



## **JUDGMENT**

The Claimant initiated this suit vide a Writ of Summons filed under Undefined List procedure pursuant to Order 35 Rule 3 of the Rules of this Honourable court. The said writ was marked Undefined on 4<sup>th</sup> day of December, 2023 and 23<sup>rd</sup> day of October, 2024 was fixed as a return date for hearing.

From the endorsement on the writ, the claim of the Claimant against the Defendants is as follows:-

- a. The sum of N304,399,998.20 (Three Hundred and Four Million, Three Hundred and Ninety Nine Thousand, Nine Hundred and Ninety Eight Naira Twenty Kobo) being the liquidated balance remaining unpaid of indebtedness owed to the Claimant by the Defendant for the supply of 12 Nos. **Toyota Hilux 4WD, DC Auto Transmission, LS Petrol, Japan, full Option, Rear Camera, Front & Real A/C Vents, 5 Speed 2017 Model Vehicles** which the said balance, the Defendants has refused to liquidate despite repeated written and oral demands by the Claimant.
- b. 10% post judgment interest on the said sum until the judgment debt is liquidated.

The case of the Claimant as distilled from the affidavit in support of the writ deposed to by Dr. Vivian Ozoekwe, the General Manager of the Claimant is that, by a Letter of Award dated 25<sup>th</sup> April, 2017, the Defendant awarded the Claimant a "Contract for the supply of 12 Nos. **Toyota Hilux (4 WD, DC, Auto Transmission, L.S., Petrol, Japan, Full Option, Rear Camera, Front & Rear A/C Vents, 5 Speed, 2017 Model)** for the House of Representatives at the total price of N374,399,998.20 (Three Hundred and Seventy Four Million, Three Hundred and Ninety Nine Thousand, Nine Hundred and Ninety Eight Naira, Twenty Kobo) only exhibited and marked Exhibit "A". A copy of the said letter is hereto.

That Claimant duly performed the contract by supplying the requested vehicles to the Defendant who accepted the same. Copy of the Delivery Note issued by the Claimant to the Defendant dated 16<sup>th</sup> November, 2017 is hereto exhibited and marked Exhibit "B".

That on the same date of 16<sup>th</sup> November, 2017 the Claimant also issued the Defendant an invoice for the payment of the contract sum. Copy of the invoice is hereto exhibited and marked Exhibit "C"

That most unfortunately, despite the issuance to the Defendant the invoice Exhibit "C", the Defendant failed, neglected or refused to pay the Claimant under one untenable excuse or the other despite numerous repeated demands by the Claimant.

That the Claimant continued to pile pressure on the Defendant to liquidate this indebtedness because the Claimant borrowed funds from its bankers to execute this contract and the non-payment was occasioning heavy losses on the business of the Claimant.

That the pressure partially paid off as the Defendant managed to pay the Claimant various installmental amounts at different times between 2017 and 2020 totaling N70,000,000.00, thereby leaving a balance of N304,399,998.20 which is the outstanding balance now being claimed in this case. This outstanding balance was duly acknowledged by the Defendant in a letter dated 3<sup>rd</sup> February, 2020 and addressed to the Claimant. copy of the above mentioned letter is hereto exhibited and marked Exhibit "D".

That despite the Defendant's letter Exhibit "D" and despite numerous desperate and repeated demands by the Claimant on the Defendant to liquidate this outstanding balance, the Defendant has failed, neglected and or refused to do so, and continues to refused to pay.

That out of desperation, the Claimant briefed the Law Firm of Adele, Adele & Co. to write a letter of demand and to give the Defendant due notice of litigation and this the Law Firm did by its letter to the Defendant dated August 26<sup>th</sup>, 2021 and despite the said letter the Defendant still continues to refuse to pay up this outstanding balance. Copy of the said Solicitor's is hereto exhibited and marked Exhibit "E".

That even after the final demand and notice of litigation Exhibit "E" the Claimant has made numerous physical oral demands on the Defendant including the last demand made on the 20<sup>th</sup> July 2023 and despite all these, the Defendant continues to refuse to pay.

That unless by Judgment of this Court the Defendant will continue to refuse to liquidate this outstanding balance.

That he verily believes that the Defendant has no defence to this action and the ends of justice will be better served if it is determined under the Undefended List Procedure.

Upon service, the Defendants jointly filed a Notice of Intention to defend the action with an affidavit of 34 paragraphs duly deposed to by one Ali Hassan, a staff of the Defendants in this suit.

It is his deposition that the Defendants denied and countered all the claims of the Claimant in the writ of summons dated 4<sup>th</sup> December, 2023 and all the depositions in the affidavit in support of the writ, deposed to by **Dr. Vivian Ozoekwe** on behalf of the Claimant.

That the Claimant claims through a letter of award dated 25<sup>th</sup> April, 2017 was offered a contract for the supply of 12 Nos. **Toyota Hilux (4 WD, DC, Auto Transmission, L.S., Petrol, Japan, Full Option, Rear Camera, Front & Rear A/C Vents, 5 Speed, 2017 Model)** for House of Representatives, National Assembly at the total sum of N374,399,998.20 (Three Hundred and Seventy Four Million, Three Hundred and Ninety Nine Thousand, Nine Hundred and Ninety Eight Naira, Twenty Kobo) only.

That there was no substantive contract between the Claimant and The Defendants with the full elements of a contract, as the Claimant did not go beyond receiving the offer letter dated 5<sup>th</sup> April, 2017.

That the letter of award clearly stated that the National Assembly Tenders Board granted approval to award the contract to the

Claimant's company and the Claimant willfully refused to perform the conditions of the contract as stated in the letter of award.

That the Claimant willfully refused and neglected to execute the legal agreement within 14 days as instructed.

That there is no legal agreement executed between the Claimant and the Defendants' legal Department till date.

That the Claimant refused to issue a letter of acceptance of the contract till date as contained in the provisional letter of award.

That the letter of Award expressly stated that payment will be based on satisfactory completion of the contract and appropriated certification by the Department of Supplies/House of Representatives (Supervisory Department) and the Monitoring and Compliance Unit of the Department of Procurement and Supplies House of Representatives Section.

That clause 4, of the letter states, ***"the above timelines are to be observed strictly and any breach would amount to automatic Invalidation of this award"***.

That formal fulfillment of the terms or conditions in any award letter/offer constitute a sin qua non to the establishment of contractual relationship and obligations between parties with any

Arms of the Federal Government, Ministries, Departments and Agencies under Nigerian Laws including the Defendants.

That the Claimant towed a wrong and unguided step in the execution of the contract which is not legally acceptable or morally appropriate.

That the Defendant is economical with the truth or does not fully know or understand the modus operandi of execution contracts in the National Assembly or any government establishment which includes the execution of formal contracts agreements with the Legal Services of government offices in the standard forms before proceeding to take further steps on the contract.

That there is no record of the Claimant ever attempting to enter into execution of the contract to establish legal relationship with the Defendants regarding the offer in issue.

That Defendants are not indebted to the Claimant in any form for any contract executed and unpaid for to the tune of N304,399,998.20 (Three Hundred and Four Million, Three Hundred and Ninety-Nine Thousand, Nine Hundred and Ninety Eight Naira, Twenty Kobo).

That the execution of the agreement for supply always follows execution of agreements, supervision and liaison with relevant offices among other conditions.

That the Claimant has not performed any contract in the guise that he claims in this suit.

That the Defendants entirety and specifically deny knowing or authorizing any **A. MANSUR** to take any action or write to the Claimant as claimed in Exhibit "A".

That the delivery note attached as Exhibit "B" by the Claimant is probably fake as the full name and designation of the receiving officer is not clearly stated on the document.

That the copy of Invoice referred to as Exhibit "C" has no link with the Defendants as the name or Logo of the Defendants are not on the document.

That there is no evidence or proof by the Claimant before the court of the various installment amounts made if any by the Defendants over the period of time and how the Claimant arrived at the outstanding balance.

That the sum claimed before this Court is not a liquidated sum at all as same was never discussed, negotiated or agreed upon by the parties.

That the Defendants did not in any way or at any time expressly, impliedly or by conduct agreed on the claimed amount with the Claimant in this matter since the legal agreement was not signed.

That the contract sum is N374,399,998.20 (Three Hundred and Seventy Four Million, Three Hundred and Ninety Nine Thousand, Nine Hundred and Ninety Eight Naira, Twenty Kobo) as against N304,399,998.20 (Three Hundred and Four Million, Three Hundred and Ninety Nine Thousand, Nine Hundred and Ninety Eight Naira, Twenty Kobo) being claimed by the Claimant.

That the amount claimed is not agreed upon by both parties and not due to the Claimant in the circumstance.

That he has searched through their records and there is no final letter of demand or pre-action notice issued or served on the Defendant before this suit was commenced.

**COURT:**

I have carefully weighed the averments in the affidavits of the parties and submissions of their learned counsels. The cardinal

issue that calls for determination is whether or not the Defendant has made out a case to justify a grant of leave to defend the suit and for that reason transfer the suit from the Undefended List procedure to the General Cause List for trial.

Indeed, undefended list 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 discloses no defence shall certainly not sway the Court into transferring the matter to general cause list for trial.

Simply put, the Defendant's affidavit must condescend upon particulars and should as much as possible, deal specifically with

the Plaintiff's affidavit and state concisely what the defence is, and what facts and documents 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 suffice as facts, which will throw doubt on Plaintiff's claim.

***UBA PLC. VS. JARGABA (Supra).***

It is the law that for a claim to be heard under the undefended list, it must firstly be for a liquidated money demand, including account stated to cognizable under the undefended list procedure thus excluding for e.g unliquidated damages as in claim in torts and special damages arising from any cause of action as they must be specially pleaded and proved.

Secondly, the claim for a debt or liquidated money demand must be supported by an affidavit verifying the claim; and thirdly, the affidavit must contain a deposition to that effect that in the belief of Plaintiff, Defendant does not have any defence to the claim.

***ASTC VS. QUORUM CONSORTION (2009) 9 NWLR (Pt. 1145).***

It is worthy of note, that the Defendants upon been served with the Plaintiff's Writ under undefended list, filed their Notice of Intention to defend this action with affidavit in line with the provisions of Order 35 of the Rules of this Honourable Court.

In this case, records of Court show the Defendant filed a Notice of Intention to Defend along with an affidavit. The crucial question therefore is whether or not the affidavit discloses a defence on the merit vis-à-vis the Claimant Claim to justify the suit being transferred to the ordinary Cause List for trial or judgment entered for the Claimant

The phrase "affidavit disclosing a defence on the merit" has received judicial consideration in a number of cases. In ***NYA VS. EDEM (2000) 8 NWLR (Pt. 669) Page 349***, the Court of Appeal explained it thus:-

***"An affidavit disclosing a defence on the merit does not mean that the Defendant must show that his defence must succeed at any event or that he must show a rock proof or iron cast defence. All that it means is that the Defendant must show***

***PRIMA FACIE that he has a defence to the Plaintiff's action. The defence may fail or succeed but it is not the business of the Court to determine that at this stage. This can only be done at the trial".***

***In AKINYEMI VS. GOVERNOR, OYO STATE (2009) FWLR (Pt. 140) Page 1821, "the Court of Appeal also held that to constitute a defence on the merit, the Defendant's affidavit must disclose either facts that raise substantial issues of law or disputed material facts that can only be resolved after a full trial".***

In ***ATAGUBA & CO. VS. GURA NIGERIA LTD. (2005) ALL FWLR (Pt. 256) Page 1219***, the Supreme Court held with respect to the Defendant's affidavit, that it must not contain mere general statement that the Defendant has a good defence to the claim, such general statement must be supported by particulars that if proved would constitute a defence. It is sufficient if the affidavit discloses triable issue or difficult point of law or posits the existence of a dispute as to the facts which ought to be tried or that there is a real dispute as to the amount due which requires the taking of account to reach a decision. To ascertain

whether the affidavit discloses a defence on the merit, it is desirable to examine the case put up by each party. See also ***NISHIZAWA LTD. VS. JETHWANI (1984) 12 SC Page 324.*** Being so guided, the Court now proceeds to consider the averments in the affidavits of the parties.

I do not think it will be of any gainful purpose re-producing everything, hook, line and sinker again. Suffices to mention that all relevant aspects of the affidavits in question would be considered.

In the affidavit in support of the writ of summons, it was averred on behalf of the Claimant, inter that the Defendant awarded the Claimant a contract for the supply of 12 Nos. Toyota Hilux (4 WD, DC, Auto Transmission, L.S., Petrol, Japan, Full Option, Rear Camera, Front & Rear A/C Vents, 5 Speed, 2017 Model) for the House of Representatives at the total price of N374,399,998.20 (Three Hundred and Seventy Four Million, Three Hundred and Ninety Nine Thousand, Nine Hundred and Ninety Eight Naira, Twenty Kobo) only.

The various delivery notes and invoice issued by the Claimant to the Defendant are attached as Exhibits "B" and "C".

That most unfortunately, despite the issuance to the Defendant Exhibit C, the Defendant has failed and neglected to pay to the claimant, despite numerous repeated demands of its part of the contract which is the outstanding payment of N304,399,998.20.

That the defendant managed to pay the claimant various installment amounts at different times between 2017 and 2020 totaling N70,000,000. 00 leaving the outstanding balance of N304,399,998.20 which was duly acknowledged by the Defendant.

That out of desperation, the Claimant through its lawyer wrote a letter of demand to the Defendant and despite this letter, the Defendant still continues to refuse to pay up this outstanding balance.

The Defendant has no defense to this claim. It is in the interest of justice to grant the claim.

In its affidavit in support of the notice of Intention to Defend, it was averred on behalf of the Defendant, inter alia, that there was no substantive contract between the claimant and the Defendant with full elements of a contract as the claimant did not go beyond receiving the offer.

Defendant further averred that payment will be based on satisfactory completion of the contract and appropriate certification by the Department of monitoring and compliance unit of the Department of the Defendant. It is also provided in the Letter of Award that the Defendant reserves the right to reject supplies that do not meet the full specification provided.

That the Claimant willfully refused to perform the conditions of the contract as stated in the letter of award.

Defendant further averred that the Claimant willfully and neglected to execute the Legal agreement within 14 days as instructed and that Claimant refused to issue a letter of acceptance of the contract till date as contained in the provisional Letter of award.

That the delivery note attached as exhibit B by the Claimant is probably fake as the full name and designation of the receiving officer is not clearly stated on the document.

That the copy of invoice referred to as exhibit C has no link with the Defendants as the name or logo of the defendants are not on the document.

That formal fulfillment of the terms or conditions in any award letter/offer constitute a *sin qua non* to the establishment of contractual relationship and obligations between parties with any Arms of the Federal Government, Ministries, Departments and Agencies under Nigerian Laws including the Defendants.

It will be in the interest of justice that this matter be transferred to the General Cause List.

I have given a serious thought to the foregoing averments of the parties. From them, it is apparent to the Court that though the Defendants does not dispute awarding the contracts for the supply of vehicles mentioned, to the Claimant, the thrust of its contention is that the Claimant is in breach of clause 3 of the Letter of Award attached as Exhibit A by the Claimant. Under the Clause, payment will be based on satisfactory completion of the contract and appropriate certification of same by the monitoring and compliance unit of the Department of procurement and supplies (Representatives Section) of the Defendant. It is also provided that the Defendant reserves the right to reject supplies that do not meet the full specification provided. It is the case of the Defendant that the Claimant willfully refused and neglected to execute the Legal Agreement within 14 days and that the

Claimant refused to issue a Letter of Acceptance of the contract till date as contained in the provisional Letter of contracts. On account of these, the Defendants rejected the supplies and further reasons it is not indebted to the Claimant.

I have read clause 3 of Exhibits A. It provides:-

***"Kindly note in addition that payment will be based on satisfactory completion of the contract and appropriate certification by the Department of Supplies/House of Representatives (Supervisory Departments) and the Monitoring and Compliance Unit of the Department of Procurement and supplies (House of Representatives Section). Furthermore, the National Assembly shall reserve the right to reject any supplies/works that do not meet the full specification provided".***

Exhibit "A" is the document exhibited by the Claimant. It is binding. There is no gainsaying that it forms the fulcrum of the contract between them and the Defendants. Clause 3 thereof is clear and unambiguous in its provision which makes payment for goods supplied subject to certification of satisfactory completion of the contract by the department of the Defendants named therein as well as the right of the Defendants to reject supplies

that do not meet the specified specification. The Defendants contends that following the Claimants' failure to perform the contract as specified in the Letter of Award and in the absence of certification by its relevant department it rejected the supplies made by the Claimant and for that reason is not indebted to the Claimant. By these, the Defendants duly joined issues with the Claimants' claim. The Claimant have not gone further to place any further evidence before the Court to put a lie to the Defendant's contentions by showing that the vehicles were satisfactorily supplied, certified and received by the Defendants. Although the Claimant attached Exhibits "B" to "C" to show they supplied the vehicles to the Defendant, there is nothing in or anywhere else showing the Defendants received and certified the goods satisfactorily in line with the provision of Clause 3 of Exhibit "A" so as to make payment incumbent on the Defendant.

Beyond the foregoing, the Legal Agreement relating to the contracts in line with the Letter of Award Exhibited by the Claimant to enable it verify the completion of the Contract has not been shown in this proceeding.

By the foregoing findings, the Court holds the view that the Defendant has raised triable issues against the Claimant's claim. As aforesaid, the Defendant's affidavit does not need to disclose an iron cast or rock proof defence. All that is required of it, is prima facie defence upon which a trial will have to be conducted.

In the circumstances, the Court resolves the issues raised in favour of the Defendants against the Claimant.

Consequently, leave is hereby granted to the Defendants in line with Order 35 Rule 3 (1) to defend the action. **I so Hold.**

***Justice Y. Halilu***  
***Hon. Judge***  
***23<sup>rd</sup> January, 2025***

## **APPEARANCES**

**Olabode Akindele, Esq.** – for the Claimant.

**Bukola A., Esq.** – for the Defendants