

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

BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS

COURT: 28

Date:-7/6/2022

BETWEEN

FCT/HC/CV/626/2021

**PRANAV CONTRACTING NIGERIA LIMITED.....
AND**

APPLICANT

**1. NATIONAL ASSEMBLY OF THE FEDERAL
REPUBLIC OF NIGERIA
2. CLERK OF THE NATIONAL ASSEMBLY** }

RESPONDENTS

JUDGMENT

The Claimant took out this action against the Defendants by a Writ of Summons, Statement of Claim, and a 19 paragraphed Affidavit deposed to by Chief Nzeribe of No. 1 Chuka Ikejiaku Street, NNPC Quarters, Garki Area 11, Abuja, same dated and filed on the 3rd day of March, 2021. The Claimant claims against the Defendants jointly and severally as follows:-

1. **AN ORDER** directing the Defendants to pay to the Claimant forthwith the outstanding balance of the sum of ₦70,514,285.12 (Seventy Million, Five Hundred and Fourteen Thousand, Two Hundred and Eighty-Five Naira, Twelve Kobo).

2. **AN ORDER** directing the Defendants to pay the Claimant 34% interest per annum on the above sum of ₦70, 514, 285.12 being the damages sustained by the Claimant for detaining this money and denying the Claimant the use of the money since it became due till judgment is delivered.
3. **AN ORDER** directing the Defendants to pay the Claimant 10% interest per annum on the Judgment sum from the date the Judgment is delivered till same is fully liquidated.

The Defendants entered appearance jointly by a Memorandum of Conditional Appearance, dated and filed on the 25th October, 2021, same was supported by a Statement of Defence, and a 6 paragraphed affidavit deposed to by Ali Usman Abdulhameed, Assistant Chief Legislative Officer, National Assembly, Central Business District, Abuja. The Defendants prayed this Honourable Court to dismiss the Claims of the Claimant for being unmeritorious and time wasting.

Hearing into the case commenced on the 14th December, 2021 with the Claimant calling a sole witness, and tendering documentary exhibits and was cross-examined by Counsel to the Defendants. The Defendants in turn called a sole witness and tendered in evidence a documentary exhibit. All the witnesses who testified were fully cross-examined. At the end of trial, both parties filed their final written addresses in support of their respective positions.

At the last session of this Honourable Court on 13th April, 2022, parties adopted their final addresses in urging the Court to grant their respective prayers.

From the facts of this case, (as presented by the parties in dispute). I have no doubt that the pith and substance of the action of the Claimant against

the Defendants is predicated upon payment of Outstanding sums due upon a contract supposedly executed between the Claimant and the Defendants.

In further evaluation of the facts of this case, it is my informed view to adopt the issues as raised by the Defendants in its Written Address to wit:-

1. *"Having regards to the pleadings and evidence before this Honourable Court, whether the Claimant is entitled to the reliefs in its Writ of Summons and Statement of Claim.?"*

Before further evaluating the above issue, it is pertinent and of outmost importance to evaluate the Preliminary Objection raised by the Defendants in its final address on Whether or not the Claimant is a juristic party in law so as to clothe this Court with jurisdiction to entertain the matter.

Jurisdiction of course is the life-wire of any Court to entertain a matter and where such issue is raised, same must be fully resolved before the Court can proceed to determine the matter.

I have read in its entirety the arguments of parties on this issue and in furtherance to the above, Let me firstly draw the attention of parties to a simple principle under the Nigerian Law of Evidence, particularly Section 131 of the Evidence Act, 2011, which provides thus:-

- (1) ***"Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts shall prove that those facts exist"***

It is worthy to note from the facts and arguments of Counsel to the Defendants on the preliminary issue that only an assertion of facts as to legal status was made by the Defendants with no substantive evidence in law backing up the claim that the Claimant is not a juristic party capable of

maintaining a legal right. Let me draw the attention of parties to the Award of Contract Letter dated 31st March 2017 which has been pleaded by both parties in this matter. I do not think that the Defendant with such a status would have engaged the Claimant in carrying out a contract of that magnitude without ascertaining its status of incorporation and other ancillary enquiries. That supposedly does not construe incorporation by reason of contractual obligations but recourse again must be made to the Evidence Act, 2011 that a party who alleges any fact has also an accompanying obligation to take steps to prove that fact before the Court.

The Supreme Court in ***OKOYE & ORS V NWANKWO (2014) LPELR-SC. 234/2004*** on the issue of burden of proof stated thus:-

“The Onus or burden of proof is merely an onus to prove or establish an issue”

It therefore goes to imply that a party who raises an issue must equally take considerable steps towards proving or establishing the veracity or otherwise of the issue raised.

In the instant case, the Defendants having raised an issue of this nature which is very fundamental and ought to have beyond mere assertions taken steps to establish that indeed, the Claimant is not a juristic party known to law. An attempt to shift the burden of proof to the Claimant would be a constructive attempt to derail from the provisions of our extant statutory and case laws on the subject matter.

It is my informed view that the preliminary issue raised by the Defendants and the Defendants having failed to establish by any relevant evidence that this Court lacks Jurisdiction to entertain this matter on the basis that the Claimant is not a juristic party in law is unmeritorious and an attempt to deny this Court the right to hear and determine this matter on its merits. Therefore the preliminary issue raised by the Defendants in its Final

Address is without merit, unsubstantiated and hereby accordingly dismissed.

On the determining issue for consideration raised and addressed by both parties, to wit:-

"Having regards to the pleadings and evidence before this Honourable Court, whether the Claimant is entitled to the reliefs in its Writ of Summons and Statement of Claim.?"

The Claimant in its final address argued that it had led uncontroverted evidence to the effect that after taking delivery of the said vehicles, the Defendants paid the Claimant the sum of N45, 238, 095.24 (Forty-five Million, Two Hundred and Thirty Eight Thousand, Ninety-five Naira, Twenty-four Kobo) only; and also, on the 21st of January, 2019, that the Defendants made a further payment of the sum of ₦9, 047, 619.04 (Nine Million, Forty-Seven Thousand, Six Hundred and Nineteen Naira, Four Kobo) to the Claimant which was acknowledged by its letter dated 21st of January 2019, tendered as Exhibit 2. That this implied that the balance outstanding was in the sum of N70, 514, 285.12 only.

It is also the argument of the Claimant that the reply of the Defendants to the fact in its Statement of Claim that payment of the installments pursuant to the contract sum was made was not properly traversed by the Defendants. Counsel cited the case of **ANDREW NWEKE OKONKWO V CORPORATIVE & COMMERCE BANK NIGERIA PLC & ORS (2003) LPELR-2484 (SC)** in line with the submission that the traverse of the

Defendant was evasive and failed to answer pointedly the averments made by the Claimant in its statement of claim and as such they were deemed admitted.

Counsel to the Claimant further submitted that the failure of the Defendants to reply the letters from the Claimant marked **Exhibits 2 and 3** which they received, amounts to an admittance of the contents therein.

Counsel cited the cases of ***MR. CHIJOKE ONUIGBO V MR. NNAMDI AZUBIKE (2013) LPELR-22796 (CA)*** and the case of ***REMATON SERVICE LIMITED V NEM INSURANCE PLC (2019) LPELR- 49330 (CA)*** in support of the above position.

Counsel to the Claimant further argued that the letter dated 21st January, 2019 (**Exhibit 2**) acknowledged the payments made by the Defendants and also the accrued interest asserting that the stamp on the admitted Exhibits dismisses the contention of the Defendants that the said letters were not received by the Defendants.

The Claimant in asserting the delivery of the contracted vehicles stated that the Vehicles were delivered to the Defendants on the 8th of August, 2017. The Claimant relied on a Way Bill/Delivery Note marked **Exhibit 1b**. And in further to the delivery, a certificate of job completion was issued to the Claimant which the Claimant submitted to the Defendant's Accounts Department to process the payments of the Contract sum. The Claimant urged this Court in summary to grant the reliefs as sought by its statement of Claim.

In response to the averments of the Claimant, the Defendants in their final address asserted that firstly, the Claimant failed to demonstrate that it complied with the terms of the contract as contained in the Award Letter, Counsel to the Defendants in asserting the above cited **Section 131 (1) and 133(1) of the Evidence Act** to the effect that the Claimant has failed to prove that the conditions contained in the Award Letter were adhered to.

It is also the argument of the Defendants that the Claimant failed to evidentially show that it supplied the vehicles, in compliance with the Award Letter to the Supervisory Department and Monitoring and Compliance Unit of the Department of Procurement and Supplies (House of Representatives Section).

The Defendants finally asserted that the Claimant failed to plead the identity of the person who purportedly received the letters of acknowledgment on behalf of the Claimant, to show that he or she exists. The Defendants urged this Court to resolve the sole issue in favour of the Defendants.

It is my informed view, flowing from the above arguments of parties and adopting the sole issue raised by parties that this action is predicated on a Simple Contract of supply of vehicles pursuant to an Award of Contract Letter dated 31st March and pleaded by both parties. In evaluating the subject matter of concern between parties, it is pertinent to raise and answer some pertinent questions, to wit:-

1. Whether the Claimant complied with the terms of the Award of Contract Letter
2. Whether the Defendants took delivery of the Contractual Vehicles
3. Whether the Claimant was in receipt of part payments of the contract sum necessitating its Claim for the balance.

The law is trite on contractual relations that the Agreement of parties remains the prima-facie basis for a Court to evaluate and give life to a contract. This principle was enunciated in the case of ***ALI & ANOR V LAKESIDE MEWS LTD (2021) LPELR- 56134 (CA)*** When the Court stated that:-

".....Where the intention of parties to a contract is clearly expressed in a document, the Court must strictly give effect to the literal interpretation of the Terms of the Agreement so the intention of the Contracting parties prevail..." Per ADEBUKUNOLA ADEOTI IBIRONKE BANJOKO, JCA (Pp. 51- 53 Paragraphs. E-B)

It is therefore worthy to note that this Court will firstly consider the Award of Contract Letter which evidence the Contract between the parties and same must be construed judiciously to save the justice of the day.

On Whether the Claimant complied with the terms of the Award of Contract Letter and whether it took delivery of the Vehicles, It is the view of this Court that the conditions provided as prerequisites to further the execution of the awarded contract ought to have been complied with before the

vehicles were delivered. From the pleadings of the Claimant and documents admitted in evidence, **Exhibit 1B** which is a **Waybill/Delivery Note** adduced by the Claimant as evidence of delivery of the vehicles to the Defendants, the document is dated 8th August, 2021 and signed by the Claimants and a representative of the Defendants, in effect acknowledging receipt of the Vehicles. The Court is predicated upon this evidence to agree with the Claimant that there was in fact a delivery of the contracted vehicles to the Defendants.

Therefore, flowing from the above, it is only logical and aptly informed to state that the act of delivery of the said Vehicles only but goes to waive other terms as contained in the Letter of Award of Contract given to the Claimant by the Defendant. Therefore the Defendants cannot assert a breach of terms of a contract of supply of Vehicles where there was a delivery of the said vehicles being the subject matter of the Contract. The Supreme Court gave life to the above position on waiver thus:-

"A waiver arises where one party leads the other to believe that he will not insist on the precise stipulation in the contract e.g. as to the time of performance, and the other party has acted on that belief and has thereby prejudiced his position, the first party cannot afterwards insist on the terms of the original contract.." Per **EMMANUEL OLAYINKA AYOOLA, JSC (Pp. 94-94, Paragraphs. B-C)**

From the facts of this case, it will be agreed that the act and completion of delivery of the Vehicles goes to construe compliance with other terms of the Contract as other terms were only meant to serve as preliminaries to the supply proper. Therefore, to my mind, I do not think the Defendants having taken delivery of the said vehicles can on the other hand assert a breach of the terms of the contract. I do not think so. The fact and evidence of delivery of the Vehicles goes in effect to waive other terms of the Award of contract Letter.

On whether the Claimant was in receipt of the part payment of the Contract sum thereby necessitating a right on the balance of the contract sum, this Court is minded to rely solely on the evidence placed before this Honourable Court in appreciating this issue. The Claimant's Letters dated 21st January 2019 and 18th March 2019 marked and admitted as Exhibits 2 and 3 in this matter are called into proper evaluation so as to give life to this issue. The Letters were duly received and acknowledged with the stamp of the 2nd Defendant as well as a signature of the recipient as contained on the face of the letter. The Defendants ought to have in this case replied the said letter, refuting or asserting the claims and averments of the Claimants so as to give a different bearing to the issue. However, the Defendants' replies to the above letters are not before this Honourable Court and therefore this Court is not in place to ascertain whether or not same was done. The failure to do same in effect amounts to admittance of the facts as stated therein. The Court stated in effect of the above principle

in the case of **VASWANI V JOHNSON (2000) 11 NWLR (Pt. 679) 582 at 588-589** Wherein GALADIMA (JCA) (as he then was) held thus:-

"The learned trial judge rightly held that the appellants having failed to respond to the letters, were bound by the contents and reliance placed by the respondents thereon. She was justified to hold that a prudent businessman would have reacted to the correspondence had the contents been untrue. Having failed to deny the contents of the Exhibits CACJ1 and CACJ2, the appellants must be deemed to have admitted the contents. This is trite law and not a novel proposition of law as there are ample authorities in support of it.."

Also in the case of **GLORYLUX ASSOCIATED IND. (NIG) LTD V N.P.F.M.B (1993) 7 NWLR (Pt. 305) 341 at 351**, the Court per OGEBE JCA (as he then was) on the same principle said:

"The evidence in prove of the case was entirely documented, namely, Exhibits C and E, the appellant did not counter this documentary evidence. It merely denied the fact that a visit was carried out. If the appellant had reacted to Exhibit C which was written as far back as 1983 to say that no visit was carried out and the debt containing in that document could not be true, it would have had a good case in rebuttal of the respondents claim."

Further to the above principle, it is important to consider the position of the Court in the case of ***RODETHORNE (NIG) LTD & ANOR V AMCON (2020) LPELR-50395 (CA)*** where the Court stated thus:-

“The Courts have held that silence in circumstances in which a reply is obviously expected will operate as an acceptance” Per MOHAMMED IDRIS, JCA (Pp 34-35 Paragraphs. F-D)

It is therefore the informed view of this Honourable Court flowing from the above decision of the Courts and from the facts of this case, the letters written by the Claimant to the Defendants in this circumstances necessitated a reply, refuting or affirming the contents thereof. It is not enough for the Defendants to assert that they were no previous payments of installments and in effect no valid contract between it and the Claimant, the circumstances necessitated a reply to the correspondences of the Claimant which were duly received by the Defendants and same was not done, the facts are deemed in the circumstances to be admitted. I so hold.

I would also like to add in this judgment that the Defendants failed to show to the Court that the claim of the Claimant is unsubstantiated I have looked at the entire evidence and the exhibit tendered in the cause of this trial. I have discovered that the Claimant have proof his case based on balance of probability. The merit of the case is the real or substantial ground of an action or defence in contradiction to some technical or collateral matters raised in the cause of the case. In

practice it is a matter of substance as distinguished from a matter of form. A matter of adjectival or procedural nature is generally not on merit. The duty of the Court is to determine the merit of the case before it and not engage in hypothetical question on matter before it see the case of **ABRAHAM MODECHI VS MR. DEBAYO – DOHATY (2013) 2 NWLR (PT 1338) 320 NATIONAL INLAND WATERWAYS AUTHORITY VS SPDC NIG. LTD (2008) ALL FWLR (pt 433) 1402.** From the above principles of law it is the duty on the part of the Defendant to establish before the Court that the claim of the Claimant does not exist at all. The overriding interest of doing substantial justice to all of the parties and action is the preoccupation of the law Courts, tribunal and administrative powers of enquiry . Technical justice is no justice at all and a Court of law should distance itself from it. A Court of law should not be unduly tied down by technicalities particularly where no miscarriage of justice would be occasioned. See the case of **OUT BASSEY ELEPENETU VS NFAWA OFEGOBI (2012) 15 NWLR (PT1223).** From the facts and circumstances of the case before me I must admit the fact that in this judgment the Defendant deliberately failed to honour the agreement that exist between them with the Claimant in this case. This can be clearly seen from the record of this cases as contained in this judgment. it is a fundamental principle of adjudication between parties that Courts of law must limit themselves to the issues raised by the parties in their pleadings because to act otherwise may result in the denial of the right of fair hearing to one or

the other of the parties see ***CHUKA CHARLES VS OSADEBE NZERBE (2013) 3 NWLR (PT 1342) 584.***

In this case the Claimant have succeed in establishing its claim against the Defendant it should be noted that not only on the weak of the Defendants case but the Claimant was able to establish his case by way of preponderance of evidence. Consequently, therefore, in light of the evaluated circumstances of this case, the facts as stated by the parties and the evidence adduced thereof, it is the well informed believe of this Honourable Court that the Claimant have led substantial evidence to proof that there was a contract, the contract was performed, advanced payments made by the Defendants and that there is an outstanding sum left on the contract. The sole issue for consideration to wit; Whether or not the Claimant is entitled to the reliefs sought in its Statement of claim is hereby resolved partly in favour of the Claimant as follows:-

1. The Defendants are hereby directed to jointly and severally pay the Claimant forthwith the outstanding balance of the sum of ₦70, 514, 285.12 (Seventy Million, Five Hundred and Fourteen Thousand, Two Hundred and Eighty-five Naira, Twelve Kobo).
2. An Order of this Court directing the Defendants to pay the Claimant 10% interest per annum on the above judgment sum from the date of this Judgment being delivered till same is finally liquidated.
3. An Order of this Court dismissing the claim of the Claimant for 34% interest per annum on the above judgment sum being damages sustained by the Claimant for detaining this money and denying the

Claimant the use of the money since due till judgment is delivered. This relief is hereby dismissed by this Honourable Court in favour of the Defendants as no evidence was adduced to substantiate the claim by the Claimant.

HON. JUSTICE M.S IDRIS
(Presiding Judge)

Court:- Parties absent