



IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDING AT MAITAMA
BEFORE HIS LORDSHIP: HON. JUSTICE H. B. YUSUF



SUIT NO: FCT/HC/CV/2551/2020

BETWEEN:

VISH INTEGRATED RESOURCES LTD.....CLAIMANT

AND

1. THE CLERK OF THE NATIONAL ASSEMBLY)
2. THE NATIONAL ASSEMBLY).....DEFENDANTS

JUDGMENT

By a Writ of Summons filed under the Undefended List on 4th September, 2020, the Claimant claims against the Defendants as follows:

- 1. A sum of N96,723,809.37 (Ninety-Six Million, Seven Hundred and Twenty-Three Thousand, Eight Hundred and Nine Naira, Thirty-Seven Kobo) only, being the unpaid balance for the six (06) Toyota Hilux (4wd Dc pss 2.7 ltrs, SHELL SPEC, 5 speed 2017 Model, Japan), supplied by the Claimant to the Defendants at the Defendants' request, under the Agreement for Supply dated 27th day of July, 2017 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 N96, 723, 809. 37 (Ninety-Six Million, Seven Hundred and Twenty-Three Thousand, Eight Hundred and Nine Naira, Thirty-Seven Kobo) only, until the unpaid sum is finally liquidated.**
- 3. The sum of N50,000,000.00 (Fifty Million Naira) only, being general damages for breach of contract for supply of Six (6) Toyota Hilux (4wd Dc pss 2.7 ltrs, SHELL SPEC, 5 speed 2017 Model, Japan) dated 27th day of July, 2017 bewttween the Claimant and the Defendants.**
- 4. Cost of this suit.**

Mr. Abdulrazaq Tunde Ajani, the Managing Director of the Claimant Company deposed to a supporting affidavit of 18-parapgraphs to which photocopies of documents marked as Exhibits "A" to "I" were annexed. There is also a 17-pages written address filed by the learned Senior Counsel for the Claimant. Upon the delivery of the Writ of Summons to the Defendants, they jointly filed on 19th November, 2020 the following processes:

- 1. Pre-Action Counseling Certificate;**
- 2. Joint Memorandum of Conditional Appearance;**
- 3. Notice of Intention to Defend;**

- 4. Affidavit of Defence; and**
- 5. Written address in support of notice of intention to defend.**

The Claimant upon the receipt of the above processes filed a further affidavit of 17-paragraphs and reply address on points of Law. These processes were all filed on 30th November, 2020.

When this matter came up for hearing on 10th December, 2020, the learned Senior Counsel to the Claimant applied to withdraw reliefs 3 and 4 thereby leaving reliefs 1 and 2 as the surviving claim in this action. The Senior Counsel in adumbration after adopting Claimant's processes submitted that there is no denial of Claimant's claim on the face of the Defendants' affidavit in support of the notice of intention to defend. He submitted that Defendants had as a matter of fact made part payment which in essence means that they have no defence to Claimant's claim. The Court was referred to the followings cases:

- 1. KWARA STATE MINISTRY OF HEALTH Vs ISA ELECTRICAL ENTERPRISES (2012) 3 NWLR (PT.1287) 258 AT 276;**
- 2. UNITED WORLD LTD INC Vs MOBILE TELECOMMS SERVICES LTD (1998) 10 NWLR (PT.568) 106 AT 116;**
- 3. AIRA RESOURCES LTD Vs NATIONAL ASSEMBLY & ANOR, SUIT NO. FCT/HC/CV/2543/2020**

**(UNREPORTED) DELIVERED BY THIS COURT ON 9TH
DECEMBER, 2020.**

In the consideration of the processes filed by parties, I need to make it abundantly clear at this earliest opportunity that Order 35 of the Rules of this Court which specifically laid down the procedure for Undefended List actions, does not envisage the presentation of any written address. It would therefore appear to me that the written address in issue constitute avoidable waste of time.

Now the facts in support of Claimant's case are that sometimes in 2017, the Defendants awarded a contract for the supply of Six Units of Toyota Hilux to the Defendants. Paragraph 1 of the letter of award annexed as Exhibit "B" states that:

**"LETTER OF AWARD OF CONTRACT FOR THE SUPPLY OF
6NOS. TOYOTA HILUX (4WD DC P SS 2.7L, SHELL SPEC,
5SPEED, 2017 MODEL, JAPAN) FOR JOINT SECURITY
OPERATIONS, HOUSE OF REPRESENTATIVES LEADERSHIP,
NATIONAL ASSEMBLY**

**I am pleased to inform you that the National Assembly
Tenders Board met on Friday, 10th March, 2017 and
granted approval to award your Company the contract for
the supply of 6nos. Toyota Hilux (4WD DC P SS 2.7ltrs, Shell
Spec, 5 speed, 2017 Model, Japan) for Joint Security**

Operation, House of Representatives, National Assembly. The contract is awarded at a Unit Price of N31,199,999.85 totaling N187,199,999.10 (One Hundred and Eighty Seven Million, One Hundred and Ninety-Nine Thousand, Nine Hundred and Ninety-Nine Naira, Ten Kobo) only.”

The award letter was followed by a formal contract agreement between parties marked as Exhibit “C”. Defendants confirmed the delivery of the vehicles by issuing a delivery note to the Claimant (Exhibit “E”) and a Store Receipt (Exhibit “F”). The Defendants also issued “Job Completion Certificate” dated 13/10/2017 (Exhibit G) in favour of the Claimant. Claimant received from the Defendants payments in piecemeal totaling N90,476,190.48 (Ninety Million, Four Hundred and Seventy-Six Thousand, One Hundred and Ninety Naira, Forty-Eight Kobo) as part-payment for the contract, thereby leaving an unpaid balance of N96,723,809.37 (Ninety-Six Million, Seven Hundred and Twenty-Three Thousand, Eight Hundred and Nine Naira, Thirty-Seven Kobo) only. Claimant through its Solicitor forwarded a Demand/Pre-action Notice dated 1st July, 2020 to the Defendants (Exhibit “H”). In response to Claimant’s demand for payment or risk Court action, the Defendants called for a meeting on the face of Exhibit “I”. However, the meeting turned out to be an

exercise in futility. Paragraph 12 of the affidavit in support of Claimant's claim state as follows:

“That the Defendants admitted the debt owed to the Claimant at the meetings held with the Deputy Clerk of the National Assembly on the 11th day of August, 2020 and 19th day of August, 2020 respectively. The Letter of invitation dated 17th July, 2020 is hereby attached and marked as ‘Exhibit I’ ”.

At the end of the day, the Defendants did not pay the outstanding debt, despite the demand for payment by the Claimant.

In this case, the Defendants have contended that the Claimant is not entitled to Judgment on the ground that its payment is not yet due and that the contract in issue was not in line with relevant procurement regulation. Defendants have also contended that parties' agreement envisaged arbitration in the event of dispute and that one of the documents relied upon by the Claimant is not genuine. Defendants also stated that the Claimant failed to serve Pre-action Notice on the Defendants before the presentation of this action.

I have considered these points and it is my view that they are merely speculative. The allegations are not supported by any documentary evidence to suggest that the award was either outrageous in value

or that the items were not supplied. The documents annexed to the Claimant's suit have put all those issues beyond doubt. For me, it is ridiculous for the Defendants who awarded the contract to the Claimant and made part-payment to the Claimant to begin to doubt the genuineness of documents, which they themselves issued in support of the contract.

The only interpretation to be placed on these contentions is that it is a desperate attempt to delay the Judgment in which the Claimant is entitled and drive him from the seat of such Judgment.

I have no doubt from what has played out in this case, is that the Defendants have no genuine defence to the claim of the Claimant, as their affidavit in support of the notice of intention to defend is speculative and evasive. The Defendants have refused to answer specific paragraphs in the averments in support of Claimant's affidavit in support of its claim.

See the case of **ATAGUBA & CO. Vs GURA (2005) S.C (PT.II) 101** where the Apex Court has this to say:

“Under the Undefended List Procedure, the Defendant's affidavit must condescend upon particulars and should as far as possible deal specifically with the Plaintiff's claim and affidavit, and state clearly and concisely what the defence is

and what facts and documents are relied on to support it. The affidavit in support of the notice of intention to defend must of necessity disclose facts which will at least throw some doubt on the case of the Plaintiff. A mere general denial of the Plaintiff's claim and affidavit is devoid of any evidential value and as such would not have disclosed any defence which will at least throw some doubt on the Plaintiff's claim."

See also:

AGRO MILLERS LIMITED Vs CONTINENTAL MERCHANT BANK (NIGERIA) PLC (1997) 10 NWLR (PT. 525) 469.

Further to the above exposition of the Law, the Supreme Court in **AKAHALL & SON LTD Vs N.D.I.C (2017) LPELR - 41984 (SC)** (per Nweze, JSC) explained the rationale behind the Undefended List Procedure as follows:

"...Such Rules are thus designed to relieve the Courts of the rigour of pleadings and burden of hearing tedious evidence on sham defences mounted by Defendants who are just determined to dribble and cheat Plaintiffs out of reliefs they are normally entitled to because the case is patently clear and unassailable."

His Lordship went further:

“In such a case, it would be inexpedient to allow a Defendant to defend for the mere purpose of delay.”

What the Defendants have put forward in this case is a sham defence, which does not avail them. In **G.M.O NWORAH & SONS CO. LTD Vs AFAM AKPUTA (2010) 9 NWLR (PT.1200) 443** Ogbuagu, JSC restated the law as follows:

“The Court can refuse to let in a Defendant to defend a suit, when once it is satisfied that the Defendant's affidavit, does not disclose a good defence on the merit, or where the ground of defence, is not clear and reasonable or it is flimsy or vague. It must be stressed that the object in the Un defended List Procedure, is to prevent unnecessary delay in proper cases or where the claim of the Plaintiff from the affidavit evidence, is unassailable.”

Accordingly, by Order 35(4) of the Rules of this Court, the Court does not have an option than to proceed and enter Judgment for the Claimant on the first leg of its claim which is for the sum of N96,723,809.37 (Ninety-Six Million, Seven Hundred and Twenty-Three Thousand, Eight Hundred and Nine Naira, Thirty-Seven Kobo)

only, being the unpaid balance for the supply of Six (06) Unit of Toyota Hilux to the Defendants.

The second and last claim is for 10 percent Post Judgment interest. The power to grant this head of claim is statutory, as it is donated by Order 39(4) of the Rules of this Court and it is designed for the benefit of a victorious party. Evidence need not be given for it to be awarded. However, the Court has a discretion to decide whether or not to award interest on Judgment debt. I have considered the circumstances of this case and the commercial nature of the transaction between parties, and I form the view that the Claimant is entitled to Post Judgment interest as prayed. Accordingly, I award 5% Post-Judgment interest on the Judgment sum.

SIGNED

Hon. Justice H. B. Yusuf

(Presiding Judge)

16/12/2020