

**IN THE HIGH COURT OF THE FEDERAL
CAPITAL TERRITORY, ABUJA
HOLDEN AT ABUJA**

ON WEDNESDAY, 3RD DAY OF APRIL, 2019

BEFORE HON. JUSTICE SYLVANUS C. ORIJI

SUIT NO. FCT/HC/CV/352/2015

BETWEEN

SUPERLINK ELECTRICAL SUPPLY LTD. --- PLAINTIFF

AND

**1. COOP PROPERTY DEVELOPMENT
COMPANY LTD. } DEFENDANTS
2. KABIR AYINDE TUKUR }**

JUDGMENT

The plaintiff filed this suit on 3/12/2015 by writ of summons. The pleadings in this suit are: [i] the plaintiff's statement of claim filed on 3/12/2015; [ii] the defendants' statement of defence and counter claim filed on 24/6/2016; and [iii] the plaintiff's reply to the statement of defence and defence to counter claim filed on 30/6/2016.

In paragraph 31 of the statement of claim, the plaintiff claims against the defendants jointly and severally as follows:

1. An order of the Court directing the defendants to replace the three containers with their contents returned to them by the plaintiff or to pay to the plaintiff the sum of N8,400,000.00 which is the money worth of the allocation papers of the three containers returned to the defendants.
2. An order of the Court directing the defendants to pay to the plaintiff the sum of N600,000.00 which sum he paid to Customs' agent for the three containers.
3. An order of the Court directing the defendants to pay to the plaintiff the sum of N500,000.00 as cost of litigation.
4. N10,500,000.00 as general damages for loss of earnings.
5. 10% interest on the entire judgment sum due to the plaintiff beginning from April, 2014 till judgment is delivered.

The counter claims of the defendants against the plaintiff are:

1. An order of this Honourable Court directing the plaintiff to refund the sum of N6,500,000.00 only wrongly paid to the plaintiff by the counter claimants.
2. The cost of litigation being the sum of N1,000,000.00 only.

At the trial, Ifeanyi Nwandu, the plaintiff's managing director, testified as PW1. He adopted his statement on oath filed on 3/12/2015 and the further

statement on oath filed on 30/6/2016. PW1 tendered Exhibits A1-A3, B1, B2, C1, C2, D1-D4, E1, E2, F & G. Segun Odewunmi, the general manager of the 1st defendant, gave evidence as DW1. He adopted his statement on oath filed on 24/6/2016 and tendered Exhibits H, J1, J2, K, L & M.

Evidence of the plaintiff:

The evidence of PW1 is that 1st defendant is a property developer for Nigeria Customs Services. 2nd defendant is the chairman of 1st defendant. Sometime in 2013, Mr. Joel Awuzie informed the plaintiff through him [PW1] about the Auction Sale/Allocation of Overtime/Abandoned Goods by Nigeria Customs Services at Tincan Island Port, Lagos. They indicated interest in 4 containers and subsequently paid N2,800,000.00 for each container, which amounted to N11,200,000.00; the payment was vide UBA cheque and electronic transfer. They made payment for 3 containers at the first time and they were given 3 allocation papers dated 21/8/2013. Three months later, they made payment for the fourth container and they were given an allocation paper. They paid custom duties through Sky Bank Plc. and First Bank Plc. for the 4 containers to Nigeria Customs Services.

They made other payments to the custodian of the containers in Tincan Island Port which is PTML and for agency charges. They paid N200,000.00 for each of the containers to the Customs' agent that facilitated the transaction with Nigeria Customs. They took delivery of the 4 containers from Nigeria Customs. They opened one of the containers in their warehouse in Lagos

and discovered that the items in the container were already spoilt. They opened the remaining 3 containers and discovered that they were carrying furniture. They were ready to dispose them to recover the money they have spent so far. They had lost over N3 million in the transaction as a result of the spoilt items in the first container.

PW1 further testified that after 5 days of taking delivery of the 4 containers, he received a call from Joel Alozie [a Nigeria Customs' agent]. Mr. Alozie told him that the Deputy Comptroller General of Customs and the 2nd defendant wanted to see him in Abuja. He travelled to Abuja. When he went to the office of the Deputy Comptroller General of Custom [Enforcement Unit], he saw the 2nd defendant. He was shocked to hear from the 2nd defendant that the 3 containers were sold in error as the contents of the containers were meant for the furnishing of Nigeria Customs Services apartment in Customs Estate which 1st defendant was developing for Nigeria Customs in Ibadan, Oyo State. The 2nd defendant pleaded with him to return the 3 containers to them at Ibadan and that he will be given other containers or he will be refunded his expenses and the cost of the containers. He reluctantly accepted to return the 3 containers on the strength of the fact that he will be refunded the money spent so far.

He went back to Lagos and loaded the 3 containers into 3 different trucks and moved them to Ibadan. The PW1 further stated that the 3 containers were received by the defendants, with a written acknowledgement. The

defendants have refunded the sum of N4,500,000.00, which is the cost of clearing the 3 containers from Tincan Island and other customs duties. He has since made efforts to recover the expenses and cost of the containers or a replacement of the containers, but to no avail. Since March, 2014 when the defendants received the 3 containers, he has been going to the Deputy Comptroller General of Customs [Enforcement Unit] but he told him [PW1] to go to the defendants who received the containers. The persons that lent them part of the money they used to buy the containers are on their neck.

In his statement on oath filed on 30/6/2016, Ifeanyi Uwandu [PW1] stated that he is surprised to see in the statement of defence that the containers in issue belong to the defendants. The 2nd defendant who persuaded him to return the 3 containers never told him that the containers belonged to them. The defendants made part payment to them to take care of the cost of clearing the containers and the cost of transporting the 3 containers from Lagos to Ibadan. They have discovered that the containers were seized from the defendants by Nigeria Customs Services. After the containers were sold to the plaintiff as abandoned goods, 2nd defendant, who is a friend to the Deputy Comptroller General of Customs [Enforcement Unit], passed through him to retrieve the containers. This fact was hidden from him as the defendants knew that if disclosed, he will not release the containers; and this is fraud. The containers were not sold to them in error.

PW1 tendered the following documents:

- i. The 4 Customs revenue receipts nos. A154757, A154758, A0182812 & 0226733 are Exhibits A1, A2, A3 & B1; Customs pay-in-form from First Bank Plc. is Exhibit B2.
- ii. UBA cheques both dated 18/11/2013 for the sums of N2,800,000.00 and N1,000,000.00 are Exhibits C1 & C2 respectively.
- iii. Auction Sale/Allocation of Overtime/Abandoned Goods nos. 0000511, 0000695, 0000699 & 0215536 are respectively Exhibits D1, D2, D3 & D4.
- iv. Provisional invoice cashier's receipt numbers 114418P & 114419P both dated 14/10/2013 from Grimaldi Agency Nigeria Ltd. are Exhibits E1 & E2 respectively.
- v. Document titled: Container Protocol number 131. 129. 128 is Exhibit F.
- vi. The 1st defendant's letter to the plaintiff dated 5/3/2014 is Exhibit G.

During cross examined, Ifeanyi Uwandu [PW1] stated that he has document to show that N2.8 million was paid for each container; the document is not in Court. The 1st defendant paid him a total of N6.5 million; N4.5 million was for duty and clearing of the 3 containers and N2 million was for renting of the truck that took the goods to Ibadan and other expenses. He paid N600,000.00 to some Customs' agents. There is no document to show that he paid N600,000.00 to any Customs' agent. The agreement he entered into with the defendants was oral.

Evidence of the defendants:

In his evidence, DW1 stated that the 2nd defendant was a former managing director of 1st defendant until July, 2015 when he was removed as a director of the 1st defendant. COOP Savings and Loans Ltd. was also a former director of the 1st defendant. The 2nd defendant informed him at his office at about 4:30p.m. on 20/6/2016 and he verily believed him as follows:

- i. He [the 2nd defendant] pleaded with the plaintiff's managing director to return the 3 containers wrongly given/sold to his company by the Nigeria Customs Services. 2nd defendant denied that he undertook that other containers would be given back to plaintiff or that the expenses and cost of the containers would be refunded to the plaintiff.
- ii. He [the 2nd defendant] promised to give the managing director of the plaintiff some amount of money only in view of the alleged expenses incurred in clearing the containers pending the time Nigeria Customs Services will refund the money the plaintiff spent in purchasing and clearing the said containers.
- iii. There was no contract/agreement [oral or written] between the plaintiff and the defendants to either purchase or sell any container at any time to warrant the bogus and fallacious claim made by the plaintiff.
- iv. The defendants deny promising the plaintiff that whatever money it had spent so far would be refunded to it. Rather, the 1st defendant paid the plaintiff the sum of N6,500,000.00 in view of the alleged expenses it

incurred in clearing the containers pending the time Nigeria Customs Services will repay the money expended in clearing the containers to the plaintiff.

DW1 further stated that the defendants are not liable to refund the expenses incurred by the plaintiff and the cost of the containers because plaintiff did not make any payment to them and they were not privy to any agreement for the monies paid by the plaintiff to the Nigeria Customs or any other agent. If at all the plaintiff is entitled to any refund, it is the Nigeria Customs Services who ought to refund plaintiff the sum paid to it in respect of the containers, which were wrongly sold to the plaintiff by the Nigeria Customs Services. The 1st defendant purchased the items in the said containers from Sundream International Limited, London in 2012. The containers contained kitchen cabinets, doors and other items.

Segun Odewunmi further testified that due to some gaps in communication, the 1st defendant could not clear the containers on time. Nigeria Customs Services wrongly sold the said containers to the plaintiff as the containers belong to the 1st defendant. When Nigeria Customs Services became aware of the manifest error, it directed the plaintiff to return the containers to the 1st defendant. The defendants mistakenly paid the sum of N6.5 million to the plaintiff for the expenses it allegedly incurred to clear the 3 containers. The defendants paid their solicitors the sum of N1,000,000.00 to defend this suit. DW1 tendered the under listed documents:

- i. The Certificate of Incorporation of the 1st defendant dated 24/7/2009 is Exhibit H.
- ii. Forms CAC 3 & CAC 7 of 1st defendant are respectively Exhibits J1 & J2.
- iii. Document titled: Commercial Invoice from Sundream International Ltd. to the 1st defendant is Exhibit K.
- iv. Acknowledgement receipt of N1,000,000.00 from Tree Stone Alliance to the 1st defendant dated 1/2/2016 is Exhibit L [also Exhibit S].
- v. Diamond Bank deposit slip for the sum of N500,000.00 dated 19/2/2014 is Exhibit M.
- vi. Statement of account of COOP Savings and Loans Ltd. in Skye Bank Plc. is Exhibit N; the 1st defendant's statement of account in Wema Bank is Exhibit O.
- vii. Skye Bank Plc. Debit Advice Form dated 27/1/2016 is Exhibit P.
- viii. Skye Bank cheque for N7 million dated 5/3/2014, the Debit/Credit Ticket dated 5/3/2014 and the attached Debit/Credit Ticket also dated 5/3/2014 are together Exhibit Q.
- ix. Certificates of Evidence dated 23/2/2018 and 26/2/2018 are Exhibits R1 & R2 respectively.

When DW1 was cross examined, he stated that he was the one that received the 3 containers. Before the containers were released to him, he informed the

managing director of the plaintiff at the Lagos Airport that the containers originally belonged to the 1st defendant. When he met plaintiff's managing director, he showed him the documents of ownership of the containers by the defendants. He was introduced to the plaintiff's managing director by 2nd defendant. He would not know if a container declared abandoned becomes the property of Government. He did not know where the 2nd defendant was as at the date he [DW1] gave evidence [i.e. on 28/5/2018].

Issues for determination:

When trial ended, Oladapo O. Agboola Esq. filed defendants' final address on 25/6/2018 while Ndubuisi Kalu Esq. filed the plaintiff's final address on 27/7/2018. On 10/1/2019, the counsel for the parties adopted their respective final addresses.

Learned defence counsel formulated these two issues for determination:

1. Having regard to the facts and circumstances of this case vis-à-vis oral and documentary evidence adduced; whether the plaintiff has proved its case to be entitled to the reliefs sought.
2. Having regard to the facts and circumstances of this case vis-à-vis oral and documentary evidence; whether the defendants have proved the counter claim to be entitled to the reliefs sought.

Learned plaintiff's counsel posed three issues for determination. These are:

1. Whether from the facts and circumstances of this case, it could be said that there is a legally binding agreement between the parties in this suit.
2. Whether the plaintiff has proved his case based on preponderance of evidence to merit the judgment of this Court.
3. Whether the defendants/counter claimants are entitled to the counter claim.

The Court is of the view that there are two main issues for resolution in this action. The first is whether the plaintiff is entitled to its reliefs; while the second is whether defendants/counter claimants are entitled to their reliefs.

ISSUE 1

Whether the plaintiff is entitled to its reliefs.

The plaintiff's reliefs will be considered one after the other.

Relief 1:

In its first relief, plaintiff claims an order directing the defendants to replace the 3 containers it returned to them or to pay the sum of N8,400,000.00 to it which is the money worth of the allocation papers of the 3 containers. The critical question that arises from this claim is whether the plaintiff proved that the defendants agreed to replace the 3 containers it returned to them or to refund the sum of N8,400,000.00 to it.

The defence counsel posited that plaintiff's cause of action is largely rooted in oral contract agreement. There is no document precisely streamlining the terms and conditions of the negotiations which the plaintiff claimed it had with the defendants towards the return of the containers. He submitted that from the evidence of the parties, no consideration was agreed upon by the plaintiff and 1st defendant for the return of the containers. It was argued that where one element for a contract is absent, there cannot be a valid and enforceable contract. Since no consideration was agreed upon by the parties, there was no contract between them. Oladapo O. Agboola Esq. also stated that 1st defendant is the owner of the 3 containers as evidenced by Exhibit K; thus, the question is whether the 1st defendant can enter into a contract with the plaintiff to buy its property. He submitted that there cannot be a contract between the plaintiff and 1st defendant for the purchase of the 3 containers.

On the other hand, learned plaintiff's counsel argued that there was a legally binding agreement/contract between the parties in this suit. There was offer, acceptance and consideration. The offer was made by the defendants, which was accepted by the plaintiff. To make the contract complete, the defendants took steps and paid a consideration of N6.5 million to the plaintiff. It was submitted that parties are bound by the agreement which they freely entered into and the duty of the Court is to give effect to that agreement. The case of **Nika Fishing Co. Ltd. v. Lavina Corporation [2008] 16 NWLR [Pt. 1114] 509** was referred to. Ndubuisi Kalu Esq. also contended that the presence of a binding contract is strengthened by the defendants' letter dated

5/3/2014[Exhibit G].He stressed that without a binding agreement, the plaintiff would not have released the 3 containers and the defendants would not have made the initial payment of N6.5 million to the plaintiff.

The further argument of the plaintiff's counsel is that the DW1 was not part of the meeting that took place in Abuja between the parties. The evidence of DW1 can best be described as hearsay evidence which is not admissible. He cited the case of Kekih v. PDP [2015] EJSC Vol. 8, page 23.It was submitted that once a property is sold by a public body via auction, the property ceases to belong to the original owner; and the original owner is not at liberty to lay claim to the property. Ndubuisi Kalu Esq. also stated that the UBA cheque,the plaintiff's statement of account and other sundry exhibits tendered are evidence of the purchase cost of the containers. He concluded that plaintiff has established its case on preponderance of evidence and balance of probabilities. Therefore, the plaintiff is entitled to award of damages as there is obvious breach of contract by the defendants.

Now, from the documents tendered by DW1 as Exhibit K, it is glaring that the 1st defendant bought the items in the 3 containers in issue [i.e. doors and furniture] from Sundream International Ltd.It is also evident from Exhibits D1, D2 & D3 titled: *Auction Sale/Allocation of Overtime/Abandoned Goods* that Nigeria Customs Services sold the 3 containers to the plaintiff.After clearing the containers, PW1 was informed by the 2nd defendant that the containers belonged to the 1st defendant; and that Nigeria Customs sold the containers to

the plaintiff in error. Later, the plaintiff returned the 3 containers to the defendants in Ibadan. The Court finds as a fact that PW1 and 2nd defendant had discussions with regards to the return of the containers. Now, what were the terms agreed upon by the PW1 and the defendants for the return of the 3 containers?

In paragraphs 20 & 21 of the statement of claim, the plaintiff averred:

20. *That the 2nd defendant pleaded with the plaintiff's managing director to please return the three containers to them at Ibadan and that we will be given other containers or that we will be refunded our expenses and the cost of the containers.*
21. *That the plaintiff's managing director reluctantly accepted to return the three containers on the strength of the fact that we will be refunded whatever money we have spent so far.*

The defendants denied these averments. In paragraph 10 of the statement of defence, they averred that:

... the defendants deny promising the plaintiff that whatever money it had spent so far would be refunded to it; rather, the 1st defendant paid the plaintiff the sum of N6,500,000.00 in view of the alleged expenses incurred in clearing the containers pending the time the Nigeria Customs Service will refund the monies allegedly paid to it by the plaintiff for the containers and the money expended in clearing of the containers to the plaintiff.

Section 131[1] of the Evidence Act, 2011 provides that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts shall prove that those facts exist. It is axiomatic that he who asserts must prove. It is also trite that civil cases are decided on preponderance of evidence or balance of probabilities. See **Aiico Insurance Plc. v. Addax Petroleum Dev. Co. Ltd. [2014] LPELR-23743 [CA]**. In this case, the plaintiff has the burden to prove its case; especially the agreement pleaded in paragraphs 22 & 23 of the statement of claim.

It is pertinent to state that as at the date the PW1 had discussions with the 2nd defendant, the containers had been purchased and cleared. So, the PW1 knew the amount he expended in respect of the 3 containers; especially the cost of buying the 3 containers from Nigeria Customs. If there was an agreement at that meeting that the defendants will refund to the plaintiff the cost of buying the containers from Nigeria Customs Services, why did the PW1 not disclose the amount which the defendants are expected to pay? In my considered opinion, the fact that the parties did not agree on any specific amount to be refunded makes it improbable that the parties agreed that the defendants will refund to the plaintiff the cost of buying the 3 containers.

Apart from the *ipsi dixit* of the PW1, there is no evidence to establish the plaintiff's assertion that the defendants agreed to refund to the plaintiff the cost it incurred in buying the 3 containers. The plaintiff did not call the Deputy Comptroller General of Customs [Enforcement Unit] - who PW1 said

was at the meeting he had with the 2nd defendant - as a witness to confirm that the 2nd defendant agreed to refund the cost of purchasing the 3 containers from Nigeria Customs Services.

Also, from the date of the meeting between the PW1 and the 2nd defendant until the plaintiff filed this suit, there is no correspondence from the plaintiff to the defendant to show that the defendant agreed to refund to the plaintiff the cost it incurred in buying the 3 containers. There is no letter of demand by the plaintiff to the defendant for the refund of the cost of buying the 3 containers. It is not in dispute that the defendant paid N6,500,000.00 to the plaintiff, which, from the evidence of the parties, is the expenses incurred by the plaintiff in clearing the containers and cost of taking the 3 containers from Lagos to Ibadan. Assuming any sum is outstanding after the payment of N6,500,000.00, the plaintiff would have, in the ordinary or natural course of events, demanded the payment of the balance.

In 1st defendant's letter to the plaintiff dated 5/3/2014 [Exhibit G], it confirmed that *"three [3] containers have been returned to our office"*. In the letter, the 1st defendant stated the details of the containers and then concluded: *"We are expecting the last truck."* If the defendant were indebted to the plaintiff for the cost of purchasing the containers, this letter would have, in the ordinary or natural course of events, prompted or stimulated a demand by the plaintiff for the payment of the outstanding sum.

In the light of the evidence that the 3 containers belong to the 1st defendant before they were sold to the plaintiff by Nigeria Customs Services; and the plaintiff paid the purchase price for the 3 containers to Nigeria Customs, I hold the humble view that it is not probable that the defendants agreed to refund the money paid by the plaintiff to Nigeria Customs for the purchase of the 3 containers. I agree with the evidence of DW1 in paragraph 20 of his statement on oath that if at all the plaintiff is entitled to any refund, it is the Nigeria Customs Services that ought to refund the plaintiff the sum paid to it for the containers which it sold to the plaintiff.

One more point on relief 1; that is whether the plaintiff adduced cogent and credible evidence to establish that it expended the sum of N8,400,000.00 to purchase the 3 containers from Nigeria Customs as claimed. As rightly stated by the defence counsel, Exhibits D1, D2 & D3 dated 21/8/2013 [i.e. Auction Sale/Allocation of Overtime/Abandoned Goods] are the allocation papers for the 3 containers. The Auction Value of the Doors in Exhibit D1 is N400,000.00; the Auction Value for the Furniture in Exhibit D2 is N1,000,000.00; while the Auction Value for the Furniture in Exhibit D3 is N1,000,000.00. The Custom revenue receipts [Exhibits B1, A1 & A2] are for payments of Custom Values of the items in Exhibits D1, D2 & D3 plus 5% VAT stated in clause 2[iii]. Exhibit B1 is for N420,000.00; Exhibit A1 is for N1,050,000.00; Exhibit A2 is for N1,050,000.00. Exhibits B1, A1 & A2 show the total sum of N2,520,000.00 paid by the plaintiff for the purchase of the 3 containers.

Let me refer to Exhibits C1 & C2, which are cheques for N2,800,000.00 and N1,000,000.00 respectively. Both cheques are dated 18/11/2013. The learned counsel for the defendants stated that:[i] the cheques [Exhibits C1 & C2] were issued by Samtex Concept Ltd., and not by plaintiff; [ii] the 2 cheques were not issued in favour of Nigeria Customs Services; and [iii] the date of the 2 cheques was after the date of Exhibits D1, D2 & D3.

Oladapo O. Agboola Esq. submitted that the logical inference is that Exhibits C1 & C2 were not made in respect of Exhibits D1, D2 & D3. Plaintiff did not produce documents showing payment of N8,400,000.00 for the 3 containers. It was further submitted that where oral evidence of a witness ought to be backed or supported by documents, the mere *ipsi dixit* of the witness will not suffice to establish the fact because documentary evidence constitutes the hanger on which oral evidence is assessed. He referred to **Ogbeide v. Osifo [2007] 3 NWLR [Pt. 1022] 423.** He concluded that the plaintiff failed to prove that it spent N8.4 million to purchase the 3 containers.

On the other hand, Ndubuisi Kalu Esq. submitted that the UBA cheque, the plaintiff's statement of account and other sundry exhibits tendered are evidence that the plaintiff spent N8.4 million to purchase the 3 containers. I pause to remark that the PW1 did not tender any statement of account.

From the above documents, I hold the considered view that the plaintiff did not adduce any evidence to show how Exhibits C1 & C2 relate to the

paymentit made to Nigeria Customsfor the purchase of the 3 containers. PW1 also tendered Exhibits E1, E2 & F; each is for the sum of N418,751.25. It is glaring from Exhibits E1, E2 & F that they do not relate to the purchase of the 3 containers. From Exhibits D1, D2 & D3 and B1, A1 & A2, I hold that the total sum paid by the plaintiff for the purchase of the 3 containers is N2,520,000.00.

The decision of the Court on relief 1 is that the plaintiff failed to prove that the defendants agreed to refund the cost of purchasing the 3 containers from Nigeria Customs.Assuming the plaintiff proved that the defendants agreed to refund the cost of purchasing the 3 containers, the Court holds that the plaintiff failed to prove that it spent the sum of N8,400,000.00 to purchase the 3 containers as claimed in relief 1. The plaintiff failed to prove relief 1.

Relief 2:

The plaintiff's claims the sum of N600,000.00 paid to Customs' agent for the 3 containers. Under cross examination, PW1 stated that he paid N600,000.00 to some Customs' agents. However, he said there is no document to show that he paid N600,000.00 to any Customs' agent.The defence counsel argued that the claim of N600,000.00 is for special damages, which must be specifically pleaded and proved. He referred to **Okunzua v. Amosu [1992] LPELR-2531 [SC]**. It was submitted that the plaintiff failed to specifically plead and prove the name of the Customs' agent[s] that this sum was paid to and it failed to

tender any document to prove that this amount was paid. He urged the Court not to grant the relief.

The parties agree that the defendants paid N6.5 million to the plaintiff to cover expenses it incurred for clearing and transportation of the 3 containers to Ibadan. Was the sum of N600,000.00 claimed by the plaintiff not part of the N6.5 million paid to it by the defendants? The plaintiff did not adduce any evidence in support of the claim for N600,000.00. During cross examination, PW1 said there is no document to show that he paid N600,000.00 to any Customs' agent. There is no letter of demand or any other correspondence to show that the sum of N600,000.00 is outstanding; even after 1st defendant's letter to the plaintiff dated 5/3/2014 [Exhibit G] by which it confirmed that *"three [3] containers have been returned to our office ..."* I hold that the plaintiff failed to prove the claim of N600,000.00. It is dismissed

Reliefs 3, 4 & 5:

These reliefs are N500,000.00 as cost of the suit; N10,500,000.00 as general damages for loss of earnings; and 10% interest on the judgment sum. I adopt the decision of the Court on relief 1 and hold that the plaintiff is not entitled to any of these claims. They are dismissed.

ISSUE 2

Whether the defendants/counter claimants are entitled to their reliefs.

The first counter claim of the defendants is the sum of N6.5 million, which they wrongly paid to the plaintiff. Mr. Ndubuisi Kalu argued that the 1st defendant failed to prove that it is entitled to a refund of N6.5 million, which was paid to the plaintiff to defray the cost of clearing, warehousing and transporting the 3 containers from Lagos to Ibadan. He emphasized that the payment of the sum of N6.5 million was a product of the meeting which the PW1 had with the 2nd defendant in Abuja.

On the other hand, Mr. Oladapo O. Agboola stated that the counter claimants have proved their entitlement to the sum of N6.5 million. He argued that the plaintiff stated that the N6.5 million paid to it by the defendants was for the cost of clearing the 3 containers and other duties but there is no evidence on what it costs the plaintiff to clear each of the containers.

In paragraph 10 of the statement of defence quoted earlier, the defendants averred that *“the 1st defendant paid the plaintiff the sum of N6,500,000.00 in view of the alleged expenses incurred in clearing the containers”*. The evidence of DW1 in support of this claim is that the defendants mistakenly paid the sum of N6.5 million to the plaintiff for the expenses it allegedly incurred to clear the 3 containers. Defendants have the burden to prove the alleged error but they did not adduce any evidence to prove their assertion. This claim is dismissed.

The second counter claim is N1 million being cost of the litigation. In proof of this claim, the DW1 tendered Exhibit L, which is the receipt of N1 million

from Tree Stone Alliance to the 1st defendant. The essence of this claim is to pass on the counter claimants' solicitors' fee to the defendants in the counter claim. Can a party in litigation pass on his solicitors' fee to his opponent?

In the case of Ihekwoaba v. ACB Ltd. [1998] 10 NWLR [Pt. 571] 610, it was held that the issue of damages as an aspect of solicitor's fees is not one that lends itself to support in this Country. Also, in the case of Guinness Nig. Plc. v. Nwoke [2000] 15 NWLR [Pt. 689] 150, it was held that it is unethical and an affront to public policy for a litigant to pass on the burden of his solicitor's fees to his opponent in a suit. Based on the above authorities cited by Mr. Oladapo O. Agboola, the claim of N1 million as cost of the suit, which is covered by the fee paid by the defendants/counter claimants to their solicitor, is dismissed.

CONCLUSION

The plaintiff's claims lack merit and are dismissed. The defendants' counter claims lack merit and are dismissed. The parties shall bear their costs.

HON. JUSTICE S. C. ORIJI
[JUDGE]

Appearance of counsel:

Ndubuisi Kalu Esq. for the claimant.