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/269/2014

BETWEEN:

RT. HONOURABLE IBRAHIM ISA BIO ..... **PLAINTIFF**

AND

EMMANUEL AGBO OGAH ..... **DEFENDANT**

JUDGMENT

DELIVERED ON 4TH JULY, 2019

This case was file via undefended list by the Plaintiff and later move to general course list. The Plaintiff file his statement of claim dated 27th May, 2015 prays the following reliefs viz:

1. The sum of $588, 593 (Five Hundred and Eighty Eight Thousand, Five Hundred and Ninety Three US dollars) being the amount owed to the Plaintiff by the Defendant.
2. 21% from 2012 Judgment until judgment is delivered.
3. 10% on the Judgment debt until final liquidation of same.
4. Cost : ₦ 5,000, 000 (Five Million Naira)

The fact of this case is contained in paragraph 3 – 25 of the Plaintiff statement of claim in the above paragraph the Plaintiff

categorically stated that the Defendant owed the Plaintiff the sum of $ 588, 593 (Five Hundred and Eighty Eight Thousand, Five Hundred and Ninety Three US Dollars) from the balance of money severally deposited with the Defendant for safe keeping.

On the other hand the Defendant file it statement of defence dated 12th June, 2015, in which the Defendant denied some of the averment of the Plaintiff in his statement of claim such are contained in 5 – 24 of the Defendant statement of claim.

Also attached to the statement of defence is counter claim by the Defendant against the Plaintiff and also two Exhibits.

On the June, 2016, The case was set for hearing and the Plaintiff open his case by taking one witness PW1 the Plaintiff himself and tendered 24 Exhibits and same was admitted and marked as Exhibit A1 – A24 Respectively.

On the 13th December, 2016 the Defence counsel cross examined the Plaintiff PW1 and tender 1 document through the PW1 and admitted and marked as Exhibit D1. And same date the Plaintiff closed his case and the court order the Defendant to open his defence.

On 13th November 2018 the Plaintiff course under Order 32 Rule of FCT Civil Procedure Rules urged the court to foreclose The Defendant who reneged to open his defence, same was

granted and Order the parties to file and adopt their written address and adjourned the case to 24/01/2019 on the returned date both parties file their written address and adopt same.

From the above facts of this case I will like to take the argument canvassed by both parties in their written address. It is the argument of the Defendant that in his written address dated 16th January, 2019 that:-

Defendant counsel submitted that the law is trite that a party who elicited evidence from a Plaintiff through answers to questions during cross examination which supports his case cannot be said to have abandoned his pleadings. See the case of **Akomolafe vs Guardian Press Ltd (2010) 3 NWLR PT 1181 at 351.**

That under cross examination the Plaintiff herein admitted that the transactions forming the subject matter of this dispute were all in cash. By this admission of the Plaintiff under cross examination, the Plaintiff admitted the contents of paragraphs 24 of the statement of defence. This admission which was extracted from the Plaintiff under cross examination supports the contents of paragraph 24 of the statement of defence. The bottom line or crux of this defence is that the funds involved in this transaction did not pass through any financial institution as

envisaged by section 1 of the Money Laundering Act 2004 and 2011.

Defendant counsel also submitted that assuming without conceding that the Plaintiff paid or gave the sum of $ 647,700.00 to the Defendant as alleged in the statement of claim. It is submitted that a calm perusal of paragraph 6 of the Plaintiff's witness statement on oath and the cross examination of the Plaintiff, will reveal that it is bereft of any fact to show that the said sum of $ 647,700.00 or the money being claimed herein was paid to the Defendant through a financial institution. That is by bank cheque or bank electronic transfer. No cheque or any document was tendered by the Plaintiff to show that this alleged transaction between the Plaintiff and Defendant passed through a financial institution. He referred the court to Section 1 of the **Money Laundering (Prohibition) Act 2004 and 2011 (which shall hereinafter be referred to as MLPA 2004 AND MLPA 2011 for short).**

Counsel contended that this is a clear admission that the money which the Plaintiff alleged that he gave the Defendant did not pass through a bank or any financial institution but cash. It is trite law that an averment in a pleading can be established by an admission by the other party (the Plaintiff in

the instant case). See the case of **Odebunmi vs Abdullahib** (1997) 2 NWLR Pt. 489 526 at 540. Therefore, the Plaintiff with profound respect cannot be correct when he submitted that evidence led by the Plaintiff is unchallenged and the Defendant's statement of defence is deemed abandoned or unproved. The law is trite that facts admitted needs no further prove.

The naira equivalent of the money which the Plaintiff alleged that the Defendant received from him and he is now claiming from the Defendant is N104, 465,000:00 (One Hundred and Four Million Four Hundred and Sixty-Five Thousand Naira). See paragraph 18 of the Plaintiff's witness statement on oath where the Plaintiff deposed thus:

> *"That the Naira equivalent of the sum owed by the Defendant at the prevailing Central Bank of Nigeria exchange rate at the time of filing the suit was N170/1.00 USD (One Hundred and Seventy Naira per one Dollar) is N 104,465,000:00 (One Hundred and Four Million Four Hundred and Sixty-Five Thousand Naira). Also, the Bureau De Change rate was N175/1.00 USD."*

That also the sum of N104, 465,000.00 which the Plaintiff herein alleged in his witness statement o oath that he gave to the Defendant and which he is now claiming from the Defendant is well above the cash transaction threshold of N500,000.00 set by Money Laundering Act 2004 and N5,000,000:00 set by the Money Laundering Law 2011.

The MLPA 2004 and 2011 not only makes cash transaction above N500, 000.00 or N5, 000,000:00 or its equivalent in any foreign currency which do not go through a financial institution, illegal. It also criminalizes such cash transactions, as in the instant case, in the sum of $ 647,700:00, which do not pass through a financial institution. Section 1 of the MLPA 2004 and 2011 prohibits the making of cash payment above N500,000:00 or N5,000,000:00 or equivalent by an individual as the Plaintiff herein without passing through a financial institution. The said MLPA 2004 and 2011 forbids the Defendant also from accepting any cash payment above N500, 000.00 and N5, 000,000.00 from the Plaintiff. By the said section 1 of the MLPA 2004 and 2011 it is mandatory that any cash payment by the Plaintiff to the Defendant in the sum of $588,593.00 or its equivalent or above N500,000.00 or N5,000,000.00 must pass through a financial institution. If the Plaintiff deposited or paid the sum of $588,593:00 to the Defendant as alleged in paragraph 6 of the Plaintiff witness statement on oath, this

contravenes the provision of section 1 of the Money Laundering Act 2004 and 2011. The Plaintiff himself under cross examination admitted that all the money given to the Defendant were in cash. This is exactly what the Money Laundering Laws frown at or prohibit. The transaction forming the basis of the Plaintiff's cause of action is not only illegal but is a criminal offence under the money laundering laws of the land. This court therefore has no jurisdiction to enforce it. The offence created under the MLPA 2004 and the MLPA Act 2011 was lucidly explained by the Court of Appeal Lagos Division in the case of **Federal Republic of Nigeria vs. Rt. Hon. Adeyemi Sabit Ikuforiji Appeal No CA/L/1046/2014.**

Counsel further stated that the purpose of citing all these authorities is to show to the court that it is a criminal offence for both the Plaintiff and the Defendant to either make or accept cash payments from each other without passing through a financial institution.

In the instant case where the transaction herein offends the provisions of the Money Laundering Act 2004 and 2011 and same is illegal which is unenforceable by this court. See the case of CITEC INT'L vs. EDICOMISA INT'L & ASSOCIATES (2017) 6 SC (Pt. 111) 36.

Counsel also contended that no evidence or facts was deposed to in the Plaintiff's witness statement on oath to show that this transaction passed through a financial institution so as to make it legal under the MLPA 2004 and 2011. Since this alleged transaction never went through a financial institution in accordance with the provision of section 1 of the MLPA 2004 and 2011, it is submitted with profound respect that this transaction is not only illegal but is also a criminal offence punishable under MLPA 2004 and 2011.

Counsel cited the Supreme Court in the case of **ONYIUKE III v. OKEKE (1976) ALL NLR 148 AT 153**

> *"it is the law that a contract is illegal if the consideration or the promise involves doing something illegal or contrary to public policy or of the intention of the parties making the contract is thereby to promote something which is illegal or contrary to public policy; and an illegal contract is void and cannot be the foundation of any legal right".*

Counsel finally urged the court to uphold the foregoing submissions and dismiss the Plaintiff's suit in the overall interest of Justice.

On the other hand, the Plaintiff filed final written address dated 30th November, 2018 and also a claimant's reply on point of law to the Defendant final written address dated 24th January, 2019 in the Plaintiff final courter address 3 issues were formulated for determination viz:-

1. Whether the Plaintiff is entitled to judgment as per his claims in the statement of claim having proved its case as required by law.
2. Whether the refusal of the Defendant to call any evidence in this case does not amount to admission of the Plaintiff's claimant.
3. Whether the claims of the Plaintiff is justified in the circumstances of this case.

Having state the background of this suit above I will like to start the resolution of the issues identified by the parties as calling for the determination by this Honourable court by first take the objection rise by the Defendant in this statement of Defendant for ease of reference I will like to reproduce same viz:-

a. The alleged transaction, which is the subject matter of this suit, never passed through any financial institution and same contravenes the provisions of section 1 of the money laundering act 2004.

b. The alleged transaction which is subject matter of the suit is tainted with illegality and at the trial of this suit, the Defendant shall rely on the latin maxim, "exturpi causa non oritur action.

c. The alleged transaction, which is subject matter of this suit, being illegal is not enforceable by any court in Nigeria.

I will like to produces the provision of section of money laundry provisions act of 2004 thus:-

"No person or body corporate shall, except in a transaction through a financial institution make or accept cash payment of a sum exceeding:-

a. N5,000,000.00 or its equivalent in case of an individual ; or

b. *N10, 000,000.00 or its equivalent in the case of a body / corporate."*

In answering objection A of the Defendant from the provision of the above section, I will like to take keyword in the provision of section 1 of MLA 2004 & MLPA 2011 viz:-

1. Through financial institute
2. Make or accept payment

Now the question is? **Whether there is a transaction through financial institution between the parties in this suit?**

On the 13th day of December, 2016 under the cross examination the following encounter ensued between the claimant and the defence counsel:-

Defendant counsel: In paragraph 5, you stated that you deposited the sum of $ 647,000 and €185, 500.00.

That you deposited these sum with the Defendant in cash, now these two sums did not pass any financial institute?

Answer: They did not pass any financial institution.

Now among other benefits or purposes of cross examination is to establish the case of the party under taking the cross examination through the mouth of his own opponent. This secured by eliciting evidence in pursuit of the case of the opponent. See the case of **MTN Communication Ltd v. Amadi** (2012) LPELR 21276 CA. Owoade J. C. A has this to say:-

> *"The purpose of cross examination is to test the veracity of a witness shake his credibility*

and elicit evidence in pursuit of the case of the opponent cross examination is a powerful and valuable weapon for the purpose of testing the veracity of a witness and the accuracy and completeness of this story."

See also the case of **Nzenwata v. Nzenwata** (2016) LPELR - 41089 CA.

To my understanding of section 1 of MLPA 2011, is that there must be a transaction through financial institution of payment or accepting of cash exceeding N5,000,000.00 for individual and N10, 000,000.00 for corporate.

Now in this case at hand Whether there is payment through financial institute by the Plaintiff to the Defendant what connote payment :-

Wikepedie the law Dictionary featuring Black's law dictionary free online legal dictionary 2nd edition defines payment to means:-

"Payment is the trade of value from party (such as person or company) to another for goods or services or to fulfill a legal obligation"

Also Wikidiff online dictionary define payment to means:-

> *"The act of paying a sum of money paid in exchange for goods or services."*

From the above definition of payment I find it very difficult in all the submission of the Defendant and cross examination to prove that there is payment from the Plaintiff to the Defendant through any financial institution exceeding the amount prohibited by section 1 of the money laundering Prohibition Act 2011.

The Defendant misunderstood the provision of section 1 of MLPA 2011 the key ingredient of the offence of laundering under section 1 of MLPA 2011 is:-

1. Transaction through financial institution
2. Payment or accepting cash exceeding N5, 000,000.00 to individual and N10, 000,000.00 for corporate.

This two ingredient never exist the relationship of the Plaintiff and the Defendant, There is no any transaction through financial institution nor payment of cash through the financial institute exceeding the approve amount by the section 1 of MLPA 2011.

At this juncture the objection so raised by the Defendant on section of money laundry act 2004 has failed and hereby resolved in favour of the Plaintiff against the Defendant.

On objection "B" without much belabored the Defendant raised issue of the Plaintiff collecting money from contractor which is forbidden by various statutes cited by the Defendant.

It is trite law that he who assert must proof in civil case and in criminal case is beyond reasonable doubt. See section 131, 132, 135, 136 and 137 of Evidence Act and see the case of **Adeyemo Onifade Vs. Muslim Raheem Oyedemi & Orss** (1999) 5 NWLR pt. 601.

Whether the Defendant allegation of collecting money from contractor by the Plaintiff have been proof by the Defendant against the Plaintiff.

Counsel to the Defendant under cross examination ask the pw1 thus:-

Defendant counsel: You have told this court that you are once a minister of transport that you are charge for the dreading of River Niger True or false?

Answer: I was a supervisor.

Defendant counsel: As at the time you are minister you are paid in Nigeria naira true or false?

Answer: Not true, because, when I traveled to Europe, we were paid in Dollars.

Defendant counsel: You are giving an amount to the Defendant to keep for you within 3 years, were you receiving alert?

Answer: I do received alert, but in kind of transaction does not required any alert.

From the background provided above and exhibit A23 , the Defendant did not in any way establish his allegation of the Plaintiff collecting or depositing money on his behalf by any contractors or to the Defendant, from all angle the Defendant failed to prove this allegation and this ground of objection resolved in favour of the Plaintiff against the Defendant.

Now I will like to take the remaining two grounds of objection together that is, C and D.

The Defendant alleged that the transaction, the subject matter of the case is tainted with illegality and relied on latin maxim of:- exturpi causa no oritua action.

Let me start with the general rules on the effect of illegality in contracts. The position of law is that a contract that is exfacie illegal will not be enforce by the courts, where the illegality is clearly apparent or evident

from the facts of the case. The court will not enforce a contract.

Illegal contract agreement to import or sell a prohibited product or an agreement to engage in any activities without permit see. **Ekwunite Vs. Wayne Wa** (1989).

The question that come to my mine is whether there is any transaction or contract between the Defendant and the Plaintiff .

What connote transaction or contract:-

Transaction is the act of transacting within or between groups as carrying on commercial activities. also

Transaction is defined by online your dictionary .com to mean "is an exchange, or an instance where business is done or something is bought or sold.

Contract is an agreement enforceable by law between two or more persons to do or obtain from doing some act or acts their intention being to create legal relationship and not merely to exchange mutual. see the principle and nature of law of contract in Nigeria 29th november, 2012.

Having states above from the averment in statement of claim of the Plaintiff is clearly shows that the subject matter of the suit is base on deposit of money by the

Defendant for safekeeping. see paragraph 5 of Plaintiff's statement of claim and also in exhibit A22 at paragraphs 4, 5, 15, 20 of the Defendants Statement of claim with suit No: FCT/HC/CV/3175/2013 establish the claim of the Plaintiff for money deposited for safekeeping with the Defendant. There is no any contract or transaction in furtherance of any illegal act, the relationship is purely fiduciary.

A fiduciary obligation exist whenever the relationship with client involves a special truest, confidence, and reliance on the fiduciary to exercise his discretion …… expertise in acting for the client. Also the fiduciary must knowingly accept that trust and confidence to exercise his expertise.

From the foregoing, having stated above on objection (A) that the vebs of section 1 of money laundering act 2004 did not catch-up within the Plaintiff claim, that answer the two objection C and D. The Plaintiff cause of action is purely on the fiduciary relationship between the parties which in law the Plaintiff have the right to institute civil action to recovered his money and ask for compensation for the loss occur from the act of the fiduciary party.

At this end firmly hold that this objection also failed and resolved in favour of the Plaintiff against the Defendant .

Having done with the objection raised by the Defendant now back to the main case at hand in doing so I will like to adopt the issue formulated by the Plaintiff in his final written address viz:-

1. Whether the Plaintiff is entitled to judgment as per his claims in the statement of claim having proved its case as required by law.
2. Whether the refusal of the Defendant to call any evidence in this case does not amount to admission of the Plaintiff's claimant.
3. Whether the claims of the Plaintiff is justified in the circumstances of this case.

Having earlier set the background of this case, I do need to go back to reproduce the claim of the Plaintiff, the argument canvassed in his written address, the bound of contention is whether the Plaintiff have prove his claim / case against the Defendant to warrant the grant of the reliefs sought, without much belabored with strength of the evidence so tender which the Defendant never challenged, I am with satisfaction that the Plaintiff prove his claim against the Defendant for money deposited for safe keeping with the Defendant.

It is glaring from exhibit A13, 14, 15, 16, 17, 18, 19, 20, 22, 23 and A24 the Plaintiff has establish his claim against the Defendant.

Relief 1 is hereby granted thus:-

1. The sum of $588,393 (Five Hundred and Ninety three Dollars) being the amount owed to the Plaintiff by the Defendant

Relief 2, 3 and 4 are hereby refused. I so hold.

Let me out of caution take the Defendant counter claim which stand abundant by the Defendant , the Plaintiff also filed reply to the statement of defence and counter claim. I will like to adopt the Plaintiff argument and the counter claim to answer the Defendant counter claim from the over warming evidence place by the Plaintiff, the Defendant claim has failed who knowingly accept to create a fiduciary relationship on trust and honest to collect and safe keep money of the Plaintiff, the Plaintiff has right to demand and collect his money back.

It is trite law that where party abandoned his claim without proving same is liable to struck out.

Having the Plaintiff establish his claim against the Defendant, the Defendant counter claim is bound to failed and it

hereby struck out accordingly. This is the judgment of this court.

APPEARANCE:

Badmos Dotun Esq. holding the brief of **Eyitayo Fatogun Esq.** for the Plaintiff.

Luis Ikongbeh Esq. for the Defendants

Sign

Hon. Judge

04/07/2019