

**IN THE HIGH COURT OF THE FEDERAL CAPITAL
TERRITORY**

IN THE ABUJA JUDICIAL DIVISION

**BEFORE HIS LORDSHIP HON. JUSTICE J. ENOBIE
OBANOR**

HOLDEN AT JABI.

COURT NUMBER: HIGH COURT NUMBER 29

CASE NUMBER: SUIT NO: CV/1043/2021

THIS DAY 18TH JANUARY 2022

BETWEEN DOM BEE NIGERIA LIMITED – CLAIMANT

AND

- 1. THE CLERK OF THE NATIONAL ASSEMBLY }**
- 2. THE NATIONAL ASSEMBLY**

JUDGMENT

The Claimant took out a writ of Summon under the Undefended List Procedure Pursuant to Order 35 of the Rules of this Honourable Court.

In line with Law, the writ was marked undefended on the 21st September, 2021.

The Claims of the Claimant as endorse on the writ is as thus;

1. A sum of (₦56,030,000.00) Fifty-Six Million, Thirty Thousand Naira only, being the value for the (2) 2017 Edition of Peugeot 508 Exclusive Car, supplied by the Claimant to the Defendants which the Defendants have refused to liquidate despite written and oral demands by the Claimant.
2. Ten Percent (10%) Post-Judgment interest on the unpaid sum (₦56,030,000.00) Fifty-Six Million, Thirty Thousand Naira only until the unpaid sum is finally liquidated.

In line with the provision of Law, 18 paragraphs supporting affidavit was duly deposited to by one Atuluku Victor the Account Manager of the Claimant.

The case of the Claimant as distilled from the supporting affidavit is that sometimes in the year 2017, the Tender Board of National Assembly Abuja, addressed and sent a letter of invitation to the Claimant, requesting that the Claimant submit Quotation for the supply of New Peugeot 508 as utility vehicles for the House of Representatives, National Assembly and that a quotation was submitted vide Exhibit 'B'.

Claimant stated that on August 14th, 2017 approval was given by the Defendants for the supply of 5 Nos. 2017 Edition of Peugeot 508, Executive (1.64ltrs, Turbo High Pressure, Petrol Engine, Auto, Keyless, Full Option with additional features) to the Claimant at the Unit Sum of ₦28,515,000.00 totaling ₦127,575,000.00 (One Hundred and Twenty-Seven Million, Five Hundred and Seventy-Five Thousand Naira) only.

The Letter of Award is annexed as Exhibit 'C' and the letter accepting the contrast is annex as Exhibit 'D'. Whereas the agreement letter is annex as Exhibit 'E'.

It is further the case of the Claimant that the two (2) Peugeot 508 Executive Cars with Chassis Nos.: VF38D0FC5GL000791 and VF38D5GY3JL000127 were delivered to the Defendants. The vehicle attestation document issued was attached as Exhibit 'F'. The Defendants issued the Claimant Certificate of Preliminary Payment and Certificate of Goods supplied vide Exhibits 'G' and 'H' attached.

That the Defendants up-till date have deliberately refused to liquidate the outstanding sum of (₦56,030,000.00) Fifty-Six Million, Thirty Thousand Naira only owed to the Claimant. And that the Defendant admitted its indebtedness to the Claimant vide their Letter of 17th July, 2020 vide Exhibit 'J'. Letter of Demand written by the Claimant solicitor is attached as Exhibit 'K'.

That it will be in the interest of Justice to grant the prayers of the Claimant.

Upon service, the Defendants filed Memorandum of Conditional Appearance and Notice of Preliminary Objection stating that this Honourable Court lacks both substantive and procedural jurisdiction to entertain the instant suit.

The grounds upon which the preliminary objection was brought is as follows: -

1. That the writ of summon has expired, having not been served within 3 months from when it was filed, as contemplated by form 1 and Order 2 Rule 2 (5) of the Rule of the Court.
2. That this Court lacks substantive jurisdiction to entertain the case, for failure of the Claimant to issue a pre-action Notice in terms of the Claims sought pursuant to Section 21 of the Legislative House (Powers of Privileges) Act, 2017.
3. This Court lacks substantive jurisdiction to entertain the instant case, pursuant to Section 4 & 5 of the Arbitration and Reconciliation Act, 2004.

4. That the Defendants/Applicants have not delivered any pleadings or taken any steps in this proceeding which can constitute a waiver.

Court was urged to strike out this suit for incompetence, and lack of both substantive and procedural jurisdiction or alternatively stay further proceedings in the case, and refer same to Arbitration.

In support of the Notice of Preliminary Objection is an affidavit of 9 paragraphs deposed to by one Popoola Oluwafemi, a Litigation Clerk in the Law firm of the Defendants' Counsel.

It is the affidavit of Defendants that the instant writ was served on the 21st September, 2021 after five months of its issuance and that the writ has become void.

That no pre-action Notice was given to the Defendants as letter of Demand issued to the Defendant which is Exhibit 'B' is different from the Claim before the Court.

That the Claimant completely defaulted and breached all the terms of agreements entered with the Defendants and that this case is far from a liquidated money demand.

A written address was filed wherein Counsel distilled a sole issue for determination to writ.

Having regard to the facts and circumstance of the case, whether the Honourable Court has the vires and jurisdiction to entertain further proceedings in this case.

Arguing on the aforesaid issue, learned Counsel contents that the writ of summon has expired having not been served within 3 months from when it was filed as the writ was filed on the 1st April, 2021, but was served on 21st September, 2021 and therefore void.

The cases of **Inakoju Vs Adeleke (2007) 4 NWLR (pt. 1025) P. 424, Nwokoro Vs Onuma (1990) 3 NWLR (pt. 136) 22 at 32** was cited by learned Counsel.

Learned Counsel submit further that, no pre-action notice was issued by the Claimant, on the Defendants in terms of the reliefs sought pursuant to Section 21 of the Legislative House Act 2017, as notice given to the Defendants is for the sum of ₦127,575,000.00 and ₦56,030,000.00 as endorsed on the writ.

Counsel submit further that every agreement of a legal nature, domestic or international, presupposes that in concluding the agreement, the parties acted with the intention to abide by the provision.

UBN Ltd Vs Nwoakolo (1995) 6 NWLR (pt 127) at 154 was cited by learned Counsel. And that the parties agreed that any dispute arising from their agreement which cannot be mutually resolved shall be referred to an Arbitration for settlement.

Counsel therefore, urge the Court to refer the matter to Arbitration pursuant to Section 4 and 5 of the Arbitration and Conciliation Act, 2004.

Upon service, Claimant's Counsel filed a written address in response to the Defendants/Applicant Notice of Preliminary Objection and distilled a sole issue for determination to wit; whether considering the circumstances of this case, this Honourable Court is not vested with jurisdiction to hear and or determine this suit under the undefended list.

Arguing on the aforesaid issue, learned Counsel submit that by Order 6 Rule 6 (1) and (2) of the Rules of this Honourable Court, the Life Span of writ is 6 months and where it expires, it can be subject to a renewal for another three months.

And therefore, the argument of learned Counsel for the Defendant is misplaced, Counsel cited the case of F.B.N Vs T.S.A IND. Ltd (2010) 15 NWLR (pt 1216) pg 299 – 300.

On statutorily privilege pursuant to Section 21 of the Legislative Houses Act 2017, learned Counsel submit that it does not relate to contracts or any subject matter outside the purview of granting Legislators the desired powers, immunity and legislative responsibilities of the Legislative Houses.

Learned Counsel submit that there is no dispute capable of being referred to Arbitration that has arisen between the parties and therefore Court was urged to grant the Claimant prayer.

Defendants filed a reply on point of Law wherein the Defendants submit that there is no counter affidavit by the Claimant supporting the Notice of Preliminary Objection and therefore all facts in the Notice of Preliminary Objection deemed admitted.

Learned Counsel submit further that Court is bound to look at the documents before it and use same in evaluating the evidence before it. And that the claim before this Honourable Court is not liquidated and therefore same should be struck out.

On the issue of Arbitration, Learned Counsel submit that from the affidavit before the Court, dispute was arisen as same must be referred to Arbitration.

Court was finally urged to grant the application in the interest of justice.

Court

I have gone through the case of the Claimant as aptly captured in the affidavit in support of the writ under the undefended list procedure brought pursuant to Order 35 of the Rules of this Honourable Court. I have equally perused through the Notice of Preliminary Objection raised by the Defendants/Applicants and the grounds of the objection as extensively argued in the written address in support of the Notice of Preliminary Objection, and the reaction of the Claimant/Respondent. I shall first of all resolve the issue of my jurisdiction as aptly argued by the Defendant in the interest of justice.

Indeed, jurisdiction, be it subject matter or party jurisdiction is most fundamental in the determination of suit. It is a legal authority or capacity to adjudicate on a matter.

FCDA & Anor Vs Kuda Engineering and Construction Company Ltd & Ors (2014 LPELR 2285 (CA)).

I shall therefore consider each ground of objection as argued by the Defendant in the interest of justice.

on ground one, “The writ of summon has expired, having not been served within three (3) months from when it was filed”.

Indeed, where a law or legislation has set on the procedure for doing a thing, there should be no other method of doing it. **Inakoju Vs Adeleke (2007) 4 NWLR (pt 1025) P. 424.**

It is equally fundamental principle of legality that where an act or course of conduct fails to meet with the requirements prescribed by law, such that the non-compliance renders the act or course of conduct devoid of legal effect, no

legal consequence flow from such acts or course of conduct. **Nwokoko Vs Onuma (1998) 3 NWLR (pt 136) 22 at 32.**

The law is that the writ of summons is valid and enforceable for a period of six (6) months and where it expires, it can be subject to a renewal for another three (3) months.

For avoidance of doubt, Order 6 Rule (6) (1) and (2) of the Rules of this Honourable Court provides as thus;

1. “The life span of every originating process shall be 6 months”.
2. “Where a Court is satisfied that it has proved impossible to serve an originating process on any Defendant within its life span and a Claimant applied before its expiration for renewal of the process, the Court may renew the original or concurrent process for three months from the date of such renewal. A renewed originating process shall be as in form 7 with such modification or variations as circumstances may require”.

A perusal of the writ will reveal that it was filed on 1st April, 2021 and was served on the 21st September, 2021. From the above, it is obvious that the Defendants were served within the ambit of the six months’ life span of the writ.

It is my ruling that the argument of the Defendants is a misconception of the law and therefore dismiss.

On ground 2, that the Court lacks substantive jurisdiction to entertain the case, for failure of the Claimant to issue a pre-action notice in terms of the claims sought, pursuant to the mandatory provision of Section 21 of the Legislative Houses (Powers & Privileges) Act 2017.

It is instructive to state here that statutes are to be construed in the ordinary and natural meaning of the words and sentence. The Supreme Court summarized the approach to be adopted as follows: -

1. In its interpretation, the Court should adopt a liberal approach.
2. The Court must employ care and always bear in mind the circumstances of the case.
3. The background facts necessary for comprehension of the subject matter may be used as an aid to discover the intention of the Legislative which is deducible from the language of the statute.
4. Regard must be taken to ensure that the mischief, which is intended to be arrested is arrested.

AG Federation & Ors Vs Alhaji Atiku Abubakar & 3 Ors delivered Friday 20th April, 2017 SC 31/2007.

It is also the law that provisions of statute must not be interpreted in isolation, but must be interpreted in the context of the statute as a whole. **Action Congress & 1or Vs Independent National Electoral Commission (INEC) (2007) SC 69/2007.**

Learned Counsel for the Defendants cited Section 21 of the Legislative Houses (Power and Privileges) Act of 2017.

In its explanatory memorandum, it stated that it is an Act to repeal the Legislative Houses (Powers and Privileges) Act, Cap L 12, Laws of the Federation of Nigeria (2004) and enact Legislative Powers and Privileges Acts, 2017 to give the Legislature the desired powers and immunity to be able to carry out its Legislative responsibilities, and for related matters.

From the above, it is clear that the power refers to is that which is related to the power of the Legislature as provided for under Section 4 of the Constitution.

Indeed, there is nothing in the Constitution or even in the Act relied upon that empowered the legislatures to award or enter performance of Contracts of any sort, whether specific, simple or complex.

It is my Ruling that there is nothing in the supporting affidavit to demonstrate that awarding contracts is part of the Legislative duties and equally there is nothing in the contract agreement referring to the necessity of giving three Months pre-action notice.

I therefore overruled the Defendants on this ground of objection and dismissed same.

On ground (3) that this Court lacks substantive jurisdiction to entertain the instant case pursuant to Section 4 & 5 of the Arbitration and Conciliation Act, 2004. I have read with interest the argument of both Counsel for the Defendants and Claimant on the need to stay proceedings or not in the present matter while parties are referred to Arbitration pursuant to the Arbitration Clause contained in the contract document annexed as Exhibit 'E' which is an Agreement for supply of 5 Nos. 2017 Edition of Peugeot 508 Executive vehicles between the Claimant and the Defendant.

Clause 2.0 "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. A 18, Laws of Federation of Nigeria, 2004".

In view of the fact that the myth of this argument is centered on Arbitration Clause, I shall therefore reproduce the relevant provision of Section 5 of the Arbitration and Conciliation Act, which specifically deals with the issue of land.

Section 5 (1) of the Act provides;

“If any party to an Arbitration agreement commences any act or in any Court with respect to any matter which is the subject of an Arbitration, any party to the Arbitration agreement was, at any time after appearance and before delivery any pleading or taking any other step in the proceedings apply to the Court to stay proceeding”.

From the above, it is obvious the agreement provides for Arbitration on issue arising from the contract and not after the contract had been executed.

A perusal of the writ will reveal that the Claimant had exhibited the following documents:

1. Certificate of Incorporation
2. Tenders Submission Sheet
3. Letter of Award of Contract
4. Agreement Letter
5. Certificate of Goods Supplied

Indeed, any issue arising after the obtaining of the Job Completion Certificate is not part of dispute arising from this agreement. The agreement ended when the job completion certificate was granted to the Claimant.

I must observe here that, there is no dispute here, goods were delivered, acknowledged and signed and same are in use by the Defendants.

It is the Ruling of this Honourable Court that there is nothing before this Court to be referred to Arbitration.

It is also the law that before a stay may be granted pending Arbitration, the party applying for a stay must demonstrate unequivocally by documentary and/or other visible means that he is willing to arbitrate. He does it satisfactory by notifying the other party in writing of his intention of referring the matter to Arbitration and proposing to writing an Arbitration or Arbitrator for Arbitration.

United Bank for Africa Plc Vs Trident Consulting Ltd (2013) 4 CLRAat 119.

From what has pay out, the Defendants has failed to demonstrate their readiness for Arbitration in the affidavit in support of the Notice of Preliminary Objection and therefore this ground again has fail and accordingly dismiss.

Having dismissed the said objection of Defendant for want of merit, I shall now beam my judicial searchlight on the substantive writ to ascertain whether there is merit in the case of the Claimant.

I need only state the trite principle of general application that when a case entered on the undefended list comes up on the return date, the court has only one duty, namely to see whether the defendant has filed a notice of intention to defend and an affidavit disclosing a defence on the merit. It is on the basis of the materials so provided that the court exercises its powers under order 35 Rule 3 (1) and (2) and Rule 4 to grant leave to defend or hear the suit as undefended and judgment given accordingly.

There is therefore no mandatory requirement or provision under our applicable rules of court under the undefended list for oral address or submissions on amplification of facts stated in the affidavit before the court decides whether or not to grant leave to the Defendant to defend or in alternative enter judgment in the undefended list.

I find support for this in the decision of *C. R. P. D & CO LTD VS OBONGHA (2000) 8 NWLR (pt. 670) 751 AT 762* where the court of Appeal in construing provisions that are in pari-material with our applicable rules observed instructively as follows: -

“Although the trial court has discretion under order 23 Rule 5 to hear evidence at any stage of the proceedings under Rule 4, that cannot be translated into an obligation or a mandatory requirement.

The court has to exercise its discretion judicially and judiciously on the basis of the materials before it and in accordance with the rules. The primary objects of the court is to attain substantial justice according to law. It must be emphasized that under Order 23 aforesaid, there is no mandatory provision for oral address or oral submission by the parties or their counsel.”

Assuming without conceding that a defendant’s affidavit disclosing his defence on the merit is deficient, will the oral address or submission of counsel from the Bar improve deficient affidavit?

My answer is absolutely no. In NWODOBE VS NWOKEDI (1973) 3 E C S L R (Pt. 2) 633, it was held that a deficient affidavit cannot be supplemented by counsel’s statement in open court or at the Bar.

I do not agree therefore with the learned counsel for the appellant that the parties or their counsel have a right to address the court on their affidavit evidence when a suit is brought under the undefended list which comes up for hearing.”

See also *UNION BANK OF NIGERIA PLC VS EDAMKUL & ANOR (2005) NWLR (Pt. 925) 520 at 539.*

I also wish to restate the age long principle governing the undefended list procedure at this juncture.

The three requisite that must be available for a suit to be placed under the undefended list are as follows:

- a. That the claim must be for liquidated money demand including account stated to be cognizable under the undefended list excluding for example unliquidated damages as in claims in torts and special damages arising from any cause of action as they must be specially pleaded and strictly proved.
- b. The claim must be supported by affidavit verifying the claim; and
- c. The affidavit must contain deposition to the effect that in the honest belief of the Plaintiff, Defendant has no defence to the claim of the Plaintiff.

Once these conditions are met, the claim is qualified to be placed on the undefended list. See ***ABIA STATE TRANSPORT CORPORATIONS & ORS VS QUORUM CONSORTIUM LTD (2009) 9 NWLR 1 SC.***

Furthermore, I wish to also instructively state that in an action brought under the undefended list, once a Defendant has been served with the claims of the Plaintiff in line with Order 35 of the Rules of the High Court of FCT 2018, he has a duty to disclose his defence to the action. See ***ATAGUBA AND COMPANY VS GWIA NIGERIA LIMITED (2005) 2 SC (Pt. 11) 101.***

In the circumstances, I shall proceed to the merits of the case, in view. In the court's considered opinion, only one issue arises for consideration from the materials placed before the court, to wit: **whether Plaintiff on the strength of his affidavit is entitled to judgment as per his writ.**

Trial courts have no duty to go unto the merits of the case when a Defendant's affidavit in support of his notice of intention to defend an action is being considered. All that is required is to see whether the defence has issues requiring or necessitating a full contest of the action. See *U. N.N. VS ORAZULIUE TRADING & CO. LTD (1989) 5 NWLR (Pt. 119) 19 at 29.*

Poser: *What then is the implication of non- filing of notice of intention to defend and affidavit disclosing defence?*

The claim of Plaintiff against Defendants as endorsed on the writ of summon are as follows;

1. A sum of [56,030,000.00] fifty-six million, thirty thousand naira only, being the value for the [2] 2017 Edition of Peugeot 508 Exclusive car, supplied by the claimant to the Defendant which the Defendant have refused to liquidate despite written and oral demands by the claimant.
- 2 Ten percent post judgment interest on the unpaid sum until unpaid sum is finally liquidated

Defendants neglected and or ignored to file notice of intention to defend this action in line with Order 35 Rule 3(1) of the Rules of this Court aside the notice of preliminary objection which was already dismissed in the preceding part of this judgment.

This leaves the Court with an uncontested claim which has been duly marked "undefended" having met the basic criteria under Order 35 of the Rules of this Court.

Usually and procedurally speaking, matters brought under Order 35 are determined by affidavit evidence.

Where a party served with the writ of summons under the undefended list by virtue of Order 35 Rules 1 and 2 of the Rules of this Court, intends to defend the action, he shall within 5 days to the day fixed for hearing, deliver to the registrar notice of intention to defend the action with accompanying affidavit disclosing defence on the merit.

Where the said notice of intention to defend the action with affidavit does not disclose any defence on the merit, the Court shall not give such leave, but proceed to hear the suit as undefended and give judgment as such under Order 35 Rule 4 of the Rules of this Court.

The rule governing an unchallenged deposition in an affidavit is very trite.

As stated by Makhtar JSC, in the case of ***REGISTERED TRUSTEES OF NATIONAL ASSOCIATION OF COMMUNITY HEALTH PRACTITIONERS VS MEDICAL AND HEALTH WORKERS UNION OF NIGERIA & ORS (2008) VOL. 37 WRN 1 at 39 lines 10 – 15 SC***, “*affidavit evidence that is neither challenged nor debunked remain good and reliable evidence which ought to be relied upon by a Court*”.

In the absence of any Notice of Intention to defend and an affidavit in support, and after a calm analysis of the facts of this case and guided by sound reasoning and wisdom, I have no doubt that Plaintiff is entitled to the judgment of this court.

I must observe that parties to a contract are bound by the clear words of the contract.

In view of the fact that there is no such affidavit in support of notice of intention to defend for this court to see whether there are triable issues raised or any substantial question of facts which ought to be tried by full contest, I shall

therefore enter judgment in favour of the Plaintiff pursuant to Order 35 Rule 4 of the Rules of this court.

Judgment is hereby entered in favour of the plaintiff as per the writ.

In summation, judgment is hereby entered in favour of the Plaintiffs, as follows:

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1. An Order of this Honourable Court mandating the Defendant to pay the sum of N56,030,000.00 (fifty-six million, thirty Thousand Naira) to the Claimants being the value for the 2 2017 Edition of Peugeot 508 exclusive car, supplied by the claimant to the defendant which the defendants have refused to liquidated despite written and oral demand

2. Ten percent post judgment interest on the unpaid sum is hereby awarded.

SIGNED
HON. JUDGE
18/1/2022

Comment [u]: