

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GWAGWALADA- ABUJA

THIS TUESDAY THE 5TH DAY OF NOVEMBER, 2024

BEFORE HIS LORDSHIP: HON. JUSTICE ALIYU YUNUSA SHAFI

SUIT NO: FCT/HC/CV/4500/2014

BETWEEN:

PAVILION MOTORS LTD.....PLAINTIFF

AND

- 1. SON-CHECK VENTURES LTD**
- 2. OBAMARK INVESTMENT LIMITED**
- 3. MR SOLOMONNWACHUKWU ONWUKOBI.. DEFENDANTS**

JUDGMENT

This matter is a transferred file from Hon. Justice A. A. I. Banjoko (as at then was) now Justice of Court of Appeal to commence denovo transferred to this court on the 10th day of January, 2022. First mentioned on the 17/03/2022.

The plaintiff by statement of claim of 32 paragraphs dated 24th day of March, 2017 filed the same date claims the following reliefs from the defendants jointly and severally as follows:

- 1. The sum of N26,540,000.00 (Twenty six million, five hundred and forty thousand naira) only being the balance sum of some money the defendants owe the plaintiff from transactions involving units of motor vehicles the plaintiff delivered on good condition to the 1st and 3rd defendants between 2008 and 2009.**
- 2. A monthly interest of N25% (Twenty five percent) Central Bank of Nigeria note on the judgment debt from 30/09/2009 when the last transaction between the plaintiff and the 1st and 3rd defendants was made and the unpaid balance for the transaction done for payment to the plaintiff by the defendants until the Judgment debt is finally liquidated by the defendants.**
- 3. The cost of this action.**

Attached to the statement of claim are annexures marked as follows:

- a. **Annexure PML1 being delivery note dated 25/06/2008 from Pavilion motors addressed to Son check ventures for Toyota Hilux with Engine No. 17R6376251**
- b. **Annexure PML2 of N5, 000,000.00 (Five million naira) only addressed to Pavilion Motors dated the 18/11/2008.**
- c. **Statement of account of Son-Check Venture Ltd as annexure PML3**
- d. **Delivery note from Pavilion motors to Son-check venture dated 10/02/2009 for Toyota Hiace Buses C4 units with the following Engine No:**
 - i. **2TR8180862**
 - ii. **2TR8184066**
 - iii. **2TR8183461**
 - iv. **2TR8179491****All white in colour.**
- e. **Delivery not from Pavilion Motors Venture to Solomon N. N or Son-check Venture as Invoice No. 0181 dated 10/02/2009 Toyota HiaceBoses.**
- f. **Afri Bank Nigeria PlcCheque in favour of Pavilion motors dated 12/02/2009 the sum of N24,000,000.00 PML 6**
- g. **Delivery note from Pavilion Motors dated 25/08/2008 in favour of Son-check Ventures of ToyotaHilix (4XX) DC, AC Engine No. 2TR6537275 annexure PML7.**
- h. **Delivery note by Pavilion Motors in favour of Son-check Ventures dated 25/08/2008 Peugeot Expert Ambulance with Engine No. 01469066 white in colour. Annexure PML8**
- i. **Invoice No. 6204 from Pavilion Motors in favour of Son-check Ventures dated 25/08/2008 Toyota Hilux 4WD and Peugeot Expert Ambulance.**
- j. **Delivery note from Pavilion Motor addressed to Solomon N. N dated 22/07/2009 for Toyota Hiace Buses CMIDROOF with the following Engine Numbers:**
 - i. **8204108**
 - ii. **8177374**
 - iii. **8195210**
 - iv. **8204058****As annexure PML10**

- k. Invoice No. 0616 from Pavilion Motors in favor of Solomon N. N dated 22/07/2009 Toyota Hiace Bus as annexure PML11**
- l. Afri Bank NigPlcCheque No. 11928884 dated 16/09/2009 in favor of Pavilion Motors for the sum of N5,530,000.00 as annexure PML12**
- m. Delivery note from Pavilion Motors dated 30/09/2009 in favour of Son-check Ventures Toyota Hiace, Ambulance with Engine Numbers:
 - i. 2TR8211698**
 - ii. 2TR8211845**White colourannexure PML13**
- n. Invoice No. 0243 from Pavilion Motors in favour of Solomon N. N Toyota Hiace Buses, Ambulance dated 30/09/2009 as annexure PML14**
- o. Request to pay debt owed Pavilion Motors by you from Pavilion Motors addressed to Solomon Nwachukwu Son-check Ventures Ltd dated 02/07/2012 as annexure PML15**

And the witness statement made by Mr. EbereEnyi dated the 24/03/2017. Upon the receipt of the plaintiff's statement of claim, the defendants filed a joint statement of defence dated the 05/04/2017 attached with the joint statement of oath of 5 pages deposed to by Solomon Nwachukwu.

Upon the receipt of the defendant's joint statement of defence, the plaintiff filed a reply to 1st-3rd defendants' joint statement of defence and defence to counter claim dated the 06/04/2017 and attached the following documents:

- i. Cooperate Affairs Commission Certificate of Incorporation of Pavilion Motors Ltd**
- ii. Investigation activities for Son-check Venture Ltd account no. 1410156319616 addressed to the Bank Manager, Afri Bank Plc dated 04/08/2010**

And a further witness written statement on oath of Mr. EbereEnyi the Managing Director of the plaintiff of 18 paragraphs dated 14/02/2018.

In the course of the hearing, two witnesses testified for the plaintiff while one was for the defendants.

This court insummarizing the plaintiff's witnessconcludes thus:

PWI oneEbereEnyi the Managing Director of the plaintiff for the course of testimony informed the court that he made two witnesses statement on oath

dated 24/03/2017 and 14/02/2018 same couched through his signature and prayed the court to adopt the two statements as his oral evidence in this case.

Upon anticipation, this court adopted the two witnesses statement on oath of the plaintiff's witness as it's and testimony by this court have admitted as Exhibit PW1 and PW2 respectively.

That in paragraphs 5, 6, 7, 8, 9, 10, 11, 12, 13, 16, 17 and 19 of his written statement on oath he referred to duplicate copies of delivery notes dated 25/06/2008 and also 2 photocopies of bank draft dated 18/11/2008.

3. Duplicate of the delivery notes and the delivery of invoices dated 10/02/2009.

4. Photocopies of cheque dated 12/02/2009 for N24million

5. Delivery notes dated 25/08/2008 for delivery of the unit of Toyota Hilux

6. Duplicates of invoice dated 25/08/2009

7. Duplicates of delivery notes dated 22/07/2009

8. Duplicate of invoice dated 22/07/2009

9. A doledcheque dated 16/09/2009 belonging to the 2nd defendant

10. Duplicates of delivery notes dated 30/09/2009

11. Request to pay debt dated 02/07/2012

12. Certificate of Incorporation from Corporate Affairs Commission in paragraph 3 of the plaintiff's reply to the defence to the counter claim.

That he referred to the photocopy of the bank draft dated 08/11/2008. The amount deposited in his bank Zenith account cleared. That he also referred to a photocopy of cheque dated 12/02/2009 for the sum of N24million, the money deposited in Zenith Bank, he got the value for it i.e it was paid. That in his witness statement on oath he referred to the duplicate which are with the defendant and the letter dated 11/07/2012 and their documents were tendered without objection the court admitted all evidence as follows:

- iii. Duplicate of delivery note dated 02/06/2008 as Exhibit PW3**
- iv. Photocopy of Afri Bank draft dated 18/11/2008 as Exhibit PW4**
- v. Duplicate of delivery note dated 10/02/2009 as Exhibit PW5**
- vi. Duplicate of invoice dated 10/02/2002 as Exhibit PW6**

- vii. **Photocopies of the 1st defendant's cheque dated 12/02/2009 as Exhibit PW7**
- viii. **Duplicate of delivery notes dated 25/08/2008 as Exhibit PW8**
- ix. **Duplicate of delivery note dated 25/08/2008 as Exhibit PW9**
- x. **Duplicate of delivery note dated 25/08/2008 as Exhibit PW10**
- xi. **Duplicate of delivery note dated 22/07/2009 as Exhibit PW11**
- xii. **Duplicate of delivery note dated 22/07/2009 as Exhibit PW12**
- xiii. **Original copy of the 2nd defendant's cheque dated 16/09/2009 as Exhibit PW13**
- xiv. **Duplicate of delivery notes dated 30/09/2009 as Exhibit PW14**
- xv. **Duplicate of invoice dated 30/09/2009 as Exhibit PW15**
- xvi. **Original copy of the demand letter from the plaintiff dated 02/07/2012 as Exhibit PW16**
- xvii. **The certificate of Incorporation from Cooperate Affairs Commission as Exhibit PW17 RC No. 71694**

He prayed this court to grant all the reliefs of his claim, under cross-examination by question and answer

Q. Do you have any written agreement in respect of this transaction between you and the defendants?

A. The agreement are documentary documents we have tendered before the court

Q. Was there any time you ever had board resolution with the plaintiff's company?

A. The board resolution is contained in the demand letter given to them to pay the debt owed by the company in Exhibit PW16.

Q. It is also true that you never had any business transaction with the 2nd Defendant?

A. I had business transaction with the 2nd Defendant.

Q. Was the name of the 2nd Defendant mentioned in Exhibit PW17?

A. It is mentioned in paragraph 5 of Exhibit PW1

Q. It is to your knowledge that the 2nd and 3rd Defendants are agents acting on behalf of the 1st Plaintiff?

A. They did not act as agent.

Q. From paragraph 8 and 7 of Exhibit PW1 the 1st Defendant acts through who?

A. The cheque issued is in the name of the 1st Defendant.

Q. The 1st Defendant acted through the 3rd Defendant?

A. The company named the persons whose signatures all appeared on the document.

Q. Who is Solomon Nwachukwu?

A. Solomon Nwachukwu is the managing Director (MD) of the 1st and 2nd Defendants.

Q. It is also through that you received the sum of N57million from the 1st Defendant?

A. Yes, I did.

Q. You made mentioned of dole cheque

A. Yes, I did.

Q. To your knowledge, the defendant was never arraigned before the court for issuance of dole cheque?

A. I don't know whether he has been arraigned or not.

Q. Did you report to the police?

A. I did not report to the police

Q. Do you have any car transaction with LeonaldOkoh?

A. Yes

Q. And LeonaldOkoh did not pay you direct?

A. LeonaldOkoh through the plaintiff, LeonaldOkoh is the owner of the N57million paid to me through the 1st Defendant and the vehicle purchase of the sum of N15.5million from Ineh-Mic Motors Leonald is his customer who bought vehicle from me. The money was paid to the 1st Defendant, what was made to me and the one for the vehicle was paid directly to the company.

Q. How is LeonaldOkoh a party?

A. The said LeonaldOkoh paid N75million to the 1st Defendant for the land transaction which the 1st defendant could not conclude because he did not bring the original paper.

..... The payment for the request of N75million was at the request of the owner of the money LeonaldOkoh?

Q. You made mention of demand notice, the amount stated is not the same as the amount he is claiming?

A. I have stated that in my statement, that it was a typographical error. That instead of N49, 300.00 which is the correct figure in the demand letter, they typed N43, 500.00

Q, When you noticed the typographical error and you wrote to court?

A. It was not changed, the balance that they are owing.

Q. You received the sum of N15million from the 1st defendant?

A. Yes

Q. Do you have any evidence of land transaction?

A. I don't have as he could not conclude the transaction.

Q. For your demand letter you did not make any demand by the 2nd Defendants in Exhibit PW16?

A. In the transaction that was made, the name of the 1st Defendant and the 3rd Defendant appeared on the document.

Q. Based on Exhibit PW17 paragraph 5, the 2nd and 3rd Defendants are agents of 1st Defendant.

A. They are not agents.

No – re-examination.

PW2 is Chinenye Okezie a police officer, CSP in Zone 7 H/Q that he was served with Subpoena Duces Tecum Ad Testificandum and has the documents stated therein bringing me in court.

That he is working at Zone 7 Police H/Q located in Zone 3 Wuse Abuja where he brought the following documents from.

- 1. Investigation activities being a letter the police normally write to any organization where they seek for information. In this case it was addressed to the M. D Afri Bank Plc Garki Area 11 Abuja dated 11/08/2010.**
- 2. An application to Afri Bank to freeze an account belonging to one Son-check Ventures Ltd the 1st Defendant.**
- 3. Statement of the account of the said company Son-check Ventures Ltd.**
- 4. Statement written by one Solomon N. Nwachukwu who is supposed to be the alter ego of Son-check Ventures Ltd i.e. the 3rd Defendant.**

The said listed documents were sought to be tendered in evidence but rejected to by the learned counsel, the basis was that the 1st and 2nd documents are not listed to be produced by the witness by the witness, and also that the said documents are all photocopy which must be in line with the provision of the evidence Act and it must be satisfied because it is a public document.

Hence those documents were rejected, but for statement of Solomon N. Nwachukwu was admitted in evidence and marked as Exhibit PW18. The letter written to Afri Bank Plc by the police for the purpose of freezing the account of Solomon N. Nwachukwu was admitted in evidence as Exhibit PW19.

Under cross-examination by the defence counsel question and answer

Q. How long have you been an investigatory officer?

A. Above 20 years.

Q. You are also a lawyer?

A. Yes

Q. As a lawyer you know that the allegation is not something as someone being convicted?

A. Yes, I know.

Q. That it is also clear from your statement that Mr. Solomon N. Nwachukwu is the alter ego of Son-check Ventures Ltd which you investigated?

A. Yes he is

Q. Tell the court about when the incident of the investigation of the account happened?

A.It's about 2010 when the fraud was committed for the Zenith Bank

Q. To your knowledge the suspects have not been charged to any court?

A. The suspects were arraigned in a court, there were about 18 of them at Magistrate Court Zone 6 which I cannot recall the name as I was not the prosecutor.

Q. To your knowledge, they have not been convicted?

A. The matter was withdrawn to deploy settlement i.e. the parties and the Bank.

Q. You did not tender any evidence to support the arraignment?

A. I was not subpoenaed to bring that and it's not before the court.

Q. The business that transpired between the parties in this suit is the business of contract of sale of cars.

A. We did not investigate that as he was not privy to that.

Q. That is to say whatever transpired between the parties in this case you are not aware?

A. I am not aware about any sale of cars

Q. You also mentioned that he recovered money from a staff of Zenith Bank?

A. Yes, the reason we arrested him

Q. It's also true to your knowledge that there is no Zenith Bank staff in this court?

A. I don't know their staff.

Q. You don't know whether they are part of witnesses before the court?

A. I wouldn't know.

Q. It is also true that Son-check Ventures is also operating the said account till date?

A. I do not know.

Q it's also true from your investigation that, the sum of N50million was paid from an account of Son-check Ventures Ltd to the account of the claimant?

A. When your client was arrested for receiving the sum of N15million from a staff of Zenith Bank namedLeonaldOkoh he explained how his boss disbursed the money? According to him he said he had instruction from Leonald to pay N57million to Pavilion Motors and N15million to Ineh-Mic Motors and gave N2million cash to whoever was the statement they made to them.That is where we said he disbursed N75million. That the defendants paid the sum of N57 million to Pavilion Motors.

Q. Did he tell you why he did not pay directly.

A. Up till now we have not seen Leonald Up till date.

Q. As per any transaction between the plaintiff, you did not know anything?

A. Yes I did not

Under re-examination by the plaintiff's counsel

Q. Which N75million are you talking about?

A. The N75million the 3rd Defendant mentioned in his statement to the police. That he received from the staff of Zenith Bank at large not Leonard Okoh.

The plaintiff's counsel then closed his case of the plaintiff and the matter adjourned to defence.

In the course of the defence, two witnesses testified for the defence. This court is summarizing the evidence of the defence witness testimonies thus:

DW1 one Solomon N. NwachukwuOnwukobi representing both the 1st and 2nd defendants and one of the Directors to the 1st and 2nd defendants. That he made a statement on oath before the court. The statement he recognized through his signature, his picture and prayed the court to adopt the said witness statement on oath as it's oral statement before this court.

That his relationship between the 1st and 2nd defendants is that he is a Director.

Under cross-examination by the plaintiff's counsel.

Q. Tell the court your full name.

A. My full name is Solomon NwachulwuNchekwube

Q. Do you have any other name called Onwukobi?

A. We have changed the name.

Q. How old are you and your date of birth.

A. I was born February 7, 1975.

Q. Which school do you attend?

A. Community Secondary School Mgbekwu in Ukah North Local Government

Q. Did you attend any other school? Apart from Secondary School where do you take your primary school?

A. Same community Secondary School

Q. Where did you do your Secondary school

A. The same Mgbekwu

Q. Where did you know the claimant in this case

A. The claimant has been my business partner and we have done a lot of businesses together.

Q. This transaction issue when did this transaction take place?

A. I can't remember but the statement of account can say when the transaction took place.

Q. Did you make an affidavit dated 16/02/2016

A. Yes it is the statement I made.

Q. Confirm that, you signed the statement on oath?

A. Yes, it is my signature and I signed it.

The affidavit sworn to by the witness on oath is dated 16/03/2016 having been adopted and admitted as Exhibit DD1.

Q. Do you by any chance have any other signature or initial?

A. I don't have

Q. You also remember making a counter affidavit dated 05/06/2015?

A. Yes

The counter affidavit deposed to by the DW1 was adopted and admitted as Exhibit DD2

Q. Did you sign Exhibit PW11 and PW12?

A. I signed the document.

Q. Did you sign the PW12?

A. Yes, I did sign it

Q. Do you remember issuing a cheque to the name of the 2nd Defendant to the tune of N5, 530,000.00 in favour of Pavilion Motors reference Exhibit PW13?

A. I remember issuing the cheque, he's supposed to have returned the cheque since the transaction and the amount has been transferred i.e. the statement of account speaks for itself in respect of same.

Q. What date did you transfer the sum on the cheque?

A. I can't remember as my transaction and statement of account is before the court on all the transactions I did with the claimant.

Q. Is there anything here before the court showing when you instructed Eber (M.D) of the claimant to return the cheque?

A. I called him and he told me he was going to look for the cheque since the transaction has taken place.

Q. You issued the cheque because you are a Director to the 2nd defendant in respect of the payment for the vehicle you purchased from the claimant before this court?

A. Yes Sir.

Q. What is the date on the cheque

A. 16/09/2009

Q. Which account are you saying that it is before the court?

A. It is Son-check Ventures Ltd which I am also a director.

Q. Which particular account is that

A. The Son-check Ventures Ltd which I am also a director.

Q. Meaning you control the 1st and 2nd Defendant?

A. Yes as a Director

Q. Can you remember the particular date that you transferred the money that took care of the cheque on that 16/09/2009?

A. I cannot remember

Q. Exhibit PW19 before the court, is it the statement you are referring to?

A. I have seen the transaction.

Q. You told the court that the transaction or payment from where you issued this cheque is already before the court.

A. Yes Sir

Q. In other words, this cheque would have returned to you because you made the payment on the 16/09/2009.

A. He is supposed to have returned the cheque

Q. You have also mentioned the statement before the court is the particular transaction between you, the claimant and the defendants?

A. Yes, I have

Q. Exhibit PW19, identifies the particular transaction that clears Exhibit PW13.

A. That is 18/01/2008, 21st November, 2008 and 24th November, 2008. These are all transactions I transferred to the claimant that the cheques are supposed to have been returned and some he gave them cash.

Q. Exhibit C is the cheque dated 16/09/2009 as PW13?

A. Yes, it is.

Q. How many phone numbers do you have?

A. Only one phone number

Q. Call the phone number to the hearing of the court.

A. 08033116822 that is the only number I have since the recognition of the MTN

Q. You said you paid cash in paragraph 16 to the claimant?

A. Yes, I did

Q. Is there anything before the court that you paid cash to the claimant?

A. No

Q. Do you know Leo Agoh?

A. I don't know Leo Agoh

Q. That the signature on PW18 and DD1 is it your signature?

A. It is my signature.

Q. Paragraph 1 – 14 read 7, Exhibit PW18. Do you still maintain that you don't know Leo Agoh?

A. That was written in the night and was written under duress I do not know him

Q. Exhibit 18 whose name is it

A. It's Ebere

Q. The N75million you read in the second paragraph by Exhibit PW18 you said it was on the 2nd November, 2008 and not November, 2018?

A. It's the year 2008 and not in 2018

Q. Confirm the date on 24/08/2008 on the said Exhibit PW18.

A. Confirmed

Q. What was the money for?

A. It is the money I borrowed Ebere

Q. And you borrowed him the sum of N75million?

A. Yes

Q. Is there anything before the court to show that you agree to be alone.

A. Based on the document I filed before the court

Q. Will you be surprised that the N75million of the 24th November, 2008 was what you are expected to pay to the claimant? And will you deny that the N75million was sent by Leonard Okoh?

A. I will deny it

Q. Would you also deny that the bank draft of 24/11/2008 in favour of Pavilion Motors and the one of N57million was at the instruction of Mr. Leonard Okoh for you to pay to the claimant?

A. Yes I will deny that

Q. You denied that that this part of the money which you paid to Mr. Leonard Okoh?

A. Yes I will deny it

Q. On Exhibit PW18 do you still deny that the payment is part of the N75million?

A. Yes I will deny it as the documents speaks for itself

Q. Exhibit 16, the letter was addressed to you?

A. Yes and I told him what happened and what is it for and he said he has a problem with FCMB Bank and that the bank will confirm he kept quiet and said he is having issues with FCMB.

No Re-examination

DW2 one MN Noubisi Frank in his testimony testified that he knows Pavilion Motors and also the defendants Son-check Ventures Ltd. That he works with Inch-mile Automobile Company Ltd and is the accountant in the company. That he has no document to tender, but that most of the transactions dealing with case or cheque coming and going out. That the Pavilion Motors was a good customer with his company. That Pavilion Motors collects motor from them and pay gradually.

That the month of November to be precise 24, 2008 the chairman of Son-check Ventures Ltd paid in the sum of N15million to his office and said it was in respect of a transaction between their company and Pavilion Motors. He quickly called the chairman of Pavilion Motors whether he was aware of such payment of which he affirmed that it is part of what they were owing them. That apart from this he had never had any transaction with them again.

Under cross – examination by the claimant’s counsel.

Q, How long have you worked with Ineh-Mic?

A. Ineh-Mic was established on the year 1997 April in Abuja.

Q. You know that Ineh-Mic and the claimant are into motor business and that the claimant sometimes collectvehicles and pay you people.

A. You are correct

Q. You would not know all the customers of the claimant?

A. I wouldn't know them as it is not possible.

Q. You would also not know that the customer of the claimant purchased vehicle from the claimant and the claimant came to you and collected the vehicle worth N15million or more.

A. It is not possible as he doesn't need to know his customers.

Q. And because you would not know, you will not know the person that is paying for the customer's vehicle either directly to you or through the claimant?

A. Any payment that comes in that is not from Ineh-Mic vehicle they will verify before acceptance and that is what happened in the instant case. That Ebere is their customer, they allow them to pay gradually. That other payments to come which he will ask to minus.

Q. In respect to the N15million do you know whom the vehicle was released to?

A. I don't know

Q. Would you be surprised that it was a supply to a client or a customer of the claimant known as Leonard Okoh?

A. I wouldn't know

Q. It also follows that you would not know whether Mr. Leonard Okoh made the deposit including the N15million inside the account of the 1st Defendant?

A. I wouldn't know

Q. You deny receipt of N15million?

A. Yes

Q. And you told the court that the 3rd defendant Walked into your office and he paid cash?

A. He didn't pay cash.

Q. You would also be surprised that this amount of money N15million was explained by the 3rd defendant to the A.I.G Zone 7 Police H/Q Abuja in the statement the 3rd defendant made on two different days where he was detained explaining how Mr. Leonard Okoh paid in the sum of N75million into the 3rd defendant's account and later bought a vehicle from Pavilion Motors and instructed the 3rd defendant to raise a draft of N15million in favour of Ineh-Mic?

A. I don't know

Q. You are supposed to bring bank statement why is it not here?

A. I didn't get all the statements because of time and not only that the money is not missing.

Q. Exhibit PW19 as an accountant, the N75million and the 21stdebit that follow from 21 and debit coming from the N75million

A. Yes you are correct

No Re-examination

The defence counsel then closed the case for the defendants a date was given and the matter was adjourned for them to file in their final written address. The 1 – 3rd defendant's counsel filed its written address dated 9th September, 2023 filed on the 07/09/2023 where in the written address the 1st – 3rd defendants formulated 5 issues or nominated 5 issues for determination.

- i. Whether a court can grant a claim not made against a party or whether the court can grant a claim as a party when the pleadings did not disclose any cause of action?**
- ii. Whether as clearly shown in the claimant's pleadings, the 3rd Defendant/Applicant as agents can be sued for a disclosed principal?**
- iii. Whether having regards to the Claimants/Respondents pleadings this suit disclosed any remarkable cause of action against the defendants?**
- iv. The plaintiff having failed to prove their case, whether it is entitled to reliefs claimed?**
- v. Whether the defendants from the Exhibits tendered particularly the bank statement evidencing money sent to the plaintiff as well as the testimony of the 2ndSubpeoned witness, whether the defendants have not proved their counter claimed and entitled to the reliefs therein.**

The plaintiff's counsel on receipt of the 1 – 3rddefendant's final written address, fined claimant's final written address dated 23 November, 2023 wherein the final written address the claimant's counsel formulated two issues dished for determination to wit:

1. Whether the claimant has established its case against the necessary parties to entitle it to the reliefs sought jointly and or severally against them?

2. Whether the defendants have properly pleaded and established a counter claim against the claimant in the suit of the claimant.

The defendants counsel on receipt of the claimant's final written address filed a reply on point of law dated 02/02/2004 and filed the same date.

Defendants adopted their final written address dated 11/07/2024 and urged this court to disown all the claims of the claimant and uphold the counter claim of the defendants. The claimant's counsel also adopted its final written address urging the court to grant all the reliefs of the claimant and also dismissed the purported counter claim of the defendants counter claimed.

A careful perusal of the above issues they are not familiar apart from issue 5 of that of the defendants and the issue 2 of that of the claimant. However for clarity, I shall adopt the issues as formulated by both the defendant and the plaintiff which will form the bases upon which this suit will be pleaded. But issue 5 and issue 2 will be taken together and the issues are familiar.

On issue one, whether a court can grant a claim not made against a party when the pleadings did not disclose any cause of action?

On this it is the argument of the learned defence counsel that, the claims of the claimant determines the jurisdiction of the court to entertain same. See *Ngere & Anor Vs Othoruket (XVI) & Anor (2023) LPELR-60001 (Sc)*, the Apex court in corroborating the above principled held thus:

“It is now well settled that in the determination of the jurisdiction of High court, the process to be considered is the statement of claim. The averments disclosed in the statement of claim would show whether or not the court is competent to adjudicate over the matter. Put differently, it is the plaintiff's claim that determines the jurisdiction of the court. Since it is the plaintiff that is invoking the jurisdiction of the court, it is the averments in his statement of claim that would determine the jurisdiction of the court”

See *NDICVs CBN (2002) 7 NWLR (Pt 766) 272*; *Olofinlaja (2010) 18 NWLR (Pt 1225) 545*; *Pet John Inyang Okoro JSC (Pp 28 – 29 Pages F.C)* also cited the case of *Petroleum (special) Trust Fund Vs Fidelity Bank & Ors (2021) LPELR-56625 (SC)*.

The defendant counsel submitted that, from the claim of the claimant as reproduced in this judgment, the claimant never made any claim against the

2nd defendant and as such ought not to have included him in this adventurous suit. That both the writ of summons as well as statement of claim only defined clearly the person it allegedly claims against and it stated clearly that its claim is made against the 1st and 3rd defendants.

Furthermore, that the exhibits tendered by the claimant as PW16 which is claimant's notice, the name of the 2nd defendant was not mentioned as the person from whom the claimant is making any claim against. That has not made any claim against the 2nd defendant? Neither served any claimant's notice of same, the court is bereaved of jurisdiction to grant any claim against the 2nd defendant and that, the claimant's paragraph 6, 7, 8, 9, 10, 11, 13 of PW1 of EbereEnyi's witness statement on oath in support, the claimant had any business transaction with the 2nd claimant.

The learned counsel to the defendants further stated that the invoices tendered have nothing to do with the 2nd defendant, on this he placed reliance on the plaintiff's main witness statement on oath particularly paragraphs 5, 6, 7, 8, 9, 10 and 11. On this submitted that it is indeed strange on the part of the plaintiff to seek reliefs on a party whom he had disclosed no cause of action against.

Furthermore submitted that before an intending litigant can institute an action in a court against any person, a reasonable cause of action must have accrued against that person. See *EgbeVsAdefarasin* (1985) 5 SC 50 at 87, *AdesokanVsAdegorolu* (1997) 3 SCNJ 16, *Gen Ibrahim VsOsino* (1988) 3 NWLR (Pt 82) 251 at 271 – 272 where a cause of action was defined as thus:

The meaning of “Cause of action” and “Reasonable cause of action” has been adorably set out in the judgment of my learned brother UwaisJSC in short, the statement of claim must disclose a cause of action, set out the right of the plaintiff and the obligation of the defendant it must then go on to set out facts consisting infraction of the plaintiff's legal right or failure of defendants to fulfill his obligation in such a way that if there is no proper defence, the plaintiff will succeed in the reliefs or remedy he seeks”

From the above submitted that there must be a wrongful act on the part of the applicant which gives the claimants/respondents a right of complaint or put in another way there must be a wrongful act and consequent damages to provoke a cause of action. That a thorough perusal of the pleadings in this suit will certainly leave one wondering what the 2nd defendant is doing in this suit, urged the court to so hold.

In response by the claimant's counsel argued that the 2nd defendant is a proper and necessary party to the claimant's case. That where the joinder of the 2nd defendant leads to the success of the claimant's case, it means that the claimant has a reasonable cause of action. On this cited the following cases:

1. Fidelity Bank Vs Moraicity Chemical Industries Ltd and Ors (2022) LPELR – 56866 (SC)
2. Akubor & Anor Vs Adunta & Ors (2002) LPELR – 336 (Sc) Page 22 – 23 Per Ogundare

On this submitted that a cause of action has been held to mean every fact which the defendant will have a right to traverse.

Furthermore, that the claimant cannot succeed in establishing its cause of action to the effect that it did not receive value for the sum on the face of the cheque. Exhibit PW13 which the 2nd defendant issued for the part of settlement of the indebtedness of the 1st and 3rd defendants. That the defendants have had a right to traverse Exhibit PW13. But how has the 3rd defendant been able to traverse Exhibit PW13? The fact that the 3rd defendant has given materially inconsistent evidence in respect of Exhibit PW13, buttresses the propriety of forms of the 2nd defendant. That for the 3rd defendant that it is the agent of the 1st defendant submits that, the 3rd defendant is also a necessary party for the success of the claimant's cause of action. The 3rd defendant's DW1 is the controlling hand and mind of the 1st and 2nd defendants. That the facts that the 3rd defendant has purchased some vehicles in his personal name establishes a contract of sale between him and the claimant and the cause of action is ripe upon the 3rd defendant being in breach of that contract of sale. This he submitted that the 3rd defendant admitted that he signed Exhibits PW11, PW12, PW13, PW14 and PW15 and each of these exhibits constitute a contract for what the parties therein agreed to achieve by each of the exhibits. Where any of them is not kept, a cause of action arises. See Fidelity Bank Vs Moraity Chemical Industries Ltd (Supra).

In reply to the principle of separate personality, sub matters that, the question as to whether that the 2nd defendants are doing their own business and not that of the 3rd defendant is always a question of fact. See Family stores & Night Vs Birmingham Cor. (1939) 4 All or 116, 120 Lare Alkinson quoere with approval the view of lord Steedale 17 Internal Revenue Commissioner Vs Jensen (1921) 2 WB 492 where he stated at P. 503 of the law report thus:

“There may as has being said by lord Cozens Hardy Mr. be a position such that although there is a legal entity within the

principle of Solomon Vs Solomon and that a legal entity may be acting as the agent of an individual and may really be doing his business and not his own. It is a question of fact”

On this submitted that, the 1st and 2nd defendants cannot be doing their own business but the business of the 3rd defendant. This is because of the fact that the 3rd defendant has given materially inconsistent evidence as to which for example, the cheque of the 2nd defendant is going in the failed payment of the purchases of vehicles the 3rd defendant bought in his name and not in the name of the 2nd defendant. That there is no evidence that the 2nd defendant did not authorize the use of the 2nd defendant's instrument.

Furthermore, submitted that, the only reason for the use of the 2nd defendant's instrument, PW13 is that the 2nd defendant is not doing it's own business. It is out thrust for the 2nd defendant to give a friendly loan as alleged by the 3rd defendant to the claimant without the board resolution of the 2nd defendant. That there is no evidence that the 2nd defendant also did not authorize the use of Exhibit PW13 to defray the debt of the 3rd defendant or indeed of that 1st defendant that it was authorized for it by the 3rd defendant. On this submitted that, the 2nd defendant is not doing it's own business but the business of the 3rd defendant and cannot be said to be an agent of either the 1st and 2nd defendants.

Furthermore submitted that each exhibit relating to the purchase of the vehicle constitutes certificate of sales of vehicles or repayment of the sum owed in respect of the purchase of the vehicles and the parties mentioned therein are liable on each in an action for recovery of the debt. Flowing from this, that as soon as the 2nd defendant permitted it's officers' or director in the person of the 3rd defendant to issue it's cheque, exhibit PW13 to the claimant, the claimant, the 2nd defendant became impliedly and even that the claimant has a part to sue for the value on the face of it.

The learned counsel to the claimant further submitted that the claimant became therefore, a holder in due course, respect of the instrument to which Exhibit PW13. On this under Section 29 of the Bill and Evidence Act, 1917 which defines who a holder in due course is. Section 48 – 49 I bid, on the implication of not giving notice where a bill is not paid. See UBA PLC VS Goster Investment Co. Ltd (2018) LPELR – 44886 (CA) 44 – 54. On it he submitted that the 2nd defendant became estopped from complaining that it was dragged to write where the cheque PW13 fails to clear for the value on the face of it.. That it is not the business of the claimant that PW13 failed to clear, and that the 2nd defendant was not given notice of none payment or a compliance of the bill,

PW13 being that he is a holder in one course. Reference to Section 29 48 – 49 of the Bills and Exchange Act 1917 the case of Bank of the North Plc Vs Yau (2001) LPELR – 746 (Sc) holds that, the claimant being a holder in due course has title on it and can sue the 2nd defendant for the sum on the face of it.

Furthermore, that under cross-examination, the 3rd defendant as DW1 testified that he signed the instrument as the 2nd defendant. He also accepted that he is the managing director of the 1st and 2nd defendant. It follows that a person can be sued whose signature is on the instrument see Auto Import Export Vs Adebayo & Ors (2005) LPELR – 642 (SC) where the Supreme Court held as follows:

“...Note should be taken of the fact that S. 30 (2) of Bills and Exchange Act, has made every holder of a bill a holder of due course. By Section 38 (2) of the Act, a holder in due course can enforce payment against a thing he’s liable on the bills while Section 30 (1) has made every party whose signature appears on a bill portion to the bill. Hence every party whose signature appears on a bill is a party to the bill”

Dr. Sylvester Umiwono JSC (Pp 46 – 46 Para A – C.

On this submitted that the 2nd defendant can be sued on the bill Exhibit PW13 and the claimant is a holder on due course. The 3rd defendant can also be sued on it as he’s signature appears on the bill.

In response to points of law by the defence counsel to the defendant submitted that, the claimant manufactured the issues of dole cheque allegedly issued by the 2nd defendant in favour of the 3rd defendant. On this submitted that there was no issue of dole cheque conversed before this court and same did not feature before the court nor evidence led to establish same as the bank holding the funds/monies of the 2nd defendant was not called to give evidence as to the state of the bank account of the 2nd defendant at the time the cheque (Exhibit PW13) was issued.

Furthermore, that it is recorded that Exhibit PW13 was written “Represent” on the face of the cheque which did not amount to dole cheque. Not only the bank could have had evidence as to what they meant by “Represent” which could be irregular signature, further confirmation, inability to read the issue e.t.c. Further on this submitted that the bank statement of the 2nd defendant was not tendered in evidence in proof of the false averments of the claimant and that the figure of dole cheque must be proved beyond reasonable doubt.

Furthermore, that from the pleadings claims the evidence led, the claimant did not mention any separate claim of N5, 530,000.00 against the 2nd defendant being the value of the form in PW13 and the only involvement of the 2nd defendant but rather claimed thus:

- 1. The sum of N26, 540,000.00 only being the balance of money the defendants owe the plaintiff from transaction involving 8 (eight) units of motor vehicles the plaintiff delivered in good condition to the 1st and 3rd defendants between 2008 and 2009.**

I carefully perused the arguments canvassed by both counsel in their respective written address, cases cited and statutes referred to, I wish to state as follows:

- 1. That the issue of whether the 2nd defendant is a party or not a party to this suit by the way basis of Exhibit PW13 which calls for the resolution of this just issue is germane to the resolution of the first issue.**

A careful perusal of the evidence before the court, it is clear that the claimant sold a vehicle to the 1st and 3rd defendants between 25/06/2008 and 30/09/2009. The 3rd defendant issued a cheque to the 2nd defendant in a failed attempt to repaying part of the sum owed the claimant.

The claimant also found the 2nd defendant to explain how it come to authorized or did not authorized its cheque to be used in the course of the sale of vehicles transaction between the 1st and 2nd defendant.

The 2nd defendant issued the cheque that was marked “Represent”. PW13 and equally the alter ego of 3rd defendant doing the business of the 3rd defendant and its own business.

The 3rd defendant is one of the Managing Director (MD) of Son-check Ventures Ltd.

In view of this emerging facts as stated above, I tend to agree to the submission made by the learned counsel to the defendants on the first issue raised. Hence I shall resolve issue one in favour of the claimant. I so hold.

On the second issue whether as clearly shown in the claimant’s pleadings, the 3rd Defendant/Applicant as agent can be sued for disclosed principal. On this it is the submission of the learned defence counsel that it is trite law that an agent who acted on instructions of a disclosed principal cannot be liable. See Ramon Vs Adeleke & Nor (2019) LPELR 50175 (CA), lead Security/Investment Vs Elizabeth & Anor (2022) LPELR – 58280 (CA) on this submitted that the fact

that the 3rd defendant is an agent of a disclosed principal is clearly shown by the claimant Exhibit PW1 wherein is contained in the witness statement on Oath of the claimant in paragraphs 7, 8, 9, 10, 11 e.t.c. and that from the witness statement on Oath of the plaintiff in Exhibit PW1 of the 1st defendant acted through the 3rd defendant as agent just as the plaintiff, Pavilion Motors also acted through its agent/respondent Mr. EbereEnyi.

Before going into the detail of this issue, I wish to state that; agency is a relationship which exists between two persons whom expressly or impliedly instructs to act on the behalf of the other or whom similar consent to represent the former or so to act. There are who is to be represented on whose behalf the act is to be done is called the principal and the other who is to represent or act is called agent. See Kings Planet Int'l Vs C.P.W.A (2014) 2 NWLR (Pt 1392) 605 (CA) on this I wish to state that, a master is jointly and severally liable for both the authorized act of and unauthorized mode of doing an act authorized by the servant. In other words, a master is jointly and severally liable for any act committed by his servant while acting in the course of his employment. The wrongful act of a servant is deemed to be done in the course of his employment if it is either.

- i. A wrongful act authorized by the master**
- ii. A wrongful and authorized mode of doing same act authorized by the master. See Stanbic IBTC Bank Plc Vs L.G.C. Ltd (2018) 10 NWLR (Pt 1626) 96 CA and Vulca Gases Ltd Vs Gesell Shaft for Industries G.A.A (GW) (2001) 9 NWLR (Pt 719) 610.**

It is also trite law that it is not for all cases or situation that an agent will not be liable for the acts of a principal. An agent who has exceeded the limits or bounds of his authority will be liable. See Cotecna Int'l Vs Church Gate (MG) Ltd (2010) 18 NWLR (Pt 1225) P. 346.

Haven't said this, now to the argument conversed by both the defendants counsel and the claimant's counsel in their respective submissions before the court.

The defence counsel made reference to Exhibits PW6, PW7, PW8, PW9, PW12 not only to prove that the 2nd defendant never had any business transaction with the plaintiff but also to show that the alledged business transaction is between the plaintiff and the 1st defendant. Under cross-examination the claimant EbereEnyi stated thus:

“It is to your knowledge that the 2nd and 3rd defendants are agents and acted on behalf of the plaintiff. He answered they did not act as an agent”

On this submitted that, since the defendants did not act as agent, it follows that the other defendants particularly the 2nd and 3rd defendants are wrongly joined in this suit.

That relying in Exhibit PW6, PW7, PW8, PW9 and PW12 which are purported invoices issued to the 1st defendant, only the 1st defendant was named in them yet, the plaintiff wants the 2nd and 3rd defendants into counterpart of the transaction as captured in the exhibits to be held liable. That the purported exhibits listed above (invoice of delivery notes) were addressed to the 1st defendant (Son-check Ventures Ltd) only. And that nothing was said about the 2nd and 3rd defendants in the said exhibits from whom the plaintiff is making/recompiling claim. That the said exhibits PW8, PW11 and PW13 invoices which clearly addressed to the 3rd defendant without reference to the 1st and 2nd defendant which are separate transactions of which the plaintiff could sue the 3rd defendant and not the include or attempt to hold the innocent 1st and 3rd defendant.

Furthermore submitted that in the evidence of the plaintiff on 26th March, 2022, the plaintiff said under cross-examination thus:

Q. Who is Solomon Nwachukwu

A. Solomon Nwachukwu is the MD of the 1st and 2nd defendants.

On this submitted that this contradictory statement from the plaintiff cast doubt in his evidence it makes the claim of the of the plaintiff not only incompetent but incoherent and self-contradictory. On this referred this court to the case of Mohammed VsHaruna& Ors (2023) LPELR – 60630 (CA) it was held thus:

“In the case of EjeforVs Okeke (2000) 7 NWLR (Pt 665) 363 it was held that, affidavit is self-contradictory if information contained in it states inconsistent facts therein. The law is trite that where a party gives evidence that are inconsistent and contradictory on material facts, the court ought not to attach any probative value to it....”

Also the case of State VsGbahabo& Ors (2019) LPELR – 48117 (SC) the supreme court on this case held thus:

“Contradictory evidence is that which asserts the opposite and is inconsistency with the other. Thus contradictory evidence is an

affirmation of the contrary of what was earlier stated or spoken. A piece of evidence is contradictory only where it is the direct opposite of what was earlier asserted”

On this referred this court to the statement on oaths of the plaintiff, cross-examination as well as the exhibits tendered in support of the incurable contradictions in the evidence of the plaintiff.

Furthermore submitted that from exhibits PW6, PW7, PW8, PW9 and PW12 and the evidence of the plaintiff under cross-examination, it is very clear that the 2nd and 3rd defendants are wrongly joined.

The claimant argued that, by exhibit DD2 the defendants brought out the fears of the claimant, the defendants who stated in evidence that he is the Managing Director also stated without any iota of evidence, documentary or otherwise. Therein paragraph 10 of exhibit DD2 that he paid the sum in the face of the exhibit PW13 case to the claimant. In the same paragraph 10 of exhibit DD2 the 3rd defendant alleged fraud without particulars of fraud on proof beyond reasonable doubt as required by law where allegation of fraud is an issue in civil matters.

The 3rd defendant was joined in the Claimant’s suit as he purchased some of the vehicles in his company as a natural person and in his name held himself out in those invoices and delivery notes as acting for himself doing his own business and not the business of the 1st defendant. Exhibit PW11 and PW12 are all in his name he owes the balance of N11million and then exhibit PW15 is in his name, he owes the sum of N5,040.00 million in it. Exhibit PW6 is in his name it he paid the claimant. Exhibit PW10 in his name and that of the 1st defendant.

Also submitted that under cross-examination, he admitted signing those invoices and delivery notes, the signature is also consistent with his signature in the statement (Exhibit 18) made to the Nigerian Police. In the letter, he explained the content of exhibit PW19 from the RTGS (Red Time Gross Settlement) on 21st November, 2008 from Zenith Bank Plc sent by Leonard Okoh to the last ongoing payment he made on that PTGS in the instruction of Mr. Leonard Okoh.

On the above the argument of both counsels can be said that the 3rd defendant is an agent of disclosed principal? The answer is in the affirmative as I have stated on the first issue that, Mr. Solomon Nwachukwu is not acting as agent of the disclosed principal, but a member, the alter ego of the company Son-check

Ventures Ltd hence cannot be said to be an agent of disclosed principal the Son-check Ventures Ltd.

In view of the foregoing, I will resolve the 2nd issue equally in favour of the claimant. I so hold.

On the third issue on whether having regards to the Claimant/Respondent's pleadings, this suit discloses any reasonable cause of action against the defendants. This issue has been resolved by issue No. 1 hence I equally resolve it in favour of the claimant. I so hold.

On the issue of whether the plaintiff having failed to prove his case, whether it is entitled to the reliefs claimed.

By the evidence given by the plaintiff witness, exhibit tendered and the evidence of DD1 and DD2, there is no doubt in my mind that there is nothing left for the plaintiff to claim. All the exhibits submitted before this court and the evidence of the plaintiff's witness and the responses received from the defendants witness testimonies, I can say that the plaintiff has proved his case that will entitle him to the reliefs sought therein there is no inconsistent or contradictory evidence before this court as the exhibits tendered are self-explanatory.

I say this for the following reasons as stated by the claimant's counsel and evidence adduced or led, it is clear that by exhibit PW18, the DW1 admitted his signature, his date of birth his home, DW1 also wrote how he got the RTGS of N75million from Leonard Okoh and Zenith Bank. Exhibit PW19 was writing in his hand. It is in the evidence that PW2 the Nigerian Police who was the investigation officer who was in the team of the investigation who investigated that the 3rd defendant and the police who investigated the matter tendered document used by the authorities for that freezing.

It is also in evidence that the said Leonard Okoh who is at large gave the DW1 instruction of who to pay. This statement was corroborated by PW2 (CSP) ChinenyeOkezie who witnessed DW1 make the written statement. Based on the above stated reasons, I hold and conclude that the plaintiff has indeed prove his case against the defendants jointly that as such this court will also resolve this issue in favour of the plaintiff.

On the second claim of a monthly interest of N25% of C.B.N note on the judgment sum from 30th September, 2009 when the last transaction between the plaintiff and the 1st and 3rd defendants was made and unpaid balance for the defendant until the judgment debts fully liquidated by the defendants.

By order 39 rule 7 of the rules of the court, the court may award interest of a rate not exceeding 10% per annum to be paid on any judgment commencing from the date of it or afterwards as the case may be. The plaintiff is entitled to interest on the judgment sum.

On the cost of action claimed by the plaintiff, on this I wish to state that, the issue of cost is solely at the discretion of the trial court to award same. And it is also trite that costs follow events and a successful party should not be deprived of this cost unless for good reasons. The issue of cost is to compensate the successful party for part of the loss incurred in litigation and costs cannot cure all the financial losses sustained in the litigation as it is meant to be a bonus to a successful party and not to be awarded on sentiments See. *SalbyVsOlaogun* (1991) 14 NWLR (Pt 637) P 128.

The defendant's counter claim against the plaintiff's claim. On this I wish to state that a substantive claim and a counter claim are two separate actions fused in same suit being reversible claims made by parties to suit against each other. The main claim contained in the statement of claims set out the natural facts on which the plaintiff intends to rely to show that he is entitled to the interventions of the court in his favour against the defendant. The counter claim on the other hand is an independent action that calls for another set of pleadings like the claim. The two are completely independent of one another but are combined in one action to ease the procedure like in the instant case.

In this instant case all the issues set out in this suit having been resolved in favour of the plaintiff, the counter claim will then fail. Hence the counter claim has no place on the instant suit. I so hold.

In summation, pursuant to order 21 rules of the rules of this court, I must proceed to enter judgment in favour of the plaintiff. Judgment is hereby entered for the plaintiff against the defendants jointly as follows:

- 1. The sum of N26, 540,000.00 (Twenty six million, five hundred and forty thousand naira) only being the balance of money the defendants owe the plaintiff from transactions involving 8 (eight) units of motor vehicles the plaintiff delivered in good condition to the 1st and 3rd defendants between 2008 and 2009.**
- 2. There shall be 10% interest per annum on the said judgment sum from 3rd September, 2009 when the last transaction between the 1st – 3rd defendants was made and unpaid balance for the defendant is fully liquidated by the defendants.**

3. On the cost of action I hereby award the sum of N500,000.00 (Five hundred thousand naira) only as cost in favour of the plaintiff against the defendants

This is my judgment.

.....

Hon. Justice A. Y. Shafa

Appearance:

1. Eke Nwauzoigwe for the claimant with Martins N. Chukwu.
2. Ezra Enwere for the defendant