IN THE HIGH COURT OF JUSTICE OF THE F.C.T.
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO, ABUJA
ON TUESDAY, THE 29TH DAY OF NOVEMBER, 2022
BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINI MUSA
JUDGE

SUIT NO: FCT/HC/CV/332/2021

BETWEEN:

TOPAZ GLOBAL TRUST LIMITED **CLAIMANT**

AND

NINO CORPORATION LIMITED **DEFENDANT**

JUDGMENT

This Judgment is in respect of the suit of the Claimant instituted by way of a Writ of Summons under the Undefended List Procedure.

The Claimant, by way of an undated Writ of Summons on the Undefended List which was filed on the 08th of February, 2021, instituted the suit against the Defendant seeking the following reliefs:-

1. *The Claimant claims against the Defendant, the sum of ₦20,559,500.00 (Twenty Million, Five Hundred and Fifty-Nine Thousand, Five Hundred Naira only) being the debt owed to the Claimant by the Defendant for armoured wires supplied to the Defendant by the Claimant on the eleventh day of January 2019 (11/01/2019).*

2. *25% interest on the total debt per annum from the 2nd February, 2019 till judgment is delivered in this matter.*

3. *10% Court interest from the date of Judgment until the full liquidation of the entire Judgment sum.*

4. *Cost of this action put at ₦500,000.00 (Five Million Naira) only*.

This Court marked the Writ of Summons as "Undefended List" on the 02nd of March, 2021 and fixed the 16th of March, 2021 as the return date.

On the 15th of March, 2021, the Defendant through its Counsel, Francis Moses Nworah of F. M. Nworah & Co. filed a Motion on Notice dated the same date seeking for an Order of this Court extending the time within which the Defendant could file its Affidavit in support of its Notice of Intention to Defend. It also sought an Order of this Court deeming the already filed Affidavit in support of the Notice of Intention to Defend as having been properly filed and served. Counsel for the Defendant moved this Motion, with Motion Number M/2602/2021, on the 31st of March, 2021 and this Court granted the prayers contained therein.

The Claimant, in response to the Defendant's Notice of Intention to Defend and Affidavit in support of same, filed a Reply on Points of Law on the 31st of March, 2021. The said Reply was dated the same 31st of March, 2021. The Defendant also filed a Further Reply on Points of Law to what it described as new issues the Claimant raised in its Reply on

Points of Law. This Further Reply was dated the 3rd of May, 2021 but filed on the 9th of July, 2021.

On the 18th of October, 2022, this Court heard the parties on the suit. The parties relied on their averments and adopted their arguments in support of and in opposition to the application as well as their averments and arguments in support of and in opposition to the Writ of Summons on the Undefended List. The Court thereafter adjourned for Ruling and Judgment.

One Mr Ezekiel Onyekachi Anyigor who described himself as the Managing Director and Chief Executive Officer of the Claimant deposed to the affidavit in support of the Writ of Summons on the Undefended List. He swore that the Defendant entered into a contract with the Claimant some time in 2019 for the supply of armoured cables to be used in the Defendant's quarry. The payment of ₦20,559,500.00 (Twenty Million, Five Hundred and Fifty-Nine Thousand, Five Hundred Naira) only being the total cost of the armoured cables, pursuant to the contract, would be paid within twenty-one days after the delivery of the armoured cables.

It is the case of the Claimant that it delivered the said armoured cables to the Defendant. Proof of this delivery are the cash/credit sale invoices with numbers 2801, 2802 and 2804 all dated 11/01/2019 and attached as **Exhibits A1, A2 and A3** respectively; as well as the waybill/delivery

notes with numbers 0052, 0053 and 0056, also attached to the affidavit as **Exhibits B1, B2 and B3** respectively.

One year after the due date had elapsed, and following the Claimant's importunate demands for payment, the deponent further averred, the Defendant issued thirteen post-dated cheques to the Claimant with the promise to pay the outstanding sum of ₦559,000.00 (Five Hundred and Fifty-Nine Thousand Naira) only in cash after the last cheque had been cashed. The Claimant attached these post-dated cheques as **Exhibits C1 – C13**.

Following the failed attempt to cash the said cheques on their due dates, the Claimant briefed the law firm of Messrs. GIMBG Legals to recover the entire sum from the Defendant. Several letters were exchanged between the Claimant's Solicitors and the Defendant's Solicitors, Lance & Coopers. These letters were attached to the affidavit in support of the Writ of Summons on the Undefended List as **Exhibits D, E and F**. Eventually, a meeting was scheduled and did hold between the Claimant and the Defendant at the conference room of the Defendant's Solicitor at Suite 32 Joshua Plaza, 7 Damba Close, off Sultan Abubakar Way, Zone 5, Wuse, Abuja with a view of getting the Defendant to pay the debt it owed the Claimant. The outcome of this meeting was the agreement dated the 14th of September, 2020 by which the Defendant asked to be given two months from the date of the meeting to source for the funds to

pay its debt to the Claimant. This agreement is attached to the affidavit as **Exhibit G**. It is the case of the Claimant that the Defendant has refused to fulfill its obligation under the said agreement, thereby making this suit a necessity.

In the Affidavit in support of the Notice of Intention to Defend, the Defendant, through the deponent, one Mr Nino Oshiozokhai Abokhai, described as false the averments in paragraphs 6 – 25 of the Affidavit in support of the Writ of Summons on the Undefended List. Further to this denial, the deponent averred that one Mathias Dauda Sati, a clerical staff of the Defendant, on the 6th of March, 2021 at about 8:27am handed a document which turned out to be the Writ of Summons initiating the suit. According to the deponent, he scrutinized the document and saw that it was signed by one Pame Lydia Sule which he described as '*secretary with address of no particular office in Joshua Plaza, Wuse, Zone 5, Abuja*'. He wondered why the process was taken to Joshua Plaza, even though the correct address of the Defendant was properly endorsed on the process as Plot 261 Sefadu Street, Zone 4, Wuse, Abuja.

It was the case of the Defendant that it was not aware of any transactions with the Claimant relating to the supply of armoured cables, since there was no resolution of the Defendant authorising or ratifying any transaction with the Claimant. The deponent further stated that none of the exhibits attached any liability to the Defendant, adding that Nino

Corporation is different from Nino Corporation Limited which is the Defendant in this suit.

The deponent further swore that his Counsel informed him, in the course of a conference over the processes received, that the Writ of Summons was not signed by the Claimant; that there was no proper service of the process on the Defendant as there was no leave of Court to serve the Defendant by substituted means and at an address other than the Defendant's registered address of Plot 261 Sefadu Street, Zone 4, Wuse, Abuja; that there was no resolution of the Board of the Defendant sanctioning the transaction and, as such, the contract did not emanate from the Defendant; and that Pame Lydia Sule who received the processes was not known to the Defendant.

The Defendant through the deponent further swore that even if the contract was entered into by any of its directors, paragraph 1.5(c) of the Deed of Settlement dated 14th of September, 2020 subjected the payment of the debt due to the Claimant from the Defendant to the sale of the Defendant's properties. He added that the properties have not been sold and, accordingly urged the Court to decline jurisdiction on the ground of absence of proper parties before the Court and the lack of proper service of the originating processes on the Defendant. In the alternation, the deponent urged the Court to allow it to defend the suit on the merit.

Though the Rules of this Court did not make provision for a reply on points of law to the Defendant's Notice of Intention to Defend, the Claimant nonetheless filed a Reply on Points of Law to the Defendant's Notice of Intention to Defend. In the Claimant's Reply on Points of Law, learned Counsel formulated a sole issue for determination, that is, "*Whether from the Claimant's claims and affidavit in support of the claim, juxtaposed with the Defendant's Notice of Intention to Defend and its supporting affidavit, the Defendant has disclosed any defence on the merit*." Arguing this sole issue, Counsel iterated the purpose of the Undefended List Procedure, which is, the minimization of delay in suits involving liquidated money demands. He quoted extensively the decision of the Supreme Court in the case of ***Wema Securities & Finance Plc v. Nigeria Agricultural Insurance Corporation (2015) LPELR-24833 (SC) per Chima Centus Nweze, JSC at pp. 67 – 70, paras E – C***.

It was the contention of learned Counsel that the Defendant who intended to defend the suit on the Undefended List must disclose cogent defence in their affidavit in support of their Notice of Intention to Defend. He cited the cases of ***Okoli v. Morecab Finance (Nig.) Ltd (2007) LPELR-2463 (SC), Aluminium Manufacturing Co. Ltd & Anor v. Union Bank (2015) LPELR-26010 (CA), Lewis v. UBA (2016) LPELR-40661 (SC), GTBank Plc & Anor v. Oluwadamilare & Ors (2014) LPELR-24387 (CA), Okonkwo v. CCB Nig. Plc (2003) 8 NWLR (Pt. 822) 347 at 419*** and ***Julius Berger (Nig.) Plc v. IGP & Ors (2018)***

LPELR-46127 (CA). It was the case of the Claimant that the affidavit of the Defendant disclosing a defence on the merit has not disclosed any such defence to the Claims of the Claimant. He also urged the Court to take note of the documentary exhibits the Claimant had attached to its affidavit in support of its Writ of Summons and to find that the Defendant has not disclosed any meritorious defence to the claims of the Claimant.

Not to be outdone, the Defendant filed what it called a Further Reply on Points of Law to New Issues Raised by the Claimant in its Purported Reply on Points of Law in Opposition to the Defendant's Affidavit in Support of Notice of Intention to Defend. In this Further Reply on Points on Law, learned Counsel for the Defendant formulated the following issue for determination: "*Whether the Claimant has any right of reply on points of law against an affidavit of the Defendant in a narrow case of undefended list proceedings of this nature?*"

In his argument on this issue, learned Counsel referred this Court to the provisions of Order 35 Rules 2 and 3 of the Rules of this Court and the cases of ***Jumba v. Idris (2017) LPELR-43120 (CA), Kwara State Polytechnic v. Tunfos Venture (Nig.) Ltd (2018) LPELR-45701 (CA), Union Bank of Nigeria Plc v. Awmar Properties Limited (2018) LPELR-44376 (SC)*** and ***Incorporated Trustees of American International School of Abuja v. Oklobia (2018) LPELR-46713 (CA)*** and submitted that the Undefended List procedure admitted of only two

processes: the affidavit in support of the writ of summons and the affidavit in support of the Notice of Intention to Defend. According to him, the necessity of filing further processes invariably means that triable issues had been raised and the suit would be better heard and determined on the general cause list.

Counsel contended further that the nature of the defence on the merit the Court must consider is not total defence to the suit, but possible defence to the suit. It was his argument that the filing of a Reply on Points of Law simpliciter without filing an affidavit presupposes that the Claimant admitted the facts contained in the Defendant's affidavit in support of the Notice of Intention to Defend. He cited the case of ***Alhaji Muhammad Baba Ahmed v. The Government of Gombe State & Ors CA/G/454/2020 (2021) Legalpedia (CA) 10811***. He urged the Court to find in favour of the Defendant and transfer the suit to the general cause list for hearing.

The foregoing represents the summation of the case of the parties in this suit. The question I have to resolve is this: "***Whether the Defendant's Affidavit in support of its Notice of Intention to Defend has not disclosed a defence on the merit to enable this Court transfer this case from the Undefended List to the General Cause List?***"

By way of prefatory remarks, I must deprecate the practice of Counsel filing further and better affidavits or replies on points of law or any joinder

by whatsoever name called in a matter that is filed under the Undefended List. The Rules of this Court envisages the filing of only the affidavit in support of the Writ of Summons on the Undefended List and the affidavit in support of the Notice of Intention to Defend disclosing a defence on the merit. It is the responsibility of the Court to place the two affidavits side by side, weigh their probative value and decide either to determine the suit under the Undefended List Procedure or to transfer same to the General Cause List so that evidence can be called. I agree with Counsel for the Defendant when he cited the case of ***Kwara State Polytechnic v. Tunfos Venture (Nig.) Ltd (2018) LPELR-45701 (CA)*** where the Court held that "***The act of filing the further affidavit or any other process for that matter to answer the depositions in reaction of the defendant/respondent's affidavit in support of the Notice of Intention to Defend showed the need to go to full trial to resolve the disputed facts, that Where the Claimant decides to file any other process in any form in reaction to the Defendant's affidavit, signifies that, the matter is contentious. Therefore, the only order available to the court is to transfer the marked writ to the General Cause List.***"

Though the Claimant in this case has filed what it called a reply on points of law, this suit can be distinguished from the case of ***Kwara State Polytechnic v. Tunfos Ventures (Nig.) Ltd (2018) supra***, on the ground that what was filed in this suit was a reply on points of law,

whereas a further affidavit was filed in the ***Kwara State Polytechnic's case***. Again, though Counsel for the Defendant purported to file a Further Reply to new issues he claimed the Claimant raised in its Reply on Points of Law, it is my view, and I so hold, that no new issue was raised in the Reply on Points of Law. The so-called Reply on Points of Law was more or less a legal argument to bolster the affidavit in support of the Writ of Summons on the Undefended List. It is not only unnecessary, it is entirely otiose. Accordingly, the Claimant's Reply on Points of Law and the Defendant's Further Reply on Points of Reply – two gratuitous and redundant processes – are hereby struck out. This Court shall proceed to determine this suit on the basis of only the Affidavit in support of the Writ of Summons on the Undefended List and the Affidavit in support of the Notice of Intention to Defend.

The Defendant, in the affidavit in support of its Notice of Intention to Defend, denied paragraphs 6 through to 25 of the affidavit of the Claimant in support of the Writ of Summons on the Undefended List. I have produced a precís of the affidavit in support of the case of the Claimant at the beginning of this Judgment. It remains to be ingeminated that those paragraphs contained the crux of the Claimant's claim against the Defendant. In making a general denial of the averments in those paragraphs, the Defendant did not address the facts contained in those paragraphs. I however note that the Defendant's strategy is to attack the competency of the suit and all the steps taken in relation thereto. This is

immediately obvious from the averments in the affidavit in support of the Notice of Intention to Defend whereat the Defendant challenged the competency of the service of the originating processes on the Defendant at an address other than its registered address; the suability of the Defendant for acts which it did not authorize and the immaturity of the suit itself as a result of the non-fulfilment of what it perceived as a condition precedent to the institution of the action. The question, therefore, is whether this line of defence constitutes a defence on the merit.

To answer this question, recourse must be had to the provisions of Order 35 of the Rules of this Court which deals with the suits suitable for the Undefended List proceeding and what a Defendant who intends to defend the suit is expected to present to as defence on the merit. The Order provides that:-

1. ***(1) Where an application in Form 1, as in the Appendix is made to issue a writ of summons in respect of a claim to recover a debt or liquidated money demand, supported by an affidavit stating the grounds on which the claim is based, and stating that in the deponent's belief there is no defence to it, the judge in chambers shall enter the suit for hearing in what shall be called the "Undefended List".***

(2) A writ of summons for a suit in the undefended list shall contain the return date of the writ.

2. *A claimant shall deliver to a registrar on the issue of the writ of summons, as many copies of the supporting affidavit, as there are parties against whom relief is sought, for service.*

3. *(1) Where a party served with the writ delivers to registrar, before 5 days to the day fixed for hearing, a notice in writing that he intends to defend the suit, together with an affidavit disclosing a defence on the merit, the court may give him leave to defend upon such terms as the court may think just.*

   (2) Where leave to defend is given under this Rule, the action shall be removed from the Undefended List and placed on the ordinary Cause List; and the Court may order pleadings, or proceed to hearing without further pleadings.

4. *Where a defendant neglects to deliver the notice of defence and an affidavit prescribed by Rule 3(1) or is not given leave to defend by the court the suit shall be heard as an undefended suit and judgment given accordingly.*

5. ***A court may call for hearing or require oral evidence where it feels compelled at any stage of the proceedings under Rule 4.***

The Rules neither defined nor explained the term 'defence on the merit'. At this point, therefore, it becomes necessary to call in aid the explication of the expression given by the Courts in a plethora of authorities. In the case of ***Julius Berger (Nig.) Plc v. A.P.I. Ltd. (2022) 11 NWLR (Pt. 1841) 201 S.C. at 251, paras C - E***, the Supreme Court per Mary Peter-Odili, JSC explained the term in the following terms:-

> **"*Under the undefended list procedure, the defendant's affidavit must condescend upon particulars and should as far as possible deal specifically with the plaintiff's claim and affidavit and state clearly and concisely what the defence is and what facts and documents relied on to support it. The affidavit in support of the notice of intention to defend must of necessity disclose facts which will at least throw some doubt on the case of the plaintiff. A mere general denial of the plaintiff's claim and affidavit is devoid of any evidential value and such would not have disclosed any defence which will at least throw some doubt on the plaintiff's claim.*"**

The same Supreme Court, in the case of ***Kwara State Government & Others v. Guthrie Nigeria Limited (2022) 13 NWLR (Pt. 1846) 189 at***

210, paras B – E, made the expression more effulgent when it held, while examining the provisions of Order 23 Rule 3(1) of the Kwara State (Civil Procedure) Rules 2005 which contains provisions that are equivalent to the provisions of Order 35 Rule 3(1) of the Rules of this Court, 2018, that

> "***If the defendant in an undefended list action intends to defend the suit, he must file a notice in writing together with an affidavit disclosing a defence on the merit. The affidavit should contain enough facts and particulars to satisfy the court to remove the case from the undefended list to the general cause list. Where the affidavit discloses no defence, then the case would not go on the general cause list***."

Did the Defendant's affidavit in support of its Notice of Intention to Defend '***condescend upon the particulars'*** of the facts stated in the affidavit in support of the Writ of Summons? Did the Defendant's affidavit in support of its Notice of Intention to Defend '***as far as possible deal specifically with the plaintiff's claim and affidavit***'? Does the affidavit in support of the Defendant's Notice of Intention to Defend '***contain enough facts and particulars to satisfy the court to remove the case from the undefended list to the general cause list'***? The Defendant had stated in paragraph 10 of its affidavit in support of its Notice of Intention to Defend that "*Paragraphs 6-25 of the affidavit of Mr Ezekiel*

Onyekachi Anyigor are false and hereby deny (sic)*, because the Defendant is not aware of any contract of sale or any supply entered on its behalf and for its benefits and the Defendant is ready to proof* (sic) *same on full trial*." This denial is general; it did not deal with the specificities of the facts contained in the affidavit in support of the Writ of Summons.

Besides, the Defendant merely denied the averments in those paragraphs. It did not deny the contents of the documentary exhibits attached to the affidavit. The Supreme Court has held in ***Zakhem Oil Serve Ltd. v. Art-in-Science Ltd. (2021) 18 NWLR (Pt. 1808) 341 S.C. at p. 358 para A*** that "***The exhibits attached to an affidavit form part of the affidavit.***" Since the Defendant did not deny the documents attached to the affidavit in support of the Writ of Summons, the contents of those documents are deemed admitted by the Defendant. It is immaterial and of no moment that the Defendant tried to cast some shade of dubiousness on the documents when it averred in paragraph 11 that "*From all the documents attached, there is none that specifically disclosed any agreement between the Claimant and the Defendant duly signed by at least two directing mind* (sic) *of the Defendant, other than subsequent efforts to write Nino Corporation which is different from the Defendant as I can now see*". My finding, nonetheless, still stands. I shall address the probativeness of those documents in the course of this Judgment.

There is no question that the gamut of the Defendant's defence on the merit revolves around a defence on points of law. This can be seen, as I have noted earlier, from its emphasis on what it believes to be improper service of the originating processes on it; the misjoinder of the Defendant as a party to this suit and the non-fulfilment of a condition precedent to the institution of the suit. Defence on points of law is allowed in law and constitutes a defence on the merit on points of law if the Defendant can establish same. In the case of ***Onoeyo v. U.B.N. Plc (2015) 10 NWLR (Pt. 1466) 104***, the Court of Appeal, following the decision in ***Lewis v. UBA (2006) 1 NWLR (Pt. 962) page 546 at pp. 563-564 paras. F-D*** which, in itself, followed earlier decisions of the Supreme Court in ***Sanusi Bros (Nig.) Ltd. v. Cotici C.E.I.S.A. (2000) 11 NWLR (Pt. 679) 566 at 580*** while applying its earlier decisions in ***Macaulay v. NAL Merchant Bank Ltd. (1990) 4 NWLR (Pt. 144) 283*** and ***Nishizawa v. Jethwani (1984) 12 SC 234*** laid down the following conditions which an affidavit in support of a Notice of Intention to Defend must fulfill before a defence on the merit can be made out:

> ***"For a notice of intention to raise a defence on the merit under the undefended list such a notice of intention must satisfy the following conditions:***
>
> ***a. Condescend upon particulars as far as possible, deal specifically with the plaintiffs' claim and affidavit, and***

state clearly and concisely what the defence is and what facts are relied on as supporting it.

b. ***Where the defence is that the defendant is not indebted to the plaintiff, state the grounds on which the defendant relies as showing that he is not indebted. A mere general denial that the defendant is not indebted will not suffice.***

c. ***Where the affidavit states that the defendant is not indebted to the plaintiff in the amount claimed or any part thereof, state why the defendant is not so indebted, and so state the real nature of the defence relied on.***

d. ***Where the defence relied on is of fraud, state clearly the particulars of the fraud. A mere general allegation of fraud is useless.***

e. ***If a legal objection is raised, state clearly the facts and the point of law arising thereon.***

f. ***In all cases, give sufficient facts and particulars that there is bona-fide defence.***

g. ***Matters of hear-say are admissible provided that the sources and grounds of information and belief are disclosed; and***

h. ***A case of hardship that creates no enforceable right e.g. past promise by plaintiff unsupported by valuable consideration, or a mere inability to pay or an allegation that the plaintiff has given time for payment which of course constitute no defence unless there be consideration, will not constitute defence on the merit."***

Paragraph (e) of the dictum above is very relevant in this case. I shall proceed to address the points of law the Defendant raised as its defence on the merit to the suit of the Claimant. First, the Defendant is challenging the service of the originating processes on the Defendant at an address other than its registered address. This is evident from paragraphs 5, 6, 7, 13(c), (f), (g), (h), (i) and (j) of the affidavit in support of the Notice of Intention to Defend. Its contention is that as a company, service of processes on it must comply with the requirements of the law. Section 104 of the Companies and Allied Matters Act, 2020 provides that "***A court process shall be served on a company in the manner provided by the rules of court and any other document may be served on a company by leaving it at, or sending it by post to, the***

registered office or head office of the company." Order 7 Rule 8 of the Rules of this Court, 2018, to which the Act defers in so far as what is to be served on a company is a court process, stipulates that "***every originating process requiring personal service may be served on a registered company, corporation or body corporate, by delivery at the head office or any other place of business of the organisation within the jurisdiction of the Court…***"

In order to satisfy myself that these provisions were complied with in so far as service of the originating processes on the Defendant is concerned, I examined most fastidiously the records before me. Indeed, one Pame Lydia Sule of Joshua Plaza, Zone 5, Wuse, Abuja, acknowledged receipt of the originating processes at the same address. the Defendant's agitation would have stand but for the certificate of service executed by the Bailiff of this Court wherein he stated that "*On the 4th day of March, 2021, at 9:26am, I served upon the Defendant Writ of Summons (marked undefended list) by delivering at the registered changed* (sic) *address of the Defendant at Plot 261 Sefadu Street, and extending* (sic) *a copy to Suite 32, Joshua Plaza, 7 Dalaba Close, where a secretary received and endorse same*." It is clear, therefore, that the service on the Defendant at the office of its erstwhile solicitors who represented it in the resolution of the dispute prior to the institution of this action was a surplusage which was added, as it were, as an icing on the cake of the proper service effected by the delivery of the documents at

the Defendant's registered address. I note, with interest, the fact that learned Counsel for the Defendant exhibited the proof of service of the originating processes on the Defendant through Pame Lydia Sule of Suite 32 Joshua Plaza, 7 Dalaba Close, Zone 5, Wuse, Abuja; but it did not exhibit the certificate of service executed by the Bailiff after he had served the processes at the Defendant's registered address.

As to the probative value to be attached to the certificate of service signed by the Bailiff, the Supreme Court has held in ***Registered Trustees of Presbyterian Church of Nigeria v. Etim (2017) 13 NWLR (Pt. 1581) 1 SC at 29 – 30 paras H - C***, that,

> "***The several ways in which service of process can be validly effected, depending on whether the process itself is originating process or otherwise and depending on the mode of service prescribed by rules of Court, whether personal service and/or service other than personal, proof thereof can be validly acknowledged by certificate of service; affidavit of service; certificate of posting (where service is effected by registered post and, in some rules of Court, by tendering a service recording book/register in which certain details relating to service effected on parties are entered by the officer serving the process or by the***

Registrar of the Court. Such entry is prima facie proof of service."

The apex Court went on to hold at ***page 30, paras D – F***, that,

"***The purpose of affidavit of service is to convince the Court that the persons on whom the processes are to be served have been duly served. Where there is no affidavit of service and the person served with a writ or any other processes of court appears in Court, there is no further need to insist on proof of service. There cannot be a better proof than the appearance in Court of the person on whom the process was served***."

Interestingly, the Defendant in paragraph stated that,

4. *"I was given a document by one of our clerical staff by name, Mathias Dauda Sati in our office at plot 261, Sefadu Street, Wuse Zone 4, Abuja on the 6th of March, 2021 at about 8:27am purporting to be a document received from a lady later to be knonw as one Pame Lydia Sule, in respect of this matter who is not a principal officer of the Defendant.*

5. *I cursory (sic) flipped through and discovered that, it was signed by the lady (Pame Lydia Sule) as a secretary with address of no particular office in Joshua Plaza, Wuse Zone 5 Abuja and she is neither a principal officer nor a secretary to the Defendant."*

I am intrigued by the above depositions for two reasons. First, the Defendant denied being served at its registered address, but was merely given a document by a member of its staff at its registered address. second, the Defendant swore that when he perused through the documents, he noticed that one Pame Lydia Sule of Joshua Plaza, Zone 5, Wuse, Abuja acknowledged receipt of the originating processes.

It is common knowledge that proofs of service of Court processes, known here as 'endorsement and returns', are kept in the case file in Court. The Defendant could only have known that Pame Lydia Sule was the recipient of the originating processesat Joshua Plaza, Zone 5, Wuse, Abuja from a copy of the endorsement and return made available to him by the registry of this Court. Indeed, I saw that the documentary exhibits attached to the Notice of Preliminary Objection were certified true copies from this Court. Indeed, there is an application dated the 10th of March, 2021 in the case file from learned Counsel for the Defendant for certified true copies of documents and processes in this suit. What this mean is that it was the copies of the originating processes which the Bailiff of this Court left at the registered address of the Defendant that Mr Nino Oshiozokhai Abokhai 'cursorily flipped through' on the '6th of March, 2021 at about 8:27am'. While the Defendant filed its Notice of Intention to Defend the suit on the Undefended List was filed on the 10th of March, 2021, same date as the application for certified true copies, the affidavit in support of same was filed on the 15th of March, 2021 after it had

received the certified true copies it applied for. It is deducible therefore, that the Defendant was merely hunting for defence on the merit when it claimed it was never served at its registered address.

In view of the foregoing, therefore, I find it extremely difficult to agree with the Defendant that it was not properly served with the originating processes. I find, on the contrary, that the Defendant was properly served at its registered address in the manner provided by the Companies and Allied Matters Act, 2020 and the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules, 2018. The service at Joshua Plaza, Zone 5, Wuse, Abuja was *ex abundanti cautela*. I so hold.

The Defendant in its affidavit struggled valiantly to impress on this Court that a company is not liable for the actions of its directors, members, shareholders, or other classes of officers, agents and workers of the company howsoever called. This line of defence can be seen from paragraphs 11, 12, 13(d), (e) and 16 of the Defendant's affidavit in support of the Notice of Intention to Defend. I must concede that a company, being a juristic person, enjoys certain privileges arising from its attributes which are intrinsic to its legal personality. One of such attributes is that a company, not being a natural person, must of necessity act through its human agents. The Courts have described these human agents as the directing mind of the company.

Sections 87(1) and (3), 88 and 89(a) and (b), 90(1)(a) and (b), and (2), and 93(a) and (b) proviso (i) of the Companies and Allied Matters Act, 2020 are relevant in this regard. I will reproduce the sections and highlight the germane parts for emphasis and immediacy.

Section 87:

> ***(1) A company shall act through its members in general meeting or its board of directors or through officers or agents appointed by, or under authority derived from, the members in general meeting or the board of directors.***
>
> ***(3) Except as otherwise provided in the company's articles, the business of the company shall be managed by the board of directors who may exercise all such powers of the company as are not by this Act or the articles required to be exercised by the members in general meeting.***

Section 88(b):

> ***Unless otherwise provided in this Act or in the articles, the board of directors may—***
>
> ***(a). . .***
>
> ***(b) from time to time, appoint one or more of its members to the office of managing director and may delegate all or any of its powers to such managing director.***

Section 89:

Any act of the members in general meeting, the board of directors, or a managing director while carrying on in the usual way the business of the company, shall be treated as the act of the company itself and the company is criminally and civilly liable to the same extent as if it were a natural person:

Provided that—

(a) the company shall not incur civil liability to any person if that person had actual knowledge at the time of the transaction in question that the general meeting, board of directors, or managing director, as the case may be, had no power to act in the matter or had acted in an irregular manner or if, having regard to his position with or relationship to the company, he ought to have known of the absence of such power or of their irregularity; and

(b) if in fact a business is being carried on by the company, the company shall not escape liability for acts undertaken in connection with that business merely because the business in question was not among the business authorised by the company's memorandum.

Section 90:

(1) Except as provided in section 89 of this Act, the acts of any officer or agent of a company shall not be deemed to be acts of the company, unless—

(a) the company, acting through its members in general meeting, board of directors, or managing director, shall have expressly or impliedly authorised such officer or agent to act in the matter; or

(b) the company, acting as mentioned in paragraph (a), shall have represented the officer or agent as having its authority to act in the matter, in which event the company shall be civilly liable to any person who has entered into the transaction in reliance on such representation unless such person had actual knowledge that the officer or agent had no authority or unless having regard to his position with or relationship to the company, he ought to have known of such absence of authority.

(2) The authority of an officer or agent of the company may be conferred prior to any action by him or by subsequent ratification, and knowledge of such action by the officer or agent and acquiescence by all the members of the company or by the directors or by the managing director for the time being, shall be equivalent to ratification by the

members in general meeting, board of directors, or managing director, as the case may be.

Section 93:

A person dealing with a company or with someone deriving title under the company, is entitled to make the following assumptions and the company and those deriving title under it shall be estopped from denying their truth that—

(a) the company's memorandum and articles have been duly complied with;

(b) (b) every person described in the particulars filed with the Commission pursuant to sections 36 (4) (c), 319 and 337 of this Act as a director, managing director or secretary of the company, or represented by the company, acting through its members in general meeting, board of directors, or managing director, as an officer or agent of the company, has been duly appointed and has authority to exercise the powers and discharge the duties customarily exercised or performed by a director, managing director, or secretary of a company carrying on business of the type carried on by the company or customarily

exercised or performed by an officer or agent of the type concerned;

(c) …

(d) …

Provided that a person shall not be entitled to –

(i) ***make such assumptions, if he had actual knowledge to the contrary or if, having regard to his position with or relationship to the company, he ought to have known the contrary;***

The effect of a cumulative reading of the above statutory provisions is that a company can act through its human medium such as the directors, members, shareholders, officers or agents. In ***Adeyemi v. Lan & Baker (Nig.) Ltd. (2000) 7 NWLR (Pt. 663) 33 C.A. at 51, paras. A – B***, the Court of Appeal held that,

"***An incorporated limited liability company is always regarded as a separate and distinct entity from its shareholders and directors with the result that the acts of any of these biological persons carried out within the ambit of the memorandum and articles of association of the incorporated company is solely the acts of the incorporated company for which it alone is responsible. In***

effect, the consequence of recognising the separate personality of a company is to draw a veil of incorporation over the company generally. No one is entitled to go behind or lift the veil."

Speaking further on this subject, the Court concluded ***at page 51, para B of the Report*** that

"***Since a limited liability company only exist in the eye of the law it can only operate by means of human beings; usually, a company acts through its directors and managers whose actions can be attributed to the company***."

In **Polak Investment and Leasing Company Limited v. Sterling Capital Market Limited (2018) LPELR-46830(CA)**, a case that is uncannily evocative of this instant case, the Court of Appeal per Abimbola Osarugue Obaseki-Adejumo, JCA held at pp. 38-40, paras. C-B) that:-

"***...A fortiori, it cannot be disputed that there is a measure of truth in the evidence of DW1 that the Respondent acted under the instruction of the Appellant's Chairman. This is so because, in all the correspondence and agreement executed by the parties, it is the Appellant's Chairman, Mr. Pius Olarewaju, who acted for and on behalf of the Appellant and***

in whose name some of the shares were purportedly purchased. Section 65 of the Companies and Allied Matters Act clearly stated that the act of its director done while carrying on in the usual way of the business of the company shall be treated as the act of the company itself and the latter shall be liable as if it is a natural person. See Hung & Ors v E.C. Investment CO. (Nig.) Ltd v Anor (2016) LPELR - 42125 (CA). In Adeyemi v. Lan & Baker (Nig.) Ltd [2000] 7 NWLR (PT 663) 33, it was held by the Apex Court that a party will not be allowed to use his company as a cover to dupe, cheat and/or defraud another party who entered into a lawful contract with the company only to be confronted with the defence of the company's legal entity as distinct from its directors. The Court cannot give in to the submission by the Appellant that the Respondent has no authority to purchase the shares in the names of third parties who includes the directors of the Appellant Company. To do so will certainly not meet the justice of this case, thereby result in unconscionable instances, where parties will willingly and consciously enter into agreement and/or make representation to another party, which is acted upon, only to turn around and contend that it never made such representation. It is inherently dubious and ignoble for the

Appellant to assert as it did here, not only that it did not give the Respondent the requisite authority, but also that though Mr. Pius Olarewaju acted in his capacity as a director of and on behalf of the Appellant, he did not give the Respondent the authority to purchase the shares in his name and those of his other family members, who also double as directors of the Appellant. See Exhibit D6 and D7. I am thus in agreement with the learned trial judge that Appellant's claim on this ground cannot succeed."

Another effect of a joint reading of the above provisions is that the authority to act for the company could be given prior to the act that has been performed, or subsequently through ratification. This authorization and ratification could be express or implied. Learned Counsel for the Defendant placed heavy reliance on the absence of an express prior authorization by the company that he conveniently overlooked the provision of section 89 of the Companies and Allied Matters Act, 2020 which provides that "*Any act of the members in general meeting, the board of directors, or a managing director while carrying on in the usual way the business of the company, shall be treated as the act of the company itself and the company is criminally and civilly liable to the same extent as if it were a natural person*". Counsel also failed to advert

his mind to section 90(1)(a) of the Act which stipulates that authorization could also be implied.

One way authorization can be inferred is when the officer acting for the company takes steps which ordinarily would have been impossible if he had no such authority to so act. In such a situation, the presumption of regularity which is provided for in section 93 of the Act inures for the benefit of the party who deals with such officer of the company who holds himself out as representing the company. Another way ratification can be implied is where the members of the company or the directors or the managing director has knowledge of such action by the officer or agent and acquiesced to the said action. This is provided for in section 90 (2) of the Act.

It is at this point I return to the documents attached to the affidavit in support of the Writ of Summons. **Exhibits A1 – A3** are the cash/credit sale invoices that contained the specifications and quantity of the goods the Claimant supplied to the Defendant. The name of the customer is stated as 'Nino Corporation'. **Exhibits B1 – B3** are the waybill/delivery notes acknowledging the delivery of the goods to the destination specified. The name of the beneficiary is 'Nino Quarry' and the destination is 'Karshi, Abuja'. The goods were delivered and received. **Exhibit D** is the letter from the Solicitors of the Claimant and addressed to one Mr Joshua Aborkhar. He is described in the letter as the CEO/MD,

the acronyms for Chief Executive Officer/Managing Director, of Nino Corporation Limited, the Defendant herein. **Exhibit G** is the Deed of Settlement/Resolution for the payment of the debt which is the subject matter of this suit. One Mr Nino Abokhai executed the Deed of Settlement. He is described in the document as the Director/CEO of the Defendant. The same Mr Nino Abokhai deposed to the affidavit in support of the Defendant's Notice of Intention to Defend. In paragraph 1, he described himself as 'Director to the Defendant'.

Whether or not Mr Nino Abokhai is the same as Mr Joshua Aborkhar referenced in **Exhibit D**, what is pertinent here is that he, Mr Nino, is a director of the Defendant. If he could execute **Exhibit G** and bind the Defendant, then the authorization to act for the Defendant is implied; and the fact that the Defendant had knowledge of the transaction and actually benefited from same, as can be seen from the correspondences it exchanged with the Claimant, particularly, **Exhibit E**, which is a letter from the Defendant's Solicitors addressed to the Claimant's Solicitors to which were attached two letters signed by one Umole E. F. (Esq.) and dated 18th of May, 2020 and 29th of May, 2020 admitting its liability to the Claimant in respect of the goods supplied, constitute ratification of the contract of supply pursuant to section 90(2) of the Companies and Allied Matters Act, 2020. I cannot hold otherwise. Further to this, the Defendant's admission of indebtedness to the Claimant, as seen in those

exhibits, is ultimately self-defeating of whatever defence it has set out to erect in this suit.

I have earlier referenced the case of ***Zakhem Oil Serve Ltd. v. Art-in-Science Ltd. (2021), supra*** where the Supreme Court held that exhibits attached to affidavits form part of the affidavits. See the case of ***Asuquo v. Ekpo & Anor (2019) LPELR-48168 (CA). In APC v. Loko & Others (2022) LPELR-56703 (CA)***, where the Court per Gumel, JCA held that "***The correct position of the law, in my view, is that documents that are attached to an affidavit become part of the said affidavit and the Court will be at liberty to look and evaluate all documents in its bid to do substantial justice in a given case.***" In ***Sil Estate Development Limited & Others v. Hon. Ignatius Amodu (2022) LPELR-58701 (CA), at pages 28 – 31, paras B – A***, the Court of Appeal, after quoting extensively from a number of authorities on the same subject, and inhaling copious invigorating air from same, held per Ige, JCA that

> "***The Appellants did not deny that they collected the monies neither did they counter that the receipts evidencing the collection of the said monies were not issued by the Appellants that it is Exhibits B - B5 attached to the Affidavit of the Respondent in support of the Undefended Writ of Summons. The said Exhibits formed part of the Affidavit evidence before the lower Court. The***

Appellants are deemed to have admitted all the depositions contained in the Respondent's Affidavit in Support of the Undefended Writ of Summons. No further proof is required. 1. HALIMA HASSAN TUKUR VS GARBA UMAR UBA & ORS (2012) 10 SCM 139 AT 168 E-G per ARIWOOLA, JSC (now AG. CJN) who said:- "In the instant case, the case was tried on affidavit and documentary evidence. There was affidavit and further affidavit in support of the Originating Summons by the appellant at the trial Court. There were also Counter affidavit and reply to further affidavit of the Respondents to oppose the originating summons. It is already a settled law that an affidavit evidence constitutes evidence and must be so construed, hence, any deposition therein which is not challenged or controverted is deemed admitted. See; Ajomale vs Yaduat & Anor (No. 2) (1991) 5 NWLR (Pt. 191) 226 at 282-283, (1991) 5 SCNJ 178. Magnusson vs. Koiki (1993) 12 SCNJ 114; Henry Stephens Engineering Ltd vs Yakubu (Nig) Ltd (2009) 6 SCM 90 at 99." 2. MATHEW IYEKE & ORS V. PETROLEUM TRAINING INSTITUTE & ANOR (2019) 2 NWLR (PART 1656) 217H TO 218 A - D the apex Court per AUGIE, JSC who said:- "It is settled law that documents attached to an affidavit as exhibits, form

part of the affidavit in question - see Ezechukwu v. Onwuka (2016) LPELR-26055 (SC), (2016) 5 NWLR (Pt. 1506) 529 and S.E.S.N C. & Ors v. Anwara (1975) 9-11 SC 55, wherein Fatayi- Williams, JSC (as he then was) observed: "In Re Hinchcliffe (1895) 1 Ch. 117, it was held that such an exhibit is part of the affidavit, and any person, who is entitled to inspect the affidavit has a right to demand inspection of the exhibits referred to in it. In the view of Lord Herschel, L.C. at 120:- "They form as much part of the affidavit as actually annexed to and filed with it". In this case, in addition to the 19-paragraph affidavit in support of the originating summons that the appellants filed at the trial Court, they annexed the copies of their Letters of Offer of Appointment as exhibits A I-A25; copy of the said letter dated 12/3/2003 as exhibit B; copy of the Notice of Declaration of Trade Dispute as exhibit' C; copy of the letter of the Minister appointing the Conciliator as exhibit D; and a copy of the Conciliator's Report, was attached as exhibit E. It is evident from its decision that the Court of Appeal closed its eyes to the appellants' affidavit and exhibits attached thereto, which spelt out in no uncertain terms that they had reason to sue, and that the suit they filed disclosed a reasonable

cause of action. But in one breath, it acknowledged that the letters of employment incorporated some terms and conditions governing their rights and obligations, and in another breath, it said the Court was not availed the full terms of the contract governing their rights and obligations. In the circumstances, I will, most certainty, heed the call of the appellants to interfere with the judgment of the Court of Appeal, and set it aside accordingly."

It is instructive to note that the Defendant did not challenge the veracity of these documents. The Defendant's defence to these documents is in paragraph 8 of its affidavit where it averred that "*…the Defendant is not aware of any transactions or dealings with the Claimant*." In paragraph 9, the Defendant provided what it considered a defence when it stated that "*It is possible the Claimant have an agreement with someone else for the benefits of another but definitely not the Defendant or for its benefits, because I cannot remember when any resolution was passed or any meeting held for the purpose of conducting or even ratifying the any* (sic) *transactions that has* (sic) *to do with purchase or supply of cable/wire by anyone including the Claimant.*"

In all of these averments, the Defendant did not controvert the contents of the documents attached to the affidavit in support of the Writ of

Summons. In ***Lagos State Government & Others v. Abdulkareem & Others (2022) LPELR-58517 (SC) at pages 29 – 30, paras B – E***, the Supreme Court per Kekere-Ekun, JSC held that "***It is a general principle of law that facts pleaded or averments deposed to in an affidavit, if not specifically challenged or controverted, are deemed admitted and require no further proof, except where the facts are obviously false to the knowledge of the Court***."

Further to this, the Defendant did not show that the Claimant was aware that the person it was dealing with lacked the power to so deal with a third party on behalf of the Defendant. It is my considered view, and I so hold, that the failure of the Defendant to challenge the veracity of the documents attached to the affidavit in support of the Writ of Summons, as well as to impute that knowledge of defect in the officer's authority is fatal to its defence.

It bears repeating that to displace the presumption of regularity provided for in section 93, and to challenge the authority of the officer who claims to be acting for the company, the other party must have knowledge that the officer of the company, at the time of acting, is bereft of the authority and capacity to so act. In this case, the Defendant has not shown that the officer who entered into the contract of supply of armoured cables did not have the requisite authorization of the company to so act.

What the Defendant sought to do in those paragraphs was to displace the presumption of regularity of the actions of the officer who entered into a contract of supply with the Claimant. By displacing that presumption of regularity, the Defendant hoped that the Court would find that the transaction was with a person other than the Defendant and, accordingly, to hold that the Defendant is not liable to the Claimant. That is the train of its depositions in paragraphs 8, 9, 11, 12, and 13(e) of the affidavit in support of the Defendant's Notice of Intention to Defend. Specifically, the Defendant stated in paragraph 11 that "*From all the documents attached, there is none that specifically disclosed any agreement between the Claimant and the Defendant duly signed by at least two directing mind (sic) of the Defendant, other than subsequent efforts to write Nino Corporation which is different from the Defendant as I can now see*."

It is important to observe that the Defendant is not challenging the name of the Defendant as it appears in the processes of the Claimant in this suit. It is only claiming that the Claimant entered into a contract for the supply of armoured cables with 'Nino Corporation', and not with 'Nino Corporation Limited'. It is obvious that the substratum of this contention is **Exhibits A1, A2 and A3** where the Claimant wrote 'Nino Corporation' as the name of the name of the Defendant. But, there are other documents attached to the affidavit in support of the Writ of Summons with the name of the Defendant in different forms. In **Exhibits B1, B2 and B3**, the recipient of the goods is described as 'Nino Quarry'. In

Exhibit D, the Defendant's name is written as Nino Corporation Limited. In **Exhibit E** which is the letter from the Defendant's Solicitors, it is stated that they are "…Solicitors to Messrs Nino Corporation Limited". The two annexures to the **Exhibit E** described the Defendant as Nino Corporation, Abuja. In **Exhibit G**, the Defendant is defined as Nino Corporation Limited. Above all, **Exhibit C1 – C13** are post-dated cheques the Defendant issued to the Claimant. Clearly written on the cheques as the owner of the account to which the cheque leaves are linked is Nino Corporation Limited.

It is rather superfluous and otiose for this Court to state that 'Nino Corporation', 'Nino Corporation Abuja', 'Nino Quarry' and 'Nino Corporation Limited' referred to the Defendant. Yet, this Court must find, for the sake of its records, and hereby finds, that these nomenclatures refer to the Defendant. There is no mistake as to the identity of the person the Claimant has sued as a Defendant in this suit as to render this suit defective and incompetent. The question of the suability of the Defendant as a proper party does not arise. This ground of legal defence of the Defendant hereby collapses and falls flat on it face. I so hold.

At the end of the day, what is left is the Defendant's defence as contained in paragraph 17 of the Affidavit in support of the Notice of Intention to Defend. The Defendant through its deponent had stated that "*Although assuming but not conceding that,* (sic) *the transactions were*

by one of its Directors with the Claimant and not with the Defendant, paragraph 1.5 (c) of Deed of Settlement dated 14th September, 2020 although not equally sanctioned, states that "…the debtor is willing to sell some of its properties and most specifically its property knows (sic) *as Joshua Plaza…"".* The Defendant averred further in paragraph 18 that "*Upon inquiry, I am aware that the property has not been sold yet, let alone invoking paragraph 1.5(e) of the same Deed of Settlement dated the 14th September, 2020*."

The Defendant's argument is that the Claimant did not comply with paragraph 1.5 (c) of Exhibit G which it contended was a condition precedent to the institution of any suit. The Defendant, no doubt, must be under a misapprehension of the law on the jurisdiction of the Court as enunciated in the *locus classicus* of ***Madukolu v. Nkemdilim (1962) 2 SCNLR 341*** and applied in a number of cases such as the case of ***Ogbuji v. Amadi (2022) 5 NWLR (Pt. 1822) 99 at 132, paras. A-C*** where the Supreme Court held that,

> ***"A court is competent to exercise jurisdiction when: it is properly constituted as regards numbers and qualification of the members of the bench, and no member is disqualified for (a) one reason or another; and the subject matter of the case is within its jurisdiction, and there is no feature in the case which prevents the court from (b) exercising***

its jurisdiction; and the case comes before the court initiated by due process of law, and upon fulfilment of any condition precedent to the exercise of (c) jurisdiction. Any defect in competence is fatal, for the proceedings are a nullity, no matter how well conducted or decided, as the defect is extrinsic to the adjudication."

A term in an agreement to make the payment of a debt subject to certain external conditionalities cannot operate as a condition precedent to the institution of a suit. The condition precedent envisaged in the elements of jurisdiction in *Madukolu v. Nkemdilim, (1962) supra*, are conditions stipulated by the law regarding that cause of action and the constituents of due process. Moreover, a reading of the said paragraph 1.5 (c) of **Exhibit G** which the Defendant referenced neither made the repayment of the debt subject to the sale of the properties of the Defendant nor the institution of a suit to recover the debt upon the failure of the Defendant to pay its debt after it had sold its properties. In ***Onoeyo v. U.B.N. Plc (2015) 10 NWLR (Pt. 1466) 104*** the Court held *inter alia* that "***A case of hardship that creates no enforceable right e.g. past promise by plaintiff unsupported by valuable consideration, or a mere inability to pay or an allegation that the plaintiff has given time for payment which of course constitute no defence unless there be consideration, will not constitute defence on the merit.***"

A community reading of the paragraphs that constitute paragraph 1.5 readily shows that the Defendant is required to raise funds from sources other than the sale of its properties. Specifically, the Defendant is even obligated, by virtue of paragraph 1.5(d) of **Exhibit G**, to make payments in installments pending the final liquidation of the entire debt. The Defendant had not made any payment pursuant to this paragraph of **Exhibit G**. Seeking to rely on certain parts of a document it considers favourable to it while ignoring other parts of the same document it considers unfavourable amounts to approbating and reprobating on a piece of evidence. The Courts frown at such practices. In the case of ***Mohammed v. Farmers Supply Co. (KDS) Ltd. (2019) 17 NWLR (Pt. 1701) 187 at p. 211, paras. F-H***, the Supreme Court per Eko, JSC held that "***A party to an action would not be allowed to approbate and reprobate.***" Earlier, the Supreme Court per Kekere-Ekun, JSC had stated this position in ***B. B. Apugo Ltd v. Orthopedic Hospital Management Board (2016) 13 NWLR (Pt. 1529) 206 at p. 254, paras B-C*** where it held that "***A party cannot approbate and reprobate on the same piece of evidence***."

It is in view of the foregoing, therefore, that I inevitably arrive at the conclusion that the Defendant has not disclosed any defence on the merit to the case of the Claimant on the Undefended List. Though the Defendant has urged this Court to move the case to the general cause list so that it can present its proof, this Court finds it unnecessary to beat

that route; the Court has seen and evaluated the evidence before it. The documents attached to the affidavit in support of the Writ of Summons speak for themselves. Since the Defendant has not challenged any of them, they are deemed admitted and no further proof of the dispute is required. It is a settled principle of law that it is not in all cases that the Court will call oral evidence to resolve conflict in affidavit evidence. The need for oral evidence is all the more obviated when there are documents attached as exhibits which resolve conclusively such conflicts. See the cases of ***Eimskip Ltd v. Exquisite Industries (Nig.) Ltd (2003) LPELR-1058 (SC) at p. 38, paras A – D per Niki Tobi, JSC (of blessed memory); Airehodion & Others v. Ehikpehale (2019) 48267 (CA) at pp. 58 – 59, paras E – A per Awotoye, JCA; and Dahiru v. Ahmed & Others (2013) LPELR-22843 (CA) at p. 16, para C per Yahaya, JCA***. In ***Jayesimi & Another v. Darlington (2022) LPELR-57344 (SC), at pp. 22-23, paras. F-C*** the Supreme Court per Ogunwumiju, JSC held that

> "***The law is settled that generally, a Court of law is not competent to resolve conflict in affidavit evidence without calling oral evidence. There is however exception to this rule, one of which is that where the Court has documentary evidence at its disposal which can aid it to resolve the conflict, it can do so without recourse to oral evidence. See Ezegbu v. F.A.T.B. Ltd (1992) 1 NWLR***

(Pt.220) 699 at 720; Magnusson v. Koiki (1991) 4 NWLR (Pt.183) 119. Furthermore, the need to call oral evidence would not arise if the areas of conflict are so narrow or if there are enough documents to assist the Court in the resolution of such conflict."

Accordingly, Judgment is hereby entered in favour of the Claimant as follows:-

1. **The Defendant is hereby ordered to pay to the Claimant the sum of ₦20,559,500.00 (Twenty Million, Five Hundred and Fifty-Nine Thousand, Five Hundred Naira only) being the debt owed to the Claimant by the Defendant for the armoured cables/wires supplied to the Defendant by the Claimant on the 11th day of January 2019.**

2. **The claim for 25% interest on the total debt per annum from the 2nd February, 2019 till judgment is delivered in this matter is hereby refused. A claim for pre-Judgment interest is in the realm of special damages. Whoever that claims pre-Judgment interest must prove their entitlement to same. The Claimant in this case did not adduce evidence in support of its claim of 25% pre-Judgment interest. It is, therefore, not entitled to the relief.**

3. **This Court hereby awards the cost of ₦500,000.00 (Five Hundred Thousand Naira) only to the Claimant as the cost of prosecuting this action.**

4. **The Defendant is hereby ordered to pay 10% post-Judgment interest on the entire Judgment sum from the date of Judgment until the full liquidation of the entire Judgment sum.**

This is the Judgment of this Court delivered today, the 29th day of November, 2022.

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HON. JUSTICE A. H. MUSA
29/11/2022
JUDGE

APPEARANCES:

FOR THE CLAIMANT:
O. O. Immanuel Esq.
G. C. Ahamefula Esq.

FOR THE DEFENDANT:
Francis Moses Nworah Esq.