

**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: 6TH FEBRUARY, 2023

BETWEEN

FCT/HC/CV/18/2022

VISTAR SERVICE LIMITED-----

CLAIMANT

AND

1. THE NIGERIA POLICE FORCE

2. THE INSPECTOR GENERAL OF POLICE

} DEFENDANTS

JUDGMENT

The suit was commenced by a writ of summons dated and filed on the 18th October, 2022 wherein the Claimant is seeking for the following reliefs against the Defendants jointly and severally:-

1. An order of this Honourable Court directing the Defendants to pay to the Claimant forthwith, the sum of \$6,208,811.64 (Six Million, Two Hundred and Eight Thousand, Eight Hundred and Eleven Dollars, Sixty Four Cent) being 25% of the contract sum of

\$26,945,811.64 (Twenty Six Million, Nine Hundred and Fort five Thousand, Eight Hundred and Eleven Dollars, Sixty Four Cent) less 7.5 % Vat and 1% stamp duty as advance payment due to the Claimant in compliance with the provision of Article 2.2.1 (I) of the Supply agreement made between the Claimants and the Defendants. Or in the alternative;

2. An order of this Honourable Court directing the Defendants to pay to the Claimant the sum of \$2,423,364 (Two Million Four Hundred and twenty Three Thousand, Three hundred and Sixty Four Dollars) being less 7.5% Vat and 1% stamp duty being the cost for the 15 units of the Steyr – Punch 690 Pinzgau 4x4 Military Standard Truck with open rear angle and trampoline metal for 2 and 12 passenger front and back for pipeline patrol and surveillance in the Niger Delta already delivered to the Defendants by the Claimant in 2012 based on the reversed contract sum of \$ 26,945.811.64 (Twenty Six Million, Nine Hundred and Fort five Thousand, Eight Hundred and Eleven Dollars, Sixty Four Cent).

3. An order of this Honourable Court awarding interest at the rate of 10% per annum on the judgment sum until judgment is executed.

the writ is supported by a 36 paragraph affidavit and exhibits marked A-K. the affidavit was also filed on the 18th October, 2022 and was deposed to by Mr. Sylvester Unokesan and contains among others the following facts.

1. That the 1st Defendant was awarded the contract for the supply of 145 units of Steyr Punch Pinzgauer trucks all fitted with communication gadgets for pipeline patrol and surveillance in the Niger Delta to the Claimant in a letter dated 5th March, 2010 in the sum of \$40,000,000.00 (forty Million Dollars) and executed the supply agreement on the 16th of March, 2021 in the sum of \$ 26,945,811.64 (Twenty Six Million, Nine Hundred and Fort five Thousand, Eight Hundred and Eleven Dollars, Sixty Four Cent) being a downward review of the contract price by the Bureau of public procurement.
2. That the Claimant was awarded the contract for the purchase of additional (145) units of steyr- Punch Pinzgauer Trucks all fitted with communication

gadgets for pipeline patrol and surveillance in the Niger Delta by the Defendants in the sum of \$40,000,000.00 (Forty Million Dollars) in a letter dated 5th March, 2010.

3. That in the said letter, the Defendants informed the Claimant that they have notified the bureau of Public Procurement to issue a certificate of no objection whilst urging the Claimant to contact the Original Equipment Manufacturers (OEM) to arrange a production schedule to enable them meet the above purchase.
4. That the Claimant quickly acted on these instructions, raised funds from his bankers on loan and without any form of mobilization from the Defendants contacted the original equipment manufactures who agreed to delivers 15 units of the trucks leading to the Claimant delivering to the Defendants a total of 15units of the said trucks on the 24th of December, 2012 as contained in delivery note 0000057- 0000058.
5. That the facts of the delivery of 15 units of the said trucks to the Defendants by the Claimants is not in

dispute as same has been acknowledged by the Defendants in several letters/communications with respect to this contract as follows:-

- i. The Defendants request for presidential approval dated 29th January, 2013 with Ref: CB/3380/IGP.SEC/ABJ/VOL.39/653.
- ii. The Defendant's letter to the Director General of the Bureau of Public Procurement dated 29th January, 2020 with Ref No. CB:3383/DOPS/TPT/ABJ/VOL.7/129.
- iii. The Defendant's letter to the Group managing Director of the NNPC dated 6th July, 2020 with Ref. No. CB: 3380/1GP.SEC/ABJ/VOL. 74/445. Copies of these letters are hereby pleaded and marked as exhibits C-E.
- iv. That from 5th March, 2010 when the contract was first awarded leading to the supply of 15 units of the trucks to the Defendants, till date the Claimant till date has not received a penny from the Defendants with respect to the contract or even paid for the 15 units of the trucks already supplied

- to them by the Claimant on the 24th of December, 2012.
- v. That the Defendants have failed to take any steps to obtain the due process certificate as stated in the award letter since 2010 until may 2020 that the Defendants were able to procure the due process certificate for the contract at a reviewed project cost of \$26,945,811.64 (Twenty Six Million, Nine Hundred and Fort five Thousand, Eight Hundred and Eleven Dollars, Sixty Four Cent)7.5% Vat and 1% stamp duty inclusive from the bureau of public procurement.
 - vi. That the certificate of objection issued by the Burea of public procurement also covered the contract sum for the procurement of (1) Technical/Mechanical servicing/maintenance workshop for the Nigeria police, after which the supply agreement was executed on the 16th of March, 2021 between the Claimant and the defendants in the total sum of \$26,945,811.64.
 - vii. That in the said supply agreement, the cost for the supply of steyr punch 690 pinzgauer 4x4 military

- standard truck with open rear angles and trampoline metal for 2 and 12 passengers front and back which the Claimant supplied to the Defendants was valued at \$2,423,364 for the 15 units of the truck already supplied less 7.5% Vat and 1% stamp duty.
- viii. That since the execution of the supply agreement in March, 2021 till dated the Defendants have failed and refused to execute the terms of the agreement or even pay the claimant the money due to it for the 15 units of the trucks already supplied.
 - ix. That the Defendants at all times agreed to pay the Claimants the monies due to it having revived the sum of N16,967,286,940.00 from the NNPC.
 - x. The Claimant realized that the Defendants were using delay tactics to distract the Claimant and had no intention of paying the Claimant until this administration wound up. Hence the claimant wrote the Defendants a letter of demand on the 16th of August, 2022, which the Defendants have failed to reply.

xi. That the Claimant is entitled to claim from the Defendants money due to it from the execution of the supply agreement with the Defendants in the sum of \$6,208,811.64 and that if the Defendants do not want to continue with the contract, they should pay the claimant the sum of & 2,423,364 USD being the cost of the 15 units of the steyr punch 690 pinzgau 4x4 military standard truck already delivered to the Defendants.

This writ is marked under the undefended list. The essence of the undefended list is to save the judicial time where the Defendant has no reasonable defence to the claims of the claimant. **In *MASSKEN NIGERIA LTD & ORS V MR. AMIABLE AMAKA & ANOR (2017)LPELR 42360 (SC)***, it was held thus:-

“ The essence of the undefended list procedure in the civil procedure rules of the various High Court throughout Nigeria, including order 23 Rule 3 (1) of the High Court of the Federal Capital Territory Civil Procedure) *Rules*, is to allow a Claimant obtain quick justice in respect of a debt or liquidated sum where the facts are clear and there is no genuine defence to the claims. It allows a Court to

enter judgment in favour of the Claimant instantly without the need to go the whole hog of a full trial and the calling of witnesses. It is a veritable tool that saves judicial time and expense.”

The procedure under the undefended list, even though designed to quicken the recovery of liquidated money demands clearly derogates from the rights of the parties in regard to the principle of Audi alteram partem, vis- a- vis fair hearing. In this wise, the Plaintiff is obliged to meet strictly the conditions of bringing his claim on the undefended list. Anything short of strict Compliance with the rules will not suffice nor sustain the claims under the rules.

The three requirements for a Plaintiff to succeed in an action under the undefended list, which I shall deal with anon, must be strictly construed.

They are firstly that the claim must be for a debt or liquidated money demand, including account stated to be cognizable under the undefended list procedure, thus, excluding for example, un-liquidated damages as in claims in torts and special damages arising, howbeit from

any cause of action as they must be specially pleaded and strictly proved.

Secondly, the claim for a debt or liquidated money demand must be supported by an affidavit verifying the claim and thirdly the affidavit must contain a deposition to the effect that in the belief of the Plaintiff the Defendant has no defence to the claim.

Once these conditions are met the claim is otherwise qualified to be placed on the undefended list. It is settled that the competency of a claim on the undefended list must pass the test of the three conditions as outlined above.

The undefended list ought to be refused ab initio where the three conditions have not been satisfied.

In ***MASSKEN (NIG) LTD & ORS V AMAKA & ANOR (2017)LPELR- 42360 (SC)***, the Supreme Court per Walter Onnoghen JSC held as follows:-

" I need to re-emphasise the point that the undefended list procedure is fashioned to take care of cases relating to simple, uncontested debt or liquidated money

demand or monetary claims. Where, however serious disputes arose in the affidavits on points of law relating to the claim(s), the trial Court ought to exercise caution in entering judgment under the undefended list procedure and should transfer the matter from the undefended list to the General Cause List to be dealt with by pleading etc.”

For a Claimant to commence an action under the undefended list Procedure three conditions must be met:-

1. The claim must be for a debt or liquidated money demand.
2. The claim for debt or liquidated money demand must be supported by an affidavit verifying the claim.
3. The affidavit must contain a deposition to the effect that in the belief of the Plaintiff, the Defendant does not have a defence to the claim.

These three conditions must co-exist before the Plaintiff can institute an action under the undefended list procedure. From the foregoing, the Court will enter

judgment in favour of the Plaintiff, if the Plaintiff is able to meet the three conditions and prove that the defendant does not have a valid defence to his claim. See also ***OBITUDE VS ONYESOM COMMUNITY BANK LTD (2014)LPELR 22693 (SC); BEN THOMAS HOTELS LTD VS SEBI FURNITURE CO. LTD (1989) LPELR-7669 (SC), IMONIYAME HOLDINGS LTD & ANOR VS SONEB ENTERPRISES LTD & ORS (2010)LPELR - 1504 (SC).***

However, a Defendant will be allowed to defend if he can show that there are disputed facts or that there is a dispute between the parties. See ***OBARO VS HASSAN (2013)LPELR -20089 (SC); IMONIYAME HOLDINGS LTD & ANOR VS SONEB ENTERPRISES LTD & ORS (2010)LPELR – 1504 (SC); NKWO MARKET COMMUNITY BANK (NIG)LTD VS OBI (2010)LPELR-2051 (SC) G.M.O NWORAH & SONS CO.LTD VS AKPUTA (2010)LPELR-1296(SC)” per ADEBUKUNOLA ADEOTI IBIRONKE BANJOKO JCA (pp 16-19) paragraphs A-F.***

In the instant case, I am satisfied that the Claimant has discharged his obligations under the undefended list procedure. The Claimant has exhibited evidence of a

contractual relationship with the Defendants. The Defendants and the Claimant and between the Defendant and the presidency, confirming the indebtedness of the Defendants. What is more? the Defendant's even after being served with the processes, and having been afforded with an opportunity to show cause why this matter should not be determined under the undefended list procedure, failed to show up in Court nor file anything in response.

From the above it is important to note that in consideration of an action brought under the undefended list by the Plaintiff the trial Court is faced with a decision whether to hear the case or transfer it to the general cause list. It must have to begin with a careful scrutiny of the Plaintiff claim and be satisfied that the action is not contentious and one should be placed on the undefended list. The Court owes it a duty to scrutinize the claims and the verifying affidavit with the attached documents, if any, to ensure that the claim is indeed suitable to be heard under undefended list procedure, otherwise it should be transferred to the general cause list see ***INTERNATIONAL BANK VS BRIFAIR LTD NO***

SC 67/2004. Also cited **(2012)13 NWLR (PT)**. Consequently from the entire process filed by the Claimant and the exhibits attached made this Court to enter judgment as per the Claimants claim as contain in his alternative prayers No. 2 and 3.

HON. JUSTICE M.S IDRIS
(Presiding Judge)

Appearances

Samuel Ogah:- For the Claimant.