

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE NYANYA JUDICIAL DIVISION
HOLDEN AT NYANYA ON THE 14TH DAY OF MARCH, 2019
BEFORE HIS LORDSHIP, HON. JUSTICE U. P. KEKEMEKE

SUIT NO.FCT/HC/CV/164/16

COURT CLERK: JOSEPH ISHAKU BALAMI & ORS.

BETWEEN:

CHIKE NWOGU
(Trading under the name and style
Of BESPOKE VACATIONS) }CLAIMANT

AND

1. LINDA IKEJI
2. CONSUMER PROTECTION COUNCIL }DEFENDANTS
(Nominal Party)

JUDGMENT

The Claimant's Motion for Judgment is dated 6/03/18 but filed on the 7th.

It prays the Court for an Order entering Judgment in favour of the Claimant/Applicant as per his Claims on the Writ of

Summons in default of the 1st Defendant's failure enter appearance and Pleadings.

And for such Order or Further Orders as the Court may deem fit to make in the circumstance.

The application contains the grounds upon which the application is brought. Learned Counsel to the Applicant also rely on the 12 point Affidavit filed in support of the application and one Exhibit.

In the said Affidavit deposed to by Odenigbo Francisca Ukama, the Deponent deposes as follows:

That Claimant instituted this action against the Defendants on 10/11/16. That leave was obtained to institute and serve the Originating Processes outside jurisdiction of the Court.

That the 1st Defendant was served on the 10th day of November 2017 at 12.45 pm. Exhibit A is the Proof of Service. The 2nd Defendant was also served on 20/03/17 at about 12.03 pm. That since the service of the Originating Processes, the Defendant failed to enter appearance or file a Defence to the action. That it

is in the interest of justice to grant the application. The Defendants were served with the Originating Processes. They failed, refused and or neglected to enter appearance or enter their defence.

The Claimant has by this application applied for judgment to be entered in its favour against the 1st Defendant. The Claim of the Claimant of per his Writ of Summons and Statement of Claim is

- (1) The sum of N2,250,000.00 only being special damages for the loss of business occasioned by the 1st Defendant's deliberate act of refusing to honour her part of the contract she entered with the Claimant.
- (2) N5 Million only being punitive and exemplary damages to deter such unwholesome practice.
- (3) N10 Million only as general damages for breach of contract, inconveniences, trauma and stress.

By Order 10 Rule 5 of the High Court of the Federal Capital Territory (Civil Procedure) Rules 2018 where the Claim in the Originating Process is for pecuniary damages or for detention of goods with or without a claim for pecuniary damages and the

Defendant or any of the Defendants fail to appear, a Claimant may apply to the Court for Judgment. The value of the goods and the damage or the damages only as the case may be shall be ascertained in such manner and subject to the filing of such particulars as the Court may direct before Judgment for that part of the Claim.

By Order 21(3) of the rules of Court, if the Claim be for pecuniary damages or for detention of goods with or without a claim for pecuniary damages and the Defendant or all the Defendants if more than one, make a default the Claimant may apply to Court for interlocutory judgment...

I have earlier reproduced the Claim of the Claimant. The Rule is that in an action for breach of contract such as this, the term special and general damages are not applicable.

Consequently, there is no distinction between special and general damages in law of contract.

See *CHANRAI VS. KHAWAN (1965) 1 ANLR P. 182 SC.*

SHELL B. P. VS. JAMMAI ENG. LTD (1974) 1 ANLR (PT. 1) 542 SC.

OKEKE VS. OCHE (1994) 2 NWLR (PT. 329) 688.

STEYER (NIG.) LTD VS. GADZAMA (1995) 7 NWLR (PT. 407) 305. AT 339.

In awarding damages in an action founded in breach of contract, the rule to be applied is restitutio in integrum, that is, in so far as the damages are not too remote, the Claimant shall be restored as far as money can do it, to the position in which he would have been if the breach had not occurred.

See ***OKONGWU VS. NNPC (1989) 4 NWLR (PT. 115) 296.***

OSHM& OSHM LTD VS. LIVESTOCK FEED LTD (1997) 2 NWLR (PT. 965) 600

NWAOLISAH VS. NWABUFOR (2011) LP ELR – 2115 SC.

UDEAGU VS. BENUE CEMENT CO. PLC (PT. 965) 600.

For reasons above Prayers 2 and 3 are refused.

The 1st Defendant failed, refused and neglected to file appearance and or defence.

Judgment is therefore hereby entered in favour of the Claimant against the 1st Defendant as follows:

The 1st Defendant shall pay to the Claimant the sum of N2,250,000 being loss of business occasioned by her deliberate act of refusing to honour her part of the contract she entered with the Claimant.

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HON. JUSTICE U.P. KEKEMEKE
(HOH. JUDGE)

20/03/19