IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI

THIS MONDAY, THE 27TH DAY OF MARCH, 2023.

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: CV/11530/2022

BETWEEN

1. PEAK BAMK AND COMPANY LIMITED
2. MR. KOLADE TAIWO ..... **PLAINTIFFS**

AND

1. NIGERIA CUSTOMS SERVICE BOARD
2. THE COMPTROLLER GENERAL OF CUSTOMS
3. THE HONOURABLE ATTORNEY GENERAL OF THE FEDERATION AND MINISTER OF JUSTICE ..... **DEFENDANTS**

JUDGMENT

The Plaintiffs claims as endorsed on the Writ of Summons and Statement of Claim filed on 25th January, 2022 are as follows:

a. **A DECLARATION that the seizure, detention and subsequent auction/sale of the Plaintiffs' Mack Truck with Registration No:XY249 MUS without any Notice by the 1st and 2nd Defendants was fraudulent, unlawful, unconstitutional, null and void.**

b. **A DECLARATION that the fraudulent auction/sale of the Plaintiffs' trailer truck Mack CH500 automatic manual engine injector with registration No: XY 249 MUS by the 1st and 2nd Defendants after issuance of approval to release the said trailer truck on the 10th November, 2020 by**

the 2nd Defendant is unlawful, null and void and said auction/sale by the 1st and 2nd Defendant be set aside.

c. **AN ORDER of this Honourable Court directing the 1st and 2nd Defendants to produce and/or replace the Plaintiffs' trailer truck Mack CH500 automatic manual engine injector with registration number: XY 249 MUS unconditionally.**

IN THE ALTERNATIVE:

1. **AN ORDER of this Honourable Court directing the 1st and 2nd Defendants to replace the same value of the Plaintiffs trailer truck mack CH500 automatic manual engine injector with trailer carriage attachment worth Fifty Million Naira (N50,000,000.00) being the current market value.**

2. **AN ORDER of this Honourable Court directing the 1st and 2nd Defendants to jointly and severally pay the Plaintiffs the sum of Five Hundred Million Naira (500,000,000.00) as exemplary, aggravated and general damages for the untold hardship metted on the Plaintiffs from 15th November, 2017 till date.**

3. **The sum of Five Million Naira (N5,000,000.00) as cost of action.**

The processes on the Record were duly served on all Defendants. Both 1st and 2nd Defendants and 3rd Defendant acknowledged receipt of the originating processes on 10th February, 2022.

Now it is important to state that the Plaintiffs commenced this action against the Defendants at the **Federal High Court, Abuja**. The learned trial judge, Hon. Justice Z.B. Abubakar at the court determined that the case was not one within the jurisdictional sphere of the court and accordingly transferred the matter to the High Court of the F.C.T and it was then assigned to my court by the Honourable, the Chief Judge.

On receipt of the case file, hearing notices were then served on all Defendants on 17th June, 2022 but they never appeared or filed any defence joining issues with Plaintiffs. Indeed a perusal of the accord show that even at the Federal High Court, the Defendants never filed a defence.

Hearing then commenced. In proof of their case, the Plaintiffs called only one witness. **Taiwo Kolade**, the 2nd Claimant testified as **PW1.** He deposed to a witness statement dated 26th January, 2022 which he adopted at the hearing. He tendered in evidence the following documents:

1. The proof of ownership certificate; Lagos State Government Treasury Receipt; Lagos State Government Allocation of Registration number to new vehicle; particulars of motor vehicle form and document titled information required for clearance of used vehicle imported into Nigeria were all admitted in evidence as **Exhibits P1(a-e).**

2. Letter by the law firm of G.I.I Ekunwe, Esq to the 1st and 2nd Defendants dated 22nd November, 2017 which was acknowledged or received on 30th November, 2017 was admitted as **Exhibit P2.**
3. The response by the 2nd Defendant dated 8th January, 2018 was admitted as **Exhibit P3.**

4. Letter by 1st and 2nd Defendants ordering for the release of Plaintiffs vehicle or truck dated 10th November, 2020 was admitted as **Exhibit P4.**

5. Letter for demand for immediate release of Plaintiffs' vehicle written by the law firm of U.J Umoru & Co dated 28th September, 2021 was admitted as **Exhibit P5.**

PW1 then urged that the court grant the Reliefs prayed for. The Plaintiffs' counsel then prayed the court to in the interest of justice grant an adjournment to enable the Defendants file a defence and exercise their right to cross-examine PW1 if they were interested. The matter was then adjourned to 22nd November, 2022 and hearing notices were ordered to be served; but despite service of the hearing notices, the Defendants did not appear and upon application, their right to cross-

examine PW1 and to defend the action was foreclosed and final addresses ordered and matter adjoined to 15th December, 2022 for adoption.

Now it is interesting to note that when the matter came up for adoption of addresses on **15th December, 2022**, one **J.A Dada of Counsel** appeared for 1st and 2nd Defendants and pleaded with the Court for a short adjournment on the ground, according to him, that they only became aware of the case after the final address was served on them; that they have even now prepared their defence and were just about filing same. The court again graciously bent over backwards and adjourned the case at their instance to enable them file a defence so that the case can be heard on the merits and the matter was then adjourned to **19th January, 2023** for continuation of hearing.

It is strange to note that Counsel who said that their defence was ready and about to be filed on the last adjourned date never filed the said process or defence and indeed did not appear in court again. They did not also file any response to the final address which he acknowledged was also served on them. It is really difficult to understand how a counsel qua advocate would behave in such inappropriate manner. If a client does not have a defence, why not say no instead of actively or overtly playing an ignorable role of trying to deliberately subvert the process? Counsel must not make applications as done here aimed only as a reprehensible ploy to delay indefinitely the speedy conclusion and determination of a case. Counsel should not allow parties to use them to employ dilatory tactics to stall the wheels of justice. Counsel should understand that they are suppose to be honourable people and held to very high standards. Counsel here did not behave or conduct himself in a manner befitting of a member of the noble profession. I say no more. Indeed the least said about the conduct of this counsel, the better.

Now I recognise that fair hearing is a fundamental element of any trial process and it has some key attributes; these include that the court shall hear both sides of the divide on all material issues and also give equal treatment, opportunity and consideration to parties. See **Usani V Duke (2004) 7 N.W.L.R (pt.871) 16; Eshenake V Gbinijie (2006) 1 N.W.L.R (pt.961) 228.**

It must however be noted that notwithstanding the primacy of the right of fair hearing in any well conducted proceedings, it is however a right that must be

circumscribed within proper limits and not allowed to run wild. No party has till eternity to present or defend any action. See **London Borough of Hounslow V Twickenham Garden Dev. Ltd (1970) 3 All ER 326 at 343.**

The defendants have been given every opportunity to respond to the allegations of plaintiffs and they have exercised their right not to respond. Nobody begrudges this election. It is only apposite to reiterate that nobody is under any obligation to respond to any court process if he so chooses. I leave it at that.

The court accordingly proceeded with the adoption of final address. In the final address of Plaintiff, three(3) issues were raised as arising for determination:

1. **Whether from the pleadings and totality of evidence before this Honourable Court, the Plaintiffs have proved their case to entitle them(sic) judgment.**

2. **Whether failure of the 1st and 2nd Defendants to release the Plaintiffs trailer truck is unlawful and a grave violation of the Plaintiffs right**

3. **Whether or not the Plaintiffs are entitled to all the reliefs sought.**

I have set out above the issues as raised by the Plaintiffs. In the court's considered opinion, the above issues can conveniently be accommodated under one issue as formulated by court hereunder:

Whether the Plaintiffs have established their case against the Defendants in the entire circumstances and therefore entitled to all or any of the Reliefs sought?

The above issue formulated by court has brought out with sufficient clarity the pith of the contest which shall shortly be resolved by court. The only point to note is that the issue thus raised by court is not raised as an alternative to that formulated by the Plaintiffs. Indeed the 3 issues distilled by Plaintiff can conveniently and be cumulatively taken under the single issue raised by court. See **Sanusi V. Amoyegun (1992)4 N.W.L.R (pt.237)527 at 550**

It is therefore on the basis of this issue raised by Court that I would now proceed to consider the evidence and submissions of counsel.

ISSUE ONE

Whether the Plaintiffs have established their case against the Defendants in the entire circumstances and therefore entitled to all or any of the Reliefs sought?

I had at the beginning of this judgment stated the claims of Plaintiffs. Similarly I had also stated that the defendants despite the service of the originating court processes did not file any defence nor adduce evidence in challenge of the evidence adduced by plaintiffs and the trial court is in such circumstances entitled to or is at liberty to act on the plaintiff's unchallenged evidence. See **Tanarewa (Nig) Ltd V Arzai (2005) 4 N.W.L.R (pt.919) 593 at 636 C-F; Omoregbe V Lawani (1980) 3-7 SC 108; Agagu V Dawodu (1990) N.W.L.R (pt.160) 169 at 170.**

Notwithstanding the above general principle, the court is however still under a duty to examine the established facts of the case and then see whether it entitles the claimant to the relief(s) he seeks. I find support for this in the case of **Nnamdi Azikwe University B Nwafor (1999) 1 N.W.L.R (pt.585) 116 at 140-141** where the Court of Appeal per Salami J.C.A. (as he then was) expounded the point thus:

"The plaintiff in a case is to succeed on the strength of his own case and not on the weakness of the case of the defendant or failure or default to call or produce evidence… The mere fact that a case is not defended does not entitle the trial court to overlook the need to ascertain or prove the facts adduced before it to establish or prove the claim or not. In this vein, a trial court is at no time relieved of the burden of ensuring that the evidence adduced in support of a case sustains it irrespective of the posture of the defendant…."

A logical corollary that follows the above instructive dictum is the attitude of court to the issue of burden of proof where it is not satisfactorily discharged by the party upon which the burden lies. The Supreme Court in **Duru V Nwosu (1989) 4 NWLR (pt.113) 24** stated thus:

"… a trial court ought always to start by considering the evidence led by the plaintiff to see whether he had led evidence on the material issue he needs to prove. If he has not so led evidence or if the evidence led by him is so patently unsatisfactory, then he had not made out what is usually referred to as a prima-facie case, in which case the trial judge does not have to consider the case of the defendant at all."

From the above, the point appears sufficiently made that the burden of proof lies on the plaintiffs to establish their case on a balance of probability by providing credible evidence to sustain the claim irrespective of the presence and/or absence of the defendants. See **Agu V Nnadi (1999) 2 N.W.L.R (pt.589) 131 at 142.**

From the unchallenged pleadings of Plaintiffs which has defined or streamlined precisely the issues in dispute, the facts of this case are largely not in dispute. I will highlight the essence of the case made out from the unchallenged oral and documentary evidence tendered by the Plaintiffs. The case of Plaintiff is simply that it is the owner of a trailer truck mack CH500 which it uses for hire for consideration. **Exhibits P1(a-e)** clearly situates their ownership of this truck.

Sometimes around 15th November, 2017, the truck was arrested and confiscated by officers of 1st Defendant attached to the Ikeja Zone A Command on allegation that it was involved in conveying **"bags of foreign rice considered as contraband".** PW1 stated that he went to the command to inform them of their non involvement in the allegation as they only hire out the trucks and do not oversee what the trucks carry and he was told that the matter will be thoroughly investigated.

The Plaintiffs however instructed their counsel who wrote a letter of appeal for the release of the truck vide **Exhibit P2** particularly since the contraband goods has been confisticated and offloaded from the truck wherein the Defendants by **Exhibit P3** replied requesting for an interview with their Controller investigations on 4th January, 2018 at the customs headquarters, Abuja by 10:00am and they were requested to come along with them all relevant documents to buttress their **"claims on the matter"**.

PW1 stated that he attended the meeting and explained that he only uses his truck for legitimate business and that he does not oversee or supervise the content of every carriage on their trailer truck once it is hired out.

PW1 stated that at the conclusion of the investigations which look some time, the 2nd Defendant vide **Exhibit P4** dated 10th November, 2020 approved the release of the truck.

The PW1 said he then went to the 2nd Defendants office in Ikeja to retrieve the truck and he was told to come back, that they were yet to receive the signal for the release of the truck. Despite several visits to the station, Plaintiffs' truck was not released and in one of his follow-up visits, PW2 said he was informed that his truck has been auctioned and that he needs to apply for a replacement of same.

PW1 further stated that an application for replacement was made by the comptroller, Federal Operations Unit Zone A, though no copy was tendered in evidence and despite several visits to Lagos and Abuja at considerable expense, there was no positive response by 1st and 2nd Defendants which then compelled them to formally brief another solicitor who wrote a letter of demand vide **Exhibit P5.** The 1st and 2nd Defendants received this letter since 29th September, 2021 and they are yet to deliver the truck to Plaintiff nearly three years after the order for the release vide **Exhibit P4.**

The key elements or facts of this case were not denied, impugned or challenged. The law is that evidence that is neither challenged nor debunked remains good and credible evidence which should be relied upon by the Judge, who would in turn ascribe probative value to it.

Indeed the law is certain that where evidence before a trial court is unchallenged and not contradicted by any other admissible evidence, it is the duty of that court to accept and act on it even if it has been minimal evidence as it constitutes sufficient proof of party's claim. See **Adeleke V. Iyanda (2001)13 N.W.L.R (pt.729)1 at 22-23 A-C; Kopek Construction Ltd V. Ekisola (2010)3 N.W.L.R (pt.1182)618 at 663 C-D and Insurance Brokers of Nig V. ATMN (1996)8 N.W.L.R (pt.406)316 at 326G.**

I accordingly find on the basis of the unchallenged evidence, oral and documentary, that the following facts stands established as follows:

1. **That the trailer truck mack CH500 with Registration No: XY249 Mus belongs to 1st Claimant.**

2. **The truck was involved in conveying of bags of foreign rice which is considered to be contraband.**

3. **That the driver of the truck together with the truck were arrested and detained by men of 1st Defendant stationed at Ikeja. The contraband goods were also confisticated. The driver was subsequently released.**

4. **The Plaintiffs informed the custom authorities of their non involvement in the act of conveying of the contraband.**

5. **That they only hire out the trucks but do not oversee or supervise the content of every carriage on the trailer after handing over to those companies who hire the truck.**

6. **That the Plaintiffs appealed and prayed for the release of the truck and after a thorough investigations, the 1st Defendant approved the release of the truck on 10th November, 2020.**

7. **It is now more than two years and the 1st and 2nd Defendants have not released the said truck despite the several visits to the offices of 1st and 2nd Defendants by PW1 and even after the letter by their counsel.**

As a logical corollary and from the above, it is clear that the arrest of the truck clearly was because of its involvement in the conveying of foreign rice considered as **"contraband rice".** The Plaintiffs concede that they don't have direct involvement in the alleged act of conveying contraband rice since they only hire out the truck and have no control over what they carry but this does not mean that the truck was not used in conveying **"contraband rice".**

In effect, the Claimants in the pleadings and evidence did not deny the use of their truck for this apparently illegal activity and this then explains the appeal vide **Exhibit P2** for the release of the truck. The letter is instructive and I reproduce it as follows:

"APPEAL FOR THE RELEASE OF TRUCK WITH REG NO: XY249 MUS

We are solicitors to Mr. Kolade Taiwo of No. 14, Dayo Adegunwa Street, Off Obode Street, Ijaye, Lagos State (hereinafter referred t as "our client") and on his instruction we write this letter.

1. **Our client told us that he uses the said truck for commercial transportation.**

2. **Our client further told us that he instructed his driver not to use the truck to convey illegal goods.**

3. **That the driver without our client's knowledge and consent used the said truck to carry rice and he was arrested by the CGC Task Force on the 15th of November, 2017 at Sango Toll Gate.**

4. **That all effort to get the truck release at the Federal Operations Unit, Ikeja proved abortive.**

5. **We however use this medium to appeal to you sir, to temper justice with mercy and use your good offices to order the release of the said truck as it is our client's only means of livelihood.**

6. **We shall be grateful if our appeal is favourably considered.**

7. **We attached the vehicle particulars for your perusal.**

8. **Meanwhile, accept the assurances of our professional regards.**

Yours faithfully
For: Ekunwe Chambers

signed

George Algbe Esq."

The above letter written on behalf of Claimants is clear with respect of the use of the truck to convey **"illegal goods"**

The point of value out of this narrative is that the arrest and detention of the truck at the initial stage cannot really be faulted under any basis. An arrest and detention properly made by the customs in the legitimate exercise of their duty and on grounds of reasonable suspicious of having committed an offence cannot really be legally faulted or be categorised as unconstitutional. See **Igwe Gilbert Ononuju V. I.G.P & Ors (2014)LPELR 24322 (CA) 2526 C-B**

Now on the evidence, when Claimants made the above appeal, investigations were carried out before the order for release vide **Exhibit P4** was made on 10th November 2020. Again the investigations carried out which heard from Claimants vide **Exhibit P3** cannot again be faulted and this culminated in the order for release.

The real problem in the case and that is the crux of this dispute arose from the failure to comply with the **directive** for the release of the truck. There really appears to be no basis, factual or legal for the continued confiscation of the truck of Claimants after **Exhibit P4** on 10th November, 2020. Under the circumstances, the continued confiscation of the said truck after the said letter was wholly wrongful and unconstitutional. See **Section 43 and 44 of the 1999 Constitution.** For reasons that are not clear, some officials of the same 1st Defendant have refused to comply with the directives of their superiors and this is strange. It may be relevant to quote from the said **Exhibit P4** from the 1st Defendant thus:

"RE-APPEAL FOR THE RELEASE OF TRUCK WITH REG NO: XY249 MUS

1. **Following the conclusion of investigation on an appeal by Mr. Kolade Taiwo through his lawyer, Gorge Aigbe Esq., to the CGC, on 17th November, 2017 for the release of truck Reg. No. XY249 MUS.**

2. **The CGC has graciously approved that the Mack Truck with registration No. XY249 MUS, be released to the owner.**

3. **Above for your information and compliance, please.**

Signed
A.A SHITTU
A.g Comptroller (Investigation)
For: Assistant Comptroller-General (E,I &I)

The above letter is clear and written on behalf of a very senior officer of 1st Defendant, an Assistant Comptroller General who conveyed that after the conclusion of investigation, the **"C.G.C. has graciously approved that the mack truck with registration No: XY249 MUS be released to the owner."** The letter ended with a clear directive for **"compliance".**

The 1st and 2nd Defendants have at no time impugned or challenged the contents of this letter. Indeed it is their letter. It follows therefore that the Plaintiffs have an immediate right to the possession of the truck from the date of the order for release and here despite repeated demands, the 1st and 2nd Defendants have failed to deliver up the truck without any lawful excuse. The conduct of certain officials of 1st Defendant who have held on to this truck is inexcusable, illegal and unacceptable. It cannot be right or fair that the 1st and 2nd Defendants have held on this truck even after they had concluded their investigations in 2020 and the vehicle ordered to be released thereby denying Claimants legitimate use of the truck to earn a living. The Claimants without any shadow of doubt are entitled to the immediate release and return of the **truck**.

Now I note that in both the **pleadings of Claimants** and the **evidence of PW1**, he asserted that on one of his visits to the 1st Defendant's office at Ikeja, he was

"reliably" informed by **"one officer that the said truck had been auctioned and that he should apply for a replacement."** Unfortunately no where in the pleadings or evidence was the name of this officer mentioned and he was not called to give evidence. This piece of evidence on the alleged auctioning of the truck which PW1 said he was informed by an unidentified source is therefore clearly inadmissible. See **Section 37-38 of the Evidence Act.**

It is settled law that a piece of evidence is hearsay if it is evidence of a statement made by a witness who is himself not called to testify as in this case. It presupposes that if any fact is to be proved against anyone, it ought to be proved in his presence by the testimony of a witness sworn to speak the truth and testifying to facts within his personal knowledge, subject to recognised exceptions. See **Utteh V. State (1992)2 N.W.L.R (pt.223)257 at 273 E-F**

To the clear extent that Claimants are relying on this piece of information to prove the truth of the auctioning of the truck, it is inadmissible. See **Nwobosi V. ACB Ltd (1995)6 N.W.L.R (pt.404)658 at 679F-G**

To further undermine this assertion of auctioning of the truck, no iota of evidence was supplied by Claimants to support the auctioning. If the truck was auctioned, when was it auctioned? Who conducted the auction and where? And who was it auctioned to and at what price or value? etc. In the absence of evidence to situate on support the averments related to the auctioning of the truck, the averments will be deemed abandoned. Similarly the **Claimants also pleaded** that following the alleged auctioning, a comptroller, Federal Operation Unit Zone A Ikeja wrote the Headquarters for a replacement of the truck on 21st June, 2021 but here again, neither the officer was produced or the letter supporting or situating that he wrote to headquarters that the truck be replaced. Again this piece of evidence is hearsay and inadmissible.

The point must thus be underscored that facts deposed to in pleadings must be substantiated and proved by evidence, in the absence of which the averments are deemed abandoned. See **Aregbesola V. Oyinlola (2011)9 N.W.L.R (pt.1253)458 at 594 A-B.** I note that **counsel** also in his **address** made submissions related to the auctioning of the truck. Here too, in the absence of any evidence to situate the auctioning, the address on it goes to no issue and will be discountenanced. An

address, no matter how well articulated is no substitute for pleadings and or evidence that must be demonstrated and proved at trial. This is trite principle.

The above findings then provides both **factual** and **legal** template or basis to determine whether the **Reliefs** sought are availing.

It is however important that I immediately make some prefatory and important points in view of the way and manner the Reliefs in the extant case were framed which appear to me not to have captured the proper Reliefs that ought to have been claimed in the context of the dynamics of the facts in this case.

Firstly, I note that counsel couched the Reliefs in the alternative and this has implications particularly with respect to this case as I will soon show. It is settled principle in civil jurisprudence that where a claim is in the alternative, the trial court will first of all consider whether the principal or main claim ought to have succeeded. It is only after the court has found that it could not for any reason grant the principal claim that it would consider the alternative claim. See **Newbreed Organisation Ltd V. Erhomosele (2006)5 N.W.L.R (pt.974)499 at 544 D-C.**

It is also elementary and settled law that a court will not normally grant any relief to a party which has not been specifically claimed or to award a Claimant more than what he has claimed. The rationale for the principle is not farfetched. A court is not a Charitable Institution doling out Reliefs which have not been claimed. See **Fatunbi V. Olantoye (2004)12 N.W.L.R (pt.881)229 at Ilona V. Idakwo (2003)11 N.W.L.R (pt.830)53 at 86 F-G; 236 D-E.**

It is also to be noted that two out of the **three principal Reliefs** are declaratory Reliefs. It is basic that in claims relating to declaratory Reliefs, it is for the Plaintiff to establish his claim on the strength of his claim and not to rely on the weakness of the defence, if any, or failure to file a defence. Declaratory Reliefs are also not even granted on admissions by the Defendant where the Plaintiff fails to establish his entitlement to the declarations by his evidence. See **A.G River State V. A.G Bayelsa State (2013)3 N.W.L.R (pt.1340)123; Nwokedu V. Okonu (2010)3 N.W.L.R (pt.1181)362.**

Having stated these principles, let me now go back to the Reliefs.

Relief (a) seeks **A DECLARATION that the seizure, detention and subsequent auction/sale of the Plaintiffs' Mack Truck with Registration No:XY249 MUS without any Notice by the 1st and 2nd Defendants was fraudulent, unlawful, unconstitutional, null and void.**

Now on the **evidence,** I had found that the initial arrest and detention of the truck was due to its involvement in an illegal activity of conveying foreign rice which is said to be contraband. The initial arrest and detention of the truck therefore cannot be legally faulted as demonstrated. On the evidence, after the arrest, the 1st and 2nd Defendants carried out an investigation which the Claimants participated in and made representations. The carrying out of these investigations which clearly involved the continued seizure of the truck cannot also be faulted.

This Relief (a) then **conjunctively** prayed that the seizure, deprivation, detention and subsequent auction/sale of the truck was fraudulent, unlawful, unconstitutional, null and void. The seizure in this case to the extent that it was not situated within the period after the order for the release has not been established to be unlawful or unconstitutional. The link of the seizure to **"and subsequent auction/sale...without notice"** clearly undermines this Relief because there is absolutely no evidence of any **auction or sale** of the vehicle as earlier demonstrated at length. There is nothing in either the pleadings or evidence to situate any auction or sale, to whom, when it was conducted, the price or indeed the parameters of the sale or auction.

The Plaintiffs contend that the **auction or sale without notice** was **fraudulent** and unlawful but it is settled principle that fraud must be distinctly alleged with all necessary particulars pleaded and distinctly proved. Fraud cannot be raised without pleadings as done here. See **Durbar Hotel Ltd V. Kasaba Ltd Ltd (2017)2 N.W.L.R (pt.1549); Ojibah V. Ojibah (1991)5 N.W.L.R (pt.191)296.**

An allegation of fraud is analogous to imputation of crime and ought to be proved beyond reasonable doubt. Where a party fails to plead the particulars of fraud or to prove the allegation or to lead evidence in support, the pleading is deemed abandoned. **Dubar Hotel Ltd V. Kasaba Ltd (supra); Yakubu V. Jauroyel (2014)11 N.W.L.R (2017)(pt.1418)205; Olufumse V. Falana (1990)3 N.W.L.R (pt.136)1.**

At different levels, Relief (a) is compromised. There is absolutely nothing to situate that there was an auction or sale without notice which was **"fraudulent, unlawful, unconstitutional, null and void."** Being a declaratory Relief which has to be creditably established with evidence, the absence of evidence to support it meant that it is not availing. **Relief (a)** fails.

Relief (b) seeks **A DECLARATION that the fraudulent auction/sale of the Plaintiffs' trailer truck Mack CH500 automatic manual engine injector with registration No: XY 249 MUS by the 1st and 2nd Defendants after issuance of approval to release the said trailer truck on the 10th November, 2020 by the 2nd Defendant is unlawful, null and void and said auction/sale by the 1st and 2nd Defendant be set aside.**

Flowing from **Relief (a),** this Relief really has no factual and legal basis. At the risk of sounding prolix, there is nothing in the pleadings or evidence to situate any fraudulent auction or sale of Plaintiff struck after the order for release of the truck. If there is no evidence to support any auction or sale, it logically follows that there is nothing to really declare as fraudulent, null and void and equally nothing to set aside. **Relief (b)** equally fails.

Relief (c) seeks **AN ORDER of this Honourable Court directing the 1st and 2nd Defendants to produce and/or replace the Plaintiffs' trailer truck Mack CH500 automatic manual engine injector with registration number: XY 249 MUS unconditionally.**

I am in no doubt that following the undoubted and unchallenged facts in this case that this Relief should be availing following the commitments made by 1st and 2nd Defendants under the clear remit of **Exhibit P4.** The clear mandate of **Exhibit P4** is that **"the C.G.C has graciously approved that the mack truck with registration No:XY 249 Mus be released to the owner."**

The directive was made as far back as **10th November, 2020**. There is therefore no further legal basis to keep hold of the truck. It cannot be right or fair that this clear and express directive of the **C.G.C** has not been complied with nearly three years after the directive. It is only reasonable to add that if something untoward or inappropriate has happened to the truck under the watch and control of 1st and 2nd

Defendants, then is it only reasonable that they replace the truck with something similar and deliver same forthwith to Claimants. **Relief (c)** is availing.

Now having granted **Relief (c)** of the principal claim and indeed Relief (c) appears to be the main claim in the context of the facts of this case, it is clear that the court in law cannot properly now consider the **alternative claim**. As already alluded to, a court will only proceed to make an order in respect of an alternative claim where the main claim did not succeed. However, where a court grants the main claim of a successful party as in this case, there will be no need to consider any alternative claim. See **Goldmark (Nig) Ltd V. Ibafon Co Ltd (2012)10 N.W.L.R (pt.1308)29**

In the circumstances, Relief (1) and (2) comprising the alternative Reliefs legally have no leg to stand on. In the event, I may even be wrong, let me out of abundance of caution situate whether the Reliefs are availing.

Relief (1) of the alternative Reliefs seek for **AN ORDER of this Honourable Court directing the 1st and 2nd Defendants to replace the same value of the Plaintiffs trailer truck mack CH500 automatic manual engine injector with trailer carriage attachment worth Fifty Million Naira (N50,000,000.00) being the current market value.**

Relief (1) is essentially a repetition of **Relief (c)** of the main claim only that a trailer carriage attachment was added to form part of the truck and the current market value of the truck was added. Having granted Relief (c), Relief (1) cannot be granted. The key demand under Relief (c) is "**to produce and or replace"** which the court has duly granted. If that is the case, how can Claimants again pray for replacement under another Relief? I just wonder.

A carriage attachment and an amount or current market value may have been added to Relief (1) to subtly differentiate it from Relief (c) but this change did not alter the real essence or character of both Reliefs. Most importantly Relief (1) is not praying for the value of the truck but a replacement of the truck. In real terms there is no difference between Reliefs (c) and (1) of the alternative claim.

In addition there is even nothing **in evidence** to situate, support or show creditably what the **current value of similar truck** is and the court cannot speculate or

engage in any exercise of guess work to the clear extant that there was no demonstration of the current value in open court. No value or valuation report was presented by Claimants to situate the current value of the truck as claimed. Relief (1) is equally not availing.

The final alternative Relief (2) claimed by Claimants is for **"AN ORDER of court directing the 1st and 2nd Defendants to jointly and severally pay the Plaintiffs the sum of Five Hundred Million Naira (500,000,000.00) as exemplary, aggravated and general damages for the untold hardship metted on the Plaintiffs from 15th November, 2017 till date.**

The above claim of exemplary, aggravated and general damages is for untold hardship since **15th November, 2017** till date.

Now as demonstrated already and from the evidence, **the arrest and detention of the truck on 15th November, 2017** was conceded by Claimants as due to the involvement of the truck in an **illegal activity of conveying foreign rice which is a contraband**. The Plaintiffs may understandably not have directly participated in the illicit activity of conveying the contraband but their truck was involved which thus explains the detention. The letter of appeal by their Counsel vide **Exhibit P2** recognised that the truck was used as such.

As stated earlier, the arrest and detention of the truck cannot be faulted. There was then the period of investigations which the Claimants have not contested or impugned in this case, so we can't say much on that.

Now on the evidence, by **Exhibit P4,** the truck was ordered to be released on **10th November, 2020.** If there should be any computation for claim of damages, it certainly cannot be from **15th November, 2017** as claimed in Relief (2) above which shows or situates that the circumstances surrounding the arrest and detention was lawful. The claim for damages ought to have been from 20th November, 2020 when the directive for release was made and which was not compiled with and not otherwise.

Since the Relief was not formulated as such or specifically claimed, the court cannot grant what has not been claimed or asked for as already indicated as the court is not a charitable organisation and the judge who personifies it is not a father

Christmas. See **Stowe V. Benstowe (2012)9 N.WL.R (pt.1306)450; Ajayi V. Texaco (Nig)Ltd (1987)3 N.W.L.R (pt. 62)577; Odulaja V. Wema Bank Ltd (2015)N.W.L.R (pt. 1464)299.** Again, if I am wrong here, let me consider where Relief 2 would have been availing.

Now on the evidence, I am not sure that exemplary and aggravated damages claim against 1st and 2nd Defendants would have been available.

In law exemplary, punitive, vindictive or aggravated damages when claimed are usually awarded whenever the Defendants conduct is sufficiently outrageous to merit punishment as where for instance, it discloses malice, fraud, cruelty, insolence or flagrant disregard of the law. See **University of Calabar V. Oji (2002)3 N.W.L.R (pt.418); Elivatun (Nig) Ltd V. Mbadiwe (1986)1 N..WL.R (pt.14)47 and Odiba V. Azege (1998)9 N.W.L.R (pt.566)370.**

On the evidence, the 1st and 2nd Defendants did the needful in arresting the truck involved in illicit activities and carrying out necessary investigations which culminated in the order for release. I am not sure exemplary or punitive damages should be awarded here where the authorities gave clear instructions for the release of the truck but down the line, the release was not effected. As also found there is no evidence on record to show that the truck was auctioned or sold and whether it was authorised by them. The actions of the 1st and 2nd Defendants situates the officers at the upper echelon of customs acted with propriety in the circumstances. I cannot situate malice, cruelty, fraud or flagrant disregard for the law in their actions. In the circumstances **exemplary** or **aggravated damages** would not be availing, that is even if it had been claimed properly.

I would however have awarded general damages in the circumstances. General damages are losses which flow naturally from the Defendants act. Its quantum therefore need not be pleaded or proved as it is generally presumed by law. In according general damages, the court would be guided by the opinion and judgment of a reasonable man. See **Taylor V. Ogheneovo (2012)12 N.W.L.R (pt.1316)46; Garba V. Kur (2003)11 N.W.L.R (pt.831)280.**

In this case, as I have found that the truck was used by Claimants for hire and for consideration. It is not in dispute that since the order for release of the truck in November, 2020, the truck has not been released for no apparent reason(s). The

Claimants have thus been denied a veritable source of earning legitimate means of livelihood since 2020 and that cannot be right or fair. On the evidence even after the Receipt of the letter of demand for release of the Truck by 2nd Defendant on 29th September, 2021 vide **Exhibit P5** written by Plaintiffs' counsel, the 1st and 2nd Defendants did not respond. If the Comptroller General or 2nd Defendant of customs was not aware that his directives has not been carried out since November, 2020, at least by this letter he became aware of the position and since the receipt of the letter on 29th September, 2021, nothing appears to have been done to rectify the wrong done to Claimants by the failure to release the truck. On the whole, if this alternative Relief had been properly claimed, I would have awarded **N10,000,000(Ten Million Naira)** as general damages for the wrongful detention of Claimants truck from November, 2020 till date. That would have been a fair recompense.

For the avoidance of doubt, I only considered the merit of the alternative Reliefs out of caution but they do not define the Reliefs granted by court. At the risk of sounding prolix, alternative Reliefs are construed disjunctively, distinctively and not conjunctively. See **Idufueko V. Pfizer Products Ltd (2014)12 N.W.L.R (pt.1420)96.** Where a court grants the principal Relief in a suit, it should not consider or look at the alternative Relief claimed in the suit. See **Idufueko V. Pfizer Products Ltd (supra), Agidigbi V. Agidigbi (1996)6 N.W.L.R (pt.454)128.** Indeed it is only after the court may have found that it could not for any reason grant the principal or main claim, that it will consider the alternative claim. I think I have sufficiently explained this point to avoid any confusion.

As I round up, it may be relevant to call on counsel to show more circumspection in the preparation of court processes and in the context of this case the **Reliefs** sought. The formulation of any Relief must be well thought out to project the rights of a party. Before Reliefs can be canvassed, they have to be properly claimed and then established. Where this is not done properly, an otherwise good case may be compromised. The exercise of the powers of court to grant reliefs affecting the rights or parties is not unlimited as already explained, precisely because the Court is bound to confine itself to the Reliefs claimed. The Reliefs in this case could and should have been properly framed. I leave it at that.

On the whole, the sole issue raised is answered partly in favour of Claimant. For the avoidance of doubt, I enter judgment for the Plaintiff against 1st and 2nd Defendants in the following terms:

1. **IT IS HEREBY ORDERED that the 1st and 2nd Defendants produce and release forthwith to Claimants, Truck Mack CH500 automatic manual engine injector with Registration No:XY 249 MUS detained by them and where for whatever reason, the said Truck is unavailable, that a replacement of similar make or value shall be replaced and released to Claimants forthwith and unconditionally.**

2. **Reliefs a, b and the alternative reliefs are all not availing.**

3. **I award costs assessed in the sum of N150,000 payable by 1st and 2nd Defendants to Claimants.**

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Hon. Justice A. I. Kutigi

Appearances:

1. **Umoru Jibrin, Esq., for the Claimants.**

2. **J.A. Dada, Esq., for the 1st and 2nd Defendants.**