

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE GWAGWALADA JUDICIAL DIVISION
HOLDEN AT GWAGWALADA
BEDORE HIS LORDSHIP: HON JUSTICE A. S. ADEPOJU
DATED THIS 25TH DAY OF OCTOBER, 2023

SUIT NO: FCT/GWD/CV/125/2023

BETWEEN :

KELVIN ENERGY SERVICES LIMITED -----CLAMANT

AND

TELCOM SATELLITES LIMITED -----DEFENDANT

QASIM A. OPAKUNLE for the Claimant.

*Claimant is represented by the Director **KAMORUDEEN OLADEJO**.*

Defendant not in Court and not represented.

There is proof of service in the record of the Court.

JUDGEMENT

The Claimant's claim was instituted under the undefended list procedure brought pursuant to Order 35 of the FCT High Court Civil Procedure Rules where in the Claimant seeks the for the following:

1. An order of this honorable court mandating the Defendant to pay up with immediate effect the sum of **N71, 675, 000 (Seventy-One Million, Six- Hundred and Seventy-Five Thousand Naira Only)** to the Claimant being the amount the Defendant is indebted to for the supply of 90,000 liters of diesel.
2. An order of this honorable court mandating the Defendant to pay the sum of **N7, 167,500 (Seven Million, One Hundred and Sixty-Seven Thousand, Five Hundred Naira Only)** to the Claimant being

the 10% of the principal sum undertaken by the Defendant to pay the claimant in the event the Defendant defaults.

3. AN ORDER OF THIS HONOURABLE COURT awarding sum of **N3,000,000 (Three Million Naira Only)** as the cost of this suit.

In the affidavit in support, the Claimant averred that it is into the business of supply of diesel, petrol and several other petroleum products which the defendant is into the business of paid satellite television broadcast. That the Defendant runs a television broadcast brand popularly known as TSTV and it is actively in business.

That on the 1st of February, 2023 the Defendant placed an order to the Claimant through a Local Purchasing Order (LPO) for the supply of **45,000 liters** of diesel (AGO PURE-83-84 DENSITY). The LPO was attached as Exhibit A. That the total price for the diesel is **N42,750,000 (Forty-Two Million, Seven Hundred and Fifty Thousand Naira Only)** at **N950** per liter. That the LPO states that the sum of **N10,000,000 (Ten Million Naira Only)** will be paid to the Claimant upon delivery and the balance of **N32,750,000 (Thirty-Two Million, Seven Hundred and Fifty Thousand Naira Only)** will be paid within 30 days from the supply of the diesel. That the Claimant delivered the **45,000 liters** of diesel to the Defendant and was acknowledged by one Mr. Moses Dahomi; a staff of the Defendant on the 4th of February, 2023. The proof of delivery of the diesel and the Claimant's invoice was attached as Exhibit B & C. That despite the fact that the Claimant has delivered, the Defendant refused to pay as stated in the LPO. That the Claimant placed several calls to the office of the Defendant for the payment but it yielded nothing.

The Deponent averred further that 13th April, 2023, the Defendant placed a call to the Claimant through its Chief Executive Officer apologizing for the breach and issued another LPO for the supply of another 45,000 liters of diesel (AGO PURE-83-84 DENSITY) to the Claimant and promised the Claimant that it will pay the sum of **N10,000,000 (Ten Million Naira Only)** for the first supply and pay the balance within 30 days from the supply of another 45,000 liters. That The Defendant through its new LPO dated 13th April, 2023 stated that the money for the new supply will as well be paid within 30 days from the delivery. The Defendant's LPO dated 13th April, 2023 is attached as Exhibit D. That the price of the second order is **N38,925,000 (Thirty-Eight Million, Nine Hundred and Twenty-Five Thousand Naira Only)** at **N865** per liter.. That the defendant in order to further convince the Claimant on its willingness to pay all the outstanding within a month from the delivery of the second 45,000 liters, signed an undertaken to pay a sum equivalent to 10% of the total outstanding should he default in the payment of the total outstanding within 30 days from the delivery of the second order. The undertaking titled "Payment Agreement" signed by both parties is attached as Exhibit E. That the claimant delivered the second 45,000 litres of diesel to the Defendant on 13th April, 2023; same day the LPO was issued by the Defendant as the Defendant claimed that it was in urgent need for it. The product was received by the same Defendant's staff that received the first delivery, Mr. Moses Dahoml. The proof of delivery and Claimant's invoice are attached as Exhibits F & G. He also averred that the Defendant defaulted in the payment of the outstanding as it undertook.

That several calls were placed to the Defendant's office in Idu Area of Abuja but nothing came out of it.

Mr. Kamarudeen Oladejo also averred that the Defendant has not paid the balance of **N32,750,000 (Thirty-Two Million, Seven Hundred and Fifty Thousand Naira Only)** for the first supply it took from the Claimant and has not also paid the full money for the second supply it received from the Claimant on 13th April, 2023 which amounts to **N38,925,000 (Thirty-Eight Million, Nine Hundred and Twenty-Five Thousand Naira Only)**. That the total outstanding sum for the two supplies is now **N71,675,000 (Seventy-One Million, Six Hundred and Seventy-Five Thousand Naira Only)**. And that the Defendant having defaulted to pay as it undertook, will also pay the 10% of the total outstanding which is **N7,167,500 (Seven Million, One Hundred and Sixty-Seven Thousand, Five Hundred Naira Only)**

He averred further in his affidavit that when the Claimant tried all it could to recover its monies and was not paid, it consulted Qousim A. Opakunle, Esq. of Sabiq Legal Practitioners to help recover the outstanding and paid N3,000,000 (Three Million Naira Only) to Sabiq Legal Practitioners for the legal service. The receipt of payment is hereby attached as Exhibit H. That the lawyer wrote a demand letter to the Defendant on behalf of the Claimant demanding the payment of the outstanding sum within 7 days and litigation if the Defendant fail to comply. The acknowledgment of the letter is hereby attached as Exhibit I. That the Defendant till date has not paid the outstanding whereas; it is conducting its businesses. And that the Defendant has no defence to the Claimant's claim.

The nature of the claim of the Claimant is for a liquidated money demand suited for determination under the undefended list procedure. See the case of **OLALEKAN V IFEDAPO (2010)LPELR 4560 CA** where the Court of Appeal held:

“The point must now be made that the sole purpose of actions brought under the undefended list is to save time and costs where with respect to claim for a liquidated sum of money plaintiff applies to court to place suit in the undefended list and dispose in a supporting affidavit that to the best of his knowledge defendant has no defence to the claim. The Court enters the suit in the undefended list and the writ is marked “Undefended”. The Court then sets a date for hearing. On the date so fixed by the court for hearing, the court expects to see a Notice of Intention to defend the action followed by an affidavit in support disclosing a defence on the merits filed by the defendant. If there is no such Notice of Intention to defend the action filed, then the court has a duty to enter judgement for the plaintiff in terms of the claim.”

See also the provision of Order 35 Rule 3(1) of the FCT High Court Civil Procedure Rules which provides thus:

“Where a defendant neglects to deliver the notice of intention to defend and an affidavit prescribed by Rule 3(1) or is not given leave to defend by the Court, the suit shall be heard as undefended and judgement given accordingly.”

In the instant case, the proof of service deposed to by the bailiff of this Court showed that the Defendant was served with the Originating

process (Writ of Summon) on the 3rd of October 2023 at its registered or usual place of business at TSTV Teleport and Breach Data Center, Plot 859, Idu Industrial Area, Idu, Abuja. The Defendant have failed and or neglected to in accordance with the above stated rules of the Court file its Notice of Intention to Defend together with an affidavit. The duty of the Court on the day the matter is slated for hearing is to enter judgement based on the claim of the Plaintiff as endorsed on the Writ of Summons. I therefore hold that the plaintiff is entitled to judgement.

Judgement is hereby entered in terms of the reliefs set-out on the writ of summons.

SIGN

**HON. JUDGE
25/10/23**