court retains all necessary powers with respect to granting amendments so that necessary or correct parties are before the Court to enable the effectual adjudication to be made on the matter in dispute, hence the Court will deal with the matter in contrary regarding the rights and interest of the Plaintiff with the proper party before it and in this case, the proper party before the Court is the 1st Defendant who is The Attorney General of the Federation. In view of this I therefore strike out the name of the 2nd Defendant for want of being a juristic person.

Having disposed of this issue, I will therefore go into the merits of this suit. The guiding principles on cases placed on the Undefended List are well developed in our legal system. Three of them are worthy of mention and are applicable to this proceeding at this stage.

The first is that in Undefended List cases very much unlike other proceedings are heard on affidavit evidence, conflicts in affidavits are not to be resolved by further and better affidavit or oral evidence. Once there is conflict on an important or relevant fact, the Suit must be transferred to the General Cause List. **EBONG Vs. IKPE (2002)7 NWLR (pt.797) 504, ECOBANK PLC Vs. REV. SR CHARLES LUANGA LPELR(2010)**

The second point is that where parties have joined issues, it is not appropriate to continue to hear the case on the Undefended List. The implication of such joinder is that the defendant has succeeded in

putting up a defence on the merit by disclosing in his affidavit of defence sufficient materials that if proved, will constitute a complete defence to the action. **See USMAN VS. MUNGA (2012) LPELR 15186(C.A).**

The third point is that when a Court is considering whether or not a defendant's affidavit of defence has disclosed a defence on the merit sufficient to warrant the suit being transferred to the General Cause List and his being granted leave to defend, the Judge should as much as possible refrain from making comments on the probative value of the facts deposed to. This is because, at this stage, the Court is not called upon to evaluate evidence but to weigh the potency of the facts disclosed and consider whether if proved they could constitute a defence to the action. **USMAN VS. MUNYA (Supra).** That is why the defendant's affidavit is expected to go beyond a mere denial of the debt. It must be viable and not merely frivolous, vague, devious or craftily designed to obstruct the proceedings and delay the Judgment which the plaintiff truly deserves. See **UBA Vs. JAGARBA (2001)43 WRN 1, ACB Vs. GWAGWADA (1994) 5 NWLR (pt.342)25.**

"By the provision of **Order 35 Rule 1 of the FCT High Court Civil Procedure Rules, 2018**, a defendant who is served with a Writ of Summons on the Undefended List has five days to the date fixed for hearing, to file a Notice of Intention to defend the suit, along with an affidavit disclosing a defence on the merit. A defence on the merit, means a prima facie defence, a defence that shows that there are triable

issues that would warrant the Suit to be transferred to the general cause list for hearing, instead of summarily. It does not mean a successful defence.

In the instant case as stated earlier, the 1st Defendant filed their notice of intention to defend and affidavit disclosing defence on the merit on the 26/2/2020. The said affidavit did not controvert nor challenged the affidavit in support of the undefended list. The facts as contained in the affidavit disclosing defence on the merit are simply a summary of the grounds relied upon in the preliminary objection which this Court has struck out. The court is also aware that it is trite and settled that averments in an affidavit that are not controverted or challenged are taken as established. See **SHELL PETROLEUM DEVELOPMENT COMPANY OF NIGERIA V. CHIEF TIGBARA EDAMKUE & 5 ORS (2009) 14 NWLR (PT. 1160) PG. 1 PP. 33, PARAS D-F.** Thus the 1st Defendant affidavit titled "defence on merit" has no defence disclosed, let alone on the merit shown at all.

Having examined the Claimant's affidavit and the documentary evidence (produced above) in support of the writ of summons, the law is that a person who seeks to enforce a contract must show that all the condition precedents has been fulfilled and that he performed all the terms, which ought to have been performed by him. See the case of **FLORENCE COKER V. GABRIEL AJEHOLE (1976) 9 & 10 SC 50.**

According to Exhibit GLOBAL 3, the Government of the Federal Republic of Nigeria through the Federal Ministry of Lands, Housing &

Urban Development had awarded a contract to the Claimant for the construction of Borehole with hand pump at Iwu Village, Offumwengbe ward, and Nikrogha Ward Ovia South West LGA, and Oluku Ward North East LGA, Edo South Senatorial District, Edo State with contract No: PROC//DMGs7/2013//838/1, which said contract was finished and handed over to the Federal Ministry of Lands, Housing & Urban Development who in turn issued the Claimant with a Certificate of Practical Completion and took over the Boreholes with its hand pumps on the 20th of January, 2014. The said contract agreement is exhibited as Exhibit GLOBAL 3.

The Federal Ministry of Lands, Housing & Urban Development has failed to pay the Claimant despite repeated demands from the Claimant as evidenced in the various letters of demand written by the Claimant to the Defendant and marked Exhibit GLOBAL 6. No reason whether tenable or not was adduced for refusing/neglecting to pay the Claimant.

Claimant's claim is unchallenged and uncontroverted by the Defendant and I therefore HOLD that Claimant has successfully proved its claim.

On the 3rd prayer which is "Interest on the above stated sum calculated at 10% (ten percent) per annum, from the date payment of the sum was due according to contract agreement until the judgment sum is liquidated", first and foremost nothing is captured in the agreement but by virtue of Order 39 Rule 4 of the FCT High Court Civil Procedure Rules, 2018 the Court has power to grant post judgment interest either from the date of judgment or afterwards at a rate not exceeding 10% per

annum and this discretion lies entirely at the discretion of the trial Court after delivering of judgment and I hereby grant the claim for post judgment interest at the rate of 10% per annum from the date of this judgment until final liquidation.

Accordingly, judgment is entered in favour of the Claimant against the Defendants. IT IS HEREBY ORDERED AS FOLLOWS;

1. That Claimant are entitled to the sum of N8,435,000.00 and the Defendant shall pay to the Claimant forthwith, the sum of N8,435,000.00 (Eight Million, Four Hundred and Thirty-Five Thousand Naira) Only, being the contract sum executed by the Claimant for the construction of Borehole with Hand Pump at Iwu Village, Offumwengbe ward and Nikrogha Ward Ovia South West LGA, and Oluku Ward North East LGA, Edo South Senatorial District, Edo State, with contract No: PROC/MDGs7/ 2013/838/1. Which sum is due and owed to the Claimant by the Defendant.
2. Claimant in its third relief is claiming both pre and post judgment interest simultaneously. While award of post judgment interest is at the discretion of the Court and provided under Order 39 Rule 4 of the rules of this Court, it is trite that before a court can award pre-judgment interest the party seeking same must place before the Court credible and cogent evidence establishing the party's right to pre-judgment interest at the 10% rate claimed in this suit. Claimant in this case did not establish nor adduce any evidence establishing basis for their claim for pre-judgment interest and

same is hereby refused. As I have earlier held, the award of post-judgment interest is at the discretion of this Court and I am of the view that Claimant is entitled to post judgment interest. Consequently, Defendant is hereby ordered to pay to the Claimant 10% per annum on the judgment sum from date of judgment until final liquidation.

3. Cost in the sum of N200,000.00 is hereby awarded in favour of the Claimant.

PARTIES: Absent

APPEARANCE: No legal representation for either party.

HON. JUSTICE M. OSHO-ADEBIYI

JUDGE

30TH DAY OF SEPTEMBER, 2020