

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT KUBWA, ABUJA
ON THE 16TH DAY OF JANUARY, 2020
BEFORE HIS LORDSHIP: HON. JUSTICE K.N. OGBONNAYA
JUDGE
SUIT NO:FCT/HC/CV/1903/19

BETWEEN:

OSHOPO OSITADINMA } ----- APPLICANTS
AND

1. GREEN WORLD NATURAL SOLUTION INT'L LTD
2. MR. ZHO ZHAOYU (STEPHEN) FORMER MANAGING DIRECTOR GREEN WORLD NATURAL SOLUTION } ----- DEFENDANTS
3. MR. RYAM MANAGING DIRECTOR GREEN WORLD NATURAL SOLUTION ABUJA BRANCH.

JUDGMENT

On the 14/9/19 the Plaintiff – Oshopo Ositadinma filed this Suit against Green World Natural Solution International Limited, Mr. Zho Zhaoyu (Stephen) former Managing Director of the 1st Defendant, Mr. Ryam current Managing Director of the 1st Defendant. He also filed a Motion Exparte and Motion on Notice. In the Writ he is seeking for the following:

- 1. A Declaration that the arrest and detention of the Plaintiff for 3 days by the Nigeria Police at State SCIID Calabar on the instruction of the 2nd Defendant is unlawful, unconstitutional and gross violation of the Plaintiff's Fundamental Right.**

- 2. An Order directing the Defendants jointly and severely to pay to the Plaintiff the sum of Nineteen Million, Six Hundred and Five Thousand, Eight Hundred Naira (N19, 605,800.00) only being the sum total for the product not supplied to the Plaintiff by the Defendant.**
- 3. An Order directing the 2nd Defendant to pay to the Plaintiff the sum of Hundred Million Naira (N100, 000,000.00) only as general damages and exemplary damages against the 2nd Defendant for the violation of the plaintiff's Fundamental Right to the personal liberty.**
- 4. An Order directing the Defendants jointly and severely to pay to the Plaintiff the sum of Twenty One Million Naira (N21, 000,000.00) only being the amount for the award of Three Star Manager.**
- 5. The sum of Two Million Naira (N2, 000,000.00) only as cost of this Suit.**
- 6. Omnibus Prayer.**

As already stated the Plaintiff filed a Motion Exparte for an Order of Interim Injunction. The Exparte application was for restraining the Defendant, their privies, servants, Agents or other person acting for them or on their behalf from further selling or marketing the products from the Defendant's production line pending the hearing and the determination of the Motion on Notice for Interlocutory Injunction.

The Experte application was based on the ground that the Defendants are in violation of the Right of the Applicant by selling and marketing their products without supplying the products the Plaintiff/Applicant had paid for worth **Thirteen Million, Seven Hundred and Twenty Four Thousand, Sixty Naira (N13, 724,060.00)** as at 2014. That the Application continue to incur damages due to the action of the Defendants.

The Plaintiff Counsel had asked for accelerated hearing but Court did not grant same as at that time.

The 1 & 3 Defendants were served personally and the 2nd Defendant was ordered to be served through the 1 & 3 Defendants as the service on 1st Defendant suffices as service on the 3rd Defendant since the life of the company is continuum even after the exit of its management personnel.

The bottom line is that all the Defendants were served with the Process filed Plaintiff and Hearing Notices showing the days the matter was scheduled for Hearing.

On the 4/11/19 this matter came up and the Plaintiff and his Counsel were in Court, the Defendants were not in Court. They did not engage any Counsel to stand for them. They never filed any Memorandum of Appearance or any Process in Defence.

It is no secret that any fact which are uncontroverted remains strong and are deemed admitted.

The Plaintiff Counsel had on the 4th November, 2019 asked for an adjournment to ensure that the Defendants are notified about the next adjourned date and to see if they can enter appearance and file any defence. The Court granted it. But all Defendants did not come to Court even as a mark of respect.

The Plaintiff Counsel who was in Court applied that the Court enter Judgment on their behalf based on the provision of the Rules of this Court – Order 10 Rule 5 & Rule 9; Order 21 Rule 9 since the Defendants have not entered appearance as Plaintiff is not expected to wait for the Defendant in perpetuity.

This Court after considering the said application adjourned the case for Judgment but had issued an Order that the Defendant should show cause why the Court should not grant the Application by Plaintiff Counsel for Court to enter Judgment in their favour. The Defendant have failed to show cause.

On the ----- day January, 2020 when the Court wanted to deliver the Judgment, the Defendant appeared in Court with soul aim of

arresting the Judgment. The Court gave them audience and adjourned to enable the Defendant enter appearance and file any defence but they did not file any. Court adjourned to 16/1/20 without filing any defence to the Suit of Plaintiff.

Today this Court has no reason not to follow the due process of law to ensure that Justice is not denied the right person as Justice delayed does no good to the Parties, the Court and the Public. Hence this Judgment on the 10/1/20.

COURT

It is the law that as provided by the Rules of this Court **Order 10** the a – z of what the Court can do where a Defendant fails to appear before the Court where such a Defendant have been served with the Originating Process. For clarity the provision of **Order 10 Rule 5** states:

Order 10 Rule 5 FCT High Court Rule 2018:-

“When the claim in Originating Process is for pecuniary damages or for detention of goods with or without a claim for pecuniary damages, and the Defendant or any of the Defendants fail to appear, a Claimant may apply to the Court for Judgment. The value of the goods and damages or damages only as the case may be shall be ascertained in such a manner and subject to the filing of such particulars as the Court may direct before Judgment for that part of the claim.”

It is also imperative to state verbatim the provision of **Order 10 Rule 12**

“In all claims not specifically provided for under this Order, where the party served with the Originating Process does not appear within the time prescribed, a Claimant may proceed as if appearance had been entered.”

It is on record that the Defendants were served with the Originating Processes filed by the Plaintiff. They were equally served with the Hearing Notice everyday this matter was scheduled to be heard. The endorsement and return and Affidavit of the Bailiff shows that the Defendants were served with the items. But till date the Defendants have not entered appearance. They have not equally filed any Process in defence even after the Court had suspended the delivery of the Judgment on the 13/12/19.

It has been held that where there is nothing to put on the other side of the imaginary Judicial Scale the standard of proof which is ordinarily on a balance of probabilities is automatically reduced. Facts uncontroverted are deemed admitted. The Plaintiff in this Suit had alluded to several facts in the Statement of Oath of the two (2) Witnesses and Statement of Claims as well. He had attached documents; the Defendants were served but had not challenged the claims as set out therein. They have also not entered appearance. They have not in any way challenged the facts, or claims of the Plaintiff.

Facts not contended or challenged are deemed to have been implied admitted, more so where the Defendant had not entered appearance. This is the decision of the Supreme Court in the case of:

Cappa D'alberto V. Akintilo

(2003) 27WRN 1

It is imperative to also state verbatim the provision of **Order 21 Rule 9 FCT High Court Rule 2018:-**

“In all action other than those in the preceding Rules of this Order, if the Defendant(s) make default in filing a defence, the Claimant may apply to the Court for Judgment and such Judgment shall be given upon Statement of the Claim as the Court SHALL consider the Claimant to be entitled to.”

The above provision of the Rules is very clear and need no further elucidation.

It is also important and worth of mention the provision of the **Order 21 Rule 12:-**

“A Judgment by default whether under this Order or this Rules shall be final and remain valid and may only be set aside upon application to the Court ... upon such term as the Court may think fit.”

All the Defendants particularly the 1 & 3 Defendants have not filed any defence in this Suit. It is important to note that in the dispute the Plaintiff have alleged that it deed business – sale of product of the 1st Defendant. The 3rd Defendant is the current Managing Director of the 1st Defendant. The 2nd Defendant who had travelled to China was the Managing Director of the 1st Defendant when the Plaintiff had the transaction with the 1st Defendant. There is no doubt that the Plaintiff dealt with the 1st Defendant and the 2 & 3 Defendants were only Officers of the company.

The documents attached by the Plaintiff speak for themselves. The Plaintiff was determined as stated in the Statement of Claim at the instruction of the 2nd Defendant who invariably acted for on behalf and in the interest of the 1st Defendant. The same 2nd Defendant and invariable on behalf of the 1st Defendant whom he worked for and served as its Managing Director ensured that the Plaintiff was forced to do the undertaking – EXH 3.

The same 2nd Defendant witnessed for the 1st Defendant. This further shows that he is part and parcel of the 1st Defendant and that it is the 1st Defendant that the Plaintiff had business transaction with.

Again a closer look at the undertaking made by the Comfort Ojinika on the 30th day of November 2014 in Calabar, where she undertook to pay Ten Million Naira (N10, 000,000.00) only to the 1st Defendant after the illegal, unlawful and unconstitutional arrest and detention of the Plaintiff, shows clearly that the dealing the Plaintiff had and

the humiliation suffered was with and from the 1st Defendant. The 2nd Defendant as the Managing Director of the 1st Defendant as at that period of time was only the face of the 1st Defendant just as the 3rd Defendant is currently the face and mouth piece of the 1st Defendant.

In the 1st paragraph of the undertaking it states:

“Today 30th day of November, 2014, I the above named entered into an undertaking that I will pay the sum of Ten Million Naira (N10, 000,000.00) only to Green World Natural Solution Kano State Branch This money will be paid on behalf of one Ositadinma Oshopo (Plaintiff) who happens to owe the company the above amount since 2012.” (emphasis mine)

The above clearly shows who pays what, to whom and for what purpose. Every action taken was for and on behalf of and the benefit of the 1st Defendant, whom the Plaintiff has dealings with and who the 2nd & 3rd Defendants work for. The other documents attached puts no one in doubt as to the role and status of the 2nd Defendant and the benefit accrued to the Plaintiff in the business he had with the 1st Defendant.

A closer look at the 2nd paragraph of the undertaken for the payment of the Ten Million Naira (N10, 000,000.00) only for the “BAILOUT” of the Plaintiff shows that upon payment of the said Ten Million Naira (N10, 000,000.00) the 1st Defendant should fulfill its own obligation. The said paragraph states:

“It has also been agreed that as soon as this money is paid the Green World Natural Solution (1st Defendant) will immediately pay to Ositadinma Oshopo his house Fund Award.”

The Plaintiff, going by the averment in paragraph 13, 14 & 15 of his Statement of Claim stated that all attempt to pay the money proved abortive as the 1st & 3rd had refused to fulfill their obligation under

the undertaken which they voluntarily entered into. All attempts made had been thwarted by 1st Defendant by reason best known to it.

The Defendant have by their action denied the Plaintiff the House Fund Award there by refusing to fulfill their own side of Bargain as per the undertaken. The principle of Pacta Sunt Sevarande provides that parties are bound by the contract they entered into. They are bound to fulfill their respective obligation therein. The Plaintiff fulfilled his own obligation by the payment of the Ten Million Naira (N10, 000,000.00) but the Defendant failed to fulfill theirs. Defendant did not deny that fact though they were given ample opportunities to do so.

Notwithstanding the humiliation and the fact that the Plaintiff had already to fulfill his obligation under the undertaking, the 1st Defendant had continued to frustrate and deny the Plaintiff the fruit of his success. Most importantly, they have continued to do their deductions and at the same time withhold the awards which the Plaintiff had by the business agreement with them earned and merited.

Notwithstanding the same denial, the Plaintiff had painstakingly ensure that he meet and have an outstanding performance in the sale and marketing of the 1st Defendant products, yet the Defendants continue their humiliation and denial of the fruit of his hard work.

They are even withholding the sum of **Thirteen Million, Seven Hundred and Twenty Four Thousand, Sixty Naira (N13, 724,060.00)** as at 2014 but worth **Nineteen Million, Six Hundred and Five Thousand, Eight Hundred Naira (N19, 605,800.00)** in today's market value. All attempt made by the Plaintiff to ensure the Defendants fulfill their obligation to him after the undertaking payment of Ten Million Naira (N10, 000,000.00) failed as I stated earlier. The Defendant are indebted to the Plaintiff and they know it.

The Plaintiff had raised the issue of violation of his constitutionally guaranteed fundamental right to personal liberty and freedom of movement. In that he was detained in Calabar for 3 excruciating days at the SCIID at the instruction and instigation of the 2nd Defendant who invariably was working for the 1st Defendant at that time.

It is a constitutional provision that no citizen shall be detained beyond a period of 48 hours (Forty Eight Hours) without being taken to High Court. The 1 – 3 Defendants in this Suit did not do so rather they decided to use the Police as a Debt Recovery Agency which they are not.

Signing of the Undertaking at the Cross River State CIID clearly shows that the Police was used as a Debt Recovery Agency. There is no provision in the Police Act that empowers them to act as such. There is also no constitutional provision to that effect too.

There is also no decision of the Court that empowers the Police to so act. The Defendants are not empowered to do so either. Having so humiliated the Plaintiff by the long incarceration at the Police Station for a period longer than the law provide shows that the Defendants violated the Plaintiff's right to Personal Liberty and Freedom of Movement as well as dignity of his human person.

One can imagine how the Plaintiff who had gone to Calabar had come based on the invitation of the Defendants to come for an award only for him to be arrested and detained at the SCIID and released 3 days after the hellish time in the Police dungeon. That action violated the Plaintiff's right to freedom of movement, personal liberty and dignity of his human person. See:

Order II FREP. S. 34 & 35, 41 & 46, 1999 Constitution as Amended.

It is the law that once a person establishes that any of his Rights under the ***CAP 4 of the 1999 Constitution as Amended*** has been, is been or likely to be violated, such person is entitled to

compensation from the Defendants. See S. 46 1999 Constitution as amended.

The Plaintiff has also been able to establish his claims and the Defendants has not in any way challenged the said claim. The Plaintiff deserve the Relief sought, since those rights were violated by Defendants.

This Court therefore hereby enter Judgment in his favour since his case stands unchallenged.

- (1) It is therefore hereby Declared and Ordered that the arrest and detention of the Plaintiff for 3 days by the Nigeria Police at the State CID Calabar on the instruction of the 2nd Defendant who works and acts on the instruction of the 1st Defendant in this Suit is unlawful, unconstitutional and very gross violation of the Plaintiff's Fundamental Right as enumerated in this Judgment.**
- (2) The 1 – 3 Defendants jointly and severely are Ordered to pay to the Plaintiff without further delay the sum of Nineteen Million, Six Hundred and Five Thousand, Eight Hundred Naira (N19, 605,800.00) only being the sum total for the products not supplied to the Plaintiff by the Defendants.**
- (3) The Defendants is hereby Ordered to pay to the Plaintiff the sum of Five Million Naira (N5, 000,000.00) only as general and exemplary damages for the violation of the Plaintiff's Fundamental Right to as stated above.**
- (4) The 1st Defendant is hereby Ordered to pay Plaintiff the sum of the appropriate amount of money for the and in accordance with their company policy for the full amount for the award of Three Star**

Manager. This payment SHALL be within Twenty One (21) Days of this Judgment or so soon after. In addition the Defendant shall tender unreserved apology in writing to the Plaintiff for the humiliation he received by the violation of his Fundamental Right.

This is the Judgment of this Court.

Delivered today ----- day of ----- 2020 by me.

JUSTICE K.N. OGBONNAYA
HON. JUDGE