

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GARKI, ABUJA**

**CLERK: MRS VICTORIA SILAS ADINOYI
COURT NO. 9**

**SUIT NO: FCT/HC/CV/4257/2024
DATE: 29/01/2025**

BETWEEN:

TASHA ENERGY & ENGINEERING SERVICES LIMITED..... CLAIMANT

AND

- | | | |
|--|---|------------------------------|
| <ul style="list-style-type: none">1. STAN & DEKA RESOURCES LIMITED2. ENGINEER SAM ALABI3. STAN SPECIALIST CONSTRUCTION LIMITED4. MR. LEONARD ABULOKWE | } | DEFENDANTS/APPLICANTS |
|--|---|------------------------------|

RULING

(DELIVERED BY HON. JUSTICE S. B. BELGORE)

In this matter, placed under the Undefended List, the Claimant – Tasha Energy & Engineering Services Ltd – Claims jointly and severally against four Defendants – (1) Stan & Deka Resources Ltd, (2) Eng. Samuel Alabi, (3) Stan Specialist Construction Ltd, and (4) Mr. Leonard Abulokwe – as follows:

- (1) The sum of N66,000,000.00 (sixty-six million naira) being the unliquidated monetary balance owed by the Defendants to the Claimant in respect of the contract of supply and installation of 900 (nine hundred) units of all-in-one 100 watts solar street lights, executed by the Claimant for the Defendants, in Bayelsa State.**

- (2) **Post-judgment interest against the Defendants at the rate of 10% from the date of judgment until the final liquidation of the judgment debt.**

Subsequently, the case was fixed for 27/1/2025 for hearing. And following the service of the writ on the Defendants, the 1st Defendant, brought an application *Ex-parte* – M/16662/2024 – wherein they prayed for the following reliefs:

- (1) **AN ORDER OF THIS HONOURABLE COURT** joining Mr. Cyprian Ugochukwu Ossai of Block E8 CBN QTRS Garki 2, Abuja as a Third Party to the Suit with Suit No: FCT/HC/CV/4257/24 between **TASHA ENERGY & ENGINEERING SERVICES LIMITED and STAN & DEKA RESOURCES LIMITED & ORS** for the just, effective and effectual determination of the underlining dispute.
- (2) **AN ORDER GRANTING LEAVE TO THE 1ST & 3RD Defendants/Applicants** to serve the Third-Party Notice on the Proposed Third Party; Mr. Cyprian Ugochukwu Ossai by substituted means to wit; vide electronic means which includes his active email address; **uossai79@gmail.com** and WhatsApp number **+44 7436593697** as authorised by the Rules of this Court or by pasting same in his last known address at Block E8 CBN QTRS Garki 2, Abuja, Nigeria.
- (3) **AN ORDER OF THIS HONOURABLE COURT** deeming the Third-Party Notice filed separately and contemporaneously with this motion as properly filed and served.

I granted the application on 12/12/2024. We stuck to the 27/1/2025 as the date of hearing as originally endorsed on the writ at the time of placing under the Undefended List Procedure.

All the Defendants were served with the Claimant's affidavit in support including the 3rd party brought in by the 1st Defendant. By the 27/1/2025, when the matter came up in Court for hearing, all the Defendants with

the exception of the 2nd Defendants have filed their Notice of Intention to Defend together with affidavits in support. Ditto the 3rd party.

The 2nd Defendant had actually filed his own Notice of Intention to defend, served the claimant and but was then not put in the Court's file. It was precisely for that reason that I adjourned the matter till this morning (of 29/1/2025) to enable the 2nd Defendant do so.

Now, today is the hearing date of this case placed under the Undefended List. Perhaps, it need to be pointed out that under the applicable rule, a writ marked "Undefended List" such as in this case, must have a return date for hearing but where the case has been fixed for anything other than hearing, say mention or taking a motion *ex-parte* either for purposes of substituted service or as in this case for bring in a 3rd party, the suit cannot be entertained on that day as hearing. The above explain why the proceeding of 12/12/24 was not considered a hearing date. See the case of **SHEVRON NIG. LTD VS. WARRI NORTH LGC (2003) 5 NWLR (PT. 812) 28 SC.**

Today, I repeat, is the hearing date. When a matter under the undefended list come up for hearing, the Court has only one duty. That is to see if a notice of intention to defend with a counter affidavit in support was filed by the Defendant. If none was filed by the Defendant, the Court must proceed to judgment. See **BEN THOMAS HOTEL LTD VS. SEBI FURNITURE LTD (1989) 5 NWLR (PT. 123) 523 SC.**

However, a Defendant who intend to defend an action brought under the Undefended List Procedure is expected to file a Notice of Intention to defend with a counter-affidavit disclosing a defence on the merit or a triable issue.

Clearly, the Court is required to consider only the evidence to consider only the evidence contained in the affidavit filed by the Defendant in support of Notice of intention to defend the suit. Once the Court comes to the conclusion that the affidavit does not disclose a defence on the

merit or a triable issue, the Court is to proceed with hearing of the suit as an undefended suit and enter judgment accordingly without calling on the Defendant even if present in Court, to answer or be heard. See **HAIDO VS. USMAN (2004) (PT. 859) 65 CA.**

Otherwise, the suit would be transferred to the general Cause List for trial. See Order 35 Rule 1 – 5 of the Rules of this Court.

It is pertinent for me to emphasise that the Undefended List Procedure is not intended to shut out a Defendant from contesting the suit brought there under. Where a Defendant can show in his affidavit that he has a defence on the merit, he or she would be granted leave to defend the suit. The Defendant at this stage need not show a complete defence. It suffices if the defence set up shows that there are triable issues or that for some other reasons, there ought to be a trial. See **FESCO (NIG) LTD VS. N. R. & C. P. CO. LTD (1998) 11 NWLR (PT. 573) 227 CA.**

What do I find vis-a-vis the various Notices of Intention to defend as filed by the various Defendants in this case? Before I answer this question, let me deal briefly with the position of the 3rd party as it relates to the parties here.

A third party is a party or person not originally a party to the suit but enabled by what is called “3rd party proceedings” to be brought into the suit as a party at the instance of the Defendant who has a claim against him for contribution, or indemnity or other remedy or relief connected with the Plaintiff’s claim against the said Defendant. Such a 3rd party is *strict sensu* not a Defendant of the Claimant but a Defendant to the Defendant at whose instance he/she was brought in. See **EXPO LTD VS. PAFAB ENTERPRISES LTD & ANOR (1999) 2 NWLR (PT. 591) 449.**

Be that as it may, is there any triable issue(s) in the affidavits of these Defendants in this case? A triable is where the affidavit of the Defendant discloses a defence on the merit which goes to show that the claim of the claimant is beyond the contemplation of a debt. It is a material allegation

that requires further investigation by the Court to unearth the veracity or otherwise of the same. simply put, a triable issue is an issue that cannot be dismissed with a waive of hand. See the cases of **INTER-CITY BANK PLC VS. BELLO SANI ALI (2002) 7 NWLR (PT. 766) 420; PAUL OKOYE ANUNOBI VS. KENNEDY OBIWELOZO (2003) 12 NWLR (PT. 835) 617; SHELL PETROLEUM DEVELOPMENT OF NIGERIA LTD VS. ARHO-JOE NIGERIA LTD (2006) 3 NWLR (PT. 966) 172.**

Let me now condescend to the main point in this ruling. I mean to answer my earlier question. What do I find in this case? Are there triable issues in the affidavits of these Defendants? I have perused the contents of all the Defendants affidavits. It seems to mean that there are hotly disputed facts. There are prima facie defences and not sham defences. I have the firm view that there are issues, which if true would be a defence by the Defendants to the claim of this Claimant.

First, paragraphs 30-41, 42 – 46, of the 1st – 3rd Defendant’s affidavits clearly portray triable issues in this case. Those paragraphs shows certain payments made to one Cyprian Ugochukwu Ossai, a supposed agent of the claim? What is the exact quantum of the payment and when and how need to be determined at trial.

Secondly, paragraphs 7(b) (c) (e) (g) (h) (i) of the 2nd Defendant’s affidavit is in the same category. Infact, paragraph 9, 10, 11 and 12 is a total denial of any indebtedness. They denial not being a party to the contract between the Claimant on one hand and 1st and 3rd Defendants on the other hand. See paragraph 8 of the affidavit.

Thirdly, paragraph 9(d) (e), 10 and 11 of the 4th Defendant’s affidavit are more pungent, direct attack and knock the claims of the Claimant, if true, down and paint a complete defence. I think I should bring them out:

Paragraph 9(d) reads:

“.....

the principal sum being claimed by way of liquidated money demand has been received by Mr. Cyprian Ugochukwu Ossai as the 1st and 3rd Defendants made payments of the sums being claimed to the Claimant through him as their agent/intermediary”

Paragraph 9(e):

“.....Cyprian Ugochukwu Ossai, is directly connected to the subject matter of this suit as he has received MOST payments due to the Claimant which are relevant to the claims made by the Claimant in this suit” (Capital is mine).

Paragraph 10:

“.....the Defendants are not indebted to the Claimant in the way and manner or in any manner at all it has been conveyed in the affidavit in support of the writ of summons.” (Underlined are mine).

Paragraph 11:

“.....I know the Defendants have made all the payments due to the Claimant.....through: Mr. Cyprian Ugochukwu Ossai, who facilitated the contract between the parties and whom the claimant held out as it's implied and ostensible agent at all material time.” (Underlined are mine).

Honestly speaking, if all the above depositions in the Defendants various affidavits do not amount to triable issue, then I confess, I would not know what else would amount to it. It would appear to any discerning mind,

that the claimant want double payment unless this is disputed. And the only way for the claimant to do so is to be given opportunity at full trial.

Consequently, I in line with the provisions of Order 35 Rule 3 (1) (2) transfer this case to the general cause list. Parties are to exchange pleadings in accordance with the provisions of this Civil Procedure Rules, 2018.

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S. B. Belgore

(Judge) 29/1/2025

APPEARANCES:

Chief Gody Uche SAN with Chijioke Ideli, Francis Nsiegbunom, Victor Enene Cagbonjimi and K. Nwachukwu for the Claimant.

M. J. Numa SAN with Teejani Jimoh and J. P. Okako for the 1st and 3rd Defendants.

Samson Egege for the 2nd Defendant

Ijeoma Kelubia with C. C. Eziukwu for 4th Defendant.

Joshua I. For the 3rd Party.