

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA – ABUJA**

**BEFORE HIS LORDSHIP: JUSTICE SALISU GARBA
COURT CLERKS: JIMOH I. SALAWU & OTHERS
COURT NUMBER: HIGH COURT TWO (2)
CASE NUMBER: FCT/HC/CV/248/2015
DATE: 17TH MAY 2019**

BETWEEN:

EZEH DAVID OBUMNEME - PLAINTIFF
(Trading under the Name and Style
of O.B. Davies International)

AND

1. PACIFIC HOMES LIMITED. - DEFENDANTS
2. CHIEF UGOAGU

Plaintiff in court while the Defendant absent.

K.J. Omang for the Plaintiff.

Obinna Ugwu for the Defendants.

Plaintiff's Counsel – The matter is for judgment and we are ready to take same.

J U D G M E N T

By a writ of summons and statement of claim dated 23/11/2015, the Plaintiff claim against the Defendants jointly and severally as follows:

1. An Order of this Honourable Court compelling the Defendants to immediately and unconditionally pay over to the Plaintiff, the sum of N4,992,500 (Four Million, Nine Thousand and ninety Two Thousand, Five Hundred Naira) only, being outstanding payment on steel reinforcement

supplied by the Plaintiff to the Defendant and which payment became due since 23th April, 2014.

2. The sum of N5 Million only as exemplary and general damages.
3. Post judgment interest in accordance with Order 39, Rule 7 of the Rules of this Court 2004 from the date of judgment until the judgment sum is finally liquidated.
4. One Million Naira only being the cost of this suit.

In prove of this claim, the Plaintiff filed 20-paragraph statement of claim dated 23/11/15, 25-paragraph Plaintiff's reply to the Defendants statement of defence; the said reply is dated 27/7/2018 and called a sole witness.

The Plaintiff himself testified as PW1. In his evidence-in-chief, he adopted an 18-paragraph witness statement on oath dated 23/11/2015 as his evidence; the said PW1's statement on oath is hereby adopted as forming part of this judgment.

The gist of the PW1's evidence is that sometimes in January 2014 the Defendants approached him and requested that he assist them in the procurement of steel reinforcements for the construction of their commercial residential estate at Gudu District, Abuja, known as Dr. Zara Estate. Consequently an LPO No. 001502 dated 05/01/2014 was issued to him for the supply of different sizes of steel reinforcement valued at N25,297,500.00 and another LPO dated 13/1/2014 was issued to him valued at N345,000.00. that the total cost of reinforcement supplied to the Defendants amounted to N25,642,500.00 only.

It is the evidence of PW1 that after the said supplies, the Defendants have been able to pay him the sum of N20,650,000.00 in four tranches; that his outstanding balance with the Defendants is N4,992,500.00 which he had demanded from the Defendants but they refused to pay him. The Plaintiff also stated that the insistence of the Defendants on holding on to his money without any lawful justification from 23/4/14 till date, has caused him unquantifiable loss of earnings, horrendous hardship on him and his family and so much physical and emotional trauma.

In the cause of PW1's evidence, the following documents were admitted in evidence as exhibits.

1. LPOs Nos. 002502 and 001510 – Exhibits A¹ and A².
2. A Delivery Notices/Waybills – Exhibits B¹ – B⁹ respectively.
3. 2 Credit Sale Invoices No. 0625 and 0626 – Exhibit C¹ and C².
4. Copy of payment Demand Notice dated 26/10/15 – Exhibit D.

Under cross-examination by the Defendant's counsel, the PW1 stated that he knows Mr. Collins Egbo in person but do not know where he is now. That the Defendants paid to him 3 times by cheque and 1 by cash.

Under re-examination by the Plaintiff's counsel, the PW1 stated that in this transaction, a Local Purchase Order (LPO) was issued and payment by the Defendants to Plaintiff was made in the Plaintiff's Diamond Bank Account.

PW1 was according discharged and that is the case for the Plaintiff.

In defence of this suit, the Defendants filed an 18-paragraph statement of defence on 20/2/2018 and called two witnesses.

Sabdat Ohunene Isah testified as DW1. In her evidence-in-chief, she adopted 14-paragraph witness statement on oath dated 20/2/18 as her evidence; the said DW1's statement on oath is adopted as part of this judgment.

The gist of DW1's evidence is that during the meeting held in January 2014, the 2nd Defendant did informed them (staff of the 1st Defendant) about a standing order he gave to the Plaintiff to supply the 1st Defendant with iron rods for the construction of the estate being developed by the 1st Defendant.

The DW1 also stated that she took inventory and/or record of all the materials supplied to the 1st Defendant by the Plaintiff and never at all saw any waybill/delivery note or receipts from the Plaintiff to the 1st Defendant. That the total cost of the materials supplied by the Plaintiff to the 1st Defendant amounted to a sum of N20,650,000.00 only which sum has been paid to the Plaintiff by the 1st Defendant.

That all throughout the cause of her employment with the 1st Defendant she has never known any employee of the 1st Defendant bearing the name Collins Chijioke Egbo.

In the cause of DW1's evidence, the following documents were admitted in evidence as Exhibits:

1. Letter dated 3/1/11 – Exhibit E.
2. 11 O.B. Davies International Delivery Notes – Exhibits F1 – F11 respectively.

3. 7 original copies of Pacific Homes Limited Receiving Reports and copy of Receiving Reports No. 0075 – Exhibit G1 – G8 respectively.

Under cross-examination of DW1 by the Plaintiff's counsel, the DW1 stated that the signature of the Plaintiff is on Exhibit G1 – G8. Exhibit G1 – G8 are not part of the disputed transaction. Also Exhibits F1 – F11 do not form part of the dispute before the court.

No re-examination, DW1 discharged.

The 2nd Defendant testified as the DW2. In his evidence-in-chief, he adopted a 43-paragraph witness statement on oath dated 20/2/18 as his evidence; the said DW2 witness statement on oath is accordingly adopted as forming part of this judgment.

The gist of the DW2's evidence is that he did approach the Plaintiff for the supply to the 1st Defendant different sizes of steel iron rod for reinforcement and construction work in the Zara Estate at Gudu District, FCT Abuja.

That it was revealed that the quantity of steel used for construction work as supplied by the Plaintiff amounted to a sum of N20,650,000.00 which the 1st Defendant has paid for.

The DW2 further stated that Collins Egbo is not a staff of the 1st Defendant and as such does not have the Defendant's mandate to issue LPO.

In the cause of DW2's evidence, the following documents were admitted as exhibits:

1. Policies and Procedure Manual dated 5/7/2011 and CTC of Page B1 of Daily Trust Newspaper of 17/12/2014 – Exhibits H and I.

2. 2 Pictures and Certificate of Compliance in evidence – Exhibit J1, J2 and J3 respectively.

Under cross-examination of DW2 by the Plaintiff's counsel, the DW2 stated that there was no specific amount mentioned in the contract as the Plaintiff was to supply the materials when needed. That he was not around when the contract was executed. The DW2 further stated that the signature on Exhibits A1 and A2 are not his, it was clearly forged.

That the Plaintiff was given the Recovery Reports and he did not sign them.

No re-examination, DW2 discharged and that is the case for Defendants.

The Defendant filed a 16-page final written address dated 30/4/18 wherein counsel formulated an issue for determination, thus:

“Whether considering the evidence adduced by the Plaintiff in proof of his claim and the evidence adduced by the Defendant in defence of same, the Plaintiff has discharged the burden of proof on him as to entitle him to his claims against the Defendants as contained in the writ of summons”

On this issue, it is the submission that the burden of proof in civil cases rest upon the party whether Plaintiff or Defendant who substantially asserts the affirmative of the issue. Se TEXACO OVERSEAS (NIG) PET CO. UNLTD v RANGK LTD (2009) All FWLR Pt 494 P. 1520 Pt 1535 Paras E – G; Section 136 Evidence Act.

It is the contention of the Defendants that they never issued any Local Purchase Order (LPO) to the Plaintiff as the agreement between the 1st Defendant and the Plaintiff was orally entered

into and that Mr. Egbo Chijioke Collins whom by the entire exhibits tendered by the Plaintiff transacted with the Plaintiff was never a staff of the 1st Defendant neither did the 1st Defendant at any time present the said Egbo Chijioke Collins to anybody including the Plaintiff as her agent or representative.

Therefore it is for the Plaintiff to prove that, the said Egbo Chijioke Collins whom the Plaintiff alleged to have transacted with on behalf of the 1st Defendant was at the material time a staff of the 1st Defendant or an agent of the 1st Defendant vis-a-vis the fact that the actual materials supplied to the 1st Defendant by the Plaintiff is worth a sum of N25,642,500.00 as against the sum of N20,650,000.00 as claimed by the Defendants.

It is submitted that the failure of the Plaintiff to call Mr. Egbo Chijioke Collins whose signature appears on all the documents tendered in evidence by the Plaintiff save Exhibit D is very fatal to the case of the Plaintiff. See *IMHANRIA & ORS V Nigerian army* (2007) LPELR – 8302 (CA); *SMART v STATE* (2016) LPELR – 40728 (SC). It is the contention that the Defendant who denied signing or executing Exhibit A1 and A2 have proven beyond reasonable doubt that Exhibit A 1 and A2 were not signed or executed by them. See *NDOMA-EGBA v A.C.B. PLC* (2015) 14 NWLR Pt 944 Pg 79.

It is submitted that the evidence as adduced by the Plaintiff in proof of his case against the Defendants are not cogent and credible as they only support the position of the Defendants to the fact that the Plaintiff's claim against them is a mere phantom

orchestrated by the Plaintiff. Court is urged to enter judgment in favour of the Defendants.

The Plaintiff's counsel filed a 19-page final written address dated 12/2/19 wherein counsel formulated the following issues for determination:

1. Whether the denial by the 2nd Defendant of the execution of Exhibits A1 and A2 tendered by the Plaintiff amounts to an allegation of crime against the Plaintiff.
2. Whether the Plaintiff has proved his case on the balance of probability to entitle him to the reliefs sought before this Honourable Court.
3. Whether the Plaintiff is entitled to the award of general damages against the defendants.

On Issue 1, it is the submission that parties are bound by their agreement, the court of justice are precluded from interfering in agreements of parties which are not illegal, but should give effect to same. See ADAMS O. IDUFUEKO v PFIZER PRODUCTS LTD (2014) 20 JMLR.

It is the Plaintiff's contention that Exhibits A1 and A2 represent a binding contract between the parties to this suit.

The mere fact that the Defendants denied making or executing Exhibit A1 and A2 cannot avail them. Court is referred to Section 135(1) & (2) of Evidence Act and the case of NDOMA-EGBA v A.C.B. PLC (2005) 14 NWLR (Pt 944) 79.

It is trite law that any allegation of commission of a criminal offence in a proceeding must be proved beyond reasonable doubt and the burden to prove such allegation is on the person

who alleges such commission of the offence. See AMADI v ORISAKWE (2005) 4 MJSC 152 at 162 to 163. Court is urged to hold that the Defendants failed to prove their allegation of forgery against the Plaintiff. Court is also referred to Order 15 Rule 3(1) of the Rules of this court.

On Issue 2, it is the submission that there is no Satilla of evidence before this court that DW1 interfaced with the Plaintiff in January 2014 when the subject matter before the court took place between the parties because at that time, it was Collins Chijioke who was completely in charge of procurement on site.

It is submitted that there are irreconcilable differences in the testimony of DW1. In one breath, she denied having any interface with the Plaintiff during the subsistence of the business and in another breath, when confronted with her signatures on Exhibits G1 and G2, she admitted receiving materials personally from the Plaintiff. Court is urged to attach no probative value to her testimony. See OLOWE & ANOR v ALUKO (2014) LPELR 24235 (CA).

It is the submission that the Defendants outrightly denied executing Exhibits A1 and A2 which forms the fulcrum of the contract between the parties. It is on record and admitted as Exhibit D, a payment demand notice dated 26/10/16 and received by DW1. The LPOs and sales invoices Exhibits A1, A2, C1 and C2 were attached to Exhibit D. These are the same documents the defendants denied executing. There is no evidence before this court that the Defendants replied the Plaintiff Exhibit D protesting the genuiness or otherwise of the attached document, no report made to the police that they have

discovered another culprit who connived with Collins Chijioke Egbo to defraud them. The Defendants took no action until this matter was filed in court almost one month later.

It is submitted that it is too late in the day for the Defendants to deny the said Exhibits A1 and A2 as same amounts to an after-thought. See CO-OPERATIVE DEVELOPMENT BANK PLC v ARC. MFON EKANEM & ORS (2010) All FWLR (Pt 511) Pg 833 at 835.

On the issue of Plaintiff not calling Collins Chijioke Egbo, it is submitted that the Plaintiff does not need the testimony of Collins Chijioke Egbo to prove his case. Exhibits A1 and A2 suffices for the Plaintiff. Collins Chijioke Egbo was only an agent of a disclosed principal.

It is the defendants who alleged fraud and forgery that need Mr. Egbo's testimony to prove their allegation beyond reasonable doubt and this they did not bother to do.

On Issue 3, it is the submission that the primary object of an award of damages is to compensate the Plaintiff for the harm done to him. See BRITISH AIRWAYS v ATPYEBI (2014) 24 JMLR.

It is submitted that general damages is at the discretion of the court which will take the general conduct of the Defendants in this case into consideration.

It is further submitted that the Plaintiff has been able to establish that there was a binding contract between the parties. He showed that he performed his own part of the obligation under the contract and that the Defendants are yet to fulfil their own part of the obligation. Court is urged to grant all the reliefs sought by the Plaintiff.

I have carefully considered the processes filed, testimonies of PW1, DW1 and DW2 and also the submission of learned counsel on both sides, I am of the view that this case poses no complexity.

It is not in doubt that the Plaintiff did supplied different sizes of steel/ion rods for reinforcement and construction work in Dr. Zara Estate at Gudu District, FCT, Abuja. The contention between the parties is that the Plaintiff claim that the Defendants issued him a Local Purchase Order (LPO) No. 001502 dated 05/01/2014 Exhibit A1 for the said supply valued at N25,297,500.00; while the Defendant claim is that the said offer was made orally to the Plaintiff.

It is the testimony of the DW2 the Managing Director of the 1st Defendant that the total cost of the steel/rods supplied to the 1st Defendant by the Plaintiff is N20,650,000.00 which the 1st Defendant has paid for.

It is trite law that when a party is relying on an oral agreement, he must prove the terms of such oral agreement beyond a doubt. See ODUTOLA & ANOR v PAPERSACK NIG. LTD (2006) 2 All NLR.

In the instant case, the Defendant never bothered to lead evidence to show how such oral agreement was reached, where it was reached and witnesses to such an agreement.

Now it is the contention of the Plaintiff that the contract entered between the parties was reduced into writing vide Exhibits A1 and A2 respectively.

It is instructive to point out here that the Defendants denied issuing the LPO Exhibits A1 and A2. However, a cursory look at Exhibit A1 shows that there is the signature of the Managing Director who

testified as DW2 in this case. I have carefully considered the said signature of Mr. Earnest A. Ugoagu (DW2) on Exhibit A1 and his signature in supporting affidavit in Motion No. 5514/17 for stay of further proceeding and also his signature in the counter affidavit dated 20/6/18 and that in Exhibit E reveals that the signature on those documents was signed by one and same person i.e. the DW2.

It is also worthy of note that the feature on the said Exhibit A1 and A2 i.e. the address Plot 559 Cadastral Zone CO2 Life Camp Abuja is same with the 1st Defendant's address on the foot of Exhibit E (Offer of Employment).

In the light of the above, I hold the considered view that Exhibit A1 and A2 was issued by the Defendants.

The DW2 tendered a CTC of Page 61 of Daily Trust Newspaper of December 17, 2014 admitted as Exhibit I.

A cursory look at the said Exhibit I show that it was a disclaimer against the whole world and not particularly against Collins Chijioke Egbo or any other person as nobody's name was mentioned in the disclaimer; the said disclaimer was taken out on 17/12/14 almost one year after the business with the Plaintiff was concluded. Accordingly, I hold that there is no nexus between the disclaimer and the matter before the court.

It is the evidence of DW2 that the Defendants reported the fraudulent activities of Collins Chijioke Ego to the Nigeria Police. However, during cross-examination of DW2, he stated that he did not have a copy of the petition he wrote to the police. It is also instructive to note that the Defendants never called any police

officer to confirm the said petition. I must state that this court is not a court of speculation. Accordingly the evidence by the Defendants on the issue of petition to the police is of no moment. On the issue that the Defendant's office was submerged in flood and the contention that the flood washed away their records, and as such they did not have records of the Plaintiff's dealing with them. I have carefully examined Exhibits J1 and J2 there is nothing to show that the building on those pictures belong to the 1st Defendant. Exhibit J2 particularly shows a building under construction and not an office.

Accordingly I hold that Exhibit J1, J2 and J3 are of no moment.

It is not in doubt that the Defendants was in receipt of the Demand Notice Exhibit D but never bothered to reply same.

It is instructive to reproduce the said Exhibit D as follows:

O.B. DAVIES INERNATIONAL
(A SUBSIDIARY OF DAVE – JONES LTD)
Dealers on Iron Rods & General Contractors

HEAD OFFICE
Zone D4 Shop 114
Dei-Dei Building Materials
Market Abuja F.C.T.

TEL: 0803-5931154

Our Ref.....Your Ref.....Date:.....

26th October, 2015

The Managing Director,
Pacific Homes Ltd,
Plot 559, Cadastral Zone CO2,
Life Camp,
Abuja

Dear Sir,

PAYMENT DEMAND NOTICE

Please, find attached, the following documents as ANNEXURES "A", "B", "C" and "D" respectively.

1. Pacific Homes Ltd Local Purchase Order (LPO), number 001502 dated 05/01/2014.
2. Homes Ltd Local Purchase Order (LPO), number 001518 dated 13/01/2014.
3. O.B. Davies International Sales Invoice, number 0625, dated 23/01/14.
4. O.B. Davies International Sales Invoice, number 0626, dated 13/01/14.

Annexures A and B represent the order given to me for the supply of steel reinforcements to your Dr. Zara Estate at Gudu District, Abuja. It was stipulated in annexures A and B that payment for

the materials shall be made ninety (90) days from the date of delivery.

Suffice it to say that delivery of the materials was concluded on 13/01/14 and 23/01/14 respectively as reflected on Annexures C and D and the total cost of supplies made amounted to N25,642,500 (Twenty Five Million, Six hundred and Forty Two Thousand, Five Hundred Naira) only, and payment for the materials was to have been made not later than 23rd April, 2014.

However, you have been able to pay the sum of N20,650,000 (Twenty Million, Six Hundred and Fifty Thousand Naira) only, in four tranches of N10,000,000 (Ten Million Naira) only, another N10,000,000 (Ten Million Naira) only, N150,000 (One Hundred and Fifty Thousand Naira) only and N500,000 (Five Hundred Thousand Naira) only respectively.

Despite repeated entreaties, you have not paid me the balance of N4,992,500 (Four Million, Nine Hundred and Ninety Two Thousand, Five Hundred Naira) only, more than eighteen (18) months after the money became due for payment.

By this notice, you are, as a matter of utmost urgency, required to pay the sum of N4,992,500 (Four Million, Nine Hundred and Ninety Two Thousand, Five Hundred Naira) only, within seven (7) days of the receipt of this demand notice, into this account number.

Account Name: O.B. Davies International
Account No. 0046523580
Bank: Diamond
Sort Code: 063080148

I do hope that wise counsel shall prevail in this matter, but in the unlikely event that you fail to pay this money, you leave me no choice but to take necessary legal steps to recover my money without further recourse to you.

Thank you most sincerely,
(Sgd)
Ezeh, David O.
(For O.B. Davis International

I am of the view that it is too late in the day on the Defendants to deny the existence of Exhibits A1 and A2 as same amounts to an after-thought. It is the law that it is incumbent on the recipient of a business letter to reply, as its default to reply is presumed that it has no objection to the proposal contained therein. See the case of CO-OPERATIVE DEVELOPMENT BANK PLC v ARC. MFON EKENEM & ORS (Supra).

On the issue of Collins Chijioke Egbo. The Defendant's counsel is of the view that the Plaintiff not calling the said Collins Chijioke Egbo is fatal to his case.

On the contrary, I am of the view that it is the Defendant who alleged fraud and forgery that need Mr. Egbo's testimony to prove their allegation beyond reasonable doubt and this they did not bother to do.

It is on record that the Plaintiff filed and served a notice on the Defendants to produce their Diamond Bank statement of account to show withdrawals made by the same Collins Chijioke Egbo whom they swore not to know, but they failed to produce the said statement of accounts. Accordingly the provision of Section

167(d) of the Evidence Act is hereby invoked and I hold that the failure of the Defendants to produce the said statement of account is that it will be detrimental to their case.

In conclusion, I am of the considered view that the Plaintiff have proffer cogent, credible and sufficient materials to warrant this court enter judgment in his favour.

Accordingly, judgment is entered in favour of the Plaintiff against the Defendants jointly and severally as follows:

1. The Defendants are ordered to pay to the Plaintiff the sum of N4,992,500 (Four Million, Nine Hundred and Ninety Two Thousand, Five Hundred Naira) only being outstanding payment on steel/iron rod supplied by the Plaintiff to the Defendants and which payment became due since 23rd April, 2014.
2. The sum of N500,000.00 (Five Hundred Thousand) is hereby awarded as general damages in favour of the Plaintiff against the Defendants.
3. 10% interest on the judgment sum is hereby awarded from the judgment date until final liquidation of the judgment sum.
4. Cost of N4,410.00 is awarded against the Defendants.

(Sgd)
JUSTICE SALISU GARBA
(PRESIDING JUDGE)
17/05/2019

Claimant's Counsel – We are grateful for the judgment.

Defendant's Counsel – On the part of the Defendant we express our gratitude to the court for the judgment.

(Sgd)
JUSTICE SALISU GARBA
(PRESIDING JUDGE)
17/05/2019