

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT KUBWA, ABUJA

ON TUESDAY, THE 20TH DAY OF NOVEMBER, 2020

BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA

JUDGE

SUIT NO.: FCT/HC/CV/1904/20

BETWEEN:

FOOTSTEP PRESS & BOOKS LIMITED ----- } CLAIMANT

AND

PEOPLES DEMOCRATIC PARTY ----- } DEFENDANT

RULING

On the 19th day of June, 2020 Footstep Press & Books Limited hereafter called the Claimant institute this action against Peoples Democratic Party (PDP) hereafter called the Defendant, claiming Twelve Million, Five Hundred Thousand Naira (₦12, 500,000.00) as contract sum owed to the Claimant by Defendant over contract Defendant awarded to Plaintiff vide letter of Award dated 12th day of April, 2016. Plaintiff also claims Forty Eight Million, Eight

Hundred and Sixty Six Thousand, Six Hundred and Fifty Naira (~~N~~48, 866,650.00) – being another contract sum Defendant owes it by contract awarded vide letter of Award dated 25th April, 2016.

The Plaintiff also want 10% interest on the contract sums from the date Judgment is delivered till the time of final liquidation of the Judgment sum. He supported his claims with Affidavit of 41 paragraphs. They attached several documents in support of their claims **EXH. A - L**.

Because the Writ is predicated on debt liquidated money demand, the Court marked it as undefended.

The Defendant was served and on the 15th of October, 2020 they filed a Notice of Intention to defend the Suit. They also filed an Affidavit of 34 paragraphs. They also attached documents marked as **EXH. PDP 1 – PDP 7**. They filed Written Address too.

The Claimant upon receipt of the Defendant's Affidavit in support of the Notice of Intention to Defend filed a Reply on Points of Law.

The Plaintiff claims that Defendant gave it a contract in 2016 – 12th April, 2016 and 25th April, 2016 respectively. The total contract sum is Sixty One Million, Three Hundred and Sixty Six Thousand, Six Hundred and Fifty Naira (~~N~~61, 366,650.00). That they supplied the goods as requested. The contract is for printing of Nomination Forms, Ballot Papers, Booklet

for Ward Congresses, Result Sheets for State and Local Government and Zonal Congress, Guidelines.

That they supplied the goods within the stipulated period and that the Defendant accepted the goods and issued it Store Receipts Vouchers which they attached as EXH. E.

That when the Defendant did not fulfil their own side of the contract, the Plaintiff wrote letters demanding payment for the goods supplied. The letters were received on the 26th of April, 2016 and 9th of May, 2016 – EXH. F1 & 2. Despite these letters, the Defendant failed and refused to pay Plaintiff.

So in 2017 the Plaintiff instituted an action CV/1042/17 under the Undefined List. The Court delivered its Judgment on the 12th of June, 2017 upholding Plaintiff's claims. The said Judgment and Certificate was attached as **EXH.G.**

The Plaintiff commenced Garnishee proceeding against Defendant's Banks. Court granted Order Nisi on the 7th of December, 2017 – **EXH. H.**

But the Court set aside the Order Nisi in that the Defendant was not properly served with the Originating Processes in its Ruling, on ground of Non-Service of the Originating Processes on the 25th of May, 2018 – **EXH. I.**

Subsequently the Defendant approached the Plaintiff to resolve the issue amicably. The Plaintiff wrote to

Court, withdrew the case against the Defendant filing an application for Discontinuance on 21st of September, 2018 – **EXH. J**. When the Defendant did not pay as promised the Plaintiff instructed its lawyer to write the Defendant demanding payment of the said contract sum.

The letter was dated 17/10/19 – **EXH. K**. But again the Defendant refused and failed to pay within the time frame given by the Plaintiff. So in its resolution on the 13th of November, 2019 the Claimant in its Resolution resolved to institute the present action against the Defendant in order to recover the debt in issue. Hence the present Suit. They attached the copy of the Resolution as **EXH. L**. They demand that Judgment be entered in its favour.

To the Plaintiff the Defendant has no prima facie defence to the case and as the issue is on liquidated money demand/a debt. That is why they urged Court to enter Judgment in its favour as doing so will not prejudice the Defendant.

But the Defendant has by the fact in its Affidavit in support of the Notice of Intention to defend claimed that they have a Prima Facie Defence on merit.

In the Affidavit, Defendant denied that they awarded the contracts. That the document or letters of award were obtained and issued fraudulently by the Alter-ego of the company – Plaintiff. That the said Alter-ego – Akani Bolaji Akpan is the National Financial

Secretary of the Defendant and therefore not supposed to engage in any business dealing with Plaintiff that will benefit him. That the whole contract was a scam and that it never existed.

That all documents purported to be issued in the course of the business by the Defendant were all forged and fraudulently procured by the Akani Bolaji Akpan using his privilege position to defraud the Defendant.

That it is the Plaintiff through its said Alter-ego that begged the Defendant to allow him withdraw the matter from Court and not the Defendant as Plaintiff claims. That the Judgment of the Court earlier delivered as well as the Order Nisi were all set aside in the Ruling of the Court delivered by M.B. Idris. That by the said Judgment the present case is statute bar and caught up by the doctrine of the Res Judicata.

That the Defendant has a defence on the merit and should be allowed to defend the case by the Court placing this case in the General Cause List so that all parties will be heard. That contrary to averment in paragraphs 38, 39 & 40, the Defendant will be highly prejudiced if Judgment is entered in the favour of the Applicant/Plaintiff in this case. They urged Court to hold that the Defendant has a strong defence on merit against the fraudulent and dubious claims of the Claimant.

The Defendant filed a Written Address which is strange in any application of Notice of Intention to defend a Suit on merit. Since the Court must look at every document filed in the cause of a Suit the Court will go on to summarize the Written Address.

In the said 9 pages Written Address the Defendant raised 2 Issues for determination which are:

- 1. Whether the Claimant is estopped from instituting this action same having been determined in the Suit FCT/HC/CV/1042/17 filed by the Claimant.**
- 2. Whether having regards to the materials placed before the Court the Defendant's Affidavit in support of the Notice of Intention to Defend has action raised triable issues and disputed fact warranting this Suit to be transferred to the General Cause List.**

On Issue No.1, the Defendant submitted that the Plaintiff cannot revisit the subject matter of this Suit or re-litigate same since the subject matter have been decided in the Suit FCT/HC/CV/1042/17. That the decision of the Court on the subject matter constitutes Estoppel and cannot therefore be re-litigated upon in any subsequent proceeding bordering on the same subject matter. He referred to the case of:

Etim V. Obot

(2010) 12 NWLR (PT. 1207) 108 @ 120 Para C – G.

That the Judgment of the Court which has decided the issue constitutes a bar to this subsequent case instituted by the Claimant. He referred and relied on the case of:

Aminu V. Hassan

(2014) 5 NWLR (PT. 1400) 287 @ 294

He urged the Court to hold that the aim of doctrine of Res Judicata is to bring an end to litigation. He relied on the case of:

Cole V. Jibumoh

(2016) 4 NWLR (PT. 1503) 499 @ 502 – 3

He urged Court to so hold and resolve the Issue in the favour of the Defendant.

On Issue No.2, the Defendant submitted that if the Court does not hold that the issue is caught up with Estoppel per Res Judicata, the Court should hold that the Defendant has raised triable Issues that warrants the matter to be transferred to the General Cause List. That by so doing the Defendant will be let in to defend the action since it has a far case for determination. He relied and laid credence to the case of:

GMON & S Limited V. Akputa

(2010) 9 NWLR (PT. 1200) 443 @ 476

Din V. Okose

(2014) 16 NWLR (PT. 1432) 124 @ 153

That the Defendant has held that there was no contract awarded to Plaintiff for supply of the alleged goods. That the documents of award were all fraudulently procured. That there is need for the Plaintiff to do some explanation on them. That this allegation are what should be decided in full hearing and call of evidence. That the Notice to defend reveals fact that would require the Claimant to throw more light. They urged the Court to transfer the matter to the General Cause List.

Upon receipt of this Counter Affidavit and the Written Address the Plaintiff, based on the Issues raised thereon by the Defendant filed a Reply on Points of Law, submitting thus:

That by the Ruling of 12th June, 2017 in the Suit, the subject matter of the Suit was never determined. That the said Ruling only Set Aside the entire Proceeding and the Judgment because of improper service of the Originating Processes on the Defendant. That the Issues in dispute were never determined as the Defendant alleged. That the case cited and relied on by the Defendant – **Etim V. Obot Supra** cannot stand because the Judgment is not subsisting. That since the entire Suit CV/1042/17 was Set Aside, it is as if the said Suit was never conducted. They urged the Court to hold that this Suit is not caught up by doctrine of **Estoppel per rem Judicatam**.

On Issue No.2, the Plaintiff replied that the Notice of Intention to Defend and Exhibits attached is not

defence on merit to warrant transfer of the case to General Cause List as the facts therein are only denial, speculation, inadmissible, hearsay and not supported by any documentary evidence. That by Order 17 Rule 3 High Court Rules 2018 the facts as contained in the Notice of Intention to Defend cannot qualify as defence on merit to warrant the transfer of the case to the General Cause List. That since that is the case the Court is enjoined to enter Judgment in favour of the Plaintiff. He referred to the case of:

**Cotia Comercio Exportacao E Importacao S.A
V. Sanusi Brother (Nigeria) Limited
(2000) 11 NWLR (PT. 679) 566**

That the Defendant did not particularize the allegation of forgery, fraud and illegality. That there is no where in EXH PDP 3 – Constitution of the PDP, that shows that it is only the National Working Committee of the PDP that has the power to take action that will bind the Defendant. Again, there is no where EXH PDP 3 stated that it is only the General Secretary of the Defendant that can sign Contract Award Letters. Also that EXH PDP 3 did not provide that any company that has any of the Defendant’s National Officer as one of its Directors should not be awarded any contract. That S.38 of EXH PDP 3 does not show that the duty of Financial Secretary includes being in custody of the financial documents of the Defendant.

That it is the National Treasurer that is in custody of the financial documents and other Banking documents of the Defendant going by **S. 37 (1) (a) EXH PDP 3.**

That the Managing Director of the Plaintiff never was in charge or custody of the financial Books of the Defendant. So he could not have forged the documents or fraudulently procured the contract documents as Defendant alleged. That the defence of Defendant is frivolous unsubstantiated. EXH PDP 3 does not support the Defence of the Defendant. He relied on the case of:

**Ejezie V. Anuwu
(2008) 4 SCNJ 113**

**Ibrahim V. The State
(1986) 1 NSCC 230**

They urged Court not to rely on the Affidavit of the Defendant as it is speculative and not factual and reliable.

The Defendant failed to attach any original document from where the Plaintiff's EXH C – K were forged from. That for the intention to defend to succeed the Defendant should produce the second documents from where the Plaintiff forged the said EXH C – K so that Court can base on that transfer the case to the General Cause List. That the allegation of fraud made by Defendant is vague.

That there is no Affidavit deposed to by any member of National Working Committee of the Defendant showing that the Defendant did not award the contract in issue to the Plaintiff. Again none of the said old or new members of the National Working Committee informed the deponent of the Affidavit that they did not award the contract or of any facts in the Affidavit in support of the Defendant's intention to defend the Suit. The deponent did not disclose the source of his information too.

They urged the Court to hold that the said Affidavit did not disclose any defence on merit to warrant transfer of the case to the General Cause List.

Again, Defendant did not show any documentary evidence to show the steps it took to arrest the Bolaji Akpan Akani the CEO of the Plaintiff over the forgery allegedly committed by him after it became aware of the case and the forgery in 2017. There is no evidence of plea for leniency as Defendant alleged in paragraph 27 of their Affidavit. They urged the Court to discountenance paragraph 27 of the Affidavit if the Defendant.

That the defence of the Defendant is an afterthought and therefore not credible. They referred to the case of:

**Oghenevweta V. State
(1982) 1 – 2 SC**

Ndidi V. State

(2007) 5 SC 175

Olatideye V. The State

(2010) LPELR – 9097 (CA)

That the Defendant failed to adduce evidence of fraud, forgery and illegality in Suit No: CV/1042/16. That it only challenged the Suit on ground that it was not served the Originating Process. That the Ruling of the Court is on vacating the Judgment, Order Nisi and Enforcement on the on the ground of non-service. That failure of the Defendant to adduce all evidence and raise issue of allegation of fraud, forgery and illegality then, is an afterthought in this case and as such is not credible. They urged the Court to so hold.

The Plaintiff urged Court to discountenance the entire defence as contained in the Affidavit of the Defendant. That in paragraph 5, 7, 8, 9, 15 & 17 the Defendant denied awarding the contract but in paragraph 12 (f), 18 (f), 6 (a) & (b) the Defendant said that the contract was never brought to the attention of the National Working Committee of the Defendant who usually deliberate on such contract before awarding same. But no member of the National Working Committee of the Defendant had denied awarding the contract.

That by the above averment the Defendants were approbating and reprobating.

They urged Court to dismiss the evidence of the Defendant in that regard and treat same as unreliable and enter Judgment in favour of the Plaintiff by

refusing to transfer the case to the General Cause List as sought by the Defendant. That the Court should hold that the Defendant has no prima facie defence to warrant transfer of the case to the General Cause List.

COURT:

In any matter marked Undefended the Plaintiff believes that Defendant has no prima facie defence to the case of the Plaintiff.

Once the Defendant is served with such application, it has within five (5) days to respond by filing Notice to Defend supported by Affidavit setting out facts therein showing that it has a defence on merit and urging the Court to transfer the case to General Cause List and allow them to all witness, to tender evidence to show there is merit to their Defence.

It is the facts in the Affidavit and documents where available that the Court will weigh in order to determine if actually there is a prima facie defence on merit.

Once there is any iota of disparity in the fact in support of the Notice to Defend, the Court will not transfer the case to the General Cause List. So it is incumbent on the Defendant to state vividly such facts and evidence to convince the Court that it actually has a defence and to persuade the Court to transfer the case to the General Cause List. Where Defendant fails to do so, the matter will be retained

an Undefended List and the Court will enter Judgment. Once the facts are speculative, the matter will not be transferred.

Again where there is a disparity in the story and claims of the Plaintiff, the Court will transfer the case as sought and allow parties to call evidence. This means that facts raised by Plaintiff in its Affidavit must be concrete and credible. So also the fact by Defendant must also be consistent for Defendant to succeed. See the case of:

**Intercontinental V. Brifina Limited
(2012) 13 NWLR (PT. 1316) 1**

To rely on forgery the Defendant must show particulars. See the case of:

**Thor Limited V. FCMB
(2005) LPELR – 3242 (SC)**

**Obi V. Nkwo Market Community Bank Limited
(2001) 2 NWLR (PT. 696) 113**

Undefended List Proceeding is to avoid delay usually where Plaintiff has a clear case and the Defendant has no defence. But it should be noted that the Court is not set to be concerned at this stage whether such defence can succeed or not. See:

**MC Investment Limited V. CI & CM Limited
(2012) 12 NWLR (PT.1)**

**UTC V. Pamotei
(1989) 2 NWLR (PT. 103) 224**

In this case the Plaintiff alleged that Defendant awarded to the Plaintiff contract for supply of printed materials. The contract sum is Twelve Million, Five Hundred Thousand Naira (₦12, 500,000.00) for the first contract and Forty Eight Million, Eight Hundred and Sixty Six Thousand, Six Hundred and Fifty Naira (₦48, 866,650.00) for the second contract. They tendered the documents of award. The Plaintiff also attached evidence of supply of the goods to Defendant and acknowledgment of the receipt of the supply of the goods as shown in the store receipts.

This contract was awarded to an artificial person – a company – Footsteps Press and Books Limited and not to any natural person with flesh and blood.

The Plaintiff had gone to Court to seek for payment of the contract sum after all entreaties to make the Defendant pay failed. Unfortunately, according to Plaintiff, the Judgment obtained was set aside because of improper/non-service of the Originating Processes on the Defendant. By the setting aside of the proceeding that heralded the Judgment, it is clear that the Judgment never existed as the proceeding was void.

The parties agreed to explore amicable settlement and the Plaintiff withdrew or discontinued the action against the Defendant hoping that the settlement will succeed. But it failed. Hence the present Suit.

On their part, the Defendant claimed that they never awarded the contract to the Plaintiff. That the documents of award were all forged and fraudulently obtained by Plaintiff. That they were never informed about the contract and that only the National Working Committee has right to award contract. That Malachy Ugwu who signed the letter of contract has no authority to do so.

That the discontinuance filed was because the Defendant intended to persecute Bolaji Akani Akpan, a onetime National Financial Secretary of the Defendant as at the time the contract was awarded having served as such between 2012 – 2016.

Again, that since the Judgment was set aside that the subject matter has been determined in the said Judgment and as such the subject matter and the case are caught by the doctrine of Estoppel per Rem Judicatam. The Plaintiff had challenged same submitting that the subject matter is not caught up by Estoppel but that the whole proceeding, by the Ruling of the Court, was nullified and as such the subject matter is still open for determination, hence the present Suit.

COURT:

From the above, can it be said that the subject matter in this case has been determined in the Judgment and by the Ruling in which the proceeding which heralded the Judgment was set aside in that by the

Ruling the subject matter is caught up by Estoppel as such the Court should dismiss the case of the Plaintiff as the Defendant is postulating put differently? Is the Suit caught up by Estoppel?

Again looking at the totality of the Affidavit of the Plaintiff in support of this case vis-a-vis the Judgment/Ruling as attached, should this Court hold that the Issues in dispute has not been determined and that the Plaintiff has established that the Defendant has no prima facie defence to its case and should therefore enter Judgment for the Plaintiff and hold that they are entitled to be paid the contract sum and the accrued interest having established that there was a contract legally awarded to it. Should the Court transfer or refuse to transfer the case to General Cause List for full hearing as the Defendant are postulating?

Not answering the question seriatim, it is the humble view of this Court that there was a valid contract awarded to the Plaintiff. The Defendant had not established that they have a prima facie defence to the case of the Plaintiff.

The subject matter of the case has not been determined and the case is therefore not caught up by the doctrine of Estoppel per Rem Judicatam. The Defendant has not particularized the issue of fraud or established that the Plaintiff obtained the documents of the contract by fraud, forgery or illegally. The Ruling of the Court setting aside the Judgment, the

Order Nisi and Enforcement only shows that the proceeding which heralded the Judgment was wrong because of none or improper service of the Originating Processes on the Defendant. That means there was no fair hearing.

For Court to hold that a subject matter has been caught up by doctrine of Estoppel, the Defendant must show concrete evidence and not mere speculation that: the parties are same, the claims are same, the subject matter are same, the decision of the Court on which the plea is relied on is valid, subsisting and final and that the Court has requisite competency and the jurisdiction to do so. It is for the Defendant to establish all these. Where any of the point is lacking the plea of Estoppel cannot stand. That is the Court decision in the following cases:

**A-G Nasarawa V. A-G Plateau State
(2012) 10 NWLR (PT. 1309) 419**

**Balogun V. Ode
(2007) 4 NWLR (PT. 1023) 1**

**Dagaci V. Ebuwa
(2006) 7 NWLR (PT. 979) 382**

In that case, the Judgment of the Court was set aside when the Defendant raised the issue of none/improper service of the Process on them by the Plaintiff. The Court in its Ruling set aside not just the Judgment but also the Order Nisi and Enforcement of

the said Judgment. The Court stated in the said Ruling at page 8 thus:

EXH. 1 @ page Ruling of 25/5/18

“Consequently upon the above consideration I hereby Set Aside the entire Proceeding in this Suit No: FCT/HC/CV/1042/17 and Judgment of this Court delivered on the 12th day of June, 2017 same having been conducted without the required jurisdiction. I further Set Aside the Garnishee Order Nisi predicated on the Judgment of this ... Court delivered on the 12th of June, 2017 which is adjudged to be a nullity. All Garnishees are hereby discharged.

The Court had earlier in the Ruling stated that:

“But the Judgment under the Undefended List can be Set Aside where there is allegation that it was a nullity owing to some fundamental errors like non-service of Court Process (as in the present Suit).

The Court ended up by stating that:

“There is no basis considering other application in this Suit since it has nullified all Proceeding based on lack of competency and requisite jurisdiction”.

From the above it is clear that the proceeding in the Suit was nullity because of lack of fair-hearing and

non-service of the Processes on the Defendant who is same Defendant in the present Suit. This means that the issues in dispute were not determined as result of that fundamental anomaly based on non-service of Process. So contrary to the submission of the Defendant, the issues in dispute in this case were never determined in the previous case by virtue of the nullification of the matter as per the said Ruling. So this case is not caught up by the issue or doctrine of Estoppel as the Defendant erroneously are postulating.

This Court therefore discountenance Defendant's that submission on Estoppel and hold that the matter was not caught up by Estoppel. The Defendant therefore has no defence on merit in that regard.

Again, on the submission that there was no contract awarded. This Court holds that two contracts were awarded by the Defendant to the Plaintiff as the Plaintiff stated.

A look at the documents – Letters of Award dated 12/4/16 and 25/4/16 show that these letters emanated from the Defendants. It specifically stated the goods to be supplied. It referred to the quotation made by the Plaintiff on the 23rd day of March, 2016. It clearly spelt out what were to be supplied and the specific quantity as well as the amount, the unit price and total price. In paragraph 3 it shows who the contract/goods supplied should be delivered to which is the Store Officer of PDP – Defendant.

It even instructed that the Store Officer should issue the Plaintiff with Store Receipt Voucher as basis for processing the payment for the goods. The said contract letters also specified the period (1 month) within which the Plaintiff must supply the goods from date of receipt of the offer. The same document contains the Letter of Acceptance which the Plaintiff attached evidencing acceptance of the contract. The contract was awarded to Footsteps Press and Books Limited and not to Bolaji Akpan Akani. The acceptance was done by one of the Directors of the Plaintiff and not by Bolaji Akpan Akani.

In the said Letter of Award, it was stated in paragraph 2 of both letters thus:

Contract of 12/4/16:

“This is therefore to convey the APPROVAL of the party leadership for your company (M/S Footsteps Press and Books Limited) to print and supply ... cards to the Peoples Democratic Party (PDP) National Secretariat”.

In the contract of 25th of April, 2016 it stated the same thing but specified:

“This is to convey the approval of the party leadership for your company (Footsteps Press and Books Limited) to print and supply the following Electoral materials to the Peoples Democratic Party (PDP) National Secretariat”.

The letter of contract stated the items listed to be supplied. It stated the amount/the contract sum.

The Plaintiff acknowledged receipt of the letter as required and supplied the goods as requested.

The Defendant issued the Plaintiff with Store Receipt. The Store Officer issued the receipt for the contract of the 12th April, 2016 and of the 25th of June, 2016 as shown and evidenced in EXH. E tendered by the Plaintiff. It was signed by Assistant Chief Administrative Officer (Stores) of the Defendant on the same 25th of June, 2016. The person who signed the document is a known staff of the Defendant and not a stranger to the Defendant.

On the 6th of May, 2016 the Store Officer acknowledged the receipt of the goods supplied by the Plaintiff in the 2nd contract. The said Form was stamped and signed by the same Store Officer acknowledging receipt of the said goods. This document as well as the Letter of Acceptance all emanated from the office of the Defendant. The stamps on the document further confirmed same. So also the signature. The Defendant cannot deny that.

Again, the document F1 and F2, the Letters of Demand for Payment of the goods supplied by the Plaintiff go further to show that there was contract of supply done by the Plaintiff. That letter was addressed to the Chairman of the Defendant. It was dated 26/4/16 for the 1st contract and it was received

by the office of the Chairman of the Defendant on the 26/4/16 as evidenced by the stamp on the document from the said Chairman's office.

Also the Letter for Request for Payment of the 2nd contract was written to the same Chairman on the 9th of May, 2016. The same office of the Chairman acknowledged receipt on the 9th of May, 2016 as evidenced in the stamp on the document – EXH F2. The content of these letters are not strange to the Defendant.

If actually the Defendant were not aware of same they would have raised alarm about that and arrested or made move to arrest whoever was behind the document. This Court finds it difficult to believe that the Plaintiff will have the effrontery to forge Letter of Contract, Store Receipt Voucher and letters demanding payment of contracts that do not exist as the Defendants are deceptively making this Court to believe. But the same Defendant did not make any move to take criminal action against the Plaintiff and their Cohorts and particularly Mr. Bolaji Akpan Akani or any of the Directors of the Defendant. Not taking any criminal action against the Plaintiff after the first Judgment was set aside is a sure sign and conviction that the Defendant is aware of the said contract because the said contract emanated from them, the goods were supplied to them and they acknowledged receipt of same and the Defendant also know that they are liable to pay for the supplied goods.

The denial or allegation that the Plaintiff withdrew the Suit on 21st September, 2018. It is imperative to state that the Ruling was delivered on the 25th of May, 2018. This means that the Suit was still pending after the Ruling was delivered that is why the Plaintiff withdrew/discontinued same afterward. If in the Judgment the issue in dispute were determined the Suit would not have been pending until 21st September, 2018 several months after the Ruling to Set Aside was delivered. The Suit still pending till then means that the issues in dispute were not yet determined by the Court. Again the Court believes the Plaintiff that it withdrew/discontinued the case because of the plan to amicably settle the dispute with the Defendant but that did not succeed. Hence the filing of the present Suit.

This Court does not believe the Defendant the Suit was discontinued because the Defendant discovered that the contract was based on forgery, fraud and illegality as the Defendant wants the Court to believe. The discountenance of the Suit is because of the attempt to amicably settle the dispute. So this Court holds.

The Defendant did not establish evidence of the alleged fraud and forgery as well as illegality. The averment and submission in that regard are not credible at all. This Court does not believe them

This Court cannot therefore transfer this matter to the General Cause List because the submission of the

Defendant does not show that they have a prima facie defence to the Suit of the Plaintiff. The Defendant have no prima facie defence to the case of the Plaintiff, so this Court holds.

Of utmost importance is also the document – letter by the Counsel to Plaintiff written on 17th October, 2019 over one year after the Plaintiff discontinued the case against the Defendant. The caption of the said letter of 17th October, 2019 clearly shows that it was for demand for payment of the contract sum in this case. It was addressed to Chairman of the Defendant and was acknowledged by the office of the Chairman of the Defendant on the same day the 17th October, 2019.

It is imperative to state that by the content of the letter – EXH K further clarified and confirmed that the withdrawal/discountenance of the Suit was as a result of agreement to explore amicable settlement. Paragraph 4 of the said letter states:

“When you became aware of the said Judgment you pleaded with our client for out of Court Settlement and specifically requested that our client should withdraw the Suit to pave way for an amicable Resolution as you were desirous of paying our client its money due”.

Paragraph 5

“On the basis of your plea our client discontinued the Suit and served the Notice of Discountenance on you on the 21st September, 2018”.

The letter further stated in paragraph 6 thus:

“... 13 months after our client discontinued the Suit, you have not even paid a dime from the contract sum”.

If actually the issues in dispute had been determined and the matter caught up by Estoppel as Defendant submitted, should the Plaintiff have instructed their lawyer to demand for the payment of the contract sum? Of course not. The Plaintiff instructed their Counsel to demand for the payment because the debt was still unpaid. Again the Plaintiff’s lawyer would not have out of the blues started demanding for payment of a debt own to its client (Plaintiff) based on a contract obtained by fraud, forgery and illegality as the Defendant is deceptively contending. The Defendant knows that it is indebted to the Plaintiff for the said contract. The Defendant’s argument on the withdrawal based on plea from Bolaji Akpan Akani cannot hold because it is not true and that fact is not credible and is not substantiated at all. This Court cannot therefore transfer this case to the General Cause List based on that as the Defendant are contending.

Also the Plaintiff Counsel would not have ordinarily given the Defendant 72 hours to pay the debt if there was no valid contract awarded to the Plaintiff by the Defendant and fully executed by the Plaintiff. The same Counsel would not have threatened to go to Court to seek legal redress against the Defendant as they have done in this case in order to recover the debt. The Resolution of the Board of the Plaintiff **EXH L** further confirmed the whole claim of the Plaintiff. In the said EXH L the Board of the Plaintiff in the Extra Ordinary General Meeting of the 13th of November, 2019 had resolved that the company should institute an action against the Defendant to recover the contract sum. That document was signed on the 13th of November, 2019 before the present Suit was instituted. It goes to show and confirm that the issue in dispute in the Suit FCT/HC/CV/1042/17 was not determined in the Judgment and Ruling as the Defendant claimed. If it were, there would not have been any resolution of the company to file a Suit demanding payment of the debt.

It is incumbent on a party that filed a Notice to Defend to supply facts showing that it has good ground and prima facie defence on merit. That must be based on facts and not on speculation and hearsay. The Defendant must concisely state its defence not just mere denial of the claims of the Plaintiff. There must be particulars of bonafide defence. That is the Court decision in the case of:

Thor Limited V. FCMB Limited Supra

The particulars of fraud must be stated as I said earlier. The Court does not act on speculation too. See the case of:

Ezekiel V. Anuwu Supra

Also the apex Court had stated severally that where a party alleges fraud and particularly forgery of documents, such party must provide the document from which the forgery was made and must also produce the forged documents showing and clearly pointing out that where and how the document was forged. It must also attach a document which it claimed is the right document which the other party has forged. Failure to do so the allegation of forgery cannot stand.

In this case the Defendant did not present the so called forged documents. They presented the documents of contract issued to a company – **Socochild Ventures**. Interestingly, the said Letter of Award issued to that company has the same/similar paragraph as in the letter of contract in issue. In paragraph 2 of the contract to Socochild Ventures, it read as in paragraph 2 of the contract letters in issue thus:

“This is therefore to convey the approval of the party leadership to your company to print and supply ...”

It has the same condition of contract as in the contract letter in Issue. The only difference is that it was purportedly signed by the National Chairman of the Defendant.

Yes the Defendant had stated that it is the National Chairman that has the power to issue letters of contract. They attached the Constitution of the Defendant but did not cite or refer the Court to the exact provision of the said Constitution to prove that it is only the Defendant's National Secretary that signs such document.

Again it did not also show the provision of the same Constitution where it stated that it is only the National Working Committee of the Defendant that approves contract. Even where that is the case, the 2nd paragraph of the letter of the award of the contract in issue shows that the writer of the letter was conveying an approval already made by the National Working Committee or whichever approving body by the use of the phrase in paragraph 2 of the letter thus:

“This is to convey the approval of the party leadership ...”

The above shows that it was not Malachy O. Ugwu (Deputy Director) General Service for National Director of Administrative People Democratic Party (PDP) that awarded the contract. By that phrase he was only conveying the approval by the party

leadership which is or may be the National Working Committee.

From the above it is evidently clear that the Defendant are indebted to the Plaintiff. There was sure supply of goods. The Defendant had not paid the Plaintiff for the goods. The attempt to amicably settle failed. The matter is not caught up by Estoppel. It is a liquidated money demand. The Defendant had not been able to show that they have prima facie defence on merit. This Court cannot therefore transfer the case to the General Cause List because the Notice to Defend is NOT therefore MERITOROUS.

The application to defend on merit is therefore DISMISSED.

The Court cannot transfer the case to the General Cause List.

This matter is therefore retained in the Undefended List Procedure since there is no defence on merit.

This matter is not caught up by Estoppel.

This is the Ruling of the Court.

Delivered today the ___ day of _____ 2020 by me.

**K.N. OGBONNAYA
HON. JUDGE**

