IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT GUDU - ABUJA

ON TUESDAY THE 26TH DAY OF JANUARY 2021.

BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE OSHO-ADEBIYI

SUIT NO. CV/2546/2020

BETWEEN:

C. L. UKAS INVESTMENT (NIG) LTD ---------- CLAIMANT

AND

1. THE CLERK OF THE NATIONAL ASSEMBLY ------DEFENDANTS

2. THE NATIONAL ASSEMBLY

RULING

By a Writ of Summons filed on the 4th day of September 2020 under the undefended list, the Claimant is claiming the following reliefs against the Defendants:-

1. A sum of N96,369,200 (Ninety-Six Million, Three Hundred and Sixty-Nine Thousand, Two Hundred Naira) only, being the value of the goods supplied by the Claimant to the Defendants at the Defendants request, under the contract for the supply of office equipment dated 26th day of November 2018 between the Claimant and the Defendants, which the Defendants have refused to liquidate despite several written and oral demands by the Claimant.
2. Ten Percent (10%) Post judgment interest on the unpaid sum of N96,369,200 (Ninety six Million Three Hundred and Sixty Nine

Thousand Two Hundred Naira) only, until the unpaid sum is finally liquidated.

3. The sum of N20, 000,000.00 (Twenty Million Naira) only, being general damages for breach of contract for the supply for the office equipment dated 26th day of November 2018 between the Claimant and the Defendants
4. The cost of this suit.

Attached to the Writ is an affidavit of 23 paragraphs, deposed to by one Uche Okenwa, the North Central Representative of the Claimant. The facts that gave rise to this suit is that the Defendants in a meeting on the 4th of August 2017 resolved to grant an approval to award the contract for the supply of Office Equipment to the National Assembly to the Claimant and a letter of award was issued to the Claimant to that effect. That an agreement was executed for the supply of equipment and the Claimant, in line with its obligations under the agreement, supplied the office equipment to the Defendants. That the Defendants did not make any down payment or mobilize the Claimant towards the execution of the Contract and the Claimant took out a short-term loan facility to carry out the job. That after the supply of the office equipment to the Defendants, the Defendants have refused to pay for the goods supplied. That Defendants' refusal to pay the sum owed has affected Claimant's business as Claimant has been in default of payment of the loan with accrued interest. That several demand letters have been sent to the Defendants, but Defendants have refused to pay the Claimant the sum owed. That the Defendants admitted the debt owed to the Claimant at the meetings held with the Deputy Clerk of the National assembly and the Clerk of the National Assembly on the 11th day of

August 2020 and the 19th day of August respectively. That the Defendants have no defence to this claim.

The Claimant attached documents as exhibits in proof of its case as follows;

1. Certificate of Incorporation of Claimant as Exhibit A
2. Copy of Extract of Minutes dated 4thAugust 2017 as Exhibit B
3. Letter of award of contract as Exhibit C
4. Agreement for supply as Exhibit D
5. Cash/Credit sales invoice dated 30th November 2017 as Exhibit E
6. Waybill/Delivery Note dated 30thNovember 2017 as Exhibit F
7. Certificate of goods supplied dated 16th July 2016 as Exhibit G
8. Loan Agreement dated 2nd October 2017 as Exhibit H
9. Letter of Demand dated 1st July 2020 attached as Exhibit J
10. Letter of invitation dated 17th July 2020 as Exhibit K

Also filed is a written address as argument with authorities cited to buttress the fact that the claimant has made out a case for the issue raised to be resolve in its favour and judgment be entered in favour of the Claimant.

I have examined the Writ of summons, the affidavit, the exhibits as well as the written address filed by Counsel in this case. The Defendants were duly served with the writ on the 11th of November 2020 but failed to file a notice of intention to defend this suit. **By Order 35 Rule (3) and (4) of the FCT Civil Procedure Rules 2018**a Defendant who has been served with a writ under the undefended list, where he so desires to defend the suit, file a Notice of Intention to Defend along with an affidavit disclosing a defence on the merit;

and the Court upon consideration of the affidavit if satisfied that triable issues have been raised in the affidavit, will transfer the matter to the general Cause list. However, wherea Defendant fails to file a Notice of Intention to Defend along with a supporting affidavit as required by the rules of this Court, the suit shall be heard as an undefended suit and judgment entered accordingly.

In this instant case, from the Court's record, the Defendantsfailed to enter appearance, nor file aNotice of Intention to Defend along with an affidavit disclosing a defence on the merit hence the suit was heard as undefended.

Be that as it may, the mere failure of the Defendants to file an affidavit will not automatically result to judgment being entered for the Claimant as the Court is obligated to consider the claim of the Claimant to determine if a case has been made for the Court to grant the reliefs as claimed.

In this case, upon an examination of the Claimant's claim, it shows that relief no. 3 and 4, is seeking for the sum of N20, 000, 000.00 as general damages and for as cost of this action. The Undefended List procedure is designed for hearing of liquidated money demands. This means ascertained debts not money due that needs to be further provedor requires an arithmetical calculation. In ***MAYA V SAMOURIS (2002) FWLR (PT. 98) P. 818,*** the Supreme Court explained that a liquidated money demand is a claimin respect of a debt or liquidated demand, that is to say, an ascertained or specific amount in which there is nothing more that needs to be further done to determine the quantum or extent of the Defendants liability.

In this case the Claimant's third and fourth reliefs which are claims for general damages and costs of this suit does not qualify as a liquidated money demand. A claim for general damages and cost which are at large at the discretion of the Court, is unascertainable and unquestionably, is a claim for unliquidated money demand and cannot be granted under the undefended list. More so as there is nothing in the agreement that states that the parties fixed any amount payable as damages upon default by the other, therefore general damages cannot be claimed and if it is claimed, it cannot be awarded under this procedure. See the case of **FASTECH (NIG) LTD Vs. ZAMFARA STATE GOVT & ORS. (2019) LPELR-48135(CA) and LONESTAR DRILLING NIG LTD VS. NEW GENESIS EXEC. SECURITY LTD (2011) LPELR-4437(CA).**

The Claimant's claim for the sum of N20,000,000.00 as general damages and cost of this suit are not claims which are recognizable under the Undefended List procedure, as a result, this Court cannot grant these prayers and same is liable to be struck out and I so hold.

With respect to reliefs one and two, from the facts giving rise to this claims as earlier stated in this judgment, the Defendants did not file a notice of intention to defend and an affidavit to controvert those facts in the Claimant's case, the Claimant would ordinarily be entitled to judgment as the Defendants have no defence to the claim.

However, going by the Agreement for Supply which is Exhibit Dparticularly clause 22.0. This Clause is one on arbitration which provides:-

> "*Any dispute arising from this Agreement which cannot be mutually resolved shall be referred to an*

Arbitration for settlement and such arbitrator shall be agreed to by both parties, and in the absence of such agreement, an arbitrator shall be appointed by the Chief Judge of the High Court, Abuja on application by either party in accordance with the arbitration and Conciliation Act Cap. A18, Laws of the Federation of Nigeria, 2004."

The above, clause 22.0 of the agreement can be interpreted to mean that first there must have been a dispute, secondly parties must have attempted to settle the dispute by mutual consent, third upon the inability of both parties settling by mutual consent then the matter should be referred to Arbitration for settlement. From Exhibit K, it is clear that the parties had met mutually to resolve the dispute, which was not resolved. The next means of resolving should have been by arbitration as stipulated in the agreement executed by the parties.

The Arbitration Clause used the word **"shall**" in stating that any dispute between the parties which cannot be resolved by mutual consent shall be settled by arbitration under the Laws of Nigeria. By the use of the word "shall", the parties agreed that any dispute which they cannot resolve by mutual consent must mandatorily be settled by arbitration and no other way. The parties having subscribed to a mandatory resolution of any dispute by arbitration and parties are bound by their agreement.The Courts have been enjoined to give effect to the plain words of a written contract, and must not read into them any meaning not stated in the agreement. Nevertheless, this does not oust the jurisdiction of this Court, the Clause gives the parties means of resolving and not just rush to litigation. The

Supreme Court in the case of ONYEKWULUJE & ANOR V. BENUE SATE GOVT & ORS (2015) LPELR-24780 (SC) Per KEKERE-EKUN J.S.C. (P.65, paras. A-G) held;

> *"..... In Magbagbeola v. Sanni (2002) 4 NWLR (Pt. 756) 193 it was held that an arbitration clause is only procedural in that a provision whereby parties agree that any dispute should be submitted to arbitration does not exclude or limit rights or remedies but simply stipulates a procedure under which the parties may settle their differences. In other words, the existence of an arbitration clause in a contract merely postpones the right of the contracting parties to resort to litigation."*

Consequently, this Court would honour the terms of the parties as stated in the agreement executed by them and refer this matter to the Hon. Chief Judge of the High Court of FCT, Abuja, who shall appoint an arbitrator. Parties are hereby given 3 months from the date of this ruling to report progress on Arbitration.

Appearances: Fatima Mala Aluma, Esq., for the Claimant. Defendants not represented.

HON. JUSTICE MODUPE R. OSHO-ADEBIYI

JUDGE

26/01/2021