

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

BEFORE: HON. JUSTICE O. C. AGBAZA

COURT CLERKS: UKONU KALU & GODSPower EBAHOR

COURT NO: 12

SUIT NO: FCT/HC/CV/1496/2013

BETWEEN:

UDU DIEGBE.....PLAINTIFF

VS

EDO STATE GOVT.& 1 OR.....DEFENDANTS

JUDGMENT

By a Writ of Summons filed on 17/1/13 the Plaintiff commenced this suit against the Defendant claiming the reliefs set out in Paragraph 20 of the Statement of Claim as follows:-

1. The sum of ₦2,105,000 (Two Million One Hundred & Five Thousand Naira) only being amount due from the Defendants to Plaintiff representing Professional Fees for legal services rendered upon formal instruction to conduct legal searches on some Companies and Certified True Copies of demanded documents of same Companies at the Corporate Affairs Commission, Abuja.
2. General Damages in the sum of ₦10,000,000 (Ten Million Naira) only.

3. Interest rate of 21% from 18th June 2008 until judgment and 10% interest on judgment sum until same is liquidated.

The Write of Summons and other processes of this Suit were served on Defendants and upon receipt filed their Joint Statement of Defence on 22/4/13 but deemed duly filed and served on 22/7/13.

Issues having being joined, the Plaintiff opened his case on 19/5/14 and testified as PW1 and deposed to a 24 Paragraphs Statement on Oath on 16/1/13 which he adopted as his Oral Testimony in this suit and stated he was instructed by Defendants to conduct due diligence search and procure Certified True Copies of relevant documents of 24 Companies from the Corporate Affairs Commission. Carried out the instructions and send search reports, Certified True Copies of the documents and cover up letter to 2nd Defendant that the instructions had been carried out and requested payment of both statutory and professional fees in the sum of ₦2,105,000.00. Stated when there was no response, he wrote another letter and attached copy of the bill and letter of instruction. Further that between the months of February and June 2010, had cause to visit 2nd Defendant and prayed him to settled his fees and on his way back to Abuja in one of the trips, he was robbed and his brief case which had number of documents including the letter of instruction and other documents relating to this matter was stolen. Stated in one of his trip to Defendants was told a reply had since being sent in response to one of his letters, but when he complained he did not receive any, 2nd Defendant directed him to the Solicitor General who directed her Secretary to print and give him a draft copy and copy of the initial memo written by the Attorney General on the

need to conduct search and procure the Certified True Copies and advise that he will be paid. Stated he wrote a letter dated 22/2/10 imploring 2nd Defendant to settle his bill and in reply 2nd Defendant vide his letter dated 26/5/10 did not deny owing but requested him to forward proof of the approved bill for payment. That despite his plea, 2nd Defendant by his letter dated 12/7/10 told him to comply with his demand before his fees will be settled.

In the course of his evidence in chief tendered the following documents and were admitted in evidence.

1. Letter titled "Brief to conduct searches on some Companies of Corporate Affairs Commission dated 26/5/10 addressed to Ken Asogwu of Diegbe & Diegbe Associates – Exhibit "A".
2. Letter titled "Brief to conduct searches on some Companies at Corporate Affairs Commission dated 20/7/10 addressed to Udu Diegbe of Diegbe & Diegbe Associates – Exhibit "B".
3. Copy of letter titled "Brief to conduct searches on some Companies at Corporate Affairs Commission dated 22/2/10 addressed to 2nd Defendant – Exhibit "C".
4. Copy of letter titled "Brief to conduct searches on some Companies at Corporate Affairs Commission, final demand dated 20/5/10 addressed to 2nd Defendant – Exhibit "D".

5. Letter dated 18/6/08 titled "Brief to conduct searches on some Companies at Corporate Affairs Commission addressed to 2nd Defendant – Exhibit "E".

Cross – examined PW1 stated sometime in 2008, OA Omonuwa (SAN), then A.G Edo State Called him on phone and requested if he could do some legal service for the State to which he said yes. That days later got Written Instruction from his office signed by one Okungowa, then PA to the AG. That he came out the instruction and sent report to the AG which was acknowledged. When asked the whereabouts of the letter of instruction, told the court he was robbed and his brief case containing the documents stolen but did not report the matter to the Police neither did not obtain Police Extract. When shown Exhibit "B" and requested to read out Exhibit "A", stated he wrote several letters on the matter to the AG. Stated he is not a registered contractor to the state and has not done any contract as Solicitor with the state.

Dako Ibrahim, an administrative officer attached to Dept of Administration and Supply. Edo State Ministry of Justice testified on behalf of Defendants as DW1 and deposed to a 26 Paragraph Witness Statement on Oath on 10/6/14 which he adopted as his Oral Testimony and stated there was never a time in 2008 or at any other time Plaintiff was instructed by 2nd Defendant to carry out diligent search on some Companies. That 2nd Defendant cannot award contract on behalf of himself or 1st Defendant as its not within statutory competence to so do. That before a person can be awarded contract even by 1st Defendant, such person must be registered contractor with the government in that particular year and for every

contract awarded, on offer letter is usually issued but Plaintiff has not shown this letter. That if he actually conducted the searches did not so on his frolic as Defendants never took any benefit of same nor know or have anything to do with them.

The DW1 did not tender any document in evidence.

Cross – examined, stated he came for this matter once in 2016 and in 2015 he never came. Also that in 2014 he did not come. Stated he has two signatures, uses one for his Bank Account and the second for the office and in the course of cross – examination his signed signature on a plain sheet of paper was admitted in evidence as Exhibit “F”. When shown the Exhibit “F”, he, however, confirmed that his first signature is on the witness deposition. When shown Exhibit “A”, “B” stated he has not read the two letters and did not know whether he received any letter from Plaintiff in May 2010. When also shown Exhibit “C”, “D”, “E” stated it is the first time he is seeing those three letters.

At the close of evidence, the parties filed and exchanged their Final Written Address in line with the Rules of Court.

Samson Erhaze Esq. filed the Defendant’s Final Written Address on 26/6/17 and a reply to Plaintiff’s Final Written Address on 9/5/18. Udu Diegbe Esq filed the Plaintiff’s Final Written Address on 5/11/18.

In the Final Written Address of Defendants, Counsel raised a sole issue for determination;

“Whether from the facts and circumstance of this case there is legally binding contract between the Plaintiff and the Defendants”.

On the other hand, Udu Diegbe of Plaintiff Counsel in his Final Written Address submitted three (3) issues for determination;

1. Whether an affidavit not signed by the alleged deponent and not signed before a Commissioner of Oath is competent.
2. Whether pleadings not backed by evidence have any value.
3. Whether the Plaintiff has on the preponderance of evidence established his claim as to entitle him to the reliefs claimed.

I have carefully considered the testimony of the parties, the submission of both Counsel, the Exhibits tendered and authorities cited. The broad issue that calls for determination is;

“Whether or not the Plaintiff has made out a case to justify or warrant the grant of the reliefs sought in the Statement of Claim”.

The settled position of the law in our adversarial legal jurisprudence is that the burden of proof first lies on a party who asserts a state of affairs and seeks the courts favourable finding or declaration in that regard, to lead credible evidence in proof of it least, he fails. The burden of proof, however, is not static as it shift from party to party until the issue in contention is resolved. See Section 131 – 133 of the Evidence Act, 2011 and the case of Iroagbara Vs Ufomadu (2009) 11 NWLR (PT. 1153) 587 @ 590.

In the case, Plaintiff Claimed to have been instructed by Defendants via a letter dated 27/5/08 to conduct due diligence search and procure Certified True Copies of documents of 24 Companies at Corporate Affairs Commission. Carried out the instruction and sent reports, the Certified True Copies and cover up letter and requested for payment in the sum of ₦2,105,000 when there was no response, wrote another letter and attached copy of the bill and letter of instruction. Made several visits to 2nd Defendants on the issue and prayed him to settle his fees and in one of the trips he was robbed and in the process his brief case which had documents relating to this matter was stolen. Also that in one the trips to Defendants, was told a reply had since being sent in reply to one of his letters and when he complained not receiving any 2nd Defendants directed him to the Solicitor General who directed her Secretary to print and give him draft copy and copy of the initial memo written by the AG on the need to conduct search and obtain the Certified True Copies and advise that he be paid. In connection with these claim, the Plaintiff tendered the Exhibit "A", "B", "C", "D", "E". These Exhibits undoubtedly illustrate the Plaintiff's case as averred in its Statement of Claim. By this, the Plaintiff has discharged the burden of proof which first lies on him to lead credible evidence in support of his contention. With this, Defendants having joined issues with the Plaintiff's case in his pleading, evidential burden shifted to Defendants to lead evidence contradicting or debunking those evidence lead by Plaintiff as set out above.

The Defendants contention in their Joint Statement of Defence and evidence of the DW1 led in support denied that they never at any time

instructed Plaintiff to conduct due diligence search or procure Certified True Copies of document of any Company on 27/5/08. That 2nd Defendant cannot award contract on behalf of himself or the 1st Defendants because he lacks the statutory competence to do so and before a person can be awarded contract he must be registered and for every contract awarded, an offer letter is usually issued.

First, it is observed that the Witness Statement on Oath of the DW1 who testified on behalf of the Defendants is substantially defective, incompetent and invalid what makes an affidavit competent is the deponents signature before the Commissioner for Oath and failure of the deponent to sign the affidavit amounts to substantial defect different from the defect in form curable by Section 113 of the Evidence Act. See the case of Urya Vs Akogun (2009) 10 NWLR (PT. 1150) 437 @ 441. From the facts before court, it is clear that the DW1 never deposed to the witness depositions of the Defendants which constitutes their evidence. A critical perusal of the Exhibit "F" goes to show that DW1 never deposed to the facts which constitutes the evidence of the Defendants as his second signature on the Exhibit "F" is radically different from the one in his witness deposition on Oath bearing in mind his testimony before court that the signature on his Witness Statement on Oath is the second signature. Interestingly, he contradicted himself when he stated that in the year 2014 when his Witness Statement on Oath was filed, he never came to Abuja neither was he in Abuja in respect of this matter that year. Yet in another breath, stated that on 10/6/14 when he deposed to his Witness Statement on Oath, he was at FCT High Court Maitama to depose to his Witness

Statement on Oath. In the light of all of these glaring contradictions, and lies the Witness Statement on Oath the DW1 cannot be said to be his Witness Statement on Oath and as such the court cannot act on it. The implication of this is that there is no evidence on the part of Defendants in support of the averments in their pleadings and it is trite law that pleadings not supported by evidence goes to no issue, deemed abandoned and should be discountenance. See the case of Ajayi & Anor Vs Bosede (2014) LPELR – 23984 (CA). See also Odutola Vs Papersack Nig. Ltd (2006) 18 NWLR (PT. 1012), 470. Notwithstanding this position of the law, the Plaintiff has the Onus to establish by credible evidence that he is entitled to the relief sought and to succeed on the strength of his own case and not to rely on the weakness of the defence or default in pleadings. See the case of Ladoja Vs Ajimobi (2016) All FWIR (PT. 843) (SC). See also Onu Vs Nwuba (2016) All FWLR (PT. 864) 1806.

In proof of his case, the Plaintiff placed reliance on the Exhibit "A", "B", "C", "D", "E" which are correspondence between the parties on this matter. Plaintiff did stated in his testimony that the letter of instruction to him dated 27/5/08 by Defendants, which is the basis of his claim, was stolen because it was amongst other documents relating to this matter and contain in his brief case that was taken from him when he was robbed on his way to Abuja from Benin in one of his visits to Defendants regarding this matter and as such was not available to be tender as evidence before court. This, for me is rather unfortunate, because the said letter of instruction is so fundamental and pivotal to the claims of the Plaintiff. It is on it that the Plaintiffs reliefs stand. Unfortunately, the Plaintiff could not

provide a copy of the said letter of instruction and did not procure a Police Extract to attest to the fact that the document was stolen. He did not also corroborate his evidence by calling the erstwhile AG who gave him the instruction or his then P.A, Okungbowa to give evidence in proof of his case.

It is not the habit of court to speculate on the contents of a document not placed before it but act on evidence furnished before the court. The letter of instruction which is the basis of the claim of the Plaintiff is not before the court to enable the court discerns the terms and consider the claim of the Plaintiff. The Exhibit "A", "B", "C", "D", "E" of the Plaintiff are correspondences between the parties on the matter and do not in any manner translate to the said letter of instruction which is the basis of his claim and fundamental to his case. Even his letter to the new AG dated 24/2/09 attached to the Writ of Summons which was tendered and later withdrawn by Plaintiff which he relied on in his submission for court to infer that an instruction was given despite the non-production of the letter of instruction does not also translate to the letter of instruction, rather it qualifies as a correspondence between the parties regarding the matter.

From all of these and by reasons of all I have state above, I hold that the Plaintiff herein has failed to discharge the burden of proving his claims against the Defendants. In the circumstances, I resolved the broad issue raised above against the Plaintiff.

Consequently, all the reliefs sought against the Defendants by the Plaintiff in this suit fails in its entirety and they are hereby dismissed.

This is the judgment of the court.

Signed

HON. JUSTICE O. C. AGBAZA

Presiding Judge

1/2/2019

UDU DIEGBE ESQ FOR THE PLAINTIFF

SAMSON ERHAZE ESQ FOR THE DEFENDANTS.