

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY,
IN THE ABUJA JUDICIAL DIVISION,
HOLDEN AT COURT NO. 12 BWARI, ABUJA.
BEFORE HIS LORDSHIP: HON. JUSTICE O. A. MUSA.**

SUIT NO. FCT/HC/CV/2122/2015

BETWEEN:

1. NELOX LTD
2. GLOBAL IMAGE CONCEPT LTD PLAINTIFFS

AND

1. THE NIGERIA POLICE FORCE
2. THE INSPECTOR GENERAL OF POLICE DEFENDANTS

JUDGMENT

DELIVERED ON 4TH JULY, 2019

This matter was commenced by the Plaintiffs against the Defendants by writ of summons filed on the 15/06/2015 wherein the Plaintiffs claimed against the Defendants as follows:-

1. The sum of N4, 320,768.00 (Four Million Three Hundred and Twenty Thousand Seven Hundred and Sixty Eight Naira) for the rehabilitation of 1 No. Inspector's Quarters at Kuje Barracks FCT Abuja.
2. The sum of N11, 674,113.85 (Eleven Million Six Hundred and Seventy Four Thousand, One Hundred and Thirteen Naira, Eighty Five Kobo) for the rehabilitation of 1 No. Type II Police Station at Shanono, Kano State.

3. The sum of N11, 674, 1133. 85 (Eleven Million Six Hundred and Seventy Four Thousand One Hundred and Thirteen Naira, Eighty Five Kobo) for the rehabilitation of Police Station at Filing Hockey, Kano State.
4. An aggregate sum of N24, 283,000.00 as interest accrued on the loans and finances assessed by the Plaintiff from March, 2012 to May, 2015.
5. The sum of N500, 000, 00.00 as generally damaged.
6. The sum of N5, 000,000.00 as cost of action.
7. 10% interest on judgment sum every month until the judgment sum is paid.
8. Any other order the Honourable court may deem fit to make in the circumstances.

The Defendant was served with Plaintiff's processes on the 04/11/2015 but the Defendants did not file any defence. The matter went to trial and the Plaintiffs called two witnesses tendered several Exhibits and they close their case.

However on the 2/06/2017 via an application, a certain Global Image Concept Ltd applied to be joined as a Plaintiff in the matter which application was granted on 23/10/2017.

I have carefully read the entire processes filed in this case as well as the Exhibits tendered in support of the claimants tendered in support of the claimants case. In the same vein,

I have listened to the evidence of pw1 and pw2 while testifying and I will turn my attention first to the 2nd Plaintiff. The basic question here is, has he proof that it has a cause of action against the Defendants. I doubt from the entire gamut of the pleading and the evidence adduce, there is no iota of facts linking the said 2nd Plaintiff and the contract given rise to the dispute. there is also no facts adduced linking the said 2nd Plaintiff with the Defendants. From the evidence of pw1 and pw2, all that is said of the 2nd Plaintiff vis a vis the Defendants is that the said 2nd Plaintiff obtained various loans which he advanced to the 1st Plaintiff which it use to execute the contract. The witnesses tendered various loan agreement between the 2nd Plaintiff and the person who loan it the money. The Defendants were not parties to the loan agreement and as such, there is no privity of contract between the 2nd Plaintiff and the Defendants. The 2nd Plaintiff therefore cannot sue the Defendants on the contact between them and the 1st Plaintiff. There is no tripartite loan agreement involving the Defendants, the 2nd Plaintiff and the person who loans the 2nd Plaintiff. Therefore, the 2nd Plaintiff, though having shown through the various Exhibits that he obtained loans which the 1st Plaintiff applied for the benefit of the Defendants, cannot sue the Defendants on the loan agreement as there is no

guaranty executed by the Defendants securing the loan. In matters of privity of contract, the principle is that a beneficiary of a contract to which he is not a party cannot sue on such a contract nor will a stranger to a contract sue to enforce it. See the cases of **Dunlop Pneumatic Tyre Co. Ltd V. Selfridge & Co. Ltd** (1915) A. C. 847 at 853; **Ikpeazu V. A. C. B. Limited** (1965) NWLR 374; **A. G. Federation V. A. I. C. Ltd** (2000) 6 S. C. (pt. 1) 175 and **C. A. P. Plc V. Vital Inv. Ltd** (2006) 6 NWLR (pt. 976) 200 C. A.

In the light of this I hold that the 2nd Plaintiff has no privity of contract with the Defendants. It cannot therefore sue the Defendants to enforce the contracts the subject matter of this suit. In fact in relation to the contracts, the 2nd Plaintiff is a total stranger.

Now the claim of the Plaintiff is in the realm of law of contract according to pw1, the Defendants entered into a contracts with the Plaintiff for various civil works namely:

1. N4, 320,768.00 for the rehabilitation No. 1 Inspector's Quarters at Kuje Barracks FCT Abuja.
2. N11, 674,113.85 for the rehabilitation of No. 1 Type II Police Station at Shanono, Kano State.
3. N11,674,113.85 for the rehabilitation of Police Station at filling Hockey Kano state.

In prove of this the pw1 tendered several Exhibits. It is the further evidence of pw1 that 1st Plaintiff executed the contract as stipulated in the contract agreement and upon completion the 1st Plaintiff handed over the completed work to the Defendants who have since taking over the subject matter of the contract and are enjoying same. In prove of these facts, the pw1 tendered as Exhibit before this court a handover letter.

According to the witness, when the Plaintiff finish the job and handed over same to the Defendants, the Defendants did not pay for the contracts. Prior to this, the witness gave evidence that upon completion of the job, the Defendants issued the 1st Plaintiff interim completion certificate vide a letter dated 2/04/2012 . he tendered the said letter and the interim completion certificate as an Exhibit in this court. The witness said, the Plaintiff made demand to the Defendants via various letters for the payment of the contracts sum vide various letters but to no avail. The witness tendered dated 19/03/2012, 18/02/2014 and various other letters indicating letters and correspondences between the Plaintiff and the Defendants indicating the demands for the contracts sum. This letter and correspondences were admitted in evidence as Exhibits in this court.

As I said earlier the Defendants did not proffer any evidence in counter to the evidence of pw1. The law is well settle that a Plaintiff will rely on the strength of his case and not on the weakness of the Defendant case in other to succeed. See the cases of **Ahmed V. Internal Affairs Minister** (2002) 15 NWLR (pt. 790) 239 @ 245 and **Ayeni v. Adesina** (2007) 7 NWLR (pt. 1033) 233 C. A. Also where evidence is proffer in a case by a party but the evidence is not challenge or contradicted by the other party, the evidence is admitted as the truth and the court is free to rely on same in reaching its decision see the cases of **Abacha V. Fawehinmi** (2000) NWLR (pt. 4) pg. 533 @ 602; **Nanna V. Nanna** (2006) 3 NWLR (pt. 966) pg. 1 @ 44. I hold that the evidence proffered by the pw1 in proof of the contracts and the accruing debt thereto is unchallenged and uncontroverted.

This evidence therefore is admitted and shall relied upon by this court in reaching its decision.

Where a Defendant is served with a claim of the Plaintiff from the court and the Defendant failed to defend the matter, he does so at his own peril. However, the burden of proof will still be on the Plaintiff to establish his case in order to get judgment in his favour. Now if the evidence adduced by the Plaintiff in this case sufficient to ground the case of the Plaintiff in order

to secure judgment in his favour in the face of the facts that the Defendants did not challenge the evidence by the Plaintiff? the law is well settle that he who asserts a state of facts must prove the assertion whether the other party challenge or filed a defence or not.

In other words, he who asserts must prove. See the case of **Nanna V. Nanna (supra)** at page 29. By the provision of law however, the burden of proof on the Plaintiff where the Defendant did not file a defence or challenge the evidence adduced is minimal and based on the preponderance of evidence see the cases of **Okpoko Community Bank Ltd V. Igwe** (2013) 15 NWLR (pt. 1376) 167 @ 183 – 184 Paras G – C and **Ozigbu Eng. Co. Ltd v. Iwuamadi** (2009) 16 NWLR (pt. 1166) 44 in the instant case, I hold that the 1st Plaintiff has discharge the onus on it.

From the Exhibits tendered, I am satisfied that the 1st Plaintiff was awarded the contract to rehabilitate 1 No. Inspector's Quarters Kuje Barracks FCT Abuja at the sum of N4, 320,768.00; 1 No. Type II Police Station at Shanono, Kano State at the sum of N11,674,113.85 ; and Police Station Filling Hockey, Kano State at the sum of N11,764,113.85. I am also satisfied from the evidence adduce before the court as well as Exhibits tendered that the 1st Plaintiff executed the

contracts and has handed over same to the Defendants who have since taken possession and have put same to their operational use. Yet still I am satisfied from the evidence before the court that the Defendants have not paid the 1st Plaintiff the contracts sum despite demands from the 1st Plaintiff. In the light of this I hold that the 1st Plaintiff is entitling to judgment on the contracts sum claimed.

1. The sum of N4,320,768.00 for the rehabilitation of 1 No. inspector's Quarters at Kuje Barrack FCT Abuja,
2. The sum of N11, 674, 113.85 for the rehabilitation of 1 No. Type II Police Station at Shanono, Kano State.
3. The Sum of N11, 674,113.85 for the rehabilitation of Police Station at filling Hockey, Kano State.

I shall now turn my attention to the other reliefs claimed by the Plaintiff. At paragraph 41(d) of the reliefs claimed by the Plaintiff. The Plaintiff claims the sum of N24, 283,000.00 as aggregate interest on the loans and finances assessed by the Plaintiff from March 2012 to May, 2015. From the nature of this relief, the claim is for interest predating the judgment of this court.

This claim in other words is a claim in special damages. A claim in special damages by the Plaintiff must be pleaded and the particulars supplied in the pleading of the Plaintiff.

The Plaintiff is also required to establish and strictly prove the claim. To strictly prove means that the Plaintiff should adduce cogent and credible evidence at the trial. As I said earlier the claim of interest by the Plaintiff in this case is as endorsed on the writ of summons and the statement of claim. It is a pre-judgment interest spanning from March, 2012 to May, 2015. As the name suggests, A pre-judgment interest is the interest claimed before the date judgment is entered by the court at the conclusion of the trial of the matter. The nature, rate and effective date of such interest are usually provided for by express or implied agreement of the parties, by known custom of the trade or transaction involved, or by law/ statute. This type of interest can only be awarded if it is supported by sufficient and satisfactory evidence adduced by the party claiming same. The legal duty is the party claiming same. The legal duty is therefore on the claimant of such interest to provide the evidence in proof of his entitlement to the interest as claimed. The interest can also properly be awarded under the principle of equity such a breach of a fiduciary relationship. See the cases of **Ekwunife V. Wayne (W. A); Royal Exchange Assurance Nigeria Ltd. V. Aswani Textile Industries Ltd** (1991) 2 NWLR (pt. 176) 639; **Hausa V. First Bank Of Nig. Plc** (2000) FWLR (pt. 29) 2516; **Ibro Hotels V. Hotel**

Support Services (2000) FWLR (pt. 16) 2748 @ 2762;
Veepee Industries Ltd V. Cocoa Industries Ltd (2008) ALL
FWLR (pt. 425) 1667, (2008) 13 NWLR (pt. 1105) 486 @ 513
and 514.

The position of the law as it relates to claims for interest is that interest may be awarded by the court in two distinct circumstances, namely, (i) as of right; and (ii) where there is a power conferred by the statute to do so, in the exercise of the court's discretion. Interest may be claimed as of right where it is contemplated by the agreement between the parties or under a mercantile custom, or under a principle of equity such as breach of fiduciary relationship. See the cases of **Texaco Overseas (Nig.) Unltd. V. Pedmar** (2002) FWLR (pt. 126) 885 and **I. T. B Plc V. K. H. C Ltd** (2006) ALL FWLR (pt. 292) 116; it is also the law that where an interest is claimed as a matter of right, the proper practice is to claim entitlement to it on the writ of summons and plead facts which show such an entitlement. However, as the statement of claim in law supersedes the writ of summons even if interest is not claimed on the writ of summons but facts are pleaded in the statement of claim and evidence given which show entitlement thereto, the court may, if satisfied with the evidence, award interest. See the case of **Daniel Holdings**

Ltd V. U. B. A Plc (2005) ALL FWLR (pt. 277) 895, the claimed of the Plaintiff in the sum of N24, 283, 000. 00K being a pre judgment interest is calculated on a principal sum at the pre judgment interest rates from the date the cause of action accrued, which in the instant case from the said head of claim is March 2012.

It is a claim of interest as of right. for that reason, on the authorities of the cases cited above, the Plaintiff has duty to provide sufficient and legally admissible evidence to prove its entitlement to it. The Plaintiff have claimed these said sum of N24,283,000.00, the Plaintiff have at paragraphs 14, 15, 16, 17, 18 and 19 of their affidavit averred to facts chronicling how the various loans were obtained by the 2nd Plaintiff and the interest that accrued therefore. In the evidence of Pw2, it can be gleaned that the said loans were obtained by the 2nd Plaintiff from various sources and the interest that accrued in the various loans ensure to the 2nd Plaintiff. Search as I have done through the Exhibits tendered by the Plaintiff I have failed to see any evidence that the various money allegedly collected by the 2nd Plaintiff was paid to the 1st Plaintiff. There is no document in evidence to show that the said loans were applied by the 1st Plaintiff in executing the Defendants job. The law has always remain he

who asserts must prove. The Plaintiff's assertion here is that they obtained the loans and applied same in executing the Defendants job but unfortunately there is no scintilla of evidence proving this assertion. All the Exhibits tendered to prove that loans were collected point to the facts that the loan contracts was between the 2nd Plaintiff and 3rd parties. There is no showing that the 1st Plaintiff was a party to the loans agreement. It is worse when regard is had that the Defendants were even mentioned in the entire Exhibits either as beneficiary or parties. I hold that not being a party to the loan agreement and there being not evidence pointing to the facts that the Defendants and the Plaintiff agreed in any party of the contracts agreement that loans will be obtained and used by the Plaintiff in executing the projects and interest accruing thereto ensuring to the Defendants, the Defendants cannot be hold liable to pay the pre – Judgment interest sum of N24, 283, 000.00. I refused to award this relief to the Plaintiff.

The Plaintiff also claimed the sum of N5, 000,000.00k as cost of this action. This head of claim is also in the realm of special damages. The onus is on the Plaintiff to plead same in its pleading, supplied the particulars and proffered cogent evidence in proof thereof. The instant Plaintiff did not only failed to plead facts justifying the claim in his pleadings, but

failed also to adduce any evidence in prove of the claim. I hold that the Plaintiff have not prove this claim and I hereby refused to award this claim.

In similar vein the Plaintiff claimed the sum of N500, 000, 000.00 as general damages. In their evidence, the Plaintiff through pw1 gave evidence that the Defendants were in breach of the contracts in their refusing to pay the contracts sum after it has executed the contracts and hand over same to the Defendants. I have carefully studied the contracts document as well as the Exhibits tendered in prove that the 1st Plaintiff has indeed executed the contracts as is entitled to be paid. I am satisfied that the Defendants are in breach of the said contracts and the 1st Plaintiff is entitle to some measure of damages which I access and award the sum of N10,000,000.00 as general damages. I also award 10% interest on the judgment sum per annum until the judgment sum is liquidated. And this shall be the judgment of the court.

APPEARANCE:

J. P. Aya Esq. for the 1st and 2nd Plaintiffs

The Defendants not in court and not represented.

Sign

Hon. Judge

04/07/2019