

**IN THE HIGH COURT OF JUSTICE OF THE F.C.T.**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT KUBWA, ABUJA**  
**ON TUESDAY, THE 15<sup>TH</sup> DAY OF MAY, 2020**  
**BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA**  
**JUDGE**

**SUIT NO.: FCT/HC/CV/1355/19**

**BETWEEN:**

1. AL-NAJAH NIGERIA LIMITED } ----- PLAINTIFFS  
2. ALHAJI ABUBAKAR IMAM } -----

**AND**

UNITY BANK PLC } ----- DEFENDANT

**JUDGEMENT**

On the 19<sup>th</sup> day of March 2019, Al-Najah Nigeri Ltd and Alhaji Abubakar Iman instituted this Originating Summon against Unity Bank of Nigeria PLC. In it they want the Court to resolve the following questions which are:

- (1) Whether the plaintiffs are entitled to the interest waiver granted by the Defendant to the indebtedness owed to the Defendant?
- (2) Whether Defendant is not in breach of the waiver granted to it following the payment of Four Million

Naira (~~₦~~4, 000,000.00) and medical evidence of the 2<sup>nd</sup> Plaintiff as the final settlement of the Plaintiffs following the Defendant letter of the 7<sup>th</sup> day of November, 2017?

- (3) Whether the Defendant can claim that they have sold the Plaintiffs' debt to a unit in part of the Defendant's bank in 2017 while still giving the plaintiffs a go ahead to pay the Four Million Naira (~~₦~~4, 000,000.00) as full and final settlement of the indebtedness?

He asked the Court to grant the following Reliefs:

- (1) An Order declaring that the Plaintiffs are not indebted to the Defendant in any form or shame.
- (2) An Order of this Court restraining the Defendant, their agents, associates, representatives, cronies or anybody by whatever name called acting for or on behalf of the Defendant demanding or claiming any debts from the Plaintiffs.
- (3) A Declaration that the Plaintiffs have settled their indebtedness in full to Defendant.
- (4) A Declaration that the Defendant give full account of the Plaintiffs monies in the Defendant's bank.
- (5) A Declaration that the Defendant releases all the Plaintiffs documents concerning the indebtedness.

The Plaintiffs supported the application with an Affidavit of 23 paragraphs deposed to by the 2<sup>nd</sup> Plaintiff. They attached several documents – EXH ALN 1 – 5. Defendant filed a Preliminary Objection. They also filed a Counter Affidavit in opposition to the Suit of the Plaintiffs.

This Court has just dismissed the Preliminary Objection filed by the Respondent challenging the case of the Plaintiff.

In the application in the main the Plaintiff had raised the three (3) questions which the Plaintiffs want the Court to consider and after the full determination of same, answer the question in their favour and grant them all the Reliefs which are consequent upon the Court's determination.

The Court had at the beginning of the Ruling which forms part of this Judgement listed out the questions and the consequential orders.

The Plaintiffs had supported this application with an Affidavit of 24 paragraphs which is deposed to by the 2<sup>nd</sup> Plaintiff in person.

In the Written Address the Plaintiffs raised a question for determination which is:

**“Considering the totality of the facts as deposed to in the Originating Summons vis-a-vis the exhibits EXH ALN 3, the questions for determination are sought to be resolved in favour of the Plaintiffs thereby granting all the Reliefs sought by the Plaintiffs”.**

The Plaintiffs submitted referring Court to the Supreme Court case of:

**Kaydee Ventures V. Minister of FCT & or  
(2010) 7 NWLR (PT. 1192) 171**

That by EXH ALN 3 attached in support of this Originating Summons shows that there is a contract between the parties in this Suit.

According to the Plaintiff he was given a contract for the drilling of bore-hole by the Lower Benue River Basin Authority sometime in 2006. He was required to present a bond if he will like to have 25% mobilization fee of the contract paid up front. He contacted the Defendant who gave him the bank bond on terms and conditions agreed by the parties. He could not meet up with certain terms and condition because the Lower Benue River Basin Authority failed to pay as at when due. Coupled with that he became sick and was hospitalized at the National Hospital. He realized that the interest rate has mounted up to Eight Million Naira (₦8, 000,000.00) and that the bank – Defendant were threatening him. So what he did was to instruct his lawyer to write the bank for a waiver. His Counsel wrote, there were communication between his Counsel and the bank both in writing, face to face meeting, telephone conversation and SMS messages. The parties agreed for a waiver and the bank asked the Plaintiffs to pay Four Million Naira (₦4, 000,000.00) as full and final settlement. They paid initially One Million Naira (₦1, 000,000.00). The bank acknowledged that in writing and

eventually the Plaintiffs paid a cheque of Three Million Naira (₦3, 000,000.00) as per the instruction of the bank and agreement of the parties as shown in EXH ALN 5. The Plaintiffs also sent documentary evidence to show that the 2<sup>nd</sup> Plaintiff was sick and hospitalized.

The Plaintiffs attached a photocopy of the cheque of Three Million Naira (₦3, 000,000.00) which was paid as far back as the 28<sup>th</sup> day of November, 2017 based on the letter of the bank dated 7/11/17. All these documents were contained in EXH ALN 5.

The Defendant had promised to write to the Plaintiffs concerning the full payment as final settlement of the debt. But it failed to do so since the 28<sup>th</sup> day of November, 2017 when the Three Million Naira (₦3, 000,000.00) was credited as instructed by the Defendant.

Based on the long and unusual silence on the part of the Defendant the Plaintiffs instructed their Counsel to write to the Defendant after several oral solicitations. The instruction of the Plaintiffs were to notify the Defendant that they are not indebted to the Defendant in any way. This comes as a backdrop of the letter of the Defendant to Plaintiffs which is:

**“Notice of Assignment of Loan and Loan Right”** dated 11/9/17 in which the Defendant claimed to have Sale and Purchase Agreement dated 26/5/17 between Defendant and Frontier Capital Alternative Assets Ltd (FAAL).

The Plaintiffs complained that they were surprised to receive the said letter after they had held meetings with the Defendant in July to November 2017 acceding to the Four Million Naira (₦4, 000,000.00) offer as full and final settlement of the Plaintiffs' indebtedness to Defendant.

In the same letter the Plaintiffs' Counsel had pointed out to the Defendant that the Plaintiffs are no longer indebted to the Defendant as they have settled the debt owed to Defendant. They told the Defendant to comply with the agreement of the parties within 21 days of the receipt of the letter – 10/11/18 to 1/12/18 the Four Million Naira (₦4, 000,000.00) having been agreed as the full and final settlement of the indebtedness to them.

The Defendant failed to comply so the Plaintiff instituted this action against them.

In submission to the sole Issue raised in the Written Address in support of the Originating Summons, the Plaintiffs stated that the Defendant is bound by the terms of the agreement voluntarily entered into by the parties and that they cannot renege or resolve from the terms and condition except for good and genuine reasons. That they made an offer to them on interest waiver through letters between 2014 – 2015. That the Defendant agreed to the waiver of interest and for then, Plaintiffs to pay Four Million Naira (₦4, 000,000.00) through the letter of the 7<sup>th</sup> day of November, 2017 – EXH ALN 3. That the Defendant had reneged from the condition they agree to adhere to. That they have made the said payment for over one year

waiting for Defendant to respond but they told Plaintiffs that they are still working on it which never come, only for them to write that the Defendant have assigned the debt to Frontier Capital Alternate Asset Limited (FCAAL). They relied on the following cases:

**JFS Investment Ltd V. Brawal Lime Ltd  
(20100 18 NWLR (PT. 1225) 495**

**Texaco Overseas Nigeria Ltd V. Rangk Ltd  
(2008) LPELR – 9850**

They urged the Court to grant the application.

Upon receipt of the Originating Summons, the Defendant filed a Counter Affidavit of 14 paragraphs deposed to by Fatima Abba Umar.

In it they confirmed the existence of the performance bond but had claimed that Plaintiffs failed to settle the debt till date. They also referred to and confirmed the offered waiver of Eight Million Naira (₦8, 000,000.00) which they claimed Plaintiffs failed to accept it. They confirmed the initial payment of One Million Naira (₦1, 000,000.00) and Three Million Naira (₦3, 000,000.00) respectively and the Plaintiffs request for a total waiver which the Defendant promised to process. That the Defendant never entered into any agreement of waiver with the Plaintiffs.

The Defendant raised an Issue for determination in the Written Address filed in support of their Counter Affidavit in opposition to the Originating Summons which is:

**“Whether the Plaintiffs has proved their allegations on the balance of probability as to be entitled to the Reliefs sought”?**

They submitted that Plaintiffs failed to discharge the burden placed on them by law under **S. 131 EA 2011** which requires them to provide evidence of proof of entitlement on such legal right in order to be so entitled. That the Plaintiffs are required to prove their case with admissible and credible piece of evidence.

That Affidavit of the Plaintiffs failed to meet and fulfill the preconditions for admissibility. That paragraphs 1 – 19 of the Affidavit are heresy from his lawyer. That the said paragraphs violates provision **S. 115 (2), (3) & (4) EA 2011** and as such is inadmissible and unreliable.

That if the Court thinks otherwise that paragraph 8 – 10 of the Plaintiffs’ Affidavit constitutes admission that Plaintiffs failed to accept the waiver offer extended to them by Defendant. That facts admitted requires no further proof. They referred to **S. 20 and S. 27 EA 2011** as well as the case of:

**Veepee Industries Ltd V. Cocoa Industries Ltd  
(2008) 7 MJSC 125 @ 138 – 139 paragraph G – A**

That Plaintiff failed to produce any agreement with Defendant where the Defendant agreed to any waiver/concession. That EXH ALN 3 cannot constitute any agreement as it did not state that waiver has been granted or that the Four Million Naira (~~N~~4, 000,000.00) paid by

Plaintiffs was accepted as full and final settlement of the Plaintiffs indebtedness. That Plaintiffs should not read into Defendant's letter what is contained therein expressly.

They submitted that the cases of **Kaydee Ventures V. FCT Minister & ors and Texaco V. Rangk Ltd as well as JFS Investment Ltd V. Brawal Lime Ltd (Supra)** cited by Plaintiffs are all irrelevant because these cases were decided on agreement clearly and unambiguously entered into by parties in those cases; which is not same as in the present case as there was no offer and acceptance. They referred to the case of:

**BPS Construction & Engineering Ltd V. FCDA  
(2017) 1 MJSC (PT. 2) 12 @ 134 – 135**

That **EXH ALN 3** cannot constitute an acceptance of offer. That the letter merely required 2<sup>nd</sup> Plaintiff to pay what he claimed was available and also make evidence of his hospitalization so as to enable Defendant process 1<sup>st</sup> Plaintiff request for total waiver.

That averment in paragraph 7 of Affidavit of Plaintiffs that payment in respect of the contract was made into 1<sup>st</sup> Plaintiff's Account which Defendant is not supported by any credible evidence.

They urged the Court to so hold and dismiss the Plaintiffs case for lacking in merit.

**COURT:**

After the summary of the submissions of the parties for and against, can it be said that Plaintiffs have established their case on the balance of probability and as such the Court should grant the claims/reliefs as sought?

Or can it be said that Defendant had controverted and greatly challenged the case of the Plaintiff in its Counter Affidavit so much so that the Court should not grant the Reliefs and as such should dismiss the case? Was there any contract of waiver between the parties in this Suit that the Court should hold that there exists a contract agreement in that the parties are bound by the terms and conditions and that any party that resiles or reneges should be held responsible and therefore civilly indicted? Taking the question from the rare.

It is the humble view of this Court that there is a contract between the parties as it pertains to the waiver.

This is so because going by letter of the 7<sup>th</sup> day of November, 2017 EXH ALN 5, letter of the 8<sup>th</sup> day of November, 2018 and letter of 21<sup>st</sup> day of November, 2018; it is not disputing that there was an agreement as reflected in the letter of 7<sup>th</sup> day of November, 2017 as it pertains to the waiver. In the said letter EXH ALN 5 it states thus:

**“Following your letter ... requesting for interest to allow your client Al-Najah Nigeria Limited ..... to pay the sum of Four Million Naira (N4, 000,000.00) as full and final settlement of your indebtedness to the Bank ...”**

From the above the Defendants were in the know about the offer and acceptance and the existence of such arrangement between the parties as regards the waiver.

Meanwhile the letter which is from the Defendant is captioned:

**“RE: Interest Waiver Granted  
Al-Najah Nig. Ltd – 233/1301731/1/201 CBD Branch”**

From the caption it is clear that there is also in existence Interest Waiver granted to Plaintiffs as at the date of the letter.

The said letter of the 7<sup>th</sup> day of November, 2017 went on to states as follows:

**“We acknowledge receipt of the One Million Naira (N1, 000,000.00) Manager’s Cheque into the clients account and request that the remaining Three Million Naira (N3, 000,000.00) be paid into their account with the Bank as well as documentary evidence on the health status of the client.”**

From the above it is clear that there was already in existence an agreement which had culminated in the instruction to pay the One Million Naira (N1, 000,000.00) which the Plaintiffs had paid and the same existing agreement culminated into the specificity of the payment of Four Million Naira (N4, 000,000.00) part of which was paid – One Million Naira (N1, 000,000.00) and the receipt acknowledged by the Defendant in the letter of 7<sup>th</sup> November, 2017.

It was based on that agreement that made the Defendant ask the Plaintiff to also pay the remaining Three Million Naira (~~₦~~3, 000,000.00) as they have done by the payment of One Million Naira (~~₦~~1, 000,000.00) which the Defendant acknowledged in the letter.

Going by the said letter based on the existing agreement, the Defendant also asked the Plaintiffs to send the documentary evidence on the health status of the 2<sup>nd</sup> Plaintiff.

Hear them:

**“We request that the remaining Three Million Naira (~~₦~~3, 000,000.00) be paid ... as well as documentary evidence on the health status of your client ...”**

There was an agreement between the parties. It was that agreement in existence that made the Defendant ask for the payment of the remaining Three Million Naira (~~₦~~3, 000,000.00) and also for the documentary evidence of the health status of the 2<sup>nd</sup> Plaintiff. To that, it will, as the Defendant put it in the later part of the letter:

**“... this will enable us proceed FURTHER with your request; taking into consideration of the reported ill-health of the client which hindered the payment of the PREVIOUSLY GRANTED WAIVER IN 2014.”**

**(emphasis mine)**

The above shows that there is a previous agreement when a waiver was granted as clearly highlighted above – “...

**hindered the payment of the previously granted waiver in 2014.”**

It also shows that there is a new waiver based on the agreement of the parties. There was an older agreement of waiver. That agreement is different from the present agreement. It is based on the present agreement that Defendant asked Plaintiffs to furnish them with the health status documentary of the 2<sup>nd</sup> Plaintiff to enable them proceed further by the phrase **“proceed further”** means that the Defendant had already taken steps in the agreement and that the payment of the Three Million Naira (~~₦~~3, 000,000.00) which is the part of the Four Million Naira (~~₦~~4, 000,000.00) agreed will help them seal the deal.

The part of the statement in paragraph 2 of the letter is to the effect:

**“... to pay Four Million Naira (~~₦~~4, 000,000.00) as full and final settlement of your indebtedness to the bank ....”**

says it all. There was an agreement in which the issue of the sum of Four Million Naira (~~₦~~4, 000,000.00) was reached and agreed before the Plaintiffs were asked or when they paid the One Million Naira (~~₦~~1, 000,000.00). If the Defendant had not agreed with the Plaintiffs, would they have asked the Plaintiffs to pay only Three Million Naira (~~₦~~3, 000,000.00) after they had paid the initial One Million Naira (~~₦~~1, 000,000.00) which is totally different from this one on which the EXH ALN 5 was premised? That

waiver agreement was made in 2014. It is different from the present waiver.

If there was no previous agreement as to the amount, the Defendant would not have asked the Plaintiffs to pay the remaining Three Million Naira (~~₦~~3, 000,000.00). Of course there was an existing agreement between the parties. So this Court holds.

It is imperative to state that an agreement between parties must not always be in writing before it can be said there exists a binding agreement or contract.

An agreement can be deciphered from the action or inaction of parties thereto. Contract or Agreement can be also deciphered by the “body language” of the parties which manifest in their action with each other.

So the content of EXH ALN 5 speaks for itself and clearly shows that there is actually in existence an agreement between the parties in this Suit on which the EXH ALN 5 was premised. The Defendant knows it and cannot deny that.

Again the chequer of Three Million Naira (~~₦~~3, 000,000.00) made in the name of the Defendant further shows there was an agreement. The Plaintiffs did not just raise that amount out of the blues.

There was an agreement and the Defendant knows it. The Defendant cannot renege or resile from it and any breach is an actionable wrong. The Defendant also knows that the

payment was for the full and final settlement of the said indebtedness.

The Defendant cannot also deny the existence of an agreement for waiver with the Plaintiffs because the Plaintiffs fulfilled the other condition which is to attach the documentary evidence of the health status of the 2<sup>nd</sup> Plaintiff to enable the Defendant further process the agreement. The Plaintiffs sent the document to the Defendant as requested together with the Three Million Naira (₦3, 000,000.00) Manager's Cheque. The plaintiffs did that waiting for the Defendant to fulfill its own side of the obligation. But the Defendant failed to do so. The Plaintiffs had also in their Affidavit in support pointed out to the Defendant through phone calls, face to face meeting with the Defendant Personnel/Officer and through SMS and letter EXH ALN 5 notified the Defendant that they are still waiting for the Defendant.

Rather than respond by fulfilling their own side of the bargain, the Defendant wrote to the Plaintiffs to tell them about their agreement with FAAC by sending the Notice of Assignment of Loan to Federal Capital Alternative Asset Limited (FCAAL) where Defendant claimed they sold Plaintiffs' debt in an agreement dated 26/5/17 within the time when the same Defendant had meeting with the Plaintiffs between July – November 2017 according to the offer for payment of the said Four Million Naira (₦4, 000,000.00) which they had acknowledge receipt of the One Million Naira (₦1, 000,000.00) and requested Plaintiffs

to pay the remaining Three Million Naira (~~N~~3, 000,000.00) as contained – EXH ALN 4.

The Defendant denial in their Counter Affidavit is not acceptable because it is an afterthought. Even the branch manager spoke to the Plaintiffs and or his lawyer. She sent the number of Babatunde the Head of Debt Collection to the Plaintiffs/Plaintiffs' Counsel.

Meanwhile Fatima Abba Umar was the Acting Branch Manager. With full capacity given her rank to know and take informed decision on the issue and give sound and reliable information on the issue.

The Plaintiffs' Counsel had in a detailed letter dated 8/11/18 notified the Defendant expressing the Plaintiffs' displeasure and disappointment over the behaviour of the Defendant on the issue of waiver especially as it have failed to fulfill its own side of the bargained obligation in the contract/agreement of interest waiver.

It is in the same letter that Plaintiffs through their instruction to their Counsel had notified the Defendant of their intention to seek redress because of the failure of the Defendant to fulfill its own obligation in the interest waiver saga. That EXH ALN 4 lay bare all that actually transpired between the parties in that regard.

The Defendant received the said EXH ALN 4 and in their response dated 21/11/18, that is about thirteen (13) days after the receipt of the EXH ALN 4. The Defendant promised to respond to the issues stated in the EXH ALN 4

appropriately but they never did that. They even asked the Defendant to exercise restraint accordingly – EXH ALN 3.

In EXH ALN 3 the Plaintiffs had given the Defendant up to the 1<sup>st</sup> day of December, 2018 to so respond or face Court action.

The Defendant failed, refused and deliberately neglected to do so till date. That is why the Plaintiffs came to Court almost four (4) months after the said EXH ALN 3 by the Plaintiffs.

Going by all the Exhibits attached as well as the facts stated in Affidavit in support, it is very crystal clear that the Plaintiffs had established their case on the balance of probability and beyond doubt on the civil ground. The Defendant were not able to controvert these facts. The Defendant reneged on the contract agreement they had with the Plaintiffs and they know it.

The Plaintiffs are entitled to the interest waiver based on the agreement of the parties to that effect.

The Defendant are in breach of the waiver agreement since the Plaintiffs had paid the Four Million Naira (~~₦~~4,000,000.00) as agreed and presented the document of health status of the 2<sup>nd</sup> Plaintiff. The Defendant cannot therefore claim to have sold the debt while they have given the Plaintiffs go ahead to pay the said Four Million Naira (~~₦~~4,000,000.00) as full and final settlement of their indebtedness to the Defendant within the time it claimed to have sold the debt.

That being the case, the case of the Plaintiffs is very meritorious. The Defendant is in breach of the contract of interest waiver.

***This Court therefore grants all the Reliefs sought by the Plaintiffs in this case.***

This is the Judgement of this Court.

Delivered today the \_\_\_\_\_ day of \_\_\_\_\_ 2020  
by me.

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**K.N. OGBONNAYA  
HON. JUDGE**