

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP: HON. JUSTICE Y. HALILU

COURT CLERKS : JANET O. ODAH & ORS

COURT NUMBER :HIGH COURT NO. 22

CASE NUMBER : SUIT NO: CV/1543/20

DATE: : WEDNESDAY 27TH JANUARY, 2021

BETWEEN:

AIRA INTERGRATED RESOURCES LTD.....CLAIMANT

AND

1. MADUNKA MOTORS LIMITED } **DEFENDANTS**
2. ALHAJI ABDULLAHI HAIDO }

RULING

The Claimant approached this Honourable Court vide a Writ of Summon Pursuant to Order 35 of the Rules of this Honourable Court. In line with law, the said Writ was marked undefended on the 5th September, 2020.

The claims of the Claimant against the Defendants are as follows:-

1. A sum of N34,000,000.00 (Thirty Four Million Naira) only being the value of 2 (two) Units of Peugeot 508 2017 Model Motor Vehicles, which the Defendants failed, refused and/or neglected to refund to the Claimant having failed to supply the said remaining 2 (two) Units of Peugeot 503, 2017 Model Vehicles since December, 2017

despite both Oral and Written demands by the Claimant.

2. The sum of N100,000,000.00 (One Hundred Million Naira) only, being general damages for Defendants' breach of contract for failure to supply the remaining 2 (two) Units of Peugeot 508, 2017 Model Vehicles or refund to the Claimant the amount of money equal in value of the Motor Vehicles being the Sum of N34,000,000.00 (Thirty Four Million Naira) only.
3. Twenty One Percent (21%) interest on the Sum of N34,000,000.00 (Thirty Four Million Naira) only, from December, 2017 to the date of Judgment and 10% interest from the date of

Judgment until the total Judgment Sum is fully and finally liquidated.

In support of the application is an affidavit of 17 paragraph deposed to by One Abubakar Mohammed Ibrahim, the Managing Director of the Claimant.

It is the deposition of the Claimant that on the 31st day of July, 2017, the National Assembly Abuja addressed and sent a letter of invitation to the Claimant, asking the Claimant to submit Quotation for the Supply of 10 (Ten) Units Peugeot 508, 2017 Model Motor Vehicles for her oversight functions as prescribed by the relevant laws guiding the functions, obligation and duties of the National Assembly. The said letter is hereby attached and Marked Exhibit 'P2'.

That a meeting was scheduled for the 4th day of August, 2017 between the Claimant and the designated officials of the National Assembly concerning the sealing of the contract for the supply of 10 Units of Peugeot 508, 2017 Model Motor Vehicles to the National Assembly. And that as soon as the Claimant was informed about the outcome of the meeting of 4th August, 2017, she contacted the 2nd Defendant through the 1st Defendant and the Defendants agreed to supply the 10 Units of Peugeot 508, 2017 Model Motor Vehicles at N17,000,000.00 (Seventeen Million Naira) only, per unit and at the total sum of N170,000,000.00 (One Hundred and Seventy Million Naira) only.

Applicant avers that on the 24th day of November, 2017, the Defendant sent a Proforma Invoice to the Claimant, listing the price of the 10 (Ten) Units of

Peugeot 508 2017 Model Motor Vehicles, at N170,000,000.00 (One Hundred and Seventy Million Naira) only. The Proforma Invoice issued by the Defendants with the delivery note are hereby attached and marked Exhibit 'P4'.

It is further the deposition of the Applicant that on the 28th day of November, 2017, Claimant paid to the Defendant in full for the Motor Vehicles and a Sales Receipt was duly issued to the Claimant by the Defendants to this effect. The Car Sales Receipt dated 28th November, 2017 and Delivery Note dated 27th November, 2017 are hereby attached and marked as Exhibit 'P5' and 'P6', respectively.

That on the 29th day of November, 2017, the Defendants supplied the 10 (ten) Units of Peugeot

508, 2017 Model Motor Vehicles to the National Assembly, Abuja.

Applicant avers that 1 (one) Month after the date of the supply of the Motor Vehicles, 3 (three) Units of the Motor Vehicles were rejected and returned to the Defendants, as they were found defective on grounds of technical fault or issues.

It is the contention of the Applicant that after several attempts were made to recover the said sum of N51,000,000.00 (Fifty One Million Naira) only, including the interest that accrued so far from the Defendants, the Defendants failed, refused and/or neglected to either effect repairs on the 3 (three) Motor Vehicles or return the money equal in value of the Vehicles.

That based on the instruction(s) of the Claimant, the Claimant's Solicitor Roland Otaru, SAN, FCI Arb, vide a letter dated 9th December, 2019 wrote to the Defendants for the refund of the sum of N34,000,000.00 (Thirty Four Million Naira) being the value of the 2 (two) Units of Peugeot 508, 2017 Motor Vehicles which the Defendants had failed, refused and/or neglected to refund despite both oral and written demands. Letter dated 9th December, 2019 and the DHL Shipment Way Bill dated 11th day of December, 2019 are hereby attached and marked as Exhibit 'P9' and 'P10' respectively.

That it is the interest of justice to grant all the Claimant's Claim against the 1st and 2nd Defendants herein jointly and severally.

Upon service, the Defendant filed their Notice of Intention to defend the Suit. The affidavit in support of the Notice is deposed to by One Alhaji Abdullahi Haido, the Managing Director of the 1st Defendant.

It is the deposition of the Defendant that he did not transact any business with the Claimant Aira Integrated Resources Limited. That he had transaction of supply of 10 Peugeot 508, 2019 Model with Bashir Mohammed, Abbas Abdul and Ibrahim Chado which has been completed.

That the Board Chairman is a distinct and separate personality from Madunka Motors Limited and he did not guarantee the liability of the company in his personal capacity. And that the Defendant only collected monies from Bashir Mohammed, Abbas Abdul and Ibrahim Chado by way of transfer and

they never disclosed to him Aira Integrated Resources Nigeria Limited.

It is further the deposition of the Defendants that he cannot read and write and that the unsigned undertaking forwarded to him which he refused to sign is hereby annexed as Exhibit 'A'.

That the statement of account of the 1st Defendant particularly from 27th November, 2017 – 29th November, 2017 showed how monies were collected.

That a total of N23, 000,000.000 (Twenty Three Million Naira) only were collected from the monies that was transferred into 1st Defendant account in the sum of N170,000,000.00 (One Hundred and Seventy Million Naira) only via Aira Integrated Limited who was not a party to their transaction.

The Defendant annexed Exhibits 'B(i) – B(iv)' to the affidavit in support of Notice of Intention to defend.

That it will be in the interest of justice to transfer this Suit to the general cause list.

Upon service of the Defendants Notice of Defence, a further affidavit was filed. Wherein the Claimant stated that the Defendant duly signed an undertaking (Exhibit 'P7') and that the Defendant surrendered the original documents of his property situate at NDA Road, covered with a Right of Occupancy No. KD3426 to his Solicitor Shariff A.A Esq.

That the Defendant does not thumb print documents as he personally signed some Bank Transfer Forms attached to his Notice of Intention to Defend.

That the Defendants does not have defence to this action.

I wish to observe that the undefended list procedure is a truncated form of ordinary civil hearing peculiar to our adversary system where the ordinary hearing is rendered unnecessary due in the main to the absence of an issue to be tried or the quantum of Plaintiff's claim disputed to necessitate such a hearing. It is designed to quicken justice and avoid the injustice likely to occur where there is no genuine defence on the merits to the Plaintiff's case.

It is a procedure meant to shorten hearing of a suit where the claim is for liquidated money demand see ***UBA PLC VS JARGABA (2007) 5 SC1.***

An action begun under the undefended list, is no less a trial between the parties and where a Defendant is properly served, he has a duty to disclose his defence

to the action. *ATAGUBA & CO. VS GURA (2005) 2 SC (pt. 11) 101.*

However, notice of intention supported by affidavit so filed must condescend to issues stated in affidavit in support of the claim of the Plaintiff. A mere empty affidavit in support of the Notice of Intention to defend which disclose no defence shall certainly not sway the Court into transferring the matter to general cause list for trial.

Simply put, the Defendants affidavit must condescend upon particulars and should as far as possible, deal specifically with the Plaintiff's affidavit and state clearly and concisely what the defence is and what facts and document are relied on to support it.

Such affidavit in support of Notice of Intention to defend must of necessity disclose facts which will, at least throw some doubt on the Plaintiff's case.

A mere denial of Plaintiff's claim or liability or vague insinuation devoid of evidential value does not and will not suffer as facts, which will throw doubt on Plaintiff's claim. ***UBA PLC VS JARA GABA (Supra).***

I have gone through the affidavit of Plaintiff in support of its claim brought under the undefended list in Order 35 of the Rules of this Court. I have also gone through the affidavit in support of Notice of intention to defend this action filed in compliance with Order 35 Rule 3(1) of the Rules of this Court.

The facts averred in affidavit in support of Plaintiff's case are such that if put side by side with those of

the Defendant, certainly the reliefs claimed by Plaintiff cannot be resolved under Order 35 of the Rules of this Court.

By the power conferred on me therefore, I hereby transfer this suit to general cause list under Order 35 Rule 3 (2) of the Rule of this Court.

I order that evidence be led in prove of the respective cases of Plaintiff and Defendant in that Order.

This is the Ruling of the Court.

Justice Y. Halilu
Hon. Judge
27th January, 2021

APPEARANCES

ROLAND OTARU, SAN – for the Claimant with
AKINOLA OYEBANJO.

NNAEMEKA E. DUHU holding the brief of I.L.
OGOR for the Defendants.