

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY OF
NIGERIA
HOLDEN AT ABUJA
ON FRIDAY 14TH DAY OF FEBRUARY 2020
BEFORE HIS LORDSHIP:HON. JUSTICE O. A. ADENIYI
SITTING AT COURT NO. 14 APO – ABUJA**

SUIT NO: FCT/HC/CV/591/2019

BETWEEN:

KOLAWOLE OLOWOOKERE
*(Trading under the name and style of
Kolawole Olowookere & Co.)*

CLAIMANT

AND

ATTORNEY GENERAL OF THE FEDERATION
AND MINISTER OF JUSTICE

DEFENDANT

JUDGMENT

The Claimant commenced the instant action under the Undefended List Procedure of this Court vide Writ of Summons filed on 12/12/2019, whereby he claimed against the Defendant the reliefs set out as follows:

- 1. An Order of this Honourable Court directing the Defendant to pay to the Claimant the sum of \$21,550,000.00 (Twenty-One Million, Five Hundred and Fifty Dollars) only or its Naira equivalent being the agreed value of 5% success fee for actual recovery made and remitted to the account of the Federal Government of Nigeria domiciled with the Central Bank of Nigeria.**
- 2. The sum of ₦10,000,000.00 (Ten Million Naira) only being damages for breach of contract.**
- 3. Post Judgment interest at the rate of 10% per annum on the judgment sum until the judgment is fully liquidated.**
- 4. The sum of ₦10,000,000.00 (Ten Million Naira) only being the cost of this action.**

In support of the action, the Claimant deposed to an Affidavit of 44 paragraphs to which a number of documents were attached as exhibits.

It is borne by the records of the Court that the Defendant was duly served with the originating processes in this action on 12/12/2019, the same day the Writ was filed. The records further bear out that the Defendant was subsequently served with hearing notice of the scheduled hearing date on 07/02/2020.

On the date scheduled for hearing, the Defendant failed to turn up; neither was he represented by learned counsel. He equally failed to file a Notice of Intention to Defend this suit pursuant to the provisions of **Order 35 Rule 3(1)** of the **Rules** of this Court or any processes whatsoever in response to the Claimant's claim.

The Court heard the suit as an undefended action on 12/02/2020. Suffice to note that at the hearing, the Claimant's learned counsel withdrew **relief (2)** of the Claimant's claim; not being a relief for liquidated money demand cognizable under the Undefended List Procedure of the Court. Accordingly, **relief (2)** of the Claimant's claim is hereby struck out.

The summary of the case of the Claimant, as gathered from the affidavit deposed in support of the Writ of Summons, is that upon his application to the Defendant *vide* letter dated 9th August, 2016, copy of which is attached to the Affidavit in support as **Exhibit A**, he sought to be appointed as a Recovery Agent for the Federal Government of Nigeria in view of the fact his client, one **Alhaji Abdallah Dauda**, had information which could lead to the recovery of sums of

money in the range of **\$500,000,000.00 (Five Hundred Million Dollars)** only, which funds were stashed in secret accounts in both **Skye Bank Plc** and **First Bank of Nigeria Plc**.

In response, the Defendant, by letter dated 12th August, 2016, appointed the Claimant law firm as a Recovery Agent in respect of Assets Recovery Services, on behalf of the Federal Government of Nigeria. A copy of the said letter of engagement is attached to the Affidavit in support as **Exhibit B**.

By the said letter of engagement, it was agreed that the Claimant shall trace, track, freeze and recover funds purportedly secretly held by **NNPC BRASS LNG INVESTMENT ACCOUNT** domiciled with **First Bank Plc** in **Account No. 2011104669** with a credit balance of

\$468,444,611.64 (Four Hundred and Sixty-Eight Million, Four Hundred and Forty-Four Thousand Dollars and Sixty-Four Cents) only; and funds held by Patience Jonathan, domiciled with Skye Bank Plc, in Account No. 2110001712, with a credit balance of \$5,000,000.00 (Five Million Dollars) only, as claimed by the Claimant.

By the said letter of engagement, **Exhibit B**, the Defendant offered to pay to the Claimant as success fee/professional fees, an amount representing **5%** of the actual recoveries made and remitted to the designated accounts of the Federal Government of Nigeria with the **Central Bank of Nigeria**; which fees shall be deemed to cover all fees and expenses incurred by the Claimant and any agent(s) or associates contracted by the firm in the course of the recovery exercise.

As required by the letter of engagement, **Exhibit B**, the Claimant firm conveyed its acceptance of the offer to the Defendant *vide* letter dated 16th August, 2016, copy of which attached to the Affidavit in support as **Exhibit C**.

By the said letter of engagement, **Exhibit B**, paragraph 3(x) thereof, it is provided that the instruction issued to the Claimant by the said letter shall be valid for a period of **six (6) months** only; but that the same could be renewed subject to the Claimant's outstanding performance. In this regard, at the expiration of the first **six (6) months** of issuing **Exhibit B**, the Claimant wrote letter dated 13th February, 2017, to the Defendant to request for renewal of the instruction; which request the Defendant formally granted by letter dated 28th February, 2017. Copies of both the request letter and the Defendant's response

thereto were attached to the Affidavit in support and marked as **Exhibits J** and **K** respectively.

In the course of the recovery exercise, the Claimant, through the office of the Defendant, sought the assistance of the office of the Inspector General of Police to facilitate the recovery of the funds, which eventually led to the recovery, in the first instance, of the sum of **\$325,000,000.00 (Three Hundred and Twenty Five Million Dollars)** only lodged in the said **NNPC Brass LNG Investment Fund Account** domiciled with **First Bank Plc**, which said sum **First Bank Plc** purportedly credited to the Federal Government Treasury Single Account domiciled with the **Central Bank of Nigeria**; but that the **Central Bank of Nigeria** only confirmed receipt of the sum of **\$275,000,000.00 (Two Hundred and**

Seventy Five Million Dollars) only from **First Bank Plc** in the Federal Government account domiciled with her.

In view of the foregoing, the Claimant, by letter dated 2nd March, 2017, written to the Defendant, demanded for **5%** of the actual sum of **\$275,000,000.00** confirmed by the **Central Bank of Nigeria** to have been recovered from the said **NNPC Brass LNG Investment Fund Account** domiciled with **First Bank of Nigeria Plc**, being the sum of **\$13,750,000 (Thirteen Million, Seven Hundred and Fifty Thousand Dollars)** only. Copy of the said letter is attached as **Exhibit M** to the Affidavit in support.

By a letter dated 20 March, 2017, copy of which is attached to the Affidavit in support as **Exhibit N**, the Defendant wrote to the Governor of **Central Bank of Nigeria** to confirm receipt of the amount of

\$325,000,000.00 claimed by **First Bank of Nigeria Plc** to have remitted to the **CBN** as a result of the recovery efforts of the Claimant with the active assistance of the Inspector General of Police.

In his response to **Exhibit N**, the **Governor of Central Bank of Nigeria**, by letter dated April 4, 2017, copy of which is attached to the Affidavit in support as **Exhibit O**, wrote to the Defendant to confirm that the **CBN** indeed received a total sum of **\$275,000,000.00** from **First Bank Plc** in tranches of **\$75,000,000.00** on October 28, 2016; **\$50,000,000.00** each in two tranches transferred on November 18, 2016 and January 4, 2017 respectively; and **\$100,000,000.00** transferred on January 10, 2017.

The Claimant further stated that after a period of back and forth, the office of the Inspector General of Police, by letter

dated 28th July, 2017, confirmed to the Defendant that so far a total sum of **\$431,000,000.00** had been recovered and remitted to the Account of the Federal Government of Nigeria with the **CBN** by **First Bank Plc.** A copy of the letter is attached as **Exhibit X.**

On the strength of the letter, **Exhibit X**, the Claimant wrote series of letters to the Defendant to pay the **5%** of the sum recovered so far as the agreed success fees.

On the basis of the Claimant's requests, the Defendant wrote to the **Hon. Minister of Finance**, by letter of 20th September, 2018, authorizing and directing payment of the sum of **\$23,500,000.00** to the Claimant, as **5%** agency fee of the sum recovered. Copy of the said letter is attached to the Affidavit in support as **Exhibit DD.**

Rather than the Hon. Minister heeding the request and directive of the Defendant, by letter dated 5th October, 2018, she requested for additional documents reflecting the full extent of the recoveries made by the Claimant. Copy of the letter is attached as **Exhibit EE**.

It is also pertinent to state that in the course of the engagement between the Claimant and the Defendant, the Defendant had cause to write to His Excellency, the **Vice President** of the Federal Republic of Nigeria, **Prof. Yemi Osinbajo, GCON, SAN**, who, at the material time doubled as the **Acting President** of the Federal Republic of Nigeria, to intimate him of the developments with respect to the recoveries and also to seek approval for the payment of the recovery fees as demanded by the Claimant. Copy of

the said letter is attached to the Affidavit in support as **Exhibit S**.

In his response, by letter dated 20 July, 2017, copy of which is attached to the Affidavit in support as **Exhibit U**, the **Acting President**, although silent on the issue approval as requested by the Defendant in **Exhibit S**; however raised concerns as to why the entire sum was not recovered; and further inquired to know the efforts of the Defendant at identifying and prosecuting individuals and corporate entities responsible for the “**hiding**” of the discovered funds.

From the totality of the gamut of materials placed before the Court, I am not in doubt that the Claimant has satisfactorily established his rightful entitlement to the liquidated sum he claims from the Defendant, for the

recovery work done and in accordance with the terms and tenor of the letter of offer, **Exhibit B**. I so hold.

The law is well known that on the date fixed for hearing of a matter placed under the Undefended List Procedure, all that the Court is required to do, where a Defendant files Notice of Intention to defend to which an affidavit disclosing a defence on the merit is attached, is to consider whether indeed the affidavit discloses *prima facie* defence, and if so, to transfer the suit to the General Cause List to be heard by pleadings; and where the Court refuses to give the Defendant leave to defend the suit; or the Defendant neglects to deliver or file a Notice of Intention to Defend as required, the Court shall be obliged to enter judgment in favour of the Claimant. See the provisions of **Order 35 Rules 3** and **4** of the **Rules** of this Court. See also *Joel*

Okunrinboye Export Co. Ltd. Vs. Skye Bank Plc. [2009] 6 NWLR (Pt. 1138) 518(SC); MC Investments Limited Vs. Core Investments & Capital Markets Limited [2012] LPELR-7801(SC).

In the instant case however, the Defendant has filed no processes to be weighed against the case already made out by the Claimant. In the circumstances, the Claimant is entitled to judgment for the liquidated sum claimed. I so hold.

Without any further ado, I hereby enter judgment in favour of the Claimant against the Defendant upon the following terms:

- 1. The Defendant is hereby ordered to pay to the Claimant the liquidated sum of \$21,550,000.00 (Twenty-One Million, Five Hundred and Fifty Thousand***

Dollars) only or its Naira equivalent being the agreed value of 5% success fee for the actual recovery made and remitted to the Account of the Federal Government of Nigeria domiciled with the Central Bank of Nigeria from the recovery exercise undertaken by the Claimant at the instance of the Defendant.

2. Interest on the judgment sum in (1) above at the rate of 5% per annum from the date of this judgment until the same is finally liquidated.

3. Costs of this action, in the sum of ₦500,000.00 (Five Hundred Thousand Naira) only, payable by the Defendant to the Claimant.

OLUKAYODE A. ADENIYI

(Presiding Judge)

14/02/2020

Legal representation:

I. G. Ogugua, Esq. (with Moses Awuru, Esq.) – for the Claimant

Defendant unrepresented by counsel