

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA – ABUJA**

**BEFORE HIS LORDSHIP: JUSTICE SALISU GARBA
COURT CLERKS: FIDELIS T. AAYONGO & OTHERS
COURT NUMBER: HIGH COURT TWO (2)
CASE NUMBER: FCT/HC/CV/3144/2019
DATE: 17TH SEPTEMBER, 2020**

BETWEEN:

OKPALA CHUKWUMEZIE - CLAIMANT

AND

DELTA TRANSPORT SERVICE LIMITED - DEFENDANT

Parties absent.

Nick Ilonuba for Claimant appearing with R. Shidondo Esq.

Ifeakwuaba Aleke for the Defendant holding the brief of K.C. Ndukuba Esq.

Claimant's Counsel – The matter is for ruling. We are ready to take same.

R U L I N G

The Plaintiff took out a writ of summons under the Undefended List Procedure against the Defendant and claims as follows:

1. The sum of N8,167,500.00 (Eight Million, One Hundred and Sixty Seven Thousand, Five Hundred Naira) only being debt due and owing from the Defendant to the Claimant arising from the supply of motor vehicles to the Defendant by the Claimant pursuant to the Letters of Award of Contract to

supply Motor vehicles to the Defendant dated 3/11/2014 and 11/11/2014.

In support of the claim is a 21-paragraph affidavit dated 8/10/2019 deposed to by Mr. Magadelene Okapa the wife of the Claimant in this case. Attached thereto are 11 exhibits marked as Exhibits A, B, C, D1, D2, D3, E, F, G, H and I respectively.

Upon being served with the originating processes, the Defendant filed a Notice of Intention to Defend dated 30/1/2020. Also filed by the defendant is 13-paragraph affidavit disclosing a defence on the merit dated 30/1/2020 deposed to by Sorhue Mevi Collins an employee in the Account Department of the Defendant in this matter.

It is trite law that in an action brought under the Undefended list procedure, the trial court is required to consider only evidence contained in the affidavit filed by the Defendant in support of the 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 the hearing of the suit as Undefended suit and enter judgment accordingly. See HAIDO v USMAN (2004) 3 NWLR (Pt 859) 65.

It is also trite that where there is a conflict in the affidavits of parties under the Undefended list procedure, evidence is the only way by which the conflict can be resolved and it is mandatory to enter the suit on the general cause list. See EBONG v IKPE (2002) 17 NWLR (Pt 997) 504.

I have carefully considered the 13-paragraph affidavit disclosing a defence on the merit and come to the firm conclusion that there are triable issues and therefore it has disclosed a defence on the merit. For instance in paragraph 5 of the said affidavit it is deposed to that the only contract transaction which existed between the Claimant and the Defendant was that entered vide an Award Letter dated 3rd November 2014 for the supply of one (1) unit of Toyota Hiace Medium Roof A/C Bus in the sum of Eight Million, Two Hundred and Thirty Five Thousand Naira (N8,235,000.00) only.

In paragraph 6 the Defendant deposed that he has paid the contract sum and thus has satisfied its contract obligation.

Further deposed in paragraph 8 that the Defendant denies entering into a second contractual relationship with the Claimant for supply of any other vehicles.

In the light of the above, I hold the considered view that this suit ought to be transferred to the General Cause List and accordingly it is transferred to the General Cause List. I order that parties should file and exchange their respective pleadings.

(Sgd)
JUSTICE SALISU GARBA
(PRESIDING JUDGE)
17/09/2020

Claimant's Counsel – We thank the court for the ruling. May we suggest 18/11/2020 for hearing of the matter.

Defendant – No objection.

Court – Suit adjourned to 18/11/2020 for hearing.

(Sgd)
JUSTICE SALISU GARBA
(PRESIDING JUDGE)
17/09/2020