

**IN THE HIGH COURT OF JUSTICE OF THE  
FEDERAL CAPITAL TERRITORY ABUJA  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT JABI - ABUJA**

**BEFORE: HON. JUSTICE O. C. AGBAZA**

**COURT CLERKS: UKONU KALU & GODSPower EBAHOR**

**COURT NO: 11**

**SUIT NO: FCT/HC/CV/3085/18**

**BETWEEN:**

- 1. DIVINE ERA NIG LTD**
- 2. MR. RAPHAEL SANI.....CLAIMANTS**

**VS**

- 1. A – ONE EXECUTIVE PROFESSIONAL SERVICES LTD**
- 2. MR. BADMUS ADEDEJI.....DEFENDANTS**

**RULING**

By a Writ of Summons dated 22/10/2018 and filed same day, under the "undefended list" the Claimants claim against the Defendants are as follows;

- (1) Sum of ~~₦~~6,920,000.00 (Six Million Nine Hundred and Twenty Thousand Naira) being the money the Defendants owe the Claimants.

Accompanying the Writ of Summons is an 18 Paragraphs affidavit with four (4) Exhibits attached, the affidavit was deposed to by the Raphael Sani 2<sup>nd</sup> Claimant and Managing Director of the 1<sup>st</sup> Claimant. The process was served on the 1<sup>st</sup> Defendant on 6/2/2019 and by Order of Court given on

27/3/2019 was served on 2<sup>nd</sup> Defendant by pasting at the last known Address being 14 Buchawa Street off Aminu Kano Crescent Wuse 2 Abuja FCT.

In compliance with Order 35 Rule 3 of the High Court of the Federal Capital Territory (Civil Procedure) Rule 2018, and upon service of the Writ of Summons, the Defendants filed a Notice to Defend dated 26/3/2019, along with a 21 Paragraph affidavit deposed to by Mr. Badmus Lukman Adedeji the 2<sup>nd</sup> Defendant.

The case of the Claimant in brief is that, the parties entered into a transaction vide a Local Purchase Order (LPO) dated 24/10/2017 issued by the 1<sup>st</sup> Defendant through 2<sup>nd</sup> Defendant to the Claimant requesting the supply of 33,000 litres of Diesel at the rate of ₦240 per liter totaling the sum of ₦7,920,000.00 (Seven Million Nine Hundred and Twenty Thousand Naira). The Claimant supplied the requested item subject matter of the Local Purchase Order (LPO) without an initial deposit paid by the Defendants. But given an assurance by the 2<sup>nd</sup> Defendant that he will pay within two weeks of supply. That on 16/11/2017 the Defendants issued a Zenith Bank cheque No. 25992654 to the tune of ₦7,920,000.00 (Seven Million Nine Hundred and Twenty Thousand Naira) in favour of the 1<sup>st</sup> Claimant which was dishonoured upon presentation at the Suleja Branch of Zenith Bank on the ground that the account lack funds. 2<sup>nd</sup> Defendant promised to do something about the lack of fund and on 16/7/2018, transferred directly the sum of ₦1,000,000.00 (One Million Naira) to the 2<sup>nd</sup> Claimant. That since that time all efforts to reach 2<sup>nd</sup> Defendants failed.

It is further the case of the Claimants they found out after going to the 1<sup>st</sup> Defendant's office in Kaduna that they no longer do business there, but were now in Abuja and caused their lawyer to write a letter of demand dated 2/9/18 to be served on the 2<sup>nd</sup> Defendant in his office in No. 14 Buchawa Street of Aminu Kano Crescent, Wuse 2 Abuja. That the Defendant never made any attempt to reach the Claimants on payment of the balance sum of ₦6,920,000.00 (Six Million Nine Hundred and Twenty thousand Naira). And believes that the Defendants have no defense to the Claimants' Suit, since they have failed to pay up the outstanding sum after repeated demand of same.

On the other hand, the Defendants in their Joint Affidavit disclosing a defence on the merit denies that Claimants supplied them 33,000 liters of Diesel at the rate of ₦240 pursuant to any Local Purchase Order dated 24/10/2018 therefore did not take delivery of same at the 1<sup>st</sup> Defendant's Project Site at Kuje FCT. Denies further that the Defendants denied receiving any delivery invoice or authorized any agent of the company to sign any Delivery Invoice for the Claimants. And no receipt of purchase was issued to the Claimants as in standard practice with 1<sup>st</sup> Defendant Company and generally in the execution of contracts.

The Defendants denies issuing any Zenith Bank Cheque with No. 25992654 in favour of the 1<sup>st</sup> Claimant to the tune of ₦7,920,000.00 (Seven Million Nine Hundred and Twenty Thousand Naira) dated 16/11/2017 and that the said cheque is fake, forged and fraudulently obtained. Denies that the 1<sup>st</sup> Defendant's Cheque was never presented for cash at Suleja branch of Zenith Bank 2<sup>nd</sup> Defendant, also denies making a promise of cash payment

or repayments to the Claimants, but admits sending or transferring the sum of ₦1,000,000.00 (One Million Naira) to the 2<sup>nd</sup> Claimant's Account on 16/7/2018 for other purpose un-connected with the facts of this case.

The Defendants also denies receipt of demand letter dated 2/9/2018 from Claimant's lawyer and does not owe the Claimants jointly or severally to warrant the 2<sup>nd</sup> Defendant calling the Claimants on any balance of ₦6,920,000.00 (Six Million Nine Hundred and Twenty Thousand Naira) for the supply of Diesel or any other sums stated by the Claimants.

It the case of 2<sup>nd</sup> Defendant that as a Director of 1<sup>st</sup> Defendant, he is an agent of the 1<sup>st</sup> Defendant who is a disclosed principal and has not incurred any liability against the Claimants. 2<sup>nd</sup> Defendant also states that he does not know the Claimant in his personal capacity and does not have any business transaction with Claimants whatsoever or whensoever. On the bases of these, the Defendants have a Defence on the merit to the suit of the Claimants.

Upon a careful consideration of the submission of both Counsel for and against this suit filed under the "Undefended List" the Judicial authorities cited as well as their affidavit evidence, the issue that can be distilled from all of these for determination is;

"Whether the Claimants has proved their case to be entitled to judgment under the "Undefended List Procedure"

By the Provision of Order 35 Rule 3(1) of the Rules of Court, where a Defendant is served with a Writ of Summons under the "Undefended List",

the Defendant has five (5) clear days to file his Notice of Intention to defend along with an affidavit disclosing a Defence.

It is trite law that where a Defendant files a Notice of Intention to defend along with an affidavit disclosing a Defence, pursuant to Order 35 Rule 3(1) of the Rules, the duty of the court at that stage is to look at the affidavit to find if there are triable issues from the facts contained in the said affidavit. It is not the duty of the court at that stage, to determine whether the Defence being put up will ultimately succeed or whether the defence has been proved or comprehensive. See Trade Bank Plc Vs Spring Finance Ltd (2009) 12 NWLR (PT. 1155) 360 @ 373.

A Defendant who seek to succeed must show triable issues as revealed in the affidavit accompanying the Notice to Defend. On what amount to triable issues, the Court of Appeal in the case of Patigi Local Govt Vs I.K Eleshin Nla Esq. (2008) All (PT. 421) 854 @ 875 Para E – G stated thus;

That the following situations may give rise to the discharge of the burden placed on the Defendants;

- (a) A difficult point of law has been raised in the Defendant's affidavit.
- (b) Dispute as to facts raised in the Defendant's affidavit.
- (c) Dispute as to correct amount owed.
- (d) Where there is probability of a bonafide Defence, e.g. Counter Claim.

In the instant case the Claimants Claims the balance of ₦6,920,000.00 (Six Million Nine Hundred and Twenty Thousand) being balance of the amount involved in a transaction between the parties for the supply of 33,000 litres of diesel which total sum amounted to ₦7,920,000.00 (Seven Million Nine Hundred and Twenty Thousand Naira). The Defendant on the other hand raises some disputes as to the facts as alleged by the Claimant by denying the entire transaction, as well as stating that the cheque attached as Exhibits was fake, forged and fraudulent. 1<sup>st</sup> Defendant also denies knowing the Claimant in his personal capacity. The pertinent question which follows is that are these denials weighty enough to warrant the court to transfer the case to the "General Cause List"?

The Defendant have raised the issue of forgery and fraud in their affidavit in support of intention to Defend, the allegation of forgery and fraud as well as denial of being involved in any transaction with Claimants. This is a criminal allegation which requires a strict proof beyond reasonable doubt. I am of the opinion that the standard required of proof of the said allegation and denials cannot be proved by affidavit evidence, it is one which the parties must call further oral and perhaps documentary evidence. In the case of Okpara Vs Gusau, (2009) 11 NWLR (PT. 1151) 1 @ 20 Paras E – F. the court held;

"The court should not be hasty to hear cases under the "Undefended List". It should look into conflicting affidavits and other evidence before embarking or proceeding to treat an action under the "Undefended List" it is better to hear out the parties in order words, once there is conflicting affidavit evidence the burden of proof

becomes very necessary and the court should proceed to hear the parties”

Applying this principle to the instant case, I am of the firm opinion that the dispute raised by the Defendants is one which cannot be sufficiently addressed under the “Undefended List” and having been admonished by the court to adopt a liberal approach in the determination of whether or not to give leave to a Defendant to defend a suit under the “Undefended List”. See Okpara Vs Gusau (Supra) 22 – 23 Para H – C. This court hereby hold that this case ought to be heard with parties allowed to give evidence in support of their respective cases.

From all of these and having considered the affidavit of the parties, this court having held that this suit ought to be heard under the General Cause List hereby holds that the Defendant has shown sufficient cause warranting the transfer of the case to the General Cause List and accordingly this suit is hereby transferred to the General Cause List for determination. Parties are to file and serve their respective pleadings within the time prescribed by the Rules of Court

**HON. JUSTICE O. C. AGBAZA**

Presiding Judge

5/3/2020

**APPEARANCE:**

SADIYA SULE FOR THE CLAIMANTS

CHARLES ABALAKA FOR THE 1<sup>ST</sup>/2<sup>ND</sup> DEFENDANTS