

**IN THE HIGH COURT OF JUSTICE OF THE F.C.T.**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT KUBWA, ABUJA**  
**ON FRIDAY, THE 10<sup>TH</sup> DAY OF JANUARY, 2020**  
**BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA**  
**JUDGE**

**SUIT NO.: FCT/HC/CV/1929/19**

**BETWEEN:**

**CHIEF FRANKLIN EGOLUM**

**CLAIMANT**

**AND**

- 1. DR. BENOY BERRY**
- 2. CONTINENTAL TECHNICAL  
TRANSFERT COMPANY LTD.**

**DEFENDANT**

**JUDGMENT**

On the 17/5/2019, Chief Franklin Egolum instituted a Writ of Summons against the Defendants- Dr. Benoy Berry and Continental Technical Transfert Company Ltd. Meanwhile Dr. Benoy Berry is the Chief Executive Officer of the 2<sup>nd</sup> Defendant.

In the Writ the Claimant Claims for the following reliefs jointly and severally from the Defendants.

1. The sum of \$1,000,000.00 ( One Million US Dollars) being the balance due to the Claimant from the 1<sup>st</sup> & 2<sup>nd</sup> Defendants for Professional Legal services rendered to them at the Ministry of Interior and Ministry of Justice in respect of which both agreed on a fee of \$1.5 Million (US Dollars) out of which the sum of N200,000,000.00 (Two Hundred Million Naira) which represents \$500,000.00 (Five Hundred Thousand US Dollars) leaving unpaid the Claimed sum of \$1,000,000.00 (One Million US Dollars) or the Naira equivalent on the date of the payment.
2. Interest on the Claimed sum at 22% per annum from March 2015 until Judgment and thereafter at the interest rate of 10% until the entire sum is paid.

He filed the witness statement on Oath and statement of Claim. Because the Claim is predicated on liquidated money demand-debt on Professional service rendered, the Plaintiff also filed a motion asking the Court to enter Judgment Summarily for the Claimant since to him the Defendant have no Prima Facie defence to the case.

On the 17/5/2019 he also filed a motion to that effect. The said motion on notice was based on the following grounds:

That the Defendants/Respondents engaged the services of the Claimant and were paid N28 Billion Naira being the amount due to the Defendants/Respondents for the services they rendered to the Ministry of Interior (then Ministry of Internal Affairs).

That the Claimant applicant had earlier agreed with the Defendant/Respondents that the Applicant/Claimant's Legal fees shall be the sum of \$1,500,000.00 (One Million Five Hundred Thousand US Dollars) and the Defendant/Respondent paid \$500,000.00 (Five Hundred Thousand US Dollars) to Claimant

Applicant upon the recovery of the said N28 Billion Naira leaving as unpaid to the Claimant/Applicant the sum of \$1 Million US Dollars since 2015.

And that the Claimant then sent a Bill of Charges to the Defendants/Respondents as per the directives of the Court in Suit No: CV/1540/18. But the Defendants/Respondents have failed, refused and neglected to pay the said sum even though they did not dispute it.

The Claimant supported the motion with an Affidavit of 26 Paragraphs which he deposed to in person. He attached the Bill of Charges of the service he rendered to the 1<sup>st</sup> Defendant and his company, the 2<sup>nd</sup> Defendant that document is marked as Exhibit 1.

In the written address in support of the motion the Claimant though his Counsel, A. O. Maduabuchi SAN raised an issue for determination which is:

**“Whether in the circumstances of this case this matter should be heard under the summary Judgment”.**

The Counsel argued and submitted as follows: That whenever a Claimant files an action for a debt or liquidated money and believes that the Defendants does not have a defence to the action he will file alongside his claim a motion for Judgment in what is called Summary Judgment Procedure. That the main difference between Summary Judgment and undefended list procedure is that in Undefended list procedure applies only to liquidated money demands but does not include ordinary debts. That it allows for speedy trials and obviates the necessity for full blown trials where the Defendants have no real defence to the matter. He referred to the case of:

Bona Textile Ltd Vs. ATM Plc (2013) 2 NWLR (PT.1338) 357 @372

That Claim in this Suit is on the unpaid professional legal services rendered to the Defendants/Respondents at their instance and instruction.

That the level of work undertaken by the Claimant in the cause of the service are as detailed in the Affidavit in support of this motion as well as in the statement of Claim. That the Claimant as a “labourer” is entitled to his wages. That the 22% interest Claimed is as per the Central Bank of Nigeria rate, from the March 2015 till Judgment is delivered. And the other rate of 10% interest post Judgment is payable until the Final liquidation of the Judgment sum.

That as required the claimant had served the Bill of Charges. The Defendants receipted, acknowledged same and did not dispute same since the 29/3/19 when the said Bill of Charges was served on them. That since the Defendants did not disputed or challenge the service of the Bill of Charges, the said bill is assumed and deemed to be accepted by them. He laid credence in the case of:

CAP PLC VS. VITAL INVESTMENT LTD (2006) 6 NWLR (PT.976) 220@ 267

That the Claimant upon being briefed by Respondents rendered and dutifully caused out the assignment and ensured that the defendants were paid the sum of N28 Billion. That the Claimant sent his Bill of Charges to the Defendants/Respondents, a copy of which he attached as Exhibit 1. That the Defendants/Respondents received and acknowledged and accepted the said bill of Charges.

That upon receipt of the said Bill it became incumbent on the Defendant/Respondents to protest the Bill if they find it

objectionable. But that the Defendant did not object and they kept silent which means they have accepted the contents of the Bill of Charges.

That having not objected and as such have accepted the Bill, the only obligation left for the Defendants/Respondents is to pay the Claimant the said Bill as contained in the Bill of Charges. Hence this application. He urged the Court to enter Summary Judgment for the Claimant/Applicant.

COURT:

It is imperative to point out that the Defendants/Respondents were served with the Writ of Summons as well as the motion on Notice for Summary Judgment filed by the Claimant. The same 1 & 2 “ Defendants/Respondents were also served with the Hearing Notices showing that the matter is scheduled for hearing first on the 8/10/19 and subsequently on the 9/12/19. They did not enter appearance or file any statement of defence or counter Affidavit challenging the motion for summary Judgment. On the 2 days the matter came up for hearing, they did not also engage any Counsel or have any representatives from their office.

The Court went on to hear the matter as scheduled. It is important to reiterate that the Respondents/Defendants were served with the Writ and motion on since the 5/7/19. They were served the Hearing notice for the Hearing of the matter on the 4/12/19. The Court heard the matter on the 9/12/19, eventually.

It is the law that where a party served with an Originating Process fails to respond to such process, it is deemed that it has no defence. Again unchallenged facts contained in a document served on a party are deemed admitted once its obvious that the

Statutory period of service of the process has elapsed. So where that is the case the Court has a right and is duty bound to hold that such facts are deemed admitted. So nothing stops the Court from entering Judgment in favour of the party whose case is unchallenged.

So where a statement is made by another person to another in an action and where assertions of facts are made in such document served on the person and the party so served refuses, neglected and failed to challenge such facts, more so, when an ample time was given for it to do so, the failure to so challenge the said assertion of fact is traditionally and judicially deemed as admission of those facts. That means the party involved had accepted the facts and as such those facts remain unchanged and unchallenged and remains as the true position of things involved.

Where there is a debt and there is evidence to show the Defendant has no defence, and the Claimant had filed a motion for Summary Judgment against the Defendants showing facts in affidavit to support that and attached evidence in form of documents in support, the Court has the right after due consideration to grant such motion once it is meritorious. Where that is the case, the Court will not hesitate to enter Judgment Summarily for the applicant.

To merit such summary Judgment the applicant must have filed a Writ of Summons, statement of claim and witness statement on oath as well as pre-action Certificate. He must also file a motion for summary judgment stating facts and reason why Court should grant such motion and enter judgment summarily on his behalf and his favour.

Such judgment makes for speedy trials and saves quick dispensation of Justice the Court necessity of full hearing and call of evidence and witness especially where it is very obvious the Defendant has no real defence to the case.

Summary Judgment when sought and granted is for disposal of a case which is uncontested. It makes for treating a case with utmost dispatch. For Summary Judgment to stand it must be where there is no iota of doubt that the Claimant is entitled to Judgment going by the facts in the affidavit and the documents attached in support of those facts if any. For Summary Judgment to stand it must be such that it is highly inexpedient to allow the Defendants to defend the Suit. It is meant for straight forward and quick dispensation of Justice and not for purpose of devour, crafty and delay of wheel of Justice. That is the decision of the Supreme Court in the case of:

Lewis Vs UBA PLC (2016) 6 NWLR (PT.1514) 329@389-399

Summary Judgment is granted on Claims where there is no genuine issue of material facts upon which the Claim is anchored in which there is basically no defence against and upon which the applicant is entitled to prevail as a matter of Law.

What the Court considers where there is an application for Summary Judgment is the content of the pleadings, the motion for Summary Judgment and the facts and exhibits attached in support and any additional fact adduced by the parties for and against, in order to determine whether there is a genuine issue of material facts rather than law. Where the Court after due consideration of all these feels that there is genuine issues based on those material facts it will grant the application and enter Judgment Summarily. The procedure is followed and allowed for

speedy disposition of controversy devoid of the rigours to go into trial of the case. That is the decision of the Supreme Court in the case of:

Bona Textile Ltd Vs. ATM PLC (2013) 2 NWLR (PT.1338) 357 @372

It is the law and had been held in plethora of cases in all our Courts that it is incumbent on a party served with a process to respond to that process if he so wish. Again the same Courts of our land had variously held that the failure to respond to such process means admission of all the facts contained thereon. Such facts are deemed and remain unchallenged and undisputed. That is the decision of the Court in case of:

CAP PLC VS VITAL INVESTMENT LTD (2006) 6 NWLR (PT.976) 220@276.

Once a party fails to respond or reply as case may be, it means such party has no defence to the case of the facts as contained in a document served on that party; more so where such document if a letter needs a reply.

Again where there is acceptance of a document by a party and the document is not disputed or questioned by the recipient, it means the said recipient had accepted the document and its content, and as such he is bound by it.

Also agreement between parties and acceptance of the content of a document served on a party can be deciphered as acceptance by such conduct.

So agreement between parties are not only valid when penned down in paper, it can be deciphered by their conduct and body language. See the case of:



Co-op Dev. Bank Plc Vs Ekanem (2009) 16 NWLR (PT.1168)  
585@601

In this case the Defendant/Respondents were served with the writ and motion for Judgment. They were equally served with Hearing notices showing when the matter is scheduled for hearing. They were served with Bill of Charges filed by the Claimant/Applicant. But for reasons known only to them, they did not respond to the letter of Bill of Charges or Countered the motion for Summary Judgment or even entered appearance in pen and paper or flesh and blood.

For not doing so this Court holds that they have nothing to say and have admitted all facts in both the writ, statement of claim and Affidavit in support of the application for Summary Judgment.

The Court also hold that they do not challenge and therefore has accepted the reliefs sought in the motion for Summary Judgment too since they did not file any Counter to challenge it.

The content of the Bill of Charges which the Defendant received and acknowledged on the 29/3/19 is not strange on them. The said Bill is titled:

“Enclosed is copy of Bill of Service rendered by me to you and your company.”

The above document was dated 28/3/19. It was also address to

“The managing Director/CEO Continental Transfert Company Ltd.”

It is important to reiterate that the Managing Director/CEO who the document is address to is the 1<sup>st</sup> Defendant/Respondent in this Suit, Dr. Benoy Berry. The Company is the 2<sup>nd</sup> Defendant/2<sup>nd</sup> Respondent in this Suit.

The said Bill was sent by Egolum & Egolum & Co where the Claimant is the Principal.

A closer look at the Bill also confirm the averment that N200,000,000.00 equivalent of \$500,000.00 US Dollars was paid to the Claimant through the Defendants Lawyer- Paragraph 17 Affidavit in support. The said bill also spelt out the details of the payment and the amount paid and when it was paid as well as the outstanding balance of \$1,000,000.00 US Dollars equivalent of N340, 000,000.00 yet to be paid.

The Bills also stated how and where the Bill was arrived at in the London residence/house of the 1<sup>st</sup> Defendant. It concluded that the Claimant will take action after one month if the Defendants fail to pay him. That he did by filing the present action when Defendants failed to pay.

As the Counsel for Claimant had stated, a labourer is worth his wages. It is not in doubt that the Claimant laboured to ensure that the instruction given to him by the Defendants were carried out to the later to ensure that the Defendants received their money N28 Billion from the Ministry of Interior and Ministry of Justice.

He no how deserve to be paid his wages which is the professional fee for services he had rendered. The Defendant has not challenged that fact. The Claimant had as law abiding citizen and a professional followed due process by serving the Defendant with the Bill of Charges where he spelt out in great details the money paid and the outstanding balance owed to him by the Defendant.

This Court has no reason not to grant the said application seeking for summary judgment having granted the motion as sought.

No doubt the Claimant deserved the summary judgment of this Court as sought. This Court grant that and this Court also hereby grants the reliefs sought to wit:

That the Defendants pay to the Plaintiff the sum of \$1,000,000.00 US Dollars being the outstanding balance due to the Claimant, Chief Franklin Egolum from the Defendants, Dr. Benoy Berry and Continental Technical Transfert Company Ltd, for professional Legal services rendered to the 1<sup>st</sup> & 2<sup>nd</sup> Defendants at the Ministry of Internal Affairs ( now Ministry of Interior and Ministry of Justice in respect of which both parties agreed on a fee of \$1,500,000.00 US Dollars out of which N200,000.00 (Two Hundred Thousand Naira) which represented \$500,000.00 (Five Hundred Thousand US Dollars) was paid to Claimant leaving the said outstanding Balance the said \$1,000,000.00 US Dollars, unpaid.

(2) 1<sup>st</sup> & 2<sup>nd</sup> Defendants to pay to the Plaintiff interest of 12% per annum from March 2015 until this day that Judgment is delivered .10/1/2020.

The Defendants are also to pay 7% interest on the said Judgment sum from this Day of Judgment until final liquidation of the entire sum.

**This is the Judgment of this Court. Delivered today the ----- day of -----2020.**

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**K.N. OGBONNAYA**

**HON.JUDGE**

