

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE NYANYA JUDICIAL DIVISION
HOLDEN AT NYANYA ON THE 22ND DAY OF MAY, 2020
BEFORE HIS LORDSHIP, HON. JUSTICE U. P.KEKEMEKE
SUIT NO: FCT/HC/ CV/2788/17

COURT CLERK: JOSEPH BALAMI ISHAKU & ORS.

BETWEEN:

1. JUST UNIQUE BOUTIGUECLAIMANTS

2. KENNETH AIGBOGUN



AND

JAMES EGAH NDEYE ESQ.....DEFENDANT

JUDGMENT

The Claimant's Writ of Summons and the Statement of Claim is dated and filed on the 31/08/17.

It prays for the following reliefs:

1. An Order compelling the Defendant to forthwith refund the sum of N2 Million given to him for onward transmission to the Kalawa Jankaro family in a bid to facilitate an out of Court settlement in Suit No. FCT/HC/CV/43/17 which sum was withheld for 58 days and he failed to inform the said family or hand over same to the family.
2. A declaration that the Defendant's failure to call a meeting of the Kalawa Jankaro family at least 24 hours from the time of receipt of the N2 Million for the purpose of facilitating settlement out of Court of Suit No. FCT/HC/CV/43/17 contrary to the agreement between the Claimant and the Defendant amounts to breach of agreement.
3. A declaration that the Defendant's act of not disclosing receipt and handing over to the Kalawa Jankaro family the sum of N2 Million meant for the said family is an act unbecoming of a Legal Practitioners.
4. N15 Million general damages.

The Defendant was served with the Writ of Summons and Statement of Claim on the 12/10/17.

He failed, refused and or neglected to file a defence.

That he was further served with a hearing notice on the 25/01/19.

On 22/05/18, the Claimants opened their case and called only one witness.

He is Aigbogun Kenneth. He stated that he made a Witness Statement on Oath on the 31/08/17.

He adopted it as his oral testimony. In the said statement on Oath, he states as follows:

The Claimant was allocated Plot of land known and described as Plot 1849 Cadastral Zone C12 Kubwa District, Abuja.

The Claimant made attempt to clear it and build a perimeter fence to secure same but was stopped by the Kalawa Jankaro family led by one Markus Apmatozon. They said they are the indigenous natives that has customary ownership of the said land.

The said Kalawa Jankaro family do not have any valid title yet went ahead to file a Suit No. FCT/HC/CV/43/17.

Claimant decided to amicably resolve the matter despite the fact that they are able to defend the Suit. The Defendant was the Counsel of the Kalawa Jankaro family.

The 2nd Claimant on behalf of the Claimants gave the sum of N2 Million to the Kalawa family through their attorney, the Defendant which said sum ought to be delivered within 24 hours of receipt in order to foster settlement and consequently end Suit No. FCT/HC/CV/43/17. The Defendant's assurance to call for a meeting of the Kalawa Jankaro family in less than 24 hours from the receipt of the said sum of N2 Million to disclose the payment of the money and the handover of same to the Kalawa Jankaro family in their presence made him to hand over the money to the Defendant.

The members of the Kalawa family who later met them on the Plot of land in issue said they were not aware and was not given N2 Million or any sum whatsoever by the Defendant to settle the Suit No. FC/HC/CV/43/17 out of Court.

A call was put through to the Defendant by Markus Apmatozon in their presence and in the presence of the Kalawa family and he refuted the claim of having received N2 Million or any sum from him on behalf of the 1st Claimant for the purpose of settling the Suit out of Court.

The Claimant thereafter requested the Kalawa family to invite the Defendant who is their lawyer to the site where they were all gathered.

The Defendant eventually showed up at about 6:30 p.m.

That Claimant's Counsel Daniel Iorker Esq asked Defendant to confirm if he received the sum of N2 Million from the Claimant for onward transmission to the Kalawa Jankaro family on the 20/06/17.

The Defendant confirmed receiving the said sum and also said he had not communicated same to his client the Kalawa Jankaro family two months after the receipt of the said money.

The Defendant called for an adjournment of the matter to save his face and they all agreed.

The meeting was convened at around 9:30 p.m the same day and a vote of no confidence was passed on the Defendant by the Claimant as he was seen as a person who could not aid the settlement desired.

He therefore requested for the refund of the sum of N2 Million given to the Defendant for transmission to the Kalawa Jankaro family.

The Defendant failed to refund the said sum.

The Claimant tendered the following Exhibits.

Exhibit A – Writ of Summons, Statement of Claim and Exhibits dated 17/05/17.

Exhibit B – Receipt for N2 Million in the name of the Witness dated 20/06/17.

Exhibit C – Acknowledged copy of letter dated 21/08/17 address to Defendant.

The Defendant failed, refused and or neglected to cross-examine the CW1 or enter his defence despite the service of hearing notice. His right to cross-examine and enter his defence was therefore foreclosed.

The Claimant's Counsel adopted his Final Written Address dated 24/01/19 and raised one issue for determination.

It is whether the Claimants have proved their case on the preponderance of evidence to warrant the grant of the reliefs sought in this Suit.

Learned Counsel canvasses that the Claimants have proved their case on the preponderance of evidence hence the claim should succeed.

That the evidence of the lone witness of the Claimant has not been controverted.

That the Defendant breached the agreement to hand over the sum of N2 Million which he promised to hand over to the Kalawa Jankaro family to aid settlement of the Suit filed by the said family against the Claimants.

The Defendant breached Rule 23 (1) and (2) of the rules of Professional Conduct for Legal Practitioners 2007.

That the time to report and account for the N2 Million is 24 hours of the receipt of the money as agreed between Defendant and the Claimant.

That the Defendant abused and took advantage of his client.

That from the evidence and exhibits the Claimant has proved their case on the preponderance of evidence and is therefore entitled to judgment.

I have read the only evidence available.

I have also considered the Written Address of Counsel.

In ***OWNERS OF M/V GONGOLA HOPE & ANOR. VS. SMURFI CASES NIG. LTD. & ANOR. (2007) LPELR – 2849 SC***, the Supreme Court held:

“...also firmly settled, is that where the evidence of a Plaintiff is unchallenged and uncontroverted and particularly, where the opposite party or side, had the opportunity to do so, it is always open to the trial Court seised of the matter, to accept and act on such unchallenged and or uncontroverted evidence before it.”

See ***ODULAJA VS. HADDARD (1973) 11 SC 357.***

ISAAC OMOREGBE VS. LAWANI (1980) 3-7 SC 108 at 117.

In ***OKEREKE & ANO. VS. ABA NORTH LGA (2014) LPELR – 23770***, the Court held per Rhodes Vivour thus:

“It is well settled that where evidence given by a party in proceedings is not challenged by the adverse party who had the opportunity to do so, the Court ought to act positively on the unchallenged evidence before it.”

In ***MILITARY GOVERNOR OF LAGOS STATE & ORS. VS. ADEBAYO ADEYIGA & ORS. (2012) SCM on 183 at 211***.

It was held:

“The evaluation of evidence in the instant Suit before the trial Court was based on the unchallenged evidence of the Plaintiffs/Respondents. The position of the law where evidence is unchallenged or uncontroverted is that such evidence will be accepted as proof of a fact it seeks to establish. A trial Court is entitled to rely and act on the uncontroverted or uncontradicted evidence of a plaintiff or his witness. In such a situation, there is nothing to put or weigh on the imaginary scale of justice. In the circumstance, the onus of proof is naturally discharged on a minimum proof.”

In the instant case, the evidence is that the Claimant gave the Defendant N2 Million to aid the out of Court settlement of a Suit pending in Court in which he is the Claimants Counsel.

He failed to transmit the said amount to his Client the beneficiary neither did he disclose that he received such an amount until exposed.

The Claimants wrote a letter demanding for the refund but the Defendant failed, refused and or neglected to do so. The above evidence is unchallenged and uncontroverted.

There is nothing on the side of the Defendant in the imaginary scale of justice.

The Claimants have therefore discharged the onus of proof placed upon them by law and are therefore entitled to Judgment.

Judgment is entered in favour of the Claimant against the Defendant as follows:

1. The Defendant is hereby ordered to refund the sum of N2 Million to the Claimants forthwith which sum was given to him for the purpose of aiding an out of Court settlement of a land Suit.
2. The Defendant is further ordered to pay N200,000.00 to the Claimants as general damages.

.....

HON. JUSTICE U.P. KEKEMEKE

(HON. JUDGE.)

22/05/20