

FTCC 002/2022

2022

T.

NO.1

IN THE HIGH COURT OF SIERRA LEONE
COMMERCIAL AND ADMIRALTY DIVISION)
FAST TRACK COMMERCIAL COURT

BETWEEN:

JOSEPH TUCKER
3^BSYKE STREET
CONGO TOWN
FREETOWN

AND

SIERRA LEONE ROAD SAFETY AUTHORITY
KISSY ROAD
FREETOWN

- **PLAINTIFF**

- **DEFENDANT**

JUDGEMENT DELIVERED BY THE HONOURABLE JUSTICE M.P. MAMI J.A
DATED 11TH DAY OF DECEMBER, 2023.

COUNSEL

RENNER-THOMAS ASSOCIATES
PLAINTIFF

- **SOLICITORS FOR THE**

BREWAH & CO.

- **SOLICITORS FOR THE DEFENDANT**

Background

The plaintiff is before this court through an action initiated by writ of summons intituled FTCC 002/2022 T. No.1 for the following claims:

1. Recovery of the sum of Le2,086,295,000/00 (Two Billion and Eighty-six Million, Two Hundred and Ninety-five Thousand Leones)
2. Damages for breach of contract
3. interest on the sum pursuant to Section 4 of the Law Reforms (Miscellaneous Provisions) Act No.19 of 1960
4. Any further relief(s) or order that this Honourable court may deem fit and just in the circumstances
5. costs

The claim of the plaintiff is as gleaned from the particulars of claim as contained in the writ of summons to wit:

Facts

- That the plaintiff is a businessman engaged in the business of general merchandise at No.18 Lightfoot Boston street, Freetown
- Whilst the defendant at all material times to this action a government institution engaged in the business of regulating and coordinating all activities within the Road-Transport Sector.
- That within the period 2015 to 2019, the plaintiff supplied the defendant office equipment amounting to Le2,086,295,000/00 (Two Billion Eighty-six Million Two Hundred and Ninety-five Thousand Leones) with the said transaction being acknowledged by the procurement office.
- That the purchase order made to the defendant was for the supply of office equipment, office furniture and general totaling to the sum of Le2,086,295,000/00 (Two Billion Eighty-six Million Two Hundred and Ninety-five Thousand Leones)
- That the said goods were delivered to the defendant 2015 to m2019 the order was made and the delivery note was signed and dated by the store keeper. Procurement officer and others of the defendants who received the said goods on behalf of the defendant.
- Plaintiff further claimed that it was a term of the contract that 100% payment should be made for the goods upon delivery.

- That it has since been five years and the defendant have made no effort to pay the monies owed and due the plaintiff.
- That by reason of the defendant the plaintiff has suffered hardship, damages and loss, whereof they claim initially aforestated.

On the 14th of February, 2022 Abu Bakarr Sheriff Esq. filed entered appearance for and unbehalf of the defendant.

The defendant on the other hand contends in its defence that most of the said transactions were done without the lawful authorization and/or approval by its executive director. It further asserts that the procurement officer who is currently under suppression, following and indictment by the Anti-Corruption Commission for alleged corruption, engaged in most of the transaction without the knowledge of the said Executive Director.

The defendant further contends that, it is bound by public policy and law to reject claims for payment in respect of any dubious or suspicious transaction regarding the tenor and spirit of the Public Financial Management Act, 2016, the Public Procurement Act (as amended 2016) and the Public Procurement Regulation 2022 and Auditing obligation imposed by relevant laws. As such, the defendant strongly denies owing the plaintiff the said sum alleged.

The defendant however, asserts that payments, had been made to the plaintiff for supplies he had made which were to the knowledge of its executive director and which where duly approved by him.

It is therefore, the defendant's assertion that refusal to pay the plaintiff the sum claimed in the action was as a result of Public Financial Policy considerations, taking into account and t queries, among other things.

It is also the defendant's averment in response to the plaintiff's claim that the said goods received by the store keeper, procurement officer and others were not authorised by the Executive Director/Vote Controller.

The defendant therefore, pleads fraud, the particulars of fraud are as follows:

- (a) That the procurement of same of the equipment flagrantly and repeatedly breached procurement rules and processes items not listed in the approval price nor on; procurement requisition not approved by Executive Director, local purchase order not signed by the supplier, delivery note not dated or signed by the supplier, items delivered prior

to local purchase order, being signed by the supplier, and not Nassit compliant.

- (b) The local purchase orders in respect of same of the transaction were either not signed or if signed dated on the same date as their purported deliveries.
- (c) That the plaintiff had knowledge that the vote controller Executive Director had refused to approve some of the payments, yet continued to purportedly deliver the equipment in collusion with the indicated procurement manager and or other staff.
- (d) That certain invoices presented by the plaintiff neither bear the name nor the enterprise registered under his name.
- (e) That despite repeated refusal by the vote controller/executive director to approve or sign cheques for payments purportedly due and owing to the plaintiff, the continued purportedly supply equipment to the defendant.

In further response to the plaintiff's claim, the defendant avers that even if the supplies are deemed or implied to have been authorised, their monetary value is less than the sum stated in the plaintiff's statement of claim. It further asserts that there was no valid contract in respect of the said sum between the parties in this matter.

That the defendant avers that the alleged hardship, damages and loss suffered were not as a result of the actions of the defendant, and that the plaintiff should have mitigated his loss since 2015 when the defendant refused to make payment on public policy grounds by not continuing to make supplies.

The defendant further avers that assuming without conceding that the Honourable court is inclined to adjudge hardship, damages for breach of contract, that the plaintiff failed to mitigate the said hardship, damages and loss in that while the defendant refused a public policy grounds to pay suspicious or dubious payments for unauthorised deliveries, purported or otherwise, beginning 2015, the plaintiff kept the chain of supply ongoing until 2019.

The matter then proceeded to trial, on the understanding of the parties to waive the need for summons for direction on the file, this is against the backdrop of the period of time spent in abeyance notwithstanding, it proceeded to full trial.

Same was then waived for the expedient and efficient disposal of the matter. I will rehash the full testimony of the plaintiff.

Witnesses and the Evidence Adduced Before the Court

The plaintiff was led in evidence-in-chief to wit: -

PW1 (SOB)

XX I am Joseph Tucker and I live at No.3 Congo Town (Syke street), and I am a businessman

XX Yes, I know the defendant, S.L.R.S.A, and I have a business relationship with them. I supply them stationeries, office, equipment, computers, laptops and toners.

XX Yes, I am the owner of registered business, two businesses – Tedfin Investment.

(Witness shown exhibit B7¹⁻²)

XX Yes, this is the business name registered for Tedfin Investment

XX Yes, I have business registration for the other business Ansusil

XX The business registration of Ansusil does not from part of the documents.

XX If given time, I will certainly furnish the court.

XX Yes, I made a witness statement in this matter, and this my statement and I want the court to see it.

(counsel applies pursuant to Order 30 sub Rule 9, (a) of the High Court Rules 2007, no objection, same is granted, tendered and marked PWS1¹⁻²)

XX Yes, I supplied the defendant, no I have stopped supplying the defendant.

XX In 2015, I started supplying the defendant.

XX They use to give me RFQ, I then put a quotation to it, I then give them back the RFQ, the defendants then do the selection for the lowest bid after which an L.P.O is prepared then I afterwards supply them the goods with invoice and delivery.

The storekeeper and various recipients of the goods in the defendant's institution. Sometimes if I am not chanced, I sent my boy Umaru Kargbo, who will be the person who will delivered, Umaru will then sign the delivery note.

(Witness shown exhibit A3¹⁻¹⁶)

XX These documents are not

Exhibit A3¹⁻² - L.P.O

Exhibit A3³ – Invoices

Exhibit A3⁴ – Delivery note

exhibit A3¹⁻² is signed by the representative of the defendant

XX Exhibit A3⁴ is signed by representative of the defendant

XX I have not been paid in respect of this order.

counsel for the defendant request for an adjournment with a view to an out of court settlement, which however did not work out.

o resumption of his testimony, the following also came out

XX Witness shown exhibit A4-14. witness shown “exhibit A2”

XX There are invoices and L.P.O in respect of Ansusil Investment.

XX No, I have not been paid in respect of these order.

Witness shown exhibit (A4¹⁻⁴)

XX Yes, there are L.P.Os and invoices and deleted in respect of Ansusil, and we have not been paid.

Witness shown exhibit (A8¹⁻⁷)

XX There are L.P.Os delivery note in respect of Tenfein investment not been paid yet.

Witness shown exhibit (A12¹⁻⁴)

XX This is another L.P.O delivery note in respect of Ansusil Investment and we have not been paid yet.

Witness shown exhibit (A18¹⁻⁸)

XX These are L.P.Os and delivery notes in respect of Ansusil and have not been paid.

(Witness shown exhibit (A19¹⁻¹²))

XX These are L.P.O s and delivery notes, and we have not been paid in respect of these orders.

XX They give RFQ after which the form is filled out. I then take it back to the defendant, they look for the lowest bidder. after which my company is successful they give me the L.P.O. I then do the supply. After which when the supply is done is with the invoice and delivery note.

XX Yes, I own two businesses, Ansusil and Tenfil

XX No, the other business document apart from Ansusil.

XX I told the defendants that I used other business names.

XX After supply, the cheques were handed over to me.

(Witness shown exhibit A5¹⁻⁴)

XX This is an L.P.O invoice in respect of Eddie Con for which I was not paid

(Witness shown exhibit A6¹⁻⁹)

XX This is an L.P.O in respect of Sheruk Enterprises

(Witness shown exhibit A9¹⁻¹⁴)

XX There are L.P.Os delivery notes and invoices in respect of ledgers enterprises. Yes, I used that business, and I have not been paid in respect of this order.

(Witness shown exhibit A15¹⁻¹⁵)

XX These are L.P.Os delivered notes and invoices in respect of Patman. I used that business in respect to supply. I have not been paid.

(Witness shown exhibit A16¹⁻⁸)

XX these are L.P.Os delivery notes and invoices in respect of the aforesaid enterprises. I supplied and have not been paid.

(Witness shown exhibit A17¹⁻¹²)

XX These are L.P.Os delivery notes, invoices in respect of Brotherhood, and I used it to supply, but no payment

(Witness shown exhibit A20¹⁻⁴)

XX This is an L.P.O in respect of Mitam Investment but we have not been paid, I used it but have not been paid.

(Witness shown exhibit A25¹⁻⁸)

These are L.P.Os and delivery notes in respect of Saidu B. Koroma Enterprises and we used it to supply the defendant, nut we have not been paid.

XX I started supplying the defendant since 2015, with all these different names, and the defendant has never returned a delivery when we supplied.

XX That, they have refused to accept delivery notes.

XX The delivery note was not always signed by one (1) person]

XX We never failed to supply the defendant or delay to supply

XX I always supply based on request

XX We supplied them, eventhough they owed us.

XX The defendant never told us that the documentation was incorrect.

XX We were told that the orders needed approval by the executive director before payment.

XX Yes, the date on the delivery note comes before the date on the L.P.O.

XX I only do this when they needed urgent supplies then they do the document later for me.

XX Yes, I know a Mr. Victor Labour, he used to be the procurement manager from the defendant office.

XX Yes, I am aware, that he was investigated by the ACC.

XX Nobody called me at the ACC as a witness or suspect

XX yes, I continued to supply when the defendant was investigated by the ACC.

XX Yes, they received the goods from me.

XX There was no other document attached to the L.P.O given by the defendant.

XX Yes, I am owed Le2,86,295

XX It was affected me seriously, the turnover of my business, huge embarrassment, and at time, my properly to almost the subject matter of the writ of fifa.

Cross-examination by counsel for the defendant.

XX Yes, I have been doing business with S.L.R.A since 2015.

XX Yes, I kept supplying even when they were not paying.

XX Because of the relationship that I had with the defendant company. I supplied eventhough I was not paid.

XX I had a good relationship with few people of the defendant company.

XX I had good relationship with the finance director by the name of Joseph H. Momoh, also Francis Bahim the Internal Auditor, Glen Cole, the I.T man, and Tenneh Bai Kamara and Victor Labor.

XX I cannot recall all the members but if given opportunity, I will list all of them out.

XX They are registered business with the NRA.

XX If given time I will come with all the business registration.

XX Over usual course of dealings typical of business of such nature, is that they give me their business name to supply.

Further Cross-examination at the adjourned date of 3rd of November, 2022.

XX Yes, I did supply through other businesses.

XX Yes, I have copies of other businesses. I used that I acted through. (Copies of certificate of business registration shown)

XX Yes, I will come with the originals

XX Yes, I don't have procurement records

XX Was total of 12 company's

XX Yes, I have presented L.P.Os in my bundle.

(Witness shown plaintiff bundle Exhibit A1¹⁻¹⁴)

XX There is no date, there are no delivery dates.

(Witness referred to exhibit A2)

XX Yes, there are no dates against the delivery notes.

(Witness referred to Edican)

XX No delivery dates.

XX No delivery dates.

(Witness referred to (page 3 under exhibit A1¹⁻¹⁴))

XX Marcella Barrie, there are no delivery dates.

(Witness referred to page 4 of same)

XX Where there is Kaitibi, there are no delivery dates

XX Cumulatively there was no dates.

XX (Witness referred to exhibit A21-35 page 6 thereof).

XX Yes, what is written there is far G.S.T certificate to be attached to qualify for payment.

XX No, I never presented G.S.T certificate to qualify for payment.

XX (Witness referred to page 6 of A15¹⁻¹¹)

XX There is no entry those supporting the L.P.Os.

XX (Witness referred to exhibit A6¹⁻⁹) the L.P.O dated 26th April, 2017 page 3 thereof.

XX It not signed and dated.

XX Yes, all of these L.P.Os have cardinal requirement for the attachment of G.S.T.

XX (Witness referred to exhibit A7¹⁻²⁰)

XX Yes, I these L.P.Os from the procurement section.

XX I collected the L.P.O's from Victor Labor and then Tenneh Bai Kamara and Joseph H. Mani all of the procurement department.

XX In the rush of supply, I did not sign or date any of the L.P.Os.

(Witness referred to exhibit A8¹⁻⁷⁰) page 20)

XX Yes, I now see a name and signature.

XX The name there is Joseph Tucker with a date.

(Witness referred to page 4, A61-70)

XX Yes, the L.P.O and the invoice were executed on the same day.

XX Yes, the invoice remained unsigned

XX Sometimes Marcella Bassie writes and sometimes she signs.

(Witness referred to A8¹⁻⁷⁰)

XX Yes, it was fourteen Million Leones.

XX Yes, there is signature but the portion is cut-off.

(Witness referred to exhibit A1¹⁻¹⁴) the last sending statement from 2015, 16, 17, 18, and 19

XX I kept on supplying because they were my customers.

XX Yes, I acted though for other business that were not mine.

XX The name of the owner of Shemack Enterprises is Sheku Kamara.

XX I met with Mr. Sannoh, Miss. Memuna Koroma to explain my dissatisfaction

XX At one instance Mr. Panda (the E.D) told Mr. Momoh to pay one.

XX They never paid me.

XX I also went with my wife to risk Mr. Sannoh

XX I eventually hired the services of Mr. Gevao to write and demand payment, and he subsequently issued a writ of summons when they refused to pay.

XX Yes, I know Mr. Victor Labour from 2014 and dealt with him for over 5-6 years.

XX I am aware that he is presently been indicated and facing trial before the ACC court.

XX I would not know whether they are in the defendant records i.e. the L.P.Os at the S.L.R.S.A.

XX There were times I made supplies before the L.P.Os, they were rush-up supplies.

XX I would not know that it's against the procurement law.

XX If given time, I will come with the original of the business certificates but as for the GST, I never registered GST.

XX I will come with the originals of the business certificate.

XX Yes, I have the originals of the business certificates.

XX I promised at the last date, I was going to come with.

XX (Witness referred to exhibit B26 of the defendant's bundles)

XX Yes, I remember this form.

XX Yes, I see, the requirement and I signed up to all of these requirements, together, in all subsequent transactions.

XX Yes, I supplied all the requirement thereunder. I fulfilled all these conditions.

XX Not to my knowledge that there is no business certificate I have the originals supplied.

XX Yes, there is no business certificate for copy print and said B. Koroma

XX Yes, I supplied through these businesses enterprises.

XX Yes, I did not fulfil the requirements contained in the RFQ particularly Section "B"

XX I did not fail to set authority from these businesses to and at supply in their names.

(END OF CROSS-EXAMINATION)

RE-EXAMINATION.

XX I have not been paid between these orders.

XX I made supplies to S.L.R.S.A against from these between 2015 to 2019.

(No further question). I have painstakingly set out the details of the testimonies in Evidence-in-chief and the cross-examination and the re-examination in detail and extension as the plaintiff how direct dealings with the defendant company or dealt with it through his errand boy.

Seemingly, the plaintiff told the court details of which have all been set out that he started supplying goods to the defendant in 2015. He incontrovertibly told the court that he is a businessman and the owner of two (2) registered business; Ansusil Investment and Tenphine Investment the plaintiff explained the supply process; he explained that the defendant puts out request for quotations (RFQ) and he submit quotation. That the defendant would usually go with the lowest quotation and would issue to him a local purchase order (L.P.O) subsequently, he would then supply the goods to the defendant consistent with the invoice by attach by delivery same to the storekeeper and or the procurement department or any department he is directed to deliver to.

The plaintiff identified exhibit A2¹⁻³⁵, A3¹⁻¹⁶, A4¹⁻⁴, A8¹⁻⁷⁰, A12¹⁻⁴, A18¹⁻⁸, and A19¹⁻², which he told this Honourable Court were copies of local purchase Order (L.P.O) invoices or deliveries made of the defendant company between 2015-2019 by Ansusil Investment and Tenphine Investment. He further stated that he had paid in respect of the said orders.

From the testimony, the plaintiff informed the court, that he used other businesses to supply goods to the defendant, as this was a usual practice in their line of business. This piece of evidence remained uncontroverted.

He also told the court, that the defendant was aware that he was supplying goods to it using different business and they had handed over local purchase orders and cheques for payment in respect of these other businesses to him personally.

These businesses are as follows:

Edican Investment, Sheruk Enterprises, Jalisa Enterprises, Saidu D. Koroma Enterprises, Embore Enterprises, Copy print, Kadgoes Commercial, Patmans Business Ventures, the Brotherhood Investment and Miham Investment.

The plaintiff further identified exhibits A5¹⁻⁴, A6¹⁻⁹, A7¹⁻²⁰, A9¹⁻¹⁴, A10¹⁻¹⁶, A11¹⁻¹², A13¹⁻¹⁴, A14¹⁻¹², A15¹⁻¹¹, A16¹⁻⁶, A17¹⁻², A20¹⁻⁴, A21¹⁻⁴, A24¹⁻⁴, A25¹⁻⁸, the plaintiff identifies them as copies of the local purchase orders, invoices and delivery notes in respect of the deliveries made to the defendant. Notes in

respect of the deliveries made to the defendant between 2015-2019, in the names of the other businesses which he used to supply the defendant and that the defendant has not made payment to him in respect of the said orders.

The plaintiff further informed the court, that even when the defendant told that he had not paid him, was because there were issues with the documentation in respect of the supplies, that he was not so informed of this. when asked

why according to the defendant the dates on same delivery notes were earlier than the dates on the local purchase orders, the plaintiff testified that sometimes the defendant needed the goods urgently, and therefore he would be asked to supply the goods and then the local purchase order would be issued later from testimony as set out inter alia, the plaintiff told this court that he know Mr. Victor Labor, the erstwhile procurement manager of the defendant that he is aware that the said Mr. Labor had been investigated by the ACC. He told this court, that he had not been called either as a witness or a subject during the said investigation, and that even when the said investigation was ongoing and thereafter, the defendant continued to do business with and receive goods from him. He also stated that no other documents were attached to the local purchase order when they were issued to him, the plaintiff intimated that he defendant still owes him the sum of Le2,086,295 which it failed to pay. He further testified that his business has been immensely affected, he has been embarrassed and even if life at home, has been hard.

The plaintiff as outlined earlier in details of cross-examination, when asked to provide authorization from the other business names to supply goods was their usual course of dealing. He told this court that he supplied the defendant using 12 business names including his two, and that the said business were all duly registered at the offices of the Administrator and Registrar General.

Infact, the plaintiff intimated and maintained under cross-examination, that he continued to supply the defendant eventhough he was not paid because he had a good relationship with the defendant and particularly some of the people and that the defendant promised to pay him. When the plaintiff was confronted about the fact that some of the L.P.Os were unsigned and he stated that is how he received them from the procurement department where he used to collect L.P.Os from Victor Labour, Joseph H. Momoh and Tenneh Bai-Kamara. In response to why some of the delivery notes were unsigned the

plaintiff testified that, sometimes the storekeeper, Marcella Bassie wrote, her name and at other times she signed and/or did both.

When the plaintiff was further cross-examined, he testified that he did see the past executive directors of the defendant, in respect of the said outstanding payments and that one of them, Mr. Panda asked Mr. Momoh (The director of finance) to pay him but this did not take place. He then told the court that he instructed solicitors to institute an action against the defendant.

The plaintiff second witness Umaru Kargbo testified that he was worked for the plaintiff since 2017 and that his job was to deliver supplies for the plaintiff.

He told this court that he delivered some orders, to the defendant for and unbehalf of the plaintiff.

He further confirmed what the plaintiff told this court, which is that for some of the supplies he delivered, they were not in the business names of the plaintiff, but that this was not unusual in the plaintiff's line of business. He further testified that he delivered the goods to Marcella Bassie, the store keeper and that she was aware that he worked for the plaintiff. he further testified that when he delivered to the storekeeper, she sometimes wrote her name or signed the delivery note and he left her with a copy of the said delivery note, and he left her with a copy of the said delivery note. He emphatically told this court that the defendant had delivery from him.

He further maintained under cross examination that he delivers for the plaintiff and at other times, the plaintiff does the delivery himself. He also confirmed that he delivered under the other businesses names not owned by the plaintiff. He also stated that he saw, the L.P.Os sometimes because the plaintiff shows them to him when he collects them. He also testified that he was not present when the plaintiff requested his payment from the defendant.

The Defendant's Witnesses and Evidence

Same is as set out in detail at the outset of testimonies given before this court. Three (3) witnesses were called.

Defendant's 1st witness was the acting procurement manager for the defendant. she listed some of her duties which includes preparation of a procurement activities. she testified that for the defendant could not make any

purchase in the absence of a procurement plan. In her witness statement she stated:

“that there is no evidence that any procurement plan was made for the period 2015-2019. She gave the consequence for the absence of such a plan within the management.

She intimated that all delivery is done through the stores unit, and received by the store's manager and witnesses by the Audit or finance department. who also endorsed the delivery note. When asked under cross-examination whether there was a process, she confirmed that there was not and that it was the storekeeper's responsibility to ensure that the said process was adhered to.

Of importance is that when asked whether the defendant did not buy any items at all between 2015-2019, including toilet paper and printing paper, since there was no procurement plan, she responded that she did not know how items were purchased because she was not heading the department

When shown exhibit B1BQ (RFQ and letter of sof funds) both dated 2016, the witness admitted that the defendant put an RFQ and paid funds for goods purchased in 2016 in the absence of procurement plan thereby breaching its own rules.

Under cross-examination, the witness said “It is not to my knowledge that there was no procurement plan” which is not the same, with her previous testimony set out initially that there was no procurement plan for 2015 to 2019.

She also confirmed that the authorised person to sign L.P.Os authorised person to sign L.P.Os is the procurement will not be issued to any supplier that does not provide all the documents listed on Section B, paragraph 5 of the L.P.OS, that the said documents include valid business licence, valid business registration certificate, valid NRA Tax clearance (for at least three financial years) and Nassit clearance

The witness confirmed in all material particular and corroborated the plaintiff's witnesses evidence that the defendant was aware that the plaintiff was supplying the defendant using different other businesses.

The defendant in their defence raised same skepticism or doubts of fraud and same so pleaded by the defendant, the witness confirmed that the defendant was aware that the plaintiff was using the said method of supplies.

The procurement officer told the court that he has been a professional all his life, and intimated when asked that it is the business of the procuring entity has the responsibility of ensuring that the procurement of goods, services and works is in compliance with the rules.

This brings to mind and apt so in the circumstances the Rule in Turquand's case (otherwise known as the "indoor management rule") the facts of the Turquand's case is worthy to rehash in this instance.

Facts

The claimant bank lent £2,000 to a joint stock company called Cameron Coalbrook Steam Coal and Swansea and London Railway Company, which was at the time of the action in course of winding up. Turquand was the general manager of the company and was brought into the action to represent it. The company had issued a bond under its common seal signed by two (2) directors, agreeing to repay the loan. The registered deed of settlement of the company (which corresponded to the articles of a modern company) provided that the directors might borrow on bond such sums as they should be authorised by a general resolution of the members of the company to borrow. In the case of this loan it appeared that no such resolution authorizing the borrowing had been passed, there was no need to go indoors the management to make active enquiries.

The defendant in their defence (alternatively) to distance themselves from the procurement officer has not logically and legally added up, as they have failed to displaced in the circumstances that even if the procurement officer dealt with the plaintiff as an officer, he had no such authority.

The case of **FREEMAN AND LOCKYER V. BUCKHURST LTD (1964) 1 All ER 630**

A Mr. Kapoor carried on a business as a property developer, and entered into a contract to buy an estate called Buckhurst Park at Sunning Hill. He did not have enough money to pay for it, and obtained financial assistance from a Mr. Hoon, they formed a limited company with a share capital of £70,000 subscribed equally by Kapoor and Hoon, together with two persons,

comprised the board of directors. the quorum of the board was four. Hoon was at all material time abroad, there was a power under the articles to appoint a managing-director but this was never done. Kapoor to the knowledge of the board acted as if he were managing-director in relation to finding a purchaser for the estate and again without express authority of the board but with its knowledge he employed on behalf of the company a firm of architects and surveyors, the claimants in this case for the submission of an application for planning permission which involved preparing plans and defining the estate boundaries, the claimants now claimed from the company, the fees for the work done, and the company's defence was that Kapoor had no authority to act for the company. The court of Appeal found that the company is liable.

Infact the procurement officer under cross-examination confirmed that a procurement request is an internal document not handed over to the supplier and that there was no way that a supplier would be able to know whether the procurement has been approved by the executive director before delivery of goods.

She also testified under cross-examination that after the former procurement manager was indicted by ACC, and she took over his duties, she continued to do business with the plaintiff and he has always delivered without delay.

The defendant through DW2, who happens to be the Director of licensing testified that he was tasked with availing certain transaction including some involving the plaintiff. That in the referred audit he concludes that some of the transaction did not follow proper procurement rules and/or that some of the items could not be traced. He also confirmed that some of the transactions were regular and payment ordered to be made on them. But even when he confirmed, the "regular ones" payment to the plaintiff was not made by the defendant.

They also failed to rebut and or provide any evidence of what transactions that were disputed.

The defendant witness could be logically telling this court what was not supplied in the first place as the only said they were not traced and therefore there was no way to confirm whether they had been supplied in the first place.

However, he said they could not be found in the records of the stores, although he confirmed afterwards that the entries in the record system are made by the storekeeper.

He also under cross-examination confirmed DW1's evidence that procurement requests are internal documents that are not handed over to suppliers.

DW3- The defendant's director of finance testified both in evidence and cross-examination that the authorised person to sign L.P.Os is the procurement manager.

He also told the court that request for payment including all procurement documents are submitted to the Executive Director for approval after the supplier has delivered goods. He also stated that he is not aware of what happens to the goods if payment approval is refused. He also testified that all procurement documents are payment approval requesting approval. He also of immense significance testified that all procurement documents are submitted by the procurement unit should ensure that the statutory process is followed.

The plaintiff's claim as contained in the writ of summons same of which could be surmised supply is all as contained in the L.P.Os.

He claims that between 2015-2019 he made 79 supplies to the defendant amounting to the sum of Le2,086,295 for which he is yet to be paid, that the said 79 supplies were for items ranging from A4 papers to computer desktops and laptops to a generator.

The contract between the plaintiff and the defendant is as contained in the L.P.Os when testifying DW1 – said that all L.P.Os issued to contractors must be signed by the authorised person.

Under cross-examination, she confirmed that, the authorised person to sign L.P.Os issued to suppliers including the plaintiff is the procurement manager of the defendant, and she indeed re-affirmed during re-examination.

Consequently, the period 2015-2019 Mr. Victor Labour was the defendant's procurement manager as confirmed by DW1, and that he signed all 79 L.P.Os issued in respect of the suppliers made by the plaintiff.

Exhibit "A" is quite explicit in that regard, which demonstrably points to one issue, which is that defendant issued valid contract to the plaintiff in respect of the orders which are subject matter of this action.

The other ambit of the plaintiff's claim is that the goods which were ordered consistent with the delivered L.P.Os is as averred in paragraph 4 of the plaintiff's particulars of claim which provides thus:

"That the said goods were delivered to the defendant to the defendant 2015 to 2019, the order was made and the delivery note was signed and dated by the storekeeper, procurement officer and others of the defendant who received the said goods on behalf of the defendant.

Reference for answers to this is the defence filed, with specific recourse to paragraph 4 of the plaintiff's particulars of claim reads thus: "That the said goods received by agents of the defendant same was not authorised by the competent vote controller/executive director and therefore could have been fraudulently obtained.

Does this amounts to denial of the issues raised by the plaintiff or have they tacitly admitted?

Recourse will be to Order 21 Rule 13(1) and (3) of the High Court Rules 2007 which provide thus:

13(1) Any allegation of fact made by a party in his pleading is deemed to be admitted by the opposite party unless it is traversed by that party in his pleading or a joinder of issue under rule (14) operates as a denial of it.

(2) A traverse may be made either by a denial or by a statement of non-compliance and either expressly or by necessary implication.

(3) every allegation of fact made in a statement of claim or counterclaim which the party on whom it is served does not intend to admit shall be specifically traversed by him in his defence or defence to counterclaim as the case may be, and a general denial of such allegations, or a general statement of non-admission of them, is not a sufficient traverse of them"

this position is made quite explicit in order 18/13/6 (inclusive) of the Annual Practice 199 same of which provides"

"The main object of this rule and rule 14 is to bring the parties by their pleadings to an issue and indeed to narrow them down to define issues and so diminish expense and delay."

This object is secured by requiring that each party in turn should fully admit or clearly deny any material allegation made against him. Thus in an action for debt or liquidated demand in money, a mere denial of the debt is wholly inadmissible.

Infact Order 18/13/6 of the said Annual Practice 1999 provides that:

"A traverse whether by denial or refusal to admit must not be evasive but must answer the points of substance."

Averments must be pleaded in summary form, concisely, precisely, clearly and definitely.

Matters must be raised in a statement of defence or reply, failing which the claim or defence would not be maintainable.

Order 18/13/6 of the Annual Practice 1999 also further provides that:

"A traverse whether by denial or refusal to admit must not be evasive but must answer the point of substance, the pleader must deal specifically with every allegation of fact made by his opponent -that is he must either admit it frankly or deny it boldly. Any half admission or half denial is evasive."

Reference to Bullen and Leake and Jacob's precedent of pleadings 12th Edition- at page 79-80 under the Rubric Traverse provides thus: "A traverse in the defence is a denial of an allegation of fact made in the statement of claim. It negates such an allegation and it operates to contradict what is alleged and put it in issue... A traverse must however be made either by a denial or by a statement of non-admission and it may be made either expressly or by necessary implication. every allegation of fact made in the statement of claim . . . must be specifically traversed by him in his defence."

A look at paragraph 8 of the defendants defence (in answer to paragraph 4 of the plaintiff's particulars of claim) this court is of the considered view that the allegation has not been denied.

The plaintiff has established and discharged his obligation under the contract to supply goods to the defendant, the surmation of the totality from the documents is that 70 out of 79 deliveries were received by signed for and acknowledged by employees of the defendant namely Marcella Bassie, Glen Cole, Victor Labour and Daniel Kaitibi.

DW1 confirmed under cross-examination that the said people all worked for the defendant, and except for Victor Labour who is indicted by the ACC, but all the others are current employees of the defendant.

Simplicita as restated earlier is the claim by the plaintiff that there is a breach of contract.

Has the plaintiff discharged the burden of proof?

Phipson on evidence 15th Edn. at chapter 4 under the Rubric "Burden and standard of proof" succinctly describe the degree to which the proof must be established."

The persuasive burden is referred to as the "Legal burden", whilst "the probative burden" the ultimate, "the burden of proof on pleadings", or the risk of non-persuasive burden is the obligation proposed on a party by a rule of law to prove (or disprove) a fact in issue to the requisite standard of proof." certainly the burden of proof lies upon the party who substantially asserts the affirmative of the issue"

On the issue of standard of proof, the very author Phipson provides that

"the standard of proof in Civil cases is proof on a balance of probabilities. if therefore, the evidence is such that the tribunal can say "we think it more probable than not" the burden is discharged, but if the probabilities are equal, it is not."

The plaintiff has also claimed for damages for the aforesaid breach of contract.

Reference is to Halsbury's Laws of England 3rd Edition Volume 11 at page 216 provides:

"Damages may be defined as the pecuniary compensation which the law awards to a person . . . for the injury . . . he has sustained by reason of the act of default of another whether that act or default is a breach of contract or a tort, or put more shortly, damages are the

compense given by process of law to a person for the wrong . . . that another has done him."

Infact Halsbury Laws of England 4th Edition Volume 9 at page 385 provides

"Whether or not a breach of contract gives rise to rescind, it gives the injured party a right action for damages, loss or injury he has suffered through the breach."

Reference is made in Livingstone V. Rawyards Coal Co, where damages is defined as:

"The sum of money which will put the party who has been injured or who has suffered in the same position as he would have been in if he had not sustained the wrong for which he is now settling his compensation or repatriation."

The plaintiff in this case has averred, that the defendant has for a period spanning eight (8) years failed to pay sums of monies owed to him from 2015 to 2023, these monies he claims that he has been deprived off being used for other purposes. the plaintiff told this court that his businesses and even family have been deprived and adversely affected by the defendant's failure.

the plaintiff further claimed interest on the sum found due pursuant to the Law Reform (Miscellaneous Provision) cap 19 of the Laws of Sierra Leone 1960. Recourse will be to Section 4 of the said Act, provides: -

"4 (1) In any proceedings tried in any court for the recovery of any debt or damages, the court may if it thinks fit on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgement: -

provided that nothing in this Section

- (a) shall authorise the giving of interest upon interest; or**
- (b) Shall apply in relation to any debt upon which interest is payable as of right whether by virtue of any agreement or otherwise; or**
- (c) shall affect the damages recoverable for the dishonor of a bill of exchange.**

The matters fallen herein are ones proper for the award of such interest, as it does not fall within any of the exception outlined in the Section.

In the case of BP Exploration Co. (Libya) Ltd v. Hunt (No.2) 1982 All ER 925 it was said that:

"The fundamental principle is that interest is not awarded as a punishment but simply because the plaintiff has been deprived of the use of money which was due to him."

Such interest will be assessed accordingly.

It may well appear that the bane of the defendant's defence hinges on "illegality" and "public policy."

the defendant have intimated this court, and this court so fully seised that they are so bound thereof.

They feel so strong about some of the L.P.Os and intimate that they can reject claims for payment in respect of any dubious or suspicious transactions, regarding the tenor and spirit of the Public Financial Management Act 2016, The Public Procurement Act (as amended 2016) and the Public Procurement Regulations 2022, and auditing obligation imposed by relevant laws.

This in surmation raises the defence of illegality and public policy.

The question this court will ask itself is whether it pleaded same with sufficient particularity. This court refers to **Bullen and Leake & Jacob: precedent of pleadings 12th Edn. at page 1106** thereof under the Rubric "pleading" which provides that "where the defendant relies upon the defence of illegality he should distinctly raise the defence by his pleading and should state the facts or refer to facts already stated in the statement of claim, so as to show clearly what the illegality is. If a man intends to charge illegality, he must state facts for the purpose of showing what the illegality is (Bullivan V. Att gen for Victoria 1901 AC 196 per Lord Davey at 204.)

This court regard as tenable and with merit the submissions of counsel for the plaintiff that a general mention of the statute without more and is an insufficient plea for illegality.

Indeed, the defendant has failed to provide the facts which show clearly what the illegality is.

Consequently, therefore it follows by parity of reasoning as to whether the defendant has adduced any evidence to show that either the formation and/or

performance of the contract between the plaintiff and the defendant is one contrary to the said law?

The answer is certainly in the negative.

The evidence adduced by the plaintiff has shown that the defendant received the goods from the plaintiff, has the said goods and then refused to pay the plaintiff for the goods.

It behoves any party to a contract who has benefitted from the contract and all its "goodies" thereof to afterwards recant the contract and rebuff the benefits thereof insisting that it cannot be enforced by the plaintiff because it is illegal and contrary to public policy.

This court further refers to Chitty on contract Vol. 1 28th Edition paragraph 17-195 at page 943 under the Rubric "presumption of legality" where it is stated that 'the party alleging the illegality of the contract bears the legal burden of proving this fact.' this is a task the defendant has not lived up to.

The defendant as I have outlined above relied on fraud and detailed the particulars of fraud as follows: -

- (a) That the procurement of some of the requirement flagrantly and repeatedly breached procurement rules and processes, items not listed in the approval price norm; procurement requisition not approved by executive director, local purchase order not signed by the supplier; items delivered prior to local purchase order being signed, and not Nassit compliant.
- (b) That local purchase orders in respect of some of the transactions were either not signed or if signed dated on the same date as their purported deliveries.
- (c) That the plaintiff had knowledge that the vote controller-executive director had refused to approved some of the payments, yet continued to purportedly deliver the equipment in collusion with the indicted procurement manner and or other.
- (d) That certain invoices presented by the plaintiff neither bear his name nor the enterprise registered under his name.
- (e) that despite repeatedly refusal by the vote controller-executive director had refused to approve or sign cheques for payments purportedly due and owing to the plaintiff, he continued to purportedly supply equipment to the defendant.

(f) Was such a fraud as raised by the defendant's provide?

The Supreme Court Annual Practice 1999 at page 330 paragraph 18/12/18 under the rubric "Fraud" provides that "Fraudulent conduct must be distinctly proved, and it is not allowable to leave fraud to be inferred from the facts"

The particulars of fraud are as follows:

(a) That the procurement of some of the equipment flagrantly and repeatedly breached procurement rules and processes; items not listed in the approval price norm; procurement requisition not approved by the executive director, local purchase order not signed by the supplier; delivery note not dated or signed by the supplier; items delivered prior to local purchase order being signed by the supplier and not Nassit complaints the reasonable questions to interplay at this stage and guide the court in its resolving this contention, is to ask whether it is the defendant's responsibility to ensure the procurement rules were not breached?

The answer is certainly in the affirmative.

A cursory glance at the procurement Act No.1 of 2016, the breadth and depth of its underlying purpose is to ensure procuring entities take responsibility to ensure that the procurement rules and processes are breached.

Infact specifically Section 30 of the Public Procurement Act No.1 of 2016 provides:

"The procuring entity shall be responsible for the administration of contracts into which it enters as well as the monitoring of the performance of such contract." the L.P.Os (contract) were issued to the plaintiff by the defendant, which said L.P.Os contained at page 2 thereof, the description of the goods and the prices.

Infact DW1 made it categorically clear in his testimony before this court that the L.P.Os were issued by the procurement department of the defendant who is in charge of all procurement.

Exhibit B18¹⁻² is a sample procurement requisition, an indepth perusal of same clearly shows it is meant for internal consumption of the defendant's company. the Executive Director as the head of entity clearly has to give approval for same.

What the defendant has failed to show to this court, is whether the plaintiff was to do anything for the said approval.

The plaintiff testified that no other documents were attached to the L.P.Os has no attachment to them, when it was given to him.

This court is also quite amendable to counsel's submissions for and unbehalf of the defendant that the plaintiff was not Nassit compliant is untenable. under cross-examination the defendant's witness DW1 testified that if a supplier does not submit certain documents were the Nassit clearance.

This court is also in agreement with counsel for the plaintiff's submission, that because the L.P.Os were not signed by the supplier and/or predate the deliveries does not invalidate the contract and or make it fraudulent. It is without any doubt that the L.P.Os were signed by the person authorised by the defendant to sign them.

The plaintiff in his examination in chief and cross-examination testified that some of the L.P.Os were executed after he delivered because the defendant needed the supplies urgently, and that was why the dates or the delivery predated the L.P.Os, this evidence remains uncontroverted by the defendant through the testimony of its own witnesses.

It therefore presupposes that since L.P.O's were issued to the plaintiff, it must have been Nassit compliant.

If this court were to stretch this argument the widest, even assuming that the plaintiff was not Nassit complaint, by accepting the plaintiff's quotation and issuing him with an L.P.O, it was the defendant who had failed to comply with its own procurement rules and processes.

The contention by the defendant that certain invoices presented by the plaintiff either bear his name nor the enterprise relisted under his name raise unanswered questions for the following reasons:

As earlier analysed DW1- the acting procurement manager for the defendant company that the defendant was aware that the plaintiff was supplying it suing different business names.

The plaintiff also submitted registration certificates of the said businesses to show that they were duly registered.

During his evidence-in-chief, PW2 testified that he made deliveries to the defendant on behalf of the plaintiff under different businesses names and that the defendant (particularly the storekeeper) was aware that he worked for the plaintiff.

Both PW1 and PW2 also testified that it is a practice within their industry to use other's business names to supply goods.

This evidence remained uncontroverted by the defendant, and this court is further bolstered in its belief, since the defendant have failed to show to this court, that the goods delivered by the plaintiff were rejected and/or returned to him at any point in time.

The defendant have not discharge the onus on the issue of fraud, same of which could be either "actual fraud" or "legal fraud", reference for this is the Supreme Court Annual Practice 1999 at page 330 paragraph 18/8/16 under the rubric "Fraud" which provides that:

"It is the duty of counsel not to enter a plea of fraud on the record unless he has clear and sufficient evidence to support it. (Per Lord Denning in Associated Leisure Ltd V. Associated Newspapers Ltd 1970 2 QB 450 at 456, 2 All ER 754 1970.)"

It is clear that the plaintiff has been disadvantaged for the transaction, with the defendant from the period covering up to 8 years.

The defendant has consequently suffered no loss, and it is unconscionable for the defendant who have benefitted from these transactions through the use of the plaintiff's goods to insist that the plaintiff should not enforce his right to payment for the goods supplied to the defendant.

The defendant further averred in its defence that even if the supplies are deemed or implied to have been authorised their monetary value in less than the amount stated in paragraph 1 of the plaintiff's particulars of claim.

No such issues were addressed during trial, consequently no evidence was adduced of the actual value of the supplies alleged.

The further claim by the defendant which is also to no avail is their averment that the plaintiff failed to mitigate its loss, in that payment in Public Policy grounds, the plaintiff continued to supply goods to the defendant until 2019, although the defendant accepted the supplies.

The Court is at loss, all of which came out clearly in the evidence that the plaintiff was never informed why he was not being paid for such supplies and was not paid for others.

The plaintiff testified that, he met several people working for the defendant, including three (3) executive directors and DW3; the finance manager but none of them informed him as to why he was not paid. This evidence remained uncontroverted.

What came out quite clearly was that eventhough the defendant refused to pay the plaintiff due to "dubious suspicious activity" as they claimed, nonetheless the defendant continued to request quotations from the plaintiff and do business with him as confirmed by DW1, the Acting Procurement Manager in 2019, this was after the substantive Mr. Labour was been investigated by the ACC when he was at the helm, that he continued doing business with the plaintiff, that he cannot recall how many but more than once, and he always delivered.

Consequently, the defendant cannot appropriate and reprobate for the conduct of its staff, and this court view whatever differences that it had with Mr. Victor Labour as grossly unconscionable to be visited upon the plaintiff.

This court takes onboard and adopt wholesale chitty on contract 28th Edition Vol.1 page 1318 paragraph 27-088 to wit:

"A claimant is not under any obligation to do anything other than in the ordinary cause of business; the standard is not a high one since the defendant is a wrong doer."

Consequent upon the aforementioned, the plaintiff has proved his claim on a balance of probabilities, and this court in furtherance thereto order as follows:

- 1. The defendant is liable to the plaintiff and so hereby ordered to pay all monies due and owing to the plaintiff in the sum of Le2,086,295,000/00 (Two Billion and Eighty-six Million Two Hundred and Ninety-five Thousand Leones)**
- 2. That the said sum be paid by the defendants commencing 31st December, 2023 to March 31st 2024 in four (4) equal installments, therefore from the date of this order.**
- 3. That in default of 2 (above) all of the sums outstanding in order 1 becomes due and owing and should be paid immediately.**

4. Interest at the rate of 4% per annum from the date of initiation of this action till judgement
5. Damages for breach of contract to be assessed.
6. Solicitors costs of Nle100,000 (One Hundred Thousand New Leones)
7. Nle100,000 as costs of the action.
8. liberty to apply.



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THE HON. JUSTICE M.P. MAMI J.A.