



IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

**IN THE ABUJA JUDICIAL DIVISION
HOLDING AT MAITAMA**

BEFORE HIS LORDSHIP: HON. JUSTICE H. B. YUSUF



SUIT NO: FCT/HC/CV/2544/2020

BETWEEN:

FUTUHATI INVESTMENTS LTD.....CLAIMANT

AND

**1. THE CLERK OF THE NATIONAL ASSEMBLY)
2. THE NATIONAL ASSEMBLY).....DEFENDANTS**

RULING

By a Writ of Summons filed under the Undefended List, the Claimant claims against the Defendants as follows:

- 1. A sum of ₦127,575,000 (One Hundred and Twenty-Seven Million, Five Hundred and Seventy-Five Thousand Naira) Only, being the value for the Five (5) 2017 Edition of Peugeot 508 Executive, supplied by the Claimant to the Defendants at the Defendants’ request, under the Agreement for Supply dated 22nd day of June, 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 ₦127, 575,000 (One Hundred and Twenty-Seven Million, Five Hundred and Seventy-Five Thousand Naira) Only, until the unpaid sum is finally liquidated.**
- 3. The sum of ₦50,0000,000 (Fifty Million Naira) only, being general damages for breach of contract for the supply of five (5) 2017 Edition of Peugeot 508 Executive dated 22nd day of June, 2018 between the Claimant and the Defendants.**
- 4. The cost of this suit.**

There is a supporting affidavit of 20-paragraphs deposed to by the Managing Director of the Claimant Company. Series of photocopied documents were attached and marked as Exhibits “A” to “J”. Mr. Roland Otaru, SAN of Counsel to the Claimant also filed a 15 – pages written address in support of the claim.

Upon service of the Writ of Summons on the Defendants, they filed a Joint Memorandum of Conditional Appearance and Notice of Intention to Defend duly supported by an affidavit of 20-paragraphs deposed to by one Nwenyi Pius, Esq., an Assistant Director with the

Legal Services Department of the 2nd Defendant. The Defendants also filed a written address in support of their defence. And in reaction to the Defendants' notice of intention to defend, the Claimant filed a further affidavit of 11-paragraphs. Claimant also filed a lengthy reply on points of Law which runs through 18 pages. However, the point must be made at this earliest opportunity that the written addresses filed by parties are not within the contemplation of the Undefended List Procedure. They are therefore unnecessary and therefore do not serve any useful purpose in the prosecution of this matter.

Meanwhile, before the hearing of this Suit, the Defendants filed a Notice of Preliminary Objection dated 1st December, 2020 disputing the jurisdiction of the Court on three grounds. There is a Supporting Affidavit of 13-paragraphs and a Written Address. The notice of Preliminary Objection was served on the Claimant's Counsel on 2nd December, 2020. However, the Claimant did not file any response to the Preliminary Objection.

When the matter came up for hearing on 19th January, 2021, parties adopted their respective processes filed in support of both the substantive action and the Preliminary Objection and the Court adjourned for Ruling.

As a take off point, I will now deal with the Preliminary Objection of the Defendants due to its jurisdictional implication. Essentially, the Defendants/Objectors identified two grounds upon which they attacked the jurisdiction of the Court. The grounds are:

- 1. That Pre-Action notice which is a condition precedent prior to filing this Suit was not met, pursuant to Section 21 of Legislative Houses Power and Privileges Act and therefore Court lacks jurisdiction in this matter; and**
- 2. That the Court lacks jurisdiction to determine the Suit, in view of the fact that the contract between the Plaintiff and the Defendants contains an Arbitration Clause and Plaintiff ought to go for Arbitration before instituting this matter.**

I have carefully read the processes put forward by the Defendants/objectors and I form the view that this objection is grossly misconceived. For avoidance of doubt, the Defendants who were aware that parties agreed to refer their dispute for Arbitral intervention, failed to convince the Court that steps were taken to refer the matter for Arbitration. As a matter of fact, the Defendants/Objectors on 16th November, 2020 filed a *Notice of Intention to Defend* duly supported by affidavit. At this point, the Defendants were well aware of the option to explore Arbitration.

The Defendants were also aware that the Claimant did not serve pre-action notice before the presentation of this action yet they proceeded to file processes in defence of this action on the merit. If that be the case, the conduct of the Defendants/Objectors clearly suggest a waiver of their right to insist on service of pre-action notice and referral for Arbitration.

On what amounts to the Claimant taking a step in this proceeding, I refer to the decision of the Supreme Court in the case of **OBEMBA Vs WEMABOD ESTATES LIMITED (1977) 5 S.C. 115** where it was held that:

"A party who makes any application whatsoever to the Court, even though it be merely an application for extension of time, takes a step in the proceedings. Delivery of statement of defence is also a step in the proceedings."

See also the decision of the Court of Appeal in the case of **ONWARD ENT LTD Vs MV MATRIX (2010) 2 NWLR PT 1179 530 at 551** where it was held:

"Steps in the proceedings have been held to include; the filing of an affidavit in opposition to summons for summary Judgment, service of a defence, and an

application to the Court for leave to serve interrogatories, or for a stay pending the giving of security or costs, or for an extension of time for serving a defence or for an Order for discovery or an Order for further and better particulars."

At the end of the day, I find no merit in the Preliminary Objection of the Defendants/Objectors and it is accordingly overruled. This now takes me to the substantive claim.

I have carefully considered the claims of the Plaintiff and the Affidavit in support of the notice of intention to file by the Defendants and I form the view that the Defendants have disclosed a triable issue. The fact that the Claimant filed a lengthy further Affidavit in rebuttal of the facts disclosed in the Defendant's Affidavit supports the existence of a triable issue.

In **OLATUNBOSUN Vs OKAFOR (2012) LPELR – 20186 (CA)** the position of the Law was stated by the Court of Appeal thus:

"There is no place for a further affidavit or a reply in an undefended list procedure. Once a defendant files a notice of intention to defend, supported by an affidavit, the court is required to look at the affidavit and see whether a defence on the merit has been disclosed. The

Plaintiff does not have the right to file a Reply or a further affidavit. Filing such a reply will tend to remove the issue from the Undefended List Procedure.”

It is interesting to note that this Court in two recent unreported decisions which involved the Defendants/Objectors rendered on 16/12/2020 in the case of **VISH INTERGRATED RESOURCES LTD Vs THE CLERK OF THE NATIONAL ASSEMBLY AND ANOTHER (UNREPORTED, SUIT NO. FCT/HC/CV/2551/2020)** and **AIRA INTEGRATED RESOURCE LTD Vs THE CLERK TO THE NATIONAL ASSEMBLY & ANOTHER (SUIT NO. FCT/HC/CV/2543/2020)** delivered on 9th December, 2020, respectively rejected the defence of the Defendants/Objectors in similar action on the sole ground that the Defendants who had previously made part-payment on the disputed contracts cannot raise any sham defence to defeat the case of the Claimant filed under the Undefended List. Those cases are distinguishable from the instant case as the Defendants in the instant case have not admitted the case of the Claimant let alone make any part-payment to the Claimant.

It is also instructive to note that the Claimant is claiming the sum of N50, 000, 000. 00 (Fifty Million Naira) damages for breach of contract which is not contemplated by Undefended List Procedure.

In the final analysis, I form the view that the approach that best suit the circumstances of this case is to transfer Claimant's case to the general cause list for hearing and determination. Parties shall file pleadings which is a normal incidence of matters commented by Writ of Summons.

SIGNED
HON. JUSTICE H. B. YUSUF
(PRESIDING JUDGE)
03/03/2021